

FISCAL NOTE

Ordinance/Motion No. 2004-XXXX
 Title: Snoqualmie Corps 205 Project
 Affected Agency and/or Agencies: Water and Land Resources Division
 Note Prepared By: Steve Oien
 Note Reviewed By: Lisa Youngren

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue:

Fund/Agency	Fund Code	Revenue Source	2004	2005	2006	2007
Surface and Stormwater Construction	3180	City of Snoqualmie	870,648			
Surface and Stormwater Construction	3180	Puget Sound Energy	73,333			
Surface and Stormwater Construction	3180	CIP Fund 3292	51,883			
Surface and Stormwater Construction	3180	River Improvement Fund 1050	215,000			
Surface and Stormwater Construction	3180	Fund Balance - Project 047105	(123,512)			
Surface and Stormwater Construction	3180	Fund Balance- Project 047101	123,512			
TOTAL			\$ 1,210,864	0	0	0

Expenditures:

Fund/Agency	Fund Code	Department Code	2004	2005	2006	2007
Surface and Stormwater Construction	3180	0748 - Project 047101	1,334,376			
TOTAL			\$ 1,334,376	0	0	0

Expenditures by Category

	2004	2005	2006	2007
Salaries & Benefits				
Supplies and Services				
Capital Outlay - CIP Project 047101: Snoqualmie 205 Flood Hazard Reduction	1,334,376			
Other				
TOTAL	\$ 1,334,376	0	0	0

Assumptions:

Revenues:

City of Snoqualmie and Puget Sound Energy contributions pursuant to ILA and cooperative agreements entered into in January 2003.

SWM CIP Non-Bond Sub Fund 3292 (CIP)- transfer to fund 3180 from the Rural ADAP project #0A1801.

The total Revenue requested is less than the requested total expenditures by \$123,512 because revenue originally designated for the Rivers Major Maintenance project #047105 will be transferred to the Snoqualmie 205 Flood hazard reduction project #047101.

Expenditures

Amount shown is supplemental request only in Fund 3180. This would be added to existing budget authority in Project No. 047104.

See attachment for the total cost estimate and contributions from all parties.

2004-079

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Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue:

Fund/Agency	Fund Code	Revenue Source	2004	2005	2006	2007
River Improvement	1050	Fund Balance	215,000			
TOTAL			\$ 215,000	0	0	0

Expenditures:

Fund/Agency	Fund Code	Department Code	2004	2005	2006	2007
River Improvement	1050	Transfer to Fund 3180	215,000			
TOTAL			\$ 215,000	0	0	0

Expenditures by Category

	2004	2005	2006	2007
Salaries & Benefits				
Supplies and Services				
Capital Outlay				
Other - Transfer to CIP Fund 3180	215,000			
TOTAL	\$ 215,000	0	0	0

Assumptions:

Snoqualmie Corps 205 Supplemental Appropriation Worksheet

Project Element	Notes	Total	KC Share	Snoqualmie Share	PSE Share	Army Corps
Total Estimated Cost	1/	7,339,475	1,393,231	1,079,831	865,086	4,001,327
Life to Date Costs						
	Credited	(1,368,293)	(453,393)	(66,300)	(208,600)	(640,000)
Creditable Beyond COE Limit		(19,309)	(19,309)			
Non-Credited	2/	(307,276)	(158,457)	(33,700)	(115,119)	-
Remaining Obligations		5,644,596	762,072	979,831	541,367	3,361,327
Direct Outside Obligations		(558,033)		(83,333)	(474,700)	
Project Balance in Fund 318	3/	(511,000)	(511,000)			
Supplemental Need		4,575,563	251,072	896,498	66,667	3,361,327
Existing spend auth		(213,000)		(115,500)		(97,500)
Spend Auth Need		4,362,563	251,072	780,998	66,667	3,263,827
10% Contingency 4/		235,640	139,323	89,650	6,667	
With Contingency		4,598,203	390,395	870,648	73,333	3,263,827
Amount Requested in Suppl		1,334,376	390,395	943,981	Snoq + PSE	

1/ Estimate based on November 2003 consultant report, including Corps adjustments thru Jan 26, 2004.
 2/ Total estimated KC share includes estimated in-kind costs, and non-credited costs.
 3/ Project balance is \$1,116,000, less 2003 expenditures of \$392,000 and outside Corps and City revenues of \$213,000.
 4/ WLR contingency based upon 10% of WLR's total project share; Snoqualmie and PSE based on 10% of amount included in supplemental. A contingency is deemed appropriate because bids have not yet been received and opened by Corps staff.

