

**Project Sponsor:** Confederated Tribes and Bands of the  
Yakama Nation  
**Project Title:** Beaver Creek Low Tech Restoration  
Project

**Project Number:** 25-1225R  
**Approval Date:** 9/16/25

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#### **A. PARTIES OF THE AGREEMENT**

This Recreation and Conservation Office Agreement (Agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and Yakama Nation (Sponsor, primary sponsor), PO Box 151, Toppenish, WA 98948, and shall be binding on the agents and all persons acting by or through the parties.

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

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

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

#### **B. PURPOSE OF AGREEMENT**

This Agreement sets out the terms and conditions by which a grant is made from the Salmon State Riparian-CCA. This grant is administered by the Recreation and Conservation Office (RCO).

#### **C. DESCRIPTION OF PROJECT**

The Beaver Creek Low-Tech Restoration Project aims to restore habitat complexity, floodplain connectivity, and riparian vegetation along nearly one mile of Beaver Creek. Beaver Creek is currently impacted by channel incision, floodplain disconnection, and reduced habitat complexity, primarily due to human activities such as road and bridge construction, timber harvesting, cattle grazing, and recreational use, as well as a history of natural fire disturbance. These disturbances have simplified the stream channel, leading to downcutting, decreased water retention, increased sediment transport, and a diminished riparian corridor.

To address these impairments, the proposed project will implement low-tech, process-based restoration techniques, including:

**Large Wood** - Utilizing nearly 200 rootwad logs from the Reach 5 Project to increase flow obstruction, encourage lateral migration, and promote habitat complexity.

**Install Post-Assisted Log Structures** - Structures will mimic natural beaver dams, slowing water flow, increasing sediment retention, and reconnecting floodplain habitats. These will also provide structural stability.

**Riparian Vegetation Enhancement** - Planting willow stakes, rooted water birch, and aspen in targeted locations to improve riparian habitat for aquatic, upland, and avian species.

**Encourage Beaver Colonization** - Creating suitable conditions for beaver activity, allowing them to naturally sustain and expand restored habitats.

**D. PERIOD OF PERFORMANCE**

The period of performance begins on September 16, 2025 (project start date) and ends on September 16, 2029 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

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

**E. STANDARD TERMS AND CONDITIONS INCORPORATED**

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

**F. LONG-TERM OBLIGATIONS**

For this restoration project, the Sponsor's long-term obligations shall be for a minimum of ten (10) years, or more as specified in the Landowner Agreement, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

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

**G. PROJECT FUNDING**

The total grant award provided for this project shall not exceed \$100,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
<b>SRFB – SALMON STATE RIPARIAN -CCA</b>	100%	\$100,000.00	State
<b>Total Project Cost</b>	100%	\$100,000.00	

**H. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS**

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

**I. AMENDMENTS TO AGREEMENT**

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

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

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all applicable federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO

website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

#### J. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the Sponsor's performance of this Agreement shall comply with, all applicable state and federal laws and regulations (including without limitation applicable RCO WACs), applicable RCO policies in the manuals as identified below (including without limitation RCO funding board policies), and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that amendment.

For the purpose of this Agreement, applicable policies in the following RCO manuals will also govern Sponsor's performance under this Agreement:

- Restoration Projects – Manual 5
- Long Term Obligations – Manual 7
- Reimbursements – Manual 8
- Salmon Recovery Grants – Manual 18

For the purposes of this agreement, WAC title 420 (for salmon recovery projects), and WAC title 286 (for recreation projects) shall apply as terms of this Agreement, provided that nothing in those WACs and this Agreement are intended or shall be interpreted to prevent a Sponsor from implementing an Indian preference employment policy that is lawful under applicable federal, state, and tribal law.

