



## Thurston Conservation District Board of Supervisors Work Session Topic List & Board Meeting Agenda September 27<sup>th</sup>, 2022 5:00 pm - 7:15 pm

Zoom Meeting Link:

<https://zoom.us/j/91658577844?pwd=cDgvaC9jcWRBU0luUFFHc1lrb3hLQT09>

**Passcode: 2918**

Meeting ID: 916 5857 7844

Call in: 1-253-215-8782

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### Work Session Topic List

5:00 pm – 6:00 pm

1. Topic List Review, *All*
2. Staff Presentation: Harvest Festival, *Nora Carman-White (TCD Communications & Education Manager)*
3. Minutes Review & Revision, *All*
  - a. August 23, 2022, Board Work Session & Meeting Minutes
4. Conservation and Education Center Development, *All*
5. 2023 WA Legislative Issues, *All*
6. WACD Resolutions, *All*
  - a. Draft TCD resolutions
  - b. Other CD resolutions
7. Covid-19 Health Update, *Sarah Moorehead (Executive Director)*
8. Important Updates & Announcements
  - a. Board of Supervisors, *All*
  - b. Executive Director, *Sarah Moorehead (Executive Director)*

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### Board Meeting Agenda

6:30 pm – 7:30 pm

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|--|----------------------|
| 1. Welcome, Introductions, Audio Recording Announcement  | 6:30 PM<br>5 minutes |
| 2. Agenda Review   | 6:35 PM<br>5 minutes |
| 3. Consent Agenda – <i>Action Item</i>                   | 6:40 PM              |
| A. August 23, 2022, Board Work Session & Meeting Minutes | 5 minutes            |
| B. September 2022 Financial Report                       |                      |

C. RCO Agreement: 22-1548 Riverbend Ranch Reach Design & Construction

**4. Public Comment**

**6:45 PM**

\*Three minutes per person

*10 minutes*

**5. Partner Reports (if present)**

**6:55 PM**

A. Natural Resources Conservation Service (NRCS), TBD

*15 minutes*

B. Washington State Department of Ecology, *Alena Reynolds*

C. Washington State Conservation Commission (WSCC), *Jean Fike*

D. Washington Association of Conservation Districts (WACD), *Doug Rushton*

E. National Association of Conservation Districts (NACD), *Doug Rushton*

**6. Governance, All – Action Item**

**7:10 PM**

A. WACD Resolutions

*10 minutes*

B. Staffing Plan Update

C. TCD Resolution 2022-03: Authorizing Use of Cash Operating Reserve Fund

D. October 25, 2022, Work Session Topic List & Meeting Agenda Development

**7. Executive Session:** To discuss potential litigation with legal counsel.

**7:20 PM**

*10 minutes*

*RCW 42.30.110 (i) To discuss with legal counsel representing the agency litigation or potential litigation.*

**Adjourn**

**7:30 PM**

**Informational Only Items:**

*I. Executive Director's Report*

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**Important Dates**

**October 2022**

8<sup>th</sup> TCD Harvest Festival 10:00 am - 3:00 pm

Olympia, WA

15<sup>th</sup> Orca Recovery Day 10:00 am - 2:00 pm

Olympia, WA

25<sup>th</sup> Board Work Session & Meeting 5:00 - 7:30 pm

Virtual (Zoom)

**November 2022**

# Item

# 3

# Thurston Conservation District Board of Supervisors

## Work Session Minutes

August 23, 2022

Virtual Zoom Online Forum

Meeting Time: 5:00 pm – 5:45 pm

Originally Scheduled: 6:30 pm – 7:15 pm



### Present at Work Session:

TJ Johnson, TCD Board Chair

Helen Wheatley, TCD Board Vice-Chair

David Iyall, TCD Board Supervisor

Betsie DeWreede, TCD Board Supervisor

Ben Cushman, TCD Legal Counsel

Sarah Moorehead, TCD Executive Director

Leah Kellogg, TCD Staff

Adam Peterson, TCD Staff

### Topic List Review, All

- 1       **1. Staff Presentation:** Climate Change Adaptations for Local Farms, *Adam Peterson (TCD*
- 2               *Senior Natural Resource Specialist)*
- 3       **2. Minutes Review & Revision, All**
- 4               a. July 26, 2022, Board Work Session & Meeting Minutes
- 5       **3. Conservation and Education Center Development, All**
- 6       **4. 2022 Year End Meeting Schedule, Nov. 22 Dec 20 or 13<sup>th</sup> All**
- 7       **5. 2022 WACD Resolutions Discussion, All**
- 8       **6. Covid-19 Health Update, Sarah Moorehead (Executive Director)**
- 9       **7. Important Updates & Announcements**
- 10              a. Board of Supervisors, *All*
- 11              b. Executive Director, *Sarah Moorehead (Executive Director)*
- 12   Respectfully,

X

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TJ Johnson  
TCD Board Chair

