

**LOWER COLUMBIA FISH RECOVERY BOARD
PROJECT AGREEMENT**

Program: Cowlitz Restoration and Recovery (CRR) Fund

Project Number and Name:

Project Sponsor:

Tax ID:

I. PARTIES TO THIS AGREEMENT

This Project Agreement (Agreement) is entered into between the Lower Columbia Fish Recovery Board (LCFRB), 11018 NE 51st Circle, Vancouver Washington, 98682 and the XXX (Sponsor), XXX, and collectively referred to as the “parties”.

II. PURPOSE OF THE AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Cowlitz Restoration and Recovery (CRR) Fund, a dedicated account for the Upper Cowlitz and Cispus Rivers, funded through Tacoma Power. The grant is administered by the LCFRB to the Sponsor for the project named above per the director’s authority granted in RCW 77.85.200.

III. PERIOD OF PERFORMANCE

The period of performance begins on the date of mutual acceptance (project start date) and ends on XXX XX, 20XX (project end date). No allowable costs incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment to this Agreement.

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

IV. DESCRIPTION OF PROJECT

XX

V. SCOPE OF WORK AND BUDGET

The Sponsor shall undertake the Project as described in this Agreement, and in accordance with the Incorporated Documents listed in Section 22.

VI. PROJECT FUNDING

The total grant award provided by the LCFRB for this project shall not exceed \$_____. The LCFRB shall not pay any amount beyond that approved for grant funding unless an additional amount has been approved in advance by the LCFRB administration and incorporated by written amendment into this Agreement. The Sponsor shall be responsible for all total project costs that exceed this amount. The matching share provided by the Sponsor shall be indicated below:

	Dollar Amount
Cowlitz Restoration and Recovery Fund	\$XX
Sponsor Match	\$XX
Total	\$XX

The Sponsor agrees that funds received from the LCFRB can be expended for only public purposes and the Sponsor will keep identifiable financial and performance books and records of all funds received pursuant to this Agreement from the LCFRB detailing the receipts and expenditures of such funds; that these detailed accounting records shall be made available at all reasonable times to any county, state, or federal auditor, whose duties include auditing these funds.

VII. REIMBURSEMENT OF COSTS

Invoices including match documentation may be submitted monthly or quarterly by the fifteenth (15th) day of the month to the LCFRB for work completed. All invoices and documentation for match must be itemized to include the minimum requirements listed in the CRR Project Management Manual (LINK).

The Sponsor is responsible for providing cost allocation documentation for all employer-paid benefits and overhead rates.

Mileage and other travel-related costs such as lodging, meals and parking shall be documented on reimbursement forms and include copies of receipts for all expenses, unless using state per diem and travel rates.

An administrative fee for secondary sponsors and subcontractor services shall not be added to the cost of invoices.

If agreed to in advance, and, in writing by the LCFRB, the Sponsor may invoice the LCFRB for additional charges incurred in the event of an unanticipated increase in project-related taxes, fees or similar levies; or if project-related services, facilities or equipment must be modified to comply with new laws or regulations or changes to existing laws or regulations that become effective after execution of this Agreement.

VIII. RETAINAGE HELD UNTIL PROJECT COMPLETE

The LCFRB reserves the right to withhold disbursement of up to ten percent (10%) of the total amount of the grant to the Sponsor until the project has been completed. A project is considered “complete” when:

- All approved or required activities outlined in the CRR Project Management Manual (LINK) and Agreement are done;
- A final project report is submitted and accepted by the LCFRB;
- Any other required documents are complete and submitted to the LCFRB;
- A final reimbursement request is submitted and accepted by the LCFRB;
- The completed project has been accepted by the LCFRB; and
- Fiscal transactions are complete.

IX. ADVANCE PAYMENTS

See the CRR Project Management Manual for information on advance payments.

X. PROGRESS REPORTING

The Sponsor will provide written quarterly progress reports. The report will summarize activities completed during the reporting period, the current status of all tasks and percent complete, and the task budget and percent spent to date. The report shall identify problems encountered, their impacts to the schedule and budget and corrective actions taken or planned. The LCFRB will provide a progress report template that can be used and emailed to the LCFRB administration.

