



## AGENDA ITEM SUMMARY

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

2c  
11/26

Department: DCD

WORK SESSION ☒ Meeting Date: 11-12-19

REGULAR AGENDA ☒ Meeting Date: 11-19-19

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

### Item summary:

- |   |  |                                      |
|---|--|--------------------------------------|
| <input type="checkbox"/> Call for Hearing | <input checked="" type="checkbox"/> Contract/Agreement/MOU - Contract # 334.19.010 |                                      |
| <input type="checkbox"/> Resolution       | <input type="checkbox"/> Proclamation  | <input type="checkbox"/> Budget Item |
| <input type="checkbox"/> Draft Ordinance  | <input type="checkbox"/> Final Ordinance   | <input type="checkbox"/> Other       |

Documents exempt from public disclosure attached: ☐

### Executive summary:

The Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir project proposes to construct an 88-acre off-channel reservoir by River Road in the Sequim area to store approximately 1,600 AF. The constructed off-channel reservoir would provide a viable irrigation alternative in late summer, allow for expansion of an exempt well mitigation program, and restore upwards of 30 cfs of late summer flow in the Dungeness River. The Dungeness portion of WRIA 18 (Elwha-Dungeness is a prioritized funding basin (ESSB 6091-Section 208.2) for the Streamflow Restoration Act. This funded project includes three major project phases: Land Acquisition, Detailed Design, and Permitting. A video showing how the reservoir will operate to enhance water supplies and provide climate resiliency for people, farms, and fish may be viewed at <https://vimeo.com/203968263#t=NaNs>

**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?** ☐

This will increase revenue by \$4,092,854.

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

Please sign the contract with Ecology to receive \$4,092,854 for the Dungeness Flow Restoration and Aquifer Recharge project. The contract has been reviewed to form by the Chief Civil Prosecuting Attorney.

**County Official signature & print name:** Carol L. Creasey *Carol L. Creasey*

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

**Relevant Departments:** DCD and Public Works

**Date submitted:** 11/6/19

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

Agenda Item Summary Reservoir (11-05-19).docx

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

Revised: 3-04-2019



334-19-010

## Agreement No. WRSRP-2019-ClCoCD-00083

### WATER RESOURCES STREAMFLOW RESTORATION INTERIM IMPLEMENTATION GRANTS AGREEMENT

#### BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

#### AND

CLALLAM COUNTY COMMUNITY DEVELOPMENT

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

#### GENERAL INFORMATION

Project Title:	Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir
Total Cost:	\$4,092,854.00
Total Eligible Cost:	\$4,092,854.00
Ecology Share:	\$4,092,854.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	04/01/2019
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Streamflow Restoration Grants

#### Project Short Description:

The Dungeness Off-Channel Reservoir, would capture high flows in climate-resilient storage for late summer mainstem flow restoration, exempt well mitigation, and small stream restoration via managed aquifer recharge. The project would restore 20-30 cfs of Dungeness River flows by substituting irrigation water supply (typically diverted from the river) with reservoir water. This funded project includes three initial project phases: Land Acquisition, Detailed Design, and Permitting.

#### Project Long Description:

The Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir project will complete land acquisition, detailed design and permitting for the proposed 88-acre off-channel reservoir, to store approximately 1,600 AF. The constructed off-channel reservoir would provide a viable irrigation alternative in late summer, allow for expansion of an exempt well mitigation program, and restore upwards of 30 cfs of late summer flow in the Dungeness River. WRIA 18

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

(Elwha-Dungeness), the Dungeness portion, is a prioritized funding basin (ESSB 6091-Section 208.2) for the Streamflow Restoration Act.

#### Aquifer Recharge:

The Dungeness Water Exchange (DWE) operates an exempt well mitigation program within the Dungeness Instream Flow Water Rule Area (Chapter 173-518 WAC), which relies on managed aquifer recharge (MAR) infiltration with water purchased from and conveyed by the Dungeness Water Users Association (DWUA), an association of seven irrigation purveyors in the valley. The 2012 purchase from DWUA provides the existing MAR program with 130 AFY of water to support independent stream flow mitigation and 45 AF for mainstem flow mitigation. This project would allow for design of an off-channel reservoir that would store existing DWE water for MAR east of river where two-thirds of existing mitigation obligations is held. The DWE manages an additional site which is exclusively for flow restoration in Matriotti Creek and the mainstem Dungeness River. This site draws upon Maximum Allocation (173-518-090), high flow water, available by annual permit from Ecology under the flow rule. DWE has been in discussions to acquire additional mitigation water from DWUA to extend the mitigation capacity and time horizon of DWE. The reservoir will also be used to store excess storm runoff captured in Highland irrigation canals which causes flooding issues in the City of Sequim. Capturing additional high flows and runoff in the reservoir expands the MAR capacity to restore aquifers and independent streams.

#### Reservoir Operations:

The design will allow for water diversion from the Dungeness via the Highland irrigation system (HID) at river mile 10.9 when river flows are high, and stored in the reservoir. Roughly August to September of each year, irrigators on the east side of the Dungeness will use the stored water instead of diverting 20-30 cfs (roughly half the normal irrigation water diversions) from the river in the critical low flow period. This amount represents 30-50% of streamflow during drought years. In drought years, pumping reservoir water to the upper Highland irrigation system would result in additional reductions in stream diversions during critical flow. This is a source substitution project, altering a point of diversion from the river to the reservoir that is consistent with and would not expand irrigators' current water rights. The east Dungeness irrigation purveyors would seek Ecology changes to their water rights to allow for diversion from the HID POD, as well as earlier capture than the current irrigation season start of April 15. Additional infrastructure changes may be necessary to HID POD as well as connecting the reservoir outlet to existing irrigation infrastructure. Historic diversion and river gage data on the Dungeness dating as far back as 1923 would be monitored to demonstrate the flow restoration achieved.

The surrounding land of the reservoir site would be used to create a new County Park. Clallam County has recognized the Off-Channel Reservoir as its top water resources priority because of benefits to community, development, water resources, and salmon recovery.

#### Land Acquisition:

Project proponents have identified two key parcels which are currently owned by the Washington Department of Natural Resources (DNR). DNR is a willing seller having supported this trust land transfer (TLT) of the River Road site and included it on the TLT 2017-2019 list submitted to the legislature.

#### Design:

A conceptual design and project proposal were developed by Anchor QEA in 2016 based on the River Road site. This project will support project design, including the reservoir and any necessary connections/upgrades to irrigation infrastructure. 30% design will enable Clallam County to pursue permits. 90% design will allow the County to pursue bids for construction of the project.

#### Permitting:

The project will obtain all permits related to the construction of the project.

This project addresses priorities in many established strategies including the 2012 Instream Flow Rule and 2005

Agreement No: WRSRP-2019-CICoCD-00083  
Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir  
Recipient Name: Clallam County Community Development

Elwha-Dungeness Watershed Plan and is listed as an ESSB 6091 prioritized basin in SRF Interim Funding Guidelines. Extensive planning and preliminary design establish merits and costs. As the project will restore up to 30 cfs of Dungeness flows indefinitely, this project reflects a quantity of flow restoration unavailable through traditional water acquisition with the additional benefit of mitigation and small stream MAR. Clallam County and partners provide the needed staff capacity to complete this important project.

The multiple benefits of this project include:

- \*Dungeness River late summer flows increased by 20-50%
- \*Increased capacity for MAR storage
- \*Water quality improvement
- \*Viable irrigation alternative supply to late-season river diversion
- \*Public recreation at new park on site
- \*Climate change resiliency
- \*Flood flow storage

#### Overall Goal:

The long-term goal of the Dungeness Off-Channel Reservoir project is to improve late summer Dungeness River flows in the lower 11 miles by more than 20 cfs by providing east of the Dungeness River irrigation purveyors an alternative water supply in late summer, provide climate resilient infrastructure, support aquifer recharge to small streams, reduce flood risk to Sequim, and provide a new local park. The design of the 1,600 AF reservoir will allow for water to be stored during periods of high river flows when snow melt is abundant. Stored water will be used as a substitute for late-summer irrigation diversions when streamflow is regularly below minimum instream flow, and within the irrigators' legal water right.

The reservoir will provide water for MAR to offset permit exempt impacts on the populated eastern side of the river. Additionally, water storage will allow for increased recharge for small stream restoration on the east side of the river, which is vulnerable to low flows.

