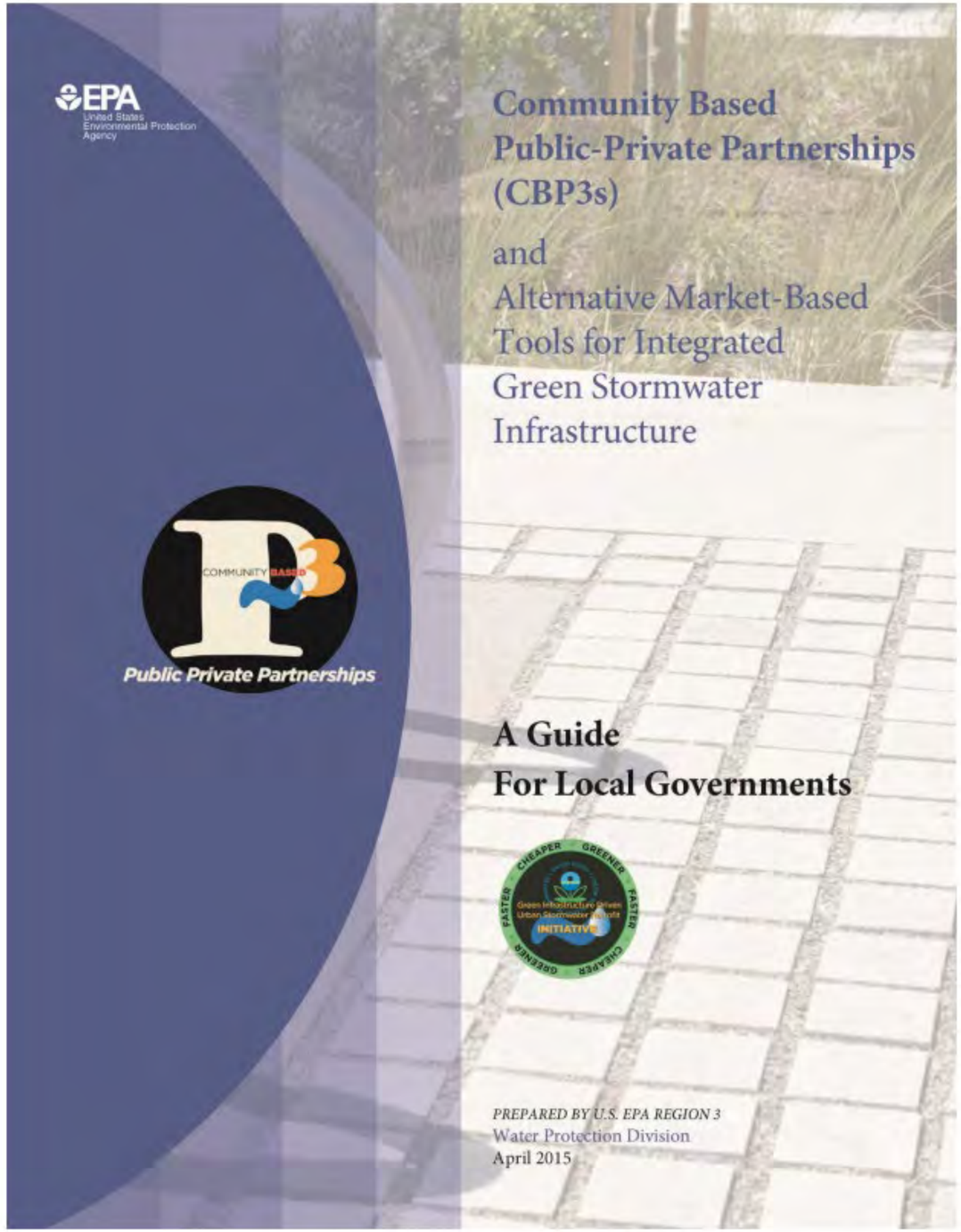
Seeking Champions for Change!
Can a Community-Based Stormwater Public Private Partnership Help You Meet Your Stormwater Goals?

Jessica Schwing
Stormwater Financial Assistance

DEPARTMENT OF ECOLOGY
State of Washington

What is a P3?


