



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 19- 37
of the
SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965;

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe;

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government;

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe;

WHEREAS, the Squaxin Island Tribal Council finds that the regulation of business activities on all lands within the jurisdiction of the Squaxin Island Tribe is essential to the health and welfare of the Squaxin Island Tribe and its members;

WHEREAS, the Squaxin Island Tribe wishes to receive a Shorelands National Coastal Wetlands Conservation grant from the Washington State Department of Ecology ("Ecology") in order to acquire and restore a parcel containing Skookum Creek;

WHEREAS, the grant agreement contains a limited waiver of sovereign immunity regarding any disputes related to the agreement;

WHEREAS, in order to induce Ecology to complete and execute the agreement, it is necessary for the Tribal Council to ratify and approve the terms of the agreement; to authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; and to consent that the Tribe may be sued in a court having jurisdiction in disputes over matters related to the agreement.

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby agrees to enter into the attached agreement with Ecology to provide grant funding to the Tribe according to the attached agreement.

NOW THEREFORE BE IT RESOLVED, the Tribal Council specifically limits its waiver of sovereign immunity for the purposes of this agreement to the limited waiver as stated in Section 10 (Disputes) of this agreement; as follows:

LIMITED WAIVER OF SOVEREIGN IMMUNITY: The Squaxin Island Tribe, for the purposes of this agreement, grants Ecology a limited waiver of sovereign immunity. Such waiver is limited solely to equitable remedies and/or recovery of damages under this agreement up to the total grant award during the term of this Agreement. Such waiver is only for Ecology, and may not be assigned, or otherwise transferred to any third-party.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby authorizes the Council Chairman or the Tribal Administrator to do any and all things necessary to effect execution of the Contract.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 11 day of July, 2019, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.


Arnold Cooper, Chairman

Attested by:


Jeremie Walls, Secretary


Charlene Krise, Vice Chairman



Agreement No. SEANCWCP-2019-SqIsTr-00027

SHORELANDS NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

SQUAXIN ISLAND TRIBE

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and Squaxin Island Tribe, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Skookum Valley Wetland Acquisition
Total Cost:	\$785,000.00
Total Eligible Cost:	\$785,000.00
Ecology Share:	\$549,000.00
Recipient Share:	\$236,000.00
The Effective Date of this Agreement is:	01/01/2019
The Expiration Date of this Agreement is no later than:	12/31/2021
Project Type:	National Coastal Wetlands Conservation Grant

Project Short Description:

RECIPIENT will acquire and restore a 158-acre floodplain property containing Skookum Creek, tributaries, and wetlands that drain directly into Puget Sound in Mason County. Acquisition will protect the property, in perpetuity through fee simple acquisition, and restoration of approximately five acres will occur following acquisition, focusing on removal of remaining structures and debris, followed by native plant revegetation.

Project Long Description:

RECIPIENT will permanently protect, through fee title acquisition, a total of 158 acres with 85.7 acres of wetlands and 4.6 miles of Skookum Creek and tributary shoreline draining directly into Puget Sound in Mason County, Washington. Restoration of approximately five acres will occur following acquisition with the primary focus on derelict structure and debris removal, followed by revegetation with native plants.

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Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

The project will acquire, restore, and permanently protect a 158-acre former cattle ranch that has fallen into disrepair. The restoration component of the project will provide important biological lift by removing up to six derelict structures and accumulated debris, followed by removal of invasive vegetation and planting of native trees and shrubs.

The property's streams provide habitat for four salmonid species: coho and chum salmon, steelhead (ESA listed) and cutthroat trout. The wetlands consist of natural, perennial wetlands that are connected to Skookum Creek by tributaries providing important habitat for numerous waterfowl, migratory birds and raptors such as osprey. In addition, the project site hosts a well-known elk herd (technically a sub-herd of the Willapa Hills Elk Herd) made up of several hundred elk that rely on the open grassland, forested hills and unfragmented landscape that Skookum Valley offers.

This acquisition is the first phase of a larger acquisition effort to conserve another 450 acres over three additional adjacent ownerships further up Skookum Creek using state funds. All combined, this larger project will protect over 600 acres of the Skookum Valley floodplain and 15.5 miles of Skookum Creek and tributary shoreline, all of which lies in the heart of the Squaxin Island Tribe's ancestral home area. This project has been identified as high priority for acquisition by the Squaxin Island Tribe, Capitol Land Trust, and numerous plans such as the Puget Sound Partnership's Action Agenda and the WRIA 14 Salmon Recovery 4-yr work plan. Having four contiguous, willing landowners who own over 600 acres of minimally developed floodplain provides a rare and compelling opportunity for large-scale conservation.

The project has two main objectives:

- 1) Acquire a 158-acre property. The objective of this project is to conserve in perpetuity, through fee simple acquisition, the Skookum Ranch.
- 2) Restore 5 acres of the property. The project also seeks to restore the northeastern corner of the property by removing a cluster of six derelict residential and non-residential structures, accumulated debris, and invasive vegetation. This will be followed by planting native trees and shrubs. While the restoration area is limited in size, it has a high concentration of materials that are detrimental to the project site, thereby making this restoration component a high priority.

Protection of this important wetland, riparian and riverine habitat is expected to have the following benefits:

- Support federal and state wildlife recovery goals by:
 - o Protecting 4.6 miles of Skookum mainstem and tributary salmonid spawning habitat.
 - o Protecting 85.7 acres of wetlands used by a wide variety of birds, fish and other wildlife.
 - o Keeping the entire 158-acre property as intact and unfragmented habitat.
- Prevent water and soil contamination and spread of invasive plants through site clean-up and restoration;
- Preserve extensive wetland habitat used by migratory shorebirds and waterfowl;
- Preserve open grassland habitat used by the Skookum Valley elk herd;
- Maintain ecosystem processes such as large wood recruitment, and contribution of leaf litter and terrestrial insects to the aquatic food chain;
- Protect water quality in Skookum Creek and Totten Inlet by preventing sediment, toxic runoff, and septic pollution associated with future development of the property.

Overall Goal:

Acquisition and restoration of the 158-acre Skookum Ranch property, on Skookum Creek in Mason County.

Agreement No: SEANCWCP-2019-SqIsTr-00027
 Project Title: Skookum Valley Wetland Acquisition
 Recipient Name: Squaxin Island Tribe

RECIPIENT INFORMATION

Organization Name: Squaxin Island Tribe

Federal Tax ID: 91-0922254
 DUNS Number: 606460475

Mailing Address: 200 S.E. Billy Frank Jr Way
 Shelton, WA 98584

Physical Address: 200 S.E. Billy Frank Jr Way
 Shelton, Washington 98584

Organization Email: ssteltzner@squaxin.us
 Organization Fax: (360) 426-3971

Contacts

<p>Project Manager</p>	<p>Scott Steltzner</p> <p>200 SE Billy Frank Jr Way Shelton, Washington 98584 Email: ssteltzner@squaxin.us Phone: (360) 432-3803</p>
<p>Billing Contact</p>	<p>Joanne Decicio</p> <p>10 SE Squaxin Lane Shelton, Washington 98584 Email: jdecicio@squaxin.us Phone: (360) 432-3825</p>
<p>Authorized Signatory</p>	<p>Ray Peters</p> <p>10 SE Squaxin Lane Shelton, Washington 98584 Email: rpeters@squaxin.us Phone: (360) 432-3909</p>

Agreement No: SEANCWCP-2019-SqIsTr-00027
Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

ECOLOGY INFORMATION

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

Physical Address: Shorelands
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Heather Kapust PO Box 47600 Olympia, Washington 98504-7600 Email: hkap461@ecy.wa.gov Phone: (360) 407-0239
Financial Manager	Heather Kapust PO Box 47600 Olympia, Washington 98504-7600 Email: hkap461@ecy.wa.gov Phone: (360) 407-0239

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Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

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

Squaxin Island Tribe

By: _____

By: _____

Gordon White Date

Ray Peters Date

Shorelands
Program Manager

Template Approved to Form by
Attorney General's Office

Agreement No: SEANCWCP-2019-SqIsTr-00027
Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

SCOPE OF WORK

Task Number: 1 **Task Cost: \$37,000.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant and loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records, submittal of requests for reimbursement and corresponding backup documentation, matching funds documentation, progress reports, and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating 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.

C. The RECIPIENT shall manage the Project as described in "USFWS Award Letter and Approved Grant Application", which is attached within ECOLOGY's Administration of Grants & Loans (EAGL) program, as well as any amendments approved by USFWS. RECIPIENT shall also manage the project under the federal regulations within the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200. This shall include, but is not limited to, conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

A properly managed and fully documented project that meets ECOLOGY's grant and loan administrative requirements as well as any Federal funding requirements.

Task Expected Outcome:

1. Timely and complete submittal of requests for reimbursement, match documentation, annual progress reports, and RECIPIENT closeout report.
2. Properly maintained project documentation.

Agreement No: SEANCWCP-2019-SqIsTr-00027
 Project Title: Skookum Valley Wetland Acquisition
 Recipient Name: Squaxin Island Tribe

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Annual performance reports in format required by ECOLOGY and USFWS. Due February 1 each year.	
1.2	Regular billing invoices, including match documentation, submitted to ECOLOGY, at least twice yearly.	
1.3	Significant Development Reports (see 2 CFR 200.328 (d)). If events occur between the scheduled performance reporting dates that may have significant impact upon the goals and outcomes of the project, notify ECOLOGY in writing as soon as problems, delays, or adverse conditions occur. This disclosure must include a statement of any corrective action taken or contemplated, or any assistance needed to resolve the situation.	
1.4	Final performance reports, billing invoice, and complete match documentation, in format required by ECOLOGY and USFWS with all required documentation. Due within 30 days of agreement end date.	

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Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

SCOPE OF WORK

Task Number: 2 **Task Cost: \$39,000.00**

Task Title: Property Appraisal and Due Diligence

Task Description:

A. Prior to accessing funds for the purchase of the property, the RECIPIENT must document market value by self-contained appraisals performed in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" (Yellow Book). A state-certified general appraiser must conduct an appraisal that complies with the Yellow Book (<http://1.usa.gov/1HmvzGu>) for the property or properties that you plan to purchase or use as match. A state-certified or licensed review appraiser must then conduct a review appraisal of the Yellow Book appraisal. Both the appraisal and review appraisal must be submitted to ECOLOGY and approved in writing by ECOLOGY and the USFWS before funds may be used to purchase the land. The ECOLOGY share of the acquisition will not be greater than the agreed upon match proportion of the current market value, as determined by the appraisal and review appraisal. If land is to be used as match, ECOLOGY funds may not be used to acquire the subject property until documentation of the match property has been approved by the USFWS. Documentation shall consist of identification and approval of the property and a Yellow Book, self-contained appraisal with review appraisal.

B. The RECIPIENT will present the landowner with a Notice of Just Compensation that informs the landowner of the approved, appraised value of the property and offers tenant relocation assistance, if eligible. The notice must be signed by the landowner and a copy sent to Ecology and USFWS for its records. Recipient shall use the form Notice of Just Compensation and Relocation Notice to Owner provided by the Washington State Recreation and Conservation Office (RCO) Acquisitions Policies Manual.

C. The RECIPIENT shall obtain and submit to ECOLOGY a Phase I hazardous substance assessment for each property to be acquired, prior to purchase. Recipient shall use the Hazardous Substances Certification and Assessment Checklist provided in the RCO Acquisitions Policies Manual procedures as a Phase I assessment. The RECIPIENT 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 shall 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."

Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D. The RECIPIENT will defend, protect, and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, costs, attorneys' fees, and any and all 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 RECIPIENT is acquiring.

Task Goal Statement:

The RECIPIENT will complete all appraisal requirements, environmental review, and other due diligence as needed to comply with local, State, and Federal law.

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 Project Title: Skookum Valley Wetland Acquisition
 Recipient Name: Squaxin Island Tribe

Task Expected Outcome:

The final outcome of this task will be the negotiation of mutually acceptable terms for the acquisition of property for protection at Skookum Valley, Mason County.

Property Appraisal and Due Diligence

Deliverables

Number	Description	Due Date
2.1	Approved Yellow Book appraisal and review for each property and match property to be approved prior to purchase.	
2.2	Notice of Just Compensation for each property to be acquired.	
2.3	Hazardous substance assessment and certification for each property to be acquired or used as match.	

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Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

SCOPE OF WORK

Task Number: 3

Task Cost: \$580,000.00

Task Title: Property Acquisition

Task Description:

A. The RECIPIENT will acquire the property and ensure that property records and conveyance documents dedicate future use of the parcel for the purposes outlined in this agreement. The RECIPIENT understands that the purchase price of the property shall not be reimbursed by ECOLOGY prior to receipt of documentation of sale, but funds may be requested to be transferred directly into escrow to go towards the property closing. This must be requested at least two weeks in advance of the estimated closing date and is contingent upon completion of all required forms and documentation as required by ECOLOGY.

Any purchased and/or match properties shall be identified as having ECOLOGY and Federal interest. A Conservation Covenant containing the required elements of a Notice of Federal Participation (NOFP) shall be recorded to further ensure that the land will be managed in perpetuity in a manner consistent with the goals and objectives of this agreement, USFWS grant requirements, and National Coastal Wetlands Conservation Grant Program project proposal. Title vesting evidence shall be included as part of the final accomplishment report. In the event that the terms for perpetual conservation are violated, the property will be subject to transfer, replacement, or repayment by RECIPIENT to the United States pursuant to 2 CFR 200.311. Draft Conservation Covenant must be approved by ECOLOGY and USFWS prior to signature and recording.

B. For the acquisition of a conservation easement (CE), the CE shall identify that the property is to be managed in perpetuity in a manner consistent with goals and objectives of the federal grant proposal and this agreement and/or a NOFP shall also be recorded, a baseline inventory shall be completed prior to closing, property management plan(s) shall be prepared, and CE monitoring shall be conducted by RECIPIENT on an annual basis. The draft CE must be approved by ECOLOGY and USFWS prior to recordation of the CE.

C. The RECIPIENT shall not, at any time, convert any real property (including any interest therein) purchased, used as match, and/or restored pursuant to this Agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY and USFWS.

Task Goal Statement:

Ensure conservation of properties subject to the USFWS National Coastal Wetlands Conservation Grant Program requirements.

Task Expected Outcome:

Properties are protected for conservation purposes as stated in this agreement and within the USFWS NCWC project proposal (including any amendments) for which funds were received.

Agreement No: SEANCWCP-2019-SqIsTr-00027
 Project Title: Skookum Valley Wetland Acquisition
 Recipient Name: Squaxin Island Tribe

Property Acquisition

Deliverables

Number	Description	Due Date
3.1	Signed and recorded deed or conservation easement (CE).	
3.2	Signed and recorded Conservation Covenant as approved by Ecology and USFWS.	
3.3	Final title insurance policy.	
3.4	Recorded legal survey and boundary line adjustment (if necessary).	
3.5	For conservation easements (CE), a baseline inventory shall be completed prior to closing, property management plan prepared, and CE monitoring on an annual basis.	
3.6	Signed settlement statement to verify purchase price and date of sale.	
3.7	Three maps of varying scale, from small to large scale, including location within the state, specific location map, parcel or plat map.	
3.8	Assignment of Rights (as needed).	
3.9	GIS Shapefile for each property acquired or used as match.	

Agreement No: SEANCWCP-2019-SqIsTr-00027
 Project Title: Skookum Valley Wetland Acquisition
 Recipient Name: Squaxin Island Tribe

SCOPE OF WORK

Task Number: 4 **Task Cost: \$129,000.00**

Task Title: Restoration

Task Description:

The RECIPIENT will restore the property after successful acquisition. The derelict structures will be deconstructed and removed, as well as years of accumulated household and farm debris, all lying within a 5-acre area in the northeastern corner of the property. Patches of invasive vegetation will be removed and native vegetation planted within the 5-acre area.

RECIPIENT must not begin any restoration work related to this award until ECOLOGY and USFWS has notified you in writing that such work can begin and all permits have been obtained. Recipients and sub-recipients of Federal grants must comply with the requirements of the National Environmental Policy Act (NEPA), Section 7 of Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA).

Task Goal Statement:

Ensure restoration is completed subject to the USFWS National Coastal Wetlands Conservation Grant Program requirements, while adhering to best management practices, and local, state, federal requirements for all work being done.

Task Expected Outcome:

Properties are restored for habitat conservation purposes as stated in this agreement and within the USFWS NCWC project proposal for which funds were received.

Restoration

Deliverables

Number	Description	Due Date
4.1	Copies of all required permits, due before project implementation.	
4.2	At least 5 sets of before/after photos of restoration site.	

Agreement No: SEANCWCP-2019-SqIsTr-00027
Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

BUDGET

Funding Distribution EG190515

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: USFWS NCWCGP Funding Type: Grant
Funding Effective Date: 01/01/2019 Funding Expiration Date: 12/31/2021

Funding Source:

Title: General Fund - Federal (Skookum Valley)
Type: Federal
Funding Source %: 100%
Description: Skookum Valley Wetland Acquisition/ National Coastal Wetlands Conservation Grant Program

Federal Awarding Agency: U.S. Fish and Wildlife Service (USFWS)
Federal Awarding Agency Contact: Heidi Nelson
Federal Awarding Agency Phone: 503-231-2096
Federal Awarding Agency Email: heidi_nelson@fws.gov
Federal Awarding Agency Address: 911 NE 11th Avenue, Portland, OR 97232-4181

CFDA Catalog Name: Coastal Wetlands Planning, Protection, and Restoration Program

CFDA Number: 15.614
FAIN: F19AP00338
Research Grant: No
Federal Award Date: 5/30/19
Total Federal Award Amount: \$785,000.00
Federal Funds Obligated To Recipient: \$549,000.00

Approved Indirect Costs Rate: Approved Federally Recognized Indirect Costs Rate: 39.53%
Recipient Match %: 0%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? Yes

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USFWS NCWCGP	Task Total
Project Administration/Management	\$ 25,438.00
Property Appraisal and Due Diligence	\$ 26,812.00
Property Acquisition	\$ 408,063.00
Restoration	\$ 88,687.00

Total: \$ 549,000.00

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Matching Funds Non-Federal	Task Total
Project Administration/Management	\$ 11,562.00
Property Appraisal and Due Diligence	\$ 12,188.00
Property Acquisition	\$ 171,937.00
Restoration	\$ 40,313.00

Total: \$ 236,000.00

Agreement No: SEANCWCP-2019-SqIsTr-00027
 Project Title: Skookum Valley Wetland Acquisition
 Recipient Name: Squaxin Island Tribe

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Matching Funds Non-Federal	100.00 %	\$ 236,000.00	\$ 0.00	\$ 236,000.00
USFWS NCWCGP	0.00 %	\$ 0.00	\$ 549,000.00	\$ 549,000.00
Total		\$ 236,000.00	\$ 549,000.00	\$ 785,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

In June 2018, ECOLOGY submitted a grant application for the Project to the United States Fish and Wildlife Service (USFWS) through the National Coastal Wetlands Conservation Grant Program (CFDA#15.614) established under the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. §§ 3951-3956). The USFWS awarded the grant to ECOLOGY under grant number F19AP00338, with an effective date of January 1, 2019, for RECIPIENT's use as the sub-grantee in the Skookum Valley Wetland Acquisition project as submitted under the federal notice of funding opportunity F18AS00114. A copy of USFWS's award letter and the Project grant application is included as an attachment within Ecology's Administration of Grants & Loans (EAGL) program under "USFWS Award Letter and Approved Grant Application". The terms of the Project grant application and award, and any amendments by USFWS are hereby incorporated by reference into the present Agreement. RECIPIENT agrees to all terms and conditions in federal award letter dated May 30, 2019 including all federal regulations within the Office of Management and Budget Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards, 2 CFR Part 200.

LIMITED WAIVER OF SOVEREIGN IMMUNITY: The Squaxin Island Tribe, for the purposes of this grant agreement, grants Ecology a limited waiver of sovereign immunity. Such waiver is limited solely to equitable remedies and/or recovery of damages under this agreement up to the Tribe's total grant award during the term of this Agreement. Such waiver is only for administrative and/or Thurston County Superior Court proceedings, is only as to Ecology, and may not be assigned, or otherwise transferred to any third-party.

SPECIAL TERMS AND CONDITIONS

Special Terms and Conditions for FY2019 USFWS National Coastal Wetlands Conservation Grant Program Subaward Agreements in EAGL

1. ACKNOWLEDGEMENTS

RECIPIENT acknowledges that this grant is based on the U.S. Fish and Wildlife Service award to ECOLOGY under ECOLOGY's application for Federal financial assistance submitted to the U.S. Fish and Wildlife Service (USFWS)'s CFDA Program 15.614, under Funding Opportunity Number F18AS00114. The Federal funding award was made under the authority of Coastal Wetlands Planning, Protection, and Restoration Program 16 U.S.C. 3954 Sec.302 Act, which established the National Coastal Wetlands Conservation Grant Program (NCWC). For a complete list of this program's authorizing legislation, go to <https://www.cfda.gov/> and search by the CFDA Program number. The Final Rule establishing the requirements for participation in the NCWC Grant Program was published in the Federal Register July 30, 2002 (67 FR 49264). The program regulations are in 50 CFR 84.

Agreement No: SEANCWCP-2019-SqIsTr-00027
Project Title: Skookum Valley Wetland Acquisition
Recipient Name: Squaxin Island Tribe

2. INCORPORATION OF TERMS OF PROJECT GRANT APPLICATION AND AWARD

The USFWS awarded this grant to ECOLOGY for RECIPIENT's use as the sub-grantee for project as submitted under the revised federal notice of funding opportunity F18AS00114. A copy of USFWS's award letter and the Project grant application is included as an attachment within Ecology's Administration of Grants & Loans (EAGL) program under "USFWS Award Letter and Approved Grant Application." The terms of the Project grant application and award are hereby incorporated by reference into the present Grant Agreement.

3. ADMINISTRATIVE REQUIREMENTS

a) Only allowable costs resulting from obligations incurred during the performance period and any pre-award costs authorized by ECOLOGY and USFWS may be charged under this agreement. All obligations incurred under the award must be liquidated no later than 60 calendar days after the end of the performance period and a final billing received by ECOLOGY. If the RECIPIENT needs more time to complete project activities, a written extension request must be submitted to ECOLOGY at least 90 calendar days before the stated expiration date.

b) RECIPIENT accepts this agreement and acknowledges it carries with it the responsibility to be aware of and comply with the terms and conditions applicable to the federal award. Acceptance is defined as the start of work, drawing down funds, or accepting the funding via electronic means. The federal award and this agreement are based on the ECOLOGY application submitted to and approved by the USFWS. Agreement is subject to the terms and conditions incorporated into this agreement or the attached notice of award either by direct citation or by reference to the following: Federal regulations, program legislation or regulation, and special award terms and conditions. The Federal regulations applicable to USFWS recipients (ECOLOGY) and their subrecipients (RECIPIENT) and contractors are listed by recipient type in the Service Financial Assistance Award Terms and Conditions posted on the Internet at <http://www.fws.gov/grants/> or by contacting ECOLOGY for a full text copy of the award terms and conditions.

c) RECIPIENT acknowledges that it is responsible for providing all matching funds as required by the federal award letter and stated in this subgrant agreement.

4. SINGLE AUDIT REPORTING STATEMENTS

As required in Title 2 of the Code of Federal Regulations Part 200, Subpart F, all U.S. states, local governments, federally-recognized Indian tribal governments, and non-profit organizations expending \$750,000 USD or more in Federal award funds in a fiscal year must submit a Single Audit report for that year through the Federal Audit Clearinghouse's Internet Data Entry System. All U.S. state, local government, federally-recognized Indian tribal government and non-profit applicants must provide a statement regarding whether RECIPIENT'S organization was required to submit a Single Audit report for the organization's most recently closed fiscal year and, if so, state if that report is available on the Federal Audit Clearinghouse Single Audit Database website (<http://harvester.census.gov/sac/>) and provide the EIN under which that report was submitted. Include these statements at the end of the Project Narrative in a section titled "Single Audit Reporting Statements."

5. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

RECIPIENT must comply with all applicable Federal laws, regulations, and policies. Evidence of compliance with the National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, Clean Water Act, and other Federal laws must be provided prior to fund expenditure.

RECIPIENT agrees that the project and the agreement are subject to Federal financial administration requirements. To find out more about the rules, including administrative requirements and cost principles, please review 2 CFR 200 and 50 CFR 84.

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Title vesting evidence shall be included as part of the final accomplishment report. In the event that the terms for perpetual conservation are violated the property will be subject to transfer, replacement, and/or repayment by RECIPIENT to the United States pursuant to 2 CFR 200.311.

If mineral rights are reserved, the extraction of minerals must be consistent with the purpose of the acquired land and must be extracted in a way that will not damage the habitat or value of the surface lands. This ensures that the quantity and quality of the habitat needed to conserve species will be maintained.

Revenue generated during the grant period from the sale of timber on acquired or match lands shall be treated as program income. Program income is subject to the Federal assistance regulations at 2 CFR 200.307. Timber revenues realized after the grant period are required to be fully used by the RECIPIENT for management of the property as approved in the management plan and may not be diverted to other purposes.

When federal funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

When state funds are part of this Agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

6. PROJECTS WITH RESTORATION AND/OR ANY GROUND DISTURBING ACTIVITIES

The proposed activities may require separate environmental compliance (Endangered Species Act Section 7 consultation, National Environmental Policy Act, National Historic Preservation Act section 106 consultation, Tribal consultation, and possibly State and Federal Clean Water Act permits) and will be ineligible for reimbursement by ECOLOGY until the compliance is completed and approved, and a Notice to Proceed is obtained from USFWS.

7. NOTICE OF CONFLICTS OF INTEREST, VIOLATIONS OF CRIMINAL LAW, BUDGET AND/OR PLAN REVISIONS

RECIPIENT is responsible for notifying ECOLOGY in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the RECIPIENT or the RECIPIENT's employees in a position of conflict, real or apparent, between their responsibilities under this award and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the RECIPIENT or RECIPIENT's employees in the matter. Upon receipt of such a notice, ECOLOGY will notify USFWS. USFWS Project Officer in consultation with their Ethics Counselor will determine if a conflict of interest exists and, if so, if there are any possible actions to be taken by the RECIPIENT or RECIPIENT's employee(s) that could reduce or resolve the conflict. Failure to resolve conflicts of interest in a manner that satisfies the Service may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including termination of this agreement.

RECIPIENT must disclose, in a timely manner, in writing to ECOLOGY or pass-through entity all violations of Federal

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criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Non-Federal entities that have received a Federal award including the term and condition outlined in 2 CFR 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338, Remedies for noncompliance, including suspension or debarment (See 2 CFR 200.113, 2 CFR Part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313).

RECIPIENT will report deviations from budget or project scope or objective, and request prior approvals for budget and program plan revisions to ECOLOGY in accordance with 2 CFR 200.308 unless otherwise specifically waived in this award.

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.
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.

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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 executives using the FFATA Data Collection Form. tc

- 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.fsrs.gov <<http://www.fsrs.gov>> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <<http://www.usaspending.gov>>.

For more details on FFATA requirements, see www.fsrs.gov <<http://www.fsrs.gov>>.

GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 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. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts 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:
 - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
 - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
 - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing 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 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 archeological or historic resources are found while conducting work under this Agreement:
 - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
 - d) If any human remains are found while conducting work under this Agreement:

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• Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.

e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

4. ASSIGNMENT

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

5. 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.

6. 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 Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email payeehelpdesk@watech.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.

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.

7. 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.

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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.

8. 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.

9. 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.

10. 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. 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.

11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental

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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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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- 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.

17. 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"; and (f) the General Terms and Conditions.

18. 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.

19. PROGRESS REPORTING

- 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.

20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property

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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.

21. 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.

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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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

27. TERMINATION

a) For Cause

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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/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no 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

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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.

28. 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.

29. 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.