Agreement No: WRSRP-2019-CICoCD-00083  
Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir  
Recipient Name: Clallam County Community Development

## RECIPIENT INFORMATION

Organization Name: Clallam County Community Development

Federal Tax ID: 91-6001298

DUNS Number: 075739235

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

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

Organization Fax: (360) 417-2443

## Contacts

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

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

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**ECOLOGY INFORMATION**

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

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

**Contacts**

<b>Project Manager</b>	Angela Johnson  PO Box 47775 Olympia, Washington 98504-7775 Email: ANJO461@ecy.wa.gov Phone: (360) 407-6668
<b>Financial Manager</b>	Alvin Josephy  PO Box 47600 Olympia, Washington 98504-7600 Email: ajos461@ecy.wa.gov Phone: (360) 407-6456

Agreement No: WRSRP-2019-CICoCD-00083  
Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir  
Recipient Name: Clallam County Community Development

## AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

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

Washington State  
Department of Ecology

Clallam County Community Development

By: \_\_\_\_\_

By: \_\_\_\_\_

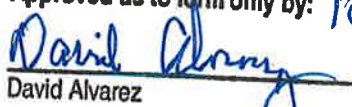
Mary Verner  
Water Resources  
Program Manager

Date

Mark Ozias  
Commissioner

Date

Template Approved to Form by  
Attorney General's Office

Approved as to form only by: 10/31/19  
  
David Alvarez  
Chief Civil Deputy Prosecuting Attorney  
Clallam County



Agreement No: WRSRP-2019-ClCoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**SCOPE OF WORK**

Task Number: 1

**Task Cost: \$335,877.00**

Task Title: Grant Administration/Management

**Task Description:**

A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation, progress reports and recipient closeout report (including photos); compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement.

**Task Goal Statement:**

Properly managed project that meets agreement and Ecology administrative requirements.

**Task Expected Outcome:**

- \* Timely and complete submittal of requests for reimbursement, quarterly progress reports and recipient closeout report.
- \* Properly maintained project documentation

**Recipient Task Coordinator:** Carol Creasey, Clallam County**Grant Administration/Management****Deliverables**

Number	Description	Due Date
1.1	Progress Reports	
1.2	Recipient Closeout Report	06/30/2023

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**SCOPE OF WORK**

Task Number: 2

**Task Cost:** \$2,170,000.00

Task Title: Land Acquisition

**Task Description:**

The site of the proposed reservoir was selected during a feasibility study funded by a Salmon Recovery Funding Board (SRFB) grant (2013). It is owned by the Washington Department of Natural Resources (DNR). DNR has expressed a willingness to transfer two parcels to Clallam County for this project and included the property on the 2017-2019 Trust Land Transfer (TLT) list submitted to the legislature (see attached DNR letter). The proposed reservoir property encompasses two parcels:

\*319-Acre Parcel West of River Road in Sequim WA Parcel 043036-210000

\*77-Acre Parcel East of River Road in Sequim WA Parcel 043036-130000

Since the acquisition funding is from SRA as opposed to the Capital Budget, the land transaction is referred to as a Direct Transfer, between DNR and Clallam County.

**Public Benefits:** These parcels are sought for Direct Transfer from DNR to Clallam County because they are well suited to provide a number of public benefits. Project supporters initially identified the parcels as an ideal location for an off-channel water storage reservoir (western parcel) which will store water in the winter and spring for use by agriculture in the late summer time (in lieu of the river) when stream flows are critically low and threaten endangered salmonids. The proposed 1,600 AF reservoir sustainably enhances late summer stream flows by 20-30 cubic feet per second increasing low flows by up to 50%. If approved for TLT, the parcels will become a public park owned, operated, and maintained by Clallam County. When complete, the park will be the largest County park in the Sequim area and its proximity to the City of Sequim will make it a popular recreation destination. In addition to creating a new public park with river access, and the creation of a storage reservoir which will improve salmon habitat, the proposed project has several other important benefits.

The site of the proposed reservoir will allow opportunities for aquifer recharge. Stored water from the reservoir site will be diverted to nearby shallow aquifer recharge facilities. Aquifer recharge will be timed to benefit low flows in the Dungeness River as well as the small independent streams on the eastside of the Dungeness River. Flooding will also be decreased by intercepting storm water and directing it into the reservoir via irrigation lines, then releasing the stored water for irrigation when river flow is low.

The proposed cost estimate has been reviewed and provided by DNR staff. Included in these task costs are appraisal and other associated real estate transaction costs.

