



WORK SESSION AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Tuesday, July 5, 2022 – 9:00 a.m.

Board of Clallam County Commissioner meetings will also be available virtually at:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/j/8755617844> and use meeting ID: 875 561 7844 and passcode: 12345

This meeting can be viewed on a live stream at this link: <http://www.clallam.net/features/meetings.html>

Public comment can be directed to the Clerk of the Board at 360-417-2256 or Loni.Gores@clallamcountywa.gov

Administration ? 9 a.m.

1. [Calendar/Correspondence](#)
2. [Resolution extending acting County Engineer for an interim period, not to exceed six months](#)

[Resolution](#)

3. [Agreement with Prosecutors? Association for collective bargaining July 1, 2022-June 30, 2024](#)

[Agreement](#)

4. [Pre-application questionnaire with Olympic Community of Health for expanding the Olympic Community of Health Table Grant](#)

[Pre-application questionnaire](#)

Public Works

5. [Letter of support for the Dungeness Off-Reservoir Project \(1c\)*](#)

[Letter](#)

Community Development

6. [Agreement with Washington State Recreation and Conservation Office for the McDonald Creek Fish Passage Restoration Project](#)

[Agreement](#)

7. Agreement amendment 1 with Department of Ecology for Marine Resources Committee Operations

Agreement amendment 1 

Board of Commissioners

8. Resolution reappointing Roger Hoffman and appointing Peter Davis to the Park and Recreation Advisory Board (3f)*

Resolution 

Budget

9. Agreement with Olympic Peninsula Visitor Bureau for 2022 Hotel/Motel Tax Funds

Agreement 

10. Agreement with Peninsula Trails Coalition for 2022 Hotel/Motel Tax Funds

Agreement 

General Discussion/Items for Future Agendas

- A. Continued Work Session ? Cancelled (July 11)
- B. Olympic Peninsula Visitor Bureau (July 18)
- C. Housing Solutions Committee Leadership update (August 1)
- D. Small Business Development Center update (August 1)
- E. Continued Work Session ? Topic TBD (August 8 at 1 p.m.)
- F. Department of Natural Resources Meeting (August 22 at 1 p.m.)
- G. Nuisance Ordinance (August 29)

EXECUTIVE SESSION

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110

- Other items may be added at the discretion of the Board and additional Work Sessions may be scheduled if more time is needed to allow for adequate discussion.
- Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board.
- Copies of public documents from Board meetings are available by contacting the Public Records Department.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2
7/5/22

Department: Human Resources

WORK SESSION ☒ **Meeting Date: 7-5-22**

REGULAR AGENDA ☒ **Meeting Date: 7-12-22**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

The County is required to employ a County Road Engineer pursuant to RCW 36.08.010. Board of Commissioners appointed Joseph Donisi as acting County Engineer for an interim period of six month on January 18, 2022 under Resolution 13, 2022. Human Resources as determined there is a need to extend the appointment for an additional six months. Review and approve a Resolution extending the appointment of Joseph Donisi as acting County Engineer for an additional six month period from July 12, 2022 – January 12, 2023.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Review and approve a Resolution extending the appointment of Joseph Donisi as acting County Engineer for an additional six month period from July 12, 2022 – January 12, 2023.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Human Resources, Road Department/Public Works – Joe Donisi

Relevant Departments: Board of Commissioners, Human Resources and Road Department/Public Works – Joe Donisi

Date submitted: June 27, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Interim County Engineer Donisi 7-12-22
Revised: 3-04-2019



RESOLUTION _____, 2022

RESOLUTION EXTENDING ACTING COUNTY ENGINEER FOR
AN INTERIM PERIOD, NOT TO EXCEED SIX MONTHS

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. The County is required to employ a county road engineer pursuant to RCW 36.08.010.
2. The County Road Engineer Ross Tyler has an effective retirement date of February 1, 2022.
3. A resolution appointing an Acting County Road Engineer must be sent to the County Road Administration Board pursuant to WAC 136-12-030.
4. The Assistant County Engineer Joseph E. Donisi is a licensed professional engineer.
5. The Board of Commissioners appointed Joseph E. Donisi as acting County Engineer for an interim period on of six months on January 18, 2022 under Resolution 13, 2022.
6. Human Resources has been determined that there is a need to extend the appointment for Joseph E. Donisi as acting County Engineer for an additional six months.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact, that

1. Joseph E. Donisi is hereby appointed as the Acting County Road Engineer for an additional period not to exceed six months (July 12, 2022 – January 12, 2023).

PASSED AND ADOPTED this 12th day of July 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

3
7/5/22

Department: Human Resources

WORK SESSION ☒ Meeting Date: 7/5/2022

REGULAR AGENDA ☒ Meeting Date: 7/12/2022

Required originals approved and attached? ☒ Not Signed
Will be provided on:

Item summary:

- | | | |
|---|---|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

In accordance with Collective Bargaining protocols and the 6-30-22 expiration of the 2019-2022 Prosecutor's Association agreement, staff has completed negotiations and the Prosecutor's Union has ratified a proposed two-year labor agreement commencing July 1, 2022 and expiring on June 30, 2024.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Based on current DPA staffing levels (2 positions vacant), it is anticipated that the Prosecutor's Office approved 2022 budget can absorb the approximate \$85,000 needed to facilitate the contract language changes for the remainder of the year.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Approve the ratified proposed agreement as negotiated and presented.

County Official signature & print name: Tom Reyes Tom Reyes

Name of Employee/Stakeholder attending meeting: Tom Reyes – Rich Sill

Relevant Departments: All Departments

Date submitted: 6/29/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

AGREEMENT BETWEEN
CLALLAM COUNTY, WASHINGTON
AND
THE CLALLAM COUNTY PROSECUTING ATTORNEY
AND
THE CLALLAM COUNTY PROSECUTORS' ASSOCIATION

FOR THE PERIOD
July 01, 2022 through June 30, 2024

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PREAMBLE

The parties to this agreement are the Prosecuting Attorney for Clallam County, Clallam County (a political subdivision of the State of Washington, hereinafter “County” or “Employer”) and The Clallam County Prosecutors’ Association (hereinafter “Association”).

This Agreement sets forth certain matters related to the working conditions and compensation of deputy prosecuting attorneys. The terms of this Agreement are subject to the authority vested in, and limitations upon, the Board of Commissioners and Prosecuting Attorney by the Constitution and laws of the State of Washington and the County Charter.

With the understanding set forth in this Preamble, which is contractual, and in furtherance of the goals of positive employer/employee relations, IT IS AGREED:

ARTICLE 1: RECOGNITION

The County and the Prosecuting Attorney recognize the Association as the sole and exclusive representative of employees in the classifications of Deputy Prosecutor I, Deputy Prosecutor II, Deputy Prosecutor III, and Senior Deputy Prosecutor for the purpose of establishing wages and benefits under Washington’s applicable public sector collective bargaining laws. All covered classifications are hereinafter referred to as “Deputy Prosecuting Attorney” and “employee”.

ARTICLE 2: ASSOCIATION SECURITY

2.1 Membership.

Membership or non-membership in the Association shall be the guaranteed individual choice of employees within the bargaining unit subject to this Agreement; provided, however, that any such employee, who as of the date of execution of this Agreement has chosen, or hereafter and during the term of this Agreement chooses to belong to the Association, shall, commencing with the date of execution of this Agreement, be eligible to maintain membership, and any such employee shall be entitled to withdraw from membership in this Association by giving written notice to the Association and the Clallam Director of Human Resources and Risk Management. The rights of non-association of employees are hereby guaranteed.

Regardless of an employee’s individual choice, with respect to membership or affiliation, the Association shall be the exclusive representative of the employee for all matters concerning employment.

2.2 New Employees.

The County agrees to furnish each new employee in the bargaining unit with a copy of the collective bargaining agreement at the commencement of employment as

part of the orientation process at no cost to the employee or the Association.

ARTICLE 3: MANAGEMENT RIGHTS

The Association recognizes that the Prosecuting Attorney is an elected, constitutional officer of the State of Washington; and recognizes the prerogatives of the Prosecuting Attorney to operate and manage the affairs of the Office of the Prosecuting Attorney in all respects in accordance with the laws of the State of Washington, applicable law and County policies, and the responsibilities and accountabilities of the Office, except as otherwise specifically limited by the expressed terms of this agreement.

The Prosecuting Attorney retains all the customary, usual and exclusive rights, decision-making authority, prerogatives and functions connected with or in any way incidental to the Prosecuting Attorney's responsibility and right to manage the affairs of the Prosecuting Attorney's Office consistent with the terms of this Agreement. The County and the Prosecuting Attorney shall have no obligation to bargain with the Association with respect to the exercise of management rights and the exercise of discretion and decision-making with regard thereto.

The parties recognize the County and the Prosecuting Attorney's right to properly determine that Deputy Prosecuting Attorneys are licensed professionals employed in FLSA exempt positions and shall be paid on a "salary basis." The parties recognize that Deputy Prosecuting Attorneys routinely must exercise independent judgment in matters of significance within such constraints, policies and direction as the Prosecuting Attorney may determine, and consistent with the ethical obligations of lawyers. Deputy Prosecuting Attorneys serve in an attorney-client relationship with Clallam County and/or the State of Washington, serve as "at-will" employees at the pleasure of the Prosecuting Attorney, act for and in the place of the elected Prosecuting Attorney, and are deemed essential personnel in the application of Clallam County operational and administrative policies.

Without limitation, but by way of illustration, the exclusive prerogatives, functions and rights of the Prosecuting Attorney and/or the County, as the case may be, shall include the following:

- A. To determine the services to be rendered to the citizens of the County and in Court.
- B. To determine and to follow the County's and the State of Washington's financial, budgetary and accounting procedures.
- C. To direct and supervise all operations, functions and policies of the Prosecuting Attorney's Office, and to determine the requirements of facilities and operations in which the employees in the bargaining unit are employed, and such other operations, functions and policies in the remainder of the County as may affect employees in the bargaining unit.

- D. To manage and direct the work force, including, but not limited to, the right to determine the place and time to report for work; to determine methods, processes and manner of performing work; the right to introduce new duties within the unit; the right to hire, promote and retain employees and transfer them within the same pay range or demote to a lesser pay range should they not be qualified for retention in the present pay range, or should their work habits or productivity not justify retention in the present pay range; the right to lay off; the right to abolish positions or reorganize the departments; the right to determine schedules of work and regular hours of work when the office is open and employees are expected to be present; the right to purchase, dispose of and assign equipment or supplies; and the right to demote or terminate the employment of an employee for good and sufficient cause as determined by the Prosecuting Attorney in the Prosecuting Attorney's judgment and discretion.
- E. To determine the need for a reduction or an increase in the work force and to implement any decision with regard thereto.
- F. To establish, revise and implement standards for hiring, classification, promotion, quality of work, safety, materials, equipment and appearance.
- G. To implement new, revise and discard, wholly or in part, old methods, procedures, materials, equipment, facilities and standards.
- H. To contract or subcontract work as may be determined appropriate by the Prosecuting Attorney without further bargaining, where the work to be transferred from the bargaining unit is performed by a Special Prosecutor, a visiting Prosecuting Attorney, or an Assistant Attorney General.
- I. To determine the need for and the qualifications of new employees and promotions.

The subjects covered by the terms of this Agreement and any subject which was or might have been raised in bargaining are closed to further bargaining for the term hereof.

ARTICLE 4: BENEFITS

4.1 Health Insurance.

During the life of this Agreement, employees shall be eligible for benefits under this Article 4 during the month following any month in which the sum of the employee's hours worked, paid time off and authorized time off is eighty (80) hours or more, and coverage commences the first month following the first payroll deduction of the employee paid amount of premium and for which eligibility is established by this Agreement and the Washington Teamsters Welfare Trust (WTWT) subscription agreement. The insurance benefits selected by the Association are:

- A. Teamsters Health Plan B
- B. Dental Plan B
- C. Teamsters Vision Plan EXT

Effective July 01, 2022, the amount of the County paid insurance premium cap shall be reset to \$1,210.

Effective January 01, 2023, the amount of the County paid insurance premium cap described in this Article shall increase fifty dollars (\$50.00) to a total County contribution of one thousand two hundred and sixty dollars (\$1,260.00) per month.

Effective January 01, 2024, the amount of the County paid insurance premium cap described in this Article shall increase an additional fifty dollars (\$50.00), to a total County contribution of one thousand three hundred and ten dollars (\$1,310.00) per month. The bargaining unit can select plans and benefits from among those made available by the trust subject to applicable insurance plan and benefits trust restrictions, if any, and the employee premium amount will be adjusted accordingly.

4.2 Deferred Compensation.

The County shall continue to make the 401(a) deferred compensation contribution (currently 2% paid by the County with no match required from the employee; plus any payroll deduction made per the employee's one time election), which is in addition to rights to defer compensation into the section 457(b) plan available to County employees, as provided for by the plan documents.

4.3 Other Insurance.

The County makes available to employees Long Term Disability, Life Insurance & ADD (\$50,000 benefit) with individually rated premiums for LTD, and an election must be made to enroll by the bargaining unit as a whole. As of the date of this Agreement, the bargaining unit has elected not to enroll in these insurance protections. In the event the bargaining unit elects to enroll in the Group Sun Life (or successor benefit provider) life, AD&D and LTD benefit plans it must do so in compliance with the trust rules and terms of benefit plan documents. In such event the enrollment shall occur without further bargaining during the term of this Agreement, the County cap will be increased ten dollars (\$10) as the County's uniform contribution for life insurance coverage, and each employee's premium share will be adjusted to include the full cost of LTD coverage and the balance of premium due for other Sun Life (or successor benefit provider) insurance benefits.

4.4 Health Reimbursement Account.

The County shall contribute monthly to an HRA VEBA account for the benefit of each employee two hundred fifty dollars (\$250.00), which shall be deemed a component of total compensation. The County HRA plan document shall be owned by the employee. The amounts paid by the County to an employee's HRA described in this Article 4.4 shall be in addition to any other amount described in a separate article and section of this Agreement.

4.5 Other Benefits.

Employees shall be afforded holiday, vacation and sick leave as established by County policy as established and revised periodically by the County for non-represented, exempt employees. If a benefit is reduced below the level in effect on the date this Agreement is ratified, the County must bargain concerning the impacts of the change.

ARTICLE 5: WAGES AND HOURS

5.1 Hours of Work.

Employees shall be compensated as salaried, professional employees who determine their hours of work outside of the regular hours when the Prosecuting Attorney's Office is open to the public and do so based on professional requirements and responsibilities dictated by caseload and their professional responsibilities with regard thereto.

5.2 Salary and Merit Adjustments.

Effective January 1, 2019, the Deputy Prosecuting Attorneys' salaries shall no longer be connected to a percentage of the Prosecuting Attorney's salary. Starting July 01, 2022, salaries shall now be set in accordance with the following Teamsters pay scale, which includes a one and one half percent Cost of Living Adjustment (1.5%). In addition, two (2) new promotional positions titled Senior DPA have been added to the salary scale (Note – these two new Senior DPA promotional positions do not allow for back filling of positions promoted from and are subject to the language in the Senior DPA job description). The new scale is as follows:

Senior Deputy Prosecutor - Range 83, Step 7 (entry) - \$10,435.85
Deputy Prosecutor Step 9 – Range 78, Step 9 - \$9,690.72
Deputy Prosecutor Step 8 – Range 78, Step 7 - \$9,223.77
Deputy Prosecutor Step 7 – Range 78, Step 5 - \$8,779.30
Deputy Prosecutor Step 6 – Range 78, Step 3 - \$8,356.28
Deputy Prosecutor Step 5 - Range 71, Step 8 - \$7,953.64
Deputy Prosecutor Step 4 - Range 71, Step 6 - \$7,570.38
Deputy Prosecutor Step 3 - Range 71, Step 4 - \$7,205.61
Deputy Prosecutor Step 2 - Range 63, Step 9 - \$6,691.12
Deputy Prosecutor Step 1 - Range 63, Step 7 - \$6,368.70

- Effective January 1, 2023, an increase to the salary scale of two and one half percent (2.5%) shall be applied in the form of a Cost of Living Adjustment (COLA).
- Effective January 01, 2024, an increase to the salary of two and one half percent (2.5%) shall be applied in the form of a Cost of Living Adjustment (COLA). Salary step placement for Deputy Prosecutor classification is as follows:

Deputy Prosecutor I	Steps 1, 2 or 3
Deputy Prosecutor II	Steps 3, 4, 5 or 6
Deputy Prosecutor III	Steps 6, 7, 8 or 9
Senior Deputy Prosecutor	Steps 7, 8 and 9

The Prosecuting Attorney may fix and adjust any Deputy Prosecuting Attorney's salary within the steps authorized for the classification based on merit. A Deputy Prosecuting Attorney shall not be advanced in pay by more than one-step designated in this Article for the Deputy's classification within any twelve (12) month period unless written concurrence of the Director of Human Resources and the Board of Commissioners is obtained. This Agreement shall not restrict the ability of the Prosecuting Attorney to promote and demote Deputy Prosecutor's among the classifications of Deputy Prosecutor I, Deputy Prosecutor II, Deputy Prosecutor III, Senior Deputy Prosecutor and Chief Criminal/Civil Deputy Prosecutor.

The parties recognize the amount of monthly salary paid in consideration of work performed by Deputy Prosecuting Attorneys constitutes a mandatory subject of bargaining that cannot be reduced without bargaining. The parties intend that the Prosecuting Attorney will administer this Article in a manner that is within the Clallam County Budget, or the budget as amended by the Board in accordance with applicable law, and this Article shall not be construed otherwise.

5.3 Hazard Pay

Effective July 01, 2022, during the period of time for which the Clallam County Board of County Commissioners (BOCC) have declared an emergency related to the COVID 19 pandemic an additional one percent (1%) increase in monthly salary shall be given to any full-time employee (37.5 hours or more per week). There is to be no expectation that this benefit is permanent and it is understood that it will end once the declaration of emergency associated with the COVID 19 pandemic, has been rescinded by the BOCC.

5.4 Length of Service Medical Contribution

Effective July 01, 2022, to recognize continuous length of service with the County, the County shall provide an additional monthly medical premium contribution on behalf of each eligible regular full-time (minimum 37.5 hours per week) employee based on length of service at the rate below. Any eligible employee receiving an evaluation having an overall rating less than satisfactory/meets standards/meets expectations shall have this benefit suspended until such time as an overall satisfactory/meets standards/meets expectations (or higher) evaluation is received.

- Completion of 10 years (anniversary date beginning 11th year of service) - \$65/month
- Completion of 15 years (anniversary date beginning 16th year of service) - \$100/month

- Completion of 20+ years (anniversary date beginning 21st year of service) – \$135/month

ARTICLE 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The parties desire to provide a measure of economic security consistent with the “at will” status of bargaining unit members whose continued employment is subject to the discretion and preferences of the elected Prosecuting Attorney whose decisions may be based on factors unrelated in any way to the merit and job performance of a particular attorney. Except as otherwise provided in this Agreement and excluding any County policy inconsistent with the Preamble, Article 1, and Article 3 of this Agreement, conditions of employment as specified in the County’s personnel policies shall apply to employees of the bargaining unit. Nothing in this Agreement is intended to reduce the rights of employees established by the constitution and laws of the United States and the State of Washington, and the Charter and Ordinances of Clallam County except as explicitly stated herein.

In the event a Deputy Prosecuting Attorney’s County employment terminates as defined in this Article, the County shall offer the employee a severance agreement including a broad release of liability in a form acceptable to the County, which shall include at a minimum the following consideration:

- A. The cash value of three (3) months salary based on the employee’s salary rate in effect on the last day of employment.
- B. The employee shall be eligible to seek reimbursement of health insurance premium expenses incurred by the employee for post-County employment health insurance coverage whether under COBRA or otherwise, for up to three (3) months of coverage at a cost which shall not exceed three times the amount which the County contributes to medical, dental and vision coverage premiums at the date of job separation. Upon receipt of evidence that the premium costs were incurred and paid, the County will reimburse the employee on a non-taxable and non-reportable basis as authorized under the laws in effect in 2022. “Terminates” as this term is used in this Article to define severance entitlement will be found and results solely from the Prosecuting Attorney’s exercise of “at will” discretion to end the attorney’s employment under circumstances not supported by documentation of reasonable cause, which documentation demonstrates deficiencies in job performance, conduct and/or attendance.

ARTICLE 7: ENTIRE AGREEMENT

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

This Agreement constitutes the sole and entire Agreement between the parties. Except as specifically modified by or treated in this Agreement, all policies, matters, questions and terms affecting unit employees in their employment relationship with the County and the Prosecuting Attorney shall be governed by Article 3 (Management Rights). The County and the Association for the life of this Agreement each unqualifiedly waives the right, and agrees that the other shall not be obliged to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either party or both parties at the time that they negotiated and signed this Agreement, except as otherwise specified in this Agreement.

ARTICLE 8: SAVINGS CLAUSE

Should any article, section, or portion of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction or any administrative agency having jurisdiction over the subject matter, such decision shall apply only to the specific article, section, or portion thereof directly specified in the decision. Upon the issuance of any such decision, the parties agree immediately to negotiate a substitute, if possible, for the invalidated article, section, or portion thereof. All other portions of this Agreement, and the Agreement as a whole, shall continue without interruption for the term hereof.

ARTICLE 9: TERM OF AGREEMENT

This Agreement shall be effective on the 1st day of July 2022 following ratification by the parties unless otherwise provided herein, and shall remain in full force and effect until the 30th day of June 2024.

Either party may reopen the Agreement by providing the other with written notice of a desire to open the Agreement no later than sixty (60) days prior to July 1, 2023, for the specific purpose of negotiating a change to Teamsters Medical Plan B, referenced in Article 4.1.A, provided such change is allowed under the Teamsters Welfare Trust rules. All other components of Article 4.1: Health Insurance shall remain unchanged.

During the term of this Agreement the parties may reopen economic terms established by this Agreement if adjustments are appropriate in order to maintain competitiveness necessary to attract and retain qualified career prosecutors.

Executed by the parties on the dates set forth below, to be effective on and after July 1, 2022.

CLALLAM COUNTY PROSECUTING
ATTORNEYS' ASSOCIATION

By: _____
Association Representative
Dated: _____

CLALLAM COUNTY PROSECUTING
ATTORNEY

By: _____
Mark Nichols, Prosecuting Attorney
Dated: _____

CLALLAM COUNTY BOARD OF
COMMISSIONERS

By: _____
Mark Ozias, Chair

By: _____
Randy Johnson

By: _____
Bill Peach

APPROVED AS TO FORM:

By: _____
Matthew W. Lynch, Special Counsel
for Labor & Employment

ATTEST:

By: _____
Loni Gores
Clerk of the Board



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

4
7/5/22

Department: Clallam County Health and Human Services

WORK SESSION ☒ Meeting Date: 07.05.22

REGULAR AGENDA ☐ Meeting Date:

Required originals approved and attached? ☒

Will be provided on:

Item summary:

- | | |
|---|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☒ Other Grant Application Questionnaire |

Documents exempt from public disclosure attached: ☐

Executive summary:

HHS intends to apply for the Olympic Community of Health (OCH) Expanding the Olympic Community of Health Table grant. This grant will be utilized to provide funding for a subcontract with Olympic Peninsula Community Clinic (OPCC) as a pilot to provide a WADOH credentialed Substance Use Disorder Professional (SUDP) to Clallam County Health and Human Services' Syringe Service Program (SSP) to initiate substance use treatment assessments and link participants with available treatment services.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

No budgetary impact.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

For the BOCC to authorize the County Administrator to Sign the Grant Application Information form as submitted.

County Official signature & print name: Jennifer Oppelt, Jennifer Oppelt

Name of Employee/Stakeholder attending meeting: Kevin LoPiccolo and Karissa McLane

Relevant Departments: Health and Human Services

Date submitted: 06.29.22

- * Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

ASI OCH Grant Application
Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

COPY

Clallam County

Grant Application Information

DEPARTMENT: **Health & Human Services** DATE SUBMITTED TO W/S: **July 05, 2022**

GRANT NAME: **Expanding the Olympic Community of Health Table**
APPLICATION DEADLINE: **July 12, 2022**

ISSUING AGENCY: **Olympic Community of Health** IS THIS A RENEWAL? **No**

LENGTH OF GRANT: **August 2022 through January 2023**
RENEWAL POSSIBLE? **No**

TOTAL AWARD: **\$35,000** ANNUAL AMOUNT: **N/A**

MATCH REQUIRED? **No** MATCH AMOUNT: **N/A**

DESCRIPTION OF GRANT AND PURPOSE:

"Olympic Community of Health (OCH) seeks to meaningfully engage with additional organizations and Tribes across the Olympic region on projects including tackling stigma of substance use disorder (SUD), addressing the health-serving workforce crisis, community-clinical linkages, addressing social determinants of health, and more. Projects will continue to focus primarily on Medicaid beneficiaries.

Project Goals:

- Reduce stigma of substance use disorder
- Identify and implement solutions to address the health-serving workforce crisis
- Improve community-clinical linkages through care coordination and by addressing social needs
- Collaborate to create action plans around four focus areas through regional action collaboratives"

EXPLAIN HOW THIS GRANT WILL BE USED FOR THE GOOD OF CLALLAM COUNTY CITIZENS:

This grant will be utilized to provide funding for a subcontract with Olympic Peninsula Community Clinic (OPCC) as a pilot to provide a WADOH credentialed Substance Use Disorder Professional (SUDP) to Clallam County Health and Human Services' Syringe Service Program (SSP) to initiate substance use treatment assessments and link participants with available treatment services.

DOES THE GRANT ACTIVITY FURTHER THE DEPARTMENT'S MISSION OR CORE FUNCTIONS? HAS IT BEEN A PART OF LONG TERM DEPARTMENT OR COUNTY GOALS?

Yes, this grant expands the services provided at the SSP to more robust and lower barrier linkages for participants to access treatment services in the moment, this has been a long term goal of the department.

DOES THE GRANT ACTIVITY INCREASE AN EXISTING SERVICE OR ADD A NEW SERVICE? TO WHAT DEGREE? IF THE GRANT WERE NOT AVAILABLE, WOULD THE SERVICE HAVE BEEN NECESSARY?

This increases existing services by providing additional support in the SSP, these services are necessary and a goal of the department to better serve SSP participants.

WHAT MEASUREMENTS (PERFORMANCE MEASURES) WILL BE USED TO EVALUATE THE SUCCESS OF THE ACTIVITIES PROVIDED BY THE GRANT? WILL PERFORMANCE MEASURES BE DEVELOPED?

Number of SSP participants engaging with SUDP, number of assessments completed, number of individuals linked with treatment services, and participant retention data regarding supportive services throughout the participants treatment journey.

DOES THE GRANT ACTIVITY CREATE A NEW SERVICE OR LEVEL OF SERVICE WHICH IS EXPECTED TO BE CONTINUED FROM LOCAL FUNDING AT THE END OF THE GRANT PERIOD?

This service grant will be utilized as a pilot for providing an SUDP in the SSP. If this services is found to be successfully utilized, the department will seek other funding sources past the grant period.

IF MATCHING FUNDS ARE REQUIRED, WHERE WILL THEY COME FROM? DOES THE DEPARTMENT HAVE EXISTING RESOURCES TO COVER MATCH REQUIREMENTS? FROM WHERE?

N/A

WILL THE ACTIVITY IN THIS GRANT HAVE IMPACTS ON OTHER DEPARTMENTS? HAS THIS BEEN DISCUSSED? DO OTHER DEPARTMENTS HAVE SUFFICIENT RESOURCES TO DEAL WITH ADDITIONAL IMPACTS?

No other departmental impacts.

WILL NEW POSITIONS BE ADDED? IF SO, HOW MANY AND WHAT TYPE ARE EXPECTED? ARE ALL WAGES AND BENEFITS PAID IN THE GRANT? WHAT WILL HAPPEN TO THE POSITIONS WHEN THE GRANT PERIOD ENDS?

N/A

DOES YOUR DEPARTMENT HAVE SUFFICIENT RESOURCES TO ADMINISTER THE GRANT? PROVIDE FOR TIMELY REIMBURSEMENT AND ACTIVITY REPORTS?

Yes, the department has worked with the OCH for other grants and understands their administration, reporting, and reimbursement processes.

ARE THERE IMPACTS TO THE COUNTY IF THE GRANT IS NOT RECEIVED? WHAT ARE THEY?

Lack of robust full circle SSP services.

ARE INDIRECT COSTS ALLOWABLE ON THIS GRANT? IF SO, ARE THERE LIMITATIONS? WILL THEY BE CHARGED AND ALLOCATED AS INDIRECT?

No

ARE THERE OTHER ACTIVITIES (GRANT OR OTHERWISE) THAT ARE BUDGETED FOR THIS YEAR THAT WILL NOT BE COMPLETED IF THIS GRANT IS APPROVED?

No

WHAT BUDGET CHANGES ARE NECESSARY? INCLUDE REVENUES AND EXPENDITURES.

N/A

OTHER COMMENTS

HHS staff have communicated with the Executive Director of the OCH who reported the proposed pilot is an appropriate fit for this grant.



ELECTED OFFICIAL/DEPARTMENT HEAD SIGNATURE

Rich Sill, ADMINISTRATOR

APPROVAL

Submit in **duplicate** to the Board of Commissioners for Work Session discussion and approval by the Administrator prior to application for any grant. The approved form must be included with the grant contract when it is submitted to the Board for approval. Refer to Administrative Policies 120 and 562.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

5
7/5/22
LC

Department: Public Works

WORK SESSION ☒ **Meeting Date: 7-5-22**

REGULAR AGENDA ☒ **Meeting Date: 7-5-22**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other: letter of support |

Documents exempt from public disclosure attached: ☐

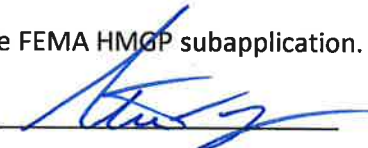
Executive summary: WA Hazard Mitigation Grant Program (HMGP) has requested that Clallam County modify the Commissioners' letter of support dated in April 2022 to reflect the change in Federal match requirements. In the initial application the Federal share was 75% and the state and local shares were both 12.5%. With the Biden administration's new cost share under the 2022 Consolidated Appropriation Act, the Federal share is now 90% and the state and local share are both 5% of project costs. As a result Clallam County's share decreased from \$3,748,336.00 to \$1,499,334.40. WA HMGP has requested that the letter specify the \$1,499,334.40 of committed local match.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None required at this time.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Please review the letter of support and sign it to complete the FEMA HMGP subapplication.

County Official signature & print name: Joe Donisi 

Name of Employee/Stakeholder attending meeting: Carol L. Creasey

Relevant Departments: Public Works

Date submitted: 6-28-22

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Agenda Item BOCC BRIC letter of support (7-5-22)

Revised: 3-04-2019



MARK OZIAS, District 1, Chair
RANDY JOHNSON, District 2
BILL PEACH, District 3

Board of Clallam County Commissioners

223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015
360.417.2233 Fax: 360.417.2493
Email: commissioners@co.clallam.wa.us

RICH SILL, County Administrator

File:

July 5, 2022

Tim Cook
Mitigation Program Manager
FEMA HMGP
WA Military Dept., Emergency Management Division
Camp Murray TA-20
Tacoma, WA 98439-5122

Dear Mr. Cook:

The purpose of this letter is to document the availability of local funds and Clallam County commitment in support of the County's FEMA HMPG subapplication entitled the Dungeness Reservoir: Building Climate Resilience in the Dungeness Community. The Clallam County Board of Commissioners strongly supports the Dungeness Off-Channel Reservoir project. Climate change projections for the Dungeness watershed indicate decreased snowpack with increased rain events and flooding. The Off-Channel Reservoir will deliver a climate change resilient solution that will benefit the whole community through lifelines of food, water, and agriculture by storing early season, high flow Dungeness River water as an alternative to river diversions when flows are critically low. This source switch will improve flows from August to September when agriculture demand is highest and ESA-listed Chinook salmon and steelhead are returning to spawn in the Dungeness River. It is projected that total spring and summer season streamflow in the Puget Sound region in WA will decrease by 24–31% on average by the end of the century. Drought in the Dungeness has already made its impact felt in 4 of the past 7 years. The Off-Channel Reservoir will expand capacity for aquifer recharge mitigation and restoration programs to offset permit exempt well impacts and restore flows in the independent streams.

Clallam County has recognized the Reservoir as its top water resources priority because of its benefits to the Dungeness River, community/agriculture water supply and development, and salmon recovery. The Reservoir is the greatest and most cost effective remaining water storage and flow restoration opportunity in the Dungeness basin to enable reliable and vital water supplies in the Dungeness basin for people, fish, and farms. Attached is a Resolution 92 passed by the Board of County Commissioners in 2018 that underscores our commitment.

This letter serves as notice that Clallam County has sufficient funding for the match component associated with our HMGP subapplication for funding the Dungeness Off-Channel Reservoir. The County has secured grant funding from the WA Department of Ecology's Streamflow Restoration Competitive Grant program that will be used as match to cover our local share of \$1,499,334.40.

Thank you for considering our subapplication for the Dungeness Reservoir: Building Climate Resilience in the Dungeness Community.

Sincerely,

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

Bill Peach



RESOLUTION 92, 2018

4a
10/30

IN SUPPORT OF THE DUNGENESS FLOW RESTORATION AND
AQUIFER RECHARGE OFF-CHANNEL RESERVOIR

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. The Dungeness River watershed is water-short most years during the critical period in late summer when both agricultural irrigators and ESA-listed salmonids rely on adequate streamflow.
2. Reservoirs of water held in annual snowpack and ancient glaciers are decreasing over time, and extreme low-flow conditions on the River are becoming more frequent and exacerbated during drought years.
3. Clallam County is highly supportive of the reservoir project proposal and has prioritized it over all other flow restoration proposals as providing substantial and significant flow benefit.
4. Clallam County has been a party to discussions and has supported proposals for water storage via reservoirs and aquifer recharge for well over a decade.
5. Finding funding to implement the Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir is Clallam County's highest flow restoration priority because the project addresses all top recommendations for River Restoration and has multiple additional benefits.
6. Clallam County is a willing landowner, local stakeholders are mobilized, the reservoir has a great deal of popular support in the community, and the planning group is actively identifying models for local cost-share for the reservoir and future operations.
7. State funding for streamflow restoration projects will be made available to certain basins in Washington state including the Dungeness as allowed in ESSB 6091 (January 2018) and documentation of support from stakeholders and initiating governments is requested.

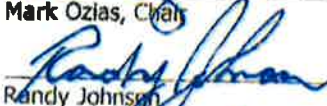
NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners in consideration of the above findings of fact:

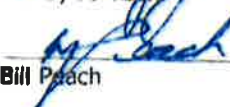
1. Supports the Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir as its highest priority to implement flow restoration, water storage and aquifer recharge because of its scale, location, cost/benefit and feasibility.

PASSED AND ADOPTED this thirtieth day of October, 2018.

BOARD OF CLALLAM COUNTY COMMISSIONERS


Mark Ozias, Chair


Randy Johnson


Bill Peach

ATTEST:


Loni Gores, Clerk of the Board



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

6
7/5/22

Department: DCD

WORK SESSION ☒ Meeting Date: 7/5/2022

REGULAR AGENDA ☒ Meeting Date: 7/12/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|--|---|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other RCO Grant Agreement project 20-1142 |

Documents exempt from public disclosure attached: ☐

Executive summary: This is a Recreation and Conservation Office Grant (RCO) Agreement for the McDonald Creek Fish Passage Restoration. The funds were previously awarded and this Agreement sets out the terms and conditions. This helps fund the McDonald Creek Fish Passage and Irrigation Project. The funds were awarded by Puget Sound Acquisition and Restoration (PSAR) and managed by RCO. The match requirement is fulfilled by US Fish and Wildlife Service grant award F18AC00619-01 previously approved by the Board of Commissioners.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐ NA
No budgetary impact

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
The DCD requests signature by Mark Ozias on the RCO Grant Agreement.
Please sign. This contract was reviewed and approved by Dee Boughton.

County Official signature & print name: Loni Kennedy for Mary Ellen Wimbom

Name of Employee/Stakeholder attending meeting: Rebecca Mahan

Relevant Departments: DCD

Date submitted: 6/28/22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Project Sponsor: Clallam County

Project Number: 20-1142R

Project Title: McDonald Creek Fish Passage Restoration

Approval Date: 07/01/2021

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and Clallam County (Sponsor, and primary Sponsor), 223 E 4th St Ste 5, Port Angeles, WA 98362-3015, and shall be binding on the agents and all persons acting by or through the parties.

The Sponsor's Unique Entity ID (UEID) Number is JV6JJNELRBS5.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Prior to and during the Period of Performance, per the Applicant Resolution/Authorizations submitted by all Sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project identified above, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this Agreement on behalf of the Sponsor(s), including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

- A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant Resolution/Authorization signed by its governing body or a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s). Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.
- B. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

DESCRIPTION OF PROJECT

The McDonald Creek Fish Passage project will rectify a long-known fish passage barrier and remove sources of fish mortality associated with operation of an irrigation diversion. The project will also improve habitat conditions, sediment, and wood transport in the creek. A small reinforced-concrete irrigation diversion dam with a Denil fishway is located at RM 3.2. Current site conditions are poor. A 2018 barrier assessment by WDFW documented that the dam is a complete barrier to fish and the Denil fishway was only deemed 33% passable for some adult fish. High velocity and turbulence likely make the existing fishway impassable to juveniles. All life stages of ESA-Listed Puget Sound Steelhead, as well as Coho, Cutthroat and Pacific Lamprey will benefit from this project. Improving fish passage will open up 4.5 and 6.1 miles of access to moderate to high quality habitat upstream of the dam for Coho and Steelhead, respectively, resulting in improved spawning and rearing habitat. The project will improve fish passage and enhance conditions for fish and wildlife while also improving Agnew Irrigation District's ability to divert water according to their water right. This will be achieved by notching the dam, installing a new fish passage structure, and constructing rock weirs and pools below the dam. The existing open diversion canal will be replaced by a buried pipeline with a new head gate and debris rack; and the existing fish screen will be relocated to the new head gate area.

PERIOD OF PERFORMANCE

The period of performance begins on September 23, 2021 (project start date) and ends on December 1, 2023 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any

applicable RCO manuals as of the effective date of this Agreement.

The RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office attached hereto are incorporated by reference as part of this Agreement.

LONG-TERM OBLIGATIONS

For this restoration project, the Sponsor's long-term obligations for the project area shall be for a minimum of ten (10) years, or more as specified in the Landowner Agreement, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

PROJECT FUNDING

The total grant award provided for this project shall not exceed \$406,415.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
SRFB - Puget Sound Acq. & Restoration	79.38%	\$406,415.00	State
Project Sponsor	20.62%	\$105,580.00	
Total Project Cost	100.00%	\$511,995.00	

FEDERAL FUND INFORMATION

This project is match to the following federal funding source(s) and the same provisions apply as if this project were funded by the federal funding source(s) as a federal subaward:

Federal Agency: US Dept of Commerce
Catalog of Federal Domestic Assistance Number and Name: 11.438 - PCSRF
Federal Award Identification Number: NA21NMF4380457
Federal Fiscal Year: 2021
Federal Award Date: 08/23/2021
Total Federal Award: \$17,848,000
Federal Award Project Description: FY2021 Pacific Coastal Salmon Recovery

Sponsor's Indirect Cost Rate: 28.94% of Direct salaries and wages

This funding is not research and development (R&D).

If the Sponsor's total federal expenditures are \$750,000 or more during the Sponsor's fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200 (as updated). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

Sponsor shall comply with the federal "Omni-circular" (2 C.F.R. Part 200).

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with the Agreement, such information shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO's director or designee and consented to in writing (including email) by the Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, WAC Title 420, SRFB policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Restoration Projects - Manual 5
- Salmon Recovery Grants - Manual 18

SPECIAL CONDITIONS

Special Condition #1: Federal Nexus

This project appears to be subject to the National Historic Preservation Act, Section 106, and therefore appears to be exempt from Governor's Executive Order 05-05 Archaeological and Cultural Resources (EO 05-05) as described in the terms of this project agreement. In order for this project to be exempt from EO 05-05, the Section 106 Area of Potential Effect (APE) must include all ground-disturbing activities subject to this project agreement, including any staging area. The sponsor is encouraged to work with the federal permitting agency to align the Section 106 APE with the scope of work subject to this project agreement. If the APE does not include all ground-disturbing activities subject to this project agreement, promptly notify the RCO grant manager, as this will require RCO to initiate cultural resources consultation following EO 05-05 for those activities not included in the federal APE. RCO will withhold reimbursement of development or restoration expenditures until this requirement is met. For acquisition projects, final payment will be withheld until evidence of cultural resources review is provided. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation and Section 106 of the National Historic Preservation Act. In the event that archaeological materials or human remains are discovered within the project area, work in the immediate vicinity must stop, and the Sponsor must ensure compliance with the provisions found in this agreement and under state and federal law.

AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

Sponsor Project Contact

Rebecca Mahan
Habitat Biologist
223 E. 4th St. Suite 5
Port Angeles, WA 98362
rebecca.mahan@co.clallam.wa.us

RCO Contact

Kat Moore
Senior Grants Manager
PO Box 40917
Olympia, WA 98504-0917
kathryn.moore@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

ENTIRE AGREEMENT

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

EFFECTIVE DATE

Unless otherwise provided for in this Agreement, this Agreement, for Project 20-1142, shall become effective and binding on the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

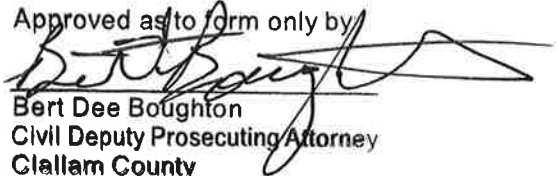
Clallam County

By: _____

Date: _____

Name (printed): _____

Title: _____

Approved as to form only by

Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County

State of Washington Recreation and Conservation Office
On behalf of the Salmon Recovery Funding Board (SRFB or funding board)

By: _____

Date: _____

Megan Duffy
Director
Recreation and Conservation Office

Pre-approved as to form:

By:  _____
Assistant Attorney General

Date: 06/01/2021

Project Sponsor: Clallam County
Project Title: McDonald Creek Fish Passage Restoration

Project Number: 20-1142R
Approval Date: 07/01/2021

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Restoration Metrics

Worksite #1, McDonald Creek

Targeted salmonid ESU/DPS (A.23):

Chum Salmon-Puget Sound/Strait of Georgia ESU, Coho Salmon-Puget Sound/Strait of Georgia ESU, Steelhead-Puget Sound DPS
Cutthroat, Lamprey

Targeted species (non-ESU species):

0.01

Miles of Stream and/or Shoreline Treated or Protected (C.0.b):

Watershed 23 square miles; stream 13.6 miles long

Project Identified In a Plan or Watershed Assessment (C.0.c):

This work was identified two decades ago in the Limiting Factors Analysis and also in the 2005 WRIA 18 Watershed Plan. This proposed project was ranked number 27 by the 18-member technical team in the 2020-21 NOPL Four Year Workplan (NOPL 2019, 2020-21 NOPL Four Year Workplan, Clallam County Courthouse, 223 E. 4th St, Port Angeles, WA 98362).

Type Of Monitoring (C.0.d.1):

Implementation Monitoring

The supporting maintenance and monitoring plan provides a project description, describes existing conditions and aquatic resources, identifies measures that will be taken to avoid and minimize impact to aquatic resources, provides a planting plan of native species for disturbed areas that are to be re-vegetated, summarizes the maintenance of that vegetation and performance standards, and lists the monitoring requirements and long-term management goals for the project site.

Fish Passage Improvement

Miles Of Stream Made Accessible (SRFB) (C.2.b.1):

6.10

Type Of Barrier (C.2.b.3):

6.1 miles for Steelhead and 4.5 miles for Coho
Diversion Dam

Fish ladder installed / improved (C.2.e.1)

Number of Fish Ladders Installed/Improved (C.2.e.2):

1

Fish passage blockages removed or altered (C.2.c.1)

Number of Blockages/Impediments/Barriers Removed/Altered (C.2.c.2):

1

Architectural & Engineering

Architectural & Engineering (A&E)

Agency Indirect Costs

Agency Indirect

Project Sponsor: Clallam County

Project Number: 20-1142R

Project Title: McDonald Creek Fish Passage Restoration

Approval Date: 07/01/2021

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Project Start	09/23/2021	Board funding date.
X	Permits Complete	04/28/2022	USACOE and HPA complete
X	Special Conditions Met	05/01/2022	Final designs approved by the Review Panel
	Bid Awarded/Contractor Hired	06/30/2022	
	Cultural Resources Complete	06/30/2022	Federal Nexus: Based upon your grant application this project appears to be subject to Section 106 of the NHPA. Sponsor must provide evidence of S106 compliance (or qualifying exemption) as defined by the Lead Federal Agency. See special condition #1.
	Final Design to RCO	06/30/2022	
	Funding Acknowl Sign Posted	06/30/2022	
	Landowner Agreement to RCO	07/01/2022	
	Progress Report Due	08/01/2022	
	Restoration Started	09/14/2022	
	Restoration Complete	10/31/2022	
	Progress Report Due	12/01/2022	
	Annual Project Billing Due	12/01/2022	
	Stewardship Plan to RCO	03/31/2023	
	Progress Report Due	06/01/2023	
	RCO Final Inspection	06/30/2023	
	Agreement End Date	12/01/2023	
	Final Billing Due	12/01/2023	
	Final Report Due	12/01/2023	

Project Sponsor: Clallam County
Project Title: McDonald Creek Fish Passage Restoration

Project Number: 20-1142R
Approval Date: 07/01/2021

Standard Terms and Conditions of the Recreation and Conservation Office

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STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 04/29/2022.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

Agreement, terms of the Agreement, or project agreement – The document entitled "RCO GRANT AGREEMENT" accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

applicable manual(s), manual – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the "RCO director" for the term "board" in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

applicable WAC(s) – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the "RCO director" for the term "board" or "agency" in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

applicant – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

application – The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor's signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

completed project or project completion – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

Cultural Resources – Archaeological or historic archaeological sites, historic buildings/structures, and cultural or sacred places.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. Part 200 (as updated)).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. 200 as updated).

long-term compliance period – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

landowner agreement – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

Office – Means the Recreation and Conservation Office or RCO.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 CFR 200 (as updated)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

project area – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project.

project completion or completed project – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.

- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. Part 200 (as updated)) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

restoration project – A project intended to bring a site back to its historic function as part of a natural ecosystem, or one intended to improve the ecological or habitat functionality or capacity of (or part of) a site, landscape, marine environment, or watershed.

restoration and/or enhancement project – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. Part 200 (as updated). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

tribal consultation – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

useful service life – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

WAC – Washington Administrative Code.

PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

ASSIGNMENT

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

RESPONSIBILITY FOR PROJECT

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.

Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

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

COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

- 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or

subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.

- 2) Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.
- D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- E. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. **Project Review.** RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
- 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.
- B. **Termination.** RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- C. **Notice To Proceed.** No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.
- D. **Compliance and Indemnification.** At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall 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.
- E. **Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement.** Costs that exceed the budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:
- 1) Keep the IDP at the project site.

- 2) Make the IDP readily available to anyone working at the project site.
- 3) Discuss the IDP with staff and contractors working at the project site.
- 4) Implement the IDP when cultural resources or human remains are found at the project site.

F. Discovery

- 1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
- 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
 - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).
 - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance and Retention.** The Sponsor shall maintain books, records, documents, data and other records relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. In order to satisfy 15 CFR 24.42(b) & (c) and 2 CFR 200 (as updated), for projects that contain Pacific Coast Salmon Recovery Funds or are used as match to Pacific Coast Salmon Recovery Funds the sponsor shall retain records for a period of nine years from the date RCO deems the project complete as defined in the PROJECT REIMBURSEMENTS Section.
- D. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- E. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in the FEDERAL FUND INFORMATION Section are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may request reimbursement only after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor, or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:
 - 1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.
 - 2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete, and
 - 3) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.
- E. **Requirements for Federal Subawards: Match.** The Sponsor's matching share must comply with 2 C.F.R. Part 200 (as updated). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:
 - 1) Are verifiable from the non-Federal entity's (Sponsor's) records;
 - 2) Are not included as contributions for any other Federal award;
 - 3) Are necessary and reasonable for accomplishment of project or program objectives;
 - 4) Are allowable under 2 C.F.R. Part 200 as updated;
 - 5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be

applied to matching or cost sharing requirements of other Federal programs;

- 6) Are provided for in the approved budget when required by the Federal awarding agency identified in the FEDERAL FUND INFORMATION Section of this Agreement; and
- 7) Conform to other provisions of 2 C.F.R. Part 200 (as updated) as applicable.

F. **Requirements for Federal Subawards:** Close out. Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:

- 1) Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
- 2) Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- 3) Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.
- 4) Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements.

RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, fails to meet its percentage of the project total, and/or fails to comply with any of the terms and conditions of the Agreement, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Return of Overpayments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.
- C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement and to be reimbursed by Sponsor for any grant funds paid to Sponsor (even if such funds have been subsequently paid to an agent), without liability to RCO or, in RCO's discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

INCOME (AND FEES) AND USE OF INCOME

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon sequestration, etc.) during or after the

reimbursement period cited in the Agreement, must be used to offset:

- 1) The Sponsor's matching resources;
 - 2) The project's total cost;
 - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
 - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
 - 5) Capital expenses for similar acquisition and/or development and renovation; and/or
 - 6) Other purposes explicitly approved by RCO or otherwise provided for in this agreement.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
- 1) Grant program laws, rules, and applicable manuals;
 - 2) Value of any service(s) furnished;
 - 3) Value of any opportunities furnished; and
 - 4) Prevailing range of public fees in the state for the activity involved.
- D. **Requirements for Federal Subawards.** Requirements for Federal Subawards. Sponsors must also comply with program income requirements (see 2 C.F.R. Part 200 (as updated) for federal awards).

PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:
- 1) Publish a notice to the public requesting bids/proposals for the project;
 - 2) Specify in the notice the date for submittal of bids/proposals;
 - 3) Specify in the notice the general procedure and criteria for selection; and
 - 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
 - 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. **Requirements for Federal Subawards.**

- 1) For all Federal subawards, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).

TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO,

or to dispose of the equipment according to RCO published policies.

B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

C. **Requirements for Federal Subawards.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013) as updated and amended):

- 1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- 2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- 3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
- 4) Adequate maintenance procedures must be developed to keep the property in good condition.
- 5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

ACKNOWLEDGMENT AND SIGNS

A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. **Signs.**

- 1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and
- 2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.

C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies and in all advertisements and mailings thereof, and any and all of its related digital media publications.

PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
- 1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.
- C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.
- E. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. **Long-Term Obligations.** This section applies to completed projects only.
- B. **Perpetuity.** For acquisition and development projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.
- C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, and/or renovated pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, and/or renovated with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state or federal laws or regulation.
- 1) When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement or law.

CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
 - 1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
 - 2) In a reasonably safe condition for the project's intended use;
 - 3) Throughout its estimated useful service life so as to prevent undue deterioration;
 - 4) In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
 - 1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
 - 2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
 - 3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

PROVISIONS FOR FEDERAL SUBAWARDS

The following provisions shall be in force for this agreement:

- A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 (as updated). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Binding Official.** Per 2 CFR 200 (as updated), as updated, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- C. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200 (as updated).
 - 1) **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - 2) **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the

supervision, inspection, and other onsite functions incidental to the actual construction.

- D. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in the Federal Fund Information Section.

The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

- E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- G. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- H. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- I. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest

percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;
- G. Applicable deed restrictions, and/or governing documents.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may, at its discretion, enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

A. For Cause.

- 1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
 - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
 - c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
- 2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
- 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

- 1) The Sponsor was not in default; or
- 2) Failure to perform was outside Sponsor's control, fault or negligence.

C. Rights and Remedies of the RCO.

- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under

this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

- 1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.
- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own costs and attorneys' fees.

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

END OF STANDARD TERMS AND CONDITIONS

This is the end of the Standard Terms and Conditions of the Agreement.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

7/5/22

Department: DCD

WORK SESSION ☒ Meeting Date: 7/5/2022

REGULAR AGENDA ☒ Meeting Date: 7/12/2022

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|---|--|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 334-21-006-2 |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

Re: SEANWS-2021-CICoCD-00006. The purpose of this amendment is to change the state funding source from the Model Toxics Control Operating Account to General Fund State and to adjust the indirect rate. The indirect rate is listed as 30% (the maximum allowed) to facilitate annual adjustments, but the actual allowed rate is dependent on the approval of backup documentation showing how the rate was calculated.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
No budgetary impact.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Please sign.

County Official signature & print name: Lori Kennedy for Mary Ellen Winborn
Lori Kennedy for Mary Ellen Winborn

Name of Employee/Stakeholder attending meeting: Rebecca Mahan

Relevant Departments:

DCD

Date submitted: 6/29/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



334- 21-006-2

**AMENDMENT NO. 2
TO AGREEMENT NO. SEANWS-2021-CICoCD-00006
BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
Clallam County**

PURPOSE: To amend the above-referenced agreement (AGREEMENT) between the state of Washington Department of Ecology (ECOLOGY) and Clallam County (RECIPIENT) for the Clallam Marine Resources Committee Operations (PROJECT).

The purpose of this amendment is to change the state funding source from the Model Toxics Control Operating Account to General Fund State and to adjust the indirect rate. The indirect rate is listed as 30% (the maximum allowed) to facilitate annual adjustments, but the actual allowed rate is dependent on the approval of backup documentation showing how the rate was calculated.

IT IS MUTUALLY AGREED that the AGREEMENT is amended as follows:

CHANGES TO THE BUDGET

Funding Distribution EG220680

Funding Title: General Fund State 2022-23

Funding Type: Grant

Funding Effective Date: 07/01/2022

Funding Expiration Date: 06/30/2023

Funding Source:

Title: General Fund - State

Fund: FD

Type: State

Funding Source %: 100%

Description: Washington State general funds, 2021-2023 biennium

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? Yes

General Fund State 2022-23	Task Total
MRC Operations	\$ 50,000.00
2. Education and Outreach	\$ 14,000.00
3. Monitoring	\$ 1,000.00
4. Olympia oyster restoration	\$ 0.00

Total: \$ 65,000.00

CHANGES TO THE BUDGET

Funding Distribution EG220679

Funding Title: General Fund State 2021-22

Funding Type: Grant

Funding Effective Date: 07/01/2021

Funding Expiration Date: 06/30/2022

Funding Source:

Title: General Fund - State

Fund: FD

Type: State

Funding Source %: 100%

Description: Washington State general funds, 2021-2023 biennium

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? Yes

General Fund State 2021-22	Task Total
MRC Operations	\$ 21,635.95
2. Education and Outreach	\$ 0.00
3. Monitoring	\$ 123.03
4. Olympia oyster restoration	\$ 0.00

Total: \$ 21,758.98

CHANGES TO THE BUDGET

Funding Distribution EG220116

Funding Title: 2022-23 Puget Sound Partnership/EPA

Funding Type: Grant

Funding Effective Date: 10/01/2022

Funding Expiration Date: 09/30/2023

Funding Source:

Title: Puget Sound Partnership/EPA

Fund: FD

Type: Federal

Funding Source %: 100%

Description:

Federal Awarding Agency: Environmental Protection Agency
Federal Awarding Agency Contact: Jennifer Grimm-Puget Sound Partnership
Federal Awarding Agency Phone: 360-485-7419
Federal Awarding Agency Email: Jennifer.grimm@psp.wa.gov
Federal Awarding Agency Address:

CFDA Catalog Name: National Estuary Program

CFDA Number: 66.456

FAIN:

Research Grant: No

Federal Award Date:

Total Federal Award Amount: \$0.00

Federal Funds Obligated To Recipient: \$29,000.00

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? Yes

2022-23 Puget Sound Partnership/EPA	Task Total
MRC Operations	\$ 15,600.00
2. Education and Outreach	\$ 10,400.00
3. Monitoring	\$ 500.00

4. Olympia oyster restoration	\$ 2,500.00
-------------------------------	-------------

Total: \$ 29,000.00

CHANGES TO THE BUDGET

Funding Distribution EG220115

Funding Title: 2021-22 Puget Sound Partnership/EPA

Funding Type: Grant

Funding Effective Date: 10/01/2021

Funding Expiration Date: 09/30/2022

Funding Source:

Title: Puget Sound Partnership/EPA

Fund: FD

Type: Federal

Funding Source %: 100%

Description:

Federal Awarding Agency: Environmental Protection Agency
 Federal Awarding Agency Contact: Jennifer Grimm-Puget Sound Partnership
 Federal Awarding Agency Phone: 360-485-7419
 Federal Awarding Agency Email: Jennifer.grimm@psp.wa.gov
 Federal Awarding Agency Address:

CFDA Catalog Name: National Estuary Program

CFDA Number: 66.456

FAIN:

Research Grant: No

Federal Award Date:

Total Federal Award Amount: \$0.00

Federal Funds Obligated To Recipient: \$37,000.00

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? Yes

2021-22 Puget Sound Partnership/EPA	Task Total
MRC Operations	\$ 3,185.15
2. Education and Outreach	\$ 23,014.85
3. Monitoring	\$ 6,800.00
4. Olympia oyster restoration	\$ 4,000.00

Total: \$ 37,000.00

CHANGES TO THE BUDGET

Funding Distribution EG220114

Funding Title: MTCA-Marine Resources Committees 21-23

Funding Type: Grant

Funding Effective Date: 07/01/2021

Funding Expiration Date: 06/30/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund: FD

Type: State

Funding Source %: 100%

Description: To distribute equally among the seven Puget Sound Marine Resources Committees.

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? Yes

MTCA-Marine Resources Committees 21-23	Task Total
MRC Operations	\$ 40,978.90
2. Education and Outreach	\$ 1,385.15
3. Monitoring	\$ 876.97
4. Olympia oyster restoration	\$ 0.00

Total: \$ 43,241.02

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
MTCA-Marine Resources Committees 21-23	0 %	\$ 0.00	\$ 43,241.02	\$ 43,241.02
2021-22 Puget Sound Partnership/EPA	0 %	\$ 0.00	\$ 37,000.00	\$ 37,000.00
2022-23 Puget Sound Partnership/EPA	0 %	\$ 0.00	\$ 29,000.00	\$ 29,000.00
General Fund State 2021-22	0 %	\$ 0.00	\$ 21,758.98	\$ 21,758.98
General Fund State 2022-23	0 %	\$ 0.00	\$ 65,000.00	\$ 65,000.00
Total		\$ 0.00	\$ 196,000.00	\$ 196,000.00

AUTHORIZING SIGNATURES

All other terms and conditions of the original Agreement including any Amendments remain in full force and effect, except as expressly provided by this Amendment.

The signatories to this Amendment represent that they have the authority to execute this Amendment and bind their respective organizations to this Amendment.

This amendment will be effective 07/01/2021.

IN WITNESS WHEREOF: the parties hereto, having read this Amendment in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State
Department of Ecology

Clallam County

By: _____
Joenne McGerr
Shorelands
Program Manager

Date

By: _____
Mark Ozias
Commissioner

Date

Template Approved to Form by
Attorney General's Office



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ Meeting Date: July 5, 2022

REGULAR AGENDA ☒ Meeting Date: July 5, 2022

Item summary:

- | | |
|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☒ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

Vacancies exist on the Parks and Recreation Advisory Board due to expiration of terms. A press release was issued in April 2022 to solicit applications from interested citizens and public representatives.

Don Crawford – Director of Parks, Fair and Facilities recommends the reappointment of Roger Hoffman and appointment of Peter Davis to the Parks and Recreation Advisory Committee.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign resolution reappointment Roger Hoffman and appointment Peter David.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners and Parks, Fair and Facilities Department

Relevant Departments: Board of Commissioners and Parks, Fair and Facilities Department

Date submitted: 6-28-22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Parks Board appointments & reappointments 7-5-22
Revised: 3-04-2019



RESOLUTION _____, 2022

REAPPOINTING AND APPOINTING MEMBERS TO THE
PARK AND RECREATION ADVISORY BOARD

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Vacancies exist on the Park and Recreation Advisory Board due to expired terms.
2. A notice of the vacancy was issued to the press in April 2022 soliciting applications from interested citizens and the current member with an expiring term was notified.
3. The current member advised staff they are interested in continuing their service and asked to be considered for another term. Seven applications were received.
4. The Director of Parks, Fair, and Facilities endorses the reappointment of Roger Hoffman and appointment of Peter Davis to the Park and Recreation Advisory Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Roger Hoffman** is reappointed to a term expiring June 30, 2027.
2. **Peter Davis** is appointed to a term expiring June 30, 2027.

PASSED AND ADOPTED this _____ day of _____ 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach

c: A22.170
Appointee
Parks



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

9
7/5/22

Department: BOCC/Finance

WORK SESSION ☒ **Meeting Date:** 7/05/2022

REGULAR AGENDA ☒ **Meeting Date:** 7/12/2022

Required Originals Approved and Attached? ☒

Will Be Provided On:

Item Summary:*

- ☐ Call for Hearing
- ☐ Resolution
- ☐ Draft Ordinance

- ☒ Contract/Agreement/MOU**
- ☐ Proclamation
- ☐ Final Ordinance

- Contract # 19925.22.016
- ☐ Budget Item
- ☐ Other

Documents exempt from public disclosure attached: ☐

Executive Summary:

Personal Services Agreement with the Olympic Peninsula Visitor Bureau in the amount of \$15,000 for the 2022 WA State TREAD App Project for the Olympic Peninsula.

TREAD is an outdoor recreation map app with real time trail data that will provide for improved use of public lands by helping with dispersion and real time messaging.

Budgetary Impact:(Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget Action is required, has it been submitted and a copy attached?** ☐

A Debatable Emergency will be processed on June 28, 2022 to add additional funding to the Hotel/Motel Tax fund budget to cover this new contract.

Recommended Action:(Does the Board need to act? If so, what is the department's recommendation?)

Please review and sign.

County Official signature & print name: Debi Cook

A handwritten signature in blue ink, appearing to read "Debi Cook", written over a horizontal line.

Name of Employee/Stakeholder attending meeting: Debi Cook

Relevant Departments: BOCC, Finance

Date Submitted: 6/23/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

PERSONAL SERVICES AGREEMENT



Contract Number: 19925.22.016

THIS AGREEMENT is entered into between CLALLAM COUNTY, a political subdivision of the State of Washington, (hereinafter called "County" or "Clallam County") and

Name: Olympic Peninsula Visitor Bureau
Address: P.O. Box 670
Port Angeles, Washington 98362
Phone N°: 360.452.8552

(hereinafter called "Contractor").

This Agreement is comprised of:

- ☒ Attachment A – Scope of Work
- ☒ Attachment B – Compensation
- ☒ Attachment C – General Conditions
- ☒ Attachment D – Special Terms and Conditions
- ☐ Attachment E – (specify)

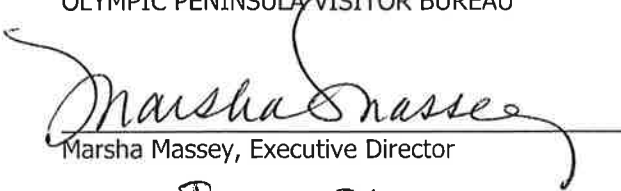
copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The term of this Agreement shall commence on the 31st day of May 2022 and shall, unless terminated as provided elsewhere in the Agreement, terminate on the 31st day of December 2022.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____ 2022.

OLYMPIC PENINSULA VISITOR BUREAU

BOARD OF CLALLAM COUNTY COMMISSIONERS


Marsha Massey, Executive Director

Mark Ozias, Chair

Date: June 21, 2022

ATTEST:

Loni Gores, Clerk of the Board

Originals: BOCC

Vendor

Initiating Department

Copies: 5

THIS CONTRACT HAS BEEN APPROVED AS TO
FORM BY THE CLALLAM COUNTY PROSECUTING
ATTORNEY

SCOPE OF WORK

The lodging tax grant will be used to assist with the funding for the 2022 WA State TREAD App Project for the Olympic Peninsula.

(TREAD is an outdoor recreation map app with real time trail data that will provide for improved use of public lands by helping with dispersion and real time messaging.)

COMPENSATION

1. ☒ **a. FIXED FEE FOR SERVICE:** For services rendered, the County shall pay to the Contractor a fixed fee of FIFTEEN THOUSAND DOLLARS (\$15,000) for the completed work set forth in Attachment "A.". Payments for completed tasks shall be made no more frequently than ☐ monthly; ☐ quarterly; ☐ semi-annually; ☐ annually; ☐ at completion of project; ☒ other (specify) One payment in the amount of \$15,000 to be paid when the contract is fully executed.

OR

☐ **b. HOURLY RATES:** For services rendered, the County shall compensate the Contractor at the following hourly rates:

Name/Position

Hourly Rate

Payments for completed tasks shall be made no more frequently than ☐ monthly; ☐ quarterly; ☐ semi-annually; ☐ annually; ☐ at completion of project; ☐ other (specify) .

Each request for payment shall be supported by an invoice specifying: the name/position of the Contractor's employee if two or more are identified above; number of hours worked; completed tasks for which compensation is sought; estimated percentage of task completion; payment amount requested; other (specify) .

In no event shall Contractor be compensated in excess of _____ DOLLARS (\$ _____) for the completed work set forth in Attachment "A."

2. AND

☒ **a.** The compensation set forth herein includes, without limitation: labor, materials, equipment, travel, telephone, computer, copiers and the like.

OR

☐ **b.** The County shall reimburse the Contractor for actual expenses incurred for travel, telephone, copiers and computer. Reimbursement for airfare, mileage, meals and/or accommodations shall be at the same rate as that applicable to county employees traveling on county business.

OR

☐ **c.** Other (specify):

GENERAL 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 Attachment 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 Attachment B. Unless specifically stated in Attachment B, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

The County shall compensate the Contractor through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Attachment B.

3. Delegation and Subcontracting. Contractor's services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the County 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.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Attachment 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 it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract 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.

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.

Notwithstanding any 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 contract 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 Requirements. This Agreement shall be subject to all federal, state and local laws, rules, and regulations.

7. Right to Review. This contract 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 County Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site 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 contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.
8. Modifications. Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
9. Termination for Default. If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. Mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

10. Termination for Public Convenience. The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.
11. Termination Due to Insufficient Funds. If sufficient funds for payment under this contract are not appropriated or allocated or are withdrawn, reduced, or otherwise limited, the County may terminate this contract upon five (5) days written notice to the Contractor. No penalty or expense shall accrue to the County in the event this provision applies.
12. Termination Procedure. The following provisions apply in the event that this Agreement is terminated:
 - (a) The Contractor shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.

- (b) The Contractor shall provide the County with an accounting of authorized services provided through the effective date of termination.
 - (c) If the Agreement has been terminated for default, the County may withhold a sum from the final payment to the Contractor that the County determines necessary to protect itself against loss or liability.
13. Defense and Indemnity Agreement. The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers, agents and employees, from and against all loss or expense, including but not limited to claims, demands, actions, 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 contract, except as expressly provided herein.
14. 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. Along with the other provisions of this Agreement, this waiver is mutually negotiated by the parties to this Agreement.
15. 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.
16. Withholding Payment. In the event the County 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 County 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 County 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 County 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 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.

17. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available bylaw.
18. 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.
19. Patent/Copyright Infringement. Contractor will defend, indemnify and save harmless County, its appointed and elected officers, agents and employees from and against all loss or expense, including but not limited to claims, demands, actions, 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 the Contractor's alleged infringement on 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, agents 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.
20. Disputes:
- (a) General. Differences between the Contractor and the County, arising under and by virtue of the contract 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 County 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 County Project Manager are in error.

In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral argument and live testimony will not be permitted. 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 County 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.
21. Ownership of Items Produced. All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the 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 and Contractor and/or its agents shall have no ownership or use rights in the work.
22. 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 Scope of Work (Attachment 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 County 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 County Project Manager by such failure to perform.

Interest shall accrue at the rate of 12 percent (12%) per annum from the time the County Project Manager demands repayment of funds.

23. 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 County Project Manager. For purposes of this Agreement, the County Project Manager is:

Name: Not applicable

Title:

Address:

Telephone:

E-mail:

Fax:

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County 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.

24. Non-Discrimination. 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.
25. Subcontractors. In the event that the Contractor employs the use of any subcontractors, the contract 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 third-party beneficiary of such contracts with full rights as such.
26. Third Party Beneficiaries. This agreement is intended for the benefit of the County and Contractor and not for the benefit of any third parties.
27. ***Standard of Care. The Contractor shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Contractor currently practicing under similar circumstances. The Contractor shall, without additional compensation, correct those services not meeting such a standard.***
28. Time is of the Essence. Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Scope of Work.
29. 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 County 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.
30. Severability. If any term or condition of this contract 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 contract are declared severable.
31. 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, state and local statutes, ordinances and regulations;
 - (b) Scope of Work (Attachment A) and Compensation (Attachment B);
 - (c) Special Terms and Conditions (Attachment D); and
 - (d) General Conditions (Attachment C).
32. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
33. Attorney Fees. In the event that litigation must be brought to enforce the terms of this agreement, the prevailing party shall be entitled to be paid reasonable attorney fees.
34. Construction. This agreement has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.

35. Survival. Without being exclusive, Paragraphs 4, 7, 13-19, 21-22 and 31-35 of these General Conditions shall survive any termination, expiration or determination of invalidity of this Agreement in whole or in part. Any other Paragraphs of this Agreement which, by their sense and context, are intended to survive shall also survive.
36. Entire Agreement. This written contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

SPECIAL TERMS AND CONDITIONS

☒ 1. Reporting. The Contractor shall submit written progress reports to the County Project Manager as set forth below:

- ☐ With each request for payment.
- ☐ Monthly.
- ☐ Quarterly.
- ☒ Semi-annually.
- ☐ Annually.
- ☐ Project completion.
- ☐ Other (specify):

Progress reports shall include, at a minimum, the following:

Reports shall include any problems, delays or adverse conditions which will materially affect the Contractor's ability to meet project objectives or time schedules together with a statement of action taken or proposed to resolve the situation. Reports shall also include recommendations for changes to the Scope of Work, if any. Payments may be withheld if reports are not submitted.

☒ 2. Insurance. The Contractor shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the work, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The County, its appointed and elected officials, agents and employees, shall be specifically named as additional insureds in a policy with the same company which insures the Contractor or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

- ☒ COMPREHENSIVE GENERAL LIABILITY:

Bodily injury, including death.	\$1,000,000	per occurrence
Property damage	\$1,000,000	per occurrence
- ☐ ERRORS AND OMISSIONS or PROFESSIONAL LIABILITY with an Extended Reporting Period

Endorsement (two year tail).	\$	per occurrence
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- ☐ WORKERS COMPENSATION:

	Statutory amount
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- ☐ AUTOMOBILE: coverage on owned, non-owned, rented and hired vehicles

Bodily injury, liability, including death	\$	per occurrence
Property damage liability	\$	per occurrence

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such insurance carried by the Contractor shall be primary over any insurance carried by Clallam County and the Contractor shall ensure that such insurances is primary. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within twenty (20) days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

The coverage limits identified herein shall not limit the potential liability of the Contractor and the Contractor's duty to defend, indemnify and hold harmless shall apply to any liability beyond the scope of insurance coverage.

- ☐ 3. Liquidated Damages. For delays in timely completion of the work to be done or missed milestones of the work in progress, the Contractor shall be assessed _____ Dollars (\$) per day as liquidated damages and not as a penalty because the County finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire project.
- ☐ 4. Other (specify):.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

10
7/5/22

Department: BOCC/Finance

WORK SESSION ☒ **Meeting Date:** 7/05/2022

REGULAR AGENDA ☒ **Meeting Date:** 7/12/2022

Required Originals Approved and Attached? ☒

Will Be Provided On:

Item Summary:*

- ☐ Call for Hearing
- ☐ Resolution
- ☐ Draft Ordinance

- ☒ Contract/Agreement/MOU**
- ☐ Proclamation
- ☐ Final Ordinance

- Contract # 19925.22.013
- ☐ Budget Item
- ☐ Other

Documents exempt from public disclosure attached: ☐

Executive Summary:

Personal Services Agreement with the Peninsula Trails Coalition in the amount of \$20,000 for their Olympic Discovery Trail Ambassador Program which is scheduled for June – October, 2022.

Budgetary Impact:(Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget Action is required, has it been submitted and a copy attached?** ☐

A Debatable Emergency will be processed on June 28, 2022 to add additional funding to the Hotel/Motel Tax fund budget to cover this new contract.

Recommended Action:(Does the Board need to act? If so, what is the department's recommendation?)

Please review and sign.

County Official signature & print name: Debi Cook

A handwritten signature in dark ink, appearing to read "Debi Cook", written over a horizontal line.

Name of Employee/Stakeholder attending meeting: Debi Cook

Relevant Departments: BOCC, Finance

Date Submitted: 6/23/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



PERSONAL SERVICES AGREEMENT

Contract Number: 19925.22.013

THIS AGREEMENT is entered into between CLALLAM COUNTY, a political subdivision of the State of Washington, (hereinafter called "County" or "Clallam County") and

Name: Peninsula Trails Coalition
Address: PO Box 1836
Port Angeles, WA 98362
Phone N°: 206-579-4218

(hereinafter called "Contractor").

This Agreement is comprised of:

- ☒ Attachment A – Scope of Work
- ☒ Attachment B – Compensation
- ☒ Attachment C – General Conditions
- ☒ Attachment D – Special Terms and Conditions
- ☐ Attachment E – (specify)

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 the 31st day of May 2022 and shall, unless terminated as provided elsewhere in the Agreement, terminate on the 31st day of December 2022.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 22 day of June 2022.

Peninsula Trails Coalition


Linda Hanlon

Date: 6/22 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Loni Gores, Clerk of the Board

Originals: BOCC
Vendor
Initiating Department

Copies: 5

THIS CONTRACT HAS BEEN APPROVED AS TO
FORM BY THE CLALLAM COUNTY PROSECUTING
ATTORNEY

SCOPE OF WORK

The lodging tax grant will be used to assist with the funding of the Olympic Discovery Trail Ambassador Program which is scheduled for June – October, 2022.

COMPENSATION

1. ☒ **a. FIXED FEE FOR SERVICE:** For services rendered, the County shall pay to the Contractor a fixed fee of TWENTY THOUSAND DOLLARS (\$20,000) for the completed work set forth in Attachment "A.". Payments for completed tasks shall be made no more frequently than ☐ monthly; ☐ quarterly; ☐ semi-annually; ☐ annually; ☐ at completion of project; ☒ other (specify) One payment in the amount of \$20,000 to be paid when the contract is fully executed.

OR

☐ **b. HOURLY RATES:** For services rendered, the County shall compensate the Contractor at the following hourly rates:

Name/Position

Hourly Rate

Payments for completed tasks shall be made no more frequently than ☐ monthly; ☐ quarterly; ☐ semi-annually; ☐ annually; ☐ at completion of project; ☐ other (specify) .

Each request for payment shall be supported by an invoice specifying: the name/position of the Contractor's employee if two or more are identified above; number of hours worked; completed tasks for which compensation is sought; estimated percentage of task completion; payment amount requested; other (specify) .

In no event shall Contractor be compensated in excess of _____ DOLLARS (\$ _____) for the completed work set forth in Attachment "A."

2. AND

☒ **a.** The compensation set forth herein includes, without limitation: labor, materials, equipment, travel, telephone, computer, copiers and the like.

OR

☐ **b.** The County shall reimburse the Contractor for actual expenses incurred for travel, telephone, copiers and computer. Reimbursement for airfare, mileage, meals and/or accommodations shall be at the same rate as that applicable to county employees traveling on county business.

OR

☐ **c.** Other (specify):

GENERAL 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 Attachment 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 Attachment B. Unless specifically stated in Attachment B, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

The County shall compensate the Contractor through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Attachment B.

3. Delegation and Subcontracting. Contractor's services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the County 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.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Attachment 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 it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract 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.

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.

Notwithstanding any 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 contract 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 Requirements. This Agreement shall be subject to all federal, state and local laws, rules, and regulations.

7. Right to Review. This contract 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 County Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site 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 contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.
8. Modifications. Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
9. Termination for Default. If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. Mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

10. Termination for Public Convenience. The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.
11. Termination Due to Insufficient Funds. If sufficient funds for payment under this contract are not appropriated or allocated or are withdrawn, reduced, or otherwise limited, the County may terminate this contract upon five (5) days written notice to the Contractor. No penalty or expense shall accrue to the County in the event this provision applies.
12. Termination Procedure. The following provisions apply in the event that this Agreement is terminated:
 - (a) The Contractor shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.

- (b) The Contractor shall provide the County with an accounting of authorized services provided through the effective date of termination.
 - (c) If the Agreement has been terminated for default, the County may withhold a sum from the final payment to the Contractor that the County determines necessary to protect itself against loss or liability.
13. Defense and Indemnity Agreement. The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers, agents and employees, from and against all loss or expense, including but not limited to claims, demands, actions, 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 contract, except as expressly provided herein.
14. 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. Along with the other provisions of this Agreement, this waiver is mutually negotiated by the parties to this Agreement.
15. 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.
16. Withholding Payment. In the event the County 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 County 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 County 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 County 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 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.

17. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available bylaw.
18. 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.
19. Patent/Copyright Infringement. Contractor will defend, indemnify and save harmless County, its appointed and elected officers, agents and employees from and against all loss or expense, including but not limited to claims, demands, actions, 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 the Contractor's alleged infringement on 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, agents 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.
20. Disputes:
- (a) General. Differences between the Contractor and the County, arising under and by virtue of the contract 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 County 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 County Project Manager are in error.

In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral argument and live testimony will not be permitted. 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 County 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.
21. Ownership of Items Produced. All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the 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 and Contractor and/or its agents shall have no ownership or use rights in the work.
22. 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 Scope of Work (Attachment 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 County 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 County Project Manager by such failure to perform.

Interest shall accrue at the rate of 12 percent (12%) per annum from the time the County Project Manager demands repayment of funds.

23. 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 County Project Manager. For purposes of this Agreement, the County Project Manager is:

Name:

Title:

Address:

Telephone:

E-mail:

Fax:

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County 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.

24. Non-Discrimination. 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.
25. Subcontractors. In the event that the Contractor employs the use of any subcontractors, the contract 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 third-party beneficiary of such contracts with full rights as such.
26. Third Party Beneficiaries. This agreement is intended for the benefit of the County and Contractor and not for the benefit of any third parties.
27. Standard of Care. The Contractor shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Contractor currently practicing under similar circumstances. The Contractor shall, without additional compensation, correct those services not meeting such a standard.
28. Time is of the Essence. Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Scope of Work.
29. 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 County 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.
30. Severability. If any term or condition of this contract 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 contract are declared severable.
31. 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, state and local statutes, ordinances and regulations;
 - (b) Scope of Work (Attachment A) and Compensation (Attachment B);
 - (c) Special Terms and Conditions (Attachment D); and
 - (d) General Conditions (Attachment C).
32. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
33. Attorney Fees. In the event that litigation must be brought to enforce the terms of this agreement, the prevailing party shall be entitled to be paid reasonable attorney fees.
34. Construction. This agreement has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.

35. Survival. Without being exclusive, Paragraphs 4, 7, 13-19, 21-22 and 31-35 of these General Conditions shall survive any termination, expiration or determination of invalidity of this Agreement in whole or in part. Any other Paragraphs of this Agreement which, by their sense and context, are intended to survive shall also survive.
36. Entire Agreement. This written contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

SPECIAL TERMS AND CONDITIONS

☒ 1. Reporting. The Contractor shall submit written progress reports to the County Project Manager as set forth below:

- ☐ With each request for payment.
- ☐ Monthly.
- ☐ Quarterly.
- ☐ Semi-annually.
- ☒ Annually.
- ☐ Project completion.
- ☐ Other (specify):

Progress reports shall include, at a minimum, the following:

Reports shall include any problems, delays or adverse conditions which will materially affect the Contractor's ability to meet project objectives or time schedules together with a statement of action taken or proposed to resolve the situation. Reports shall also include recommendations for changes to the Scope of Work, if any. Payments may be withheld if reports are not submitted.

☒ 2. Insurance. The Contractor shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the work, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The County, its appointed and elected officials, agents and employees, shall be specifically named as additional insureds in a policy with the same company which insures the Contractor or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

- ☒ **COMPREHENSIVE GENERAL LIABILITY:**

Bodily injury, including death.	\$1,000,000	per occurrence
Property damage	\$1,000,000	per occurrence
- ☐ **ERRORS AND OMISSIONS or PROFESSIONAL LIABILITY with an Extended Reporting Period**

Endorsement (two year tail).	\$	per occurrence
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- ☐ **WORKERS COMPENSATION:**

	Statutory amount
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- ☐ **AUTOMOBILE: coverage on owned, non-owned, rented and hired vehicles**

Bodily injury, liability, including death	\$	per occurrence
Property damage liability	\$	per occurrence

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such insurance carried by the Contractor shall be primary over any insurance carried by Clallam County and the Contractor shall ensure that such insurance is primary. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within twenty (20) days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

The coverage limits identified herein shall not limit the potential liability of the Contractor and the Contractor's duty to defend, indemnify and hold harmless shall apply to any liability beyond the scope of insurance coverage.

☐ 3. Liquidated Damages. For delays in timely completion of the work to be done or missed milestones of the work in progress, the Contractor shall be assessed _____ Dollars (\$) per day as liquidated damages and not as a penalty because the County finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire project.

☐ 4. Other (specify):.