

C-2017-12

**2017-19 Biennium Contract No. K1822**

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SEP 18 2017

**BETWEEN**

WA Conservation Commission

**The Washington State Conservation Commission**

**AND**

**Pend Oreille County**

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**Project: Voluntary Stewardship Program Work Plan Development and Implementation**

**THIS AGREEMENT** is made and entered into by and between the Washington State Conservation Commission, hereinafter referred to as "COMMISSION" and Pend Oreille County, hereinafter referred to as "COUNTY".

**IT IS THE PURPOSE OF THIS AGREEMENT** to provide funding to the COUNTY for the development and implementation of a work plan as required for the Voluntary Stewardship Program, consistent with RCW 36.70A.700-760 and related statutes.

**THEREFORE, IT IS MUTUALLY AGREED THAT** the COMMISSION will provide funding consistent with the terms of this contract, the policies of the COMMISSION, and the laws of the state of Washington; and the COUNTY will implement the terms of this contract with the funding provided consistent with the policies of the COMMISSION and the laws of the state of Washington.

**1.0 PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this agreement shall commence on the effective date of this agreement, which is July 1, 2017, and be completed on June 30, 2019, unless either extended by agreement of the parties or terminated sooner, as provided herein. It is the intent of the parties that the period of performance will be consistent with the timelines set forth in RCW 36.70A.720-735, subject to available funding, and subject to state contracting requirements.

**2.0 SCOPE OF WORK**

The COUNTY shall furnish the necessary personnel, equipment, material and/or service(s), or contract with third parties to accomplish the same, and otherwise do all things necessary for or incidental to the performance of the work set forth herein.

The COUNTY shall report in writing within 30 days any problems, delays or adverse conditions that will materially affect their ability to meet project objectives or time schedules

stated herein. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed to resolve the situation.

The COUNTY shall complete the work listed in APPENDIX B – SCOPE OF WORK, herein.

### **3.0 FUNDING AVAILABILITY**

Funding provided by legislative appropriation for the work herein will not exceed \$220,000. Payment for satisfactory performance of the work accomplished under this agreement shall not exceed this amount. The COMMISSION'S ability to make payments is contingent on availability of funding. In the event funding from the state is withdrawn, reduced, limited or otherwise determined by the COMMISSION to be inadequate in any way after the effective date and prior to completion or expiration date of this agreement, the COMMISSION, at its sole discretion, may elect to terminate the agreement, in whole or part, for convenience or to renegotiate the agreement subject to new funding limitations and conditions. The COMMISSION may also elect to suspend performance of the agreement until the COMMISSION determines the funding insufficiency is resolved. Should the COMMISSION determine funding needs to be reduced, the COMMISSION will provide 30-days notice of an intent to reduce the amount of funding available under this agreement.

#### **3.1 Eligible Costs:**

The COMMISSION will pay the following costs, but only upon full COUNTY compliance with APPENDIX C – BILLING PROCEDURE:

- Salaries and benefits, 20% indirect of salaries and benefits is allowed on COUNTY personnel.
- Travel, including mileage and per diem for program staff, consistent with state law. Travel and expenses paid directly to work group participants is not allowed.
- Meeting rooms and light refreshments for working meetings.
- Facilitation, reports, studies, research and document preparation, which may be accomplished through either staff efforts or qualified contractors. Contractor services shall conform to ordinary billing rates and overhead multipliers for the type and location of the services.
- Copy and printing costs.

Pre-approval by the COMMISSION is required for equipment purchases, which should be directly related to the activities of the work group and the purposes of the Voluntary Stewardship Program. Equipment may include, but is not limited to, computers, data base software, and GIS software.

#### **3.2 Disallowed Costs:**

The COUNTY is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors (such as consultants), and Assignees.

If the COUNTY expends more than the amount of the COMMISSION funding in this agreement in anticipation of receiving additional funds from the COMMISSION, it does so at its own risk. The COMMISSION is not legally obligated to reimburse the COUNTY for costs incurred in excess of this agreement.

### 3.3 Insufficient Funds:

The obligation of the COMMISSION to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this contract crosses over state fiscal years the obligation of the COMMISSION is contingent upon the appropriation of funds during the next fiscal year. The failure of the legislature or federal agencies to appropriate or allot such funds to the program shall be good cause to terminate this contract and for the Director of the COMMISSION to determine that the watershed has not received adequate funding to implement the program consistent with RCW 36.70A.735 (d).

### 3.4 Method of Compensation:

Payment shall be made on a reimbursable basis for costs or obligations. Eligible costs or obligations incurred by the COUNTY will be considered to have been paid by the COUNTY under this contract at the time the COUNTY seeks reimbursement from the COMMISSION. No payments in advance of or in anticipation of goods or services to be provided under this agreement shall be made by the COMMISSION. The COUNTY must fully comply with APPENDIX C- BILLING PROCEDURE to be eligible for reimbursement.

### 3.5 Retainage

Notwithstanding the provisions of Sections 3.0 - 3.4 above, an amount equal to ten percent (10%) of the amount listed in section 3.0 FUNDING AVAILABILITY herein shall be retained by the COMMISSION. This amount shall be available to the COUNTY after May 1, 2019 or upon demonstration of satisfactory completion of this agreement, whichever comes first, provided that the COUNTY has maintained full compliance with the provisions of APPENDIX C – BILLING PROCEDURE. The demonstration of satisfactory completion of this agreement is defined as meeting all conditions set out in APPENDIX B – SCOPE OF WORK.

## **4.0 ASSIGNMENT**

The COUNTY may assign or delegate the Lead Entity work to be completed under this agreement to an Agent. Any such Agent shall comply with the requirements of this agreement. Within any such assignment or delegation the COUNTY shall remain liable for any claim arising thereunder, and the COUNTY shall remain responsible for compliance with this agreement and RCW 36.70A.700-735, and with all applicable Federal, State and local laws, orders, regulations and permits. COUNTY retains the right to subcontract any portion or portion(s) of the work as it deems necessary to complete the work. If COUNTY chooses to assign a lead entity for VSP, a copy of the subcontract must be sent to the Commission's VSP Contract Manager identified in APPENDIX C – BILLING PROCEDURE as soon as the subcontract has been signed by both parties.

## **5.0 CONTRACT MANAGEMENT**

Each party shall assign a specific individual to be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement. Those individuals will be set out in APPENDIX D – RESPONSIBLE INDIVIDUALS herein incorporated by reference.

## **6.0 TERMINATION**

The COUNTY may terminate this agreement upon 30-days' prior written notification to the COMMISSION. If this agreement is terminated by the COUNTY, the COUNTY shall be reimbursed only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination. If this agreement is terminated by the COMMISSION, the COUNTY shall be reimbursed only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination. If the COUNTY terminates this agreement prior to the work plan's approval, or prior to when the work plan's goals and benchmarks are met, the COUNTY may be subject to the requirements of RCW 36.70A.735 and related statutory sections.

The COMMISSION may terminate this agreement upon 30-days' prior written notification to the COUNTY for cause, or for any reason or combination of reasons listed below, each of which constitute a breach of this contract in accordance with Section 7.0 BREACH:

- 6.1 Failure to complete the requirements of Section 2.0 SCOPE OF WORK and/or APPENDIX B - SCOPE OF WORK in a reasonable time frame, or for the reasons listed in 3.0 FUNDING AVAILABILITY above.
- 6.2 The failure to provide timely quarterly status reports are grounds for the termination of this agreement, at the sole determination of the COMMISSION.
- 6.3 The failure to submit the work plan within the timeline requirements provided in RCW 36.70A.720-735 are grounds for the termination of this agreement, at the sole determination of the COMMISSION.
- 6.4 The failure to provide an estimate of the final anticipated costs associated with the completion of this agreement through June 30, 2019 to the COMMISSION's VSP Contract Manager, as set out in APPENDIX B – SCOPE OF WORK, unless this agreement is otherwise completed before March 1, 2017, is grounds for the termination of this agreement, at the sole determination of the COMMISSION.
- 6.5 The failure of the COUNTY to fully comply with the provisions in APPENDIX C – BILLING PROCEDURE shall be grounds for termination of this agreement.
- 6.6 The failure of the COUNTY to submit monthly invoices for reimbursement to the COMMISSION's VSP Contract Manager, in accordance with APPENDIX C – BILLING PROCEDURE, shall be grounds for termination of this agreement.
- 6.7 The failure of the COUNTY to identify and keep current the responsible individual as identified in APPENDIX D – RESPONSIBLE INDIVIDUALS, shall be grounds for termination of this agreement.

## **7.0 BREACH**

The COUNTY shall not be relieved of any liability to the COMMISSION for damages sustained by the COMMISSION and/or the State of Washington because of any breach of contract by the COUNTY. The COMMISSION may withhold payments for the purpose of

setoff until such time as the exact amount of damages due the COMMISSION from the COUNTY is determined.

In the event the COUNTY fails to commence work on the project funded herein within the timelines established under RCW Chapter 36.70A., the COUNTY shall be subject to the requirements of RCW 36.70A.735.

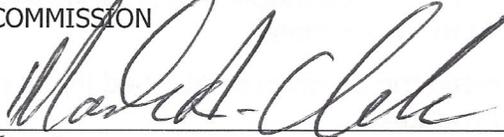
**8.0 ENTIRE AGREEMENT AND CHANGES, MODIFICATIONS AND AMENDMENTS**

This agreement and the attached APPENDICES (APPENDIX A-D) contain the entire integrated agreement of the parties may be changed, modified or amended by written agreement executed by both parties.

**9.0 EFFECTIVE DATE**

The effective date of this agreement shall be the last date of signature. This date shall be the "receipt of funds" date for purposes of RCW 36.70A.703 (9) and RCW 26.70A.725 (5) and (6).

WASHINGTON STATE CONSERVATION  
COMMISSION

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Executive Director      Date 9/19/17

Pend Oreille County

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title Commissioner, Chair      Date 9-12-17

2017-19 Biennium Voluntary Stewardship Program  
COMMISSION and COUNTY Agreement

**APPENDIX A – GENERAL TERMS AND CONDITIONS**

**I. DEFINITIONS**

Terms used throughout this contract are defined below:

"Agreement" shall mean the contract agreement to which these terms and conditions are affixed.

"Agent" shall mean any entity to which the COUNTY has assigned responsibilities as allowed in the agreement.

"COMMISSION" shall mean the Washington State Conservation Commission, any division, section, office, including the Office of Farmland Preservation, unit or other entity of the COMMISSION, or any of the officers or other officials lawfully representing the COMMISSION.

"COUNTY" shall mean the County receiving the funds as identified in the agreement that this Appendix is a part of, and is performing activities under this contract, and shall include all employees of the COUNTY.

"Project Officer" shall mean the specific employee of the COMMISSION that is assigned as the primary contact for purposes of the fulfillment of this agreement.

"Voluntary Stewardship Program" and "VSP" shall mean the program established in, and governed by, RCW 36.70A.700-760 and associated statutes.

"Implement" shall mean to execute any requirements of RCW 36.70A.700-760 and associated statutes.

**II. DISPUTES**

Except as otherwise provided in this contract, any dispute arising under this contract shall be decided in the following manner:

By the Project Officer or other designated official who shall provide a written statement of decision to the COUNTY. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date the COMMISSION receives such statement, the COUNTY mails or otherwise furnishes to the Executive Director of the COMMISSION a written appeal.

An appeal of the Project Officer's decision shall be addressed by the COMMISSION's Executive Director. The COUNTY shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the COMMISSION's Executive Director for the resolution of such appeals shall be final and conclusive and constitutes a final agency action for the purposes of the Washington Administrative Procedures Act, RCW 34.05.

Pending final decision of dispute hereunder, the COUNTY shall proceed diligently with the performance of this contract and in accordance with the decision rendered.

### **III. GOVERNANCE**

This agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws. The COUNTY and any Agent shall comply fully with all applicable federal, state and local laws, orders, regulations and permits. Any action brought to enforce the terms of this agreement shall be in the Superior Court for Thurston County. Except as otherwise provided in this agreement, in the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

In the event of 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:

- a. Applicable state and federal statutes and rules;
- b. Scope of work; and
- c. Any other provisions of the Agreement, including materials incorporated by reference.

### **IV. CONTRACTING FOR SERVICES**

Contracts for personal services, purchased services/goods, and public works shall be awarded through a competitive process, if required by State law. The COUNTY shall retain copies of all bids received and contracts awarded, for inspection and use by the COMMISSION. Retention of copies shall be consistent with time periods established herein.

### **V. INDEMNIFICATION**

The COMMISSION shall in no way be held responsible for payment of salaries, consultant fees, and other costs related to the project described herein, except as provided in the scope of work.

To the fullest extent permitted by law, the COUNTY shall indemnify, defend and hold harmless the State of Washington, agencies of the State and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. The COUNTY'S obligation to indemnify, defend, and hold harmless includes any claim by the COUNTY'S agents, employees, representatives, or any subcontractor or a subcontractor's employees.

The COUNTY expressly agrees to indemnify, defend, and hold harmless the State of Washington and the COMMISSION for any claim arising out of or incident to the COUNTY'S or any subcontractor's performance or failure to perform the contract. The COUNTY'S obligation to indemnify, defend, and hold harmless the State of Washington and the COMMISSION shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officials.

The COUNTY waives its immunity under Title 51 RCW (Industrial Insurance) to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

## **VI. RECOVERY OF PAYMENTS**

In the event the COUNTY fails, through the failure to exercise reasonable diligence unrelated to the State's failure to fully fund the stewardship process, to perform obligations required of it by this contract, the COUNTY may, at the COMMISSION'S sole discretion, be required to repay to the COMMISSION any funds that were spent by the county without exercising reasonable diligence or a portion of funds disbursed to the COUNTY for those parts of the project that are rendered worthless in the opinion of the COMMISSION by such failure to exercise reasonable diligence.

In the event that the COUNTY fails to expend funds under this contract in accordance with state laws and/or the provisions of this contract, the COMMISSION reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such rights of recapture shall exist for a period not to exceed two years following contract termination. Repayment by the COUNTY of funds under this recapture provision shall occur within 30 days of demand. In the event that the COMMISSION elects to institute legal proceedings to enforce the recapture provision, the prevailing party in any litigation for "recapture" shall be entitled to reasonable attorney fees.

## **VII. INELIGIBILITY**

The COUNTY certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or state agency.

## **VIII. INDEPENDENT RELATIONSHIP**

The COUNTY or COUNTY's Agent(s) performing under this contract are not employees or agents of the COMMISSION. The COUNTY shall not hold themselves out as nor claim to be an officer or employee of the COMMISSION or of the State of Washington by reason hereof, nor will the COUNTY make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work outlined in the scope of work shall be solely with the COUNTY.

## **IX. KICKBACKS**

The COUNTY and its employees and authorized representatives are prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

## **X. INTELLECTUAL PROPERTY**

Copyrights and Patents. Should the COUNTY or COUNTY's Agent(s) create any copyrightable materials or invent any patentable property in the course of the scope of work governed by this agreement, the COUNTY may copyright or patent the same but shall grant the COMMISSION a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions developed by the COUNTY as provided in 35 U.S.C. 200-212.

Publications. When the COUNTY, COUNTY's Agent(s), or persons employed by the COUNTY use or publish information of the COMMISSION; present papers, lectures, or seminars involving information supplied by the COMMISSION; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the COMMISSION.

#### **XI. PROPERTY MANAGEMENT**

The COMMISSION'S Property and Records Management Policy, contained in the Commission's Grants and Contracts Manual, pgs 62-63, hereby incorporated by reference, and any updates thereto, shall control the use and disposition of all real and personal property purchases wholly or in part with funds furnished by the COMMISSION in the absence of state, federal statute(s), regulations(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the scope of work.

#### **XII. RECORDS MAINTENANCE**

The parties to this agreement shall each maintain books, records, documents and other information which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be kept in accordance with the provisions contained in the Commission's Grants and Contracts Manual, pg 61 for records retention, hereby incorporated by reference, and any updates thereto. 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, federal officials so authorized by law, and as provided by the state Public Records Act, RCW 42.56. All books, records, documents, and other material relevant to this agreement will be retained for six years after expiration and 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.

#### **XIII. SEVERABILITY**

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement, which can be given effect without the invalid provision if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this agreement are declared to be severable.

#### **XIV. 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 unless stated to be such in a writing signed by an authorized representative of the party and attached to the original agreement.

#### **XV. ACCESSIBILITY REQUIREMENTS**

COUNTY will remain current with Federal and Washington State accessibility standards and comply with *OCIO Policy 188 – Accessibility* located at <https://ocio.wa.gov/policy/minimum-accessibility-standard>.

## 2017-19 Biennium Voluntary Stewardship Program COMMISSION and COUNTY Agreement

### **APPENDIX B – SCOPE OF WORK**

The scope of the work to be performed by the COUNTY, or its contractors, under this agreement is the following:

- A. Implement requirements of the Voluntary Stewardship Program (VSP) and RCW 36.70A.700-735.
- B. Identify the lead entity for the implementation of the VSP.
- C. Designate, organize, and convene a watershed work group.
- D. Provide staff support for the watershed work group.
- E. Provide for facilitation of the watershed work group, if needed.
- F. Assist the watershed work group in the development of a work plan that meets the requirements of RCW 36.70A.720.
- G. Implement the VSP work plan once it is approved by the COMMISSION. As part of implementation:
  - 1) Ensure outreach and technical assistance is provided to agricultural operators;
  - 2) Designate the entity or entities that will provide technical assistance;
  - 3) Work with the entity providing technical assistance to ensure that individual stewardship plans contribute to the goals and benchmarks of the work plan;
  - 4) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and to the commission within sixty days after the end of each biennium; and
  - 5) Satisfy any other requirement of RCW 36.70A.70.700-.760.

#### Deliverables:

- A. Provide a timely quarterly status report to the VSP Program Manager in a form and manner prescribed by the COMMISSION, and deemed reasonable by COUNTY staff. Quarterly reports are here: <https://www.formstack.com/forms/?2221155-U3eHq4N8zh>
- B. Provide to the COMMISSION a final work plan meeting the requirements of RCW 36.70A.720 and submit the work plan within the timeline requirements provided in RCW 36.70A.720-735.
- C. Provide to the COMMISSION's VSP Contract Manager, no later than March 1, 2019, an estimate of the final anticipated costs associated with the completion of this agreement through June 30, 2019.

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**APPENDIX C – BILLING PROCEDURE**

The COUNTY shall submit monthly invoices in the form and manner identified by the COMMISSION to the Commission's VSP Contract Manager:

Karla Heinitz  
VSP Contract Manager  
Washington State Conservation Commission  
P.O. Box 47721  
Olympia, WA 98504

Send invoices to: [sccgrants@sccgrants.wa.gov](mailto:sccgrants@sccgrants.wa.gov)

For billing questions, contact: [kheinitz@scc.wa.gov](mailto:kheinitz@scc.wa.gov); phone: 360-407-6212

Invoices for payment shall be submitted **monthly**. An invoice shall be submitted regardless of whether work has been performed on the project, this is considered a "No Activity" Invoice. Quarterly billings are not allowed and will not be accepted. A time summary for staff costs, including compensation or billing rates, shall be attached. Individual time records will be kept available at the COUNTY for review. A copy of any contractor invoices, or other receipts will be attached to the billing.

Payment to the COUNTY for approved and completed work will be made by account transfer by the COMMISSION **monthly** upon receipt of the invoice. Payment will be made to the person identified at the COUNTY in APPENDIX D – RESPONSIBLE INDIVIDUALS unless the COUNTY shall identify and provide contact information to the COMMISSION to the person listed in APPENDIX C - BILLING PROCEDURE herein.

Final Request for Payment:

The COUNTY must submit final requests for compensation during the current fiscal year no later than July 10<sup>th</sup> after the end of the current fiscal year. Failure to comply with this timeline may result in denial of any such claim.

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**APPENDIX D – RESPONSIBLE INDIVIDUALS**

Each party shall identify and keep current those individuals responsible for this agreement listed below. If for any reason the individuals listed below are no longer responsible for this agreement, the parties agree to immediately identify and notify each other of another responsible individual for this agreement.

The Project Officer for the COMMISSION is:

Ron Shultz  
Policy Director  
Washington State Conservation Commission  
P.O. Box 47721  
Olympia, Washington 98504  
(360) 407-7507  
[rshultz@scc.wa.gov](mailto:rshultz@scc.wa.gov)

The responsible individual for the COUNTY is:

NAME: Greg Snow  
TITLE: Director  
AGENCY: POC Community Development  
MAIL ADDRESS: PO Box 5066  
CITY, STATE, ZIP: Newport, WA 99156  
PHONE: 509-447-4821  
EMAIL: [gsnow@pendoreille.org](mailto:gsnow@pendoreille.org)

The COUNTY Billing Contact (if different than the responsible individual for the COUNTY above):

NAME:  
TITLE: (same)  
AGENCY:  
MAIL ADDRESS:  
CITY, STATE, ZIP:  
PHONE:  
EMAIL: