

Project Sponsor: Whidbey Camano Land Trust**Project Number:** 20-1461C
Amendment: 1**Project Title:** Livingston Bay Protection and Restoration Planning**Approval Date:** 07/01/2021

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Agreement (Agreement) is entered into between the State of Washington by and through the Department of Fish and Wildlife (WDFW or Funding Entity) acting through the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and Whidbey Camano Land Trust (Sponsor, and primary Sponsor), 765 Wonn Rd Barn C201, Greenbank, WA 98253, Tulalip Tribes (Sponsor, and secondary Sponsor), 6406 Marine Dr, Tulalip, WA 98271, and shall be binding on the agents and all persons acting by or through the parties.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

The identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) enter into this project agreement on behalf of the Sponsor(s), (2) enter any amendments thereto on behalf of the Sponsors. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all sponsors, unless otherwise allowed in Amendments to Agreement Section.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS section).

PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

DESCRIPTION OF PROJECT

The Whidbey Camano Land Trust and partners will develop a preliminary design to restore 317 acres of critical salmon and wildlife habitat in Livingston Bay on Camano Island and seize upon current acquisition opportunities if restoration is deemed feasible. The Land Trust will investigate the feasibility of restoring former tidal estuary and wetland habitat that is currently managed as diked farmland, and protect those lands and adjacent nearshore habitat to benefit coho, chum, pink, and Endangered Species Act-listed Puget Sound Chinook salmon and Puget Sound steelhead. The 317 acres targeted for restoration planning includes over three quarters of a mile of Livingston Bay shoreline and 25 acres of tidelands directly adjacent to over 7,500 acres of protected habitat within Port Susan Bay and the Stillaguamish River Delta. At present, at least two properties and up to 200 acres are available for acquisition. The Livingston Bay Protection and Restoration Planning project will advance process-based restoration efforts prioritized by the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP) by building off of the conceptual design work already completed and securing a portion of that project footprint.

This project received funding from SRFB, PSAR, and ESRP. The SRFB/PSAR scope of work is to acquire the Leque and Livingston Bay Community Association properties. The ESRP scope of work is the same, but also includes acquiring the Roberge and/or Sherman properties and completing a preliminary design.

PERIOD OF PERFORMANCE

The period of performance begins on July 1, 2021 (project start date) and ends on December 31, 2023 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The Sponsor must request extensions of the period of performance at least 60 days before the project end date.

STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office are hereby incorporated by reference as part of this Agreement.

LONG-TERM OBLIGATIONS

For the acquisition portion of this project, the Sponsor's long-term obligations for the project area shall be in perpetuity, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

Where conflicts may exist between this section and other sections of the agreement, the latter shall apply.

PROJECT FUNDING

The total grant award provided for this project shall not exceed \$2,145,117.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
Office - Estuary & Salmon Restoration	56.07%	\$1,500,000.00	State
SRFB - Puget Sound Acq. & Restoration	23.36%	\$624,871.00	State
SRFB - Salmon State Projects	0.76%	\$20,246.00	State
Project Sponsor	19.81%	\$529,883.00	
Total Project Cost	100.00%	\$2,675,000.00	

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions of the Recreation and Conservation Office.

AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so, and such signature shall be binding on the Sponsor.

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all applicable federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that amendment.

Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

For the purpose of this Agreement all applicable RCO WACs and funding board policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Acquisition Projects - Manual 3
- Estuary & Salmon Restoration Program Policy Manual
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Restoration Projects - Manual 5
- Salmon Recovery Grants - Manual 18

Any applicable tribal preference laws may otherwise apply for a Sponsor that is a federally recognized Indian Tribe provided such preference laws are consistent with federal law.

SPECIAL CONDITIONS

Special Condition #1: Cultural Resources-Survey Required

This agreement requires compliance with Executive Order 21-02. RCO has completed the initial consultation for this project and a cultural resources survey is required to address the acquisition area and any associated ground disturbing actions, as well address any areas slated for future development/restoration actions. The Sponsor must submit to RCO the survey and receive from RCO a notice of cultural resources completion before any ground disturbing activities can begin. Final payment for the acquisition will be withheld until special conditions have been satisfied. In the event that archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in this agreement. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation.

