



## Agreement No. WRSRP-2020-TacoES-00004

### WATER RESOURCES STREAMFLOW RESTORATION PROGRAM AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

TACOMA ENVIRONMENTAL SERVICES DEPARTMENT

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and Tacoma Environmental Services Department, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

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#### GENERAL INFORMATION

Project Title:	South Tacoma Channel Stormwater Infiltration Project Feasibility Study
Total Cost:	\$387,200.00
Total Eligible Cost:	\$387,200.00
Ecology Share:	\$387,200.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	06/01/2021
The Expiration Date of this Agreement is no later than:	12/31/2023
Project Type:	Streamflow Restoration Grants

#### Project Short Description:

The RECIPIENT shall investigate a multi-site project to enhance streamflow in the Flett Creek Watershed. Major components include rerouting stormwater flows, enhancing infiltration of stormwater in the South Tacoma Channel, and restoring ecological function of the Flett Wetland and stream channel. The feasibility study shall identify and explore technical, permitting, and administrative elements to guide preliminary project design and identify maintenance needs.

#### Project Long Description:

The RECIPIENT shall conduct a feasibility study to evaluate three streamflow benefit projects in the historical Flett Creek floodplain. These projects shall incorporate multiple project types: water storage (improved stormwater infiltration and management); watershed function, riparian and fish habitat improvements; and environmental monitoring elements. The feasibility study is the first phase of the Project and shall evaluate the potential for aquifer recharge, stormwater management, streamflow restoration at the three sites, document water availability, identify permitting

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requirements and other potential constraints, and develop preliminary design and costs for full implementation.

The overall Project is a priority project in the Water Resource Inventory Area 12 (WRIA 12) Chambers-Clover Creek Watershed Restoration and Enhancement Plan (in development) authorized under RCW 90.94.030. Flett Creek is a tributary to Chambers Creek within WRIA 12. The upstream portion of Flett Creek (Site 1), within the South Tacoma Channel (STC), is channelized or piped as part of the RECIPIENT's stormwater sewer system and flows south toward Metro Parks' South End Recreation & Adventure (SERA) athletic fields (Site 2). Site 3 is a large wetland at the boundary between Tacoma and Lakewood that has the potential to host salmon populations and other native aquatic species of concern, including Chambers Creek Coho salmon, Chambers Creek Winter Chum salmon, South Sound Tributaries Winter Steelhead, and West South Sound Coastal Cutthroat Trout (Salmon Recovery Lead Entity 2018).

The Project shall direct stormwater flows to large-scale infiltration facilities within the STC (Sites 1 and 2) to enhance streamflow and function of lower Flett Creek and Flett Wetland (Site 3). Stormwater shall originate from throughout the Flett Creek Watershed and from a redirection of current cross-basin flows from the Leach Creek Regional Stormwater Holding Basin (LCHB). To prevent flooding of residential properties adjacent to Leach Creek during large rain events, excess LCHB flow is currently pumped out-of-basin to a Commencement Bay marine outfall. This project shall redirect these flows at South 36th and Madison St. to discharge into enhanced infiltration facilities at Site 1.

Main Project components include 1) re-routing and infiltrating stormwater flows, including high flows from the LCHB and other stormwater from the Flett Creek Watershed, 2) treating and infiltrating this water in the STC at Sites 1 and 2 to re-time the current flow regime and enhance dry season baseflow to Flett Creek, and 3) restoring ecological function of the Flett Wetland and supplementing flows to the channel at Site 3. The RECIPIENT shall design all three sites to work together to enhance streamflows and avoid negative impacts to wetland functions during summer low-flow periods. The Project shall enhance instream flows that have been negatively impacted over time by: a) the progressive increase in urbanization and impervious surfaces, b) the RECIPIENT's historical stormwater management practice to collect and convey runoff and release it untreated to local waterbodies such as Flett Creek, and c) out-of-basin pumping of surface water.