River Improvement Fund/1050

Category	2002 Actual ¹	2003 Adopted	2003 Revised	2003 Estimated ²	2004 Adopted	2004 revised	2005 Estimated ⁶	2006 Estimated ⁶
Beginning Fund Balance	290,761	336,096	628,251	628,251	662,499	845,851	284,405	271,963
Revenues								
River Improvement Levy ³	2,358,647	2,359,624	2,359,624	2,426,032	2,383,322	2,498,521	2,523,506	2,548,741
Other Revenue ⁴	1,300,812	1,335,330	1,349,074	1,133,643	1,535,544	1,535,544	1,361,680	889,850
Revenue for Encumbrance Carryover			26,400	-	-	-	-	-
Revenue for Project 011043				31,131	-	-	-	-
Total Revenues	3,659,459	3,694,954	3,735,098	3,590,806	3,918,866	4,034,065	3,885,186	3,438,591
Expenditures								
Operating Expenditures	(3,321,969)	(3,597,791)	(3,597,791)	(3,373,206)	(4,454,083)	(4,454,083)	(4,047,628)	(3,619,853)
Encumbrance Carryover-2002			(168,058)	-	-	(76,428)	-	-
2004 Corps 205 Supplemental						(215,000)	-	-
Total Expenditures	(3,321,969)	(3,597,791)	(3,765,849)	(3,373,206)	(4,454,083)	(4,745,511)	(4,047,628)	(3,619,853)
Estimated Underexpenditures					150,000	150,000	150,000	150,000
Other Fund Transactions								
Total Other Fund Transactions								
Ending Fund Balance	628,251	433,259	597,500	845,851	277,282	284,405	271,963	240,701
Designations and Reserves								
Reserve for Encumbrance Carryover	(168,059)	-	-	(76,428)	-	-	-	-
Total Designations and Reserves	(168,059)	-	-	(76,428)	-	-	-	-
Ending Undesignated Fund Balance	460,192	433,259	597,500	769,423	277,282	284,405	271,963	240,701
Target Fund Balance⁵	256,162	258,647	258,647	258,647	258,647	258,647	258,647	258,647

Financial Plan Notes:

- ¹ 2002 actuals are based on 2002 CAFR.
- ² 2003 estimate is based on 13th month preliminary numbers.
- ³ 2004 - 2006 RIF levy assumes annual growth of 1%.
- ⁴ Other revenue sources include Green River Flood Control Zone District, FCAAP Grants, FEMA grants.
- ⁵ Minimum Target Fund Balance is 7% of total revenues.
- ⁶ 2005 and 2006 out year assumptions are as follows: RIF levy revenue is set at a 1% anticipated inflation rate. Other Revenue is based on current Disions projections and this revenue is comprised of GRFCZD and state and federal grants. Expenditures will be set at a level to keep the fund at minimum target fund balance levels.

2004-079

attached to cover letter



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Comments

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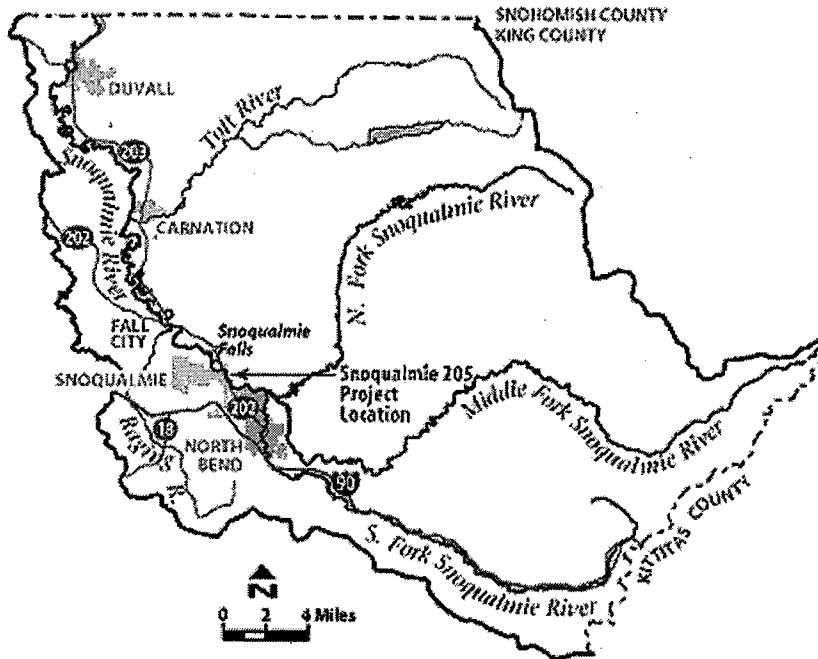


Natural Resources and Parks »
Water and Land Resources Division »

Snoqualmie Flood Reduction Project (also known as Snoqualmie 205 Project)

2004-079

The Snoqualmie Flood Reduction Project is a proposal to lower flood depths in and around the City of Snoqualmie. The "205 Project" name is a reference to the federal law that allows and funds the U.S. Army Corps of Engineers to participate in this type of project.



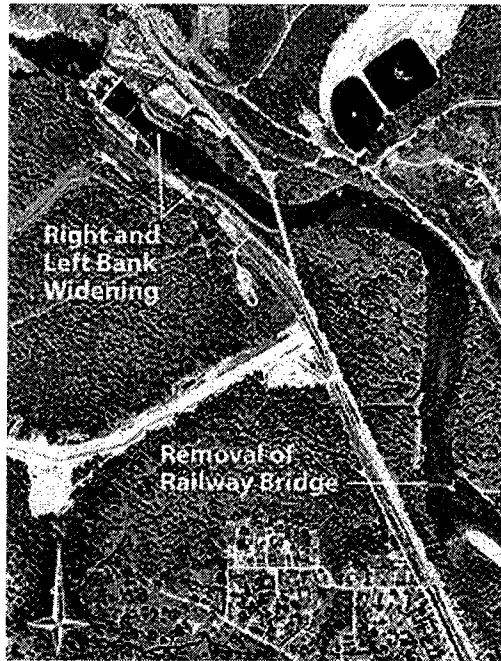
This air photo shows the historic City of Snoqualmie. The Snoqualmie River flows through town, from the right hand side of this picture to the upper left corner.

The blue lines on this image represent the 100-year floodplain boundary. This floodplain is shaped as a classic "bottleneck", where the narrow rocky river channel above Snoqualmie Falls causes deep and broad flooding in the upstream community. For this reason, the 205 project would concentrate on the narrow channel to help reduce flood depths and damages upstream.

The Snoqualmie Flood Reduction Project has three major elements, which are:

- Rock excavation along the right bank (looking downstream), just upstream of the hydroelectric intake
- Earth excavation along the left bank, just downstream of the SR 202 bridge
- Removal of a partially-failed railway bridge

This image shows the major project elements along the Snoqualmie River channel in the City of Snoqualmie. The river flows generally to the Northwest. Snoqualmie Falls and its plunge pool are visible in the upper-left corner. Also visible: Fall City-Snoqualmie Road (SR 202) bridge across the river, and new Snoqualmie Parkway (still under construction in this 1996 photo).



The outlines on this air photo show the proposed limit of project excavation. The photo shows Snoqualmie Falls and its plunge pool at the upper left corner. The Salish Lodge is near the top center of the photo, and the SR 202 bridge is at the lower right. As shown, the excavation would extend to nearly the middle of the river channel.

The following documents describe many of the project details, as well as the needs for which the project is designed. These documents were developed for the County Council approval process, which was completed in July of 2002. (Adobe Acrobat).

1. Transmittal Letter from Executive Sims to council
2. WLRD Presentation to council in support of Executive proposal (2.8 Mg)
3. Council Staff Report
4. Council Motion (project approval)

The Corps of Engineers and the City of Snoqualmie have entered agreements with King County that specify agency roles and responsibilities for completion of this project. Following

are those agency agreements.

1. Contract with Corps of Engineers
2. Contract with City
3. Project Management Plan

All of the required permits have been approved, and the Corps has advertised the construction contract to prospective bidders. The Corps solicitation is available on-line and includes the complete construction plans and specifications. Following is an excerpt of selected plan sheets in .pdf format, as well as links for the complete solicitation on the Corps web page.

1. Selected plan sheets (3.0 Mg)
2. Corps solicitation
3. On Screen Takeoff software for viewing plan sheets in Corps solicitation

Construction is scheduled to occur in 2004. Permit conditions restrict the in-water excavation to the July-September time period when river flows are low.

The project is expected to reduce the depth and frequency of flooding in Snoqualmie, where more than 600 homes and most of the commercial area are subject to severe flood damages. The Corps estimates that the project will prevent more than half of the economic damages caused by this flood problem, with an average annual savings of \$837,000. Total project cost is estimated at \$8.76 million, of which the Corps will fund \$4.86 million (55%).

Because the project will move flood water through the Snoqualmie area more readily, it may have a small adverse impact on downstream flood problems. This relationship was studied in detail by the Corps of Engineers. Their calculations show that downstream flooding may become as much as 0.1 foot deeper at the peak of a 100-year flood. Impacts would be smaller during lesser (more frequent) floods, and would diminish with distance from Snoqualmie. Still, this adverse impact is enough that the project includes a Downstream Assistance Program (DAP) that can help to address flood problems where this impact would occur.

The Snoqualmie Flood Reduction Project is proposed by the U.S. Army Corps of Engineers. King County and the City of Snoqualmie share the local sponsorship responsibilities for this Corps of Engineers project. Staff contacts at the three agencies are:

Tim Shaw, Project Manager, U.S. Army Corps of Engineers, 206-764-6978,
timothy.m.shaw@usace.army.mil

Kirk Holmes, Public Works Director, City of Snoqualmie, 425-831-4919 ext. 12,
kholmes@ci.snoqualmie.wa.us

Tom Bean, Senior Engineer, King County Flood Hazard Reduction Services Section, 206-296-8377, tom.bean@metrokc.gov

For questions about information on this page,
please contact [Tom Bean](#)

Related Information:

For questions about the
Water and Land Resources Web Page, please
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**INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE CITY OF
SNOQUALMIE
FOR COST SHARING OF US ARMY CORPS OF ENGINEERS SECTION 205
SNOQUALMIE RIVER FLOOD CONTROL PROJECT**

**I
RECITALS**

1.1 On December 17, 1996, King County (the County) and the City of Snoqualmie (the City) executed an interlocal agreement entitled "Interlocal Agreement Between King County and the City of Snoqualmie for the Joint Local Sponsorship of the U.S. Army Corps of Engineers Section 205 Snoqualmie River Flood Control Project." The purpose of that interlocal agreement was to establish joint local sponsorship of a proposed flood control project and to provide for cost sharing of the U.S. Army Corps of Engineers (the Corps) project feasibility study.

1.2 The Corps published its feasibility study in December 1999, entitled "Final Detailed Project Report and Environmental Assessment for the Snoqualmie River at Snoqualmie Flood Damage Reduction Study in King County, Washington." The feasibility report concluded that a flood reduction project with three elements (right bank widening, left bank widening and removal of abandoned railroad bridge) would be feasible and cost effective.

1.3 On the basis of the feasibility report, the Corps has produced plans and specifications for the proposed flood control project. The estimated project costs is Three Million Five Hundred Sixty-one Thousand Dollars (\$3,561,000), of which up to 65% will be paid by the Corps and the remainder, at least 35%, will be paid by the local sponsor. Prior to solicitation of bids for the project, the Corps requires that the local sponsor execute a Project Cooperation Agreement. The proposed Project Cooperation Agreement for the Corps 205 Snoqualmie River Flood Damage Reduction Project is attached hereto as Exhibit A.