EPA
United States Environmental Protection Agency
Community Based Public-Private Partnerships (CBP3s)
and
Alternative Market-Based Tools for Integrated Green Stormwater Infrastructure
COMMUNITY BASED P3
Public Private Partnerships
A Guide
For Local Governments
CHEAPER GREENER FASTER
INITIATIVE
PREPARED BY U.S. EPA REGION 3
Water Protection Division
April 2015

Stormwater Community Based Public-Private Partnership Feasibility Assessment

- http://www.commerce.wa.gov/wp-content/uploads/2019/03/Commerce-Environmental-Incentives-CBP3-feasibility-OPT.pdf

Is A Community-Based Public-Private Partnership Right For Your Community?

- http://www.commerce.wa.gov/wp-content/uploads/2019/11/Report-LGD-Stormwater-II.pdf

CBP3 FEASIBILITY ASSESSMENT RECOMMENDATIONS (PHASE I)

IMPROVE ENABLING CONDITIONS FOR CBP3S

- Seek policy and appropriations that support the use of CBP3s, performance contracts, and other alternative project delivery mechanisms
- Revise stormwater funding program eligibility guidelines to encourage state and local agencies to propose projects to facilitate CBP3s and performance contracts

DEVELOP AND IMPLEMENT CBP3 PILOT PROGRAM

- Develop education resources and provide educational venues
- Provide technical assistance
- Establish an inter-agency committee to support development of CBP3s
- Develop a list of revenue and funding sources

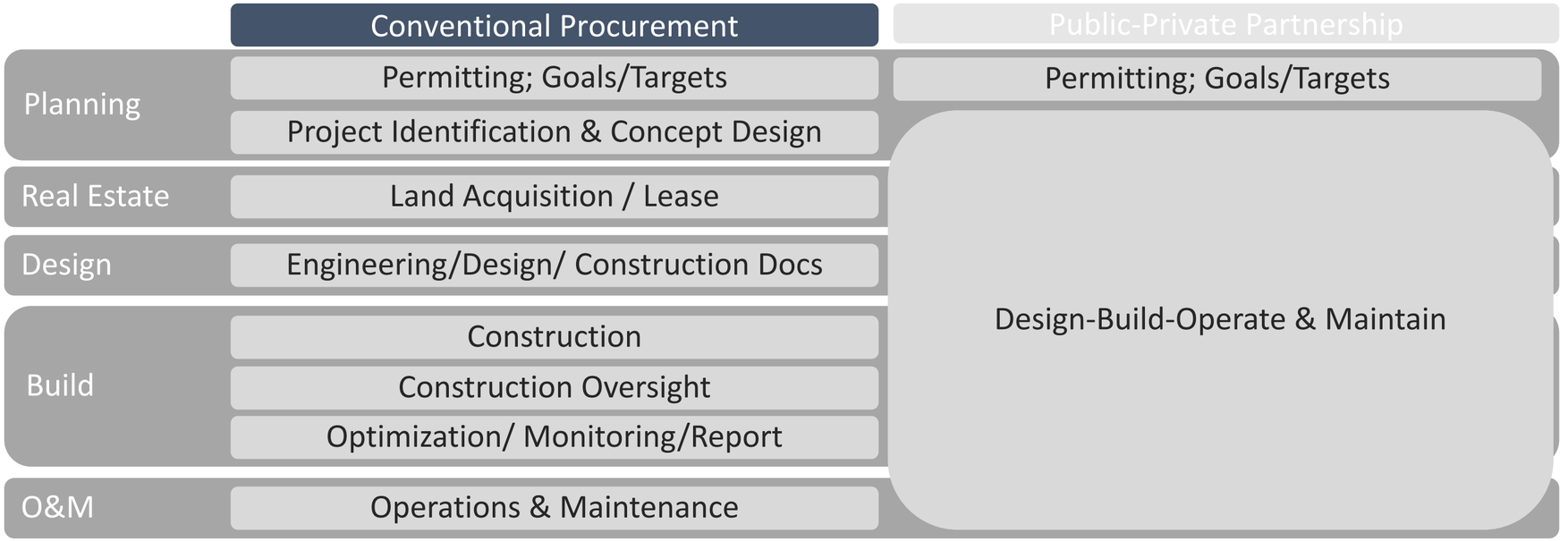
IDENTIFY AND FACILITATE CBP3 PILOT PROJECTS