The feasibility study shall investigate the implementability of the overall Project. Feasibility study activities shall include groundwater monitoring, stormwater/surface water monitoring and modeling, and soil investigations to design and maintain sustainable regional green infrastructure facilities at Sites 1 and 2 to retime seasonal high-flows through storage and aquifer recharge. Feasibility study activities at Site 3 shall include surface and groundwater monitoring and a survey to design a restoration project to enhance wetland function, improve water quality, and promote healthy stream hydrology. The feasibility study shall quantitatively confirm expected streamflow benefits to Flett Creek.

#### Overall Goal:

The overall Project goal is to restore streamflow, enhance ecological function, and provide community benefits in the Flett Creek Watershed by determining the feasibility of a group of cost-effective and sustainable stormwater infiltration and habitat restoration projects.

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**RECIPIENT INFORMATION**

Organization Name: Tacoma Environmental Services Department

Federal Tax ID: 91-6001283

DUNS Number: 073135535

Mailing Address: 326 East D Street  
Tacoma, WA 98421

Physical Address: 326 East D Street  
Tacoma, Washington 98421

Organization Email: [sally.cowan@cityoftacoma.org](mailto:sally.cowan@cityoftacoma.org)

**Contacts**

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 Recipient Name: Tacoma Environmental Services Department

<p><b>Project Manager</b></p>	<p>Calvin Taylor                  Program Manager</p> <p>326 East D Street                  Tacoma, Washington 98421                  Email: ctaylor5@cityoftacoma.org                  Phone: (253) 625-1512</p>
<p><b>Billing Contact</b></p>	<p>Louis Nguyen                  Sr. Accountant</p> <p>747 Market St                  Tacoma, Washington 98402                  Email: louis.nguyen@cityoftacoma.org                  Phone: (253) 591-5836</p>
<p><b>Authorized Signatory</b></p>	<p>Michael P. Slevin III, P.E.                  Environmental Services Director</p> <p>747 Market Street, Room 345                  Tacoma, Washington 98402                  Email: mslevin@cityoftacoma.org                  Phone: (253) 591-5531</p>

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**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
 Water Resources  
 PO BOX 47600  
 Olympia, WA 98504-7600

Physical Address: Water Resources  
 300 Desmond Drive SE  
 Lacey, WA 98503

**Contacts**

<p><b>Project Manager</b></p>	<p>Paulina Levy</p> <p>PO Box 330316                  Shoreline, Washington 98133-9716                  Email: PLEV461@ecy.wa.gov                  Phone: (206) 594-0189</p>
<p><b>Financial Manager</b></p>	<p>Alvin Josephy</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: ajos461@ecy.wa.gov                  Phone: (360) 407-6456</p>

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**AUTHORIZING SIGNATURES**

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State  
Department of Ecology

Tacoma Environmental Services Department

By: **Verner, Mary (ECY)**  
Digitally signed by Verner, Mary (ECY)  
Date: 2021.08.16 17:56:45 -07'00'

By: Michael P. Slevin III, P.E. 07/25/2021

Mary Verner  
Water Resources  
Program Manager  
Date

Michael P. Slevin III, P.E.  
Environmental Services Director  
Date

Template Approved to Form by  
Attorney General's Office

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Tadd Willie

Tadd Willie 07/25/2021  
Assistant City Manager Date

Andrew Cherullo

Andrew Cherullo 07/23/2021  
Finance Director Date

Charles Lee

Charles Lee 07/23/2021  
Legal (approved as to form) Date

John Burk, P.E.

John Burk, P.E. 07/23/2021  
Division Manager Date

Doris Sorum

Doris Sorum 08/02/2021  
City Clerk Date

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**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$3,400.00**

Task Title: Project Administration

Task Description:

A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation, progress reports and recipient closeout report (including photos); compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed project that meets agreement and Ecology administrative requirements.