#### K. SPECIAL CONDITIONS

**CONDITION APPLIES TO THE FOLLOWING AREA(S):** Beaver Creek Low Tech Restoration Project APE  
**State - Agency Landowner: Evidence of compliance required:** In accordance with the terms of this agreement, documentation of compliance with Executive Order 21-02 and/or Section 106 of the National Historic Preservation Act must be provided. The State Agency that owns and/or manages the lands on which this project is proposed has the authority to act as lead for ensuring compliance with these requirements. Therefore, RCO has not initiated review or consultation for this project. You must coordinate with the State Agency landowner to complete that agency's cultural resources compliance requirements. RCO will withhold reimbursement of development or restoration expenditures until this requirement is met. For acquisition projects, final payment will be withheld until evidence of cultural resources review is provided. If archaeological or historic materials are discovered while conducting project activities, work in the immediate

#### L. CLIMATE COMMITMENT ACT FUNDING

Where this section conflicts with other provisions of this Agreement, the requirements of this section shall prevail.

##### Project Funding, Laws, and Rules

This project is funded through the Climate Commitment Act (Chapter 316, Laws of the State of Washington, 2021 ("CCA" or "the Act"). Funds provided herein are from one or more of the following accounts in the state treasury: Carbon Emissions Reduction Account (CERA), Climate Investment Account (CIA), Climate Commitment Account (CCA), Natural Climate Solutions Account (NCSA), and Air Quality and Health Disparities Improvement Account (AQHDIA). Sponsor shall comply with the requirements of the Act and specific requirements for each account that funds the project. Sponsors shall also follow all applicable Agencies' (see below) WAC's and policies established pursuant to the Act.

##### Geographic Scope of Work

Funding through the Act's accounts (listed above) for this Agreement shall only be spent on the project and within the state of Washington.

##### Reporting

Sponsor shall assist RCO with its reporting requirements per the Act, and any applicable WAC's including but not limited to WAC 173-446B.

At the direction of RCO, Sponsor shall report project information to Washington State Department of Ecology ("ECY"), Washington State Department of Commerce, Washington State Department of Natural Resources, the Washington State Department of Health (DOH), the Office of the Governor, the Washington State Legislature ("LEG") to include the Joint Legislative Audit and Review Committee, the Environmental Justice Council (ECY, DOH), and the Office of Financial Management ("Agencies"), through 2045. Sponsor must provide RCO any requested project information needed to complete its Environmental Justice Assessment and Review and plans and assessments required by Act through 2045.

At the direction of RCO, Sponsor shall use reporting tools provided by the RCO or the Agencies to complete Sponsor and RCO's reporting requirements per this Agreement and the Act, and any WAC's or policies established by the Agencies pursuant to the Act.

#### Outreach

At the request of RCO, Sponsor shall provide a copy of all Sponsor project education and outreach materials via email to RCO for review prior to distribution.

#### Funding Source Acknowledgement and Branding

To strengthen public awareness of how CCA funding is used, Sponsor shall ensure consistent branding and funding acknowledgments are used in all communications and included in funding agreements, contracts, press releases and project related publications, media, and at the project site in the form of signs during all phases of the project to include preconstruction, pre-renovation, pre-rehabilitation, and for completed projects at the project site. Sponsor shall also ensure its contractors, subcontractors, service providers and others who assist Sponsor in implementing the project include recognition of CCA project funding on their website and other promotional or informational materials. Capital equipment costing more than \$5,000 shall also be branded with a CCA logo.

Sponsor shall request RCO provide the format for acknowledgement and branding language and logo in the language and font, and logo color, font, and format, consistent with CCA funding requirements as set for in this subsection. For logos, Sponsor shall contact RCO to request approved logo templates.

- Language: "[PROJECT] is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and- invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at [www.climate.wa.gov](http://www.climate.wa.gov)."
- Logo: Sponsor shall request RCO send it logo templates approved by the state. The RCO provided logos should always be used in its entirety, with the wordmark and symbols together. The logo should not be altered in any way, including changing the colors, proportions or fonts. The logo should be displayed on a white background. If a white background isn't possible, use the primary logo with the border or one of the approved white logos. The primary color palette is the shades of green, but it can also be used in black and white and/or gray scale as required. The logo can be used in a variety of applications, including websites, social media, print materials, and signage. When using the logo in digital applications or printing for signage, it is important to use a high-resolution version of the logo.

#### **M. AGREEMENT CONTACTS**

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

##### Sponsor Project Contact

Ben Woodworth  
Fisheries Habitat Specialist  
2 Johnson Lane  
Winthrop, WA 98862  
woob@yakamafish-nsn.gov

##### RCO Contact

Amee Bahr  
Natural Resources Building  
PO Box 40917  
Olympia, WA 98504-0917  
Amee.Bahr@rcو.wa.gov

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

#### **N. 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.

#### **O. EFFECTIVE DATE**

This Agreement, for the project, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the Sponsor and the RCO, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed, and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the attached STANDARD TERMS AND CONDITIONS OF THE RECREATION AND CONSERVATION OFFICE AGREEMENT.

The signators listed below represent and warrant their authority to bind the parties to this Agreement.

Yakama Nation

By: Gerald Lewis Date 03.04.26  
Authorized Representative/Agent

Name (printed): Gerald Lewis

Title: Tribal Council Chairman

State of Washington Recreation and Conservation Office On behalf of the [board]

By: Christy Rains Date 03/16/2026  
*Christy Rains*  
Authorized Representative

Recreation and Conservation Office

Pre-approved as to form

By: Danielle M. [Signature] Date 5/9/2020  
Assistant Attorney General

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## Eligible Scope Activities

### ELIGIBLE SCOPE ACTIVITIES

#### Restoration Metrics

##### Worksite #1, Beaver Creek Low Tech Restoration Project Area

Targeted salmonid ESU/DPS (A.23):	Chinook Salmon-Upper Columbia River Spring-run ESU, Steelhead-Upper Columbia River DPS
Targeted species (non-ESU species):	Bull Trout, Cutthroat, Rainbow
Miles of Stream and/or Shoreline Treated or Protected (C.0.b):	0.65
	Rivermile 7.3 to rivermile 7.95
Project Identified In a Plan or Watershed Assessment (C.0.c):	Tetra Tech, 2017, Beaver Creek Reach Assessment
Type Of Monitoring (C.0.d.1):	Implementation Monitoring

##### Instream Habitat Project

Total Miles Of Instream Habitat Treated (C.4.b): 0.65

##### Channel structure placement (C.4.d.1)

Material Used For Channel Structure (C.4.d.2):	Individual Logs (Unanchored)
Miles of Stream Treated for channel structure placement (C.4.d.3):	0.65
Acres Of Streambed Treated for channel structure placement (C.4.d.4):	0.7
Pools Created through channel structure placement (C.4.d.5):	40
Number of structures placed in channel (C.4.d.7):	40

##### Riparian Habitat Project

Total Riparian Miles Streambank Treated (C.5.b.1): 0.65  
Total Riparian Acres Treated (C.5.b.2): 5.0

##### Planting (C.5.c.1)

Acres Planted in riparian (C.5.c.3): 5.0  
Miles of streambank planted (C.5.c.4):

**Cultural  
Resources  
Cultural  
resources**

**Permits**

**Obtain permits**

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## Project Milestones

### PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Project Start	09/16/2025	
	Cultural Resources	12/31/2025	The State Agency that owns and/or manages the lands on which this project is proposed has the authority to act as lead for ensuring compliance with these requirements.
	Cultural Resources Documents	12/31/2025	Documentation of compliance with Executive Order 21-02 and/or Section 106 of the National Historic Preservation Act must be provided.
	Applied for Permits	01/31/2026	
	Progress Report Due	02/28/2026	
	Cultural Resources Complete	03/31/2026	Documentation of compliance with Executive Order 21-02 and/or Section 106 of the National Historic Preservation Act must be provided.
	Bid Awarded/Contractor Hired	07/31/2026	
	Annual Project Billing Due	07/31/2026	
	Final Design to RCO	07/31/2026	Pre-construction design deliverables described in Application Project Proposal
	Landowner Agreement to RCO	07/31/2026	
	Permits Complete	07/31/2026	
	Riparian Enhancement Plan	07/31/2026	Updated per Manual 18 Appendix M.
	Restoration Started	08/15/2026	
	Progress Report Due	11/30/2026	
	Progress Report Due	02/28/2027	
	Annual Project Billing Due	07/31/2027	
	Progress Report Due	11/30/2027	

