

ISLAND COUNTY COMMISSIONERS' WORK SESSION SCHEDULE
MAY 7, 2025

Those interested in attending the meeting virtually may use the following link:

<https://zoom.us/j/98750832914?pwd=3eNmGtLyPYwKV5qvVHv4tc207uylo3.1>

or for voice only, **Dial by your location:** (253) 215-8782

Meeting ID: 987 5083 2914 **Passcode:** 777859

9:00 a.m.	Public Health
9:20 a.m.	Budget
9:40 a.m.	Commissioners' Office
10:00 a.m.	Human Resources
10:15 a.m.	Public Works

NOON BREAK

The Board of County Commissioners meets routinely in Work Session the first three Wednesdays of each month. Work Sessions are held in the Annex Building, Board of County Commissioners' Hearing Room, #B102, 1 NE 6th Street, Coupeville, WA.

Work Sessions are public meetings that provide an informal workshop format opportunity for the Board to review ongoing items with departments or to meet with other agencies, committees, or groups to discuss specific topics of mutual interest. Items are typically reviewed at Work Session before being scheduled on the agenda for the Board's regular Tuesday business meetings.

While Work Sessions do not have time set aside for verbal public comment, written public comment is welcomed and can be directed to the Clerk of the Board by submitting comments to CommentBOCC@islandcountywa.gov. If you have questions regarding public comment, you may call (360) 679-7385. Written public comments are considered a public record.

Times for each department are approximate; a time slot scheduled for a specific department may be revised as the Work Session progresses. Because of the workshop format and time sensitivity, certain items, topics, and materials may be presented that are not included in the published agenda. **If you are interested in reviewing those documents, please contact the Clerk of the Board at (360) 679-7354.**

ASSISTIVE LISTENING AVAILABLE: Please contact the clerk for an assistive listening device to use during the meeting. Please return the device at the end of the meeting.

NOTE: Audio recordings are posted within 48 hours of the meeting date. To listen to the recording visit the [Agenda Center](#) on the Island County website.



ISLAND COUNTY PUBLIC HEALTH

WORK SESSION AGENDA

MEETING DATE: 5/7/2025

To: Melanie Bacon, Chair
Board of Island County Commissioners

From: Shawn Morris, Director

Amount of time requested for agenda discussion. 20 minutes

DIVISION: Environmental

Agenda Item No.: 1

Subject: On-site Sewage Systems Regulation Updates

Description: Review the implementation timeline and community impact of the revised on-site sewage system (OSS) regulations in Chapter 246-272A WAC.

Attachment: Updates memo

Request: *(Check boxes that apply)*

- | | |
|--|--|
| <input type="checkbox"/> Move to Consent | <input type="checkbox"/> Move to Regular |
| <input checked="" type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: Not Applicable

P.A. Review: Not Applicable

Island County Public Health

On-site Sewage Systems (OSS)

Subject: Implementation Update – *Chapter 246-272A WAC*

Purpose: Review the implementation timeline and community impact of the revised on-site sewage system (OSS) regulations in [Chapter 246-272A WAC](#).

Key Changes:

- **February 2025** – Maintenance Service Provider Approval Requirements
- **April 1, 2025** – Following Provisions Take Effect
 - Local Management Plans
 - Field Verification of Proprietary Treatment Products
 - Remediation and Repair Procedures
 - Minimum Lot Size Requirements
- **February 2027** – Property Transfer Inspection Requirements: Requires inspections during property transfers to guarantee continued OSS compliance (**Non-Puget Sound Counties**)

Property Transfer Inspections (not new to Island County)

Beginning in 2027, all on-site sewage systems (OSS) must be inspected when the property is sold or the deed is transferred. The health department may remove this requirement if the OSS has had a recent routine inspection. The health department may verify the results of the inspection, require additional inspections, and require that failed OSS discovered during the property transfer inspection are repaired on a set timeline.

Minor Repairs

There is a new definition for “Minor Repair” to clarify that permits are not needed for some repairs.

Repairs

The Health Department must:

- Allow the least expensive repair or replacement of an OSS that meets the rule’s requirements.
- Evaluate all unpermitted sewage discharges and require any that pose a public health threat to be brought into compliance with the rule within a set timeframe.
- Report OSS failures to the Washington Department of Health if they are within 200 feet of shellfish growing areas.
- Health Departments may not impose more stringent repair requirements on private entities than public entities.

Remediation

Health Departments may develop a policy allowing OSS remediation practices to correct certain problems and failures. Remediation practices that damage the OSS or result in insufficient soil treatment are not allowed.

Minimum Lot Sizes

Minimum lot sizes have been increased by 500 – 1000 sq ft, depending on soil type.

Minimum Usable Land Area

New lots being served by OSS must have a certain land area that is usable for septic system installation and repairs. This land cannot be under water, paved, impacted by an easement, or otherwise unusable for the OSS.

Field Verification of Proprietary Treatment Products

Manufacturers of OSS using disinfecting and nitrogen-treating proprietary treatment components must verify the efficacy of their products in the field. This will entail collecting samples from 25 installations in Washington State to evaluate their performance under field conditions.

Product Supply Chain

Proprietary products may be retrofitted with components they were not tested with if there is a supply chain or other manufacturing disruption. The manufacturer must provide a statement from an engineer that the retrofit will not impact OSS performance or maintenance.

Resilience

Sea Level Rise – Health Departments in Puget Sound counties are required to identify areas where sea level rise may impact horizontal setbacks to OSS resulting in an increased risk to public health.

Phosphorus – Health Departments in Puget Sound counties are required to identify areas where phosphorus has been found to be a contaminant of concern. They must identify measures to protect public health and water quality from phosphorus from new and repaired OSS in these areas. This is already an established requirement for areas where nitrogen is a contaminant of concern.

Nitrogen-based minimum lot size for small lots – Lots may be allowed to be made smaller than the minimums if certain safety measures are met and nitrogen treatment is installed on the OSS.

Learn more: [On-site Sewage System Rule Revision I WA DOH](#)

Next steps:

- Continue outreach to OSS professional community and realtor community
- Adopt Chapter 246-272A by reference in ICC Chapter 8.07D



ISLAND COUNTY BUDGET/RISK

WORK SESSION AGENDA

MEETING DATE: 5/7/2025

To: Melanie Bacon, Chair
Board of Island County Commissioners

From: Susan Geiger, Director

Amount of time requested for agenda discussion. 20 minutes

DIVISION: Administrative

Agenda Item No.: 1

Subject: CEDS Monitoring Amendment to EDC Contract

Description: With the successful creation of the Comprehensive Economic Development Strategy 2024-2028 (CEDS) and formal adoption by the Board in 2024, the Economic Development Council for Island County (EDC) is uniquely positioned to accurately provide the requisite monitoring and annual reporting to the State. This contract amendment adds the Scope of Work (SOW) for a reasonable additional cost.

Attachment: CEDS Monitoring EDC Contract Amendment, EDC Contract 2024 - Signed

Request: *(Check boxes that apply)*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Move to Consent | <input type="checkbox"/> Move to Regular |
| <input type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: In process

P.A. Review: In process

CONTRACT FOR ECONOMIC DEVELOPMENT SERVICES (RM-CA-2023-485)

ADDENDUM A

Comprehensive Economic Development

Strategy (CEDS) Reporting

THIS CONTRACT AMENDMENT (the "Amendment") is agreed to by and between Island County ("County") and the Economic Development Council for Island County ("EDC"), parties to the Contract for Economic Development Services agreement dated January 9th, 2024 (the "Agreement").

WHEREAS, the designated associate development organization (ADO) for Island County is responsible for providing "support for regional economic research and regional planning efforts to implement ... economic strategies" per RCW 43.330.080 (1)(a)(ii); and

WHEREAS, the EDC was re-designated as the ADO for Island County for the 2025-2027 biennium by unanimous vote of the Board of County Commissioners for Island County at the February 4th, 2025, Regular Session; and

WHEREAS, Island County contracted with the EDC in 2023 to develop the Comprehensive Economic Development Strategy (CEDS) 2024-2028, and subsequently adopted the CEDS on July 2nd, 2024, per Board Resolution C-35-24; and

WHEREAS, RCW 43.330.080 (1)(a)(ii)(C) requires county ADOs to collect and report vital economic development data for statewide systemic analysis; and

WHEREAS, it is vital to the economic health and well-being of the County that the CEDS report annual be completed by economic development subject matter experts, who should be fairly & competitively compensated for professional knowledge and their skilled work completed; and

WHEREAS, regional data on fair and competitive pricing for CEDS reporting has been attached as **Exhibit 2: Regional Costing for Economic Development Data Collection and Reporting**.

THEREFORE, the parties mutually covenant and agree to the following amendment:

1. **AMENDMENTS.** The parties mutually agree to amend **Section 1: Scope of Services & Section 4: Compensation** to the Agreement as follows:
 - A. Add **Exhibit 1: CEDS Reporting Scope of Work**

2. **DURATION OF CONTRACT.** This Amendment shall take effect on January 1, 2025.
3. **COMPENSATION.** Payment of \$56,049.00, to be divided among the established payment dates for 2025.
4. **EXECUTION.** Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement or any earlier amendment, the terms of this Amendment shall prevail.
5. **OBLIGATIONS AND AUTHORITY.** This Amendment and each party's obligations shall be binding on the respective party and its representatives, assigns, and successors. Each party has signed this Amendment through its authorized representative.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON**

**ECONOMIC DEVELOPMENT COUNCIL
FOR ISLAND COUNTY**

By: _____
Commissioner Melanie Bacon, Chair Date

By: _____
George Henny, Board President Date

EXHIBIT 1: CEDS REPORTING SCOPE OF WORK

I. SCOPE OF WORK

A. Task → Project Management

1. In consultation with the Board of Island County Commissioners (BOCC) and the BOCC's selected delegate, the Economic Development Council for Island County (EDC) will manage the evaluation of the Island County CEDS 2024-2028. This includes managing several aspects of progress reporting:
 - i. Develop a quarterly review schedule for partners for 2025;
 - a. Attend one BOCC Work Session in the second quarter of 2025 to discuss County Commissioner priorities of focus for the calendar year to inform the review schedule;
 - b. July - December 2024 to be retrospectively included via 2025 Progress Report;
 - ii. Schedule, coordinate, and run a quarterly meeting to discuss deliverables in 2025;
 - a. Meetings to occur approximately May 2025, June 2025, September 2025, and November 2025;
 - iii. Conduct an annual update of the Island County Comprehensive Economic Development Strategy (CEDS) Project List with public agencies;
 - a. Submit the update to the BOCC's selected delegate for BOCC approval by amendment;
 - iv. Schedule, coordinate, and run an annual CEDS Review Committee meeting;
 - a. Update the CEDS Review Committee roster as needed.

B. Task → Progress Report

1. After receiving the inputs from public agencies and partners listed in the Island County CEDS 2024-2028 Action Plan, draft a Progress Report. This will include:
 - i. Brief review of Section 4.1 Broad Performance Measures;
 - a. Data drawn from WA Employment Security Department;
 - ii. Brief review of Section 4.2 Specific Performance Measures;
 - a. Data requests to be issued to public agencies and the EDC;
 - iii. Brief review of progress and projects completed, organized by partner and goal;
 - iv. Draft progress report for Island County BOCC and EDC review and comment;
 - v. Final progress report;
 - vi. One BOCC Work Session to review Progress Report;
2. The completed draft will go to the Island County BOCC's selected delegate and the EDC Executive Director for review and comment for a two-week period. The EDC-IC will work with the project team to address all comments and incorporate feedback and edits as appropriate. The draft will be finalized and submitted to the

Island County BOCC, the BOCC's selected delegate, and the CEDS Review Committee.

3. Island County Communications will be responsible for drafting and finalizing a press release and social media assets related to the release of the progress report.

II. 2025 DELIVERABLES

A. Task → **Develop Schedule and Outputs Framework**

1. Develop and implement stakeholders quarterly meeting schedule for 2025
2. One annual CEDS Review Committee meeting to update findings
3. July - December 2024 short summary report
4. 2025 Progress Report for Island County to submit to the Economic Development Administration (EDA) to include progress from July 2024 through December 2024
5. Lessons learned & process efficiencies report for future reporting years

III. SCHEDULE FOR DELIVERABLES *(Proposed)*

- A. The schedule below provides a general outline and timeline for the work to be conducted through to completion.
 1. The schedule is dependent upon timely participation and responses from Island County government and CEDS partners.
 2. If there are any significant delays in receiving data, information, or feedback, the schedule is subject to change and all partners will be promptly notified once the schedule adjustment has been determined.
- B. Please note the quarters in the proposed schedule.
 1. Island County's fiscal year matches the calendar year, which impacts mandated reporting deadlines.

Quarter / Year	Tasks	Action / Deliverable(s)	Quarterly Cost
Q1-Q2 2025	Contract	<ul style="list-style-type: none">• Negotiate and fully execute contract amendment with EDC-IC	\$14,012.25
Q2 2025	Project Management + Develop Schedule and Outputs Framework	<ul style="list-style-type: none">• Schedule BOCC Work Session item to discuss priorities for review in 2025• Develop quarterly review schedule• Schedule quarterly meetings• Hold first quarterly meeting• Update CEDS Review Committee• Develop and send out July - December 2024 survey	\$14,012.25

Q3 2025	Project Management	<ul style="list-style-type: none"> • Hold quarterly meeting • Hold CEDS Review Committee annual meeting • Share July-December 2024 & January-December 2025 survey results with BOCC + CEDS Review Committee • Send out CEDS Project List update request 	\$14,012.25
Q4 2025	Project Management + Progress Report	<ul style="list-style-type: none"> • Hold end-of-year meeting • Update CEDS Project List, submit to BOCC for approval by amendment • Collect <u>broad</u> performance measure data • Collect <u>specific</u> performance measure data • Consolidate progress evaluation findings by partner and goal • Draft progress report for BOCC and CEDS Review Committee, for review and comment • Issue final progress report to Island County for submission to the EDA • Attend a BOCC Work Session in December 2025 or the first meeting of January 2026 to review the progress report highlights 	\$14,012.25
2025	Proposed Budget	Total	\$56,049

EXHIBIT 2: REGIONAL COSTING FOR ECONOMIC DEVELOPMENT DATA COLLECTION AND REPORTING

Objective:

To monitor the implementation of the Comprehensive Economic Development Strategy (CEDS), track key performance indicators, and prepare an annual progress report in compliance with EDA guidelines. Island County CEDS monitoring & progress reporting will require a combination of Basic Monitoring (e. g. July – December 2024 summary) and Moderate Scope Monitoring (January - December 2025 progress report).

Cost Drivers to Consider:

Geographic area and number of jurisdictions involved:

Cost profiles are on the high-end of the scale due to cost of living in WA state. Island County encompasses a unique geographic area with 4 distinct economies requiring the inclusion of numerous jurisdictions and stakeholders. CEDS monitoring and progress reporting varies throughout the state with approximate costs between \$20,000 and \$90,000.

Data complexity (e.g., industry sectors, workforce data, infrastructure)

CEDS monitoring requires the collection and collation of numerous data points. Data collection, analysis and presentation requires significant experience and expertise from contractor and EDC staff.

Consultant vs. in-house staff:

EDC will hire a subject matter expert (contractor) to complete progress reports and EDC staff will be responsible for leading and participating in all required stakeholder engagement and data collection for monitoring and progress reporting activity annually. This requires EDC to have adequate funding for staff positions to ensure current and future commitment to CEDS monitoring and progress reporting. EDC currently has a funding gap on personnel which has been incorporated into the contract amendment to ensure fair and competitive compensation for skilled work completed.

Basic Monitoring & Reporting (Small Region and Limited Scope)
e. g. July – December 2024 Summary Report

Price Range: \$5,000 – \$15,000 annually

Contractor: Economic Development Council
Purpose: Economic development services
Contract No.: RM-CA-2023-485
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Includes:

Basic data updates
Annual progress summary
Simple performance metrics tracking
Limited stakeholder engagement

Moderate Scope Monitoring (Mid-size Region, More Detailed Reporting)

Price Range: \$15,000 – \$35,000 annually

Includes:

In-depth data analysis and metrics tracking
Annual or bi-annual progress reports
Coordination with stakeholders or partner agencies
Public presentation materials or dashboards

Comprehensive Monitoring & Evaluation (Large/Regional CEDS)

Price Range: \$35,000 – \$75,000+ annually

Includes:

Robust performance measurement systems
Quarterly or semi-annual reporting
Public engagement/reporting tools
Consultant-led facilitation or external evaluation

CONTRACT FOR ECONOMIC DEVELOPMENT SERVICES

THIS CONTRACT is entered into by Island County ("County") and Economic Development Council for Island County ("EDC"), a Washington 501(c)6 non-profit corporation.

WHEREAS, the EDC, a Washington private non-profit corporation representing a coalition of business, government, labor, and education leadership dedicated to planning, developing, and implementing community economic development programs; and

WHEREAS, economic development programs are coordinated public and private actions which aid in enhancing a community's quality of life and bringing its citizens into the economic mainstream by planning and building local economic capacity; and

WHEREAS, the EDC staff possesses valuable skill, experience, and expertise in community economic development; and

WHEREAS, the County wishes to use the skill, experience, and expertise of the EDC rather than attempting to perform the same services at greater expense; and

WHEREAS, the County wishes to exercise authority granted under RCW 82.14.370 by contracting with the EDC to provide economic development assistance to the County; and

WHEREAS, the County desires to have certain services performed by the EDC as described within this contract;

THEREFORE, in consideration of payment, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually covenant and agree to the following:

1. **SCOPE OF SERVICES.** The County desires to use EDC services to provide economic development programming for the entire Island County area. The County understands that it will receive economic development benefits from the EDC's efforts. Such benefits to the County include a more diversified economic base, additional employment opportunities and greater prosperity. The EDC shall maintain a professional staff to carry out an economic development program in Island County. During the term of this contract, the EDC will dedicate its best efforts to carry out such a program. As additional consideration, beyond its general mission of economic development in Island County, the EDC shall dedicate its professional and support staff to the specific objectives to be mutually updated and agreed on an annual basis. The mutually agreed upon specific objectives are:

A) Planning Efforts and Delivery of Support Services. Facilitate the alignment of planning efforts and the delivery of business support services within Island County by working with the appropriate partners throughout the county including local governments, workforce development councils, port districts, chambers of commerce, community and technical colleges, and higher education institutions, small business assistance programs, and other federal, state, and local programs. Examples of activities include:

- Provide expertise and input at critical meetings in areas such as transportation, tourism, housing, workforce development, and business grant programs for economic development.

Contractor: Economic Development Council

Purpose: Economic development services

Contract No.:

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- Maintenance of inventory of economic development entities and services.
 - Communicate opportunities and strategies including quarterly updates to county commissioners and one-on-one commissioner updates on activities in respective districts.
- B) Collaboration with Island County. Participate and provide expertise and input to Island County on projects that align with the goals of EDC and the County. Examples include the Whidbey Airpark Access Project and the further development of the Economic Development Element of the County's Comprehensive Plan. The EDC shall coordinate with Island County to complete the Economic Development Element of the Comprehensive Plan by June 30, 2025.
- C) Resource Leveraging. Leverage resources for business attraction and recruitment, business retention and expansion, and entrepreneurial startup. Examples include the partnerships between the WA Small Business Development Center (SBDC) and SCORE for the delivery of business assistance services to small businesses as well as the leveraging and partnering with other entities for training and educational opportunities for businesses and workers.
- D) Business Recruitment and Attraction. Develop and execute business recruitment and attraction plan(s) in partnership with stakeholders and other pertinent organizations. Examples of activities include:
- Provide interested businesses from outside the county with site location and other pertinent information.
 - Proactively market Island County to potential businesses and industries utilizing website and networking opportunities and follow up on discovered opportunities including lead generation from the state.
 - Provide expertise and input in specific projects such as the designated Opportunity Zone in Oak Harbor.
 - Track business contacts initiated, site selector contacts initiated, the number of interested businesses, and the number of businesses relocating to Island County.
- E) Business Retention and Expansion. Provide business retention and expansion services and referrals throughout the county.
- Such services include but are not limited to, business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses, providing information and referrals to businesses on such resources as access to funds, business growth, and educational programs and opportunities.
 - Provide export assistance and referrals to eligible companies meeting readiness criteria.
 - Track the number of outreach interactions initiated and businesses requesting assistance.
 - Advocate for existing major employers and strengthen public understanding of their value to the local economy.
- F) Entrepreneurship/Startups. Help build an ecosystem to develop entrepreneurship by partnering with pertinent organizations in and out of the county, connect entrepreneurial needs with qualified local and state resources, and assist startups meeting specific criteria.

- G) Information and Data. Collect, research, and share information and data that is relevant and helpful in economic development activities and decisions. For example:
- Provide information on state and local permitting processes, tax issues, and other essential information for operating, expanding, or locating a business in Island County.
 - Track and share Island County economic data such as living wages, number of jobs created, number of businesses created, and other data important to stakeholders and businesses.
- H) Workforce Development. Support the development of workforce training programs through engagement with workforce development councils, community and technical colleges, and private training providers. Facilitate access to job skills program grants and customized training revolving loan funds so that incumbent workers have the skills needed to support competitive industries.
- I) Nurture the relationship with Camano Island. Maintain regular contact with Camano leaders and make regular visits to Camano Island to meet with businesses, stakeholders, and relevant organizations to stay updated on challenges and opportunities. Continue to utilize Executive Director's roles with the Island Regional Transportation Planning Organization and the Island County Joint Advisory Board for Tourism to maintain regular communications with representatives of those sectors on Camano.
- J) EDC's Five-Year Strategic Priorities are attached hereto as Exhibit B.
2. **REPORTING.** The EDC shall report to the Board of County Commissioners on a quarterly basis or as otherwise agreed upon by the EDC and the County. Reporting shall include pertinent economic indicators and outcome metrics, both county-wide, and when requested, for specific areas within Island County. Examples of pertinent indicators are the number of new businesses, the number of new jobs, and wage levels. Specific outcomes and metrics reported may change over time as work continues to align the proper metrics to the strategic plan and work of the EDC. In addition, the EDC shall regularly communicate with each county commissioner so as to discuss economic development in individual commissioner districts.
3. **DURATION OF CONTRACT.** This contract shall commence on January 1, 2024 and shall terminate on December 31, 2025.
4. **COMPENSATION.**
- A) The EDC shall receive payment for services as specified in this contract as follows:
2024 Annual Compensation: \$148,225.00, in equal quarterly installments due January 15, April 15, July 15, and October 15.
- B) The EDC shall receive payment for services as specified in this contract as follows:
2025 Annual Compensation: \$148,225.00, in equal quarterly installments due January 15, April 15, July 15, and October 15.
- C) The EDC agrees to submit an invoice for each quarterly payment due. Upon receipt of EDC's invoice, the County agrees to process such invoices in a timely manner.
- D) Unless specifically approved in writing in advance by the County, the County will not reimburse the EDC for any costs or expenses incurred by the EDC in the performance of this contract.

5. **REPAYMENT GUARANTEE.** All funds disbursed by the County to EDC under this contract shall be used by EDC solely for the purposes described in this contract, and which are permitted uses of Rural County Economic Development sales taxes under Island County Code Chapter 3.02C and RCW 82.14.370. In the event that it is determined that any portion of the funds disbursed by the County is used for any purpose not authorized under this contract, EDC hereby guarantees that it will repay to the County all such funds, including interest earned calculated at the Washington State Investment Pool Rate, no later than thirty (30) days from receipt of written notice of non-compliance.
6. **INDEPENDENT CONTRACTOR.** The EDC agrees that EDC will perform all services under this agreement as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that the EDC is not entitled to any benefits or rights enjoyed by employees of the County. The EDC has the right to direct and control EDC's own activities in providing the agreed services in accordance with the specifications set out in this agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The EDC shall furnish, employ, and have exclusive control of all persons to be engaged in performing the EDC's obligations under this agreement ("EDC Personnel"), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such EDC Personnel shall be for all purposes solely the employees or agents of the EDC and shall not be deemed to be employees or agents of the County for any purpose whatsoever. With respect to EDC Personnel, the EDC shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes, including applicable contributions from EDC Personnel, when required by law.

Because it is an independent contractor, the EDC shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (worker's compensation). The EDC agrees to indemnify, defend, and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The EDC assumes full responsibility for the payment of all payroll taxes, use sales, income, or other form of taxes, fees, licenses, excises, or payment required by any city, county, federal, or state legislation which are now or may during the term of the agreement be enacted as to all EDC Personnel. The EDC shall assume exclusive liability therefor, and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

7. **INTERNAL CONTROLS AND RECORDS MAINTENANCE.** The EDC shall maintain accounts and records, including personnel, property, financial, program records, and such other records as the County may deem necessary, in compliance with generally accepted accounting principles.
8. **RECORDS AND ACCESS; AUDIT; INELIGIBLE EXPENDITURES.** The EDC shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after the completion of the agreement by the EDC. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers, and records of the EDC which are directly related to this agreement for the purpose of making audit examinations, obtaining excerpts, transcripts, or copies, and ensuring compliance by the County with applicable laws. Expenditures under this agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the EDC, shall be refunded to the County by the EDC. The EDC shall use the funds that are the subject of this agreement only for the purposes set forth in this agreement. Expenditures under this agreement are those eligible costs incurred during the performance of the agreement during the time period specified in paragraph 3.
9. **INDEMNIFICATION.** To the fullest extent permitted by law, EDC shall indemnify, defend and hold harmless Island County, all officials, agents and employees of Island County, from and against all claims arising out of or resulting from the performance of the contract. "Claim" as used in this contract means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. EDC'S obligation to indemnify, defend, and hold harmless includes any claim by EDC'S agents, employees, representatives, or any subcontractor to its employees. EDC expressly agrees to indemnify, defend, and hold harmless Island County for any claim arising out of or incident to EDC'S or any agent's or subcontractor's performance or failure to perform the contract. EDC'S obligation to indemnify, defend, and hold harmless Island County shall not be eliminated or reduced by any actual or alleged concurrent negligence of Island County or its agents, agencies, employees and officials.
10. **INSURANCE.** The EDC shall annually procure and maintain at its own expense for the duration of this contract an insurance policy against injury to persons or damage to property that is satisfactory to the County's requirements, as more particularly described in "Exhibit A Insurance Requirements" attached hereto.
11. **REGULATIONS.** The performance of this contract shall be subject to all federal, state and local laws, rules and regulations. The EDC shall not discriminate on the basis of race, color, sex, religion, nationality, creed, sexual orientation, marital status, age, or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefits under this contract.
12. **PARTISAN POLITICAL SUPPORT.** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

- 13. NOTICES.** Whenever this contract provides for notice to be provided by one party or another, such notices shall be in writing and directed to the Board of Island County Commissioners and the President of the EDC. Any time within which a party must take some action shall be computed from the date that the notice is received by said party. Notice shall be mailed to:

Board of Island County Commissioner
1 NE 7TH Street
Coupeville, WA 98239

Economic Development Council for Island County
Attention: President
PO Box 279
Coupeville, 98239

- 14. MODIFICATIONS.** The County and EDC may, from time to time, desire to make changes to this Agreement; however, no changes or additions shall be made in this agreement except as agreed to by both parties, reduced to writing, and executed with the same formalities as are required for the executions of the agreement. No alteration, changes or additions of the terms of this Agreement shall be valid unless made in writing and executed by the parties hereto prior to implementation of the changes. Any oral understandings or agreements not incorporated herein shall not be binding.

- 15. TERMINATION.** The County may terminate this agreement prior to its expiration date upon ninety (90) business days' written notice to the Contractor for any reason. If the agreement is terminated, payment shall be made in accordance with the agreements for services reasonably and directly incurred by the EDC in performing this agreement prior to receipt of the termination notice.

Termination by the County shall not affect the rights of the County as against the EDC provided under any other section of this agreement. The County does not, by exercising its rights under this Section 15, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this agreement. At its sole option, the County may deduct from the final payment due to the EDC (i) any damages, expenses or costs arising out of any violations, breaches, or non-performance; and (ii) any other set-offs or credits including, but not limited to, the costs to the County of selecting and compensating another contractor to complete the work of the agreement.

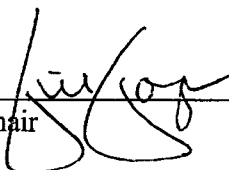
- 16. PUBLIC RECORDS ACT.** This agreement and all public records associated with this agreement shall be available from the County for inspection and copying by the public when required by the Public Records Act, Chapter 42.56 RCW ("the Act"). To the extent that public records then in the custody of the EDC are needed for the County to respond to a request under the Act, as determined by the County, the EDC agrees to make them promptly available to the County. If the EDC considers any portion of any record provided by the County under this agreement, whether electronic or hard copy, to be protected from disclosure under law, the EDC shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Act or otherwise appropriate, the County's sole obligation shall be to notify the EDC (a) of the request and (b) of the date that such information will be released to the requester unless the EDC obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the EDC fails to obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

- 17. INTERPRETATION.** This agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this agreement, shall be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this agreement are used only for convenience and are not intended to affect the interpretation of the terms of this agreement.
- 18. NO THIRD PARTY BENEFICIARIES.** The provisions of this agreement are for the exclusive benefit of the County and the EDC. This agreement is not intended to confer any rights, express or implied, upon any third parties.
- 19. GOVERNING LAW AND VENUE.** This agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this agreement shall be in the Superior Court of the State of Washington, in and for Island County.
- 20. AUTHORITY.** Each signatory to this agreement represents that he or she has full and sufficient authority to execute this agreement on behalf of the County or the EDC, as the case may be, and that upon execution of this agreement it shall constitute a binding obligation on the County and the EDC.
- 21. WHOLE AGREEMENT.** This written contract represents the entire contract between the parties and supersedes any prior oral statements, discussions or understandings between the parties.
- 22. ASSIGNMENT.** The EDC shall not assign or subcontract any of its duties under this contract to any other individual, firm or entity without the express and prior written approval of the County.
- 23. SEVERABILITY.** In the event any portion of this contract is found to be invalid, it is the intent of the parties to enforce the remainder of the contract.
- 24. SURVIVAL.** Those provisions of this agreement that by their intent and purpose should survive expiration or termination of the Agreement shall so survive.
- 25. EXECUTION IN COUNTERPARTS.** This agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

APPROVED BY:

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON**

**ECONOMIC DEVELOPMENT COUNCIL
FOR ISLAND COUNTY**

By:  11/9/24
Chair Date

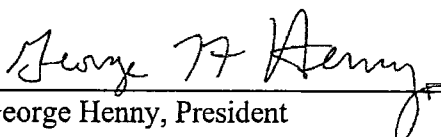
By:  12/13/2023
George Henny, President Date

EXHIBIT A INSURANCE REQUIREMENTS

Prior to commencement of services under this contract, EDC shall submit to Island County certificates of insurance or certified copies of insurance policies and endorsements, if requested by the County, for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for the life of this contract. Each insurance certificate shall provide that coverage will not be canceled or reduced below the contractual amounts stated herein without sixty (60) days prior to notice to the County. EDC shall maintain at EDC'S sole expense unless otherwise stipulated, the following insurance coverages, insuring EDC, EDC'S employees, agents, designees and indemnities as required herein:

- A. EDC shall not commence work under this contract until EDC has obtained all insurance required under this contract and such insurance has been approved by the County.
- B. All insurance policies required under this contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a Best's rating of at least A- VII. All insurance, other than Professional Liability and Workmen's Compensation to be maintained by the EDC shall specifically include the County as an " Additional Insured" and shall not be reduced or canceled without sixty (60) days written prior notice to the County. The EDC'S insurance coverage shall be primary insurance as respect to the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the EDC's insurance and shall not contribute to it.
- C. EDC shall maintain, during the life of the contract, Industry Standard Occurrence Commercial General Liability Policy Form (CG0001) or equivalent, including Premises/Operations, Products/Completed Operations, Blanket contractual Liability and Personal Injury Coverage, to protect the EDC from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations be by the EDC or by anyone directly employed by or contracting with the EDC.
- D. Specific limits required are :
 - \$2,000,000 General Aggregate
 - \$1,000,000 Products/Completed Operations
 - \$1,000,000 Personal Injury and Advertising Injury
 - \$1,000,000 Each Occurrence
- E. The Commercial General Liability Policy will contain an endorsement naming the County as Additional Insured (CG2010) and an endorsement that specifically states the EDC'S General Liability shall be primary , and not contributory, with any other insurance maintained by the County.

- F. The policy shall be endorsed to include stop gap employer's liability coverage with minimum limits as follows:
- \$1,000,000 Each Accident
 - \$1,000,000 Policy Limit for Disease
 - \$1,000,000 Each Employee for Disease
- G. Commercial General Liability insurance shall be endorsed to include a "cross liability", indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.
- H. The EDC shall maintain, during the life of this contract, Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles, in the amount of \$1,000,000 Bodily Injury and Property Damage per Accident to protect the EDC from claims which may arise from the performance of this contract, whether such operations be by the EDC or by anyone directly or indirectly employed by the EDC. Coverage shall be written on Insurance Services Office Form CA0001 or substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- I. All Liability coverages, except Professional Liability, shall be written on an Occurrence policy form. If coverage is Claims Made form, the Retroactive Date shall be prior to or coincident with the date of this contract, and the policy shall state that coverage is Claims Made, and state the Retroactive Date.
- J. EDC shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. EDC shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work.
- K. Industrial Insurance Waiver - With respect to the performance of this contract and as to claims against the County, its officers, agents and employees, the EDC expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the EDC against the County. This waiver is mutually negotiated by the parties to this contract.
- L. Subcontractors - EDC shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontracts shall be subject to all of the requirements stated herein. All subcontractors shall be required to agree to the provisions of this contract.

Exhibit B



Economic Development
Council for Island County

Coupeville, WA
(360) 678-6889

Strategic Priorities for 2020-2025

The Economic Development Council for Island County (EDCIC) focuses on promoting and assisting business growth throughout Island County. We promote Island County as a remarkable quality of life locale for business development and living wage jobs. This document outlines the strategic priorities which will guide the EDCIC for the five-year period starting in 2020 and ending in 2025. The challenges created by the economic impact of the COVID-19 pandemic have changed the way that the EDCIC will address these strategic priorities during the next five years.

Top Tier Strategic Priorities

Economic Recovery and Resiliency:

Island County, along with the rest of Washington State and the nation, is in a recession because of the COVID-19 pandemic. Our businesses, workers, and economy are being impacted in unprecedented ways. For the foreseeable future, therefore, the EDCIC's top priority is economic recovery and resiliency. The EDCIC will work to help our businesses and economy recover from this recession, as well as support business start-ups. The EDCIC will act as a recovery advisor for businesses and nonprofits seeking one-on-one or group assistance. The EDCIC will advocate for funding, programs and policies that protect our local businesses and help them grow and thrive in the new economy. The EDCIC will partner with all levels of government to direct available resources where they are needed. The EDCIC will support efforts seeking to return our trade and service people to work, with a focus on utilizing the skills and capacity of the workforce living in Island County. The EDCIC will engage in a number of other ongoing activities that support this effort, all outlined in the EDCIC's Statement of Priorities for COVID-19 Pandemic Economic Recovery (May 8, 2020). This work will support the recovery and economic resiliency of Island County.

Assistance with Business Attraction:

The EDCIC will advocate for programs and policies that encourage and assist in the attraction of businesses to Island County.

Workforce Housing:

The EDCIC will advocate for programs and policies to increase access to affordable housing for workers in Island County. There is currently an insufficient amount of affordable housing in the county, and increasing the amount of housing that aligns with workers' wages will provide growth potential for Island County businesses. The EDCIC will support local efforts to increase workforce housing by providing information and assistance to developers, non-profits, government agencies, and others seeking to add housing. It will also work to eliminate

obstacles to developing entry-level housing needed to attract a younger demographic to our community. Finally, the EDCIC will work to support opportunities to increase housing options for those who wish to live in Island County and work off-island.

Workforce Training and Development:

The EDCIC will engage with partners, programs, and policies that support appropriate and sufficient technical skills training programs and apprenticeship opportunities for growing and/or emerging employment sectors. These activities will help local businesses grow, diversify the local job base, and create a business-friendly climate that will attract living-wage job growth. Residents with significant experience—such as SCORE volunteers—can work with entrepreneurs and workers to develop skills and provide mentorship. The EDCIC will continue to partner with organizations that support and strengthen small businesses such as Goosefoot, Small Business Administration, Skagit Valley College, and Sno-Isle Libraries. EDCIC will work with Leadership Whidbey to develop and enhance community leadership training, and it will advocate for Career and Technical Education opportunities at all secondary schools.

Information Technology and Broadband:

Many areas of Island County have affordable high-speed internet service. In other parts of the county the absence of affordable and reliable internet is a barrier to establishing and growing those businesses requiring robust internet service. It is a priority of the EDCIC that high-quality internet is available for all businesses needing it. The EDCIC will advocate for programs and policies which increase access to quality, high-speed broadband that supports economic development in Island County.

Rural Economy:

The EDCIC will advocate for programs and policies that support businesses in our agricultural community—including eco-tourism, agri-entrepreneurs, and farms—by providing resources and information as available. The programs and policies will establish Island County as a positive business climate for entrepreneurs who can conduct operations from any location, and help to eliminate unwarranted barriers and address infrastructure constraints to opening and operating businesses in Island County.

Second Tier Strategic Priorities

Tourism, Hospitality and Recreation:

The EDCIC will advocate for programs and policies which enhance tourism and recreation, particularly during the shoulder season from October through April. This includes support for the initiatives of the Island County Tourism Committee and for business owners and entrepreneurs in the tour and hospitality industry. The goal will be to improve the sustainability and predictability of the County's tourism economy through seasonal balance. Increasing transportation options for Island County visitors (for example, options for walking on ferry rather than driving) will continue to be a priority, as will marketing efforts focused

on locally made goods and on local shoulder season events. Military personnel who are looking for unique experiences will be connected with opportunities on Whidbey and Camano Islands.

Arts and Culture:

The EDCIC will advocate for programs and policies which support the arts and culture community, including storefronts, galleries, instruction, retreats, festivals and home-based workshops.

Aging Population:

Island County's aging resident base represents an increasing need for services. The EDCIC will advocate for programs and policies that support new businesses and facilities addressing needs associated with an aging population and assisting this population with aging at home and in their community. It will also work in partnership with other organizations to attract, retain, and train working age adults to staff both new and existing businesses.



ISLAND COUNTY COMMISSIONERS

WORK SESSION AGENDA

MEETING DATE: 5/7/2025

To: Melanie Bacon, Chair
Board of Island County Commissioners

From: BOCC Staff

Amount of time requested for agenda discussion. 20 minutes

DIVISION: Not Applicable

Agenda Item No.: 1

Subject: Resolution for Atonement

Description: Discussion of the Draft Resolution of Atonement in Response to the Racial Restrictive Covenants Project.

Attachment: DRAFT Resolution of Atonement

Request: *(Check boxes that apply)*

- | | |
|---|---|
| <input type="checkbox"/> Move to Consent | <input checked="" type="checkbox"/> Move to Regular |
| <input type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: Not Applicable

P.A. Review: Not Applicable

Resolution of Atonement

Whereas: in May 2021, the Washington State legislature passed HB 1335 charging the Racial Restrictive Covenants Project to identify neighborhoods covered by racist deed provisions across the State of Washington; and

Whereas: the Racial Restrictive Covenants Project identified more than 900 properties in 22 subdivisions in Island County dating from 1930 to 1950 that had restrictions declaring that only white individuals could purchase those properties or live in those neighborhoods; and

Whereas: those deeds and plats included language indicating that such restrictions would exist in perpetuity; and

Whereas: it was only with the passage of the Fair Housing Act in 1968 that those perpetual restrictions were made illegal; and

Whereas: those properties include some of the most beautiful shoreline properties in Island County; and

Whereas: as the values of those properties increased, families lucky enough to purchase those properties from their inception through the adoption of the Fair Housing Act in 1968 built up generational property wealth, a benefit that non-white families had no opportunity to enjoy; and

Whereas: these restrictions were found in deeds and plats sanctioned and approved by the Board of Island County Commissioners; and

Whereas: just as today's Board benefits from good work our predecessors did, we must also acknowledge Board ownership of their censurable acts;

Now, Therefore:

Be it hereby resolved:

- (1) The Board of Island County Commissioners acknowledges this heinous and reprehensible history; and
- (2) The Island County Commissioners express our sincere sorrow and remorse, knowing that although these types of restrictions were common in the past in communities all over the United States they are nevertheless a stain on our history because our Board predecessors could have acknowledged the iniquity of such abominable discrimination and refused to participate, but did not do so; and
- (3) The Board of Island County Commissioners extends our profound apology to any individuals or families who wanted to create their dream home along the beautiful shores of Whidbey Island but who were disallowed from purchasing property specifically because they were not white, a contemptible restriction which not only negatively impacted their quality of life at that time but also kept them from being

able to develop the property wealth that could have been theirs and their descendants' had they been able to make that purchase; and

- (4) The Board of Island County Commissioners extends our gratitude to the State of Washington for enacting the Covenants Homeownership Account Act in 2023, pioneering legislation that now provides compensation in the form of mortgage assistance (interest-free down-payment loans) to families that were harmed by racist restrictions in housing opportunities in the years when such restrictions were government sanctioned; and
- (5) The Board of Island County Commissioners is also grateful to the State of Washington for enacting legislation entitling owners, occupants, tenants and homeowners' association boards of properties subject to unlawful deed restrictions or covenants to have such discriminatory covenants and restrictions struck from their chain of title, and encourages these community members to pursue such modifications for their Island County deeds.



ISLAND COUNTY HUMAN RESOURCES/GSA

WORK SESSION AGENDA

MEETING DATE: 5/7/2025

To: Melanie Bacon, Chair
Board of Island County Commissioners

From: Catherine Reid, Director

Amount of time requested for agenda discussion. 15 minutes

Agenda Item No.: 1

Subject: County Holiday Weeks Closure to Public

Description: Resolution establishing the weeks including Christmas and New Year's Day as weeks where the County is closed to the public except for specified offices and where certain offices will be available by phone for appointments.

Attachment: Resolution Establishing Closure to Certain Holiday Weeks

Request: *(Check boxes that apply)*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Move to Consent | <input type="checkbox"/> Move to Regular |
| <input type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: Not Applicable

P.A. Review: Not Applicable

Agenda Item No.: 2

Subject: Policy Addition Allowing One-time PTO Payout

Description: Resolution establishing a revision to the Personnel Policies and Procedures Manual allowing employees a one-time option to cash out up to 50% of current PTO due to unexpected financial need. Delegates authority to Human Resources Director to approve requests and to establish process for memorializing with Auditor.

Attachment: Resolution Revising Personnel Policies and Procedures Manual to Allow One-time PTO Payout

Request: *(Check boxes that apply)*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Move to Consent | <input type="checkbox"/> Move to Regular |
| <input type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: Not Applicable

P.A. Review: Not Applicable

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON**

**IN THE MATTER OF DECLARING)
COUNTY CLOSURE TO PUBLIC)
FOR HOLIDAY WEEKS)**

RESOLUTION C- -25

WHEREAS, the Board of Island County Commissioners has determined that County departments and offices will benefit from reducing public interaction during the end of year holiday weeks which consist of the week including Christmas Day and the week including New Year's Day; and

WHEREAS, departments and offices, other than the Clerk, Coroner, Courts, Prosecuting Attorney, Sheriff's Office and Juvenile Detention, perform functions for the public that are not time sensitive; and

WHEREAS, other departments and offices may need to provide public services and can do so by providing a phone number where arrangements can be made for the public to come to the office; and

WHEREAS, many employees seek to use paid leave during the end of year holiday weeks and reducing public interaction will reduce the stress on employees who do not use leave; and

WHEREAS, the Board of Island County Commissioners has the authority to manage the County's business per RCW, **NOW, THEREFORE**,

BE IT HEREBY RESOLVED, by the Board of Island County Commissioners, that the County offices and departments, except those identified above, be closed to the public for the weeks including Christmas Day and New Year's Day and that County offices will reopen on the Monday following New Year's Day.

ADOPTED this day of May 2025.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY WASHINGTON**

Melanie Bacon, Chair

Janet St. Clair, Member

Jill Johnson, Member

ATTEST:

Jennifer Roll, Clerk of the Board

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON**

**IN THE MATTER OF REVISING)
THE PERSONNEL POLICIES AND)
PROCEDURES MANUAL)
RE: ONE-TIME PTO PAYOUT)**

RESOLUTION C- -25

WHEREAS, the Board of Island County Commissioners has determined that Island County policy only allows PTO payout at the termination of employment pursuant to the Personnel Policies and Procedures Manual at IV.1.F.; and

WHEREAS, the Board seeks to add section IV.1.J, the language of which is attached as Exhibit “A”; and

WHEREAS, Island County employees occasionally experience unexpected financial needs and the Board has previously approved PTO payouts for such circumstances; and

WHEREAS, it benefits Island County to provide an avenue to assist Island County employees in handling those unexpected financial needs; and

WHEREAS, the County benefits when it pays employees for PTO at a current rate of pay as opposed to a rate later in employment;

WHEREAS, the Board of Island County Commissioners has full authority over the County budget per RCW, **NOW, THEREFORE**,

BE IT HEREBY RESOLVED, by the Board of Island County Commissioners, that the language in Exhibit “A” is to be added to the Personnel Policies and Procedures Manual.

ADOPTED this day of May 2025.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY WASHINGTON**

Melanie Bacon, Chair

Janet St. Clair, Member

Jill Johnson, Member

ATTEST:

Jennifer Roll, Clerk of the Board

Exhibit A

J. Each Island County employee may receive a one-time PTO payout of up to 50% of their PTO balance at the time of the request. Such request shall be submitted to the Human Resources Director who is delegated the authority to approve such payout. And Human Resources will work with the Auditor's Office to ensure records of the payment and which employees take advantage of this benefit are kept pursuant to Washington State Law.



ISLAND COUNTY PUBLIC WORKS

WORK SESSION AGENDA

MEETING DATE: 5/7/2025

To: Melanie Bacon, Chair
Board of Island County Commissioners

From: Fred Snoderly, Director

Amount of time requested for agenda discussion. 60 minutes

DIVISION: Emergency Management

Agenda Item No.: 1

Subject: Hazard Mitigation Grant D25-051

Description: Hazard Mitigation Grant Agreement D25-051 is used to update the Island County Multi-Jurisdictional Hazard Mitigation Plan. The total amount of the grant is \$192,570.00 including the \$22,925.00 local in-kind match.

Attachment: Memorandum, Grant D25-051, Signature Authority

Request: *(Check boxes that apply)*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Move to Consent | <input type="checkbox"/> Move to Regular |
| <input type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: Complete

P.A. Review: Complete

(continued next page)

DIVISION: Parks

Agenda Item No.: 2

Subject: Leased Trust Land Transfer Project

Description: Island County Parks and Whidbey Camano Land Trust (WCLT) will work to implement a plan to acquire all or some of the Washington Department of Natural Resources leased Trust Land Transfer properties.

Attachment: Memorandum, Leased Trust Land Transfer Project Packet, WCLT Cooperative Agreement

Request: *(Check boxes that apply)*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Move to Consent | <input type="checkbox"/> Move to Regular |
| <input type="checkbox"/> None/Informational | <input type="checkbox"/> Schedule a Public Hearing |
| <input type="checkbox"/> Signature Request | <input type="checkbox"/> Other: _____ |

IT Review: Not Applicable

Budget Review: Not Applicable

P.A. Review: Not Applicable

**Island County Emergency Management***Eric Brooks, MIPM, Director*1 NE 7th Street, Coupeville, WA 98239

Ph: 360-240-5572

Email: E.Brooks@islandcountywa.gov | www.islandcountywa.gov

M E M O R A N D U M

May 7, 2025

TO: Board of County Commissioners – Island County

FROM: Eric Brooks, DEM Director

RE: Hazard Mitigation Grant Agreement D25-051

The Island County Department of Emergency Management is presenting to the Board of Island County Commissioners (BOICC) at its May 7, 2025 Work Session the Hazard Mitigation Grant Agreement Number D25-051.

The purpose of the grant is to provide funds to Island County for the update of the Multi-Jurisdictional Hazard Mitigation Plan. The total amount of the grant is \$192,570.00. This total includes the \$22,925 .00 Local In-Kind match and the \$9,170.00 for grant administration.

The federal Disaster Mitigation Act (DMA) (Public Law 106-390) required state and local governments to develop hazard mitigation plans as a condition for federal disaster grant assistance. Island County is on a 5-year update cycle with the current plan approved on 2 September 2020. The hazard mitigation plan identifies resources, information, and strategies for reducing risk from natural hazards. Planning partners for this multi-jurisdictional planning project are anticipated to be the City of Langley, the Town of Coupeville, the City of Oak Harbor, The Port of South Whidbey, The Port Coupeville, Whidbey Island Public Hospital District, Island Transit and Fire Districts 1, 2, 3 and 5. All citizens and businesses of Island County are the ultimate beneficiaries of this hazard mitigation plan. The plan reduces risk for those who live in, work in, and visit the county. The resources and background information in the plan are applicable countywide, and the plan's goals and recommendations can lay groundwork for the development and implementation of local mitigation activities and partnerships.

**Washington State Military Department
HAZARD MITIGATION GRANT AGREEMENT FACE SHEET**

1. Subrecipient Name and Address: Island County 1 NE 7th St Coupeville, WA 98239		2. Total Grant Amount (excl. SubMC): \$183,400.00 State: \$22,925.00 Federal: \$137,550.00 Local: \$22,925.00 SubMC: \$9,170.00		3. Grant Number: D25-051	
4. Subrecipient Contact, phone/email: Eric Brooks, 360-240-5572 E.Brooks@IslandCountyWA.gov		5. Grant Start Date: October 15, 2024		6. Grant End Date: May 30, 2028	
7. Department Program Manager, phone/email: Tim Cook, (253) 512-7072 tim.cook@mil.wa.gov		8. Unique Entity ID (UEI): LDB2CDL66919		9. UBI # (state revenue): 151-000-298	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Federal Funding Identification #: FM-5456-WA FM-5456-09-P		12. Federal Award Date October 15, 2024		13. Assistance Listing # & Title: 97.039 (HMGP)	
14. Program Index # & OBJ/SUB-OBJ: (Fed) 744FF NZ, (State) 742FS NZ, (SubMC) 744FL			15. TIN or SSN: 91-6001321		
16. Service Districts: (BY LEGISLATIVE DISTRICT): <u>10</u> (BY CONGRESSIONAL DISTRICT): <u>2</u>		17. Service Area by County(ies): Island		18. Women/Minority-Owned, State Certified?: N/A NO YES, OMWBE # _____	
19. Contract Classification: Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			20. Contract Type (check all that apply): Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement Intergovernmental (RCW 39.34) Interagency		
21. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" Competitive Bidding Sole Source A/E RCW N/A Filed w/OFM? Advertised? YES NO _____			22. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER		
23. PURPOSE/DESCRIPTION: FEMA's Hazard Mitigation Grant Program provides grants for mitigation planning and cost-effective mitigation actions after a Presidential disaster declaration to reduce the risk of loss of life and property damage in future disasters. Title: Island County DEM Multi-Jurisdictional Hazard Mitigation Plan. The purpose of this Agreement is to provide funds to the SUBRECIPIENT for the herein proposed project as noted in Statement of Work and/or Description of the Project (Attachment 3), Project Development Schedule (Attachment 4), Project Budget (Attachment 5), and the FEMA approved project application, each of which are incorporated herein by this reference. The DEPARTMENT is the Recipient and Pass-through Entity of the FM-5456-09-P Island County DEM Multi-Jurisdictional Hazard Mitigation Plan and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.					
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated and made a part hereof, and have executed this Agreement as of the date below. This Agreement Face Sheet; Special Terms & Conditions (Attachment 1); General Terms and Conditions (Attachment 2); Statement of Work and/or Description of Project (Attachment 3); Project Development Schedule (Attachment 4); Project Budget (Attachment 5); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
1. Applicable Federal and State Statutes and Regulations		4. Special Terms and Conditions		5. General Terms and Conditions, and,	
2. DHS/FEMA Award and program documents		6. Other provisions of the Agreement incorporated by reference			
3. Work Plan, Schedule, and Budget					
WHEREAS the parties hereto have executed this Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE SUBRECIPIENT:		
_____ Signature Date Regan Anne Hesse, Chief Financial Officer Washington State Military Department			_____ Signature Date Melanie Bacon, Chair Island County Board of Commissioners		
BOILERPLATE APPROVED AS TO FORM: <u>Dierk Meierbachtol</u> 4/4/2023 Assistant Attorney General			APPROVED AS TO FORM: _____ Date		

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I. KEY PERSONNEL:

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Eric Brooks	Name	Tim Cook
Title	Director	Title	State Hazard Mitigation Officer
E-Mail	E.Brooks@IslandCountyWA.gov	E-Mail	tim.cook@mil.wa.gov
Phone	360-240-5572	Phone	253-512-7072
Name	Colleen Jokinen	Name	Matt Lebens
Title	PW Business Manager	Title	HMA Program Supervisor
E-Mail	ColleenJ@IslandCountyWA.gov	E-Mail	matthew.lebens@mil.wa.gov
Phone	360-240-5511	Phone	253-433-5293
Name		Name	Ella Liddicoat
Title		Title	HMA Program Coordinator
E-Mail		E-Mail	ella.liddicoat@mil.wa.gov
Phone		Phone	253-878-6277

ARTICLE II ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the HMGP program including, but not limited to, all criteria, restrictions, and requirements of the Presidential Disaster Declaration, the federal regulations commonly applicable to FEMA grants, and the FEMA Award Letter and its attachments, all of which are incorporated herein by reference.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR HAZARD MITIGATION GRANTS:

The following requirements apply to all DHS/FEMA Hazard Mitigation Grants administered by the DEPARTMENT.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. The SUBRECIPIENT must make a case-by-case determination whether each agreement it makes for the disbursement of HMGP funds received under this Agreement casts the party receiving the funds in the role of a SUBRECIPIENT or contractor in accordance with 2 CFR 200.331.
- b. If the SUBRECIPIENT becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient:
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of HMGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents

published by DHS/FEMA applicable to **FM-5456-09-P**, including, but not limited to, all criteria, restrictions, and requirements of the Presidential Disaster Declaration HMGP document, the Manual, the DHS Award Letter for the Grant, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The SUBRECIPIENT shall be responsible to the DEPARTMENT for ensuring that all HMGP federal award funds provided to its subrecipients, and associated matching funds, are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment 2 of this Agreement.

2. PROJECT FUNDING

The DEPARTMENT will administer FM-5456-09-P and will pass through the federal match and commit the available state match. The SUBRECIPIENT will commit the required local match.

- a. The total cost of the project for the purposes of this Agreement is **\$183,400.00** dollars; PROVIDED that, if the total cost of the project when completed, or when this Agreement is terminated, is actually less than above, the actual cost shall be substituted herein.
- b. The value of the contributions by the SUBRECIPIENT to the project shall be **\$22,925.00** dollars, or 12.5 percent, at minimum, of the total project cost. The SUBRECIPIENT's contributions may be cash or in-kind, must be from a non-federal source, must be reasonable, allowable and allocable, and must comply with all Federal requirements and regulations.
- c. When the DEPARTMENT enters into an agreement with the Federal Emergency Management Agency (FEMA) to contribute federal funds to this project, that federal contribution will be **\$137,550.00** dollars, or 75 percent of the total project cost, whichever is less.
- d. The value of the contributions by the DEPARTMENT to the project shall be **\$22,925.00** dollars, or 12.5 percent, at minimum, of the total project cost and is contingent on legislative approval of DEPARTMENT funding pursuant to the prerequisites provided in subsection g. The DEPARTMENT's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.
- e. The Federal Emergency Management Agency (FEMA) has contributed federal funds for SUBRECIPIENT Management Costs (SubMC). SubMC includes costs for administering the grant and indirect costs. This federal contribution is in addition to the federal award for project costs and is suitable for 100% reimbursement for eligible expenses. The maximum amount available for SubMC is **\$9,170.00** dollars, limited to 5% of the eligible project expenditures for administrative, indirect, or overhead costs, whichever is less.
- f. The DEPARTMENT shall not be obligated to pay any amount beyond that set out in Subsections c, d, and e above, unless that additional amount has been approved in advance by both the DEPARTMENT and SUBRECIPIENT and is incorporated by written amendment into this Agreement.
- g. The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.
- h. A written amendment will be required if the SUBRECIPIENT expects cumulative transfers between project budgets, as identified in the Project budget (Attachment 5) and the Statement of Work and/or description of Project (Attachment 3), to exceed 10% of the Grant Agreement Amount. Any changes to project budgets other than in compliance with this paragraph will not be reimbursed.

3. GRANT AGREEMENT PERIOD

Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall only be those after the obligation of federal funds on **October 15, 2024** and shall terminate on **May 30, 2028**. This period shall be referred to herein as the Grant Agreement Period and/or Period of Performance, unless expressly stated otherwise. Costs incurred during the Grant Agreement Period shall include pre-award costs authorized in writing by FEMA as well as eligible costs incurred after the effective date of the Grant Agreement Period and before termination.

- a. The SUBRECIPIENT shall complete the project as described in the FEMA approved project application FM-5456-09-P, incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5. In the event of extenuating circumstances, the SUBRECIPIENT may request, in writing, that the DEPARTMENT extend the deadline for Grant Agreement completion.
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed by execution of a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT addressing extensions of the DEPARTMENT'S underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).
- c. No expenditure made, or obligation incurred, before or after the Grant Agreement Period shall be eligible, in whole or in part, for grant funds with the exception of pre-award costs authorized in writing by FEMA. In addition to any remedy the DEPARTMENT may have under this Agreement, the amounts set out in Article II, section A.2 **Project Funding**, above, may be reduced to exclude any such expenditure from participation.
- d. Failure to complete the project in a timely manner, as outlined in Attachment 4, is a material breach of this Agreement for which the DEPARTMENT is entitled to termination or suspension under Attachment 2, section A.37.

4. REIMBURSEMENT AND BUDGET REQUIREMENTS

The DEPARTMENT, using mitigation funds from PL 93-288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the State of Washington, for the HMGP program, shall issue payments to the SUBRECIPIENT as follows:

- a. All payment requests shall be made to the SUBRECIPIENT upon submission and approval of eligible, reimbursable work completed and billed on an A-19, form, State of Washington Invoice Voucher Distribution. Approval is subject to receipt of acceptable documentation by the DEPARTMENT, to include, but not limited to, copies of receipts for all goods and services purchased, copies of invoices from contractors and subcontractors for work completed, and copies of timesheets for staff involved with the project, sign-in/sign-out sheets for donated personnel and/or volunteer time spent on the project, and documentation to support other in-kind contributions.
- b. The DEPARTMENT reserves the right to withhold disbursement of up to 10 percent of the total project cost to the SUBRECIPIENT until the project has been completed and given final approval by the DEPARTMENT.
- c. Final Payment: Final payment of any remaining, or withheld, funds will be made within 60 days after submission by the SUBRECIPIENT of the final report, final A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT.

Final payment by the DEPARTMENT also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.
- d. Within the total Grant Amount of this Agreement, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

- e. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Amount of this Agreement.
- f. For travel costs, SUBRECIPIENT shall comply with 2 CFR 200.475 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT's Key Personnel.
- g. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- h. The SUBRECIPIENT will submit reimbursement requests to the DEPARTMENT by submitting a properly completed State A-19 Invoice Form, Interagency Electronic Funds Transfer, or Agency/Business invoice with support documentation detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted by email to both the DEPARTMENT's Hazard Mitigation Program Coordinator and the Program Manager no later than the due dates listed within the Grant Timeline (Attachment 4), but not more frequently than monthly.
- i. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- j. If applicable, no costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.
- k. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Project Development Schedule Attachment 4) will prohibit the SUBRECIPIENT from being reimbursed until such complete reports and reimbursement requests are submitted and the DEPARTMENT has had reasonable time to conduct its review. Final reimbursement requests will not be approved for payment until the SUBRECIPIENT is current with all reporting requirements contained in this Agreement.
- l. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose.

The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

5. REPORTING REQUIREMENTS

In addition to the reports as may be required elsewhere in this Agreement, the SUBRECIPIENT shall promptly prepare and submit the following reports to the DEPARTMENT's Key Personnel:

- a. Quarterly progress reports, no later than the 15th day following the end of the fiscal quarter, indicating the status of the project, to include a brief narrative on progress during the quarter. The report shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT.

- b. A final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.
- c. The SUBRECIPIENT shall submit a quarterly progress report describing current activities as outlined in the Timeline.
- d. The SUBRECIPIENT shall submit a Final Report with final reimbursement no later than 45 days after Agreement End Date.
- e. The SUBRECIPIENT shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the DEPARTMENT an *Audit Certification/FFATA* Form. This form is required to be completed once per calendar year, per SUBRECIPIENT, and not per agreement. The DEPARTMENT'S Contracts Office will request the SUBRECIPIENT submit an updated form at the beginning of each calendar year in which the SUBRECIPIENT has an active agreement.

6. PROCUREMENT

- a. The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.317 through 200.327 and as specified in the General Terms and Conditions, **Attachment 2**, A.11.
- b. For all contracts expected to exceed \$250,000, the DEPARTMENT may request pre-procurement documents, such as request for proposals, invitations for bids and independent cost estimates. This request may apply to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving procurement requests of any non-federal entity to which the SUBRECIPIENT makes an award.
- c. For all sole source contracts expected to exceed the micro-purchase threshold per 2 CFR 200.1, the SUBRECIPIENT must submit justification to the DEPARTMENT for review and approval. This requirement must be passed on to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving sole source justifications to any non-federal entity to which the SUBRECIPIENT makes an award.

7. TIME EXTENSIONS

A time extension request for Agreement completion must be submitted by the SUBRECIPIENT to the DEPARTMENT no later than 60 days before the end of the Period of Performance. A time extension request must be in writing and identify the project, the reason the project will not be completed within the approved Period of Performance, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to timely submit a complete time extension request may result in denial of the time extension and loss of funding for the project.

8. SUBRECIPIENT MONITORING

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT'S monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT "2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> along with the signed Agreement. The SUBRECIPIENT shall complete and return the form to the DEPARTMENT each fiscal year

thereafter until the Agreement is closed. The form is incorporated by reference herein and made a part of this Agreement.

- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget, and federal requirements;
 - v. Observation and documentation of Agreement related activities, such as exercises, training, funded events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

9. CLOSE-OUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing the date completed and total amount expended on the project on FINAL PROJECT REPORT form to the DEPARTMENT. After receipt of the FINAL PROJECT REPORT form, the DEPARTMENT will conduct a site inspection and review supporting documentation for compliance with the requirements of the Agreement.

Prior to project close-out, the SUBRECIPIENT shall provide the DEPARTMENT with acceptable documentation supporting compliance with the Agreement. General documentation supporting compliance with the Agreement typically includes, but is not limited to, the following:

- a. Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.
- b. Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.
- c. Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.
- d. Certification that the SUBRECIPIENT has met the environmental and historic preservation conditions of the grant award as described in this Agreement.
- e. Copies of all compliance and consultation documentation required by the grant award as described in the Agreement (e.g., coastal zone management consistency determination from Department of Ecology).
- f. Copies of all documentation related to inspection for and removal and disposal of asbestos and other hazardous materials from each property.