1.4 The County and City have agreed to jointly fund, with a contribution from the Corps, a downstream mitigation program associated with the project with a joint contribution of Two Hundred Thirty One Thousand Dollars (\$231,000.00), notwithstanding that the Corps has included only One Hundred Fifty Thousand Dollars (\$150,000) as project costs in the project budget and will be obligated for only Ninety Seven Five Thousand Hundred Dollars (\$97,500) toward the downstream mitigation program. The total amount to be expended for the downstream mitigation program is Three Hundred Twenty-eight Thousand Five Hundred Dollars (\$328,500).

1.5 The County will be the designated "local sponsor" for purposes of signing the Project Cooperation Agreement with the Corps; however, the County and City desire to continue their joint local sponsor relationship as between themselves, and to share the

local sponsor's financial obligations equally, as set forth in this agreement, which is made and entered pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

On the basis of the foregoing premises, and in consideration of the mutual undertakings of the parties herein, the parties agree as follows:

II AGREEMENT

2.1 King County, through the Water and Land Resources Division of the Department of Natural Resources, shall serve as the nominal local sponsor of the Corps Section 205 Snoqualmie River Flood Control Project, and shall execute the Project Cooperation Agreement on behalf of the local sponsor.

2.2 King County and Snoqualmie shall be joint local sponsors of the Corps Section 205 Snoqualmie River Flood Control Project for all purposes other than those specified in section 2.1, and shall jointly exercise all rights and responsibilities of the local sponsor under the Project Cooperation Agreement and in all other matters related to the project. The County will share with the City any status reports or other information that may be delivered to the County as the official project sponsor. The County will further seek consensus with the City on significant actions or decisions.

2.3 The County and the City shall each contribute fifty percent (50%) of the local match, which is estimated to be One Million Two Hundred Forty-six Thousand Three Hundred Fifty Dollars (\$1,246,350), or Six Hundred Twenty-three Thousand One Hundred Seventy-five Dollars (\$623,175) for each. The actual local cost may exceed this amount, and the County and City shall each pay fifty percent (50%) of the actual local cost, up to the cap on the local match as set forth in the Project Cooperation Agreement. Each party shall be responsible for payment of their respective share by check or warrant at such times as payments are due pursuant to the Project Cooperation Agreement.

2.4 The County shall appoint an equal number of City and County representatives to the Project Coordination Team established in Article V of the Project Cooperation Agreement. The City shall designate the City appointees.

2.5 The County shall administer the downstream mitigation fund referred to in the Project Cooperation Agreement, which establishes local and federal cost shares totaling One Hundred Fifty Thousand Dollars (\$150,000) for the fund. This amount is included in the cost shares specified in Section 2.3 above. In addition to the amounts specified in Section 2.3, the County and the City shall each contribute Eighty-nine Thousand Two Hundred Fifty Dollars (\$89,250) to the downstream mitigation fund, which will total Three Hundred Twenty Eight Thousand, Five Hundred Dollars (\$328,500), including the sum of Ninety Seven Thousand Five Hundred Dollars (\$97,500) for which the Corps is obligated. The County's expenses for administering the fund shall count as part of its contribution to the fund. The City shall pay the County a

total sum not to exceed its contribution of One Hundred Fifteen Thousand Five Hundred Dollars (\$115,500) in one or more payments payable at such times as to enable the County to accomplish the downstream mitigation program. The County shall require payment by the City neither in greater amounts nor sooner than ninety days prior to the time such funds are to be expended by the County for mitigation program purposes. The County shall return to the City their proportional share of any surplus of the City's contribution that might remain when the County closes out the downstream mitigation fund.

2.6 The County and City shall share equally in the responsibility for project maintenance as specified in the Operations and Maintenance Manual to be prepared by the Corps. It is the specific understanding of the County and City that maintenance will be as specified in section 6.02 of the feasibility study, i.e., the project is expected to require only occasional maintenance approximately once every ten to twenty years, at an annualized cost of approximately Three Thousand Dollars (\$3,000). To the extent that the maintenance obligations require future appropriations beyond current appropriation authority, such obligations are contingent upon the appropriation of sufficient funds to complete such maintenance. If no such appropriation is made, the obligations contained in this section 2.6 will terminate. If maintenance varies significantly from this estimate, any obligation of either the County or City above such amounts shall require further specific authorization by the respective legislative body of each.