- Seek CBP3 pilot projects; target Phase I permittees. Seek performance contract pilot projects
- Use project selection criteria based on assessment criteria
- Use Value for Money techniques to compare CBP3 and traditional procurement approaches

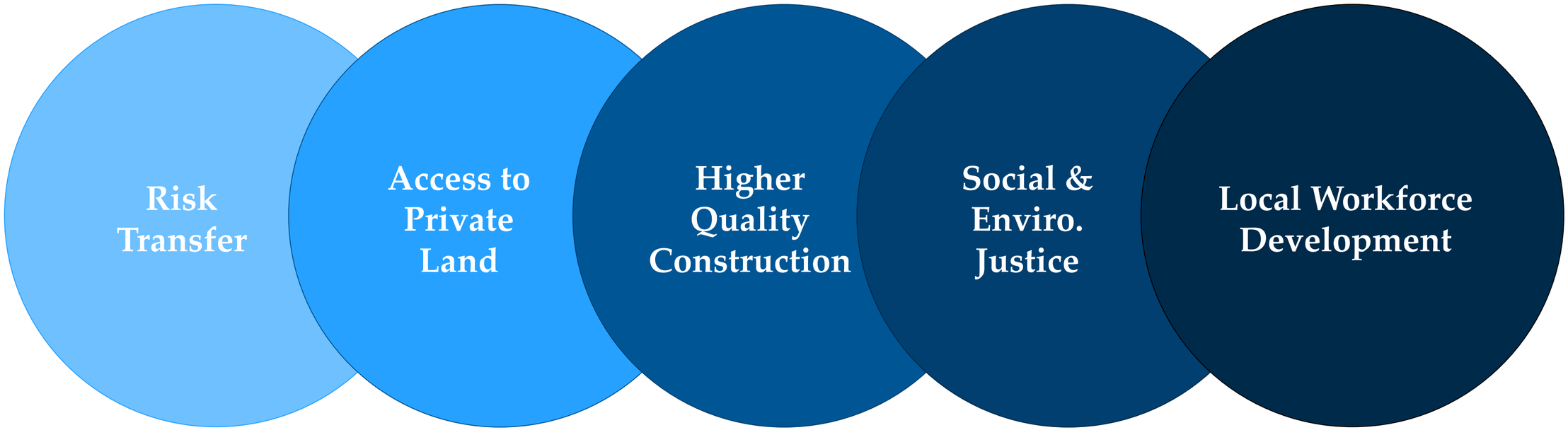
DEFINING SW CBP3 IN WASHINGTON

Our Guidebook categorizes a CBP3 as any project or program that, at a minimum,

- creates a partnership between a municipality and a private entity
- measures benefits beyond stormwater that are valuable to the community and
- develops "green" stormwater infrastructure.



WHY WOULD A LOCAL GOVERNMENT CONSIDER A CBP3?



BENEFITS OF A CBP3

COMMON CHALLENGES

The community benefits of our stormwater projects are not sufficiently leveraged or well understood.

Implementing stormwater programs takes too long.

We don’t have the internal expertise or capacity to independently conduct all the project phases.

Our department struggles to expend our annual budget each year.

We don’t have enough available land for doing stormwater projects.

We struggle to attract contractors with the skills necessary to implement green infrastructure.

Green infrastructure is too costly to implement.

BENEFITS OF CBP3s

Investment in Underserved Communities

- CBP3s prioritize creating jobs and educational opportunities in targeted areas.
- The aesthetic and recreational benefits of green infrastructure improve quality of life in urban areas.

Expedited Project Delivery

- Bundling project phases into one contract reduces contracting costs and streamlines implementation.
- Private financing can enable implementation to begin before public funds are available.

Expanded Expertise and Flexibility

- Private partners can provide technical expertise, innovative ideas, and access to new technologies.
- Working with a private partner allows for increased flexibility in the project approach and scope.

Opportunity to Bundle Projects and Phases

- Bundling projects and project phases can reduce contracting steps and increase scale.
- CBP3s enable delivering programs of a greater scale with existing staff.