Specific additional documentation requirements for projects to acquire properties for open space include, but are not limited to, the following:

- a. Signed Statement of Voluntary Participation from the owner of each acquired property.
- b. Documentation of dates of acquisition and structure demolition or removal from property for each property.
- c. Copy of recorded open space deed restrictions for each acquired property.
- d. Copy of the AW-501 form filed with the NFIP for each acquired repetitive loss property.

- e. Documentation of consultation with the Army Corps of Engineers and Washington State Department of Transportation regarding future use of each property.

Specific additional documentation requirements for projects to elevate structures above the base flood elevation include, but are not limited to, the following:

- a. Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.
- b. Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.
- c. Copies of the post-project elevation certificate for each structure.
- d. Copies of the certificate of occupancy for each elevated structure to certify that it is code compliant.
- e. Certification by an engineer, floodplain manager or other senior official of the SUBRECIPIENT that each completed structural elevation is in compliance with local ordinances and NFIP regulations and technical bulletins.
- f. Copy of the AW-501 form filed with the NFIP for each elevated repetitive loss property.
- g. Copies of proof of flood insurance for each elevated structure.
- h. Copies of the recorded deed restriction related to maintenance of flood insurance for each property within the Special Flood Hazard Area.

The DEPARTMENT will consult with the SUBRECIPIENT regarding other documentation requirements of the Agreement throughout the Period of Performance.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of all mitigation grant funds for six years following the closure of this grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

10. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All SUBRECIPIENTS must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that SUBRECIPIENTS of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

11. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The SUBRECIPIENT shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) program. EHP program information can be found at <https://www.fema.gov/grants/guidance-tools/environmental-historic>, which is incorporated into and made a part of this Agreement.
- b. Projects that have historical impactors or the potential to impact the environment, including, but not limited to, construction of communication towers; modification or

renovation of existing buildings, structures and facilities; or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed, also require a DHS/FEMA EHP review before project initiation.

- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The SUBRECIPIENT agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed, and FEMA approval received by the SUBRECIPIENT, before any work is started** for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process, and receipt of approval by the SUBRECIPIENT will not be reimbursed.

12. ADDITIONAL SPECIAL CONDITIONS

a. Construction Documents, Contracts, Change Orders

- i. Construction Document Approval: Upon request, the SUBRECIPIENT agrees to submit one copy of all construction plans and specifications to the DEPARTMENT prior to solicitation of bids. This request is to ensure bid set consistency with the subgrant's approved scope of work.
- ii. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. Copies of all bids and contracts awarded shall be submitted to the DEPARTMENT upon request. Where all bids are substantially in excess of project estimates, the DEPARTMENT may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Agreement.
- iii. Construction Change Order: All change orders must be in writing and shall be submitted to the DEPARTMENT. The SUBRECIPIENT shall pay any increase in the cost of the project as the result of a change order, unless the DEPARTMENT has agreed to the change with a written amendment to this Agreement.

13. EQUIPMENT AND TRACKABLE ASSETS MANAGEMENT

- a. If applicable, the SUBRECIPIENT and any non-federal entity to which the SUBRECIPIENT makes a subaward shall comply with 2 CFR 200.317 through 200.327, and all Washington State procurement requirements, when procuring any equipment or trackable assets under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200 to include but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and trackable assets purchased through this Agreement will be owned by the SUBRECIPIENT, or a recognized non-federal entity to which the SUBRECIPIENT has made a subaward, for which a contract or other means of legal transfer of ownership is in place.
 - ii. All equipment, and trackable assets as applicable, purchased under this Agreement will be recorded and maintained in the SUBRECIPIENT's inventory system.
 - iii. Inventory records shall include:
 - A. Description of the property
 - B. Manufacturer's serial number, or other identification number

- C. Funding source for the property, including the Federal Award Identification Number (FAIN) (Face Sheet, Box 11)
 - D. Assistance Listings Number (formerly CFDA Number) (Face Sheet, Box 13)
 - E. Who holds the title
 - F. Acquisition date
 - G. Cost of the property and the percentage of federal participation in the cost
 - H. Location, use, and condition of the property at the date the information was reported
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The SUBRECIPIENT shall take a physical inventory of the equipment, and trackable assets as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the SUBRECIPIENT to determine the cause of the difference. The SUBRECIPIENT shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
 - v. The SUBRECIPIENT shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and trackable assets including all questions of liability. The SUBRECIPIENT shall develop appropriate maintenance schedules and procedures to ensure the equipment and trackable assets are well maintained and kept in good operating condition.
 - vi. The SUBRECIPIENT shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the DEPARTMENT'S Key Personnel.
 - vii. The SUBRECIPIENT must obtain and maintain all necessary certifications and licenses for the equipment.
 - viii. If the SUBRECIPIENT is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement trackable assets or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the SUBRECIPIENT must comply with the following procedures:
 - A. For Trackable assets: If there is a residual inventory of unused trackable assets exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the trackable assets are not needed for any other federal award, the SUBRECIPIENT must retain the trackable assets for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1. Items with a current per-unit fair-market value of \$5,000 or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2. Items with a current per-unit fair-market value in excess of \$5,000 may be retained or sold. The SUBRECIPIENT shall compensate the

federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the SUBRECIPIENT for a period of six years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the SUBRECIPIENT until all litigation, claims, or audit findings involving the records have been resolved.
- b. The SUBRECIPIENT shall comply with the DEPARTMENT'S Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Unless Expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- d. If funding is allocated to emergency communications, the SUBRECIPIENT must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants, located at <https://www.cisa.gov/safecom/funding>, ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.
- e. Effective August 13, 2020, FEMA recipients and SUBRECIPIENT, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
 - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and SUBRECIPIENTS may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of the Manual and applicable NOFO.

Per subsections 889(f)(2)-(3) of the FY 2019 NDAA, and 2 CFR 200.216, covered telecommunications equipment or services means:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The SUBRECIPIENT must pass through equipment and trackable assets management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the SUBRECIPIENT makes a subaward under this Agreement.

B. DHS FFY24 STANDARD TERMS AND CONDITIONS

As a SUBRECIPIENT of HMGP funding, the SUBRECIPIENT shall comply with all applicable FEMA/DHS terms and conditions of the FEMA Award Letter and its associated documents for DHS, which are incorporated in and made a part of this Agreement.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. "Agreement" means this Grant Agreement.
- b. "**DEPARTMENT**" means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that DEPARTMENT. The DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a SUBRECIPIENT under this Agreement.
- c. "**SUBRECIPIENT**" when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "SUBRECIPIENT" is the same as in 2 CFR 200.93 for all other purposes.
- d. "**Monitoring Activities**" means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. "**Project**" means those actions funded through the Hazard Mitigation Assistance Grant Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA may process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUBRECIPIENT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT'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.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in B.3. Statement of Assurances of the Hazard Mitigation Assistance Program and Policy Guide dated March 23, 2023.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29

CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.327, Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and

[3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under [37 CFR § 401.2 \(a\)](#) and the recipient or SUBRECIPIENT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or SUBRECIPIENT must comply with the requirements of [37 CFR Part 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
7. Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
9. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C.](#)

1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10. Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
11. Notice of Federal awarding agency requirements and regulations pertaining to reporting.
12. Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
13. Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
14. Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.
15. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
16. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 2 CFR 200.327. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.
17. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law, or court order.

A.13 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the SUBRECIPIENT and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are

duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70A.305.020.

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate or suspend all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The SUBRECIPIENT represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT. The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the State of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this Agreement. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided; however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

Publication resulting from work performed under this Agreement shall include an acknowledgement of the DEPARTMENT and FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees.

A.29 RECORDS AND REPORTS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing grant funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project. The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian Tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or SUBRECIPIENT.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any SUBRECIPIENTS or contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

Once the single audit has been completed and includes and audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

Contracts.Office@mil.wa.gov

Subject: Island County, Single Audit and Corrective Action Plan

OR

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right and not by reason of this Agreement.

A.35 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.36 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENT's Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after e-mailing to the SUBRECIPIENT.

Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.37 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBRECIPIENT an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part.

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.38 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of the SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are required by the SUBRECIPIENT if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The SUBRECIPIENT, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.41 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

STATEMENT OF WORK AND/OR DESCRIPTION OF PROJECT

SUBRECIPIENT: Island County
 PROJECT TITLE: Island County DEM Multi-Jurisdictional Hazard Mitigation Plan

The purpose of this project is for Island County :

To update their Multi-Jurisdictional Hazard Mitigation Plan. Island County will identify and hire a contractor to work with county staff in updating the MJHMP. The update will incorporate more in-depth NFIP data, expand and validate the infrastructure list, and incorporate new studies, reports and technology that have been developed since the last plan. It will also include community lifelines, expand upon social equity, address in more detail climate resilience, and include the most recent FEMA guidance issues in April of 2023. Island County will be responsible for project management, grant management, and project closeout.

A specific and more detailed scope of work is found in the FEMA approved Project Application FM-5456-09-P, which is incorporated herein by reference.

Island County Agrees To:

1. Comply with the terms of this Agreement and all Attachments, including but not limited to, accomplish tasks and conditions outlined in the Statement of Work And/Or Description of Project (Attachment 3), comply with the Project Development Schedule-Attachment 4, and comply with the Project Budget (Attachment 5).
2. Submit quarterly reports that cover the previous three months no later than the 15th of the following month (or the next work day) in January, April, July and October until all requirements are fulfilled. Quarterly reports are required regardless of the level of work completed during the reporting period. Quarterly reports must include sufficient narrative to determine the degree to which the project has been implemented, the estimated time for completion, and significant developments such as delays or adverse conditions that might raise costs or delay completion, as well as favorable conditions allowing lower costs or earlier completion. Failure of the SUBRECIPIENT to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments until a complete quarterly report is received by the DEPARTMENT. SUBRECIPIENT is required to return all final closeout documentation to the DEPARTMENT within 45 days following the Period of Performance End Date determined by FEMA's Notice of Award. The DEPARTMENT reserves the right to withhold the final reimbursement request until final closeout documentation is submitted by the SUBRECIPIENT to the satisfaction of the DEPARTMENT. No final reimbursements shall be paid if submitted more than 60 days after the Period of Performance End Date.
3. Submit pen-and-ink signed, approved invoice vouchers (state form A-19) for eligible, reimbursable work completed, no more frequently than monthly and no less frequently than quarterly. Each billing must identify the task(s) completed and any other funding identification pertinent to the task(s), including match. Supporting documentation is required for all costs, to include tracking of staff time spent on the project through timesheets or other documentation approved by the DEPARTMENT; dated invoices from all contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation tracking in-kind contributions of personnel, equipment and supplies, if used on the project. Project costs must be tracked and reported by approved budget cost categories as found in Project Budget, Attachment 5. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19, along with documentation to substantiate all project costs.
4. Return by DEPARTMENT staff of invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation to staff within 15 calendar days of the staff's written request for additional documentation to support the reimbursement request.
5. Submit a signed final project report before final reimbursement is made by the DEPARTMENT.
6. **PROGRAMMATIC, ENVIRONMENTAL AND HISTORIC PRESERVATION CONDITIONS**

In completing this project, the SUBRECIPIENT must adhere to the following programmatic, environmental and historic preservation conditions:

- a. Scope of Work Change: Requests for changes to the Scope of Work after grant award are permissible as long as they do not change the nature or total project cost of the activity, properties identified in the application, the feasibility and effectiveness of the project, or reduce the Benefit Cost Ratio below 1.0.

Requests must be supported by adequate justification, including a description of the proposed change; a written explanation of the reason or reasons for the change; an outline of remaining funds available to support the change; and a full description of the work necessary to complete the activity.

A proposed change to the approved Scope of Work (as presented in the FEMA approved project application) must be submitted to the DEPARTMENT and FEMA in advance of implementation for re-evaluation for compliance with National Environmental Policy Act (NEPA) and other Laws and Executive Orders. Prior approval for a change to the approved Scope of Work must be obtained from the DEPARTMENT and FEMA before the change is implemented. Failure to obtain prior approval for a revised Scope of Work could result in ineligibility of resulting costs.

- b. Comply with all applicable federal, state and local laws and regulations. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding provided by this Agreement.
- c. Ensure that all completed work is in compliance with applicable state and local buildings codes and flood damage prevention legislation.
- d. Monitor site work during ground-disturbing activities for evidence of potential archaeological resources that are uncovered. SUBRECIPIENT must halt the project in the event historically or archaeologically significant materials or sites (or evidence thereof) are discovered. By way of example, such evidence may include, but is not limited to, artifacts such as arrowheads, bone fragments, pottery shards, and features such as fire pits or structural elements. All reasonable measures must be taken to avoid or minimize harm to such resources until such time as the SUBRECIPIENT notifies the DEPARTMENT, and FEMA, in consultation with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes, determines appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. In addition, upon discovery of human skeletal remains, the SUBRECIPIENT is required by state law to notify the county coroner and local law enforcement in the most expeditious manner possible and to immediately stop any activity which may cause further ground disturbance.
- e. Determine the presence of hazardous materials and/or toxic waste, and identifying, handling, managing, abating and disposing of such materials in accordance with the requirements and to the satisfaction of the governing local, state and federal agencies, including but not limited to the Washington Department of Ecology. Such materials may include, but are not limited to, asbestos, lead-based paint, propane cylinders, sand blasting residue, discarded paints and solvents, cleaning chemicals, containers of pesticides, lead-acid batteries, items containing chlorofluorocarbons (CFCs), motor oil and used oil filters, and unlabeled tanks or containers.
- f. Conduct work during the non-flood season as determined by the local floodplain administrator. However, should construction be required during the flood season, as determined by the local floodplain administrator, all construction equipment shall be staged in an area not susceptible to flood events or be readily transportable out of the floodplain to minimize flood damage.
- g. Dispose of all debris at an approved and permitted location. No debris shall be temporarily staged or disposed of in a floodplain and/or a wetland.
- h. Confirm with the State Department of Ecology whether this project will require a consistency determination under the Coastal Zone Management Act. If required, the SUBRECIPIENT shall obtain and comply with all requirements of the determination prior to starting the project.
- i. Select, implement, monitor, and maintain Best Management Practices (BMPs) to control soil erosion and sedimentation, reduce spills and pollution, and provide habitat protection. The acquisition site shall be stabilized from erosion and silt laden runoff by implementing these BMPs and securing the site from transient vehicle access. Any excavation and/or grading shall be done within and/or adjacent to the existing building footprint area and not beyond undisturbed portions of the site.
- j. Resubmit the project to the DEPARTMENT and FEMA prior to implementation if any in-water work will occur or if any work will occur below the ordinary high water mark of any water resource in the area, so further coordination/consultation can take place with the National Marine Fisheries Service (NMFS) to determine whether appropriate measures have been taken to ensure the project is in compliance with the Endangered Species Act.
- k. Resubmit the project to the DEPARTMENT and FEMA for re-evaluation for compliance with national environmental policies if the "Project Limits" (including clearing, excavation, temporary staging, construction, and access areas) extend into: 1) an area not previously identified for environmental and

historic preservation review, or 2) previously undisturbed ground. Additionally, all work on the project in these areas must stop until this re-evaluation is completed.

- I. National Historic Preservation Act Section 106 requirement: All proposed repair and construction activities on buildings listed in or eligible for the National Register of Historic Places (historic properties) should be done in-kind to match existing materials and form. In-kind means that the result of the proposed activities will match all physical and visual aspects of existing historic materials, including form, color and workmanship. In-kind mortar also will match the strength and joint tooling of existing historic mortar.

m. Additional requirements as noted by FEMA in grant award document:

- a. The hazard mitigation planning activities will not affect natural resources or the human environment.
- b. Award subrecipients may not use the funds for this award to implement actions identified in the plan.
- c. The result of the planning-related activity developed through this grant must be consistent with the requirements in 44 CFR Parts 201 and 206 and must enhance the existing mitigation plan consistent with mitigation planning regulations for Local Mitigation Plans per Local Mitigations per 44 CFR Part 201.6.
- n. Cost overruns in excess of the approval budget are fully the responsibility of the SUBRECIPIENT, including those costs resulting from a change in the Scope of Work. The project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, (FEMA-FM-5456-WA). A request for additional funds must be fully documented and justified.

7. SPECIAL FLOOD HAZARD AREA REQUIREMENTS

Pursuant to the Flood Disaster Protection Act of 1973, those structures that remain in the Special Flood Hazard Area (SFHA) after the implementation of the mitigation project, flood insurance must be maintained for the life of the structure. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year.

The following National Flood Insurance Program Eligibility Requirements contained in the 2023 Hazard Mitigation Assistance Program and Policy Guide apply to any project involving the alteration of existing structures, to include Mitigation Reconstruction projects that are sited within an SFHA.

- a. When the project is implemented, all structures that will not be demolished or relocated out of the SFHA must be covered by a National Flood Insurance Program (NFIP) flood insurance policy to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less.
- b. The SUBRECIPIENT (or property owner) must legally record with the county or appropriate jurisdiction's land records agency a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements as identified on page 244 of the 2023 Hazard Mitigation Assistance Program and Policy Guide:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. § 5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the floodplain management criteria of 44 CFR § 60.3 and City/County Ordinance."

- c. Copies of the recorded notices for each property will be provided to the DEPARTMENT at project closeout.

8. PROVISIONS APPLYING ONLY TO ACQUISITION OF PROPERTIES FOR OPEN SPACE

- a. The SUBRECIPIENT must ensure that prospective participants are informed in writing that property owner participation in this acquisition program is voluntary and that the SUBRECIPIENT will not use its eminent domain authority to acquire the property for the project purposes should negotiations fail.

Copies of the Statement of Voluntary Participation signed by each participating property owner will be provided to the DEPARTMENT by project close-out.

- b. The SUBRECIPIENT agrees that land acquired for open space purposes under this grant will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes and agrees to comply with the requirements of 44 CFR Part 80 Property Acquisition and Relocation for Open Space.
- c. The SUBRECIPIENT agrees to prepare, execute and record Deed Restrictions for each affected property utilizing the current Model Deed Restriction provided on the FEMA website or available from the DEPARTMENT.

Copies of the recorded deed and attached deed restrictions for each property will be provided to the DEPARTMENT by project close-out.

- d. The SUBRECIPIENT accepts all of the requirements of the deed restriction governing the use of the land.
- e. The SUBRECIPIENT ensures that, prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, it has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space.

Documentation of this consultation and the SUBRECIPIENT's consideration of this issue will be provided to the DEPARTMENT by project close-out.

- f. The SUBRECIPIENT must, prior to acquisition of the property, consult with the Washington State Department of Transportation to ensure that no future planned improvements or enhancements are under consideration that will affect the proposed project area.

Documentation of this consultation will be provided to the DEPARTMENT by project close-out.

- g. The SUBRECIPIENT will remove existing buildings from acquired properties within 90 days of settlement. The SUBRECIPIENT will provide confirmation to the DEPARTMENT as to the date of demolition of each structure included in the project in its quarterly reports, as well as confirmation that the property has been returned to "natural" or park/open space condition.

The SUBRECIPIENT will provide digital latitude and longitude coordinates and digital photographs of each property site after project implementation to the DEPARTMENT by project close-out.

- h. The SUBRECIPIENT agrees to complete FEMA Form AW-501, NFIP Repetitive Loss Update Worksheet for each property identified on FEMA's Repetitive Loss list to document completion of mitigation on the property. The form is available on FEMA's Web site or available from the DEPARTMENT.

The SUBRECIPIENT will provide a copy of the completed form to the DEPARTMENT by project close-out.

- i. The SUBRECIPIENT agrees to comply with the requirements of 44 CFR § 80.19 Land Use and Oversight, which are incorporated into these conditions by reference. These requirements include, but are not limited to, the following (which are described further in the 2023 Hazard Mitigation Assistance Program and Policy Guide which are incorporated herein by reference):

1. Restriction on future disaster assistance for damages to the property.
2. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
3. Provision for salvage of pre-existing structures and paved areas.
4. Requirements pertaining to future transfer of property interest.
5. Requirement for SUBRECIPIENT monitoring and inspection of the acquired property at least every 3 years. The SUBRECIPIENT will provide the DEPARTMENT with a report on the result of the inspection within 90 days of the inspection.
6. Provisions for enforcement of violation of open space requirements.

The Military Department Agrees To:

1. Provide staff coordination and input regarding grant administration for funding and technical assistance for project and reviews for mitigation construction projects, as necessary.
2. Except as otherwise provided in Article II, A.4, of this Agreement, reimburse Island County within 45 days of receipt and approval of signed, dated invoice voucher(s) (state form A-19) with sufficient documentation of costs to include completion of tasks to date and dated invoices for goods and services purchased. Costs

must be categorized according to the budget item and cost classification shown in the Project Budget, Attachment 5. The DEPARTMENT will return invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation within 15 calendar days of the DEPARTMENT's request for additional documentation to support the reimbursement request. Any reimbursement requests that are returned to the SUBRECIPIENT and are not returned within the 15 calendar days will be required to submit a revised reimbursement request with a new signature and date.

3. Coordinate with the staff of Island County to schedule any sub-recipient monitoring, site visits or final inspections by DEPARTMENT staff.

PROJECT DEVELOPMENT SCHEDULE

SUBRECIPIENT: Island County
 PROJECT TITLE: Island County DEM Multi-Jurisdictional Hazard Mitigation Plan

DESCRIPTION OF ACTIVITY/TASK	SCHEDULED COMPLETION DATE (months)
<i>Pre-award Grant Application, Scope of Work, Scheduling</i>	2
<i>Pre-award work, execute contracts, partner participation letter</i>	3
<i>Organize resources and define partner and planning team roles</i>	11
<i>Risk and Vulnerability Assessment</i>	8
<i>Public Outreach Period</i>	15
<i>Technical Review</i>	8
<i>Plan Adoption</i>	3
<i>Project Closeout</i>	3
Total Time Required to Complete This Project: <u>15</u> months	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	April 15, <u>2025</u> ; July 15, <u>2025</u> ; October 15, <u>2025</u> ; January 15, <u>2026</u> ; April 15, <u>2026</u> ; July 15, <u>2026</u> ; October 15, <u>2026</u> ; January 15, <u>2027</u> ; April 15, <u>2027</u> ; July 15, <u>2027</u> ; October 15, <u>2027</u> ; January 15, <u>2028</u> ; April 15, <u>2028</u> ; July 15, <u>2028</u> ; Final Report

PROJECT BUDGET

SUBRECIPIENT: Island County
 PROJECT TITLE: Island County DEM Multi-Jurisdictional Hazard Mitigation Plan

APPROVED BUDGET CATEGORY	ESTIMATED COST
Personnel	\$43,959.00
Fringe Benefits	\$29,306.00
Contractual	\$110,135.00
	<i>Project Total</i> \$183,400.00
SubMC – This category is restricted to eligible grant administration costs, including indirect costs, and is limited to 5% of eligible <i>project</i> expenditures. The amount shown here reflects the maximum amount available, based on the approved project budget.	\$9,170.00
TOTAL (Project Total + SubMC): \$192,570.00	
<p>Tracking and Reporting Project Costs: Project expenses for which reimbursement is sought must be tracked and reported by approved budget cost categories, above. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19. Supporting documentation of all costs shall include, but not be limited to: tracking of staff time spent on the project through timesheets or other similar documentation; dated invoices from contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation of in-kind contributions of personnel, equipment and supplies.</p> <p>Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the SUBRECIPIENT within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT. Final payment also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.</p>	

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, (FEMA-FM-5456-WA). A request for additional funds must be fully documented and justified.

SIGNATURE AUTHORIZATION FORM

WASHINGTON STATE MILITARY DEPARTMENT
Camp Murray, Washington 98430-5122

Please read instructions on reverse side before completing this form.

NAME OF ORGANIZATION Island County	DATE SUBMITTED 4/8/2025
PROJECT DESCRIPTION Island County DEM Multi-Jurisdictional Hazard Mitigation Plan	CONTRACT NUMBER D25-051

1. AUTHORIZING AUTHORITY

SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Melanie Bacon	Chair, BOCC
	Janet St. Clair	Member, BOCC
	Jill Johnson	Member, BOCC

2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS

SIGNATURE	PRINT OR TYPE NAME	TITLE
	Melanie Bacon	Chair, BOCC
	Janet St. Clair	Member, BOCC
	Jill Johnson	Member, BOCC

3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT

SIGNATURE	PRINT OR TYPE NAME	TITLE
	Eric Brooks	Director, DEM
	Colleen Jokinen	Business Manager, PW

**Island County Public Works***Fred Snoderly, Director**James Sylvester, Assistant Director*1 NE 7th Street, Coupeville, WA 98239 | www.islandcountywa.gov

Ph: Whidbey 360-679-7331 | Camano 360-387-3443 | S Whidbey 360-321-5111

Email: F.Snoderly@islandcountywa.gov | J.Sylvester@islandcountywa.gov**MEMORANDUM**

May 7, 2025

TO: Board of County Commissioners – Island County

FROM: James Sylvester – Assistant Director

RE: Leased Trust Land Transfer Project

The Public Works Parks Department and Whidbey Camano Land Trust (WCLT) are presenting to the Board of Island County Commissioners (BICC), at the May 7th Work Session, the Leased Trust Land Transfer project.

History:

From 2001 to 2009 Island County entered into agreements with the Washington State Department of Natural Resources (WDNR) to lease 7 properties. These leases range from 30-50 years with the first lease at Elger Bay on Camano expiring in 2031. All the leases were purchases with money secured from the State of Washington.

The Process:

Public Works Parks would like to enter into a cooperative agreement between Island County and the WCLT that will allow the Land Trust to work with WDNR to get the seven leased state trust land properties transferred in fee simple ownership to Island County.

WCLT will submit applications for the three 30-year leased TLT properties (Elger, Strawberry Point and Smugglers Cove) to go through the Trust Land Transfer program. These are due in late summer. If these properties rank high enough and the legislature appropriates sufficient funds, the Land Trust will work with WDNR to transfer them in fee-simple, at no cost, to Island County. The applications for any properties not funded can be resubmitted in the next biennium.

Work with WDNR on "buying-out" the 50-year leases on Highpoint, Skyline, Wahl and Swantown. The Land Trust will do all the work, pay the required upfront cost of \$35,000. After the appraisals are completed and WDNR presents the purchase price of each property, the Land Trust will discuss with the County which ones the Land Trust will be able to secure funding for so they can be transferred in fee-simple to Island County.

Results:

If/when Highpoint, Skyline West, Wahl Road and Smugglers Cove are owned in fee by the County, the Land Trust will prepare the agreement with the County to transfer those lands, in fee, to the Land Trust. There will be restrictions placed on the transfer to ensure the Land Trust manages the properties for the public benefit, both ecological and, where appropriate, public use. The Land Trust will consider, depending on the circumstances, also owning Strawberry Point. Elger Bay and Swantown would remain in County ownership.

Next Steps:

The Parks Department will be preparing a Cooperative Agreement with WCLT for the BICC consent agenda in the coming month.

COOPERATIVE AGREEMENT FOR THE ACQUISITION OF THE LEASED TRUST LAND TRANSFER PROPERTIES

This COOPERATIVE AGREEMENT FOR THE ACQUISITION OF THE LEASED TRUST LAND TRANSFER PROPERTIES ("Agreement") is entered into by and between the WHIDBEY CAMANO LAND TRUST, a Washington nonprofit corporation ("Land Trust"), and ISLAND COUNTY, a political subdivision of the state of Washington ("County") (collectively "Parties"), as of the last date signed by the Parties ("Effective Date").

RECITALS.

- A. *WHEREAS***, the Washington State Department of Natural Resources ("WDNR") manages approximately 2.8 million acres of state trust lands to generate revenue for designated beneficiaries, primarily public schools and other public services, through activities like timber harvesting and land leases;
- B. *WHEREAS***, between 2001 and 2009, the WDNR leased seven state trust land properties at no cost to the County under three 30-year leases and four 50-year leases, for the purpose of protecting their ecological and public benefit values and to generate revenue for the K-12 Common School Trust;
- C. *WHEREAS***, the seven leased properties are the Elger Bay Preserve on Camano Island and, on Whidbey Island, Strawberry Point, Swantown, Smugglers Cove, Wahl Road, Skyline West and High Point (together, "Leased Properties"), said properties located as shown on the map in Exhibit A ("Leased TLT Property Location Map") and described in Exhibit B ("Leased TLT Properties Information") which are attached to this Agreement and incorporated herein by this reference;
- D. *WHEREAS***, if the Leased Properties are not acquired by Island County then, when the leases expire, it is highly likely that WDNR will sell them to the highest bidder, at or above appraised market value, to generate revenue for the K-12 Common School Trust and it is probable that buyers will develop the Leased Properties by subdividing, harvesting the trees and building homes;
- E. *WHEREAS***, the Parties want to permanently protect the Leased Properties with fee-simple ownership because the properties possess important ecological values and public benefits, including climate mitigation, fish and wildlife habitat, aquifer protection, water quality through reducing and purifying surface water runoff, protecting highly erodible bluffs above marine salmon habitats, and outdoor recreation opportunities for County residents and tourists;
- F. *WHEREAS***, there are two ways in which the County can acquire fee-simple ownership of the Leased Properties, as described below:

- i. By the County authorizing that applications be submitted for some or all of the Leased Properties during WDNr's biennial application period pursuant to the TLT Program, authorized in RCW 79.17.300 ("TLT Program"), which opens in July 2025 for possible legislative funding in the 2027-2029 biennium ("TLT Application Process"); and
 - ii. By the County entering into an interagency agreement with WDNr in 2025 for purchase of those Leased Properties that have a "buy-out" clause in the lease ("TLT Buy-Out Process" and "Buy-Out Process").
- G. **WHEREAS**, state trust land property applications that rank high under the TLT Program and fall within the funding level appropriated by the Washington State Legislature are then transferred in fee-simple ownership at no cost to the successful receiving agency;
- H. **WHEREAS**, WDNr receives a high number of applications for fee-simple ownership transfer through the TLT Program each biennium, the process is extremely competitive and funding is limited, therefore it is advisable that the County only submit applications for those Leased Properties that have the best chance of being funded;
- I. **WHEREAS**, applications for state trust land properties that are not funded can be resubmitted in the next biennium to go through the TLT Application Process again;
- J. **WHEREAS**, unlike the TLT Application Process, the TLT Buy-Out Process requires that WDNr be paid for the cost of appraisals, TLT Program staff time and, if funding is secured, the appraised market value of one or more of the Leased Properties;
- K. **WHEREAS**, in 2025, after being on WDNr's TLT Program wait list since 2010, it is the County's turn to work with WDNr on the Buy-Out Process for its Leased Properties and, if this opportunity is not taken, the County will move back to the end of the waiting list;
- L. **WHEREAS**, the Land Trust has engaged with WDNr's TLT Program staff and did comprehensive research and analysis and has concluded, along with the County, that the best way forward at this time, in terms of cost effectiveness and successfully acquiring the Leased Properties, is to use both of the processes described in Recital F, with the following summary findings:
 - i. The Leased Properties that are likely to be the most competitive applications in the TLT Application Process are the Elger Bay Preserve, Strawberry Point and Smugglers Cove because:
 - (a) The Elger Bay Preserve, which has just six (6) years remaining on the lease, is used extensively by the public and children from the adjacent Elger Bay Elementary School, is a large property at 173-acres, has high ecological and public benefit values and is estimated to cost \$3.5 million to buy out the lease which is not affordable for the County to pursue under the TLT Buy-Out Process.

- (b) Both Strawberry Point and Smugglers Cove, which have 12 years remaining on their leases, include long stretches of waterfront along the Salish Sea and possess significant ecological and public benefit values due to their highly erodible, marine feeder bluffs that provide important benefits for salmon and salmon recovery.

Together, the Leased Properties identified above are “TLT Application Properties.”

- ii. The High Point, Skyline West, Wahl Road and Swantown Leased Properties are best suited, at this time, to go through the TLT Buy-Out Process because:

- (a) These properties still have 34 years remaining on the leases.
- (b) These properties are not waterfront and are significantly smaller than Elger Bay Preserve, being just 20-40 acres in size.
- (c) These factors will likely result in relatively reasonable lease buy-out costs and, if funding cannot be secured to pay for some or all of these costs to purchase the properties, applications can be submitted in future biennia under the TLT Program.

Together, the Leased Properties identified above are “TLT Buy-Out Properties.”

- M.** **WHEREAS**, the Land Trust is experienced in submitting grant applications, securing funding, working with state agencies to acquire properties and has worked cooperatively and successfully with Island County on many property acquisitions;
- N.** **WHEREAS**, because of the importance of ensuring the Leased Properties are permanently protected, the Land Trust is willing to pay for the cost of its staff and consultant to implement the TLT Application Process and the TLT Buy-Out Process (“TLT Project”), *provided* Island County assists with certain tasks, as described herein;
- O.** **WHEREAS**, with regard to the TLT Buy-Out Process, the Land Trust is willing to pay, on behalf of the County, the required estimated upfront cost of \$35,000.00 to cover DNR staff costs and appraisal costs (plus additional costs if the actual appraisal costs exceed this amount) which will result in the Parties knowing the appraised market value of the TLT Buy-Out Properties;
- P.** **WHEREAS**, after receiving the appraised market values of the TLT Buy-Out Properties, the Land Trust will endeavor to secure the funds needed to purchase them from WDNR on behalf of the County;
- Q.** **WHEREAS**, if the High Point, Skyline West and Wahl Road forests and Smugglers Cove waterfront are transferred in fee-simple ownership to the County by WDNR, the Parties agree to work together to transfer, at no cost and with reserved rights to ensure

permanent protection, the above-cited properties to the Land Trust which is willing to protect and manage these properties for their ecological values and public benefit as part of existing, adjacent Land Trust preserves; and

NOW, THEREFORE, in consideration of the mutual benefits hereunder, the covenants, conditions and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Land Trust and County agree as follows:

THE TLT PROJECT

- 1. TLT PROJECT UNDERSTANDING.** The following are the two main processes to be implemented under this Agreement in the Parties' endeavor to acquire fee-simple County ownership of the Leased Properties.
 - 1.1 TLT Application Process.** In 2025, the Land Trust will prepare and submit two applications to WDNR for the 2027-2029 TLT Program, one for the Elger Bay Preserve and the second for the Strawberry Point and Smugglers Cove waterfront properties. In 2026, the Land Trust will present these applications to the TLT evaluation committee. If funding is secured for any or all of these properties, the Land Trust will work with WDNR to transfer them, in fee-simple ownership to the County, at no cost to the County, *except* for any potential incidental costs and, if desired by the County, the premium for title insurance. The Parties' activities, tasks and responsibilities required as part of implementing the TLT Application Process are described in Exhibit C which is attached to this Agreement and incorporated herein by this reference ("TLT Application Process Details").
 - 1.2 TLT Buy-Out Process.** In 2025, after the County signs and submits the interagency agreement described in Section 1.4 below, WDNR and the Land Trust will begin to work on the TLT Buy-Out process for the High Point, Skyline West, Wahl Road and Swantown properties. The Parties' activities, tasks and responsibilities required as part of implementing the TLT Buy-Out Process are described in Exhibit D which is attached to this Agreement and incorporated herein by this reference ("TLT Buy-Out Process Details").
 - 1.3 Letter of Intent.** To authorize the submittal of the TLT applications ("TLT Applications"), as described in Section 1.1, Island County agrees to submit the required letter of intent to WDNR stating that, if the TLT Applications are funded, the County agrees to accept and manage the properties and authorizes the Land Trust to work with WDNR on its behalf. The letter must be signed by the Chair of the Board of Island County Commissioners. The form of this letter of intent is in Exhibit E which is attached to this Agreement and incorporated herein by this reference ("Letter of Intent"). The County agrees to sign the Letter of Intent and submit it to WDNR as soon as possible to allow the Land Trust to start working on these TLT Applications.
 - 1.4 Interagency Agreement.** To authorize the initiation of work by WDNR and the Land Trust on the TLT Buy-Out Process, Island County hereby agrees to enter into the interagency

agreement with WDNR that is attached in Exhibit F (“Interagency Agreement Between WDNR and Island County”). The County agrees to sign the Interagency Agreement and submit it to WDNR as soon as possible to preserve the County’s current position with WDNR to pursue the TLT process, as explained in Recital K.

2. TERMS OF AGREEMENT.

- 2.1 Term of Agreement. The initial term of this Agreement shall be five (5) years from the effective date, unless terminated earlier, as expressly provided herein or unless extended as expressly provided herein.
- 2.2 Extension of Term and Amendment. The Parties may amend this Agreement, including extending the term, provided that such amendment is in writing and signed by the Parties.
- 2.3 Termination. Notwithstanding any other provision of this Agreement, either party may, with 30 days written notice to the other party, terminate this Agreement, or the Parties may mutually agree to terminate this Agreement, and in all such cases neither party shall have any further rights or obligations under this Agreement.
- 2.4 Good Faith. The Parties agree to work together in good faith to implement this Agreement for the public benefit.

3. GENERAL PROJECT REQUIREMENTS.

- 3.1 Timing. The Parties shall perform their respective tasks and other obligations in a timely fashion under this Agreement.
- 3.2 Participation. Notwithstanding the designation of responsibility for a task under this Agreement, either party, with prior notice to the other, may participate in such task.
- 3.3 Confidentiality. Any and all records and other data or information given by a party to the other party pursuant to this Agreement, that is individually designated in writing as confidential, shall not at any time be disclosed to any person, firm, corporation, or other entity, *except* as may be required by law, including, but not limited to, the County's release of public records not exempt from disclosure under Chapter 42.56 RCW. This provision shall survive termination of this Agreement.
- 3.4 Costs.
 - 3.4.1 Each party to this Agreement shall provide all materials and labor (or contract for the provision of such items) required to adequately perform their respective tasks and other obligations hereunder. In amplification of the foregoing and not in limitation thereof, each party shall be solely responsible for its own costs and expenses under this Agreement, including, but not limited to, the compensation and employment taxes (such as FICA, FUTA, income tax withholding) of each

party's own employees and contractors.

- 3.4.2 For the TLT Buy-Out Process portion of this Agreement, the Land Trust agrees to pay WDNR's estimated upfront costs of \$35,000.00 to prepare the transfer (staff time, appraisal and incidental costs) of the TLT Buy-Out Properties to Island County ("Pre-Payment"), pursuant to Section 3.C in Exhibit F. Any portion of the \$35,000.00 not used to cover WDNR's costs to prepare the transaction shall be refunded to the Land Trust.
- 3.4.3 For the TLT Application Process of this Agreement, outside of each party's staff time and incidental expenses, there are no costs as, if any of the TLT Application Properties are funded, all costs will be covered by state funds appropriated by the Legislature.

4. NOTICES.

- 4.1 Notices. All communications by the Parties may be provided by electronic mail, telephone or U.S. mail, *except* if either party is required to give to the other party notice, pursuant to this Agreement, in which case said communications shall be: (a) in writing; (b) either (i) delivered in person, (ii) sent by U.S. mail (postage prepaid), or (iii) by Federal Express or other reputable "overnight" service; and (c) addressed as follows, or to such other address as either party, from time to time, shall designate by notice to the other ("Required Notice").

To Land Trust: Kurt Schlimme, Conservation Director
Whidbey Camano Land Trust
765 Wonn Road C-201
Greenbank, WA 98253
kurt@wclt.org / (360) 222-3310

To County: James Sylvester, Assistant Public Works Director
Island County
P.O. Box 5000
Coupeville, WA 98239
j.sylvester@islandcountywa.gov / (360) 6797-336

- 4.2 Delivery. If any Required Notice is delivered (a) in person, it shall be deemed given immediately upon delivery; (b) if such notice is sent by U.S. mail, it shall be deemed given on the third day after being deposited in the mail; and (c) if such notice is sent by Federal Express or other reputable "overnight" service, it shall be deemed given on the second business day after being deposited with the delivery service.
- 4.3 Point of Contact. Each party shall designate one person as a primary point of contact and a second person as an alternate point of contact to facilitate communication between the Parties. Each party shall promptly, after the effective date of this Agreement, provide to the other party the names and telephone numbers of such primary contact and alternate.

5. **ACTS BEYOND PARTY'S CONTROL.** Neither party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such party's reasonable control including, but not limited to, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid.
6. **GENERAL PROVISIONS.**
- 6.1 Recitals. Each recital set forth above is fully incorporated into this Agreement.
- 6.2 Assignment. Neither party may assign or transfer this Agreement without the prior written consent of the other party, which shall be in such other party's sole discretion.
- 6.3 Relationship of Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the Parties, and neither party shall be deemed to be the employee, contractor, or agent of the other.
- 6.4 Benefited Parties. The covenants, provisions, and conditions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective principals, directors, agents, successors, and assigns. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 6.5 Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Project and supersedes all prior discussions, negotiations, agreements, or understandings, relating to the Project, written or oral, all of which are merged herein.
- 6.6 Captions. The captions of this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 6.7 Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington.
- 6.8 Authority. Each undersigned representative of the Parties certifies that they are fully authorized to enter into the terms and conditions of this Agreement and to legally execute, and bind such party to, this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement:

WHIDBEY CAMANO LAND TRUST

_____ Dated: _____
Ryan Elting, Executive Director

BOARD OF ISLAND COUNTY COMMISSIONERS (insert proper signature(s), etc.)

EXHIBIT A: LEASED TLT PROPERTIES LOCATION MAP

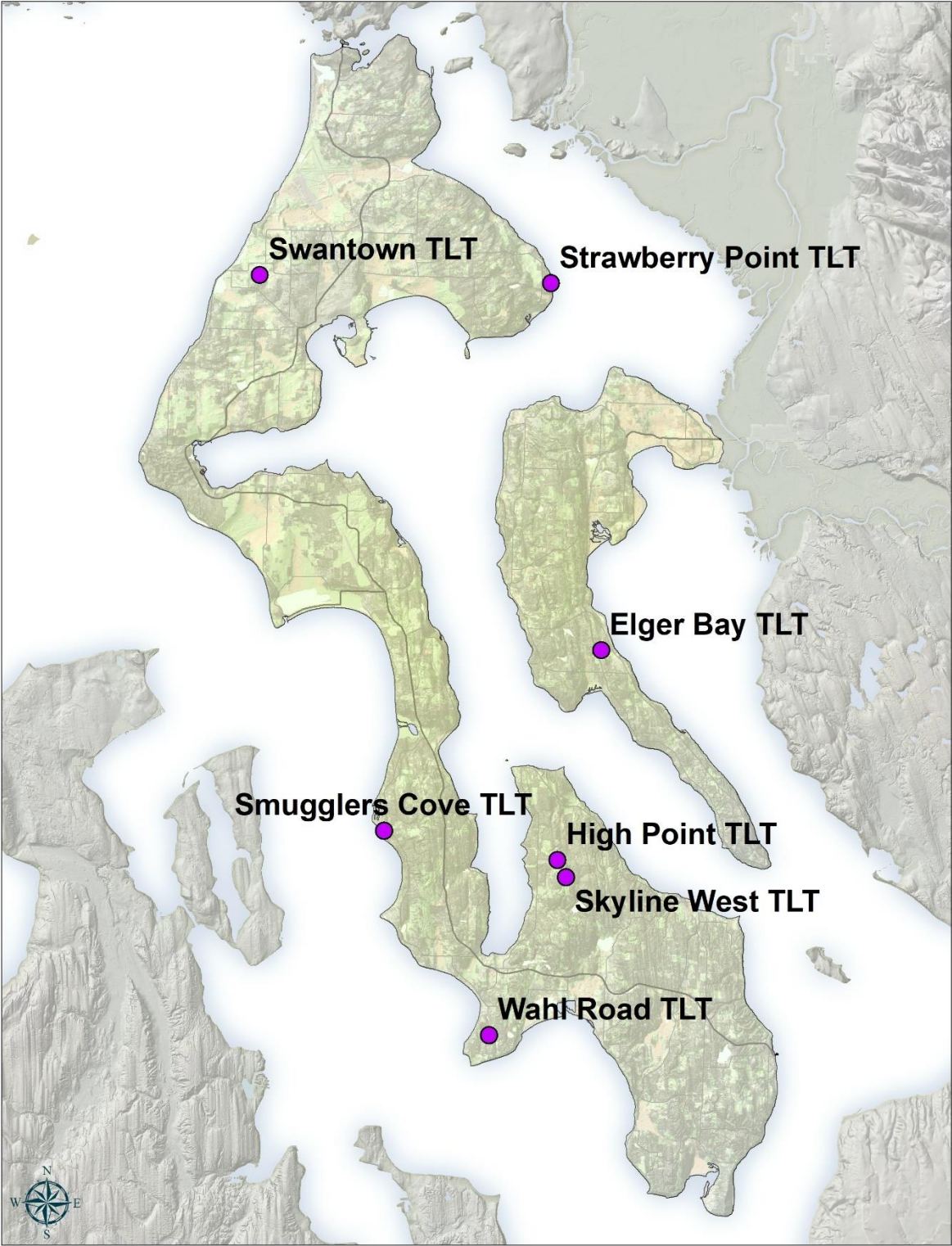


EXHIBIT B: LEASED TLT PROPERTIES INFORMATION

<u>LEASED TLT</u>	<u>Date</u>	<u>Acres</u>	<u>Term</u>	<u>Est. Buy-Out Value</u>	<u>Property Information</u>
Wahl Road	2009	20	50 yr	\$136,000	Mature forest. Zoned RF10. Lease ends 6/22/59. Important property for climate mitigation and wildlife habitat. Near Land Trust property. County Habitat Conservation Area.
Skyline W.	2009	40	50 yr	\$219,000	Older mature forest. Zoned RF10. No legal access. Lease ends 6/22/59. Adjacent to Land Trust protected properties and trail opportunities. Upper watershed with important wildlife habitat. County Habitat Conservation Area.
High Point	2009	39	50 yr	\$236,000	Mature forest. RF10. Lease ends 6/22/59. adjacent to Land Trust protected properties and trail opportunities. Upper watershed with important wildlife habitat. County Habitat Conservation Area.
Swantown	2009	40	50 yr	\$140,000	Mature forest. Zoned RF10. No legal access. Lease 6/22/59. High point in area draining into two watersheds. Provides key wildlife habitat area between Swantown Lake and Joseph Whidbey State Park. Adjacent to Oak Harbor. County Habitat Conservation Area.
Smugglers Cove	2007	13.5	30 yr	\$440,000- \$680,000	1,400 feet along Admiralty Inlet shoreline with eroding feeder bluff on designated Natural Shoreline. Zoned RF10. Lease ends 6/30/37. County designated Habitat Conservation Area, Salmon Priority Area and important upland and marine fish and wildlife habitat.
Strawberry Point	2007	11.5	30 yr	\$285,000- \$424,000	2,400 feet along Skagit Bay with eroding, vegetated feeder bluff on designated Natural Shoreline. Zoned Rural 5. No legal access. Lease ends 6/30/37. Critical upland and marine fish and wildlife habitat, including nesting Bald Eagles and Pigeon Guillemots. County designated Habitat Conservation Area, Salmon Priority Area and Natural Shoreline.
Elger Bay	2001	170	30 yr	\$3,515,000	Mature forest with trails and freshwater wetlands, including significant beaver marsh. Zoned RF10. Lease ends 5/17/31. County designated as Critical Habitat Area. Surrounds Elger Bay Elementary School and receives significant use for education and public recreation.
TOTALS		334		\$4,246,000	

Note: Value Estimates are Not Based on Appraisals

EXHIBIT C: TLT Application Process Details*

ACTIVITY	LAND TRUST (LT) TASKS	ISLAND COUNTY (IC) TASKS
Communications and coordination with WDNR TLT staff.	LT will take the lead on communications with WDNR staff and will communicate relevant information to IC in a timely fashion.	If action by IC is required, IC will arrange for relevant information and signatures to go to right person(s).
Letter of Intent from IC to WDNR. Time Sensitive.	LT will draft letter and send it to IC.	IC will review letter, arrange for review and approval by BICC and send letter to WDNR and LT.
Letters of support from community, Island County and other agencies, advocacy groups and others.	LT will take lead on written materials to secure letters of support.	IC will send LT prepared letter of support requests to entities reasonably requested by LT. As appropriate, IC will send out requests for community support in county communications, such as commissioner's emails, IC DNR emails, etc.
Written support from entities who will manage, steward, volunteer and/or steward said lands.	LT will secure a letter from the Friends of Camano Island Parks (FOCIP) for Elger Bay and LT will draft a letter(s) for Smugglers Cove, High Point, Skyline West and Wahl Rd.	IC will provide information about stewardship of leased TLT properties to the LT.
TLT Program Application	LT will prepare applications and send them to IC for review. LT will send a copy of the final application, with all supporting materials, to IC. LT will present applications to TLT evaluation committee.	IC will assist LT in providing any specific information related to improving the application through input from IC DNR and Environmental Health staff or other IC staff. IC primary contact or designee will, if possible, accompany LT to TLT evaluation committee presentations.
Coordination with WDNR on transfer of funded trust land properties.	LT will manage the real estate process, including review of documents, and communicate and coordinate with IC to ensure smooth transfer of WDNR TLT property to IC.	IC primary contact or designee will arrange process for securing approval and signatures from the BICC.
Agreements and real estate documents to transfer Smugglers Cove to LT and, potentially, Strawberry Point, if WDNR transfers them to IC.	Land Trust will prepare materials and arrange transfer to accept ownership of Smugglers Cove and, potentially, Strawberry Point, provided WDNR transfers said properties to IC.	IC primary contact will arrange process for review and securing approval and signatures from BICC.

**Activities, tasks and responsibilities not covered will be discussed & agreed to by IC and LT.*

EXHIBIT D: TLT Buy-Out Process Details*

ACTIVITY	LAND TRUST (LT) TASKS	ISLAND COUNTY (IC) TASKS
Interagency Agreement signed between IC to WDNR.	LT or WDNR will send final draft to IC for signature.	IC primary contact will arrange for timely review Interagency Agmt and approval by BICC and return to WDNR with cc: to LT.
Communications and coordination with WDNR TLT staff.	LT will take the lead on communications with WDNR staff on the Buy-Out Properties and communicate relevant information to IC in a timely manner.	If action by IC is required, IC primary contact will arrange for appropriate review of relevant information and signatures to go to the appropriate signatory(s).
Pre-payment of \$35,000 to WDNR. Additional funds requested by WDNR.	LT will send \$35K to IC. LT will review request and, if appropriate, send the additional funds to IC.	IC will arrange for LT payment to be sent to WDNR and will deliver receipt of same to LT. IC will arrange for added LT payment to go to WDNR and will deliver receipt of same to LT. IC will ensure any remaining funds from pre-payment and any additional payment is returned to LT.
Decide which TLT Buy-out Properties to acquire	LT will discuss with IC, including the BICC, the appraised values for the TLT Buy-out Properties and agree on which properties to acquire and funding strategy.	IC will discuss with LT the appraised values for the TLT Buy-out Properties and agree on which properties to acquire and funding strategy.
Secure funding to acquire some or all of TLT Buy-Out properties.	LT will be responsible for securing funding, except as otherwise agreed by IC.	IC will discuss funding options with LT if additional funds are needed.
Coordination with WDNR on transfer of TLT Buy-out Properties.	LT will manage the real estate process, including review of documents, and communicate and coordinate with IC to ensure smooth property transfer to IC.	IC primary contact will arrange for authorized signatures on real estate documents.
Agreements and real estate documents to transfer, if acquired from WDNR, High Point, Skyline and Wahl properties to LT.	After TLT Buy-out Properties are transferred from WDNR to IC, LT will prepare materials and arrange transfer of High Point, Skyline and Wahl Road from IC to LT ownership.	IC primary contact will arrange process for review and securing approval and signatures from BICC.

**Activities, tasks and responsibilities not covered will be discussed & agreed to by IC and LT.*

Exhibit E: Island County Letter of Intent

ON ISLAND COUNTY LETTERHEAD WITH BICC CHAIR SIGNATURE

Current Date

Kenny Ocker, TLT Program Manager
Strategic Planning Office
WA State Department of Natural Resources
1111 Washington St. SE
MS 47014
Olympia, WA 98504

RE: Island County Letter of Intent to Receive Fee Title to the Elger Bay, Smugglers Cove and Strawberry Point Common School Trust lands through the WDNR Trust Land Transfer Program.

Dear Mr. Ocker:

Island County (County) is pleased to accept fee title and continue to manage the Elger Bay, Smugglers Cove and Strawberry Point state trust lands if/when they qualify for transfer through the Washington Department of Natural Resources' Trust Land Transfer Program (TLT Program). The County currently has 30-year leases on these properties with the Elger Bay lease expiring in a brief six (6) years and the other two property leases in just twelve (12) years.

The 173-acre Elger Bay Preserve (Preserve) is a Camano Island gem and has a mature native forest and numerous wetlands, including a 14-acre high quality beaver marsh that drains into Port Susan Bay. The Preserve surrounds the Elger Bay Elementary School and provides abundant educational and recreational opportunities for school children and the general public. Popular trails meander through the forest and along the marsh with improvements including interpretive signs, amphitheater, benches, and a viewing platform. Friends of Camano Island Parks, a 501c3 nonprofit, works with the County to develop and maintain the Preserve as well as leading tours and providing educational opportunities. The Preserve is one of the largest contiguous mature forests on Camano Island and encompasses the majority of the watershed and stream corridor. It is critical to keep it protected for climate mitigation on this small island. The Preserve is within a County-designated Habitat Conservation Area and Salmon Priority Area.

Smugglers Cove is a 13.5-acre waterfront property with 1,400 feet along Admiralty Inlet and Strawberry Point is a 11.5-acre waterfront property with 2,400 feet along Skagit Bay (Properties). The Properties have unstable feeder bluffs with healthy, mature native coastal conifer forest and understory. Island County designates the Properties as Critical Habitat Areas, Salmon Priority Habitats and as "Natural" shorelines. The Properties' feeder bluffs contribute important nutrients to the nearshore environments that sustain forage fish, juvenile salmonids and other species, as well as promote growth of eelgrass and kelp beds. The Washington Department of Fish and Wildlife identifies Strawberry Point as part of a Marine Area of Critical Concern with dense summer and winter smelt spawning activity. Smuggler's Cove is part of an important salmon nearshore corridor. Protecting these Properties is critical to provide for nesting raptors and other water-dependent birds, as they are some of the few remaining large, undeveloped and mature forested shoreline remaining on Whidbey Island. The Whidbey

Camano Land Trust (Land Trust) volunteers to oversee the minimal management needs of these isolated Properties. Strawberry Point is close to the Land Trust's 245-acre Strawberry Point and Smugglers Cove is adjacent to the Land Trust's Smugglers Cove Forest Preserve.

Given the ecological importance of these three state trust land properties and the popularity of Elger Bay for education and recreation, Island County welcomes acquiring, managing and permanently protecting Elger Bay Preserve and the Strawberry Point and Smugglers Cove waterfront properties. Thank you for the opportunity to acquire these critical properties in Island County through the TLT Program. We look forward to this opportunity to work with you.

Sincerely,

EXHIBIT F: Form of Interagency Agreement

This Interagency Agreement ("Agreement") is entered into by the Washington State Department of Natural Resources ("DNR") and Island County, together the "Parties," as of the date of last signature ("Effective Date").

DNR and Island County enter into this Agreement under Chapter 39.34 RCW, the Interlocal Cooperation Act.

DNR leased state trust lands, known as High Point, Skyline West, Wahl Road, and Swantown, located in Island County ("TLT Properties"), under DNR Lease Nos. 60-078833, 60-078731, 60-078807, 60-082294 (collectively, "Leases"), to Island County in 2009. The leases were made as trust land transfers under the authority of Washington Laws of 2007 regular session, capital budget, chapter 520, 3204.

Island County desires to exercise its authority under the Leases to purchase the fee interest of the TLT Properties from the State of Washington. The Parties desire to take such steps as are necessary to prepare for this transfer and to provide for the payment of DNR's costs anticipated in preparing this transaction.

The Parties hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to facilitate the transfer of the TLT Properties by allocating responsibilities, including responsibility for the costs to prepare the transaction, between the Parties before the Parties enter a purchase and sale agreement, and to set forth the Parties' agreement as of the Effective Date on some of the terms to be included in the purchase and sale agreement.

2. **PROJECT REPRESENTATIVES.**

- (1) **The Project Representative for DNR is:**

"Project Mgr Name" Transaction Project Manager, "Email Address"
Work Phone: "Phone No."

- (2) **The Project Representative for Island County is:**

James Sylvester, Assistant Public Works Director, j.sylvester@islandcountywa.gov Work
Phone: 360-679-7336

3. **RESPONSIBILITIES.**

- A. **Appraisal Process.** DNR will select the Appraiser and Review Appraiser in its sole discretion. DNR shall share the approved appraised value for the TLT Properties to Island County. Island County will not receive a copy of the appraisal or appraisal review prior to closing the transaction. In accordance with RCW 79.11.100, Island County shall not rely upon the appraisal prepared by DNR for the purposes of deciding whether to purchase the TLT Properties. Island County shall make its own independent appraisal.
 - B. **Parcel Segregation.** If sale of the TLT Properties creates a separate tax lot (e.g., if any of the TLT Properties are a portion of a larger parcel), Island County shall either obtain a survey, if needed, or reimburse DNR's costs to survey the property. If DNR performs the survey, the cost to survey will be added to costs set forth in subsection 3C, Costs. Island County shall complete any forms and petitions and pay any fees required by local government. DNR may provide technical assistance to

Island County as needed.

- C. Costs.** The Parties agree that Island County shall pay DNR's costs to prepare the transfer of the TLT Properties to Island County, including but not limited to appraisal, staff time, and incidental costs. By agreeing to the terms of this subsection, the Parties intend to meet the requirements of RCW 39.34.130. The Parties estimate DNR's costs will be approximately \$35,000. Payment by Island County shall not exceed this amount unless the Parties agree to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded. Island County shall deposit \$35,000 with DNR within 45 days of the Effective Date. DNR will not order the appraisal until the funds have been received. Any portion of the \$35,000 not used to cover DNR's costs to prepare the transaction shall be refunded to Island County.

If DNR surveys the TLT Properties under Section 3B, Parcel Segregation, the cost of the survey(s) shall be paid by Island County and shall be in addition to the \$35,000 set forth herein.

4. ADDITIONAL AREAS OF AGREEMENT.

A. Approvals.

(1) Board of Natural Resources Approval. The proposed transfer of the TLT Properties is subject to approval by the Board of Natural Resources. DNR will not present the transaction to the Board of Natural Resources for its approval until the Parties have entered a purchase and sale agreement, substantially in the form attached as Exhibit A, and DNR has received notice and documentation of approval of the transaction by the governing body of Island County as provided in subsection (2).

(2) Island County Approval. The proposed acquisition of the TLT Properties is subject to approval by Island County's governing body. Prior to DNR presenting this proposal to the Board of Natural Resources, Island County shall notify DNR of the approval by its governing body of its acquisition of the TLT Properties and its authority to accept the TLT Properties at closing. Island County shall provide DNR the documents necessary to demonstrate this approval and authority.

- B. Reservations.** DNR will reserve minerals pursuant to RCW 79.11.210. DNR will reserve the ability to purchase access if needed at a future date pursuant to RCW 79.36.370.
- C. Prorations.** All rents and other income, if any, and water, sewer, utility and any other expenses relating to the property shall be prorated as of Closing.
- D. Deed/Title Insurance.** Title will be conveyed by quitclaim deed. Island County may acquire title insurance for the property at its own expense. DNR will not provide title insurance.
- E. Seller's Disclosure Statement.** If and to the extent the property is commercial real estate, unimproved residential real property, or improved residential real property, as such terms are used in Chapter 64.06 RCW, Island County will be required to waive the right to receive a seller's disclosure statement under Chapter 64.06 RCW. However, to the extent that DNR has actual knowledge of conditions on the property that would result in a "yes" answer to any of the questions in the Environmental section of the disclosure forms, DNR shall provide a completed copy of that section to Island County.
- F. Closing.** Closing shall be carried out at DNR's Olympia office. Island County acknowledges that DNR is acting as an interested party in preparing documents for, and closing, this transaction; escrow will not be formed.

- G. Timing.** Land sales and transfers typically take from nine to 12 months to complete, depending on complexity.
- 5. PERIOD OF PERFORMANCE.** Subject to its other provisions, the period of performance of this Agreement shall commence on _____, 2025 and be completed on _____, 2026 unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment.
- 6. AMENDMENT.** This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.
- 7. ASSIGNMENT.** The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without prior written consent of the other party, which consent shall not be unreasonably withheld.
- 8. ASSURANCES.** The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state, and local laws and rules as they currently exist or as amended.
- 9. DISPUTES.** In the event a dispute arises under this Agreement, it shall be determined by a dispute board ("Dispute Board") in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both Parties.
- 10. GOVERNING LAW AND VENUE.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.
- 11. MAINTENANCE OF RECORDS.** The Parties shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties. However, the parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

12. ORDER OF PRECEDENCE. If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order: Applicable state and federal statutes and rules, local laws and rules, and case law.

13. RESPONSIBILITIES OF THE PARTIES. Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a party to this Agreement.

14. SEVERABILITY. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

15. TERMINATION.

A. Purchase and Sale Agreement. This Agreement shall terminate when the Parties have each signed the purchase and sale agreement, except that Island County's obligation to pay DNR's costs of preparing this transaction under subsection 3C, Costs, shall survive the Parties' entry into the purchase and sale agreement to the extent any costs are unpaid at the time of signing.

B. Termination for Cause. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

C. Termination for Convenience. Either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

16. WAIVER. A failure by either party to exercise its rights under this Agreement *shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.*

17. HARASSMENT. Per RCW 43.01.135, Sexual harassment in the workplace, Agency Contractors hereby have access to DNR Policy PO01-007 Harassment Prevention:
https://www.dnr.wa.gov/publications/em_PO01-007_harassment_prevention.pdf

18. ALL WRITINGS CONTAINED HEREIN. This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Island County

State of Washington
Department of Natural Resources

Name, Title

Name, Title

Date

Date

APPROVED AS TO FORM ONLY

Approval on File 4/29/2021
Office of the Attorney General (Date)

Exhibit A: Purchase and Sale Agreement Template

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DAVE UPTHEGROVE, COMMISSIONER OF PUBLIC LANDS**

**AGREEMENT FOR PURCHASE AND SALE
OF REAL ESTATE**

THIS AGREEMENT is made as of the _____ day of _____, 20____, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources ("State") and Island County, ("Purchaser").

WHEREAS, State is the owner of certain real property known as "Project Name" located in Island County, Washington; and

WHEREAS, State desires to convey the real property to Purchaser, and Purchaser desires to acquire the real property;

NOW, THEREFORE, in exchange for the mutual promises and covenants herein contained, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged by Purchaser and State, it is agreed as follows:

SECTION 1 PROPERTY

1.1 Property to be Sold. State shall sell and convey to Purchaser, and Purchaser shall purchase and accept from State, all subject to the terms, conditions and contingencies of this Agreement, that certain real property located in Island County, Washington, the legal description of which is set forth on Exhibit A, together with all easements, rights-of-way and other rights appurtenant to said real property. The foregoing property and rights and interests described above are collectively referred to herein as the "Property."

1.2 Reservation. This sale is subject to the reservation of oils, gases, and minerals and easements for removal of valuable materials as prescribed in RCW 79.11.210 and in RCW 79.36.370.

SECTION 2 PAYMENT

2.1 Purchase Price. Purchaser shall pay State the Purchase Price of "INSERT written dollar Amount" {INSERT the written format for the dollar amount of the purchase price} U.S. Dollars (\$"Dollar Amount") {INSERT the numeric format for the dollar amount of the purchase price} and other charges owed by Purchaser described in Section 10.2 below in cash sufficiently in advance of Closing to facilitate certification of payment to the Governor and issuance of the deed, but in no event shall the Purchase Price be paid later than forty five (45) days after approval of this sale by the Board of Natural Resources.

2.2. No Interest. Any deposits or advance payments made by Purchaser under this Agreement shall be held by the state treasurer without interest.

SECTION 3 CLOSING

3.1 Date. The "Closing Date," "Closing," or "Date of Closing," as those terms are used herein, shall

mean the date upon which all monies are paid and all documents are recorded. Closing shall be as soon as practical for State to issue a quitclaim deed from the Governor's Office upon confirmation that the entire Purchase Price shall have been paid to the State Treasury and all terms, conditions and contingencies have been met. Closing shall not occur later than ninety (90) days after approval of this sale by the Board of Natural Resources unless otherwise agreed in writing by the parties.

3.2 Place. Closing shall be carried out at the Olympia office of the Department of Natural Resources. Purchaser acknowledges that State is acting as an interested party in preparing documentation for and closing this sale; State is not acting as an escrow. Purchaser should consult an attorney regarding the legal effects of this transaction.

SECTION 4 CONVEYANCE, TITLE INSURANCE AND POSSESSION

4.1 Possession. Purchaser shall be entitled to possession of the Property on the Closing Date.

4.2 Form of Deed. State shall convey title to the Property to Purchaser by quitclaim deed executed by the Governor of the State of Washington. Said deed shall be in the same form and format as Exhibit B, attached hereto and incorporated by this reference herein.

4.3 Title Insurance. State shall not furnish a policy of title insurance. Purchaser may procure title insurance at its sole expense. To exercise the termination rights hereafter set out, Purchaser must obtain a preliminary commitment of title insurance (Preliminary Commitment) within ten (10) days after the date of this Agreement. Within ten (10) days of receipt of the Preliminary Commitment, Purchaser must notify State in writing of any objections to exceptions listed on the Preliminary Commitment ("Objection Notice"). Failure to object to an exception shall be deemed an approval of such exception. State shall, without obligation, attempt to remove any exception to which Purchaser has objected within thirty (30) days of receipt of the Objection Notice ("Cure Period"). If State has not cured such objections within the Cure Period, State shall so notify Purchaser ("Notice of Non-Cure"). Within ten (10) days of receipt of the Notice of Non-Cure, Purchaser shall elect to terminate in writing this Agreement without further obligations of either party or to waive such objection(s) and proceed to Closing. Failure to notify State of Purchaser's intent to terminate shall be deemed an election to waive the right to terminate. The right of termination as provided in this Section 4 shall be Purchaser's exclusive remedy for title encumbrances. Upon election to terminate, Purchaser shall be entitled to a refund of any deposit.

SECTION 5 RIGHTS AND OBLIGATIONS AFTER ACCEPTANCE

5.1 Inspection. Following the date of this Agreement, and with two (2) business days' prior notice, State shall permit Purchaser and/or its designated agents to enter upon the Property at all reasonable times for the purpose of investigating the Property, and the physical condition thereof, including without limitation, the condition of improvements, if any, located upon the Property. Purchaser shall not conduct any invasive testing of the soils without prior written consent of State.

5.2 Indemnification and Hold Harmless Regarding Purchaser's Inspection. Purchaser agrees to indemnify, defend with counsel acceptable to State, and release State, its officers, agents, and employees from any and all claims, liens or costs, damages, fees and expenses (including but not limited to attorney and paralegal fees, costs and expenses, including costs and fees incurred on appeal and in bankruptcy, as well as consultant fees and costs) arising out of or relating to the actions of Purchaser and actions of Purchaser's agents or employees in exercising such rights of entry or inspections under this Agreement. Purchaser will be responsible for the payment of any fines or penalties charged against State or Purchaser, or for any employees or equipment while under Purchaser's control, employment, or direction, related to activities under Sections 5.1 above and 5.3 below.

5.3 Reports and Studies.

- (a) Subject to the conditions set forth above, Purchaser shall have the right to prepare, or have prepared, engineering studies, feasibility studies, surveys, resurveys or survey updates, environmental reviews, studies or investigations all of which are also collectively referred to as the "Purchaser's Studies" with respect to the Property. All information discovered by Purchaser through Purchaser's Studies shall be deemed to have been disclosed by State.
- (b) Further, with respect to Purchaser's Studies, Purchaser agrees that it is not acting as the agent of State, and that Purchaser's contractors, architects, engineers, or other consultants are solely employed by Purchaser to perform the studies for the benefit of Purchaser. Purchaser further shall provide written notice to each contractor, architect, engineer and other consultant of these facts, which notice shall also instruct these parties not to file any liens or notices against the Property prior to Closing. Purchaser shall ask each party to acknowledge receipt of the notice. Purchaser shall supply State with a written list of each party to whom this notice was sent within ten (10) days of their issuance, as well as a copy of each notice as acknowledged by the party to whom it was given or sent.
- (c) In the event that Purchaser does not complete the purchase contemplated in this Agreement, Purchaser shall immediately provide State with Purchaser's Studies at no cost to State.
- (d) Purchaser shall have the right to examine studies and reports, if any, prepared by State or its consultants, excluding appraisal reports (all of which are collectively referred to as "State's Studies").

5.4 Condition of Purchase. If Purchaser's Studies indicate the Property is not reasonably suitable for the intended use by Purchaser or the Property presents an unreasonable risk to Purchaser of liability associated with hazardous substances, Purchaser may terminate this Agreement without further obligation, and Purchaser shall be refunded any deposit. Purchaser shall give State written notice of Purchaser's decision to terminate within thirty (30) days of the date of this Agreement. The termination notice shall specify the problems identified. In the event Purchaser fails to give State such written notice, this termination right shall expire.

SECTION 6 DESTRUCTION OR CONDEMNATION

State shall bear the risk of loss until Closing. If on or before the Closing Date either the Property is materially damaged, or condemnation proceedings are commenced with respect to the Property, Purchaser shall elect either to terminate this Agreement or to purchase the Property. Purchaser must give written notice of such election to State within fifteen (15) days of Purchaser's knowledge of such damage or condemnation. Failure to give State notice of Purchaser's election to terminate shall be deemed an election to purchase. If Purchaser elects to terminate this Agreement, any deposit shall be returned to Purchaser, and all rights and obligations of Purchaser and State shall terminate. If Purchaser elects to purchase the Property, Purchaser shall be entitled to the insurance proceeds, if any, or to the condemnation award either of which shall be without adjustment to the Purchase Price. Damage shall be deemed "material" if it cannot be repaired or replaced within ninety (90) days or it represents more than ten percent (10%) of the Purchase Price.

SECTION 7 CONDITION OF THE PROPERTY

7.1 As Is. The Property is sold "AS IS, WHERE IS." Purchaser is encouraged to examine the Property to ascertain the condition of the Property, including but not limited to the existence of encumbrances,

encroachments, etc. State does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose about the Property, including but not limited to any improvements located thereon. No employee or agent of State is authorized to make any warranty or representation to the contrary. The foregoing specifically disclaims warranties with respect to the existence or nonexistence of any pollutants, contaminants, or hazardous waste or claims based thereon arising out of the actual or threatened discharge, disposal, seepage, migration, or escape of such substances at, from, or into the Property.

- 7.2 Release/Indemnity.** Purchaser hereby fully releases State from any and all liability to Purchasers arising out of or related to the condition of the Property prior to, at, or after Closing, including but not limited to the deposit or release of hazardous or toxic wastes or material, pollutants, and the following known or suspected defects: NONE.

It is the intent of the parties that this constitutes a full and final release of any and all claims concerning any substance including, but not limited to, hazardous substances. This release extends to and includes any action for contribution for any environmental remedial action. Purchaser agrees to indemnify, defend with counsel acceptable to State, and release State with respect to, but not limited to any claims, damages, liabilities, penalties (civil or criminal), and any other costs, including attorneys' fees and costs imposed or related to any hazardous, toxic, dangerous, or harmful substances on the Property deposited or released after Closing.

- 7.3 Waiver of Seller's Disclosure.** If and to the extent that the Property is used for residential purposes or is zoned for residential use, the Purchaser hereby agrees to waive the right to receive a seller's disclosure statement pursuant to RCW Chapter 64.06. Notwithstanding the foregoing, to the extent that the State has actual knowledge of conditions on the Property that would result in a "yes" answer to any of the questions in the Environmental section of the statutory disclosure form, State shall provide a completed copy of that section of the disclosure statement to Purchaser.

- 7.4 Notice of Possible Proximity to Farming Operations.** This notice is to inform Purchaser that the Property being purchased may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington right to farm act.

SECTION 8 ASSESSMENTS

Purchaser shall buy the Property subject to any assessment remaining unpaid at Closing.

SECTION 9 STATE CONTINGENCY

State's obligations are contingent upon the following:

- (a) approval of the sale by the Board of Natural Resources which shall be made at their sole discretion;
and
- (b) performance prior to or at Closing of all other acts and payments required of Purchaser under this Agreement.

SECTION 10 CLOSING AND CLOSING COSTS

Prior to or at Closing the parties shall do the following:

- 10.1 State.**

- (a) issue a duly executed quitclaim deed conveying title to the Property within a reasonable time after confirmation of receipt of the Purchase Price by the State Treasury;
- (b) sign a Real Estate Excise Tax Affidavit;
- (c) provide any other documents necessary to consummate this agreement; and
- (d) pay prorations to the extent required and determinable.

10.2 Purchaser.

- (a) pay the Purchase Price into the State Treasury as set forth in Subsection 2.1;
- (b) sign a Real Estate Excise Tax Affidavit;
- (c) provide any other documents necessary to consummate this Agreement;
- (d) pay all sums and prorations to the extent required under this Agreement and determinable; and
- (e) pay the cost of recording the deed and the county processing fee for filing the Real Estate Excise Tax Affidavit.

10.3 Prorations. All rents and other income, if any, and water, sewer, utility and maintenance charges and any other expenses (excluding local improvement assessment as provided under Section 8) with respect to the operation of the Property levied against the Property shall be prorated between Purchaser and State as of the Closing Date. To the extent information is then available, such prorations shall be calculated and paid as of Closing. Such prorations shall be adjusted and completed after the Closing Date, if necessary, as and when complete information becomes available, and State and Purchaser agree to cooperate and use their best efforts to complete such prorations not later than sixty (60) days after the Closing Date. No insurance proration shall be made.

SECTION 11 SURVIVAL

The obligations not satisfied at Closing or intended to continue beyond Closing shall not be deemed to have merged in the deed.

SECTION 12 REAL ESTATE COMMISSION

Purchaser shall pay any real estate commission payable in connection with this transaction. Any real estate agent or broker acting in this transaction shall be deemed to be the sole agent of Purchaser.

SECTION 13 NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or deposit in the United States first class mail, postage prepaid, and addressed as follows:

To Purchaser:
 Island County
 Attn: "Contact Name"
 Address

To State:
Department of Natural Resources
Strategic Planning Division
Attn: "Project Manager Name"
PO Box 47014
Olympia, WA 98504-7014
Facsimile: (360) 902-1789

The foregoing addresses may be changed by written notice.

SECTION 14 MISCELLANEOUS

14.1 Entire Agreement. This Agreement constitutes the entire Agreement between the parties. No prior and contemporaneous negotiations, understandings and agreements, whether oral or written shall be deemed to exist or bind any of the parties hereto.

14.2 Binding Nature; Assignment of Rights. All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective assigns, if any, of the parties hereto. However, this Agreement shall not be assignable by Purchaser without the prior written consent and acceptance by State, which shall be at State's sole and absolute discretion.

14.3 Washington Law. This Agreement shall be construed, interpreted, and enforced pursuant to the laws of the state of Washington and venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be construed in favor of or against either party hereto.

14.4 Time of the Essence. Time is of the essence in this Agreement. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

14.5 Captions. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

14.6 Invalidity. If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

14.7 Counterparts. This Agreement may be signed in counterparts, any one of which shall be deemed an original.

14.8 Date of Agreement. The date of this Agreement shall be the date on which the last party executes this Agreement. Said date shall be inserted on the first page hereof when such date is determined.

14.9 Good Faith. Both parties shall act reasonably and in good faith in order to consummate this transaction.

14.10 Authorization. Purchaser and the person(s) executing this Agreement on behalf of Purchaser represent and warrant that they are authorized to do so and that this is a legal, valid, and binding obligation on behalf of Purchaser, and is enforceable against Purchaser in accordance with its terms.

14.11 Default. In the event of default, neither party shall be liable for consequential damages.

14.12 Attorneys' Fees and Costs. If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the prevailing party shall be entitled to reasonable attorney fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

14.13 Submission. This Agreement must be executed by Purchaser, and an original delivered to State, at the address set forth in this Agreement, on or before 4:00 p.m. on "Insert Date" , to be considered by State. This Agreement shall not be binding upon State until signed by an authorized representative of the State.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

PURCHASER:

ISLAND COUNTY

Dated: _____ By: _____

Title: _____

STATE:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____ By: _____

Dave Upthegrove
Commissioner of Public Lands

Affix the Seal of the Commissioner
of Public Lands

Approved as to Form this ____ day of

_____, 20____.

Assistant Attorney General
State of Washington

PUBLIC AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____ to me known to be the _____ of the public agency that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of Washington, residing at _____.

My appointment expires _____.

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this ____ day of _____, 20____, personally appeared before me DAVE UPTHEGROVE, to me known to be the Commissioner of Public Lands, and administrator of the Department of Natural Resources of the State of Washington, that he executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of Washington, residing at _____.

My appointment expires _____.

EXHIBIT A/['
Legal Descriptions
[Project legal description(s) added at a later date and prior to execution of final PSA.]

EXHIBIT B
Form of Deed

AFTER RECORDING RETURN TO:

Department of Natural Resources
Strategic Planning Division
Attn: "Project Manager"
PO Box 47014
Olympia, WA 98504-7014

QUITCLAIM DEED
Island County

Grantor: State of Washington, acting by and through the Department of Natural Resources.

Grantee: Island County, Washington

Abbreviated

Legal Desc: (put in abbreviated legal description)

Tax Parcel #: (put in affected tax parcel #s)

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the sum of (USE UPPER CASE LETTERS FOR WRITTEN AMOUNT) Dollars (\$(#)), hereby conveys and quitclaims to "PUBLIC AGENCY NAME" , GRANTEE, all interest in the real property situated in Island County, Washington, and described in Exhibit A, attached hereto, which by this reference is made a part hereof.

The above-described lands are subject to that certain statutory reserved right as set forth in RCW 79.36.370 and to the following reservation:

The Grantor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use

all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved herein to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer.

This Deed is executed and delivered pursuant to RCW 79.02.270 at the request of the Commissioner of Public Lands with the approval of the Board of Natural Resources, State of Washington.

WITNESS the Seal of the State of Washington, affixed this _____ day of _____, 20____.

GOVERNOR

ATTEST: _____
SECRETARY OF STATE

Approved as to form this _____ day
of _____, 20____.

Assistant Attorney General

State Deed No. (#)
State Record of Deeds, Volume (#), Page (#).
Transaction File No. 02-(#)

(Including acknowledgement and exhibit(s))

LEASED TRUST LAND TRANSFER PROJECT

GOAL: Island County (County) and Whidbey Camano Land Trust (Land Trust) will work to develop and implement a plan to acquire all or some of the seven (7) leased trust land transfer properties (TLT Properties) in fee simple ownership with the least amount of cost to Island County (Project Goal). Together, the Land Trust and County are “the Parties.”

ACTION STEPS:

1. The Land Trust is willing, after fee transfer from the Washington Department of Natural Resources (WDNR) to the County and if agreeable to the County, to own and manage the High Point Forest, Skyline West Forest, Wahl Road Forest and Smugglers Cove shoreline, each subject to Deeds of Right held by the County. All of these TLT Properties are adjacent to Land Trust protected properties. Elger Bay will remain owned and managed by Island County. The Parties will discuss the ownership options for Strawberry Point shoreline and Swantown forest properties, both of which have significant public conservation values.
2. The Parties will enter into an “Implementation and Cooperative Agreement” that identifies the role of the Parties in achieving the above Project Goal, using the County template previously used by the Parties (a Dave Jamison document).
3. In summary, the Land Trust will take the lead in working with the WDNR to achieve the Project Goal. The Land Trust will take on the majority of the required workload, including conversations with WDNR staff; initial review of materials (such as letters of intent and agreements for the County); writing and presenting the TLT property applications; securing public support; raising, as needed, some of the necessary funds; and coordinating information between WDNR and the County.
4. The County will ensure timely review and Board approval and signing of necessary documents and specify a County employee to be its contact person.

TRANSFER OPTIONS:

- A. The Parties can “Buy-out” some or all of the TLT Properties. The costs include paying for the appraisals and the appraised market value of the TLT Properties (very rough estimates attached).
- B. The Parties can apply to put all or some of the TLT Properties through the TLT process again. This is a competitive process, evaluated by a qualified panel and legislatively-funded. Any unfunded TLT Properties can be resubmitted in the next TLT application cycle. There is no cost to the County.
- C. A mixture of Options A and B.

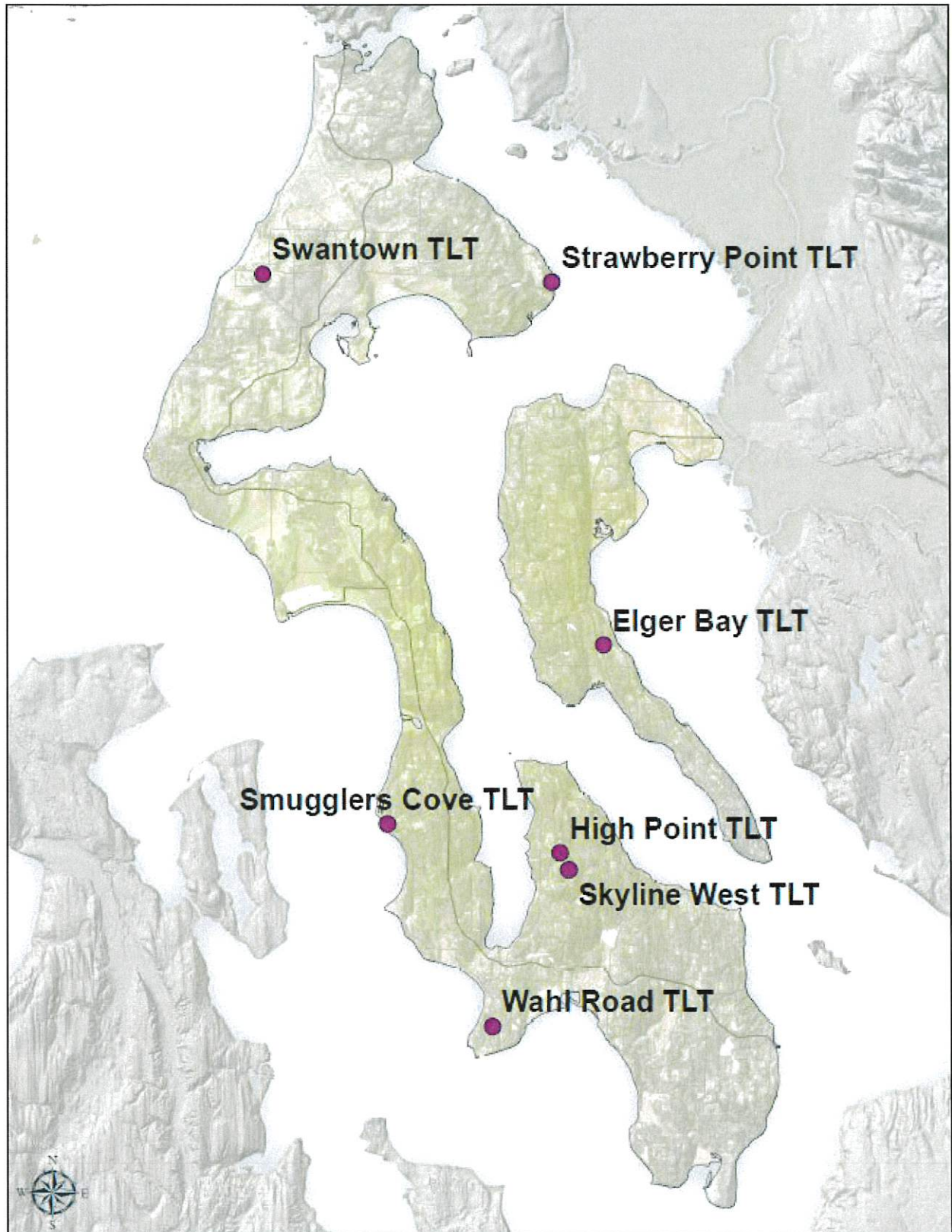
ATTACHMENTS: (1) Summary Information Spreadsheet; (2) Location Map; (3) Description of Leased TLT properties; and (4) Q & A on TLT Program.

ISLAND COUNTY LEASED TRUST LAND TRANSFER PROPERTIES

<u>LEASED TLT</u>	<u>Date</u>	<u>Acres</u>	<u>Term</u>	<u>Est. Buy- Out Value</u>	<u>Property Information</u>
Wahl Road	2009	20	50 yr	\$136,000	Mature forest. Zoned RF10. Lease ends 6/22/59. Important property for climate mitigation and wildlife habitat. Across from Land Trust property. County Habitat Conservation Area.
Skyline W.	2009	40	50 yr	\$219,000	Older mature forest. Zoned RF10. No legal access. Lease ends 6/22/59. Adjacent to Land Trust protected properties and trail opportunities. Upper part of watershed with important wildlife habitat. County Habitat Conservation Area.
High Point	2009	39	50 yr	\$236,000	Mature forest. RF10. Lease ends 6/22/59. adjacent to Land Trust protected properties and trail opportunities. Upper part of watershed with important wildlife habitat. County Habitat Conservation Area.
Swantown	2009	40	50 yr	\$140,000	Mature forest. Zoned RF10. No legal access. Lease 6/22/59. High point in area draining into two watersheds. Provides key wildlife habitat area between Swantown Lake and Joseph Whidbey State Park. Adjacent to Oak Harbor. County Habitat Conservation Area.
Smugglers Cove	2007	13.5	30 yr	\$440,000- \$680,000	1,400 feet along Admiralty Inlet shoreline with eroding feeder bluff on designated Natural Shoreline. Zoned RF10. Lease ends 6/30/37. County designated Habitat Conservation Area, Salmon Priority Area and important upland and marine fish and wildlife habitat.
Strawberry Point	2007	11.5	30 yr	\$285,000- \$424,000	2,400 feet along Skagit Bay with eroding, vegetated feeder bluff on designated Natural Shoreline. Zoned Rural 5. No legal access. Lease ends 6/30/37. Critical upland and marine fish and wildlife habitat, including nesting Bald Eagles and Pigeon Guillemots. County designated Habitat Conservation Area, Salmon Priority Area and Natural Shoreline.
Elger Bay	2001	170	30 yr	\$3,515,000	Mature forest with trails and freshwater wetlands, including significant beaver marsh. Zoned RF10. Lease ends 5/17/31. County designated as Critical Habitat Area. Surrounds Elger Bay Elementary School and receives significant use for education and public recreation.
TOTALS		334		\$4,246,000	

Note: Value Estimates are Not Based on Appraisals

LEASED TLT SITE LOCATION MAP



LEASED TRUST LAND PROPERTY INFORMATION



ECOLOGICAL IMPORTANCE OF ALL OF THE LEASED TRUST LAND PROPERTIES: All of these Island County leased properties have significant mature native forests that help mitigate climate change on the Islands including sequestering carbon, producing oxygen to improve air quality, protecting aquifers and water quality, reducing and purifying surface water runoff and providing critical habitat for wildlife. Several provide the opportunity for public outdoor use.

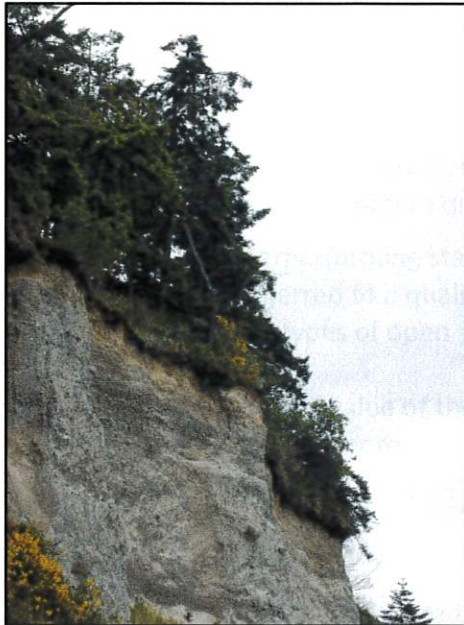
ELGER BAY PRESERVE: This 173-acres property has mature native forest and numerous wetlands, including about 14 acres of high quality beaver marsh wetland. The County designates Elger Bay Preserve as being within a Habitat Conservation Area and a Salmon Priority Area. The beaver marsh drains into Port Susan Bay and the stream and marsh are identified as fish-bearing. The Preserve encompassed the majority of the watershed and stream corridor. The size of this 173-acre forest on Camano is equivalent to an 8,883 acre forest in Snohomish County. Elger Bay Preserve surrounds the Elger Bay Elementary School and provides many educational and recreational opportunities for school children and the general public. There is an interpretive trail that leads through the forest and wetland. Improvements along the trail include educational and directional signs, an amphitheater, benches and a viewing platform. Friends of Camano Island Parks did much of the trail and improvement work and continues to help Island County maintain the trails. A rough estimate of lease buy-out value is \$3,515,000.

HIGH POINT FOREST: This 40-acre property has an older mature Douglas fir forest (aged 85-125 years) with a healthy native understory. The property is located within the Land Trust's Holmes Harbor Community Forest area and lies adjacent to forestland protected by the Land Trust. This adjacency provides the opportunity for a trail connection to a larger planned trail system. High Point Forest is at the high point in a watershed that drains into Holmes Harbor with its densely developed waterfront with numerous wells. The property is located within an Island County designated Habitat Conservation Area. The size of this 40-acre forest on Whidbey Island is equivalent to a 500-acre forest in Snohomish County.

SKYLINE WEST FOREST: This 40-acre property has an older mature Douglas fir forest (aged 105-135 years) with a healthy native understory. The property is located within the Land Trust's Holmes Harbor Community Forest area and is adjacent to Land Trust protected forest lands. This proximity provides an opportunity for a trail connection to a larger planned trail system even though there is no legal access to the property. Skyline West Forest is in the upper part of a watershed that drains into Holmes Harbor; this shoreline is densely developed waterfront homes and has numerous private wells. The forest property is located within an Island County designated Habitat Conservation Area. The size of this 40-acre forest on Whidbey Island is equivalent to a 500-acre forest in Snohomish County.

WAHL ROAD FOREST: This 20-acre property has mature forest (age 85-115 years) and includes a small wetland area and healthy native understory. The forest is used by Pileated Woodpeckers and other native wildlife. Protection will provide open space and scenic vistas along two county roads (Wahl and Barr roads). It is located across Wahl Road from a Land Trust protected property and is part of its Double Bluff protection priority area. The property is also located within an Island County designated Habitat Conservation Area. The size of this 20-acre forest on Whidbey Island is equivalent to a 250-acre forest in Snohomish County.

SWANTOWN FOREST: There is no legal access to this 40-acre forested property comprised of about 31 acres of mature Douglas fir forest (age 85-120 years) with healthy native understory and about nine (9) acres of freshwater wetland and shrub-scrub vegetation in the northeast corner that compliments the property's habitat values. The Swantown Forest lies at the top of two watersheds with most of the property draining east into a larger wetland complex which includes residential use and farm fields. The remainder of the property drains west into the Strait of Juan de Fuca which is densely developed with waterfront homes. The forest and wetland provides critical wildlife habitat just outside the City of Oak Harbor, providing important habitat for Great Blue Herons and raptors. Designated by the County as a Habitat Conservation Area, it is a lone remaining habitat acreage linking the protected Fakkema Farm and Swantown wetlands to Joseph Whidbey State Park. The size of this 40-acre forest on Whidbey Island is equivalent to a 500-acre forest in Snohomish County.



SMUGGLERS COVE SHORELINE (Tax Parcel R23026-450-4690: This 13.5-acre property includes a rare 1,400 feet of feeder bluff shoreline on Admiralty Inlet. With a healthy, coastal conifer forest and native understory, the property is critically important to the health of the marine and nearshore ecological systems. Among its contributions are nutrients that sustain juvenile salmonids and promote growth of eelgrass and kelp. Island County designates this shoreline property as a Critical Habitat Area and a Salmon Priority Habitat and the shoreline is designated as Natural. Heavy use of the property by osprey and eagles was reported by the Washington Department of Fish and Wildlife (WDFW) with the mature forest along the shoreline being critically important for raptor habitat. The property lies adjacent to a Land Trust “Forever Wild” preserve. The Smugglers Cove property is the first area of undeveloped shoreline along Admiralty Inlet lying south of the Lake Hancock protected area. In-between is more than three (3) miles of dense waterfront residential development.

STRAWBERRY POINT SHORELINE (Tax Parcel R23336-394-0140): There is no legal access to this 11.5- acre property that has ~2,400 feet of vegetated and unstable feeder bluff on Skagit Bay. With its healthy and mature coastal conifer forest and native understory, the property is critically important to the health of the marine and nearshore ecological systems. Among its contributions are nutrients that sustain juvenile salmonids and promote growth of eelgrass and kelp. Natural erosion provides crucial substrate for forage fish that spawn in the high intertidal area and are an important food source for salmon and steelhead in addition to sea birds and marine mammals. WDFW indicated that mature trees along the Island’s marine shoreline are relatively rare due to significant residential development along the shoreline. Thus, protection of the remaining undeveloped shoreline is needed to provide for nesting raptors and other water dependent birds and ensure natural erosion to the beach below. Nesting Bald Eagles and, on the bluff, Pigeon Guillemots are reported on the property. WDFW indicates this is a marine area of critical concern with dense summer and winter smelt spawning activity. The County designates the property as a Natural Shoreline, a Habitat Conservation Area, and as Salmon Priority Habitat. The Land Trust owns and manages the Strawberry Point Preserve across Strawberry Point Road to the west and south. The intact, functioning and natural shoreline processes that are occurring on this parcel are especially important in implementing Island County's salmon recovery strategy.

Q & A: LEASED TRUST LAND TRANSFER PROPERTIES

- 1. WHAT IS THE TRUST LAND TRANSFER (TLT) PROGRAM?** Established in 1989, the Trust Land Transfer (TLT) program is a legislatively-funded program that allows the Washington Department of Natural Resources (WDNR) to transfer certain state trust lands that are not suitable for revenue generation to qualified recipients. This results in two main outcomes:
 - A.** Underperforming state trust lands with high ecological values and public benefits are transferred to a qualified public agency to become parks, natural areas, wildlife refuges and other types of open space. This is done at no cost to the receiving agency.
 - B.** Using the value of the transferred properties, WDNR then buys replacement properties that can be better managed to generate long-term, sustainable revenue for trust land beneficiaries, such as the K-12 Common School Trust Fund.
- 2. WHAT TRUST LANDS ARE ELIGIBLE TO BE TRANSFERRED?** Trust lands that have:
 - A.** Properties with low income-generating potential or that are inefficient for WDNR to manage due to geographic location, physical constraints, lack of access, legal issues or other similar circumstances. All of the leased trust lands in Island County are eligible.
 - B.** Possess high ecological values and public benefits such as old-growth or mature forests, rare species, or opportunities for hiking, fishing, environmental education or scientific study. All of the leased trust lands in Island County possess all or some of these important values.
- 3. WHAT TRUST LANDS HAVE BEEN TRANSFERRED IN ISLAND COUNTY?** In total, 2,756 acres, primarily comprised of mature forests, were transferred at no-cost to public entities in Island County. The total value of the lands transferred between 1989 – 2009 was approximately \$45 million, all funded by the state legislature. See Site Map for location of transferred TLT lands.
 - A.** Thirteen (13) trust properties were transferred in fee simple to:
 - State Parks: 1,945 acres of mature and old-growth forests in four (4) parks.
 - Island County: 1,172 acres in seven (7) predominately mature forest properties (Rhodie Park, Camano Ridge, Putney Woods, Brainers Rd, Glendale, Scenic Heights and Monroe Landing).
 - Clinton Water District: 40 acres that includes its drinking water wells.
 - South Whidbey Parks and Recreation: 205 acres, i.e., Trustland Trails.
 - B.** Seven (7) trust properties, totaling 334 acres, were transferred under leases to Island County. The length of the leases ranged between 30-50 years.
 - Elger Bay County Park (30 years).
 - Smugglers Cove waterfront (30 years);
 - Strawberry Point waterfront (30 years);
 - High Point Forest (50 years);
 - Skyline West Forest (50 years);
 - Wahl Road Forest (50 years); and
 - Swantown Forest (50 years).

4. **HAVE ALL TRUST LANDS IN ISLAND COUNTY BEEN TRANSFERRED?** Yes. WDNR found it particularly challenging to manage trust lands in Island County for revenue production because of its island location, lack of adequate legal access and/or cost of trucking timber off-island to mills in addition to having a citizenry that actively and vocally opposed timber harvests.
5. **CAN ISLAND COUNTY BUY THE FEE INTEREST IN LEASED TRUST LANDS?** The lease language in four of the seven leased trust lands contains a “buy-out” clause (Section 3.02 of each lease) which allows Island County to purchase these lands in fee under certain conditions, as further explained in Item 6 below. These four are Swantown, Wahl Road, Skyline West and High Point. The three leased trust lands without this language are Elger Bay, Smugglers Cove and Strawberry Point; these can also be transferred under state law even without the above buy-out clause.
6. **WHAT IS THE BUY-OUT CLAUSE CONTAINED IN THE FOUR LEASED TRUST LANDS?** To be acceptable to WDNR” the appraisal must:
 - A. *“The appraisal must reflect a current higher and better use that is equal to, or exceeds, the use as originally appraised.”* All four of the four affected trust lands were appraised at a higher and better use of essentially dividing the properties into 10-acre lots using the then permitted unregulated segregation process, clearcutting the forest and then waiting until the vacant residential market improved to sell the 10-acre lots. The highest and best use for these four parcels today is expected to be subdividing the properties into 10-acre lots through a short plat, doing a Class IV General Forest Practice Application harvest (a “real-estate cut”), and selling the larger lots for residential homesites.
 - B. *“The terms and conditions of the offer must include a deed restriction that restricts the Permitted Use of the property to fish and wildlife habitat, open space or recreation use and not for other purposes.”* And, *all minerals and other valuable materials will be reserved by the state.*
 - C. *Also, WDNR may reserve minerals and other valuable materials and mitigation credit for its Habitat Conservation Plan.*
7. **WHAT IS THE WDNR PROCESS TO BUY-OUT LEASED TRUST LANDS?** WDNR will secure a current appraisal, paid for by Island County and/or in partnership with the Whidbey Camano Land Trust (Land Trust) for each parcel to determine the residual market value. The approved appraised value must then be paid for by Island County and/or in partnership with the Land Trust.
8. **WHAT HAPPENS IF ISLAND COUNTY DECIDES NOT TO PURCHASE ALL OR SOME OF THE LEASED TRUST LANDS IN FEE AND THE LEASES EXPIRE?** There is a high risk that these properties will be auctioned off and privately logged and developed because, after the lease expires, WDNR will not be able to manage the properties to generate on-going income.
9. **THE ALTERNATIVE:** Submit applications for the Leased Trust Lands to the biennial Trust Land Transfer Program approved and funded by the Legislature and overseen by WDNR.

Leased Trust Land Acquisition Project



Island County Fee Trust Land Transfer

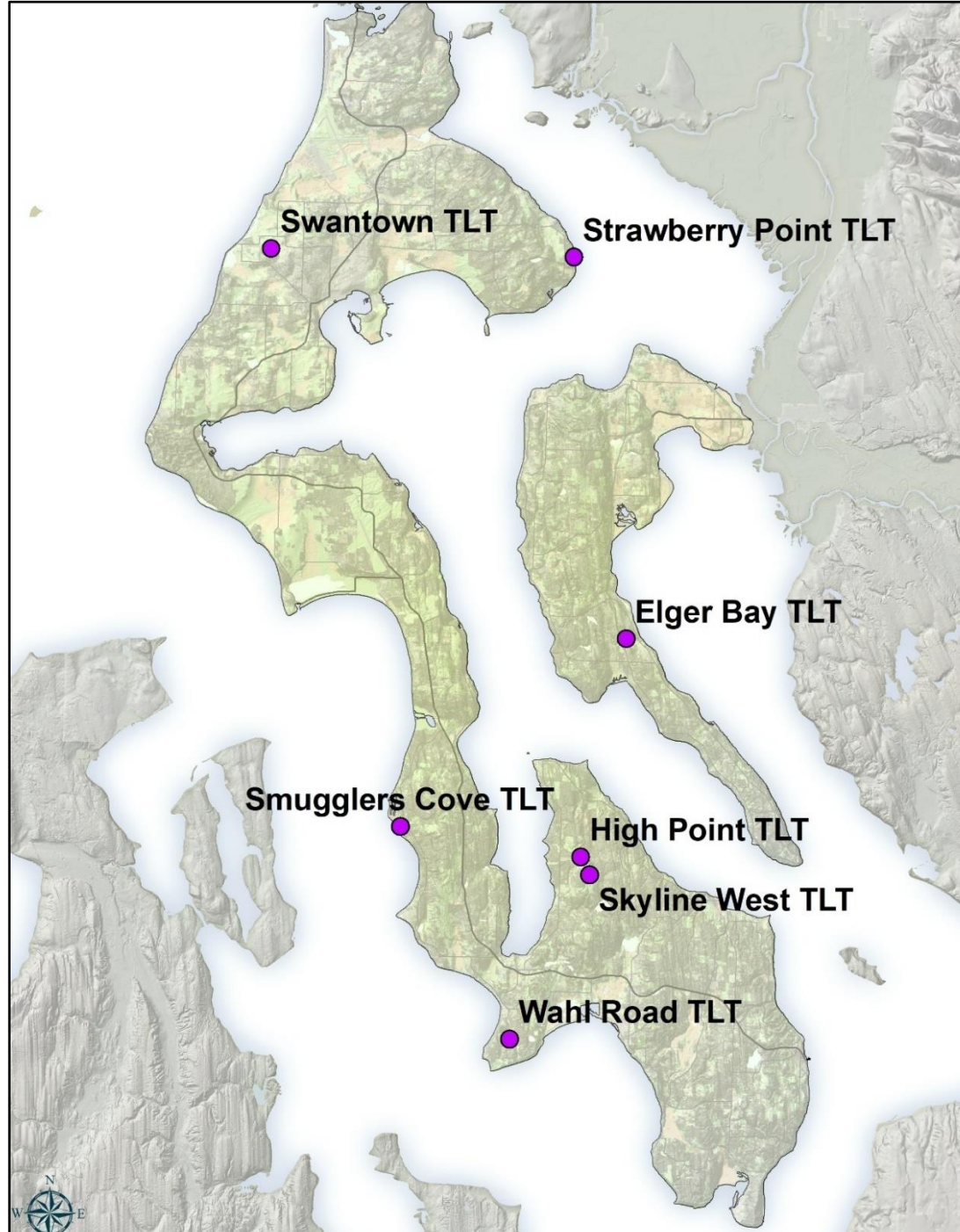
- Camano Ridge Forest – 402 ac
- Scenic Heights Forest & Field – 38 ac
- Monroe Landing Forest – 45 ac
- Rhododendron Park Forest – 146 ac
- Putney Woods Forest – 604 ac
- Brainers Road Forest – 39 ac
- Glendale Creek Forest – 40 ac

TOTAL: 1,314 acres of mature forest

Island County Leased Trust Land Transfer

- Smugglers Cove Eroding Feeder Bluff – 11.5 ac
- Strawberry Point Eroding Feeder Bluff – 13.5 ac
- Elger Bay Forest – 170 ac
- High Point Forest – 39 ac
- Skyline West Forest – 40 ac
- Wahl Road Forest – 20 ac
- Swantown Forest – 40 ac

TOTAL: 334 acres



30-year Leases

Elger Bay expires in 6 years (5/2031):

- Mature forest with trails and significant, large wetlands
- Popular site for public and school use
- Ecologically important area

Smugglers & Strawberry expire 12 years (6/2037):

- Long expanse of waterfront on eroding feeder bluffs
- Natural Shoreline designations
- Salmon Priority Areas
- Ecologically important areas

50-year Leases

Wahl, High Pt, Skyline & Swantown expire in 34 years:

- Old, mature forests
- Ecologically important areas
- 3 are upper watersheds
- Much less expensive to buy-out leases now



More information
on each property
on Page 10 of draft
Agreement and in
TLT project packet



<u>LEASED TLT</u>	<u>Date</u>	<u>Acres</u>	<u>Term</u>	<u>Est. Buy-Out Value</u>	<u>Property Information</u>
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TOTALS		334		\$4,246,000	

Note: Value Estimates are Not Based on Appraisals

Cooperative Agreement

GOAL 1: Permanently protect leased trust lands for ecological values and other public benefits.

GOAL 2: Transfer the 7 leased trust lands in fee to County at least amount of staff time and cost.

GOAL 3: Transfer 4-5 of the now-fee trust lands to Land Trust with conservation easements held by County.

Three Part Process

1. Land Trust applies to WDNR on 30-year leases:

- Elger, Strawberry and Smugglers
- Highly competitive process
- If funded, facilitate land transfer(s) to County
- No cost to County
- Unfunded properties resubmitted in following biennium

2. Land Trust works on buy-out of 50-year leases:

- LT pays \$35,000 administrative/appraisal costs
- WDNR presents purchase price for each of the 4 properties
- LT discusses with County how funding can be secured
- LT facilitates moving forward on land transfers to County

Three Part Process

3. County transfers fee trust lands to Land Trust:

- High Point, Skyline, Wahl and Smugglers
- County will reserve conservation easements
- Strawberry Point a “may-be” for Land Trust
- County owns Elger Bay and Swantown

Note: Land Trust working on Glendale TL fee transfer from County; also, may be interested in owning/stewarding Brainers Road Forest.

Next Steps

1. BICC sign Letter of Intent (Ex E) to send to WDNR:
 - Allows Land Trust to start application work ASAP
2. BICC and Land Trust sign Cooperative Agreement
3. BICC signs Interagency Agreement with WDNR (Ex F):
 - Land Trust sends \$35,000 fee to WDNR

QUESTIONS?