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**Agreement No. WQNEP-2019-CICoCD-00022**

**WATER QUALITY NEP STORMWATER INITIATIVE AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CLALLAM COUNTY**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and Clallam County, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

**GENERAL INFORMATION**

Project Title:	Clallam County Stormwater Management Plan, Regulations, and Outreach
Total Cost:	\$100,000.00
Total Eligible Cost:	\$100,000.00
Ecology Share:	\$100,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	05/01/2019
The Expiration Date of this Agreement is no later than:	06/01/2021
Project Type:	NEP Stormwater Strategic Initiative

Project Short Description:

The project will improve water quality in Clallam County through working on an updated, comprehensive Stormwater Management Strategy. The strategy will be fiscally and politically sustainable and will include stormwater strategy, regulations, staff and engineer training, as well as, citizen outreach.

Project Long Description:

This project updates its stormwater and development standards. The RECIPIENT currently uses the 27-year old 1992 Ecology SWMMWW, which is insufficient to address water quality and quantity issues. The updated strategy will address changes in land cover through the RECIPIENT's stormwater and clearing and grading ordinances and amendments to landscaping, impervious surface coverage, and critical area codes. The RECIPIENT will assemble a stakeholder group to prepare the stormwater standards and small project design criteria as well as act as a sounding board for amendments to development standards. Ideally, this body will serve as local advocates during local adoption.

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Staff will work with rural land owners to understand the importance of stormwater management to Sound Stewardship. A stormwater strategy is a necessary precursor before conducting future watershed plans.

Overall Goal:

- Recruit local/state stakeholders for a Work Group to provide input for a stormwater (SW) strategy, considering climate change and latest Ecology SW Manual
- Hire a consultant with SW engineering, code, planning, policy, and outreach skills
- Update draft Clallam County (CC)-wide SW Management Plan (SWMP) & Program and Small Project Drainage Manual for Residential Housing (SPDM)
- Generate SW ordinances: clearing & grading, illicit discharge, residential/commercial/industrial development for urban and rural areas
- Hold public outreach, meetings/hearings to vet SW documents and receive input
- Prepare & conduct staff/industry training on CC SW strategy, SWMP and Manual, SPDM, and changes to regulations
- Implement adopted SW strategy, SWMP, Ecology Manual, SPDM, and regulations
- Monitor success by tracking SW flooding and no. of new/re-development using LID and adopting SW regulations, SWMP/Manual, and SPDM.

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**RECIPIENT INFORMATION**

Organization Name: Clallam County

Federal Tax ID: 91-6001298

DUNS Number: 075739235

Mailing Address: 223 East 4th Street  
 Port Angeles, WA 98362

Physical Address: 223 East 4th St  
 Port Angeles, Washington 98362

Organization Fax: (360) 417-2443

**Contacts**

<p><b>Project Manager</b></p>	<p>Carol Creasey                  Hydrogeologist</p> <p>223 E. 4th Street                  Port Angeles, Washington 98362                  Email: ccreasey@co.clallam.wa.us                  Phone: (360) 417-2424</p>
<p><b>Billing Contact</b></p>	<p>Lori Kennedy</p> <p>223 E. 4th Street, Suite 5                  Port Angeles, Washington 98362                  Email: lkennedy@co.clallam.wa.us                  Phone: (360) 417-2354</p>
<p><b>Authorized Signatory</b></p>	<p>Mark Ozias                  Commissioner</p> <p>223 East 4th Street                  Port Angeles, Washington 98362                  Email: mozias@co.clallam.wa.us                  Phone: (360) 417-2000</p>

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**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
 Water Quality  
 PO BOX 47600  
 Olympia, WA 98504-7600

Physical Address: Water Quality  
 300 Desmond Drive SE  
 Lacey, WA 98503

**Contacts**

<p><b>Project Manager</b></p>	<p>Lola Flores</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: lflo461@ecy.wa.gov                  Phone: (360) 407-6549</p>
<p><b>Financial Manager</b></p>	<p>Lola Flores</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: lflo461@ecy.wa.gov                  Phone: (360) 407-6549</p>
<p><b>Technical Advisor</b></p>	<p>Gary Myers</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: gmye461@ecy.wa.gov                  Phone: (360) 407-7498</p>



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## SCOPE OF WORK

Task Number: 1 **Task Cost: \$2,000.00**

Task Title: Project Development

### Task Description:

This task must be completed before initiating any other work under this subaward. Work completed on other tasks prior to completion of Task 1 may be ineligible for reimbursement.