2.7 The City shall acquire permanent real estate rights for maintenance and operation of the project at the expiration of the ninety year lease from the State of Washington Department of Natural Resources in 2093 for those project lands lying within the bed of the Snoqualmie River if so directed by the Corps of Engineers.

2.8 The County and City agree to seek in good faith the resolution of issues through negotiation and other forms of non-binding alternative dispute resolution mutually acceptable to the parties. In the event disputes cannot be so resolved, the County and City shall forward the dispute to their respective Executive Officers for resolution.

2.9 No separate legal entity is to be created nor is any property to be jointly acquired or owned pursuant to this agreement.

2.10 Each party shall protect, defend, indemnify, and save harmless the other party, and that other party's respective officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments and/or awards of damages, arising out of or in any way resulting from such party's own negligent acts or omissions. Each party agrees that its obligation under this section extend to any claim, demand and/or cause of action brought by or on behalf of its employees or agents against the other party. For this purpose, each party, by mutual negotiation, hereby waives with respect to the other party only any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any party incurs any judgment, award or cost arising

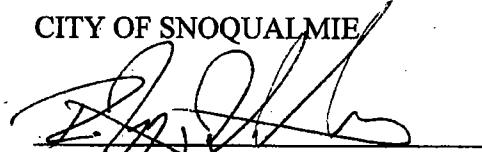
therefrom, including attorney's fees, to enforce the provisions of this section, all cash fees, expenses and costs shall be recoverable from the responsible party to the extent of that party's culpability.

2.11 This agreement shall be effective immediately upon execution by both the County and City, shall remain in full force and effect for the life of the project, including any required maintenance period, and may be amended only by written agreement of both parties authorized by their respective legislative bodies.

KING COUNTY

CITY OF SNOQUALMIE



King County Executive


Mayor

Approved as to form:

Approved as to form:


Deputy Prosecuting Attorney


City Attorney

2004-079

PROJECT COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

KING COUNTY, WASHINGTON

FOR CONSTRUCTION OF THE

SNOQUALMIE RIVER SECTION 205

FLOOD DAMAGE REDUCTION PROJECT

THIS AGREEMENT is entered into this 13th day of January, 2003, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer for the Seattle District (hereinafter the "District Engineer") and King County, Washington (hereinafter the "Non-Federal Sponsor"), represented by the King County Executive.

WITNESSETH, THAT:

WHEREAS, the Snoqualmie River Section 205 Flood Damage Reduction Project at Snoqualmie, Washington (hereinafter the "Project") was approved for construction by CENWD-CM-P on September 30, 2002 pursuant to the authority contained in Section 205 of the Flood Control Act of 1948, as amended, 33 U.S.C. 701s;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Project, as defined in Article I.A. of this Agreement;

WHEREAS, Section 103(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, under Section 205 of the Flood Control Act of 1948, as amended, the Government may expend up to \$7,000,000 on a single flood control project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

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separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Non-Federal Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the Snoqualmie Flood Damage Reduction Project, which includes the following major elements: (1) a right and left bank channel widening element just upstream of Snoqualmie Falls and downstream of the Highway 202 bridge, (2) the removal of an abandoned and partially collapsed railroad bridge upstream of the Highway 202 bridge and just downstream from the main section of the city of Snoqualmie, and (3) certain downstream mitigation activities, to be paid from a fund of \$150,000, which amount shall be included as a portion of the total project costs as hereinafter defined, and which shall be administered by King County as part of its overall downstream mitigation efforts, each of these three elements being as generally described in the Final Detailed Project Report and Environmental Assessment for the Snoqualmie River at Snoqualmie Flood Damage Reduction Study in King County, Washington, dated December 1999, and approved by Commander, Northwestern Division on February 16, 2000.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: engineering and design costs during the preparation of contract plans and specifications; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

July 23, 2002

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.D.1. and II.D.3. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized as between the Non-Federal Sponsor and the Facility owner in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

July 23, 2002

**ARTICLE II - OBLIGATIONS OF THE GOVERNMENT
AND THE NON-FEDERAL SPONSOR**

A. The Government, subject to the availability of funds and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$3,561,000.00, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than six months. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Chief of Engineers makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions,

July 23, 2002

which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute a minimum of 35 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

3. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 35 percent of total project costs.