Special Condition #2: Project Funding

The Puget Sound Acquisition and Restoration Program (PSAR) awarded \$594,871 of 21-23 funds to this project through RCO project 20-1134 in 2020 to acquire the Leque Property and Livingston Bay Community Association property (this awarded amount was less than that requested). In 2021, PSAR awarded an additional \$30,000 in 21-23 funds and the Salmon Recovery Funding Board awarded \$20,246 of 2021 funds to RCO project 20-1134 to complete those same acquisitions. The Estuary and Salmon Restoration Program awarded \$1,500,000 to this project through project 20-1461 to acquire those same properties. In addition, the ESRP award is to acquire the Roberge and/or the Sherman properties and to complete a preliminary design to restore critical salmon and wildlife habitat. These grant awards are being combined into a single contract 20-1461 for efficiency. PSAR/SRFB's required match is \$145,000, which is fully met by the ESRP award. ESRP's required match is \$1,175,000 (including some non-state funding), which is partially met by the PSAR and SRFB awards, leaving a remaining \$529,883 in additional sponsor match.

Special Condition #3: Incorporate "Attachment A" - Statement of Work (PRISM Attachment #486180) by reference here as an attachment to the project Agreement.

AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Sponsor Project Contact

Ryan Elting
Executive Director
765 Wonn Rd
Greenbank, WA 98253
ryan@wclt.org

RCO Contact

Bob Warinner
Outdoor Grants Manager
PO Box 40917
Olympia, WA 98504-0917
bob.warinner@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change.

ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

EFFECTIVE DATE

This Agreement, for project 20-1461, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the sponsor and the RCO, whichever is later (Effective Date).

Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RECREATION AND CONSERVATION OFFICE. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

Whidbey Camano Land Trust

By: Ryan Elting
Ryan Elting (May 10, 2023 12:55 PDT)

Date: May 10, 2023

Name (printed): Ryan Elting

Title: Executive Director

Tulalip Tribes

By: Teri Gobin

Date: 05/05/23

Name (printed): Teri Gobin

Title: Tulalip Tribes BOD chair

State of Washington Recreation and Conservation Office

By: Marc Duboiski
Marc Duboiski (May 10, 2023 13:18 PDT)

Date: May 10, 2023

For Megan Duffy
Director
Recreation and Conservation Office

Pre-approved as to form:

By: Daniel B. Mendenhall

Date: 02/02/2023

Assistant Attorney General

Project Sponsor: Whidbey Camano Land Trust

Project Number: 20-1461C
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Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Acquisition Metrics

Property: Leque (Worksite #1, Livingston Bay)

Real Property Acquisition

Land

Acres by Acreage Type (fee simple):

Uplands

69.00

Wetlands

25.00

Existing structures on site:

Structures and acres excluded for ineligible use

Incidentals

Appraisal

Appraisal Review

Baseline Documentation

Boundary line adjustment

Closing, Recording, Taxes, Title

Cultural resources (Acq)

Environmental Audits

Fencing (Acq)

Number of linear feet of fencing to be built:

25

Noxious weed control

Acres treated for noxious weeds by method:

Chemical

10.00

Mechanical

10.00

Signs (Acq)

Number of permanent signs that identify site and funding partners:

2

Stewardship plan

Survey (Acq)

Wetland Delineations

Administrative Costs (Acq)

Administrative costs (Acq)

Property: Livingston Bay Community Association (Worksite #1, Livingston Bay)

Real Property Acquisition

Land

Acres by Acreage Type (fee simple):

Tidelands

25.00

Uplands

7.65

Existing structures on site:

No structures on site

Incidentals

Appraisal

Appraisal Review

Baseline Documentation

Boundary line adjustment

Closing, Recording, Taxes, Title

Cultural resources (Acq)

Environmental Audits

Fencing (Acq)

Number of linear feet of fencing to be built: 25

Noxious weed control

Acres treated for noxious weeds by method:

Chemical 2.50

Mechanical 2.50

Signs (Acq)

Number of permanent signs that identify site and funding partners: 2

Stewardship plan

Survey (Acq)

Wetland Delineations

Administrative Costs (Acq)

Administrative costs (Acq)

Property: Roberge (Worksite #1, Livingston Bay)

Real Property Acquisition

Land

Acres by Acreage Type (fee simple):

Uplands 36.14

Wetlands 1.50

Existing structures on site: Structures to be demolished
Shed

Incidentals

Appraisal

Appraisal Review

Baseline Documentation

Boundary line adjustment

Closing, Recording, Taxes, Title

Cultural resources (Acq)