Access to Private Land

- Private partners can increase your access to private lands by flexibly engaging private landowners who may otherwise be wary of working with the government.

Aligned Goals

- Use of alternative procurement and performance contracts incentivize high performance.
- Bundling projects or project phases increases scale which can attract more potential private partners.

Better Value for Money

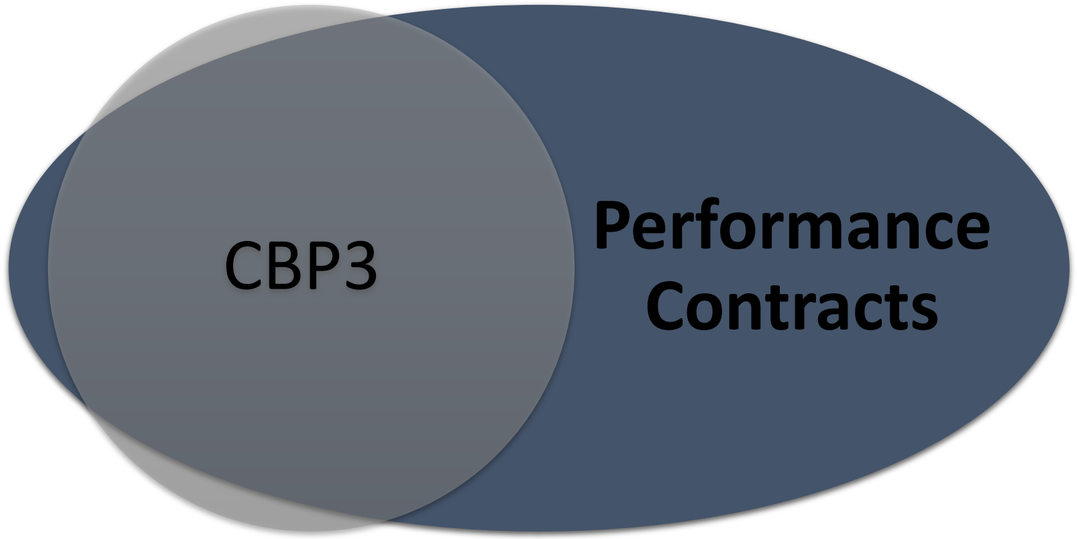
- Cost savings are enabled by reduced overhead costs and project implementation efficiencies.
- More competition from greater involvement of the private sector can reduce green infrastructure costs.

P3 MODELS

<table>
<tr><th></th><th>Conventional Procurement</th><th>Design- Build</th><th>Design-Build- Operate & Maintain</th><th>Design-Build- Own-Operate & Maintain</th></tr>
<tr><td rowspan="2">Planning</td><td>Permitting;
Goals/Targets</td><td>Permitting;
Goals/Targets</td><td>Permitting;
Goals/Targets</td><td>Permitting;
Goals/Targets</td></tr>
<tr><td>Project Identification & Concept Design</td><td>Project Identification & Concept Design</td><td>Project Identification & Concept Design</td><td>Project Identification & Concept Design</td></tr>
<tr><td>Real Estate</td><td>Land Acquisition/Lease</td><td>Land Acquisition (if necessary)</td><td>Land Acquisition (if necessary)</td><td rowspan="6">Design-Build-Own-Operate & Maintain</td></tr>
<tr><td>Design</td><td>Engineering/ Design/ Construction Docs</td><td rowspan="4">Design-Build</td><td rowspan="5">Design-Build-Operate & Maintain</td></tr>
<tr><td rowspan="3">Build</td><td>Construction</td></tr>
<tr><td>Construction Oversight</td></tr>
<tr><td>Optimization/ Monitoring/ Reporting</td></tr>
<tr><td>O&M</td><td>Operations & Maintenance</td><td>Operations & Maintenance</td></tr>
</table>

WHAT IS PERFORMANCE-BASED CONTRACTING?

Performance Contracts base payments on defined performance outcomes that reflect the quality of the project delivered.



