

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Accept the King County Flood Control District Opportunity Grant for \$154,890
DEPARTMENT:	Public Works
PRESENTED BY:	Jesus Sanchez, Operations Manager Rika Cecil, Environmental Programs Coordinator

PROBLEM/ISSUE STATEMENT:

Meridian Park is a 1.1 acre wetland within the Thornton Creek watershed. Surrounded on three sides by roads and single-family homes that create a 46% impervious surface, the wetland's hydrology and biological processes are compromised and result in high water volumes and flow rates that, in turn, can flood downstream properties and destroy aquatic and riparian habitat.

Funds from the King County Flood Control District Opportunity Grant will be used to conduct a feasibility study of the wetland and hydrologic functions downstream with the goal of restoring the natural habitat and functions of the wetland ecosystem and improving downstream conveyance. There are still some last minute negotiations going on between the various attorneys regarding the final wording of the Indemnity section; so we are requesting passage by the Council of the Interlocal Agreement "in substantially the form as attached".

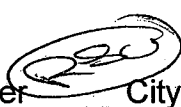
FINANCIAL IMPACT:

The \$154,890 grant will fund the feasibility study, project design plans and limited construction. If the current level of funding is not sufficient based on engineering construction estimates, the City will submit the design plans to the Public Work Trust Fund Board for construction financing.

RECOMMENDATION

Staff recommends that Council accept the King County Flood Control District Grant and authorize the City Manager to sign the Interlocal Agreement in substantially the form as attached.

Approved By:

City Manager 

City Attorney 

ATTACHMENT A - Interlocal Cooperation Agreement Between the King County Flood Control District and the City of Shoreline for Opportunity Fund Projects



King County

Water and Land Resources Division

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 600

Seattle, WA 98104-3855

206-296-6519 Fax 206-296-0192

TTY Relay: 711

April 23, 2009

Brian Landau
City of Shoreline
Surface Water and Environmental Services
17544 Midvale Ave N
Shoreline, WA 98133

RE: Sub-Regional Opportunity Fund Interlocal Cooperation Agreement

Dear Mr. Landau:

Enclosed in this package is an Interlocal Cooperation Agreement between the City of Shoreline and the King County Flood Control District governing the administration of the Flood District's Sub-Regional Opportunity Fund (Opportunity Fund).

The Opportunity Fund was established by the Flood Control District Board of Supervisors to provide jurisdictions within King County financial resources to support local flood control, stormwater control, or cooperative watershed management projects or programs. Ten percent of the Flood District's annual levy revenues are allocated to this fund, and funds are distributed based on municipalities' proportional share of King County's total assessed valuation.

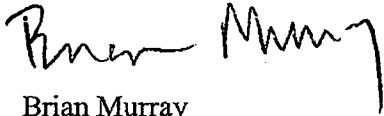
Your project proposal for 2008-9 funding is attached to the enclosed agreement as Attachment A. In subsequent years, eligible Opportunity Fund project applications will be attached to this agreement following project approval by the Flood District Board of Supervisors; thus, the agreement provides the terms for present and future Opportunity Fund projects.

The Interlocal Cooperation Agreement authorizes the disbursement of 2008 and 2009 opportunity funds to your jurisdiction. Upon execution of the agreement, the Flood District will distribute ten percent of your total 2008 and 2009 allocation, with the remainder of funds distributed on a reimbursement basis. Please note that signatures are required of *both parties* in order for the agreement to take effect, so we ask that you sign and return the agreement as soon as possible so that we may issue funds appropriately. If your jurisdiction chose to accrue 2008-9 funds until 2010, we ask that you return the signed ILA at this time.

Brian Landau
April 23, 2009
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Thank you for your quick attention to this matter. Should you have questions, please do not hesitate to call.

Kind regards,

A handwritten signature in black ink, appearing to read "Brian Murray". The signature is written in a cursive, flowing style.