Demolition

Buildings / structures to be demolished: Shed

Environmental Audits

Fencing (Acq)

Number of linear feet of fencing to be built: 25

Noxious weed control

Acres treated for noxious weeds by method:

Chemical 10.00

Mechanical 10.00

Signs (Acq)

Number of permanent signs that identify site and funding partners: 2

Stewardship plan**Survey (Acq)****Wetland Delineations****Administrative Costs (Acq)****Administrative costs (Acq)****Planning Metrics****Worksite #1, Livingston Bay**

Targeted salmonid ESU/DPS (A.23):

Chinook Salmon-Puget Sound ESU, Chum Salmon-Puget Sound/Strait of Georgia ESU, Coho Salmon-Puget Sound/Strait of Georgia ESU, Pink Salmon-Odd year ESU, Steelhead-Puget Sound DPS

Targeted species (non-ESU species):

Bull Trout, Searun Cutthroat

Area Encompassed (acres) (B.0.b.1):

317.0

Miles of Stream and/or Shoreline Affected (B.0.b.2):

0.94

Miles of Stream and/or Shoreline Treated or Protected (C.0.b):

Shoreline

0.82

Shoreline

Project Identified In a Plan or Watershed Assessment (C.0.c):

Island County Lead Entity Salmon Recovery Technical and Citizen Committee (SRTCC): WRIA 6. 2019. WRIA 6 (Whidbey and Camano Islands) Multi-Species Salmon Recovery Plan Update. [https://](https://www.islandcountywa.gov/Health/DNR/Salmon/Documents/WRIA%206%20MStillaguamishImplementationReviewCommittee(SIRC).)

[www.islandcountywa.gov/Health/DNR/Salmon/Documents/WRIA%206%20MStillaguamishImplementationReviewCommittee\(SIRC\).](https://www.islandcountywa.gov/Health/DNR/Salmon/Documents/WRIA%206%20MStillaguamishImplementationReviewCommittee(SIRC).) (2005). Stillaguamish Watershed Chinook Salmon Recovery Plan.

<https://snohomishcountywa.gov/ArchiveCenter/ViewFile/Item/2163> Please see notes section for additional plans.

Shared Strategy Development Committee. (2007). Puget Sound Salmon Recovery Plan, Volume 1. http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domain_s/puget_sound/chinook/pugetsoundchinookrecoveryplan.pdf Cereghino, P., J. Toft, C. Simenstad, E. Iverson, S. Campbell, C. Behrens, J. Burke.

(2012). Strategies for nearshore protection and restoration in Puget Sound. Puget Sound Nearshore Report No. 2012-01. http://www.pugetsoundnearshore.org/technical_papers/cdr/Design_Rpt_final.pdf

www.pugetsoundnearshore.org/technical_papers/cdr/Design_Rpt_final.pdf

[nearshore.org/technical_papers/psnerp_strategies_maps_lowres.pdf](http://www.pugetsoundnearshore.org/technical_papers/cdr/Design_Rpt_final.pdf) Environmental Science Associates. (2012). Puget Sound Nearshore Ecosystem Restoration Project. Strategic Restoration Conceptual Engineering - Final Design Report http://www.pugetsoundnearshore.org/technical_papers/cdr/Design_Rpt_final.pdf

None

Type Of Monitoring (C.0.d.1):

Design for Salmon restoration**Preliminary design (B.1.b.11.a RCO)**

Project Identified in a Plan or Watershed Assessment. (1220) (B.1.b.11.a):

Island County Lead Entity Salmon Recovery Technical and Citizen Committee (SRTCC): WRIA 6. 2019. WRIA 6 (Whidbey and Camano Islands) Multi-Species Salmon Recovery Plan Update. [https://](https://www.islandcountywa.gov/Health/DNR/Salmon/Documents/WRIA%206%20MStillaguamish)

www.islandcountywa.gov/Health/DNR/Salmon/Documents/WRIA%206%20MStillaguamish

Priority in Recovery Plan (1222) (B.1.b.11.b):

Cultural Resources

Cultural resources

Implementation Review Committee (SIRC). (2005). Stillaguamish Watershed Chinook Salmon Recovery Plan.