Progress Report Due	02/29/2028
Annual Project Billing Due	07/31/2028
Restoration Complete	10/31/2028
Progress Report Due	11/30/2028
Progress Report Due	02/28/2029
Annual Project Billing Due	07/31/2029
Funding Acknowl Sign Posted	08/31/2029
RCO Final Inspection	08/31/2029
Agreement End Date	09/16/2029
Final Report Due	11/30/2029
Final Billing Due	11/30/2029

## Standard Terms and Conditions of the Recreation and Conservation Office

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions as of 09/16/2019.

### 1. CITATIONS, HEADINGS AND DEFINITIONS

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

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

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

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

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

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

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

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

**C.F.R.**—Code of Federal Regulations

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

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

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

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

**equipment**—Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

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

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

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

**indirect cost**—Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

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

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

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

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

**Office**—Means the Recreation and Conservation Office or RCO.

**pass-through entity**—A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

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

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

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

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

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

**project cost**—The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. § 200.83 (2013) for federally funded projects).

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

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

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

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

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

**RCW**—Revised Code of Washington

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

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

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

**SRFB**—Salmon Recovery Funding Board

**subaward**—Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

**subrecipient**—Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

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

**WAC**—Washington Administrative Code.

## 2. PERFORMANCE BY THE SPONSOR

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

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement. Provided, however, that Sponsor's obligations under this agreement will be subject to force majeure. If acts of God, severe weather conditions, fire, a public health emergency, or any other unforeseen catastrophic event caused by someone other than the Sponsor, which was beyond the control of the Sponsor, prevents the Sponsor's performance, such non-performance shall not be considered a breach of this Agreement.

### 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 RCO.

### 4. RESPONSIBILITY FOR PROJECT

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

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

### 5. INDEMNIFICATION

- A. Subject to the limitations provided in this Agreement, the Sponsor shall (to their proportional share of responsibility) defend (or pay the cost of such defense), either or both of which shall not be applied to any liability limits described in this agreement, indemnify and hold the Recreation and Conservation Office (RCO), the Recreation and Conservation Funding Board, the Salmon Recovery Funding Board, collectively referred to herein as "the RCO" and its officers and employees harmless from all damage, loss, claims, demands, or suits at law or equity, which concern property damage, personal injury, bodily injury, or death, arising in whole or in part from any actual or alleged negligent acts, errors, omissions by Sponsor in connection with this Agreement (including without limitation all work or activities thereunder) or by the Sponsor or the Sponsor's agents, employees, officers, or officials. If the RCO is immune from suit pursuant to a specific statutory exemption and or limitation as to the particular claim, demand(s), or suit(s) at law or equity, the Sponsor shall have no obligation to defend, indemnify or hold the RCO harmless. Should this section 5 of the Agreement conflict with any other section of this Agreement, excepting section 33 regarding terms applicable to federally recognized Indian tribes, the terms of this section shall take precedence.
- B. Provided that nothing herein shall require a Sponsor to defend (or pay the cost of such defense) or indemnify the RCO against and hold harmless the RCO from claims, demands or suits at law or equity based solely upon the negligence of the RCO, its employees and/or agents for whom the RCO is vicariously liable.
- C. 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, officers, or officials for whom the Sponsor is vicariously liable, and (b) the RCO, its employees and agents, 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, officers, or officials.
- D. If Sponsor engages contractors to perform any of Sponsor's obligations under this Agreement or work associated with this Agreement, Sponsor shall require such contractor to likewise indemnify, defend, and hold RCO harmless through an indemnification provision consistent with and at least as protective as the above. The Sponsor shall also require such contractor to add RCO as an additional insured to any liability insurance that covers the contractor on the project. If contractor fails to indemnify RCO or if it fails to add RCO as additional insured or the insurance lapses for any reason, Sponsor's indemnification obligations to RCO under subsections A through C above shall apply to any and all claims that may arise due to contractor negligence and/or any vicarious liability of Sponsor's contractor. The term "contractor" includes all subcontractors of any tier. If any such contractors have sovereign immunity, the indemnification requirement shall also require such contractors provide the State a limited waiver of sovereign immunity to the State.
- E. RCO and Yakama Nation understand and agree that Yakama Nation employees' claims for workplace injuries are governed by Title 90 (Workmen's Compensation Plan) of the Yakama Nation Revised Law & Order Code, as amended ("RYC"). RYC Title 90 provides that all work-related injuries and deaths sustained