# Thurston Conservation District Board of Supervisors Regular Board Meeting Minutes

August 23, 2022

Virtual Zoom Online Forum

Meeting Time: 6:30 pm – 7:09 pm

Originally Scheduled: 6:30 pm – 7:30 pm



## Present at Meeting:

TJ Johnson, TCD Chair

Helen Wheatley, TCD Vice-Chair

David Iyall, TCD Board Supervisor

Betsie DeWreede, TCD Board Supervisor

Doug Rushton, TCD Board Supervisor

Sarah Moorehead, TCD Executive Director

Leah Kellogg, TCD Staff

Ben Cushman, TCD Legal Counsel

Rebecca Anderson-Blanca, National Resource  
Conservation Service (NRCS)

Hanna Coe, Department of Ecology (DOE)

## Summary of Action Items

- None

## Summary of Motions Passed

- *Supervisor Iyall moved to adopt the revised Board Meeting Agenda. Supervisor Wheatley seconded. Motion passed unanimously, (5-0).*
- *Supervisor DeWreede moved to approve the revised Consent Agenda. Supervisor Rushton seconded. Motion Passed unanimously, (5-0).*
- *Supervisor DeWreede moved to approve the July 26, 2022, Board Work Session and Meeting Minutes. Supervisor Wheatley seconded. Motion Passed, (3-0). Supervisor Iyall and Johnson abstained.*
- *Supervisor DeWreede moved to transition TCD's bank accounts to Beneficial State Bank. Supervisor Rushton seconded. Motion Passed unanimously, (5-0).*
- *Supervisor Iyall moved to adjourn. Supervisor DeWreede seconded. Motion passed unanimously, (5-0).*

## Full Version of the Minutes

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### Welcome & Introductions

At 6:30 pm, TCD Board Chair TJ Johnson called the August 23, 2022, Regular Board Meeting to order via the Zoom online forum. TCD Board and Staff were introduced by the Board Chair. For each vote, TCD Board Chair Johnson called out Supervisors by name. He announced the meeting was being video recorded. TCD Supervisors Johnson, DeWreede, Iyall, Rushton, and Wheatley attended the meeting virtually.

### Agenda Review

A Washington State Conservation Commission (WSCC) Funding Update was added to the Governance Section of the agenda.

***Supervisor Iyall moved to adopt the revised Board Meeting Agenda. Supervisor Wheatley seconded. Motion passed unanimously, (5-0).***

**Consent Agenda**

- A. August 2022 Financial Report
- B. WSCC Engineering Addendum
- C. WSCC Meyer Salmon Recovery Project Addendum

Item 3A July 26, 2022, Board Work Session and Meeting Minutes has been removed from the Consent Agenda and moved for potential action.

***Supervisor DeWreede moved to approve the revised Consent Agenda. Supervisor Rushton seconded. Motion Passed unanimously, (5-0).***

**July 26, 2022, Board Work Session and Meeting Minutes**

***Supervisor DeWreede moved to approve the July 26, 2022, Board Work Session and Meeting Minutes. Supervisor Wheatley seconded. Motion Passed, (3-0). Supervisor Iyall and Johnson abstained.***

**Public Comment**

No public comments were provided.

**Partner Reports**

- A. Natural Resources Conservation Service (NRCS) Update, Rebecca Anderson-Blanca
  - Rebecca Anderson-Blanca introduced herself as the new NRCS representative and gave a verbal update.
- B. Department of Ecology (DOE) Update, Hanna Coe
  - Alena Reynolds was not present; Hanna Coe gave a verbal update.
- C. Washington State Conservation Commission (WSCC) Update, Jean Fike
  - Jean Fike was not present. No update was provided.
- E. Washington Association of Conservation Districts (WACD) Update, TCD Supervisor and WACD Board Member Rushton
  - Supervisor Rushton was present. A written update was provided in the Board Packet.
- F. National Association of Conservation Districts (NACD) Update, TCD Supervisor and NACD Board Member Rushton
  - Supervisor Rushton gave an update. A written update was provided in the Board Packet.

**Governance**

- Climate Friendly Banking

- 57 A. Staff recommends Beneficial State Bank as the financial institution that best  
58 meets the District's financial needs and climate and social interests.  
59 B. Executive Director Moorehead provided a brief summary of the process that will  
60 be required to transition to a new financial institution.

61 ***Supervisor DeWreede moved to transition TCD's bank accounts to Beneficial State Bank.***

62 ***Supervisor Rushton seconded. Motion Passed unanimously, (5-0).***

- 63 • WSCC Funding Update  
64 A. TCD received an additional \$48K for its CREP Program, which is now fully funded.  
65 B. TCD received additional funding for three projects through the WSCC Salmon  
66 Recovery funding: the Meyer project (approved tonight), a Chehalis Basin  
67 Outreach project, and a Riparian Restoration Crew project.