DIFFERENTIATORS FROM ACTIVITY-BASED CONTRACTS:

1. Performance measures
2. Verification processes
3. Payment terms

PERFORMANCE CONTRACTING & PAYMENT TERMS

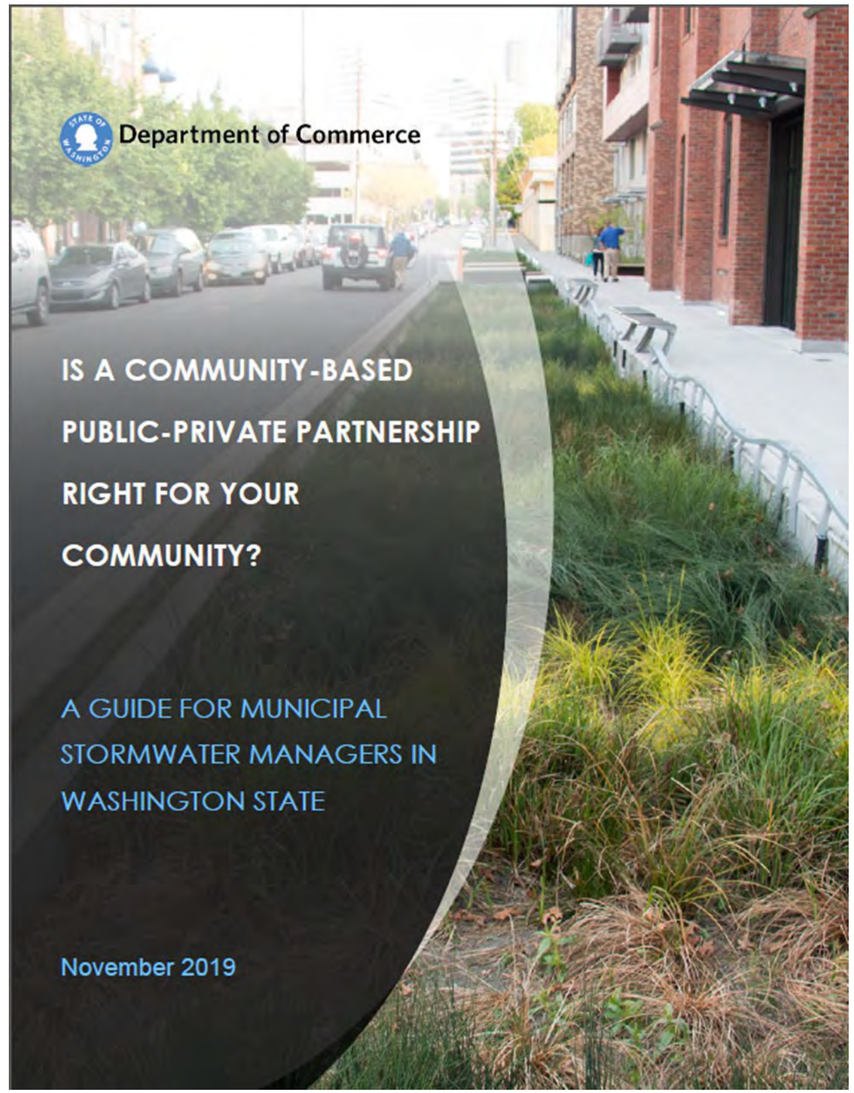
Table 2. Key distinctions of contract elements in performance-based contracts compared to traditional agreements.

CONTRACT ELEMENTS	PERFORMANCE CONTRACTS	TRADITIONAL AGREEMENTS
Definition of Performance Outcomes	▪ Performance metrics ▪ Quantitative results	▪ Flexible metrics ▪ Narrative results
Payment Terms	▪ Outcome-based	▪ Action-based
Monitoring, Reporting, & Verification	▪ Monitoring & reporting ▪ Ongoing verification	▪ Monitoring ▪ One-time verification
Management Plan	▪ Binding ▪ Specific	▪ Non-binding ▪ Non-specific
Long-Term Stewardship	▪ Informs payment	▪ Lacks financial incentive
Remediation	▪ Basis for action	▪ Lacks incentive for action