by employees of the Yakama Nation and its enterprises are withdrawn from private controversy except as permitted under Title 90, and that Title 90 provides the exclusive legal remedy available to the Yakama Nation employee. Pursuant to Title 90, injured Yakama Nation employees who have properly exhausted their administrative remedies under Title 90 may appeal Yakama Nation's decision only to the Yakama Tribal Courts. Yakama Nation's indemnification and defense obligations to RCO shall, subject to the terms and conditions of this Agreement, apply where a Yakama Nation employee (or their heirs or estate) sues or submits claims to the state for a workplace injury or death associated with such employee's performance of this Agreement.

- F. In all matters of indemnification for third party claims, this section shall only apply to suits and claims that have standing in a court of law.
- G. Sponsor shall be responsible for paying only its share of any judgement, including legal costs, which shall be proportional to its actual liability as determined by a court of law.

## **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 RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

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

## **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, RCW 42.52 if applicable; or any similar applicable statute involving the Sponsor in the procurement of, or performance under, this Agreement.

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

## **8. COMPLIANCE WITH APPLICABLE LAW**

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

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act; provided, however, that nothing in this Agreement is intended or shall be interpreted to prevent a Sponsor from implementing an Indian preference employment policy that is lawful under applicable federal, state, and tribal law. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause, or a clause substantially alike in content, in each contract for construction of this project:

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

- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees that if state prevailing wage laws (RCW 39.12) are applicable to Sponsor, it will comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with applicable provisions of the rules and regulations of the Washington State Department of Labor and Industries. However, applicable tribal wage and safety rules and preferences may otherwise apply if the Sponsor is a federally recognized Indian Tribe. This Agreement is not intended to, nor shall it be interpreted as creating a contractual obligation for Sponsor to comply with federal or state prevailing wage laws, safety laws, or Department of Labor and Industries regulations that would not otherwise apply to Sponsor.

If Sponsor is a federally recognized Indian Tribe, the following shall apply: The Tribe shall provide workers compensation coverage for all of its employees in accordance with applicable tribal worker's compensation laws. To the extent that any of Sponsor's grant-funded employees are not subject to tribal workers compensation program coverage, they shall be covered by applicable state or federal workers compensation laws.

As set forth in section 5 (Indemnification), the tribal Sponsor's indemnification and defense obligations shall, subject to the terms and conditions of this Agreement, apply where an employee of the Sponsor (or their heirs or estate) sues or submits claims to the state for a workplace injury or death associated with the employee's performance of this Agreement

- D. **Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 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.
- E. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.
- No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- F. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

## 9. RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, Sponsor's records relating to the Agreement, including materials generated under the Agreement, shall, at Sponsor's location and during Sponsor's regular business hours, be subject 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 is reasonably necessary to support the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose to RCO any information directly related to the expenditure of project funding under this Agreement as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to RCO, Sponsor understands that RCO may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit RCO to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release RCO from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying, provided that (1) RCO follows RCW 42.56 and applicable regulations and guidance, including without limitation RCW 42.56.300's protections regarding records that concern tribal cultural resources, and (2) RCO promptly provides notice to tribal Sponsors regarding any public records act requests that affect Sponsor's tribal records and affords Sponsor a reasonable opportunity within RCO's required timeline to disclose such records for response to assert any legal objection(s) to the release of Sponsor's records.

## 10. PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO. This Agreement is funded through a grant award from the recreation and conservation funding board per WAC 286 and/or the salmon recovery funding board per WAC 420. The director of RCO enters into this Agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

## 11. PROJECT REIMBURSEMENTS

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

## 12. ADVANCE PAYMENTS

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

## 13. RECOVERY OF PAYMENTS

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

#### 14. 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.

#### 15. INCOME (AND FEES) AND USE OF INCOME

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

#### 16. PROCUREMENT REQUIREMENTS

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

- 1. Publish a notice to the public requesting bids/proposals for the project;
- 2. Specify in the notice the date for submittal of bids/proposals;
- 3. Specify in the notice the general procedure and criteria for selection; and
- 4. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.

5. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer; provided, however, that nothing in this Agreement is intended or shall be interpreted to prevent a Sponsor from implementing an Indian preference employment policy that is lawful under applicable federal, state, and tribal law.

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

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

## 17. TREATMENT OF EQUIPMENT AND ASSETS

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

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

## 18. RIGHT OF INSPECTION

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

## 19. STEWARDSHIP AND MONITORING

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

## 20. ACKNOWLEDGMENT AND SIGNS

- A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. **Signs.**
  1. If the project site is open to the public, during the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and
  2. During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access if the project funded herein is a recreational site. Provided, that this

requirement shall not apply to, and public access will not be required for fish or wildlife habitat projects conducted on (a) privately owned land, (b) land owned by an Indian tribe in fee or held in trust or restricted status for an Indian tribe or its members, or (c) land held by any individual, entity, or government that is located within a closed area of an Indian reservation not generally accessible to non-tribal-members.

- 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.

## 21. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all applicable legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
  - 1. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.
- C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in this Agreement and any applicable manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009, "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

## 22. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. RCO grant funded properties that are not considered acquisition projects shall be managed by Sponsor to function as intended after the period of performance for a term as described in the Section F (as may apply) of this Agreement. Provided that impacts to or changes to the function of the site due to natural process or disasters (etc.) shall not be considered the responsibility of or otherwise assigned to the Sponsor and therefore the Sponsor shall not be responsible to remedy the impact of such processes or disaster and it shall not be considered a conversion (see below). However, the above exclusion from conversion shall not apply if the project in question is a recreation project that due to damage (regardless of source) has become unusable to the public for the intended purpose, and the damage can be cured for an amount less than 50%

of the amount provided under the grant. Also, the project site shall remain in the same ownership and in public use/access status for the term of Sponsor's long-term obligations described in Section F of this Agreement unless otherwise expressly provided in the Agreement or applicable policy, or unless a transfer or change in use is approved by the RCO through an amendment. Provided, that public access requirements of this Agreement shall not apply to, and public access will not be required for, fish or wildlife habitat projects conducted on (a) privately owned land, or (b) land owned by an Indian tribe in fee or held in trust or restricted status by the United States for an Indian tribe or any of its members; or for any project conducted on land held by any individual, entity, or government that is located within a closed area of an Indian reservation not generally accessible to non-tribal-members. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion (see below).

- B. **Conversion:** A project status that results when use or function of recreation or habitat land or facilities paid for by RCO changes, due to the actions or neglect of Sponsor, to uses or functions other than those for which assistance originally was approved. Provided, the Sponsor's failure to cure damage to a recreation project that renders it usable to the public for the intended purpose, when the damage may be cured for an amount less than 50% of the amount of the grant, shall be a conversion. If a conversion occurs, sponsor shall remedy such conversion per the terms of this Agreement. Determination of whether a conversion has occurred shall be based upon the terms of this Agreement, including without limitation all WACs and manuals deemed applicable and all applicable laws. If a conversion occurs/exists, Sponsor shall remedy such conversion by providing a new like facility or habitat area with equal or greater utility or habitat function than the grant funded property for the long-term obligation period/term identified in Section F.
- C. Notwithstanding any other provision of this Agreement, for any remedy owed by Sponsor to RCO for long-term obligations and conversion, the Sponsor is only responsible, to the extent the responsibility is owed per this Agreement, either for repayment of the grant, or for providing replacement property to remedy the conversion, but not both.

### 23. CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
  - 1. According to applicable federal, tribal, state, and local laws and regulations, including public health standards and building codes;
  - 2. In a reasonably safe condition for the project's intended use;
  - 3. Throughout its estimated useful service life so as to prevent undue deterioration;
  - 4. In compliance with all applicable federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
  - 1. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current applicable guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
  - 2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

3. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

#### **24. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS**

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 C.F.R. § 223.203(b)(8) (2000), 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 Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

#### **25. ORDER OF PRECEDENCE**

This Agreement is entered into by RCO pursuant to, and under the authority granted by applicable federal and state laws, and by Yakama Nation pursuant to its governmental authority as a sovereign Native Nation, federally recognized by the Treaty with the Yakama of 1855 (12 Stat. 951). The provisions of the Agreement shall be construed to conform to applicable law. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order, if the source is legally applicable:

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

#### **26. LIMITATION OF AUTHORITY**

The parties may amend this Agreement only by a written instrument signed by the authorized representatives of both parties. Provided, that extensions of the period of performance and minor Project scope adjustments consented to in writing (including email) by the Sponsor's Project Contact need only be signed by RCO's director or designee.

RCO's Authorized Representative: Only RCO's Director or authorized delegate (per delegation of authority memo on file with the RCO) shall have the authority to agree to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of RCO.

Sponsor's Authorized Representative: Only Yakama Nation's Tribal Council Chairman or authorized Tribal Council Executive Board designee shall have the authority to agree to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of the Yakama Nation, provided an amendment would be required for such alteration, amendment, modification or waiver.

#### **27. 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 authorized representatives of the parties, and attached as an amendment to the original Agreement.

#### **28. APPLICATION REPRESENTATIONS—MISREPRESENTATIONS OR INACCURACY OR BREACH**

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

## **29. SPECIFIC PERFORMANCE**

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

## **30. TERMINATION AND SUSPENSION**

The 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 RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

### **A. For Cause.**

1. The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
  - a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
  - b. If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
  - c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project.
2. Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
3. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

**B. For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

1. The Sponsor was not in default; or
2. Failure to perform was outside Sponsor's control, fault or negligence.

### **C. Rights or Remedies of the RCO.**

1. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

2. In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the director may require that any unspent funds, overpayments, or improperly paid amount be repaid to RCO for redeposit into the account from which the funds were derived. However, Sponsor shall repay all such amounts of grant funds if required by state law, or in the case of a federally funded grant, the federal funding agency. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

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

1. **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

### 31. DISPUTE RESOLUTION

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

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

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

Informal Negotiations. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 30 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 60 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

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

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

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

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

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

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

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

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

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

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

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

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

## **32. GOVERNING LAW/VENUE**

This Agreement shall be construed and interpreted in accordance with the authorities set forth in the Order of Preference section. In the event of a lawsuit involving this Agreement, venue shall be determined as set forth in section 33, below.

### 33. PROVISIONS FOR FEDERALLY RECOGNIZED INDIAN TRIBES

The following provisions apply where Sponsor is a federally recognized Indian tribe:

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

The Tribe hereby grants and provides only to RCO (including suits in the name of the "state" insofar as the RCO is the state actor in question) and not to any other individual, agency, or entity, a limited waiver of sovereign immunity exclusively for the following purposes, and as limited by the terms of this Agreement:

1. to enforce the express terms of this Agreement, including the indemnification provisions, and of any documents recorded pursuant to this Agreement, such as those related to real property interests in the form of deeds, easements, or covenants,
  2. to enforce the Dispute Resolution provisions of this Agreement,
  3. to compel arbitration of a Disputed Matter (unless the Tribe has elected to resolve the dispute through suit brought in a court of competent jurisdiction),
  4. to enforce any mediation agreement, Disputes Panel Decision, or Arbitration award or judgment, or to vacate an Arbitration award or judgment under RCW 7.04A.230 or 9 U.S.C. § 10,
  5. to enforce the long-term obligations of this Agreement.
- B. This limited waiver of sovereign immunity shall apply only to matters described in the above subsection A brought in federal district court in the jurisdiction where the project is situated, or if the federal district court lacks jurisdiction, then in a State court of competent jurisdiction. Such court may render judgment and issue such orders as may be necessary to enforce such awards or judgments. This waiver does not extend to and is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for indirect, consequential, or punitive damages of any kind may be made or enforced against the Tribe. Further, the limited waiver of sovereign immunity shall be of limited duration, applying during the period of performance of this Agreement and then afterwards only as follows:
1. For restoration projects: Limited to the 10 years following the final RCO project reimbursement,
  2. For non-capital projects: Limited to the period of performance. Non-capital projects include Planning, Research, Monitoring, Education, Enforcement, Maintenance, Preliminary Design, Assessment, Acquisition of Water Rights, and Studies.
  3. For capital projects: Limited to the 25 years after the end date of this agreement. Capital projects include Development and Renovation (construction and/or renovation), and completed final designs.
    - a. For the purposes of this Agreement only, final designs for restoration of habitat that do not include engineered construction or removal of structures shall be considered a non-capital project and treated under subsections B(1) and C(1) of this section 34.
- C. **Liability Limits.** The Tribe's total monetary liability arising from (1) monetary judgments or awards made pursuant to a resolution or judgment under the Dispute Resolution section, (2) any defense and/or indemnity obligations under this Agreement, (3) Sponsor's long-term obligations, and (4) defaults of any explicit duty owed by the Tribe under the terms of this Agreement, shall be limited by and to the following:
1. For Noncapital Projects (Planning, Research, Monitoring, Education, Enforcement, Maintenance, Preliminary Design, Assessments, Acquisition of Water Rights, and Studies.): The RCO grant amount.
  2. For Restoration, Development (construction/renovation), Renovation, and completed final design

projects: a per occurrence limit of \$1 million (with a maximum aggregate limit of \$3 million), or the grant amount, whichever greater, or in the case of a long-term obligation the cost of conversion or replacement property based on the current fair market value of a replacement property or an equivalent amount if the Sponsor has not obtained or is unable to obtain replacement property.

- D. Payment of a monetary judgment arising from the Tribe's indemnity obligations to RCO under this Agreement, or from a default of an explicit duty owed by the Tribe to the RCO under the terms of this Agreement, shall be further limited to payment from the Tribe's insurance if such indemnity obligation or default is covered by such insurance. The foregoing does not apply to the costs of defense under the indemnity.
- E. In disputes between the parties, each party shall bear its own attorneys' fees and costs. Attorneys' fees and costs in connection with third party claims subject to the Sponsor's indemnification of RCO shall not reduce the Sponsor's liability limits in subsection C above.
- F. Nothing in this Agreement (including without limitation Sponsor's obligations to comply with applicable federal and state laws, regulations, and policies in performing its obligations under this Agreement) is intended to or shall be interpreted to subject the Sponsor to federal or state regulatory jurisdiction to which they would not otherwise be subject.
- G. Notwithstanding the limited waiver of sovereign immunity contemplated by the forgoing subsections of section 34: For non-capital projects (including final design projects that do not include engineered construction or removal of structures), the Tribe shall have the right to, and may, through a unilaterally executed notice to RCO (which must be signed by the Tribe prior to or concurrent with its execution of this Agreement, and submitted to RCO along with the Tribe's executed copy of the Agreement), provide in writing to RCO that the Tribe chooses not to waive its sovereign immunity. Such notice shall be considered a part of this Agreement as hereby incorporated by reference in this subsection. In such case, the limited waiver of sovereign immunity provided for in section 34 shall not apply to this Agreement. Provided further, that if the Tribe chooses to exercise this right and preserve its sovereign immunity, then RCO shall have no obligation to reimburse the Tribe for any project costs until the project period of performance has ended and the Tribe has completed all associated grant requirements, including submission of a final bill and any other required documentation.

#### **34. 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.

#### **35. END OF AGREEMENT**

This is the end of the agreement.






# 25-1225 Beaver Creek Low Tech Restoration Project

Final Audit Report

2026-03-16

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