- 68 • September 27, 2022, Work Session Topic List & Meeting Agenda Development

69 **Work Session**

- 70 • Topic List Review, *All*  
71 • Staff Presentation: Harvest Festival, Nora White  
72 • Minutes Review & Revision, *All*  
73 ○ August 23, 2022, Board Work Session & Meeting Minutes  
74 • Conservation and Education Center Development, *All*  
75 • 2023 WA Legislative Issues, *All*  
76 • WACD Resolutions, *All*  
77 • Covid-19 Health Update, *Sarah Moorehead (Executive Director)*  
78 • Important Updates & Announcements  
79 ○ Board of Supervisors, *All*  
80 ○ Executive Director, *Sarah Moorehead (Executive Director)*

81 **Board Meeting Agenda**

- 82 • Agenda Review  
83 • Consent Agenda  
84 ○ August 23, 2022, Board Work Session & Meeting Minutes  
85 ○ September 2022 Financial Report  
86 • Public Comment  
87 • Partner Reports (if present)  
88 ○ Natural Resources Conservation Service  
89 ○ Washington State Department of Ecology  
90 ○ Washington State Conservation Commission  
91 ○ Washington Association of Conservation Districts  
92 ○ National Association of Conservation Districts  
93 • Governance, *All*

- 94                   ○ WACD Resolutions
- 95                   ○ October 25, 2022, Work Session Topic List & Meeting Agenda Development
- 96    ***Supervisor Iyall moved to adjourn. Supervisor DeWreede seconded. Motion passed***
- 97    ***unanimously, (5-0).***
- 98    **Adjourn 7:09 pm**
- 99    Respectfully,

**X**

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TJ Johnson  
TCD Board Chair





# BOARD MEETING

# ITEM SUMMARY

## SHEET

<b>Agenda Item Title:</b>		RCO Agreement: 22-1548 Riverbend Ranch Reach Design & Construction	
<b>Lead Staff:</b>	Mara Healy	<b>Board Meeting Date:</b>	9/27/2022
<b>Goal of Presentation:</b>	<b>Decision</b> <input type="checkbox"/> <b>Information</b> <input type="checkbox"/> <b>Feedback</b> <input type="checkbox"/>		
<b>Description/Background:</b>	<i>Please provide a description or background of the project.</i>		
<p>This contract provides the multi-year funding to finish design work and implement the ongoing Riverbend Ranch Reach Project. This is the funding award discussed at the August Board meeting, that funds the AnchorQEA contract amendment approved by the Board. Total project expenses are not to exceed \$7,674,839.00.</p>			
<b>Pros:</b> TCD has invested a lot of work in the development and diligent planning for this project. Funding will come in reimbursable installments throughout the contract period.			<b>Cons:</b> None.
<b>Fiscal Impacts:</b> <i>Please describe the costs associated with this action.</i>			
Administrative costs are reimbursable			
<b>Recommended Action:</b>	<i>What decision do you recommend the board make?</i>		
Approve			
<b>Legal Review:</b>	<b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>N/A</b> <input type="checkbox"/>		
<b>Supporting Documents:</b> <i>Please list below <b>and</b> attach supporting documents (contracts, maps, agreements, draft resolution or other documents).</i>			
1. RCO Agreement: 22-1548 Riverbend Ranch Reach Design & Construction			

**Project Sponsor:** Thurston Conservation District  
**Project Title:** Riverbend Ranch Reach Design & Construction

**Project Number:** 22-1548C  
**Approval Date:** 03/27/2022

## PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington by and through the Department of Ecology (ECY or Funding Entity) acting through the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and Thurston Conservation District (Sponsor, and primary Sponsor), 2918 Ferguson St SW Ste 1 A, Tumwater, WA 98512, 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.

Prior to and during the Period of Performance, per the Applicant Resolution/Authorizations submitted by all Sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project identified above, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this Agreement on behalf of the Sponsor(s), including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

- A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant Resolution/Authorization signed by its governing body or a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s). Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.
- B. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections.

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

## PURPOSE OF AGREEMENT

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

## DESCRIPTION OF PROJECT

Thurston Conservation District has been working with the Jensen family since 2014 to restore and manage natural resources on Riverbend Ranch. Active work on project development began in 2017, including fish passage improvement scoping and design, riparian restoration and invasive species control planning and technical assistance, and has culminated in the 2021 Project Development ASRP grant we were awarded. Our project development approach is collaborative and holistic, with project element design informed by aquatic species priorities, agricultural viability, land management techniques and partner collaboration. This approach allows us to create a holistic suite of project opportunities and create a system of natural resources management that meets ASRP and landowner goals, ensuring the longevity and success of the project.

## PERIOD OF PERFORMANCE

The period of performance begins on March 28, 2022 (project start date) and ends on June 30, 2027 (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 RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

## STANDARD TERMS AND CONDITIONS INCORPORATED

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

## LONG-TERM OBLIGATIONS

For the restoration portion of this project, the Sponsor's long-term obligations for the project area 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.