**Task Goal Statement:**

This project provides Clallam County with the funding to proceed with the Direct Land Transfer of the two designated parcels. The western parcel would serve as the site of the future 88 acres, 1,600 AF reservoir which serves for streamflow restoration, stormwater storage, aquifer recharge and public recreation with, establishment of a new county park on both parcels.

**Task Expected Outcome:**

Completed appraisal of the property. Pre-approval for land acquisition granted from Ecology in accordance with Acquisition

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

Manual 3 (WA Recreation and Conservation Office). With Direct Transfer approval, Clallam County secures the two designated parcels for planned construction of the Dungeness Off-Channel Reservoir.

Recipient Task Coordinator: Carol Creasey, Clallam County

**Land Acquisition****Deliverables**

Number	Description	Due Date
2.1	Coordinate with Department of Natural Resources (DNR). Clallam County will work with DNR to proceed with all necessary steps to facilitate Direct Land Transfer (DLT). The entire DLT process is anticipated to take 18 months.	06/30/2021
2.2	Clallam County will coordinate with DNR to secure and begin an appraisal of the two parcels proposed for Trust Land Transfer. This appraisal is estimated to take 6 months.	12/01/2019
2.3	Clallam Count will finalize DLT agreement with DNR.	07/01/2020
2.4	DLT agreement is complete and land is now owned by Clallam County.	06/30/2021

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

## SCOPE OF WORK

Task Number: 3 **Task Cost: \$1,295,300.00**

Task Title: Detailed Design

### Task Description:

The Dungeness reservoir project partners contracted the development of a conceptual project proposal and design with engineering consultant ANCHOR QEA in 2016. The document provided Preliminary Design Analysis, Design Development and Geotechnical Analysis.

The Highland Irrigation District lateral, flowing south to north and bisecting the proposed reservoir site parcel, conveys water to the Eureka main canal, Independent main canal, and other laterals north of the proposed reservoir location. Detailed design would provide specifications of the connection between the reservoir and existing irrigation infrastructure downstream of the reservoir.

Preliminary design drawings and an opinion of probable project cost are conceptual and have been adjusted with updated information.

Elements of the proposed reservoir include:

- \*A 1,600 AF storage reservoir with a maximum water surface area of approximately 88 acres
- \*An embankment with 3 horizontal to 1 vertical (3H:1V) interior side slopes, 2.5H:1V exterior side slopes, and a maximum height of approximately 30 feet, with reservoir depth of approximately 20 feet
- \*Excavation and placement of more than 700,000 cubic yards of material
- \*A sediment settling/retention basin upstream of the proposed reservoir
- \*A 30-inch-diameter inlet pipeline from the HID main canal
- \*A reinforced concrete structure at the pipe inlet and at the discharge to the reservoir
- \*A reinforced concrete, low-level outlet structure with an automated gate
- \*A 30-inch-diameter, low-level outlet pipeline designed to deliver water to the HID lateral
- \*A reinforced concrete overflow spillway structure
- \*Reinforced concrete energy dissipating structures at the low-level outlet and spillway outlet
- \*A piped connection from the HID main canal at Happy Valley Road to the reservoir for peak stormwater conveyance and control

Development of detailed design will be required prior to project construction. Additional design development activities that will be completed prior to construction include:

- \*Topographic survey of the proposed storage site
- \*Additional geotechnical investigation, including completion of additional borings, seismic study, additional laboratory analysis of soils to determine final design requirements for embankment side-slopes, dimensions, materials, and configuration
- \*Wetland and other environmental surveys
- \*Cultural resources surveys
- \*Detailed evaluation of reservoir inflows, outflows, operational controls, Highland diversion and main canal capacity
- \*Evaluation/identification of conveyance system upgrades downstream of reservoir to effectively connect and serve irrigators from the reservoir

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

\*Additional analysis to further evaluate peak stormwater flows and develop design requirements for stormwater conveyance, sediment retention, and control facilities

\*Coordination with regulatory agencies, including permitting agencies and the Washington Department of Ecology's (Ecology's) Dam Safety Office to verify permit and design requirements

\*Development of detailed drawings and technical specifications

\*Refinement of the opinion of probable construction costs to reflect the detailed design

\*Additional design to address any potential negative impacts to water quality and aquatic species

These elements represent a preliminary/conceptual design and other information developed in design process will inform final design.

#### Task Goal Statement:

The goal of this task is the issuance of an RFP for engineering and final construction-ready design, the selection of an engineering design firm, and the production of construction-ready design which maximizes the potential storage for irrigation source substitution in late summer as well as managed aquifer recharge year-round.

#### Task Expected Outcome:

30% Design from which to pursue permits.

90% Design which is ready to submit for bids for reservoir construction.

Recipient Task Coordinator: Carol Creasey, Clallam County

#### **Detailed Design**

##### **Deliverables**

Number	Description	Due Date
3.1	Clallam County will issue an RFP for final design of the Dungeness Off-Channel Reservoir project. This deliverable is estimated to take 2 months to select design firm.	03/30/2020
3.2	Engineering Design firm is selected and contract is executed to provide final design.	05/30/2020
3.3	30% Design is provided by engineering design firm within 6 months of contracting, which will be significant design to begin permit applications.	11/30/2020
3.4	30% Design is provided by Final Design with detailed drawings is provided by engineering design firm within 1 year of contracting.	05/30/2021

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**SCOPE OF WORK**

Task Number: 4

**Task Cost: \$156,727.00**

Task Title: Permitting

**Task Description:**

Application and/or acquisition of the following permits will be pursued: Section 404 permit; WDFW Hydraulic Permit; Section 401 Water Quality Certification; Ecology Reservoir Storage Permit, Ecology Water Right Change Permit for storage of late spring flows, Ecology Water Right Permit(s) for storage of storm flows, Ecology NPDES Construction Permit, and Ecology Dam Construction Permit; DNR Forest Practices Permit; SEPA; Clallam County Critical Area and Building, Construction, Clearing and Grading Permits; and, Clallam County Zoning and Conditional Use Permit, County Comprehensive Plan Land Use and Zoning Map Amendment, Shoreline Permit (if construction within shoreline jurisdiction), and On-Site Septic System for restroom facility (if planned). Completion of the cultural resources survey and hazardous toxins assessment. Completion of wetland review. Completion of construction bid packet.

**Task Goal Statement:**

All appropriate and required permitting will be acquired for the construction of the reservoir project. At completion of detailed design, a complete package of both design and permits will be ready to move forward on construction of the Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir.

**Task Expected Outcome:**

At the completion of this grant period, all required permits from the Permit List will be acquired or in process. Necessary permits will be attained to move forward on construction phase of this project.

**Recipient Task Coordinator:** Carol Creasey, Clallam County**Permitting****Deliverables**

Number	Description	Due Date
4.1	Clallam County will identify all applicable permits required for reservoir and park development as well as any permits required to connect reservoir to irrigation infrastructure.	12/30/2020
4.2	Clallam County will have filed all permit applications needed for project.	12/01/2021

## SCOPE OF WORK

Task Number: 5 Task Cost: \$134,950.00

Task Title: Outreach/Coordination, Water Rights, Legal Service

### Task Description:

Recipient or assigned will develop a formal working agreement-MOA among project partners. Coordination of all those assigned for task responsibility under this agreement will be undertaken. Coordination of all Dungeness Reservoir Working Group stakeholder meetings to provide project feedback, comment and inform the project. Recipient or assigned will undertake a public process of at minimum 3 public meetings to present the project to the community and secure comment/public feedback.

Recipient or assigned will evaluate water rights subject to change, prepare the change applications, and seek other necessary approvals to submit to Ecology for processing.

Recipient or assigned will secure legal services to support the project.

### Task Goal Statement:

Effectively coordinate among all those responsible for tasks under the SRA funded project elements. Consistently engage Dungeness Reservoir Working Group stakeholders in informing them on the project. Inform, receive, and address public feedback about the project.

Coordinate with Highland Irrigation District (HID) and Dungeness Water Users as well as Ecology to secure the necessary approvals for water right change and for reservoir storage and release.

Assigned legal counsel will provide review/development of stakeholder MOA; change applications and agreements necessary to legally effectuate the storage of water in the new reservoir.

### Task Expected Outcome:

Quarterly meetings of Dungeness Reservoir Working group, 3 public meetings with good community participation, timely coordination of task and quarterly progress report.

Change applications prepared and signed by HID; approved ROE by Ecology.

MOA and change applications are reviewed and water agreements are developed.

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**Recipient Task Coordinator:** Carol Creasey, Clallam County**Outreach/Coordination, Water Rights, Legal Service****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
5.1	MOA Development	01/01/2020
5.2	Stakeholder Meetings and preparation for meetings	12/01/2022
5.3	Public Meetings	12/01/2022
5.4	Water Right Change Applications	02/01/2022
5.5	Review and Development of Legal Documents	06/30/2023



Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**BUDGET****Funding Distribution EG200316**

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

Funding Title: Dungeness Recharge Reservoir

Funding Type: Grant

Funding Effective Date: 04/01/2019

Funding Expiration Date: 06/30/2023

Funding Source:

Title: Watershed Restoration and Enhancement Bond Account

Type: State

Funding Source %: 100%

Description: To fund projects using tax exempt bonds. Projects include acquiring senior water rights, water conservation, water reuse, stream gaging, groundwater monitoring, and developing natural and constructed infrastructure designed to provide access to new water supplies, with priority given to projects in watersheds developing specified plans and watersheds participating in the defined pilot project.

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant?

<b>Dungeness Recharge Reservoir</b>	<b>Task Total</b>
Grant Administration/Management	\$ 335,877.00
Land Acquisition	\$ 2,170,000.00
Detailed Design	\$ 1,295,300.00
Permitting	\$ 156,727.00
Outreach/Coordination, Water Rights, Legal Service	\$ 134,950.00

**Total: \$ 4,092,854.00**

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

**Funding Distribution Summary****Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
Dungeness Recharge Reservoir	0.00 %	\$ 0.00	\$ 4,092,854.00	\$ 4,092,854.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 4,092,854.00</b>	<b>\$ 4,092,854.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS****GENERAL FEDERAL CONDITIONS**

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

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY****EXCLUSION:**

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

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

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

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

## GENERAL TERMS AND CONDITIONS

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

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

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

##### 2. AMENDMENTS AND MODIFICATIONS

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

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

RECIPIENT shall:

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

RECIPIENT shall:

- Keep the IDP at the project site.

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

- Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

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

## 6. COMMUNICATION

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

## 7. COMPENSATION

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

## 8. COMPLIANCE WITH ALL LAWS

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

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of



Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

Washington which affect wages and job safety.

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

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

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

#### 9. CONFLICT OF INTEREST

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

#### 10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

#### 11. DISPUTES

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

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

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

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

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

accordance with the decision rendered.

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

## 12. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENT'S unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:
- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
  - Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
  - Submit the QAPP to ECOLOGY for review and approval before the start of the work.
- b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.
- c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: <https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

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

## 14. INDEMNIFICATION

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

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

## 15. INDEPENDENT STATUS

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

## 16. KICKBACKS

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

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

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

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

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

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

#### 18. ORDER OF PRECEDENCE

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

#### 19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

#### 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through



Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

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

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

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

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

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

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

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

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

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

## 22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

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

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

### 23. RECOVERY OF FUNDS

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

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

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

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

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

### 24. SEVERABILITY

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

### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

### 26. SUSPENSION

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

### 27. SUSTAINABLE PRACTICES

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

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

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

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

## 28. TERMINATION

### a) For Cause

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

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

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

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

### b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

### c) By Mutual Agreement

Agreement No: WRSRP-2019-CICoCD-00083

Project Title: Dungeness Flow Restoration and Aquifer Recharge Off-Channel Reservoir

Recipient Name: Clallam County Community Development

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

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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



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



DEPARTMENT: DCD

DATE: 10-30-19

Legal action requested or question you desire to be answered:

restoration

Please review this contract with Ecology for the Dungeness Flow Restoration & Aquifer Recharge (Reservoir) Project. There may be a few minor changes on Task 2 Land Acquisition since we have already passed the proposed deadlines due to Ecology taking longer to send us the contract than expected. Ecology is working to change the deadlines for Task 2.2 to 12/01/19 and Task 2.3 to 7/01/20. Otherwise, the contract will remain the same. By sending you the contract now, I hope to get the project back on a timely track.

Please contact me should you have any questions or require clarification,

Thanks,  
Carol

Carol L. Creasey ext. 2424

If request is for contract review:

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

Legal action needed by: 11-12-19

(date)

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

Carol L. Creasey x. 2424  
Official Requesting Action Ext.

**PROSECUTING ATTORNEY USE ONLY:**

Referring Dept. DCP 10/31/19  
Date Received 10/31/2019  
Opinion Rendered 10/31/2019 DWA  
Reviewed by MBN \_\_\_\_\_

Approved as to form only by: 10/31/19  
David Alvarez  
David Alvarez  
Chief Civil Deputy Prosecuting Attorney  
Clallam County