Brian Murray
Supervisor, Countywide Policy and Planning Unit
River and Floodplain Management Section

Enclosure

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE KING
COUNTY FLOOD CONTROL ZONE DISTRICT
AND THE CITY OF SHORELINE FOR
OPPORTUNITY FUND PROJECTS**

THIS INTERLOCAL COOPERATION AGREEMENT is entered into between the CITY OF SHORELINE, a municipal corporation of the State of Washington ("City"), and the KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi municipal corporation of the State of Washington ("District") ("Parties" or when singular "Party"), and shall be effective upon execution by the Municipality and the District.

Article I. Recitals.

In April 2007, the King County Council, as authorized by chapter 86.15 RCW, created the District as a quasi-municipal corporation. The King County Council members ex officio constitute the Board of Supervisors of the District, the governing body of the District.

In Resolution FCZD 2008-15.2, the Board of Supervisors approved the District's 2009 budget and annual work program, and allocated 10 percent of the District's annual property tax revenues for a sub-regional opportunity fund to be used by King County municipalities . The Board of Supervisors further determined that eligibility of projects for opportunity funds be based on consistency with chapter 86.15 RCW; provided that expenditures under RCW 86.15.035 and RCW 39.34.190 for salmonid habitat protection be linked to the construction of a flood or stormwater project. The Board of Supervisors also allocated the opportunity funds to a municipality based on that municipality's proportional contribution to the overall King County assessed valuation, as collected.

In Resolution FCZD 2009-01.1, the Board of Supervisors included the projects and activities described in Attachment A to this Agreement in an amendment to the District's annual budget and work program for the year 2009.

The Board of Supervisors desires to have the City implement its approved opportunity fund projects and activities for the years 2008 and 2009, as well as the projects and activities that are approved for the City in subsequent District annual budgets and work programs. The City desires to implement such projects and activities, and to receive opportunity funds to finance in whole or in part such projects and activities.

The City and the District are authorized to enter into this Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act), and agree as follows:

Article II. Definitions.

2.1 Eligibility Criteria. The term "Eligibility Criteria" means one of the two following criteria that Projects shall meet to qualify for Opportunity Funds:

2.1.1. Under RCW 86.15.110, Opportunity Funds may be expended for either flood control improvements or stormwater control improvements that are extended, enlarged, acquired or constructed, provided that the City has developed a comprehensive plan of development for flood control or for stormwater control, respectively, and the improvement contributes to the objectives of the plan. For flood control improvements, such plan shall be submitted to and approved by the Department of Ecology. In addition, for newly constructed improvements, the City shall develop preliminary engineering studies and plans, and such plans and studies shall be filed with the District's engineer. For all projects, the City shall provide cost estimates and underlying data and shall describe the benefit provided by the improvement.

2.1.2. Pursuant to the criteria in RCW 86.15.035 and RCW 39.34.190, as modified by Resolution FCZD 2008-15.2, District funds may be expended for cooperative watershed management actions, including watershed management partnerships and other intergovernmental agreements, for the purposes of water supply, water quality, and water resource and habitat protection and management, provided that Opportunity Funds expended for salmon habitat protection shall be linked to the construction of a flood or stormwater project, and provided further that all such funds shall be used for the implementation of watershed management plans, including but not limited to the following:

- a. Watershed plans developed under chapter 90.82 RCW;
- b. Salmon recovery plans developed under chapter 77.85 RCW;
- c. Watershed management elements of comprehensive land use plans developed under the growth management act, chapter 36.70A RCW;
- d. Watershed management elements of shoreline master programs developed under the shoreline management act, chapter 90.58 RCW;
- e. Nonpoint pollution action plans developed under the Puget Sound water quality management planning authorities of chapter 90.71 RCW and chapter 400-12 WAC;
- f. Other comprehensive management plans addressing watershed health at a WRIA level or sub-WRIA basin drainage level;
- g. Coordinated water system plans under chapter 70.116 RCW and similar regional plans for water supply; and
- h. Any combination of the foregoing plans in an integrated watershed management plan.