## PROJECT FUNDING

The total grant award provided for this project shall not exceed \$7,674,839.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
Office - CBS Habitat Rest. Project	100.00%	\$7,674,839.00	State
Total Project Cost	100.00%	\$7,674,839.00	

## RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended 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 the Agreement, such information shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. "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.

## AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO's director or designee and consented to in writing (including email) by the Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. 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.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current 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. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

## COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in 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 unless otherwise expressly stated in the amendment.

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

- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Restoration Projects - Manual 5

Provided, where a manual refers to a funding board's responsibility and/or authority but the funding board is not involved with the grant or successor to an entity that was involved, the RCO director shall have that responsibility and/or authority if such responsibilities and/or authority falls within the RCO's statutory responsibilities and/or authority or within a lawful delegation by the board to the RCO.

## **SPECIAL CONDITIONS**

### **CULTURAL RESOURCES**

Cultural Resource Special Conditions for ASRP Restoration and Protection Projects: In accordance with the objectives outlined in the Memorandum of Understanding (#23-04) between the Recreation and Conservation Office (RCO) and Washington Department of Fish and Wildlife (WDFW), WDFW shall function as the lead agency for ensuring compliance with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act. ASRP grant recipients must work with WDFW staff to ensure that cultural resources review and consultation is completed in accordance with the applicable regulations. Cultural resources compliance must be demonstrated prior to conducting ground disturbance (demolition or construction) or acquisition. For acquisitions projects full grant reimbursement will be withheld until compliance is demonstrated.

### **PUBLIC ACCESS AND SIGNS**

The following agreement language in the Standard Terms and Conditions will not be applicable to or enforced for this project:

- ACKNOWLEDGEMENTS AND SIGNS: Section B, Clause 2

- CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS: Section B

## **AGREEMENT CONTACTS**

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

### **Sponsor Project Contact**

Mara Healy

2918 Ferguson ST SW, Suite A  
Tumwater, WA 98512  
mhealy@thurstoncd.com

### **RCO Contact**

Alice Rubin  
Senior Grants Manager  
PO Box 40917  
Olympia, WA 98504-0917  
alice.rubin@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

## **ENTIRE AGREEMENT**

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

## **EFFECTIVE DATE**

Unless otherwise provided for in this Agreement, this Agreement, for Project 22-1548, shall become effective and binding on the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

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

**Thurston Conservation District**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name (printed):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**State of Washington Recreation and Conservation Office**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

For Megan Duffy  
Director  
Recreation and Conservation Office

Pre-approved as to form:

**By:** \_\_\_\_\_

**Date:** 07/01/2022

Assistant Attorney General

**Project Sponsor:** Thurston Conservation District  
**Project Title:** Riverbend Ranch Reach Design & Construction

**Project Number:** 22-1548C  
**Approval Date:** 03/27/2022

## Eligible Scope Activities

### ELIGIBLE SCOPE ACTIVITIES

#### Planning/Restoration Metrics

##### Worksite #1, Riverbend Ranch Design (2020H-006-DS)

Acres of Habitat Treated:	135.00
Identify the Habitat Types Treated:	Riparian forest, stream associated wetlands, upper riparian zone, riverine.
Other Species Targeted:	NA
Targeted salmonid ESU/DPS (A.23):	Chinook Salmon-unidentified ESU, Coho Salmon-Southwest Washington ESU
Targeted species (non-ESU species):	Rainbow, Searun Cutthroat
Area Encompassed (acres) (B.0.b.1):	250.0
Miles of Stream and/or Shoreline Affected (B.0.b.2):	2.50
Miles of Stream and/or Shoreline Treated or Protected (C.0.b):	2.50
Project Identified In a Plan or Watershed Assessment (C.0.c):	ASRP Project Portfolio
Type Of Monitoring (C.0.d.1):	None

##### Design for Salmon restoration

###### Preliminary design (B.1.b.11.a RCO)

Project Identified in a Plan or Watershed Assessment. (1220) (B.1.b.11.a):	ASRP Project Portfolio
Priority in Recovery Plan (1222) (B.1.b.11.b):	High

###### Final design and permitting (B.1.b.11.a RCO)

Project Identified in a Plan or Watershed Assessment. (1221) (B.1.b.11.a):	ASRP Project Portfolio
Priority in Recovery Plan (1223) (B.1.b.11.b):	High

#### Agency Indirect Costs

##### Agency Indirect

##### Worksite #2, Riverbend Ranch Construction (2020H-006-CS)

Acres of Habitat Treated:	135.00
Identify the Habitat Types Treated:	Riparian forest, stream associated wetlands, upper riparian zone, riverine
Other Species Targeted:	NA
Targeted salmonid ESU/DPS (A.23):	Chinook Salmon-unidentified ESU, Coho Salmon-unidentified ESU
Targeted species (non-ESU species):	Rainbow, Searun Cutthroat
Area Encompassed (acres) (B.0.b.1):	250.0
Miles of Stream and/or Shoreline Affected (B.0.b.2):	2.50
Miles of Stream and/or Shoreline Treated or Protected (C.0.b):	2.50
Project Identified In a Plan or Watershed Assessment (C.0.c):	ASRP Project Portfolio
Type Of Monitoring (C.0.d.1):	Implementation Monitoring

##### Fish Passage Improvement

Miles Of Stream Made Accessible (SRFB) (C.2.b.1):	1.02
Type Of Barrier (C.2.b.3):	Culvert

##### Culvert installed or improved (C.2.f.1)

Number of culverts (C.2.f.2):	4
Miles of stream made accessible by culvert installation/repair (C.2.f.3):	1.02

Distance from most downstream barrier.

**Instream Habitat Project**

Total Miles Of Instream Habitat Treated (C.4.b): 2.50

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

Material Used For Channel Structure (C.4.d.2): Deflectors/Barbs, Flood Fencing, Individual Logs (Anchored), Logs Fastened Together (Logjam), Other Engineered Structures

Miles of Stream Treated for channel structure placement (C.4.d.3): 2.50

Pools Created through channel structure placement (C.4.d.5): 50

Number of structures placed in channel (C.4.d.7): 76

**Riparian Habitat Project**

Total Riparian Miles Streambank Treated (C.5.b.1): 2.50

Total Riparian Acres Treated (C.5.b.2): 135.0

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

Acres Planted in riparian (C.5.c.3): 135.0

Miles of streambank planted (C.5.c.4):

**Architectural & Engineering**

**Architectural & Engineering (A&E)**

**Project Sponsor:** Thurston Conservation District  
**Project Title:** Riverbend Ranch Reach Design & Construction

**Project Number:** 22-1548C  
**Approval Date:** 03/27/2022

## Project Milestones

### PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Project Start	03/28/2022	
	Permits Complete	07/01/2022	
	Cultural Resources	07/31/2022	see special condition
	Restoration Started	07/31/2022	fish passage
	Landowner Agreement to RCO	08/01/2022	to cover fish passage construction
	Progress Report Due	09/30/2022	
	Other	10/31/2022	Conceptual Design: ASRP Steering Committee Review and Approval
	Restoration Complete	10/31/2022	fish passage
	Other	11/14/2022	Approved conceptual design attached in PRISM
	Progress Report Due	12/31/2022	
	Other	02/28/2023	Preliminary Design: ASRP Steering Committee Review and Approval
	Preliminary Design to RCO	03/13/2023	approved design attached in PRISM
	Progress Report Due	03/31/2023	
	Other	05/31/2023	Final Design: ASRP Steering Committee Review and Approval
	Final Design to RCO	06/12/2023	approved design attached in PRISM
	Annual Project Billing Due	06/30/2023	
	Landowner Agreement to RCO	06/30/2023	sponsor may amend existing landowner agreement to add river and floodplain restoration project elements.
	Progress Report Due	06/30/2023	
	Restoration Started	07/31/2023	habitat and floodplain
	Progress Report Due	09/30/2023	
	Progress Report Due	12/31/2023	
	Progress Report Due	03/31/2024	
	Progress Report Due	06/30/2024	
	Annual Project Billing Due	06/30/2024	
	Progress Report Due	09/30/2024	
	Progress Report Due	12/31/2024	
	Progress Report Due	03/31/2025	
	Progress Report Due	06/30/2025	
	Annual Project Billing Due	06/30/2025	
	Progress Report Due	09/30/2025	
	Progress Report Due	12/31/2025	
	Progress Report Due	03/31/2026	
	Progress Report Due	06/30/2026	
	Annual Project Billing Due	06/30/2026	
	Progress Report Due	09/30/2026	
	Restoration Complete	10/31/2026	habitat and floodplain
	Progress Report Due	12/31/2026	
	Progress Report Due	03/31/2027	
	RCO Final Inspection	05/31/2027	
	Agreement End Date	06/30/2027	
	Other	06/30/2027	as-built designs attached to PRISM
	Final Report Due	09/30/2027	
	Final Report Due	09/30/2027	





**Project Sponsor:** Thurston Conservation District  
**Project Title:** Riverbend Ranch Reach Design & Construction

**Project Number:** 22-1548C  
**Approval Date:** 03/27/2022

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

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 08/11/2022.

## CITATIONS, HEADINGS AND DEFINITIONS

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

**Agreement, terms of the Agreement, or project agreement** – The document entitled “RCO GRANT AGREEMENT” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

**applicable manual(s), manual** – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the “RCO director” for the term “board” in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

**applicable WAC(s)** – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for the term “board” or “agency” in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

**applicant** – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

**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's signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

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

**completed project or project completion** – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

**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.

**Cultural Resources** – Archaeological or historic archaeological sites, historic buildings/structures, and cultural or sacred places.

**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. Part 200 (as updated)).

**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 as updated).

**long-term compliance period** – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

**long-term obligations** – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

**landowner agreement** – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

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

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

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

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

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

**planning project** - A project that results in one or more of the following: 1) a study, a plan, assessment, project design, inventory, construction plans and specifications, and permits; or 2) a project that provides money to facilitate the work of an organization engaged in planning and coordination, or resource stewardship.