Reimbursement payments will be delayed if progress reporting is not current.

XI. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement shall be interpreted in light of the information provided in the Sponsor’s application and the project summary under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope of work activities and reports incorporated herein by reference. Provided, to the extent that information contained in such documents is inconsistent with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This “Agreement” as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definition of the Standard Terms and Conditions.

XII. AMENDMENTS MUST BE IN SIGNED WRITING

Except as provided herein, no amendment/deletions of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by both parties. Except, extensions of the period of performance and minor scope adjustments need only be signed by LCFRB administration, unless the consent of the Sponsor to an extension is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

Time extensions are up to the discretion of the LCFRB administration.

XIII. COMPLIANCE WITH APPLICABLE LAWS, STATUTES, RULES, AND LCFRB POLICIES

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, LCFRB published policies, applicable manuals, exhibits, and any applicable state and federal program and accounting rules as of the effective date of this agreement, all of which are incorporated herein by this reference as if fully set forth. Provided, any update in law, rule, policy, or manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, the CRR Project Management Manual is deemed applicable and shall apply as terms of this Agreement.

For the purpose of this Agreement, any rules and regulations imposed as a condition of the FERC License for the Cowlitz Hydroelectric Project will be followed upon communication of those requirements by Tacoma Power to the sponsor, included as incorporated documents to this Agreement, and shall apply as terms of this Agreement.

XIV. SPECIAL CONDITIONS

None

XV. AGREEMENT CONTACTS

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

Sponsor name Attn:	Lower Columbia Fish Recovery Board Attn: Denise Smee 11018 NE 51 st Circle Vancouver WA 98682
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These addresses shall be effective until receipt by one party from the other of a written notice of any change.

XVI. ENTIRE AGREEMENT

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

XVII. EFFECTIVE DATE

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

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

Sponsor

By: _____

Date: _____

Lower Columbia Fish Recovery Board

By: _____

Date: _____

Steve Manlow
Executive Director

GENERAL TERMS AND CONDITIONS TO THE PROJECT AGREEMENT

1. Performance by the Sponsor

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

2. Assignment

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the LCFRB.

3. Responsibility for Project

While the LCFRB undertakes to assist the Sponsor with the project by providing a grant pursuant to this agreement, the project itself remains the sole responsibility of the Sponsor. The LCFRB undertakes no responsibilities to the Sponsor, a secondary sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is sponsored by more than one entity, any and all sponsors are equally responsible for the project and all post-completing stewardship responsibilities.

4. Long-term Obligations

For this restoration project, the Sponsor's long-term obligations for the project area shall be for a minimum of ten (10) years, or more as specified in the Landowner Agreement, beginning at project completion, unless otherwise identified in the Agreement or as approved by LCFRB. In all cases, the project area may not, without prior written approval of LCFRB, be converted to a use other than that for which funds were originally approved.

5. Independent Capacity of the Sponsor

The Sponsor is an independent contractor under this Agreement. This Agreement gives no rights or benefits to anyone not named as a party to this Agreement, and there are no third party beneficiaries to this Agreement.

The parties intend that the Sponsor be an independent contractor, responsible for its own employer/employee benefits such as Workmen's Compensation, Social Security, Unemployment, and health and welfare insurance. The parties agree that the Sponsor personal labor is not the essence of this Agreement; that the Sponsor will own and supply its own equipment necessary to perform this Agreement; that the Sponsor will employ its own employees; and, that except as to defining the work and setting the parameters of the work, the Sponsor shall be free from control or direction of the LCFRB over the performance of such services.

The Sponsor represents that it is capable of providing the services identified in the scope of work.

6. Conflict of Interest

Notwithstanding any determination by the Ethics Board or other tribunal, LCFRB may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by LCFRB that there is a violation of the Ethics in Public Service Act, RCW 42.52 (LINK);

LCFRB Bylaws or policies; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

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

- 7. Equal Opportunity Employment.** The Sponsor shall not discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital or veteran status, political affiliation, or any other legally protected status in employment or the provision of services.