<https://snohomishcountywa.gov/ArchiveCenter/ViewFile/Item/2163> Please see notes section for additional plans.

Shared Strategy Development Committee. (2007). Puget Sound Salmon Recovery Plan, Volume 1. http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domain/s/puget_sound/chinook/pugetsoundchinookrecoveryplan.pdf Cereghino, P., J. Toft, C. Simenstad, E. Iverson, S. Campbell, C. Behrens, J. Burke.

(2012). Strategies for nearshore protection and restoration in Puget Sound. Puget Sound Nearshore Report No. 2012-01. <http://www.pugetsound>

nearshore.org/technical_papers/psnerp_strategies_maps_lowres.pdf Environmental Science Associates. (2012). Puget Sound Nearshore Ecosystem Restoration Project. Strategic Restoration Conceptual Engineering - Final Design Report http://www.pugetsoundnearshore.org/technical_papers/cdr/Design_Rpt_final.pdf

The project will implement multiple strategies and recommendations identified in the WRIA 6 Multi-Species Salmon Recovery Plan 2019 Update and the Stillaguamish Chinook Recovery Plan, including protection and restoration of natural marine shoreline processes, and restoration of historic estuarine habitat (SRTCC, p. 21; SIRC, p. 68). Please see notes section for additional information.

In addition, the project advances the recovery goal of the Puget Sound Salmon Recovery Plan – Watershed Profile of Whidbey and Camano Islands, "to achieve a net increase in salmon habitat through protection, enhancement, and restoration of naturally-functioning ecosystems that support self-sustaining salmon populations and the species that depend upon them (p. 208)." Furthermore, the project is located in a Shoreline Process Unit prioritized for restoration by PSNERP's Strategies for Nearshore Protection and Restoration in Puget Sound, and advances a restoration project included in PSNERP's Strategic Restoration Conceptual Engineering - Design Report (#1618).

Project Sponsor: Whidbey Camano Land Trust

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Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Project Start	07/01/2021	
X	Progress Report Due	06/01/2022	
X	Order Appraisal(s)	06/01/2022	All Properties
X	Order Appraisal Review(s)	07/01/2022	All Properties
X	Other	09/15/2022	All Properties: Voluntary Acquisition Notice to Landowner
	Other	09/30/2022	All Properties: Just Compensation and Relocation Notice to Owner
X	Other	09/30/2022	All Properties: Preliminary Title Report and Title Report Commitment Checklist
	Other	09/30/2022	Check in meeting with project partners and funders to verify concurrence that meaningful restoration is feasible before proceeding with acquisition spending in earnest.
	Purchase Agreement Signed	10/01/2022	All Properties
	Progress Report Due	12/01/2022	
	Environmental Assess Complete	12/01/2022	All Properties: Hazardous Substances Certification and supporting Environmental Site Assessment or RCO Property Assessment Checklist
	Draft Design to RCO	12/31/2022	Present draft feasibility study report, including conceptual design documents (multiple scenarios based on acquisition outcomes) and alternatives analysis to stakeholders and ESRP/RCO staff
	Other	01/15/2023	All Properties: Legal description and Property Map to RCO to include in Deed of Right
	Other	02/01/2023	All Properties: Survey and Wetlands Inventory complete
	Progress Report Due	03/01/2023	
	Recorded Acq Documents to RCO	04/01/2023	All Properties: Recorded Deed, Deed of Right
	Recorded Land Survey to RCO	04/01/2023	
	Acquisition Closing	04/01/2023	All Properties
	RCO Final Inspection	04/30/2023	
	Other	05/01/2023	All Properties: Final Title Insurance Policy
	Preliminary Design to RCO	06/01/2023	
	Cultural Resources Complete	06/01/2023	Survey required, see special condition #1. Survey must include historic property assessment of any structures over 50 years old (if applicable) and archaeological investigation to address planned ground disturbance including all infrastructure removal an
	Funding Acknowl Sign Posted	07/01/2023	All Properties
	Stewardship Plan to RCO	07/01/2023	All Properties
	Progress Report Due	09/30/2023	
	Special Conditions Met	12/31/2023	Ensure compliance with Statement of Work
	Final Report Due	12/31/2023	
	Agreement End Date	12/31/2023	PROJECT CLOSING. All expenditures must be prior to this date.
	Final Billing Due	02/29/2024	