The authority to use funds for implementation of these plans is broadly construed to include:

- 1. Coordination and oversight of watershed management plan implementation, including funding a watershed management partnership for this purpose;
- 2. Technical support, monitoring, and data collection and analysis;
- 3. Design, development, construction, and operation of projects included in the plan; and
- 4. Conducting activities and programs included as elements in the plan.

2.2 Project. The term "Project" or "Projects" means specific projects or activities that meet the Eligibility Criteria of this Agreement, are approved by the Board of Supervisors in a resolution approving the annual budget and work program, or amendment thereto, and are described in an attachment to this Agreement that is approved pursuant to this Agreement.

2.3 Opportunity Funds. The term "Opportunity Funds" means the funds made available by the Board of Supervisors to the municipalities within King County for implementation of Projects. For each of the years 2008 and 2009, these funds represent 10 percent of property tax revenues collected for each of those years, and are available to individual municipalities based on the proportional amount that municipality's assessed valuation as collected (as determined by the King County Assessor's office) bears to the entire amount of assessed valuation in all of King County (as determined by the King County Assessor's office). For the years after 2009, this term means District funds that are designated as "Opportunity Funds" by the Board of Supervisors in either a resolution approving the District's annual budget and work program or a separate resolution.

2.4 Service Provider. The term "Service Provider" means the Water and Land Resources Division of the King County Department of Natural Resources and Parks.

Article III. Duration of Agreement--Survival of Agreement.

This Agreement shall be effective upon execution by both Parties, and shall remain in effect until terminated by one or both of the Parties. Either Party may terminate this Agreement by providing written notice of termination to the other Party no less than sixty (60) days prior to the effective date of termination. This Agreement also may be terminated

upon mutual agreement of the Parties expressed in writing. Sections 4.2, 5.2, 5.3, 5.4, 5.5, 6.3, 6.4 and 6.5 and Article VII shall survive any termination of this Agreement.

Article IV. Conditions of Agreement.

4.1 Project Descriptions. The initial approved Projects are described in Attachment A, which is incorporated by reference. Subsequent approved Projects shall be described in new Attachments to this Agreement that are approved through the amendment process of Section 7.2.2, which Attachments shall be incorporated by reference into this Agreement.

4.2 Use of Funds. The City shall use Opportunity Funds distributed pursuant to this Agreement only for expenses related to the Projects.

Article V. Responsibilities of City.

5.1 Project Application and Description. The City may submit an application for distribution of Opportunity Funds within a period of time designated by the Service Provider and on a form approved by the Service Provider. As part of the application to receive Opportunity Funds, the City shall submit to the Service Provider the following information for each proposed Project:

5.1.1. Name of proposed project or activity;

5.1.2. Description of the flooding, stormwater, or watershed management problem to be addressed (one to two paragraphs);

5.1.3. Description of how the proposed project or activity will address the problem (one to two paragraphs);

5.1.4. Type of project or activity (e.g., feasibility study, design, construction, acquisition, programmatic activities, etc.);

5.1.5. Description of how the project or activity satisfies the "Eligibility Criteria," as defined in this Agreement;

5.1.6. Identification of the plan (flood control, stormwater control, or watershed management) that includes the Project;

5.1.7. Product/deliverable and, for constructed Projects, design plans or studies; and

5.1.8. Schedule, milestones, costs and budget for each Project, consistent with the requirements of this Agreement.

The schedule for a Project shall provide for the expenditure of Opportunity Funds within two years after the commencement date of the Project. The City shall submit a request for distribution of Opportunity Funds after an actual expenditure is incurred for the Project, provided that the City may request distribution of up to 10 percent of Opportunity Funds for a Project upon approval of a Project by the Board of Supervisors. After approval of the Project by the Board of Supervisors, the application form, as approved by the Board of Supervisors, shall become an attachment to this Agreement through the amendment process in Section 7.2.2.

5.2 City Obligations for Projects. The City shall implement the Project as described and provided for in the approved attachment to this Agreement. Upon receipt, the City shall deposit Opportunity Funds in a separate account, which shall accrue interest at the rate earned by the City on its investments. To request a distribution of Opportunity Funds, the City shall submit to the Service Provider such information and proof of expenditure as requested by the Service Provider.

5.3. Projects Seeking Opportunity Funds Beyond Current Appropriation Year.

The City may request distribution of Opportunity Funds beyond the appropriation year for the District's budget and annual work program, provided that District approval of such distribution of Opportunity Funds shall not be construed as nor constitute a District obligation or commitment to appropriate Opportunity Funds for the Project beyond the approved appropriation year. The District shall have no obligation to provide Opportunity Funds beyond the appropriation year for the District's budget and annual work program, provided that the District shall distribute to the City after such appropriation year any Opportunity Funds that were allocated to the City in such appropriation year and in previous years and that have not been distributed to the City.

5.4 Reporting.

5.4.1. Until the Project is completed or all Opportunity Funds for a Project have been spent, the City shall provide semi-annually to the Service Provider brief written reports describing the progress on and status of the Project and any other relevant information that the Service Provider may request to determine compliance with this Agreement.

5.4.2. Upon completion of a Project, or upon expenditure of all of the Opportunity Funds for the Project, whichever occurs first, the City shall submit a final report to the Service Provider within 90 days of such completion or expenditure. The final report shall contain a summary of all Project expenditures, copies of invoices if requested by the Service Provider, a description of the Project status and accomplishments, and other relevant information requested by the Service Provider to verify compliance with this Agreement. The final report also shall contain a certification that all Opportunity Funds

provided to the City were expended solely on the Project in accordance with this Agreement and the Project approval. If a Project is not completed prior to termination of this Agreement, a report as described in this Section shall be provided to the Service Provider within 90 days of such termination. All records relating to a Project shall be retained by the City for a minimum of seven years, unless required by law to be retained for a longer period, in which case the longer period shall apply.

5.5 City obligations upon Project completion or termination. As consideration for receipt Opportunity Funds to implement the Project, the City agrees that:

5.5.1. If the Project involves developing a report or study, undertaking a study or collecting data, or producing written or electronic materials of any kind, copies of all such materials shall be provided upon request to the District or the Service Provider; and

5.5.2. If the Project involves the acquisition, extension, enlargement, or construction of a physical improvement, the City shall take ownership of, and shall be obligated to operate, maintain, and repair such improvement for the ordinary expected useful life of such improvement.

5.5.3 If the City terminates a Project, and the City has not expended all of the Opportunity Funds paid in advance pursuant to Section 6.3, the City shall return to the Service Provider the remaining Opportunity Funds within 60 days of the close of the calendar year in which the Project was terminated. Such returned Opportunity Funds shall be credited to the City's Opportunity Fund account, and may be used on future approved Projects, provided that if the Board of Supervisors has terminated the Opportunity Fund program at that time, the returned Opportunity Funds may be used by the District for District projects and activities.

Article VI. Responsibilities of District.

6.1 Upon timely submission of a Project application by the City, the Service Provider will review the application, provide reasonable and appropriate feedback, and consider including the Project as an element of the District's annual budget and work program.

6.2 If the Board of Supervisors approves the Project application by including the Project in the District's annual budget and work program, or an amendment thereto, the Service Provider shall attach a copy of the Project application as approved to this Agreement and it shall become a part hereof.

6.3 The District, through the Service Provider, shall distribute Opportunity Funds, up to the remaining amount of the City's total Opportunity Fund allocation, after City expenditure of funds for a Project as set forth in the approved schedule for the Project, provided that upon request of the City, the District shall pay up to 10 percent of the total Opportunity Funds allocated for a Project upon approval of an attachment to this Agreement. The Service Provider shall pay the Opportunity Funds after confirming that the expenditures have been made consistent with the Project approval and schedule.

6.4 The District assumes no obligation for future support of Projects meeting the Eligibility Criteria except as expressly set forth in this Agreement.

6.5 The District shall have no obligation to provide Opportunity Funds beyond the appropriation year for the District's budget and annual work program, provided that the District shall distribute to the City after such appropriation year any Opportunity Funds that were allocated to the City in such appropriation year and in previous years and that have not been distributed to the City.

Article VII. Other Provisions.

7.1 Hold Harmless and Indemnification.

7.1.1. The District assumes no responsibility for the direct payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this Agreement. The City shall protect, indemnify and save harmless the District, its officers, agents, employees and the Service Provider from any and all claims, cost and whatsoever occurring or resulting from (1) the City's failure to pay any compensation, fees, wages, benefits or taxes, and (2) the supplying to the City of works services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this Agreement.

7.1.2. The City further agrees that it is financially responsible for and will repay the District all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts by the City, its officers, employees, agents or representatives.

7.1.3. The City shall protect, indemnify and save harmless the District from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents in connection with the implementation of the terms of this Agreement and/or implementation of the Projects. For purpose of this Agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 51 to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising therefrom including attorney's fees.

7.2 Amendment.

7.2.1. This Agreement may be modified by written instrument approved by the City Council and the District Board of Supervisors and signed by the Parties.

7.2.2. This Agreement also may be modified by additional attachment for Projects subsequently approved by the Board of Supervisors. After approval of a Project in the District's annual budget and work program, or amendment thereto, the Project application as approved shall become an attachment to this Agreement and shall constitute an amendment to this Agreement without further action by either Party.

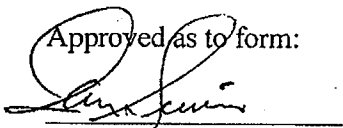
7.3 Contract Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

7.4 No Third Party Rights. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

7.5. Entirety. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this Agreement.

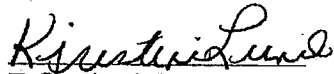
IN WITNESS WHEREOF, authorized representatives of the parties hereto have
signed their names in the spaces put forth below:

By _____
Mayor (or City Manager or Executive)
Date: _____

Approved as to form:


Municipal Attorney

KING COUNTY FLOOD CONTROL
ZONE DISTRICT


Executive Director
Date: 4/20/09

Acting under the authority of
Resolution FCD2008-16.1

ATTACHMENT A



King County Water and Land Resources Division
River and Floodplain Management



King County

Sub-Regional Opportunity Fund Project Application

Application Due Date: December 8, 2008

Jurisdiction: City of Shoreline

- 1) Do you wish to forego the receipt of your Opportunity Fund allocation this year, allowing it to accrue for a future year? ☐ Yes ☒ No
- 2) Would you prefer to apply your Opportunity Funds toward an existing project on the District's 6-year CIP? ☐ Yes ☒ No If Yes, please provide the name of the project:

If you said Yes to either (1) or (2) above, you do not need to complete the remainder of this form.

- 3) Proposed project or activity name and location: Meridian Wetland Enhancement Project, Thornton Creek Watershed, between N. 170th & N. 167th and Ashworth N. & Wallingford N., Shoreline

- 4) Description of the flooding, stormwater, or linked watershed management problem that this project or activity will address (1500 character maximum):

Meridian wetland is a palustrine forested and scrub-shrub wetland, approximately 1.1 acres in size. Thornton Creek flows through it as an open channel water course. Surrounded on three sides by roads and single-family homes that create a 46% impervious surface, the wetland's hydrology and biological processes are compromised and result in high water volume and flow rates that, in turn, flood downstream properties and destroy aquatic and riparian habitat. When Thornton Creek leaves the wetland, it is piped for 1 mile, then daylighted briefly before entering Twin Ponds. Within that mile, 15 private properties have been flooded, and 4 of these have been damaged.

Thornton Creek Watershed is in northwest King County and provides natural drainage for 11 square miles of urban habitat. Its headwaters are in the City of Shoreline and flow through the City of Seattle into Lake Washington. With endangered chinook salmon and approximately 76,000 people living in the watershed, the protection, restoration and management of the Thornton Creek ecosystem is a high priority for both the City of Shoreline and the City of Seattle.

- 5) Description of how the proposed activity will address the problem outlined in number 4 (1500 character maximum):

In Phase 1, the City will hire a consultant to conduct a feasibility study that will include a delineation of the wetland, an analysis of the wetland conditions and characteristics, and modeling of the hydrologic functions in the wetland and the downstream stormwater conveyance system to Twin Ponds.

In Phase 2, a project will be designed with the goal of restoring the natural habitat and functions of the wetland ecosystem and improving downstream conveyance. Soils may be amended to improve infiltration; invasive plants will be removed and replaced by native species; and stream flow levels will be targeted that protect and sustain people, property, fish and wildlife in the wetland and downstream.

After completion of after Phase 1 and 2 , the City will develop plans for the final of construction of the project.

To address local and multi-jurisdictional issues throughout the project, the City will actively recruit and involve residents and stakeholders in a community advisory group. In addition, watershed residents and stakeholders will be notified of public meetings; project updates will be included in newsletters and direct mailings; and educational materials will be distributed that promote healthy watershed actions.

6) Type of Activity:	☒ Feasibility Study	☒ Project Design	☒ Project Construction	☐ Property Acquisition
	☐ Programmatic – identify:			
	☐ Other – identify:			

7) Describe how the proposed project or activity satisfies the eligibility criteria for at least one of the three categories listed in Section III of the attached document (1500 character maximum):

The project proposed by the City of Shoreline meets criteria #3: watershed management in several ways. The City is an active member of the Water Resource Inventory Area 8 (WRIA 8) Salmon Recovery Council, with an Interlocal Agreement to support cooperative watershed management. In volume 2 of the Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan, chapter 14, pages 2-4, the following actions are recommended and included in the proposed project: "Protect and restore habitat conditions in tributaries, to protect/restore water quality, riparian function, and forest cover to reduce effects of urbanization, including flashy flows...." "Address the issue of maintaining and restoring instream flows at all levels of government, recognizing that different aspects of the problem are controlled by different government agencies." "Address water quality issues, including temperature and pesticides/herbicides, through stormwater regulations, best management practices (including low impact development), education, and incentives."

In the City of Seattle's Thornton Creek Draft Watershed Action Plan and Thornton Creek Five-Year Action Agenda, Implementation Action B2 is "Improve coordination between Seattle, Shoreline, King County, and within agencies and cities concerning the watershed, including water quality and quantity, restoration, protection, habitat, and related or similar issues."

8) Identify the management plan (i.e. flood control, stormwater control, or watershed management) within which implementation of the project or activity is an element or is recommended:

Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan; Thornton Creek Draft Watershed Action Plan and Thornton Creek Five-Year Action Agenda (Thornton Creek Oversight Council); City of Shoreline Surface Water Master Plan and City of Shoreline 2009-2014 Capital Improvement Plan.

9) Identify deliverables and any relevant design plans or studies (for construction projects):

Feasibility study and project design plans, at a minimum. The City will plan on submitting its design plan to the Public Work Trust Fund Board for construction financing if the current level is not sufficient, based on engineering construction estimates..

10) Identify a timeline for this project from inception to completion. List any relevant milestones, and provide an estimate of project costs and budget:

January 2009	Sign Interlocal Agreement with Flood Control District	
February – March	Develop and sign Contract for Feasibility Study	
	Recruit for Community Advisory Group	
April – September	Complete Feasibility Study	\$30,000
October	Develop and sign Contract for Design Study	
Nov '09 – Feb '10	100% Design Completed	\$50,000
March – October	Construct project	\$74,890+
Total Project Opportunity Funding:		\$154,890

For Informational Purposes Only: We wish to inform the Flood Control District Board of Supervisors on how Opportunity Funds leverage other resources, and we appreciate any information you are willing to provide in this regard. If you plan to partner with other jurisdictions to conduct a project or otherwise intend to use your Opportunity Fund allocation to leverage grant funds or other surface water management funds, please provide us with this information (1200 character limit):
 As the feasibility study is completed and the project design details are described, mutual benefit discussions with the City of Seattle will be initiated to explore their collaboration on the project.

For Internal Use Only

Authorized Signature	
☐ Project Eligible and Accepted	
☐ Project Ineligible	

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