The Sponsor shall take affirmative action to ensure that employees are employed and treated during employment without discrimination because of their race, color, religion, sex, national origin, creed, marital status, age, Vietnam Era veteran status, disabled veteran status or disability. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or selection for training, including apprenticeships and volunteers.

The Sponsor shall not, on the grounds of race, color, sex, religion, national origin, creed, age or disability:

- (1) Deny an individual any services or other benefits provided under this Agreement.
- (2) Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner from those provided to others under this Agreement.
- (3) Subject an individual to unlawful segregation, separate treatment, or discriminatory treatment in any manner related to the receipt of any service(s), and/or the use of the Sponsor's facilities, or other benefits provided under this Agreement.
- (4) Deny any individual an opportunity to participate in any program provided by this Agreement through the provision of services or otherwise, or afford an opportunity to do so which is different from that afforded others under this Agreement. The Sponsor, in determining (a) the types of services or other benefits to be provided or (b) the class of individuals to whom, or the situation in which, such services or other benefits will be provided or (c) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, religion, national origin, creed, age, or disability.

The Sponsor agrees to utilize minority-owned and women-owned businesses to the maximum extent possible in the servicing of this Agreement.

- 8. Noncompliance with Nondiscrimination Plan.** In the event of the Sponsor's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Sponsor may be declared ineligible for further Agreements with the LCFRB. The LCFRB shall, however, give the Sponsor reasonable time to cure this noncompliance. Any dispute may be resolved with the "disputes" procedure set forth herein.

9. Wage and Hour Compliance. The Sponsor shall comply with all applicable federal and state provisions concerning wages and conditions of employment, fringe benefits, overtime etc., as now exists or is hereafter enacted during the term of this Agreement, and shall save the LCFRB harmless from all actions, claims, demands, and expenses arising out of the Sponsor's failure to so comply.

10. Subcontracts. The Sponsor may use the services of a sub-contractors to perform a portion of its obligations under this Agreement however there shall be no markup on charges presented for these services. Sub-contractors are obligated to comply with the invoicing and reimbursement policies set forth in this Agreement.

11. Insurance.

a. **Insurance of the Sponsor.** The Sponsor will maintain throughout the performance of this Agreement the following types and amounts of insurance:

- i. Worker's Compensation and Employer's Liability Insurance as required by applicable state or federal law.
- ii. Comprehensive Vehicle Liability Insurance covering personal injury and property damage claims arising from the use of motor vehicles with combined single limits of one million dollars and zero cents (\$1,000,000).
- iii. Commercial General Liability Insurance covering claims for personal injury and property damage with combined single limits of one million dollars and zero cents (\$1,000,000).
- iv. Professional Liability (Errors and Omissions, on a claims-made basis) Insurance with limits of one million dollars and zero cents (\$1,000,000).
- v. The Sponsor agrees to provide the LCFRB with evidence of liability insurance naming the LCFRB as an additionally insured party with respect to ii and iii above.

b. **Interpretation.** Notwithstanding any other provision(s) in this Agreement, nothing shall be construed or enforced so as to void, negate or adversely affect any otherwise applicable insurance held by any party to this Agreement.

12. Mutual Indemnification. The Sponsor agrees to indemnify and hold harmless LCFRB, its officials and its employees from and against any and all loss, cost, damage, or expense of any kind and nature (including, without limitation, court costs, expenses, and reasonable attorneys' fees) arising out of injury to persons or damage to property (including, without limitation, property of LCFRB, the Sponsor, and their respective employees, agents, licensees, and representatives) in any manner caused by the negligent acts or omissions of the Sponsor in the performance of its work pursuant to or in connection with this Agreement to the extent of the Sponsor's proportionate negligence, if any.

This indemnification clause shall also apply to any and all causes of action arising out of the performance of milestones and work activities under this Agreement. If Sponsor contracts for services or activities utilizing funds provided in whole or in part by this Agreement all such contracts shall include a provision that LCFRB is not liable for damages or claims from damages arising from any contractor or subcontractor's performance or activities under the terms of the contracts.

As part of this indemnity Agreement, the Sponsor specifically agrees to assume potential liability for personal injury claims by its own employees that may arise during LCFRB's performance under this Agreement, and the Sponsor hereby waives its immunity from such claims under RCW Title 51.

13. Interpretation. Releases from, indemnifications against, limitations on, and assumptions of liability and limitations on remedies expressed in this Agreement shall apply even in the event of breach of Agreement or warranty, fault, or tort including negligence, strict liability, statutory or any other cause of action (except for willful or reckless disregard of obligations) of the party released or indemnified, or whose liability is limited or assumed, or against whom remedies are limited. Party, as used herein, includes the named parties, their officers, employees, agents, subcontractors, and affiliates.

14. Limitation of Liability. Notwithstanding any other provision in this Agreement to the contrary, the Sponsor's liability hereunder shall be limited as follows: (a) for insured liabilities arising out of the Sponsor's negligence, to the amount of insurance coverage specified in Article 8 above; (b) for uninsured liabilities, to fifty percent (50%) of the fee earned by the Sponsor under this Agreement. In no event shall the Sponsor's liability exceed the aforementioned limits of liability.

Each party's liability for damages provided under this Agreement shall be limited to liability for direct damages and shall in no event include liability for the other party's or their respective agents or employees remote, punitive, consequential or indirect damages for lost profits, loss of use, lost opportunity, financing, interest expense, business interruption or productivity or production loss, regardless of the breach of Agreement, breach of warranty, tort (including negligence), strict liability, or otherwise.

15. Data, Documents and Records. The Sponsor shall be entitled to rely upon the accuracy and completeness of all data furnished by LCFRB to the Sponsor that is used by the Sponsor in providing services under this Agreement. All data, documents and records provided by the LCFRB shall be used and maintained solely for this project and shall be returned to the LCFRB at the completion of the Agreement. Data, documents and records provided by the LCFRB shall not be sold, transferred or used for any purpose other than completion of this project. The Sponsor shall have the right to retain one copy of such data for its permanent project records.

The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine (9) years from the date LCFRB deems the project complete, as defined in the project reimbursement sections of the CRR Project Management Manual and this Agreement. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

16. Public Records. Sponsor acknowledges that the LCFRB is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the LCFRB shall be public record as defined in RCW 42.56. Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the LCFRB, Sponsor understands that the LCFRB may be requested to disclose or copy that record under the state public records law. The Sponsor warrants that it possesses such legal rights as are necessary to permit LCFRB to disclose and copy such document to respond to a request under the state public records laws. The Sponsor hereby agrees to release the LCFRB from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying.

17. Ownership and Use of Documents and Electronic Media Deliverables. All completed reports and other data or documents provided or prepared by the Sponsor in accordance with this Agreement are the property of LCFRB, and may be used by LCFRB. Ownership shall transfer to LCFRB only if the Sponsor has been paid in full for services under the terms of this Agreement. Third party use of reports, data, or other deliverables prepared in accordance with this Agreement without the consent of the Sponsor is at the risk of the third party. LCFRB shall release, defend, indemnify and hold harmless the Sponsor from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any reports, data, documents, drawings, specifications, or other work product prepared by the Sponsor except use by LCFRB on those portions of the project for which such items were prepared.

All data, reports, equipment and other materials purchased by the Sponsor in direct support of this project are the property of LCFRB and shall be transferred to the LCFRB.

Any post-delivery changes to the Sponsor electronic media or Geographic Information System (“GIS”) deliverables by anyone other than the Sponsor shall be the responsibility of the LCFRB. LCFRB agrees to remove the title blocks off of the Sponsor’s GIS files if LCFRB alters such files and further agrees to defend, indemnify and hold the Sponsor harmless from all claims, costs, expenses, damages or liabilities arising out of or resulting from use of any GIS deliverables that have been altered by LCFRB or anyone else to whom LCFRB may have provided such GIS deliverables. The Sponsor’s record set of GIS files shall prevail in determining whether any alternations have been made to such files.