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Standard Terms and Conditions of the Recreation and Conservation Office

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STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions of the Recreation and Conservation Office as of 10/03/2022.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

acquisition project – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

agreement or project agreement – The document entitled "RCO Tribal Project Agreement" accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the Recreation and Conservation Office, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Agreement subject to any limitations on their effect.

applicable manual(s) – A manual designated in this Agreement to apply as terms of this Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

applicable WAC(s) – Designated chapters or provisions of the Washington Administrative Code that are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

applicant – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds administered by RCO.

application – The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. 200 as updated).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board, or both as may apply.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. Part 200 (as updated)).

long-term compliance period – The period of time after the project end date or end of the period of performance (depending on the project types and grant program). During this period, the Sponsor has continuing obligations under the Agreement. This period may have a nonspecific end date (in perpetuity) or an expressly specified number of years.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and applicable regulations and policies.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

Office – Means the Recreation and Conservation Office or RCO.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 CFR 200 (as updated)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO.

project area – A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. Part 200 (as updated)) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCFB – Recreation and Conservation Funding Board

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

secondary sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This

person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. Part 200 (as updated). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

useful service life – Period during which an asset or property is expected to be useable for the purpose it was acquired, developed, renovated, and/or restored per this Agreement.

WAC – Washington Administrative Code.

PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO. All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the RCO.

RESPONSIBILITY FOR PROJECT

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor. When a project is Sponsored by more than one entity, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO has no responsibility for reviewing, approving, overseeing or supervising design or construction of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO will act only to confirm at a general, lay, and nontechnical level, solely for the purpose of compliance and payment and not for safety or suitability, that the project has apparently been completed as per the Agreement.

INDEMNIFICATION

Subject to the limitations provided in this Agreement, the Sponsor shall defend, indemnify, and hold the Recreation and Conservation Office (RCO), the Recreation and Conservation Funding Board, the Salmon Recovery Funding Board, collectively referred to herein as "the RCO"; and its officers and employees harmless from all damage, loss, claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement, by the Sponsor or the Sponsor's agents, employees, contractors, and subcontractors of any tier, or any persons for whom the Sponsor may be vicariously liable. If the RCO is immune from suit pursuant to a specific statutory exemption and or limitation as to the particular claim, demand(s), or suit(s) at law or equity, the Sponsor shall have no obligation to defend, indemnify or hold the RCO harmless. Should this section conflict with any other section of this Agreement, the terms of this section shall take precedence.

Provided that nothing herein shall require a Sponsor to defend or indemnify the RCO against and hold harmless the RCO from claims, demands or suits at law or equity based solely upon the negligence of the RCO, its employees and/or agents for whom the RCO is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, contractors, and subcontractors of any tier, or any persons for whom the Sponsor is vicariously liable, and (b) the RCO its employees and agents, contractors, and subcontractors of any tier or any for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, and subcontractors of any tier, or any persons for whom the Sponsor may be vicariously liable.

In the event a tribal employee files suit against the RCO for damages sustained in an occupational injury occurring while the tribal employee is performing services pursuant to this agreement, and RCO seeks indemnification by the tribe under this agreement for such a damages claim, the tribe shall waive and not assert immunity under the tribe's or the State's workers' compensation laws. The tribe's agreement not to assert its immunity under workers' compensation laws applies only to a claim by RCO for indemnification under this agreement, and does not preclude the tribe from asserting immunity or any other viable defenses to a claim by either a tribal employee or a third party.

INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by applicable federal, state, and/or local laws.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52 if applicable; or any similar applicable statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations).

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act; provided, however, if consistent with federal law, the applicable tribal preference laws may otherwise apply if the Sponsor is a federally recognized Indian Tribe. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees to comply with all applicable federal and state nondiscrimination laws, regulations and policies."

- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with applicable provisions of the rules and regulations

of the Washington State Department of Labor and Industries. However, applicable tribal wage and safety rules and preferences may otherwise apply if the Sponsor is a federally recognized Indian Tribe.

If Sponsor is a federally recognized Indian Tribe, the following shall apply: The Tribe shall provide workers compensation coverage for all of its employees in accordance with applicable tribal worker's compensation laws. To the extent grant funded employees are not subject to tribal workers compensation program coverage, they shall be covered by applicable state or federal workers compensation laws, and the Tribe shall not assert immunity under such workers compensation laws for actions brought under such laws by its employees or agents; and if such employees are not subject to state or federal workers compensation laws, the Tribe shall require employees to be insured under Employer's Contingent Liability (Stop Gap) with a minimum coverage limit of \$1,000,000 on accident and aggregate.

- D. **Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 21-02 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 21-02 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 21-02. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.
- E. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

- F. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to RCO, Sponsor understands that RCO may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit RCO to disclose and copy such

document to respond to a request under state public records laws. The Sponsor hereby agrees to release RCO from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying, provided that RCO follows RCW 42.56 and applicable regulations and guidance.

PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:
 - 1) All approved or required activities outlined in the Agreement are done;
 - 2) On-site signs are in place (if applicable);
 - 3) A final project report is submitted to and accepted by RCO;
 - 4) Any other required documents and media are complete and submitted to RCO;
 - 5) A final reimbursement request is submitted to RCO;
 - 6) The completed project has been accepted by RCO;
 - 7) Final amendments have been processed;
 - 8) Fiscal transactions are complete, and
 - 9) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.

ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements.

RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with applicable state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Overpayment Payments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

INCOME (AND FEES) AND USE OF INCOME

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
 - 1) The Sponsor's matching resources;
 - 2) The project's total cost;
 - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
 - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
 - 5) Capital expenses for similar acquisition and/or development and renovation; and/or
 - 6) Other purposes explicitly approved by RCO.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
 - 1) Grant program laws, rules, and applicable manuals;
 - 2) Value of any service(s) furnished;
 - 3) Value of any opportunities furnished; and
 - 4) Prevailing range of public fees in the state for the activity involved.

PROCUREMENT REQUIREMENTS

Procurement Requirements. If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:

- 1) Publish a notice to the public requesting bids/proposals for the project;
- 2) Specify in the notice the date for submittal of bids/proposals;
- 3) Specify in the notice the general procedure and criteria for selection;
- 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected; and
- 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer; provided, however, if consistent with federal law, the applicable tribal preference laws may otherwise apply if the Sponsor is a federally recognized Indian Tribe.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.
- B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure has been executed, it will further stipulate and define the RCO's right to inspect and access lands acquired or developed with this funding assistance.

STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

ACKNOWLEDGMENT AND SIGNS

- A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. **Signs.**
 - 1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and
 - 2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication

ceremonies.

PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force:

- A. **Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to all applicable manuals and RCWs or WACs.
- B. **Evidence of Title.** The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. **Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.
- D. **Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document (provided or approved by RCO) conveying certain rights and responsibilities to RCO or the Funding Entity on behalf of the State of Washington or another agency of the state, or federal agency, or other organization. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
 - 1) **Deed of Right.** The Deed of Right as described in RCO Manual #3 conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.
 - 2) **Assignment of Rights.** The Assignment of Rights as described in RCO Manual #3 document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
 - 3) **Easements and Leases.** The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.
- E. **Real Property Acquisition and Relocation Assistance.** In the event that housing and relocation costs and procedures are required by local, state, tribal, or federal law, or rule; the Sponsor agrees to provide such housing and relocation assistance as a condition of the Agreement and receiving grant funds.
- F. **Buildings and Structures.** In general, grant funds are to be used for outdoor recreation, conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsor must consult with RCO regarding treatment of such structures and compliance with COMPLIANCE WITH APPLICABLE LAW SECTION, Archeological and Cultural Resources paragraph.
- G. **Hazardous Substances.**
 - 1) **Certification.** The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:
 - a) No hazardous substances were found on the site, or
 - b) Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
 - 2) **Responsibility.** Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
 - 3) **Hold Harmless.** Subject to the limitations provided in this Agreement, the Sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against liability, cost (including but not limited to all costs of defense and attorneys' fees) and loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the

property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents, including RCO, caused or contributed to the release or should have inquired into or disclosed relevant information to the Sponsor.

LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. **Long-Term Obligations.** Sponsor shall comply with the terms of this Agreement.
- B. **Perpetuity.** For acquisition projects, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO, RCO requires that the project area continue to function as intended after the period of performance in perpetuity. The ability for RCO to enforce this long-term obligation for an acquisition project shall be as prescribed in this Agreement.
- C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policy or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and/or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon the terms of this Agreement, including without limitation all WACs and manuals deemed applicable and all applicable laws.