#### 1.1 DETAILED PROJECT PLAN (DPP)

The RECIPIENT will prepare a detailed project outline and timeline to describe project expectations and outcomes. The detailed project plan will also identify how the objectives of the project will be evaluated, including quantifiable performance measures and targets. As part of developing the detailed project plan, the RECIPIENT will meet with their Stormwater SI Grant Program Representative to discuss the project goals, tasks, timeline, and shared workload. Stormwater SI staff will have the opportunity to provide input on the plan and establish mutual expectations.

The RECIPIENT should provide relevant spatial data for their project and this should be identified in the detailed project plan. The RECIPIENT should consult with Stormwater SI staff and spatial analysts where appropriate to determine the spatial data, associated metadata, and data storage location that are relevant for the project. Project coordinates (latitude, longitude) should be submitted in decimal degrees.

#### 1.2 QUALITY ASSURANCE PROJECT PLAN (QAPP) DEVELOPMENT

Per EPA subaward terms and conditions, the RECIPIENT must submit a Quality Assurance Project Plan (QAPP) or QAPP waiver to the Washington State Department of Ecology's National Estuary Program Quality Assurance Coordinator (NEP QC) using EPA's NEP guidance for QAPPs. See <http://www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html>. If a QAPP is required, the RECIPIENT will work with the NEP QC to develop and approve the QAPP.

Work related to collecting environmental data may not begin until the QAPP or waivers are completed and approved. The detailed project plan (Task 1.1) may be appended to the QAPP waiver form in lieu of completing page 2.

#### 1.3 EFFECTIVENESS CONSULTATION

The RECIPIENT will consult via telephone once a year with the Puget Sound Partnership (PSP) effectiveness team regarding project metrics being tracked (30 minutes). PSP effectiveness team will then provide an analysis approach for the NTA, about a paragraph per project, and will provide results of the effectiveness analysis to the Stormwater Strategic Initiative Advisory Team. The Stormwater SI grant program representative will send an email to put the RECIPIENT in contact with the PSP effectiveness team.

### Task Goal Statement:

The RECIPIENT will develop a plan for project implementation and monitoring (if required) to support the successful completion of the PROJECT. As well as maintain communication with PSP to ensure project quality and relevance to the Strategic Initiative Goals.

### Task Expected Outcome:

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The RECIPIENT will produce and submit to ECOLOGY a DPP, QAPP waiver, and a QAPP (if required) prior to commencement of the PROJECT or monitoring efforts.

Recipient Task Coordinator: Carol L. Creasey

**Project Development**

**Deliverables**

Number	Description	Due Date
1.1	Detailed project plan (DPP) and timeline uploaded to EAGL.	
1.2	QAPP Waiver Determination Form submitted to NEP QC and uploaded to EAGL. If QAPP is required, submit to QC, and once approved by NEP QC upload to EAGL.	
1.3	Effectiveness consultation, one per year for a 30min phone conversation directly with PSP.	

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## SCOPE OF WORK

Task Number: 2 **Task Cost: \$7,000.00**

Task Title: Project Administration and Development

### Task Description:

This task describes the data collection and reporting requirements associated with this subaward.

#### 2.1 PROJECT FACTSHEET

The RECIPIENT will create a project factsheet and submit with the first quarterly progress report. These will be made publicly available.

#### 2.2 QUARTERLY PROGRESS REPORTS AND PAYMENT REQUESTS (PRPR)

The RECIPIENT will upload all quarterly PRPR to EAGL. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to:

- \* A description of the work completed in the reporting period, including total spending by the project sponsor and any partners and any completed deliverables.
- \* The status and completion date for the project activities and near-term deliverables.
- \* Description of any problem or circumstances affecting the completion date, scope of work, or costs.
- \* Evidence of satisfactory completion of all the reporting requirements relevant to the reporting period.

First Reporting Period (January 1–March 31) due by April 15; Second Reporting Period (April 1–June 30) due by July 15; Third Reporting Period (July 1–September 30) due by October 15; Fourth Reporting Period (October 1–December 31) due by January 15.

#### Requirements:

##### 2.2.1 EPA FEATS REPORTING

Complete semi-annual FEATS progress reports, and a final FEATS report. The final FEATS report, reflecting the final project billing, will be provided by the RECIPIENT during project closeout, within 60 days of the expiration of the grant, and will describe the entire project, highlighting project outcomes, and discussing lessons learned. FEATS Reporting Periods: April 1–September 30, due by October 15; October 1–March 31, due by April 1. Draft final FEATS report to be defined in DPP.

##### 2.2.2 PUGET SOUND PARTNERSHIP NTA REPORTING

NTA owners are required to report:

- \* Implementation status of their actions on semiannual basis (spring & fall)
- \* Financial status of their actions on an annual basis (summer)

##### 2.2.3 STORAGE AND RETRIEVAL AND WATER QUALITY EXCHANGER (STORET) DATA REPORTING (IF NEEDED)

STORET refers to an electronic data system for water quality monitoring data developed by EPA. If the RECIPIENT collects any physical, chemical, or environmental data (e.g. dissolved oxygen, water temperature, salinity, turbidity, pH, phosphorous, total nitrogen, E. coli or Enterococci, and other biological and habitat data), then STORET reporting is required. Data for an entire calendar year (Jan 1–Dec 31) submitted annually. To assist in STORET tracking, name your project as follows: NEP\_2016\_ (organization name); the unique project ID needs to be 35 characters max. More information about WQX,

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WQX web, and the STORET warehouse, including tutorials, can be found at EPA website.

Alternatively, the RECIPIENT can comply with this requirement by submitting project data formatted for entry into Ecology's Environmental Information Management (EIM) system, and Ecology will be responsible for the subsequent transfer of the data to STORET.

### 2.3 FINAL PROJECT REPORT

A final report will be written by the RECIPIENT describing the methods, results, lessons learned and recommendations for future work. The final report evaluates the success of achieving the performance measures identified in the detailed project plan. Included with the final project report will be an updated Project Factsheet.

#### Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant or loan administrative requirements.

#### Task Expected Outcome:

- \* Timely and complete submittal of requests for reimbursement, quarterly progress reports, EAGL closeout report, FEATS reports, PSP NTA reports, STORET reports (if needed) and final project report.
- \* Properly maintained project documentation

Recipient Task Coordinator: Carol L. Creasey

### **Project Administration and Development**

#### **Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	Complete Project Factsheet (template provided), submitted directly to ECOLOGY Project Manager (PM).	
2.2	Quarterly Progress Reports and Invoicing submitted to EAGL. FEATS, PSP NTA and STORET reporting coordinate submittal with ECOLOGY PM.	
2.3	Submit Final Project Report including Final FEATS and updated factsheet.	

**SCOPE OF WORK**

Task Number: 3 **Task Cost: \$2,000.00**

Task Title: Hiring a Consultant

Task Description:

This task describes the steps in hiring a stormwater consultant to provide the extra capacity and experience that the RECIPIENT needs to implement updated stormwater management for Clallam County.

3.1 DEVELOP RFP

The RECIPIENT will develop and advertise an RFP to hire an engineering consultant firm with stormwater engineering, code, planning, policy, and outreach skills to assist with activities.

3.2 CHOOSING AND CONTRACTING THE SELECTED CONSULTANT

The RECIPIENT will evaluate proposals and interview perspective consulting firms. There will be a committee process to select the consulting firm. The RECIPIENT will enter into a contract with the consulting firm after presentation to the Board of County Commissioners.

Task Goal Statement:

To hire an engineering consulting firm with stormwater engineering, code, planning, policy, and outreach skills to provide additional capacity and expertise needed to develop and adopt stormwater regulations, an updated Comprehensive Stormwater Management Manual, newer Ecology Western Stormwater Manual, and Small Project Drainage Manual for residential and small commercial development; the outreach and education needed for understanding and adoption of stormwater ordinances and manuals; and development of forms and checklists for staff to implement.

Task Expected Outcome:

To produce an RFP with Ecology assistance to hire a an engineering consultant firm with stormwater engineering, code, planning, policy, and outreach skills to assist with activities. The expected outcome will be a selected engineering firm to assist with this stormwater project and a contract with that engineering firm.

Recipient Task Coordinator: Carol L. Creasey

**Hiring a Consultant**

**Deliverables**

Number	Description	Due Date
3.1	A developed and advertised RFP for engineering consulting services, upload to EAGL.	
3.2	Upload the selected engineering firm contract to EAGL.	

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**SCOPE OF WORK**

Task Number: 4 **Task Cost: \$6,560.00**

Task Title: Stormwater Stakeholder Work Group

Task Description:

The RECIPIENT will identify and recruit local and state stakeholders for a Stormwater Work Group that will meet 3 times and provide input for a stormwater strategy and ordinances and will consider climate change and the latest Ecology SWMMWW. The RECIPIENT will identify stakeholder participants that have broad experience in stormwater management, engineering, development, conservation, and climate change. The likely mix of the stakeholder workgroup will consist of local and state partners such as cities of Sequim, Port Angeles, Forks; Jamestown S’Klallam, Elwha, Quileute, and Makah tribes; state DOE, F&W, DNR, DOT, and PSP; and local environmental, citizen, building, engineering, excavation septic installer, landscaping, forestry groups, PUD, Conservation District, Protect the Peninsula’s Future, North Olympic Land Trust, North Olympic Peninsula Lead Entity, League of Women Voters, BuiltGreen, Olympic Climate Action, and Olympic Environmental Council.

Task Goal Statement:

The RECIPIENT will develop a work group with local, state, tribes, engineers, environmental, and local development and development assistance groups to obtain input for a stormwater strategy and ordinances. Additionally the goal is that the members of the work group would provide support for updated stormwater management, especially support in public meetings and hearings on the proposed stormwater management documents and regulations.

Task Expected Outcome:

The RECIPIENT will hold up to 3 meetings with the stakeholder work group to obtain input for a stormwater strategy and ordinances and will consider climate change and the latest Ecology SWMMWW. Notes, agendas, and handouts from the meetings will be uploaded to EAGL.

Recipient Task Coordinator: Carol I. Creasey

**Stormwater Stakeholder Work Group**

**Deliverables**

Number	Description	Due Date
4.1	3 Stakeholder Work Group meetings held, upload notes, participant sign-in sheets and agendas to EAGL	

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**SCOPE OF WORK**

Task Number: 5 **Task Cost: \$65,000.00**

Task Title: Update Stormwater Documents and Develop Ordinances

Task Description:

This task describes the main activities for developing updated stormwater management.

**5.1 UPDATE THE STORMWATER MANAGEMENT PLAN AND THE SMALL PROJECT DRAINAGE MANUAL**

The RECIPIENT will update the draft Stormwater Management Plan and Program and Small Project Drainage Manual for Residential Development.

**5.2 STORMWATER ORDINANCES**

The RECIPIENT will generate stormwater ordinances dealing with clearing & grading; illicit discharge; and residential, and commercial, and industrial development for urban and rural areas including amendments to landscaping, impervious surface coverage, and critical areas sections to the Clallam County Code.

Task Goal Statement:

The RECIPIENT with consultant assistance will develop an updated Comprehensive Stormwater Management Plan and Program, Small Project Drainage Manual for Residential Development, and stormwater ordinances.

Task Expected Outcome:

By the end of this task, the RECIPIENT with consultant assistance will have a draft, updated Comprehensive Stormwater Management Plan and Program, Small Project Drainage Manual for Residential Development, and draft stormwater ordinances. The stormwater ordinances will deal with clearing & grading; illicit discharge; and residential, and commercial, and industrial development for urban and rural areas including amendments to landscaping, impervious surface coverage, and critical areas sections to the Clallam County Code. These proposed documents will be uploaded to EAGL.

Recipient Task Coordinator: Carol L. Creasey

**Update Stormwater Documents and Develop Ordinances**

**Deliverables**

Number	Description	Due Date
5.1	Updated SWMP and SPDM. The documents will be uploaded to EAGL for review.	
5.2	Stormwater ordinances. The documents will be uploaded to EAGL for review.	

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**SCOPE OF WORK**

Task Number: 6 **Task Cost: \$7,440.00**

Task Title: Adoption of Stormwater Ordinances and Manuals

Task Description:

This task is to provide the public, Planning Commission, and Board of County Commissioners the opportunity to review, evaluate, and comment on proposed new stormwater plans, manuals, and ordinances with the goal of adoption of some form of the new stormwater plans, manuals, and ordinances .

6.1 PUBLIC MEETINGS

The RECIPIENT will hold at least one meeting to inform the public of new stormwater plans, manuals, and ordinances. Additionally have a public process with at least one meeting and hearing each before both the Planning Commission and Board of County Commissioners to adopt stormwater plans, manuals, and ordinances. Any presentations, agendas, materials will be uploaded to EAGL prior to events for ECOLOGY review.

Task Goal Statement:

The RECIPIENT will develop materials for a public process with the goal of having the Board of County Commissioners adopt some form of the new stormwater plans, manuals and stormwater ordinances.

Task Expected Outcome:

The RECIPIENT expects that by holding meetings and hearings with the public, Planning Commission, and Board of County Commissioners that some form of the proposed stormwater regulations, Comprehensive Stormwater Management Plan, Small Project Drainage Manual, and more recent Ecology Western Stormwater Manuals will be adopted. The RECIPIENT will upload the final adopted stormwater documents to EAGL.

Recipient Task Coordinator: Carol L. Creasey

**Adoption of Stormwater Ordinances and Manuals**

**Deliverables**

Number	Description	Due Date
6.1	Public meetings concerning adoption of stormwater strategy, manuals, and ordinances: 1 public open house, 2 Planning Commission meetings/hearings, and 2 Board of County Commissioner meetings/hearings). Upload presentations, agendas, and other materials to EAGL prior to events for ECOLOGY review. Upload sign-in sheets of meeting attendance to EAGL.	

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## SCOPE OF WORK

Task Number: 7 **Task Cost: \$10,000.00**

Task Title: Outreach, Education and Training for Public/Staff

### Task Description:

This task describes the outreach and education to be conducted for the public, local engineers, and staff.

#### 7.1 PUBLIC OUTREACH AND EDUCATION

The RECIPIENT will conduct public outreach and education on stormwater, stormwater management, and new stormwater regulations. The outreach and education will include at least 2 workshops with handouts and an updated website, that will be sent to ECOLOGY for REVIEW before distribution.

#### 7.2 INDUSTRY TRAINING

The RECIPIENT will conduct at least 2 staff and industry training for understanding and implementation of County stormwater strategy, Stormwater Management Plan and Manual, Small Project Drainage Manual, and changes to development regulations. Training will consist of workshops and handouts. Staff training will also include checklists and forms to aid staff in assisting the public with their stormwater projects. All materials used for training purposes will be sent to ECOLOGY for REVIEW before distribution.

### Task Goal Statement:

The RECIPIENT will conduct outreach and education on stormwater, importance of stormwater management, and the newly adopted stormwater regulations, Stormwater Management Plan and Manual, Small Project Drainage Manual, and changes to development regulations to inform the public, local engineers, and County staff of the changes and to more efficiently support the transition to more updated and vigorous stormwater management.

### Task Expected Outcome:

The RECIPIENT will produce and submit to Ecology the handouts and website material for the public, local engineer, and staff workshops. The RECIPIENT will also produce and submit to Ecology the checklists and forms that will be used to aid staff in assisting the public with their stormwater projects. The expected outcome is an informed and willing public, local engineers, and staff to use efficiently the new stormwater regulations and updated stormwater management for development and redevelopment of projects.

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Recipient Task Coordinator: Carol L. Creasey

**Outreach, Education and Training for Public/Staff**

**Deliverables**

Number	Description	Due Date
7.1	Upload workshop materials, presentations, agendas, participant sign-in sheets and handouts of at least 2 public meetings to EAGL for ECOLOGY review.	
7.2	Upload training materials, agendas, handouts and participant sign-in sheets used in at least 2 staff and local engineers trainings to EAGL for ECOLOGY review.	

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**BUDGET**

**Funding Distribution EG190456**

***NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: NEP Stormwater Strategic Initiative                      Funding Type: Grant  
 Funding Effective Date: 05/01/2019    Funding Expiration Date: 06/01/2020

Funding Source:

Title: Puget Sound Action Agenda-Implementation Strategies and Actions for Vital Sign Recovery Assistance  
 Type: Federal  
 Funding Source %: 100%  
 Description: Stormwater Strategic Initiative

Federal Awarding Agency: U.S. Environmental Protection Agency  
 Federal Awarding Agency Contact: Michael Rylko  
 Federal Awarding Agency Phone: 206-553-4014  
 Federal Awarding Agency Email: rylko.michael@epa.gov  
 Federal Awarding Agency Address: 1200 Sixth Avenue, Suite 900, OWW-193 Seattle, WA 98101

CFDA Catalog Name: Puget Sound Action Agenda: Technical Investigations and

CFDA Number: 66.123  
 FAIN: 01J18101  
 Research Grant: No  
 Federal Award Date: 6/1/2016  
 Total Federal Award Amount: \$66,000,000.00  
 Federal Funds Obligated To Recipient: \$100,000.00

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 29.35%  
 Recipient Match %: 0%  
 InKind Interlocal Allowed: No  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

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<b>NEP Stormwater Strategic Initiative</b>	<b>Task Total</b>
Project Development	\$ 2,000.00
Project Administration and Development	\$ 7,000.00
Hiring a Consultant	\$ 2,000.00
Stormwater Stakeholder Work Group	\$ 6,560.00
Update Stormwater Documents and Develop Ordinances	\$ 65,000.00
Adoption of Stormwater Ordinances and Manuals	\$ 7,440.00
Outreach, Education and Training for Public/Staff	\$ 10,000.00

**Total: \$ 100,000.00**

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### Funding Distribution Summary

#### Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
NEP Stormwater Strategic Initiative	0.00 %	\$ 0.00	\$ 100,000.00	\$ 100,000.00
<b>Total</b>		\$ <b>0.00</b>	\$ <b>100,000.00</b>	\$ <b>100,000.00</b>

#### AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

#### SPECIAL TERMS AND CONDITIONS

#### GENERAL FEDERAL CONDITIONS

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

#### A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

##### EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

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7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

**B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING**

**REQUIREMENTS:**

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five executives using the FFATA Data Collection Form. tc

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

Agreement No: WQNEP-2019-CICoCD-00022

Project Title: Clallam County Stormwater Management Plan, Regulations, and Outreach

Recipient Name: Clallam County

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
  - Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
    - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
  - d) If any human remains are found while conducting work under this Agreement:

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- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

#### 5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

#### 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

#### 11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental

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measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

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- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (f) the General Terms and Conditions.

#### 18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

#### 20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property

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under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

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All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

## 26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. TERMINATION

- a) For Cause

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ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the recipient/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials

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prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

28. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

29. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

#19-179

**LEGAL ACTION REQUEST  
FOR CLALLAM COUNTY PROSECUTING ATTORNEY**

DEPARTMENT: DCD DATE: 6-12-19

Legal action requested or question you desire to be answered:

Please review this contract with Ecology (WQNEP-2019-CICoCD-00022) for providing \$100,000 of funding for increasing staff capacity and expertise needed to update the County's stormwater management strategy, plans, and ordinances and provide outreach, education, and training for the public, local engineers, and staff on stormwater management, LID, and any adopted plans and regulations resulting from this project.

The schedule is to have your review completed by 6-20-19 so that it can be included in the packet for the BOCC work session on 6-24-19.

Approved as to form only by:

David Alvarez 6/13/19

David Alvarez  
Chief Civil Deputy Prosecuting Attorney  
Clallam County

If you should have any questions, please contact me at ext. 2424.

Thanks,  
Carol  
Carol Creasey

If request is for contract review:

- Is this for a subcontract under a grant or other contract for private, state or federal funding? Yes [x] No [ ]
- Have you previously submitted subcontracts under the grant or contract for review? Yes [ ] No [x]
- If both responses are "yes," identify:  
Granting/contracting entity: \_\_\_\_\_  
Grant/contract number: \_\_\_\_\_  
Date of grant/contract: \_\_\_\_\_
- If the first is answered "yes" and the second "no," please provide a copy of the grant or contract.

Legal action needed by: 6-20-19 so that it can be part of the BOCC packet for Work Session on 6-24-19.  
(date)

Please attach any materials necessary or helpful to the attorney in accomplishing this request.

\_\_\_\_\_  
Official Requesting Action Ext.

PROSECUTING ATTORNEY USE ONLY:	
Referring Dept.	<u>DCD</u>
Date Received	<u>6-12-2019</u>
Opinion Rendered	<u>6-13-19 DWA</u>
Reviewed by MBN	_____

RECEIVED
JUN 12 2019
Prosecuting Attorne