

**INTERLOCAL AGREEMENT**

This Interlocal AGREEMENT is entered into between CLALLAM COUNTY Department of Health & Human Services, Environmental Health Division, a political subdivision of the State of Washington, hereinafter referred to as "County" and

Peninsula College  
1502 East Lauridsen Boulevard  
Port Angeles, WA 98362  
Contact Person: Dwight Barry  
Phone: 360-417-5686  
Fax: 360-457-8100  
Email:DBarry@pencol.edu

hereinafter referred to as "Contractor".

This Agreement is comprised of:

- |             |                             |
|-------------|-----------------------------|
| Exhibit "A" | Statement of Work.          |
| Exhibit "B" | Compensation.               |
| Exhibit "C" | General Terms & Conditions. |

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The term of this Agreement shall commence on July 1, 2010 and shall, unless terminated as provided elsewhere in the Agreement, terminate on December 31, 2010. Maximum consideration shall not exceed \$5,000.00.

**IN WITNESS WHEREOF**, the parties hereto have caused this contract to be entered this 28<sup>th</sup> day of September, 2010.

**CONTRACTOR:**

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

9-10-10

**BOARD OF CLALLAM COUNTY  
COMMISSIONERS:**

\_\_\_\_\_  
Howard V. Doherty, Jr., Chair

\_\_\_\_\_  
Date

09/28/10

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Doug Jensen, Chief Civil Deputy Pros. Attorney

**ATTEST:**

\_\_\_\_\_  
Trish Holden, Clerk of the Board

*Trish Holden*

**Health & Human Services Project Manager:**

Jennifer Garcelon  
HHS, Environmental Health Division  
223 East 4<sup>th</sup> Street, Suite #14  
Port Angeles, WA 98362  
Phone: (360) 417-2347  
Jgarcelon@co.clallam.wa.us

**STATEMENT OF WORK**

Peninsula College (PC) will assist Clallam County Environmental Health (CCEH) in conducting an inventory of closed and abandoned landfills throughout the County. PC will review old landfill files at CCEH and contact the Clallam County Historical Society to create a list of old and abandoned landfill sites. Field visits will be conducted and sites will be verified. GPS coordinates, a brief description of current land use practices, and photographs will be taken of the sites during the field visits.

The final product will be a list of each site with field information such as GPS coordinates, land use, and photographs.

During the project, quarterly reports will be due with information about current progress of the project.

This project is part of a Coordinated Prevention Grant to CCEH from Washington State Department of Ecology.

**COMPENSATION**

For services rendered, the County shall pay to the Contractor a fixed fee of five thousand DOLLARS (\$5,000) for the completed work set forth in Exhibit "A.". Payment will be made at the completion of the project.

## GENERAL TERMS & CONDITIONS

1. Scope of Contractor's Services. The Contractor agrees to provide to the County services and any materials set forth in the project narrative identified as Exhibit "A" during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the agreement.
2. Accounting and Payment for Contractor Services. Payment to the Contractor for services rendered under this agreement shall be as set forth in Exhibit "B". Where Exhibit "B" requires payments by Clallam County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "B", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "B" or approved in writing in advance by the County designated project manager ("Project Manager"), the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this agreement.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, through the county voucher system for the Contractor's service pursuant to the fee schedule set forth in Exhibit "B".

3. Delegation and Subcontracting. Contractor's services are deemed personal and no portion of this agreement may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the Project Manager.
4. Independent Contractor. The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this agreement with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent contractor relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Contractor agrees to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any payments be due to the Contractor pursuant to this agreement, the Contractor agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed based upon the following formula:

$$\frac{\text{Total amount to be reimbursed}}{\text{Number of payments remaining}} = \text{Deduction from payment}$$

Notwithstanding a determination by the state or federal government that an employer/employee or master/servant relationship exists, the Contractor, its officers, employees and agents, shall not be entitled to any benefits which Clallam County provides to its employees.

5. No Guarantee of Employment. The performance of all or part of this agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.
6. Regulations and Requirement. This agreement shall be subject to all federal, state and local laws, rules, and regulations.
7. Right to Review. This agreement is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Project Manager. Such review may occur with or without notice, and may include, but is not limited to, onsite inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the agreement and its performance, and any and all communications with or evaluations by service recipients under this agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this agreement for three (3) years after agreement termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.
8. Duration, Assignment, Modification and Termination. Either party to this agreement may elect to terminate the agreement without cause by delivering a thirty (30) day written notice of intent to terminate to the other party.

In the event of early agreement termination initiated by either party for whatever reason, Contractor is only entitled to costs incurred prior to the time of agreement termination.

Nothing in this agreement shall be construed to limit either party's legal remedies including, but not limited to, the right to sue for damages or specific performance should either party materially violate any of the terms of this agreement. Failure to act on any default shall not constitute waiver of rights on such default or on any subsequent default.

Either party may request changes in the agreement. Any and all agreed modifications shall be in writing, signed by each of the parties, and will be attached as an Addendum to this agreement.

9. Rights and Remedies. The duties and obligations imposed by this agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
10. Defense and Indemnity Agreement. The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees. It is further provided that no liability shall attach to the County by reason of entering into this agreement, except as expressly provided herein.

11. Industrial Insurance Waiver. With respect to the performance of this agreement and as to claims against the County, its appointed and elected officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.
12. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This agreement shall be governed by the law of the State of Washington.
13. Withholding Payment. In the event the Project Manager determines that the Contractor has failed to perform any obligation under this agreement within the times set forth in this agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the Project Manager set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provision of the Disputes clause of this agreement. The County may act in accordance with any determination of the Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount of paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of good faith withholding by the County under this clause.
14. Insufficient Funds. If sufficient funds are not appropriated or allocated for payment under this agreement, this agreement shall be null and void. No penalty or expense shall accrue to the County in the event this provision applies.
15. Contractor Commitments, Warranties and Representations. Any written commitment received from the Contractor concerning this agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

16. Patent/Copyright Infringement. Contractor will defend, indemnify and save harmless County, its appointed and elected officers and employees from any claimed action, cause or demand brought against the County, its appointed and elected officers and employees, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers and employees in any action. Such defense and payments are conditioned upon the following:
- (a) That Contractor shall be notified promptly in writing by County of any notice of such claim.
  - (b) Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

17. Disputes:

- (a) General. Differences between the Contractor and the County, arising under and by virtue of the agreement documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the Project Manager shall be final and conclusive thirty (30) days from the date of mailing unless the Contractor mails or otherwise furnishes to the county administrator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the Project Manager are in error.

In connection with appeal of any proceeding under this clause, the Contractor shall have the opportunity to be heard and to offer evidence in support of the appeal. The decision of the county administrator for the determination of such appeals shall be final and conclusive. Reviews of the appellate determination shall be brought in the Superior Court of Clallam County within fifteen (15) days of mailing of the written appellate determination. Pending final decision of the dispute, the Contractor shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

- (b) Notice of Potential Claims. The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the Project Manager or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
- (c) Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

18. Ownership of Items Produced. All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection performance of this agreement shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws.
19. Recovery of Payments to Contractor. The right of the Contractor to retain monies paid to it is contingent upon satisfactory performance of this agreement, including the satisfactory completion of the project described in the Statement of Work [Exhibit "A"]. In the event that the Contractor fails, for any reason, to perform obligations required of it by this agreement, the Contractor may, at the Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Contractor for those parts of the project that are rendered worthless in the opinion of the Project Manager by such failure to perform.
- Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Project Manager demands repayment of funds.
20. Project Approval. The extent and character of all work and services to be performed under this agreement by the Contractor shall be subject to the review and approval of the Project Manager. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Manager as to the extent and character of the work to be done shall govern subject to the Contractor's right to appeal that decision as provided herein.
21. Nondiscrimination. The Contractor shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.
22. Subcontractors. In the event that the Contractor employs the use of any subcontractors, the agreement between the Contractor and the subcontractor shall provide that the subcontractor is bound by the terms of this agreement between the County and the Contractor. The Contractor shall insure that in all subcontracts entered into, Clallam County is named as an express thirdparty beneficiary of such contracts with full rights as such.
23. Time is of the Essence. Time is of the essence in the performance of this agreement unless a more specific time period is set forth in either the Statement of Work or General Terms & Conditions.
24. Notice. Except as set forth elsewhere in the agreement, for all purposes under this agreement, except service of process, any notices shall be given by the Contractor to the Project Manager. Notice to the Contractor for all purposes under this agreement shall be given to the person executing the agreement on behalf of the Contractor at the address identified on the signature page.
25. Severability. If any term or condition of this agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this agreement are declared severable.
26. 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 statutes and regulations;
  - (b) Statement of Work [Exhibit "A"] and Compensation [Exhibit "B"]; and
  - (c) General Terms & Conditions.

27. Waiver. Waiver of any breach or condition of this agreement shall not be deemed a waiver of any prior to subsequent breach. No term or condition of this agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
28. Survival. The provision of paragraphs 4, 7, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 28, and 29 shall survive, notwithstanding the termination or invalidity of this agreement for any reason.
29. Entire Agreement. This written agreement represents the entire agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.