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested

July 23, 2002

services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

J. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

K. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a Non-Federal interest to have prepared within one year after the date of signing this Agreement, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by Non-Federal interests to preserve the level of flood protection provided by this Project. As required by Section 402, as amended, the Non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

L. Crediting and/or reimbursement is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and the

July 23, 2002

Copeland Anti-Kickback Act (40 U.S.C. 276c). Crediting and reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

**ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS,
AND PUBLIC LAW 91-646 COMPLIANCE**

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general

July 23, 2002

written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraph A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests,

July 23, 2002

plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be

July 23, 2002

acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of

Washington would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. Crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (40 U.S.C. 276c). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations and non-Federal proposed work; the Government's cost projections; final inspection of the entire Project or functional portions of the Project;

July 23, 2002

preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By January 2nd of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$3,561,000, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$424,350. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Articles II.D.1. and II.D.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Seattle District," to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or presenting the Government with an irrevocable letter of credit acceptable to the Government for

July 23, 2002

the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

July 23, 2002

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, Seattle District," to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete; however, the Non-Federal Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If,

July 23, 2002

after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

Subject to the provisions of Article XX of this agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards

July 23, 2002

and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army." The Non-Federal Sponsor is also required to comply with all applicable federal labor standards requirements including, but not limited to the Davis-Bacon Act (40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act (40 U.S.C. 276c).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Government shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either

July 23, 2002

party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government,

July 23, 2002

in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

**Manager
Water and Land Resources Division
King County Department of Natural Resources and Parks
201 South Jackson Street, Suite 600
Seattle, WA 98104**

If to the Government:

**Chief, Planning Branch, PPMD
Seattle District, Corps of Engineers
4735 East Marginal Way So.
Seattle, WA 98134-2385**

July 23, 2002

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount the Government is authorized to expend for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 35 percent borne by the Non-Federal Sponsor, and 65 percent borne by the Government.

ARTICLE XIX - LIMITATION ON GOVERNMENT EXPENDITURES

In accordance with Section 205 of the Flood Control Act of 1948, as amended, the Government's financial participation in the Project is limited to \$7,000,000 which shall include all Federal funds expended by the Government for planning, design, and implementation of the project except for coordination account funds expended prior to the first work allowance for study initiation. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

July 23, 2002

ARTICLE XX – OBLIGATIONS OF FUTURE APPROPRIATIONS

a. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by King County of the State of Washington, where creating such an obligation would be inconsistent with Article IV of the King County Charter for King County, Washington.

b. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

KING COUNTY, WASHINGTON

BY: *Ralph H. Graves*
RALPH H. GRAVES
Colonel, Corps of Engineers
District Engineer

BY: *Pam Bissonnette*
PAM BISSONNETTE
Director
Department of Natural Resources and
Parks

CERTIFICATE OF AUTHORITY

I, Joseph B. Rochelle, do hereby certify that I am an attorney for King County, Washington, that King County, Washington is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and King County, Washington in connection with the Snoqualmie River Section 205 Flood Damage Reduction Project and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of King County, Washington have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of January 2003.

Joseph B. Rochelle
JOSEPH B. ROCHELLE
Senior Deputy Prosecuting Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 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) 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

KING COUNTY, WASHINGTON

Pam Bissonnette
PAM BISSONNETTE, DIRECTOR
Department of Natural Resources and Parks

DATE: 1/2/03

CERTIFICATION OF LEGAL REVIEW

The Project Cooperation Agreement for the Snoqualmie River Section 205 Flood Damage Reduction Project has been fully reviewed by the Office of Counsel, USAED, Seattle District, Washington.

 1/9/03
ANN M. GERNER
Assistant District Counsel