**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. 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** – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

**project area** – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project.

**project completion or completed project** – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.

- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

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

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

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

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

**RCW** – Revised Code of Washington

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

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

**restoration project** – A project intended to bring a site back to its historic function as part of a natural ecosystem, or one intended to improve the ecological or habitat functionality or capacity of (or part of) a site, landscape, marine environment, or watershed.

**restoration and/or enhancement project** – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

**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.

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

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

**tribal consultation** – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

**useful service life** – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

## **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 (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

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

## **ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written approval of the RCO. Sponsor shall not sell, give, or otherwise assign to another party any property right, or alter a conveyance (see below) for the project area acquired with this grant without prior approval of the RCO.

## **RESPONSIBILITY FOR PROJECT**

Although 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, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, 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, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety 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, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

## **INDEMNIFICATION**

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

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

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.

Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or

inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

## **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 federal, state, and/or local laws.

## **CONFLICT OF INTEREST**

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

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

## **COMPLIANCE WITH APPLICABLE LAW**

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- 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 Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
  - 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to

investigate a statement regarding prevailing wage provided by a contractor or subcontractor.

- 2) Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.
- D. **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.
- E. **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."

#### ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. **Project Review.** RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
- 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.
- B. **Termination.** RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- C. **Notice To Proceed.** No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.
- D. **Compliance and Indemnification.** At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.
- E. **Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement.** Costs that exceed the budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:
- 1) Keep the IDP at the project site.
  - 2) Make the IDP readily available to anyone working at the project site.



- 3) Discuss the IDP with staff and contractors working at the project site.
- 4) Implement the IDP when cultural resources or human remains are found at the project site.

#### F. Discovery

- 1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
- 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
  - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).
  - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

#### 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 and Retention.** The Sponsor shall maintain books, records, documents, data and other records 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 nine 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 nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such record to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

#### PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and

incorporated by written amendment into this Agreement.

- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

## PROJECT REIMBURSEMENTS

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

## RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, fails to meet its percentage of the project total, and/or fails to comply with any of the terms and conditions of the Agreement, 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. **Return of Overpayments.** 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 the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.

## 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 and to be reimbursed by Sponsor for any grant funds paid to Sponsor (even if such funds have been subsequently paid to an agent), without liability to RCO or, in RCO's discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such

commission, percentage, brokerage or contingent fee.

#### **INCOME (AND FEES) AND USE OF INCOME**

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law, any needed approvals of RCO, and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon offsets sequestration, 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 or otherwise provided for in this agreement.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
- 1) Grant program laws, rules, and applicable manuals;
  - 2) Value of any service(s) furnished;
  - 3) Value of any opportunities furnished; and
  - 4) Prevailing range of public fees in the state for the activity involved.

#### **PROCUREMENT REQUIREMENTS**

- A. **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.

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

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

#### **TREATMENT OF EQUIPMENT AND ASSETS**

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

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

## RIGHT OF INSPECTION

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

## STEWARDSHIP AND MONITORING

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

## ACKNOWLEDGMENT AND SIGNS

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

## 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 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 and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner

agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement 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.
- E. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

#### **LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS**

- A. **Long-Term Obligations.** This section applies to completed projects only.
- B. **Perpetuity.** For acquisition and development projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.
- C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, and/or renovated pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, and/or renovated with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and/or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state or federal laws or regulation.
- 1) When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement or law.

#### **CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS**

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
- 1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
  - 2) In a reasonably safe condition for the project's intended use;
  - 3) Throughout its estimated useful service life so as to prevent undue deterioration;
  - 4) In compliance with all 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 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 or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

#### **ORDER OF PRECEDENCE**

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

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;
- G. Applicable deed restrictions, and/or governing documents.

#### **LIMITATION OF AUTHORITY**

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

#### **WAIVER OF DEFAULT**

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

#### **APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH**

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

#### **SPECIFIC PERFORMANCE**

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

#### **TERMINATION AND SUSPENSION**

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application

for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

**A. For Cause.**

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

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

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

**C. Rights and 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 due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment 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.
- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

## **DISPUTE HEARING**

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

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

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

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

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

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

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

## **ATTORNEYS' FEES**

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

## **GOVERNING LAW/VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

## **SEVERABILITY**

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

## **END OF STANDARD TERMS AND CONDITIONS**

This is the end of the Standard Terms and Conditions of the Agreement.



# Item

# 5

## NACD

### NACD staff changes

- Ariel Rivers has been our NACD Pacific region representative for the past couple of years. She is now the director of membership engagement for NACD. She will still be working out of California and her DC telephone number is 202.547.6406. She will be working through the SW/Pacific regions meeting in Maui (September 7-9). Her email remains [ariel-rivers@nacdnet.org](mailto:ariel-rivers@nacdnet.org). NACD will be advertising to fill the position by September 16 with a projected start date of October 1. Information on the vacancy and how to apply is [here](#).
- Megan DiLernia started with NACD on August 23 as the natural resource policy specialist (a position previously held by Mary Scott). She previously worked for the Florida Fish and Wildlife Conservation Commission on manatee protection. She will be based in DC and her email address is [megan-dilernia@nacdnet.org](mailto:megan-dilernia@nacdnet.org).

### Proposals for 2023 Annual Meeting Breakout Sessions

NACD is accepting breakout session proposals for the 2023 Annual Meeting - to be held in New Orleans, **February 11-15, 2023**. These informational breakout sessions focus on work of conservation districts and their partners across the country. Sessions typically run 60-90 minutes long and often showcase several speakers. [Session proposals](#) are being accepted now through **Friday, Sept. 30, 2022**.

This year NACD is seeking proposals fitting into one of four themes:

1. Natural Resource Management & Climate Resilience
2. District Operations & Developing Next-Gen Conservationists
3. Equity, Access, & Outreach
4. Conservation Planning & Customer Service Training

### Recent and Upcoming Events

- Joint SW/Pacific NACD regions met in Maui on September 7-9, 2022.
- NACD [2023 Annual Meeting](#) will be held February 11-15 at the New Orleans Marriott.
- NACD 2023 Summer meeting is July 15-19 at the Ramkota Hotel in Bismarck, ND. (information not yet posted to the NACD website)

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## WACD

- **WACD [Southwest Area](#)** meeting on October 12 in Chehalis, hosted by Lewis CD. Currently displayed as 8 AM – 5 PM. Area meeting information is [here](#). Bring district resolutions to the SW area meeting.
- **[WACD Board meeting](#)** (virtual) on September 19 (6-8:30 PM). Agenda items: routine updates, Envirothon Support, WACD workplan update, Area meetings, WACD annual conference, WACD officer recruitment, update on correspondence received from districts. A by-law change is being considered to have district employees to be part of the WACD board.
- **[Five Things newsletter](#)** - with all the area association meetings coming up and inklings of potential legislation arising for the 2023 session, WACD is shifting the publication schedule back to weekly for September, October, and November.
- The **[2022 WACD Annual Conference and Business Meeting](#)** will be held on the Monday, Tuesday, and Wednesday (11/28-30) after Thanksgiving at the Wenatchee Convention Center.

# Item

# 6



# Thurston Conservation District RESOLUTION

**Resolution #2022-3**

**Subject: Authorizing Use of Cash Operating Reserve Fund**

**A RESOLUTION OF THE THURSTON CONSERVATION DISTRICT,  
FOR AUTHORIZING USE OF THE CASH OPERATING RESERVE FUND**

WHEREAS, the Thurston Conservation District ("District") is governed by a five-member Board of Supervisors, as set out in Chapter 89.08 RCW that operates under the laws of the State of Washington applicable to conservation districts; and,

WHEREAS, financial best practices and fiscal prudence dictates that the District should have a reasonable amount of resources in reserve to address unanticipated declines in revenue or increases in expenditures; and,

WHEREAS, Thurston Conservation District established an unrestricted special purpose fund called the 'Cash Operating Reserve Fund' on January 20<sup>th</sup>, 2019 to be maintained, subject to Board action, for the purpose of maintaining financial stability during circumstances of unanticipated expenditures or changes in revenue or to satisfy liquidity requirements of grants.

THEREFORE,

Be it RESOLVED that the Thurston Conservation District Board authorizes the Executive Director to use up to \$100,000.00 of the Cash Operating Reserve Fund for upcoming routine and budgeted conservation project expenses. The Cash Operating Reserve Fund will be replenished upon receipt of the November 10<sup>th</sup>, 2022 Rates and Charges payment.

**ADOPTED AT A REGULAR BOARD MEETING BY THE BOARD OF THE THURSTON  
CONSERVATION DISTRICT ON SEPTEMBER 27, 2022 BOARD MEETING.**

\_\_\_\_\_  
TJ Johnson, Board Chair

\_\_\_\_\_  
Betsie DeWreede, Board Member

\_\_\_\_\_  
Helen Wheatley, Vice Chair

\_\_\_\_\_  
Doug Rushton, Board Member

\_\_\_\_\_  
David Iyall, Board Auditor

ATTEST:

\_\_\_\_\_  
Sarah Moorehead, Executive Director

# Informational Items

## Executive Director's Report

Sarah Moorehead – Executive Director

August 26, 2022

### **Priority Initiative Updates**

#### **1<sup>st</sup> Annual TCD Harvest Festival**



Communications and Education Manager, Nora White, will be presenting a detailed overview of the event to the Board at the September Board Work Session. Social and paid media will begin next week detailing many of the fun, cultural, historical and conservation activities, demonstrations and displays that will be present at this event.

Please continue to share information with your friends and neighbors!

#### **HCP For Rural Landowners – Information Sessions**

The Thurston County Habitat Conservation Plan is a long-range planning tool to protect federally listed prairie species while enabling continued development around the county. It will impact thousands of acres in Thurston County. Come learn how rural and working lands can both provide habitat value and remain working farms and/or rural residential open space.

Community meetings will be held 6:00 PM – 8:00 PM on the following days:

- September 29<sup>th</sup> - Brighton Park Grange, 815 Brighton Park SW, Tumwater
- October 18<sup>th</sup> - Violet Prairie Grange, 17028 Violet Prairie Rd SE, Tenino
- November 9<sup>th</sup> - Sportsman's Club, 404 Alaska St., Rainier

Washington State University and Thurston County will give a presentation, with time to talk one-on-one to local agencies, including TCD, about your property and to find out what kind of conservation options are available for you.

Contact Sierra Smith for more information: [sierra.smith1@wsu.edu](mailto:sierra.smith1@wsu.edu) or (360) 867-2165

Thurston County is actively soliciting for land purchase and easements. More information on their process and recruitment efforts can be found here:

<https://www.thurstoncountywa.gov/planning/HCP/Pages/hcp-LandownerEasementsIncentives.aspx>

## **Thurston County Community Planning - Important Updates**

### *HCP Public Comment & Hearing*

Information on the HCP can be found here:

<https://storymaps.arcgis.com/stories/28eb75cf86d548b09d7b5986db8e37ef>

Public comment can be provided through October 4<sup>th</sup> here:

<https://thurstoncomments.org/comment-on-the-habitat-conservation-plan/>

The Thurston Board of County Commissioners is holding a hearing on the Habitat Conservation Plan Implementation Ordinances on October 4<sup>th</sup>, 2022. More information on the hearing is available here:

<https://www.thurstoncountywa.gov/tchome/Pages/publicmeetings.aspx>

### *New Position*

Thurston County has hired an Agriculture Community Program Manager, Ashley Arai, to lead work designated in the Community Driven Review of Agriculture, in addition to being a liaison between Thurston County and the agricultural community. TCD has advocated for this position for many years and is excited to support the increase of agricultural knowledge within Thurston County and streamline opportunities for community members to implement conservation projects on their properties.

Ashley Arai | Agriculture Community Program Manager  
Thurston County Community Planning & Economic Development  
Cell (Primary): (360) 280-9298

[Ashley.Arai@co.thurston.wa.us](mailto:Ashley.Arai@co.thurston.wa.us) | [www.thurstonplanning.org](http://www.thurstonplanning.org)

### *CPA-16 Community Driven Review of Agriculture Policies and Programs*

Updates are underway for Critical Areas Ordinance regulations for New / Expanded Agriculture Uses – This code update will help clarify development regulations for any new agricultural activities and facilities that fall outside the County's VSP Work Plan. A briefing with the Planning Commission is scheduled for October 5<sup>th</sup>, 2022 to review draft code language. Additional information can be found on the project website:

<https://www.thurstoncountywa.gov/planning/Pages/devcode-ag-cao.aspx>

## **Build Your Own Rain Garden Workshop**

Saturday, September 24<sup>th</sup> 12:00 PM – 2:00 PM

West Bay Park (700 W Bay Dr NW, Olympia, WA 98502)

Join Thurston Conservation District for a FREE workshop to learn how to successfully design a rain garden for your own backyard. Together, we will explore choosing the right location, shape, and size for your rain garden. We will also discuss how to test your soil, check your site's drainage, and choose the right native plants. Register [HERE!](#)

The first 50 households to RSVP and attend the workshop will receive a \$10 gift certificate to Thurston Conservation District's Native Plant Sale.

Questions? Kiana Sinner, [ksinner@thurstoncd.com](mailto:ksinner@thurstoncd.com) or 360-972-0407

## **District Operations**

### **August 23<sup>rd</sup>, 2022 Board Meeting Action Items**

- No Action Items to report on.

### **New Hire!**

TCD is pleased to announce that Kendall Carman has joined our technical department as a Natural Resources Specialist focused on farm planning and technical assistance.

More information about Kendall, and her responsibilities at TCD will added to the staff page of our website in the coming weeks: <https://www.thurstoncd.com/about-us/district-staff/>

### **Staffing Plan Updates**

Due to recent and projected funding awards, I am seeking the support of the Board to begin recruitment for up to 2 additional FTEs to begin on or before January 1<sup>st</sup>, 2023. These positions would support the development, design, and implementation of habitat conservation projects within TCD's technical team, along with outreach efforts for this work. With current funding awards in place, it is imperative that hiring begin now to not only complete current funding deliverables, but position TCD to take on planned project work for the coming biennium. TCD is in a good position with several long-term funding opportunities to support an increased capacity to meet the demands of TCD's strategic plan and the needs of our community.

Additional capacity increases, and funding projections, will be detailed in the 2023 budget development process.

### **Monthly Staff Reports**

Reminder – Monthly staff reports can be viewed electronically! The link to view monthly staff reports can be found on your Board Portal.