Because data stored on electronic media can deteriorate undetected or can be modified without the Sponsor’s knowledge, LCFRB agrees that the Sponsor will not be held liable for the completeness, correctness, readability, or compatibility of the electronic media after an acceptance period of thirty (30) days after delivery of the electronic files. During the thirty (30) days acceptance period, LCFRB may review and examine the electronic files; any errors detected during this time will be corrected by the Sponsor as part of the basic Agreement. Any changes requested after the acceptance period will be considered additional services to be performed on a time and materials basis, at the Sponsor’s standard cost plus terms and conditions.

18. Resolution of Disputes. The law of the State of Washington shall govern the interpretation of and the resolution of disputes under this Agreement. Venue for any action pursuant to this Agreement either interpreting the Agreement or enforcing a provision of the Agreement, or attempting to rescind or alter the Agreement shall be brought in Clark County.

19. Termination for Cause. If the Sponsor fails to fulfill in a timely manner any of the covenants of this Agreement, the LCFRB shall have the right to terminate this Agreement by giving the Sponsor seven (7) days’ notice, in writing, of the LCFRB’s intent to terminate and the reasons for said termination.

Upon termination for whatever reason, all finished and unfinished documents, data, studies, drawings, service maps, models, photographs and other work product resulting from this Agreement shall, at the option of the LCFRB, become the LCFRB’s property. The Sponsor shall be entitled to payment for work completed and this Agreement shall terminate.

In the event the Sponsor is determined to be in default of this Agreement the LCFRB shall be entitled to damages, computed by subtracting from the cost to the LCFRB in completing any unfurnished work, the unpaid balance of the agreed upon Agreement price, and the LCFRB may withhold any payments owed

to the Sponsor for the purposes of set off until such time as the exact amount of damages can be computed.

In the event this Agreement is terminated by LCFRB, after any portion of the grant amount has been paid to the sponsor under this Agreement, LCFRB may require that any amount paid be repaid for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

- 20. Termination for Convenience.** Notwithstanding the term of this Agreement either party may terminate this Agreement without cause by giving the other party **thirty (30) days** written notice of said termination.
- 21. Suspension.** LCFRB reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by LCFRB to terminate the Agreement.
- 22. Non-Appropriations.** If all or any part of the services to be performed hereunder are to be funded by revenues granted to the LCFRB from federal or state agencies and, in the event said grant monies should for any reason not be received by the LCFRB or should be terminated by the granting agency, then this Agreement shall terminate without damages to either party. PROVIDED THAT the Sponsor shall be entitled to be paid for the work performed satisfactorily completed and accepted by the LCFRB to date to the extent the LCFRB is entitled to receive reimbursement for any such payment; and, in that regard, the Sponsor agrees that it understands the LCFRB's source of funding for this project and assumes the risk involved in undertaking a project on a reimbursable basis.
- 23. Recovery of Payments.**
 - 1. Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/ or the provisions of the Agreement, or meet its promised matched percentage of the project total, LCFRB reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
 - 2. Overpayment Payments.** The Sponsor shall reimburse LCFRB for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of written demand by LCFRB. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.
- 24. Covenant Against Contingent Fees**

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure the Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. LCFRB shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount of consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

25. Integration, Modification and Severability. This Agreement, including all amendments, shall be binding upon the parties and their respective successors and assigns. This is the entire Agreement between the parties, there are no other agreements or representations not set forth herein, and this Agreement incorporates and supersedes all prior negotiations, agreements, and representations. This Agreement may not be modified except in writing signed by an authorized representative of each party.

These terms and conditions survive the completion of the services under this Agreement and the termination of this Agreement, whether for cause or for convenience.

If any provision of this Agreement is ever held to be unenforceable, all remaining provisions will continue in full force and effect. The Sponsor and the LCFRB agree that they will attempt in good faith to replace any unenforceable provision with one that is valid and enforceable, and which conforms as closely as possible to the original intent of any unenforceable provision.

26. Incorporated Documents. The following exhibits and attachments are incorporated in this Agreement as if fully set forth herein:

ATTACHMENT A: Scope of Work including budget, milestones and deliverables, and as may be amended;

27. Headings, Assignment and Waiver. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Neither party to this Agreement shall assign its duties and obligations hereunder without the prior written consent of the other party. A waiver by any party of any provision or a breach of this Agreement must be provided in writing and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.