Task Expected Outcome:

- \* Timely and complete submittal of requests for reimbursement, quarterly progress reports and recipient closeout report.
- \* Properly maintained project documentation

Recipient Task Coordinator: Calvin Taylor

**Project Administration**

**Deliverables**

Number	Description	Due Date
1.1	Payment Request/Progress Reports	
1.2	Recipient Closeout Report	



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## SCOPE OF WORK

Task Number: 2 **Task Cost: \$1,500.00**

Task Title: Cultural Resources Review

### Task Description:

The RECIPIENT shall ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

The RECIPIENT shall comply with Governor's Executive Order (GEO) 05-05 concerning archeological and cultural resources. To initiate the cultural resources review the RECIPIENT shall:

-Submit to ECOLOGY a completed Ecology Cultural Resources Review form (ECY 070-537; rev. 9/2020). All submitted materials must conform to the Department of Archeology and Historic Preservation's Washington State Standards for Cultural Resource Reporting.

-Submit to ECOLOGY a completed Ecology Inadvertent Discovery Plan (IDP) (ECY 070-560). The RECIPIENT shall ensure that all contractors and subcontractors have a copy of the completed IDP prior to and while working on-site. The RECIPIENT shall ensure the IDP is immediately available onsite, be implemented to address any discovery, and be available by request by any party.

-The RECIPIENT and all contractors and subcontractors performing work onsite shall review the following Ecology video prior to proceeding with work onsite: "Inadvertent Discovery of Cultural Resources of Human Remains" (<https://www.youtube.com/watch?v=cV3BppQTx9Q>; 12:44 minutes).

ECOLOGY shall review the completed Cultural Resources Review form and IDP and, if acceptable, shall issue a Final Cultural Resources Review Determination Letter to RECIPIENT. The RECIPIENT must receive written notice from ECOLOGY prior to proceeding with any work with potential impacts to cultural resources. Work done prior to written notice to proceed shall not be eligible for reimbursement. This includes geotechnical work.

### Task Goal Statement:

Comply with Governor's Executive Order (GEO) 05-05 concerning archeological and cultural resources.

### Task Expected Outcome:

Complete cultural resources review.

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Recipient Name: Tacoma Environmental Services Department

Recipient Task Coordinator: Calvin Taylor**Cultural Resources Review****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	Submit a completed ECY 070-537 form and any supplemental cultural resources documentation to the ECOLOGY Project Manager.	06/30/2021
2.2	Upload the Final Cultural Resources Review Determination Letter to EAGL.	01/31/2022
2.3	Upload to EAGL a completed ECY 070-560 (IDP) form and notify the ECOLOGY Project Manager when upload is complete. The Project Manager and RECIPIENT shall review the IDP during a project kickoff or pre-construction meeting.	07/30/2021
2.4	Submit an email to the ECOLOGY Project Manager confirming the RECIPIENT and all contractors and subcontractors performing work onsite have viewed the video.	01/31/2022

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## SCOPE OF WORK

Task Number: 3 **Task Cost:** \$15,200.00

Task Title: Document and Data Review and Summary

### Task Description:

The RECIPIENT shall review, evaluate, and summarize existing information for the purposes of developing a comprehensive conceptual understanding and summary of the Flett Creek Watershed.

The RECIPIENT shall:

1. Compile and review information related to the project sites including current water body and stormwater management practices within the basin,
2. Compile and review information related to aquatic animal species habitat requirements.
3. Compile and review information related to hydrologic and hydrogeologic conditions within the basin.
4. Determine the level of wetland restoration needed to optimize streamflow benefits during the summer low-flow periods.
5. Identify data gaps.

### Task Goal Statement:

The RECIPIENT shall identify data gaps, and enhance the understanding of surface and groundwater flow, hydrologic and hydrogeologic conditions, and aquatic species habitat needs within the Flett Creek Watershed,

### Task Expected Outcome:

The RECIPIENT shall gain a thorough understanding and summary of existing information and the need for additional information to be collected as part of the feasibility study.

Recipient Task Coordinator: Calvin Taylor

## **Document and Data Review and Summary**

### **Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
3.1	Initial document and data summary, uploaded to EAGL.	01/31/2022
3.2	Final summary of existing information and data, uploaded to EAGL within the feasibility study report.	12/31/2023

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## SCOPE OF WORK

Task Number: 4 **Task Cost:** \$7,000.00

Task Title: Surface Water, and Groundwater Monitoring

### Task Description:

A. The RECIPIENT shall coordinate the preparation, submittal and ECOLOGY approval of a Quality Assurance Project Plan (QAPP) including monitoring system design. The QAPP must follow ECOLOGY's Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies, see

<https://fortress.wa.gov/ecy/publications/summarypages/0403030.html>. A QAPP template is available at

<https://apps.ecology.wa.gov/publications/SummaryPages/1910050.html>.

The RECIPIENT must submit the QAPP to ECOLOGY for review, comment and approval before starting the environmental monitoring activities. Any monitoring activity conducted before the QAPP receives final approval is not eligible for reimbursement.

B. The RECIPIENT shall, in accordance with ECOLOGY-accepted Quality Assurance Project Plan, procure water quality monitoring system equipment, as necessary.

C. The RECIPIENT shall, in accordance with ECOLOGY-accepted Quality Assurance Project Plan, coordinate the completion of field monitoring.

D. The RECIPIENT shall submit all data collected to ECOLOGY's Environmental Information Management database.

### Task Goal Statement:

The RECIPIENT shall collect surface water and groundwater data in accordance with the QAPP, and submit data to ECOLOGY'S EIM system.

### Task Expected Outcome:

The RECIPIENT shall use the QAPP to guide surface water, groundwater, and soil quality data collection with standard methodologies acceptable to ECOLOGY. Surface water, groundwater, and soil quality data shall be uploaded to the EIM database.

Recipient Task Coordinator: Calvin Taylor

## **Surface Water, and Groundwater Monitoring**

### **Deliverables**

Number	Description	Due Date
4.1	Quality Assurance Project Plan. Upload to EAGL and notify ECOLOGY when upload is complete	07/30/2021
4.2	Submit surface water, and groundwater quality data to EIM	12/23/2023
4.3	Email confirmation from EIM coordinator verifying the data was uploaded to EIM.	12/23/2023

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## SCOPE OF WORK

Task Number: 5 **Task Cost:** \$167,300.00

Task Title: Field Explorations and Monitoring

### Task Description:

The RECIPIENT shall install shallow geotechnical test pits and pilot infiltration tests (PITs) to evaluate sub-surface conditions and infiltration rates at Sites 1 and 2. Approximately 20 test pits, with approximately 9 converted to PITs, are expected.

The RECIPIENT shall conduct deep geotechnical borings and install monitoring wells at Sites 1, 2, and 3 to further evaluate sub-surface conditions, conduct hydraulic tests, assess groundwater table elevations and flow patterns, and perform groundwater quality testing. Approximately 9 monitoring wells are expected. The RECIPIENT shall manually collect water level measurements in all wells monthly for 1 year (starting in the Fall). The RECIPIENT shall also use a datalogger pressure transducer to measure water levels semi-continuously in approximately 3 wells for 1 year, starting in the Fall. The RECIPIENT shall collect groundwater quality samples twice in all wells.

The RECIPIENT shall install approximately 5 stormwater flow meters at Sites 1 and 3 to collect continuous flow data for approximately 2 years to characterize and quantify stormwater flows in the STC and to the Flett Creek Holding Basins. Stormwater flow and quality monitoring shall be used to characterize the suitability of stormwater for Project objectives, quantify potential Project benefits, and support calibration of stormwater modeling (Task 7).

The RECIPIENT shall collect approximately 20 soil samples at Site 1 and analyze the soil for select constituents observed at elevated concentrations at the Superfund Site.

The RECIPIENT shall install approximately 3 surface water monitoring stations. The RECIPIENT shall monitor the surface water monitoring stations monthly for approximately 2 years. Surface water monitoring station installation for stage elevation and/or flow measurements at Site 3 shall be used to assess hydraulic gradients and, where possible, flow conditions.

The RECIPIENT shall install approximately two ground/surface water seepage meters at Site 3. The RECIPIENT shall test the meters during wet and dry seasons to assess the magnitude and direction of groundwater-to-surface water flow.

The RECIPIENT shall conduct bathymetry and/or ground surface surveys of select Project elements to support the basis of design (Task 8) and stormwater modeling (Task 7). Expected survey locations include Sites 1, 2, and 3, the Flett Holding Basins, and Ward's Lake.

The RECIPIENT shall conduct stormwater quality sampling, as prescribed in the QAPP, at the Flett Holding Basins to identify current treatment efficacy and identify future maintenance or retrofit needs to provide additional water quality benefits to the wetland. The RECIPIENT shall conduct additional stormwater quality sampling at Sites 1 and 2 to determine stormwater pretreatment needs.

The RECIPIENT shall conduct natural resources investigations to identify wetland and natural water features within Sites 1, 2, and 3. The RECIPIENT shall recommend focused wetland restoration actions with greatest benefit potential and inform post-construction monitoring program design.

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**Task Goal Statement:**

Verify that the concept of the overall Project is feasible and to assess whether the hydrologic and hydrogeologic conditions of the Project sites are favorable for infiltration facilities and streamflow enhancement.

**Task Expected Outcome:**

The results of the field work shall be used to develop the basis for the design of the Project (Task 8). The expected outcome of the field exploration and monitoring task is a focused technical dataset that shall be used as the basis for design of the overall Project. Following the field work task, the RECIPIENT shall have a good understanding of soil types, infiltration and hydraulic capacities, groundwater and surface water flow regimes and water quality, and potential environmental risks at the Project sites. The results of the field work may also indicate additional data gaps to be addressed as part of the Project design. The field work deliverables shall be included in the feasibility study report (Task 9).

**Recipient Task Coordinator:** Calvin Taylor

**Field Explorations and Monitoring**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
5.1	A data report with the results of the field explorations and monitoring, including: test pit/boring/well logs; grain size curves; groundwater, surface water, and stormwater hydrographs; groundwater contour maps; groundwater-surface water seepage rate tables; water and soil quality analyses; survey data and associated figures/tables; and a separate wetland delineation and habitat assessment report.	06/30/2023

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**SCOPE OF WORK**

Task Number: 6 **Task Cost:** \$11,600.00

Task Title: Permitting Evaluation

Task Description:

The RECIPIENT shall identify permits and associated applications that are required for Project implementation. The RECIPIENT shall provide a summary of the following information for each required permit or application: regulatory lead agency and geographic jurisdiction, permitted and permit-exempt activities, permit submittal requirements, technical or planning requirements, estimated timeline for permit issuance, and estimated costs.

The RECIPIENT shall provide a summary of property ownership and access considerations relevant to the Project sites and present options for additional easements, inter-local agreements, or other access instruments, if required.

The permitting evaluation shall include an assessment of the risks associated with the range of restoration actions contemplated for Site 3.

Task Goal Statement:

Summarize the required application, permitting, and planning requirements for the overall Project so that implementation of the Project, if feasible, could proceed as efficiently as technically possible.

Task Expected Outcome:

The expected outcome of the permitting evaluation is a complete understanding of the application, permitting, and planning requirements for the overall Project. The permitting evaluation shall establish communication with regulating agencies and other stakeholders (e.g., tribes) regarding the Project so that those interested parties can begin to participate in Project permitting and planning in a collaborative manner.

Recipient Task Coordinator: Calvin Taylor

**Permitting Evaluation**

**Deliverables**

Number	Description	Due Date
6.1	A table of application, permitting, and planning requirements for Project implementation shall be uploaded to EAGL.	12/31/2023

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## SCOPE OF WORK

Task Number: 7 **Task Cost:** \$97,000.00

Task Title: Stormwater System Modeling

### Task Description:

The RECIPIENT shall develop a numerical stormwater system hydraulic model for the Flett Creek Watershed stormwater system to better understand existing and possible future flow conditions to Flett Creek and to assist in the quantification of expected Project benefits.

The RECIPIENT shall develop the stormwater system model using existing RECIPIENT GIS data as well as bathymetric surveys and field monitoring data conducted under Task 5. The RECIPIENT shall calibrate the model based on stormwater flow data from the flow meters installed at Sites 1 and 3 (Task 5), as well as limited available historical data, and the known parameters of the conveyance system network of the associated contributing areas, which shall be used as representative sub-basins, as appropriate, for calibration of the remaining sub-basins of the model. The RECIPIENT shall use the calibrated model to simulate stormwater flows under existing conditions and one possible modified land use scenario to quantify current flows to Flett Creek and predict the effect of possible future increased urbanization (i.e., impervious surfaces) within the Flett Creek Watershed. The RECIPIENT shall use the model to assess the viability of modifying water storage management strategies in the regional stormwater holding basins in the Flett Creek for improving dry season flows in Flett Creek. The RECIPIENT shall use the results of the stormwater system model to support the basis of design (Task 8) for the Project.

### Task Goal Statement:

Develop a tool for accurately predicting stormwater flows within the Flett Creek Watershed, including flows to the proposed infiltration facilities at Project Sites 1 and 2 and flows discharging to the Flett Creek Holding Basins, which are pumped into the Flett Wetland (Site 3) and continue on into Flett Creek. Modeling the Flett stormwater system contributing flows to Flett Creek shall enable the RECIPIENT to better understand and adapt to changing land use patterns and climate change with the objective of maintaining enhanced flows in Flett Creek (i.e., to avoid future flow degradation). Results from the stormwater modeling shall be used to support the basis of design (Task 8) of the feasibility study.

### Task Expected Outcome:

The expected outcome of the stormwater system modeling task is a tool to accurately simulate stormwater flows within the Flett Creek Watershed upstream of Sites 1, 2, and 3. The RECIPIENT shall use the model results as the basis for stormwater flow volumes and timing as part of a water balance evaluation as well as an assessment of possible stormwater holding basin management strategies to retine and supplement dry season flows to Flett Creek. The model shall help inform the feasibility of Project implementation.



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Recipient Task Coordinator: Calvin Taylor

**Stormwater System Modeling**

**Deliverables**

Number	Description	Due Date
7.1	Draft documentation of model construction, calibration, sensitivity, and predictions, uploaded to EAGL.	06/30/2023
7.2	Final documentation of model construction, calibration, sensitivity, and predictions, uploaded to EAGL.	12/23/2023

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## SCOPE OF WORK

Task Number: 8 **Task Cost: \$42,500.00**

Task Title: Basis of Design

### Task Description:

The RECIPIENT shall develop a basis of design, which is a summary and evaluation of the primary technical and engineering considerations for overall Project implementation, including site conditions and source water availability and design constraints at each of the three Project Sites. The RECIPIENT shall use the basis of design as the foundation for the future detailed design of the major Project elements.

The basis of design shall include, but may not be limited to:

- A water balance, using measured and modeled stormwater, surface water, and groundwater data for a quantitative assessment of the water available for infiltration and to supplement or retine flows to the Flett Holding Basins, Flett Wetland, and ultimately Flett Creek (from Tasks 5 and 7).
- An infiltration capacity analysis, including safety factor corrections of measured site-specific infiltration rates observed during field explorations (Task 5).
- A water quality analysis, including an assessment of groundwater and surface/stormwater compatibility (from Task 5).
- An evaluation of possible treatment needs based on analytical results of water quality sampling and applicable water quality standards (from Tasks 5 and 6).
- An infrastructure assessment, including recommendations for necessary infrastructure (e.g., stormwater conveyance piping, infiltration facilities, flow control, etc.).
- Operation and maintenance logistics required for overall Project implementation.

The basis of design shall also include an assessment of the existing level of habitat function within the stream and wetland habitats within Site 3. The purpose of the habitat function assessment is to summarize the data and monitoring results collected during the execution of Task 5 (Field Explorations and Monitoring). The methods to evaluate the existing wetland conditions shall include applying Ecology's Wetland Rating System (Hruby 2014) and Credit/Debit Method (Hruby 2012) against the data collected in Task 5 to establish baseline conditions with respect to water quality, hydrology, and habitat function. Guidance from WDFW's Stream Habitat Restoration Guidelines (Cramer 2012) shall be used to assess the condition of Flett Creek in and near Site 3. The resulting assessment of wetland and stream functions shall inform which restoration strategies shall provide the most improvement to stream, wetland, and habitat functions within Site 3. The assessment shall provide recommendations for channel design, vegetation species and density, large woody debris condition and placement, and off-channel habitat design.

The basis of design shall serve as the framework for project planning in support of the future design phase of the Project.

### Task Goal Statement:

Provide foundational technical data, engineering analysis and information for the Project design to successfully address the technical constraints for Sites 1, 2 and 3.

### Task Expected Outcome:

The expected outcome of the basis of design task is an understanding of the technical constraints of the main Project elements that shall determine Project design. Understanding the technical constraints of the sites shall also provide a basis for an estimate

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of Project effectiveness in enhancing infiltration, ecological function of the Flett Wetland, and streamflows of Flett Creek.

Recipient Task Coordinator: Calvin Taylor

**Basis of Design**

**Deliverables**

Number	Description	Due Date
8.1	The basis of design shall be included as a separate section of the feasibility study report; individually uploaded to EAGL.	06/30/2023
8.2	Assessment of the existing level of habitat function, uploaded to EAGL.	06/30/2023

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## SCOPE OF WORK

Task Number: 9 **Task Cost: \$41,700.00**

Task Title: Feasibility Study

### Task Description:

The RECIPIENT shall prepare the feasibility study report, which shall present an overall summary of the Project objectives, the findings of the feasibility study and associated tasks, and recommendations for Project implementation. The feasibility study report shall address the required items for MAR projects, as enumerated in Appendix D of the Streamflow Restoration Competitive Grants, 2020, Guidance for Project Applicants (Ecology 2019) and shall also include additional elements particularly relevant to this Project.

The feasibility study report shall include, but may not be limited to:

- The Project background and concept.
- Existing (pre-Project) document and data review summary.
- Cultural Resources preliminary considerations and review.
- Field explorations and monitoring description and results.
- Permitting evaluation.
- Stormwater modeling results.
- The basis of design (including the water budget analysis and habitat evaluation).
- Preliminary infiltration facility design.
- Property ownership and additional access/easement requirements.
- Recommended flow management strategy modifications for the stormwater holding basins that discharge to the Flett Creek Holding Basins.
- Summary of the range of stream and wetland restoration actions expected to result in the optimal degree of streamflow enhancement and salmon habitat augmentation.
- Estimated Project design and construction costs.
- Expected long-term performance reliability of Project elements (e.g., infiltration facilities, stormwater infrastructure, wetland features), if implemented.
- Basic operations and maintenance of Project elements once constructed, including estimated O&M costs (to be borne by the RECIPIENT).
- Community support for the Project.
- Expected schedule for Project completion; and expected Project benefits.

The feasibility study report shall include the Project QAPP by reference.

The RECIPIENT shall prepare the feasibility study report with the intent of providing a pre-design (or approximately 10% design) level of information, summarizing the primary Project elements, technical and engineering constraints, permitting requirements and potential pitfalls, and implementation recommendations.

The RECIPIENT shall prepare and submit to ECOLOGY a draft feasibility study report. ECOLOGY shall review the draft feasibility study report. The RECIPIENT shall present the draft feasibility study report in person to ECOLOGY staff. The RECIPIENT shall revise the feasibility study report based on comments received on the draft and finalize.

Agreement No: WRSRP-2020-TacoES-00004  
 Project Title: South Tacoma Channel Stormwater Infiltration Project Feasibility Study  
 Recipient Name: Tacoma Environmental Services Department

**Task Goal Statement:**

Document, based on the findings of the other feasibility study tasks, the degree to which the Project may be feasible and to provide a basic road map for efficient Project implementation. The report shall serve as the main document summarizing the primary Project objectives and components, technical and engineering constraints, regulatory permit requirements, estimated Project schedule and costs, and expected Project benefits. The content of the feasibility study report shall be the basis for future design of the Project, to be proposed and implemented in a future Project phase. Another goal of the feasibility study report shall be to have a document with which to engage with key Flett Creek Watershed stakeholders and obtain their input on Project design direction.

**Task Expected Outcome:**

The expected outcome of the feasibility study report task is a completed report summarizing the technical and regulatory feasibility of enhancing Flett Creek habitat and streamflow by improved management of stormwater in the Flett Creek Watershed. The feasibility study report may be used to support future requests for grant funding to implement the Project.

**Recipient Task Coordinator:** Calvin Taylor

**Feasibility Study**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
9.1	Draft feasibility study report, uploaded to EAGL.	06/30/2023
9.2	Presentation of draft report to ECOLOGY	11/30/2023
9.3	Final feasibility study report, uploaded to EAGL.	12/31/2023
9.4	Presentation of final report to ECOLOGY	12/31/2023

Agreement No: WRSRP-2020-TacoES-00004  
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**BUDGET**

**Funding Distribution EG210332**

***NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: South Tacoma Stormwater Infiltration Feasibil Funding Type: Grant  
Funding Effective Date: 06/01/2021 Funding Expiration Date: 12/31/2023

Funding Source:

Title: Watershed Restoration and Enhancement Bond Account

Fund: 366

Type: State

Funding Source %: 100%

Description: To fund projects using tax exempt bonds. Projects include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure designed to provide access to new water supplies, with priority given to projects in watersheds developing specified plans and watersheds participating in the defined pilot project.

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

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<b>South Tacoma Stormwater Infiltration Feasibility</b>	<b>Task Total</b>
Project Administration	\$ 3,400.00
Cultural Resources Review	\$ 1,500.00
Document and Data Review and Summary	\$ 15,200.00
Surface Water, and Groundwater Monitoring	\$ 7,000.00
Field Explorations and Monitoring	\$ 167,300.00
Permitting Evaluation	\$ 11,600.00
Stormwater System Modeling	\$ 97,000.00
Basis of Design	\$ 42,500.00
Feasibility Study	\$ 41,700.00

**Total: \$ 387,200.00**

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### **Funding Distribution Summary**

#### **Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
South Tacoma Stormwater Infiltration Feasibility	0.00 %	\$ 0.00	\$ 387,200.00	\$ 387,200.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 387,200.00</b>	<b>\$ 387,200.00</b>

#### **AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

#### **SPECIAL TERMS AND CONDITIONS**

#### **GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

#### **A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**

##### **EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.



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7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

## B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING

### REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

## C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM) <https://sam.gov/SAM> exclusion list.

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## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

#### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

#### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

#### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

#### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
    - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- \* For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
  - Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff, volunteers, and contractors working at the project site.
  - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

## 5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

## 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

#### 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

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## 16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## 18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

## 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

## 20. PROGRESS REPORTING

Agreement No: WRSRP-2020-TacoES-00004  
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Recipient Name: Tacoma Environmental Services Department

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
  1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
  2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.



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## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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## 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Failure to Commence Work.** ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

**Non-Performance.** The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Non-Allocation of Funds.** ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions