WASHINGTON STATE
Recreation and
Conservation Office

PSAR Project Agreement

Salmon Funding Accounts

Project Sponsor: City of Edmonds **Project Number:** 13-1107P

Project Title: Willow Creek Daylighting Final Feasibility Study **Approval Date:** 12/4/2013

A. PARTIES OF THE AGREEMENT

This project grant Agreement (Agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRFB) and the Recreation and Conservation Office, P.O. Box 40917, Olympia, Washington 98504-0917 and City of Edmonds (sponsor), 121 5th Ave N, Edmonds, WA 98020 and shall be binding on the agents and all persons acting by or through the parties.

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Salmon Funding Accounts of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the sponsor for the project named above.

C. DESCRIPTION OF PROJECT

Edmonds Marsh is a 32-acre remnant of a historical 100+-acre barrier estuary and marsh complex located a short distance from the downtown core in the suburban City of Edmonds. This project is intended to address the key salmon recovery issue of limited juvenile access to important, yet rare, nearshore rearing habitat. The goal is to identify a design approach to restoration that significantly improves the connection between Edmonds Marsh and Puget Sound to provide juvenile salmon access to this intact estuarine rearing habitat by daylighting the Willow Creek outlet of Edmonds Marsh to Puget Sound. The Early Feasibility Study (completed in May 2013 and funded by RCO 11-1553) indicates this restoration action will provide improved access to 28 acres of estuarine marsh habitat suitable for juvenile Chinook salmon.

The goal of the current project phase, Final Feasibility, is to address the remaining technical and social aspects of the project prior to entering into design work. These aspects include evaluating the marsh outlet configuration that would allow for juvenile salmon access into the marsh while still providing public park uses, evaluate the need for structural measures in the daylight channel to improve fish passage conditions and/or protect infrastructure, determine the need for a self-regulating tidegate to protect from coastal flooding, and assess the availability of the Unocal property for a daylighted channel and planted buffers.

D. PERIOD OF PERFORMANCE

The project reimbursement period shall begin on December 5, 2013 and end on December 31, 2015. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement or specifically provided for by RCFB and/or SRFB policy or WAC.

Requests for time extensions are to be made at least 60 days before the Agreement end date. If the request is made after the Agreement end date, the time extension may be denied.

The sponsor has obligations beyond this period of performance as described in Section E.

E. ON-GOING OBLIGATION

The Project Sponsor's on-going obligation for the project shall be the same as the Period of Performance period identified in Section D.

F. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed $200,000.00. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the sponsor toward work on this project at a minimum shall be as indicated below:

	Percentage	Dollar Amount
SRFB - Puget Sound Acq. & Restoration	85.00%	$200,000.00
Project Sponsor	15.00%	$35,300.00
Total Project Cost	100.00%	$235,300.00

G. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments, as now existing or hereafter amended, including the sponsor's application, eligible scope activities, project milestones, and the Standard Terms and Conditions of the project Agreement, all of which are incorporated herein.

Except as provided herein, no amendment/deletions of any of the terms or conditions of this Agreement will be effective unless provided in writing. All such amendment/deletions must be signed by both parties except the RCO director may unilaterally make amendments to extend the period of performance. Period of performance extensions need only be signed by RCO's director or designee.

H. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter 77.85 RCW, Chapter 420 WAC, and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. SPECIAL CONDITIONS

I. Disclosure notice:

Projects funded with state Salmon Recovery Funding Board and Puget Sound Acquisition and Restoration money may be used by RCO, the Puget Sound Partnership or Northwest Indian Fisheries Commission as match to one of the following federal assistance agreements: 1) United States Department of Commerce Catalog of Federal Domestic Assistance Number 11.438, or 2) United State Environmental Protection Agency Catalog of Federal Domestic Assistance Numbers 66.123 and 66.456.

II. PSAR funded projects:

Any signage or press materials must acknowledge the Puget Sound Acquisition and Restoration Fund as well as RCO as a fund source.

III. Cultural Resources Consultation:

This project includes ground disturbing activities, and is subject to Governor's Executive Order 05-05 Archaeological and Cultural Resources (EO 05-05) as described in Section 9 of this project agreement. RCO will need to initiate cultural resources consultation following EO 05-05 for all ground disturbing activities. Completion of this consultation and a Notice to Proceed from RCO will be required before these ground-disturbing activities can begin.

IV Design Deliverables: This project will meet the standards for Design and Restoration Project Deliverables described in Manual 18 Appendix D-2 Preliminary Design. Deliverables will include:

- *Cultural Resources Assessment*
- *Topographic surveys* along the daylight alignment for the proposed channel and beach outlet area, and along upstream marsh areas to improve marsh channel and surface data for the hydraulic model and to facilitate future channel designs.
- *Beach outlet evaluation* to identify the preferred alignment for the beach outlet based on optimal fish passage, hydrodynamics, sediment transport and geomorphic conditions and risks to property and infrastructure.
- *Numerical Hydrodynamic modeling*- to assess the need for a Self-Regulating Tidegate (SRT) (or floodgate) in the project design and, along with the beach sediment and geomorphologic evaluation, assess the likelihood of the channel becoming impassable to juvenile fish.
- *Geotechnical assessment*- including field explorations and environmental sampling along the proposed channel and beach areas as a basis of information for future design and cost estimating.
- *Contaminated Soils Assessment*- Review data and reports provided by the Unocal/Chevron along the proposed daylight channel and assess the need for a HDPE liner to reduce contamination risks. Additional soil and groundwater testing and sampling may be required.
- *Property, Real Estate and Lands Strategy*- to address rights of entry, acquisition and easements required for the project. The project team will provide a summary and professional judgment of discussions with Unocal/Chevron regarding the availability of the property to host part of the channel and with BNSF regarding daylighting the channel under the existing bottomless culverts.
- *Preliminary Design and Design Report* (See Manual 18 Appendix D-2 for additional details):
  a) Preliminary Design Report, Drawings, and Engineering Cost Estimate; and
  b) Design Review Comments.

J. FEDERAL FUND INFORMATION

(none)

K. PROJECT GRANT AGREEMENT REPRESENTATIVE

All written communications and notices under this Agreement will be addressed and sent to at least the mail address or the email address listed below if not both:

Project Contact

Name: Jerry Shuster
Title:
Address: 121 5th Ave N
Edmonds, WA 98020
Email: shuster@ci.edmonds.wa.us

SRFB

Recreation and Conservation Office
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917

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

L. ENTIRE AGREEMENT

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

M. EFFECTIVE DATE

This Agreement, for project 13-1107P, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until executed by both the Sponsor and the RCO. Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D above are allowed only when this Agreement is fully executed and an original is received by RCO.

The sponsor/s has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

City of Edmonds

By: David O. Earling **Date:** 2.24.14

Name: (printed) David O. Earling

Title: Mayor

State of Washington

On behalf of the Salmon Recovery Funding Board (SRFB)

By: Scott T. Robinson for **Date:** 3/3/14

Kaleen Cottingham
Director

Pre-approved as to form:

By: /s/ **Date:** June 7, 2013

Assistant Attorney General

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RECREATION AND CONSERVATION OFFICE

Standard Terms and Conditions of the Project Agreement

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Standard Terms and Conditions of the Project Agreement

Project Sponsor: City of Edmonds **Project Number:** 13-1107P

Project Title: Willow Creek Daylighting Final Feasibility Study **Approval Date:** 12/4/2013

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

A. Any citations referencing specific documents refer to the current version at the date of project Agreement and/or any revisions in the future.

B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:
acquisition -The purchase of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.
Agreement - The accord accepted by all parties to the present transaction; this Agreement, any supplemental Agreements, any amendments to this Agreement and any intergovernmental Agreements.
applicant - Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding Board.
application - The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.
asset - Equipment purchased by the sponsor or acquired or transferred to the sponsor for the purpose of this Agreement. This definition is restricted to non-fixed assets, including but not limited to vehicles, computers or machinery.
cognizant or oversight agency - Federal agency responsible for ensuring compliance with federal audit requirements.
contractor - Shall mean one not in the employment of the sponsor who is performing all or part of the eligible activities for this project under a separate Agreement with the sponsor. The term "contractor" and "contractors" means contractor(s) in any tier.
development - The construction of or work resulting in new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation, salmon recovery or habitat conservation resources.
director - The chief executive officer of the Recreation and Conservation Office or that person's designee.
elements, items and worktypes - Components of the funded project as provided in the project description.
funding board - The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under chapter 79A.25.110 RCW, or the Salmon Recovery Funding Board (SRFB) created under chapter 77.85.110 RCW.
grantee - The organizational entity or individual to which a grant (or cooperative agreement) is awarded and signatory to the Agreement which is responsible and accountable both for the use of the funds provided and for the performance of the grant-supported project or activities.
landowner agreement - A landowner agreement is required between a SRFB and/or RTP project sponsor and landowner for projects located on land not owned, or otherwise controlled, by the sponsor.
lower tier participant - refers to any sponsor receiving a federal grant through RCO. Lower tier participants also refer to any grantee, subgrantee, or contractor of any grantee or subgrantee from the original sponsor funded by RCO.
milestone - An important event with a defined deadline for an activity related to implementation of a funded project.
period of performance - The time period specified in the Agreement, under Section D, period of performance.
project - The undertaking that is the subject of this Agreement and that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.
RCO - Recreation and Conservation Office - The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this Agreement by Chapters 77.85.110 and 79A.25.240 RCW.
reimbursement - Payment of eligible and allowable costs that have already been paid by the sponsor per the terms of the Agreement.
renovation - The activities intended to improve an existing site or structure in order to increase its service life or functions. This does not include maintenance activities.
restoration -Bringing a site back to its original function as part of a natural ecosystem or improving the ecological functionality of a site.
RTP - Recreational Trails Program - A federal grant program administered by RCO that allows for the development and maintenance of backcountry trails.
secondary sponsor - one of two or more eligible organizations that sponsors a grant-funded project. Of these two sponsors, only one - the primary sponsor - may be the fiscal agent.
sponsor - The eligible applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees, agents and successors.
subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

SECTION 2. PERFORMANCE BY THE SPONSOR

The sponsor, and secondary sponsor where applicable, shall undertake the project as described in this Agreement, post evaluation summary, the sponsor's application, and in accordance with the sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 31.

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

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the sponsor without prior written consent of the Recreation and Conservation Office.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the sponsor. The funding board undertakes no responsibilities to the sponsor, a secondary sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is sponsored by more than one entity, any and all sponsors are equally responsible for the project and all post-completion stewardship responsibilities.

SECTION 5. INDEMNIFICATION

The sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence of, or the breach of any obligation under this Agreement by, the sponsor or the sponsor's agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

Provided that nothing herein shall require a sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this Agreement by the State, its agents, officers, employees, subcontractors or vendors, of any tier, or any other persons for whom the State may be legally liable.

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

This provision shall be included in any Agreement between sponsor and any subcontractor and vendor, of any tier.

The sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the sponsor or the sponsor's agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable, in performance of the Work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to State, its agents, officers and employees pursuant to the Agreement; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to State, its agents, officers and employees by the sponsor, its agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

The sponsor specifically assumes potential liability for actions brought by the sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the sponsor specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

The RCO is included within the term State, as are all other agencies, departments, boards, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B RCW.

The sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal,

state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

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

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

SECTION 8. ACKNOWLEDGMENT AND SIGNS

A. Publications. The sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. Signs. The sponsor also shall post signs or other appropriate media during the project period and in the future at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.

C. Ceremonies. The sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.

D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
   1. The percentage of the total costs of the project that is financed with federal money;
   2. The dollar amount of federal funds for the project; and
   3. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 9. COMPLIANCE WITH APPLICABLE LAW

The sponsor will implement the Agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies regardless of whether the sponsor is a public or non-public organization.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

Endangered Species

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the sponsor shall not commence with clearing of riparian trees or in-water work unless either the sponsor has complied with 50 CFR 223.203 (b)(8), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this project Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

Nondiscrimination Laws

The sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the sponsor may be declared ineligible for further grant awards from the funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.

Wages and Job Safety

The sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety. The sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The sponsor also agrees to comply with the provisions of the Davis-Bacon Act, and other federal laws, and the rules and regulations of the Washington State Department of Labor and Industries.

Archaeological and Cultural Resources

The RCO reviews all applicable projects for potential impacts to archaeological sites and state cultural resources. The sponsor must comply with Executive Order 05-05 or the National Historic Preservation Act before initiating ground disturbing activity. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the sponsor shall comply with the requirements of

Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50

Restrictions on Grant Use

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

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

SECTION 10. HAZARDOUS SUBSTANCES

A. Certification. The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in Chapter 70.105D.020 (10) RCW, and certify:

1. No hazardous substances were found on the site, or
2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."

B. Responsibility. Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.

C. Hold Harmless. The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and 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 sponsor is acquiring.

SECTION 11. RECORDS

A. Maintenance. The sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete , as defined in Section 17(C) below. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

B. Access to records and data. At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or Agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the sponsor's reports, including computer models and methodology for those models.

C. Public Records. Sponsor acknowledges that the funding board is subject to chapter 42.56 RCW and that this Agreement and any records sponsor submits or has submitted to the State shall be a public record as defined in chapter 42.56 RCW. Additionally, in compliance with RCW 77.85.130(8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the state sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

SECTION 12. TREATMENT OF ASSETS

A. Assets shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the asset(s) for the purpose for which it was funded, RCO will require the sponsor to deliver the asset(s) to RCO, dispose of the asset according to RCO policies, or return the fair market value of the asset(s) to RCO. Assets shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by RCO in writing.

B. The sponsor shall be responsible for any loss or damage to assets which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that asset in accordance with sound management practices.

SECTION 13. RIGHT OF INSPECTION

The sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 14. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 15. DEBARMENT CERTIFICATION

A. For Federally Funded Projects
By signing the Agreement with RCO, the sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on the Office of Inspector General Suspension and Debarment List at http://www.gsaig.gov/index.cfm?LinkServID=C4C89080-D2BE-D29A-96355D44A13E4356.

The sponsor (prospective lower tier participant) shall provide immediate written notice to RCO if at any time the prospective lower tier participant learns that the above certification was not correct when submitted or has become erroneous by reason of changed circumstances.

B. For State Funded Projects
By signing the Agreement with RCO, the sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on the "Contractors not Allowed to Bid on Public Works Projects" list at http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/

SECTION 16. PROJECT FUNDING

A. Additional Amounts. The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.

B. Before the Agreement. No expenditure made, or obligation incurred, by the sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

C. After the period of performance. No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

D. Disclosure notice. Projects funded with state Salmon Recovery Funding Board and Puget Sound Acquisition and Restoration money may be used by RCO, the Puget Sound Partnership or Northwest Indian Fisheries Commission as match to one of the following federal assistance agreements: 1) United States Department of Commerce Catalog of Federal Domestic Assistance Number 11.438, or 2) United State Environmental Protection Agency Catalog of Federal Domestic Assistance Numbers 66.123 and 66.456.

SECTION 17. PROJECT REIMBURSEMENTS

A. This contract is administered on a reimbursement basis. The sponsors may only request reimbursement after eligible and allowable costs have already been paid by the sponsor and remitted to their vendors. RCO will then reimburse the sponsor for those costs based upon RCO's percentage as defined in Section F of the Project Agreement of the amount billed to RCO. RCO does not reimburse for donations which the sponsor may use as part of its percentage. All reimbursement requests must include proper documentation of expenditures as required by RCO.

B. Compliance and Payment. The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement by the sponsor.

C. Compliance and Retainage. RCO reserves the right to withhold disbursement of up to the final ten percent (10%) of the total amount of the grant to the sponsor until the project has been completed. A project is considered "complete" when:
1. All approved or required activities outlined in the Agreement are done;
2. On-site signs are in place (if applicable);

3. A final project report is submitted to and accepted by RCO;
4. Any other required documents are complete and submitted to RCO;
5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed; and
8. Fiscal transactions are complete.
9. RCO has accepted a final boundary map, if required for the project, for which the Agreement terms will apply in the future.

D. Reimbursement Request Frequency. Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.

SECTION 18. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services to be provided under this Agreement are limited to grants approved by the SRFB and must comply with SRFB policy. See WAC 420-12-060 (5).

SECTION 19. RECOVERY OF PAYMENTS

In the event that the sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

The sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

SECTION 20. COVENANT AGAINST CONTINGENT FEES

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

SECTION 21. PROVISIONS APPLYING TO DEVELOPMENT, RENOVATION AND RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for development, renovation and restoration of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

A. Document Review and Approval. The sponsor agrees to submit one copy of all development, renovation, restoration or construction plans and specifications to RCO for review prior to implementation. Review and approval by RCO will be for compliance with the terms of this Agreement.

B. Contracts for Development, Renovation, or Restoration. Sponsors must have a procurement process that follows applicable state and/or required federal procurement principles. If no such process exists the sponsor must follow these minimum procedures: (1) publish a notice to the public requesting bids/proposals for the project (2) specify in the notice the date for submittal of bids/proposals (3)specify in the notice the general procedure and criteria for selection; and (4) comply with the same legal standards regarding unlawful discrimination based upon race, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer. This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any other entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

C. Contract Change Order. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.

D. Control and Tenure. The sponsor must provide documentation that shows appropriate tenure (landowner agreement, long term lease, easement, or fee simple ownership) for the land proposed for development, renovation or restoration. The documentation must meet current RCO requirements.

E. Nondiscrimination. Except where a nondiscrimination clause required by a federal funding agency is used, the sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

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

F. Use of Best Management Practices. Project sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. The best management practices are described in three documents: "Stream Habitat Restoration Guidelines: Final Draft", 2004; "Design of Road Culverts for Fish Passage", 2003; and "Integrated Streambank Protection Guidelines", 2002. These documents and other information can be found on the AHG website.

SECTION 22. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for the acquisition of interest in real property (including easements) for outdoor recreation, habitat conservation, salmon recovery purposes, or farmland preservation:

A. Evidence of Land Value. Before disbursement of funds by RCO as provided under this Agreement, the sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.

B. Evidence of Title. The sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.

C. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this project Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the Agreement before final payment.

D. Conveyance of Rights to the State of Washington. Document securing long-term rights for the State of Washington. When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.

   1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.

   2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

   3. Easements and Leases. The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. Real Property Acquisition and Relocation Assistance

   1. When federal funds are part of this Agreement, the Sponsor 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.

   2. When state funds are part of this Agreement, the sponsor 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.

   3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.

F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with section 9 - Archaeological and Cultural Resources before structures are removed or demolished.

SECTION 23. RESTRICTION ON CONVERSION OF REAL PROPERTY AND/OR FACILITIES TO OTHER USES

The sponsor shall not at any time convert any real property or facility acquired, developed, renovated, and/or restored pursuant to this Agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed, renovated, and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the Agreement or as approved by the funding board. Determination of whether a conversion has occurred shall be based upon applicable law and RCFB/SRFB policies.

For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation, or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

SECTION 24. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

For acquisition, development, renovation and restoration projects, sponsors must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:

A. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.

B. In a reasonably safe condition for the project's intended use.

C. Throughout its estimated life so as to prevent undue deterioration.

D. In compliance with all federal and state nondiscrimination laws, regulations and policies.

For acquisition, development, renovation and restoration projects, facilities open and accessible to the general public must:

E. Be constructed and maintained to meet or exceed the minimum requirements of the most current local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as updated.

F. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

G. Be available for use by the general public without reservation at reasonable hours and times of the year, according to the type of area or facility.

SECTION 25. INCOME AND INCOME USE

A. Income.

1. Compatible source. The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement.

2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with the:
(a) Value of any service(s) furnished;
(b) Value of any opportunities furnished; and
(c) Prevailing range of public fees in the state for the activity involved.
Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.25.210 RCW).

B. Income use. Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state or federal law, the revenue may only be used to offset:

1. The sponsor's matching funds;

2. The project's total cost;

3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;

4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or

5. Capital expenses for similar acquisition and/or development.

SECTION 26. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the funding board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 27. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate sponsor, including any nonprofit sponsor, shall:

A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the sponsor's obligation to the project as identified in the Agreement.

B. Notify RCO prior to corporate dissolution. Within 30 days of dissolution the sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the sponsor's obligation to the qualified successor if requirements are met.

C. Sites or facilities open to the public may not require exclusive use, (e.g., members only).

SECTION 28. LIABILITY INSURANCE REQUIREMENTS FOR FIREARMS AND ARCHERY RANGE SPONSORS

A. The sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars ($1,000,000) for the death of, or injury to, each person.

B. The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

C. The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this Agreement.

D. The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.

E. The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.

F. By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

SECTION 29. REQUIREMENTS OF THE NATIONAL PARK SERVICE

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" in the LWCF State Assistance Program Federal Financial Assistance Manual are also made part of this Agreement. The sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 30. FARMLAND PRESERVATION ACCOUNT

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement.

- Section 8 - Acknowledgement and Signs,
- Section 10 - Hazardous Substances,
- Section 14 - Stewardship and Monitoring
- Section 22 - Provisions Applying to Acquisition Projects, Sub-sections F and G.
- Section 23 - Restriction on Conversion of Real Property and/or Facilities to Other Uses,
- Section 24 - Construction, Operation, Use and Maintenance of Assisted Projects, Sub-sections E, F, G, and
- Section 25 - Income and Income Use

SECTION 31. ORDER OF PRECEDENCE

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

A. Applicable federal and/or state statutes, regulations, policies and procedures including RCO/funding board policies and procedures, applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;

B. Project agreement including attachments;

C. Special Conditions;

D. Standard Terms and Conditions of the Project Agreement.

SECTION 32. AMENDMENTS

Amendments to this Agreement shall be binding only if in writing and signed by personnel authorized to bind each of the parties except period of performance extensions and minor scope adjustments need only be signed by RCO's director or designee.

SECTION 33. LIMITATION OF AUTHORITY

Only RCO or RCO's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by RCO.

SECTION 34. WAIVER OF DEFAULT

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

SECTION 35. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 36. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

SECTION 37. TERMINATION

The funding board and RCO will require strict compliance by the sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the sponsor in its application for a grant as finally approved by the funding board

A. For Cause. The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this Agreement:
   i. In the event of any breach by the sponsor of any of the sponsor's obligations under this Agreement; or
   ii. If the sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines

   In the event this Agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

B. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the sponsor.

C. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 38. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

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

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

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

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other

party which it wishes to dispute. The written Agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 39. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 40. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in a county where the project is situated. The sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this Agreement is between the funding board and a federally recognized Indian Tribe, the following governing law/venue applies:

A. Notwithstanding the above venue provision, if the State of Washington intends to initiate a lawsuit against a federally recognized Indian tribe relating to the performance, breach or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such a lawsuit in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such lawsuit in federal court; otherwise the State may sue the Tribe in the Thurston County Superior Court. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal or tribal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court.

B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such a lawsuit shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F- Project Funding of the Agreement in order to satisfy the judgment.

C. The Tribe hereby waives its sovereign immunity for suit in state court for the limited purpose of allowing the State to bring such actions as it determines necessary to give effect to this section and to the enforcement of any judgment relating to the performance or breach of this Agreement. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the RCO and any other state agencies that may be assigned or otherwise obtain the right of the RCO to enforce this Agreement.

SECTION 41. SEVERABILITY

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

Eligible Scope Activities

Project Sponsor:	City of Edmonds	**Project Number:**	13-1107
Project Title:	Willow Creek Daylighting Final Feasibility Study	**Project Type:**	Planning
Program:	Puget Sound Acq. & Restoration	**Approval:**	12/4/2013

Planning Metrics

Worksite #1, Edmonds Marsh

Targeted salmonid ESU/DPS:	Chinook Salmon-Puget Sound ESU, Chum Salmon-Puget Sound/Strait of Georgia ESU, Coho Salmon-Puget Sound/Strait of Georgia ESU, Pink Salmon-Odd year ESU, Steelhead-Puget Sound DPS
Targeted species (non-ESU species):	Cutthroat, Searun Cutthroat
Area Encompassed (acres):	27.0
Miles of Stream Affected:	0.33
	This number was calculated from the draft Early Feasibilty Study which indicates the existing confined, channelized ditch is 700ft long and that the proposed daylighted channel would extend an additional 700ft along the RR to the east then 350ft from under the RR tracks across Marina Beach. The length of the channel across Marina Beach could be up to 700ft long, depending on the final channel design.

Restoration Planning And Coordination Project

Conducting habitat restoration scoping and feasibility studies

Description of the Plan:	none
Name of the Plan:	none

Milestone Report By Project

Project Number: 13-1107 P
Project Name: Willow Creek Daylighting Final Feasibility Study
Sponsor: Edmonds City of
Project Manager: Elizabeth Butler

X	!	Milestone	Target Date	Comments/Description
X		Project Start	12/05/2013	
		Data Gathering Started	02/28/2014	
		RFP Complete/Consultant Hired	02/28/2014	For cultural resources, geotech, or other consultant work.
	!	Cultural Resources Complete	05/30/2014	To be completed before ground disturbing activities start.
	!	Progress Report Submitted	06/30/2014	
	!	Annual Project Billing	07/31/2014	
	!	Progress Report Submitted	12/31/2014	
		Draft Plan to RCO	01/30/2015	Draft Design Deliverables per special condition
		Final Plan to RCO	03/31/2015	Final Design Deliverables per special condition
		Final Report in PRISM	12/31/2015	
	!	Agreement End Date	12/31/2015	All expenses must be incurred by this date.
		Final Billing to RCO	02/29/2016	

X = Milestone Complete

! = Critical Milestone

Milestone Report By Project

Project Number: 13-1107 P
Project Name: Willow Creek Daylighting Final Feasibility Study
Sponsor: Edmonds City of
Project Manager: Elizabeth Butler

X	!	Milestone	Target Date	Comments/Description
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	!	Annual Project Billing	07/31/2014	
	!	Progress Report Submitted	12/31/2014	
		Draft Plan to RCO	01/30/2015	Draft Design Deliverables per special condition
		Final Plan to RCO	03/31/2015	Final Design Deliverables per special condition
		Final Report in PRISM	12/31/2015	
	!	Agreement End Date	12/31/2015	All expenses must be incurred by this date.
		Final Billing to RCO	02/29/2016	

X = Milestone Complete

! = Critical Milestone