For acquisition projects that are expressly term limited in the Agreement, such as one involving a lease or a term-limited restoration, renovation or development project or easement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided by this Agreement, any applicable manual or WAC, or any applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per this Agreement and the applicable manuals, WACs and laws, and the RCO may pursue such remedies as the above allows.

CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
 - 1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
 - 2) In a reasonably safe condition for the project's intended use;
 - 3) Throughout its estimated useful service life so as to prevent undue deterioration;
 - 4) In compliance with all applicable federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
 - 1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current applicable guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
 - 2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
 - 3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. Applicable State law (constitution, statute);
- F. Applicable Washington Administrative Code;
- G. Applicable RCO manuals.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate by writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO relies on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and /or enforcement of long-term or other obligations. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

A. For Cause.

- 1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
 - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to

milestones and other defined deadlines; or

- c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project.
 - 2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
 - 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.
- B. **For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:
- 1) The Sponsor was not in default; or
 - 2) Failure to perform was outside Sponsor's control, fault or negligence.
- C. **Rights or Remedies of the RCO.**
- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
 - 2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.
- D. **Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.
- 1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

DISPUTE RESOLUTION

General. This Dispute Resolution section applies only to disputes between the Sponsor and RCO regarding the Parties rights and responsibilities under this Agreement, including disputes concerning any claims of the Parties for any indemnification pursuant to this Agreement for third party claims.

The parties shall, if possible, first attempt to resolve any disputes through Informal Negotiations as described below. If that is not possible or is unsuccessful, the parties shall elect to resolve the dispute through (1) a Dispute Hearing process if agreeable to both parties, or (2) binding arbitration; provided the Sponsor shall have the option to elect to resolve the dispute in state or federal court if such courts possess jurisdiction over the dispute in question.

For all of the dispute resolution methods, (1) each party shall bear its own attorney's fees and costs; and (2) during utilization of any and/or all of the mediation, arbitration and/or Dispute Hearing steps and processes, any statutes of limitation shall be tolled, and in no circumstances shall any time utilizing such steps and processes be considered when determining whether any statutes of limitation have expired.

Informal Negotiations. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other

party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above. Such closure shall not preclude continuing or later negotiations, if desired.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

Dispute Hearing. In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues.

A party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the RCO director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the dispute panel according to the nature and complexity of the issues involved. The process may be solely based on written material, if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the legal authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a dispute hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute, or completion of any Informal Negotiations conducted by the parties concerning the disputed action or position, whichever is later.

All fees and costs associated with the implementation of this process (excluding each party's own attorney's fees and costs) shall be shared equally by the parties.

Arbitration. In the event the Parties do not agree to resolve the dispute through a Dispute Hearing Process as set forth above, the parties shall resolve any controversy, claim or dispute concerning the making, formation, validity, obligations under, or breach of, this Agreement (Disputed Matter) through binding arbitration conducted under Judicial Arbitration and Mediation Services (JAMS) rules. Prior to invoking arbitration, the parties may agree to mediation, in which event the parties will use their best efforts to select a mediator as soon as possible. The mediator's costs and attendant costs of mediation shall be borne equally by the parties.

Either party may make a written demand for binding arbitration before a qualified arbitrator in Seattle, Washington, or at another place as the parties may agree in writing. Request for binding arbitration under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute, or completion of any Informal Negotiations conducted by the parties concerning the disputed action or position, whichever is later. A qualified arbitrator will mean a person generally familiar with the subject matter of the Disputed Matter with at least five years of arbitration experience, and knowledge of federal Indian law, if federal Indian law is part of the dispute. If the parties cannot agree on a single arbitrator, a three-person arbitration panel shall be selected as follows: each party shall select an arbitration panel member and the two selected panelists shall select a third. If the panelists cannot agree on a third arbitrator, the third arbitrator shall be selected by JAMS. The arbitration shall be administered by JAMS pursuant to its Expedited Procedures as now written or hereafter amended. Each party will pay for its own attorneys' fees and costs. The substantially prevailing party is entitled to reimbursement from the other party of all moneys it paid to the third arbitrator or JAMS related to the arbitration proceeding. The arbitrator's award shall be binding upon the parties and no appeal shall be permitted, except for a request to vacate under RCW 7.04A.230 or 9 U.S.C. § 10.

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the authorities set forth in the Order of Preference section. In the event of a lawsuit involving this Agreement, venue shall be in the jurisdiction where the project is situated, if venue there is legally proper, and if not, in another jurisdiction where venue is legally proper.

PROVISIONS FOR FEDERALLY RECOGNIZED INDIAN TRIBES

- A. Limited Waiver of Sovereign Immunity. The Tribe expressly retains all rights and benefits of sovereign immunity. Nothing in this Agreement shall be deemed as a waiver of sovereign immunity or as increasing the Tribe's liability beyond any statutory or other limitation of liability, except as expressly stated herein.

The Tribe hereby grants and provides a limited waiver of sovereign immunity for the following purposes as may be needed by Sponsor or RCO:

- 1) to enforce the terms of this Agreement, including the indemnification provisions, and any documents recorded pursuant to this Agreement, such as those related to real property interests in the form of deeds, easements, or covenants,
 - 2) to enforce the Dispute Resolution provisions of this Agreement,
 - 3) to compel arbitration of a Disputed Matter,
 - 4) to enforce any mediation agreement, Disputes Panel Decision, or Arbitration award or judgment, and/or vacate an Arbitration award or judgment under RCW 7.04A.230 or 9 U.S.C. § 10,
 - 5) to enforce the long-term obligations of this agreement.
- B. This limited waiver of sovereign immunity shall apply to all matters in the above subsection A in federal district court, and if the federal district court lacks jurisdiction, then in a State court of competent jurisdiction. Such court may render judgment and issue such orders as may be necessary to enforce such awards or judgments. This waiver does not extend to and is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for punitive damages of any kind may be made or enforced against the Tribe.

Duration of Limited Waiver of Sovereign Immunity described in subsection A above. The limited waiver of sovereign immunity shall apply during the period of performance of this Agreement and then be limited as follows:

- 1) For land acquisition projects: Limited to the 10 years following the end date of this agreement, however, the waiver shall be in perpetuity for fee simple property acquisitions or perpetual easements. However, the limited waiver of sovereign immunity in perpetuity is limited to the sole purpose of enforcing only subsections B and C of the Long-Term Obligations of the Projects and Sponsors section of this Agreement. Long-term obligations include any property or value owed to RCO for any conversion of the project real property to other purposes. For land acquisitions that are term limited, any limited waiver of sovereign immunity shall be limited to the longer of the 10 years following the end date of this agreement or the time required to enforce long-term obligations but only then for any relief owed to RCO for any conversion of real property to other purposes.
 - 2) For restoration projects: Limited to the 10 years following the end date of this agreement.
 - 3) For non-capital projects: Limited to the period of performance. Non-capital projects include Planning, Research, Monitoring, Education, Enforcement, Maintenance, Preliminary Design, Assessments, Acquisition of Water Rights, and Studies.
 - 4) For capital projects: Limited to the 25 years after the end date of this agreement. Capital projects include Development and Renovation (construction and/or renovation), and completed final designs.
- C. Liability Limits. Any payment of a monetary judgment arising from a resolution or judgment under the Dispute Resolution section, or any other defense and/or indemnity obligation under this Agreement, Sponsor's long-term obligations, or a default of an explicit duty owed by the Tribe to the RCO under the terms of this Agreement, shall be limited by and to the following:
- 1) For Noncapital Projects (Planning, Research, Monitoring, Education, Enforcement, Maintenance, Preliminary Design, Assessments, Acquisition of Water Rights, and Studies.): The RCO grant amount.
 - 2) For Restoration, Development (construction/renovation), Renovation, Acquisition, and completed final design projects: a per occurrence limit of \$1 million (with a maximum aggregate limit of \$3 million), or the grant amount, whichever greater, or in the case of a long-term obligation the cost of conversion or replacement property based on the current fair market value of a replacement property or an equivalent amount if the

Sponsor has not obtained or is unable to obtain replacement property.

- D. In disputes between the parties, each party shall bear its own attorneys' fees and costs. Attorneys' fees and costs in connection with third party claims subject to the Sponsor's indemnification of RCO shall not reduce or otherwise affect the Sponsor's liability limits in the Liability Limits subsection above.

SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

END OF AGREEMENT

This is the end of the agreement.









20-1461 Amendment #1 - Scope Change

Final Audit Report

2023-05-10

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