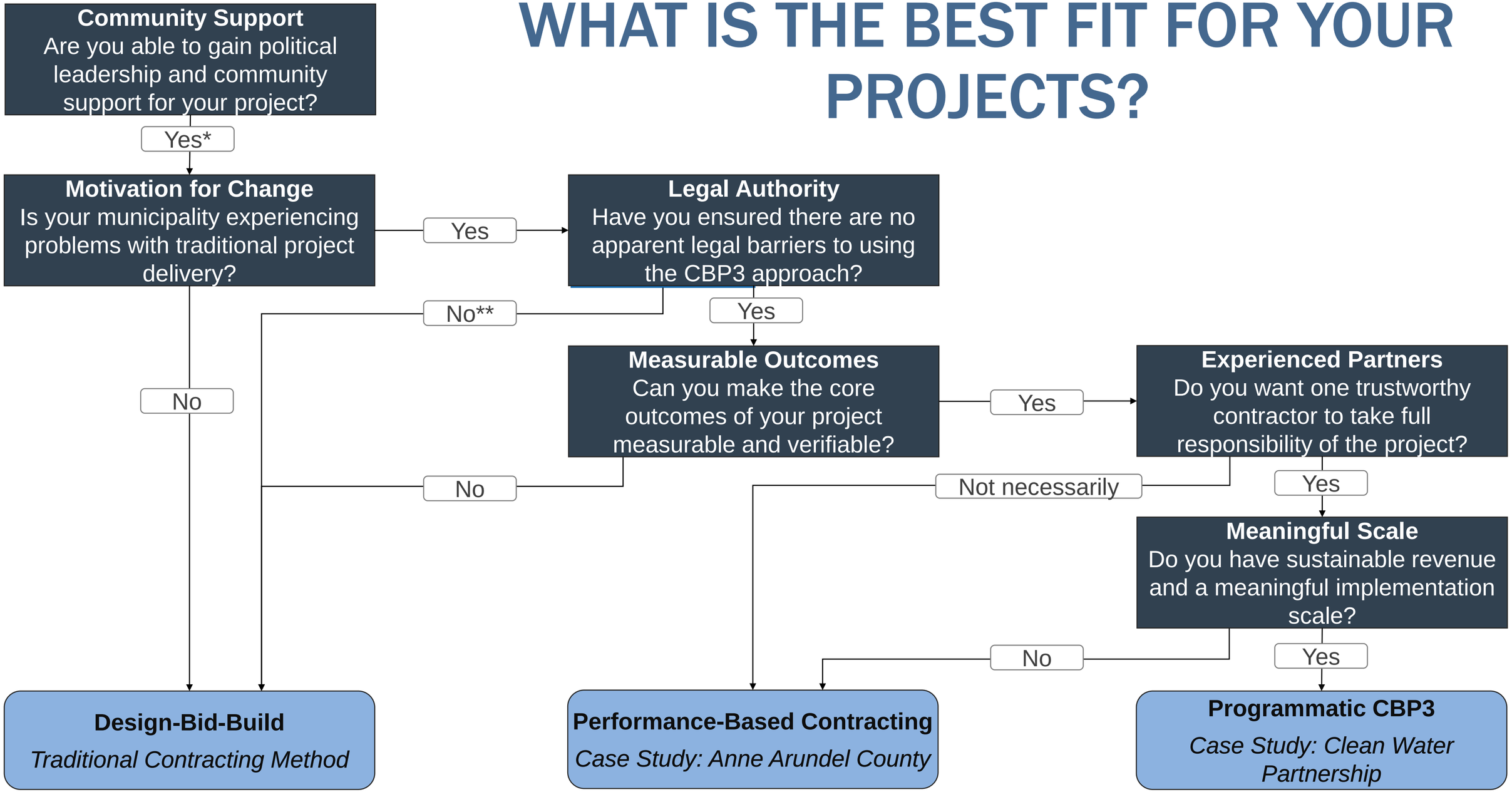
GUIDEBOOK STRUCTURE

A CBP3 Guide for Municipal Stormwater Managers in Washington State

- Section I. Is a CBP3 Right for Your Community?
- Section II. Designing a CBP3
- Section III. Building Support for Your CBP3
- Section IV. Getting Started
- References & Appendices (P3 Models, Case Studies)



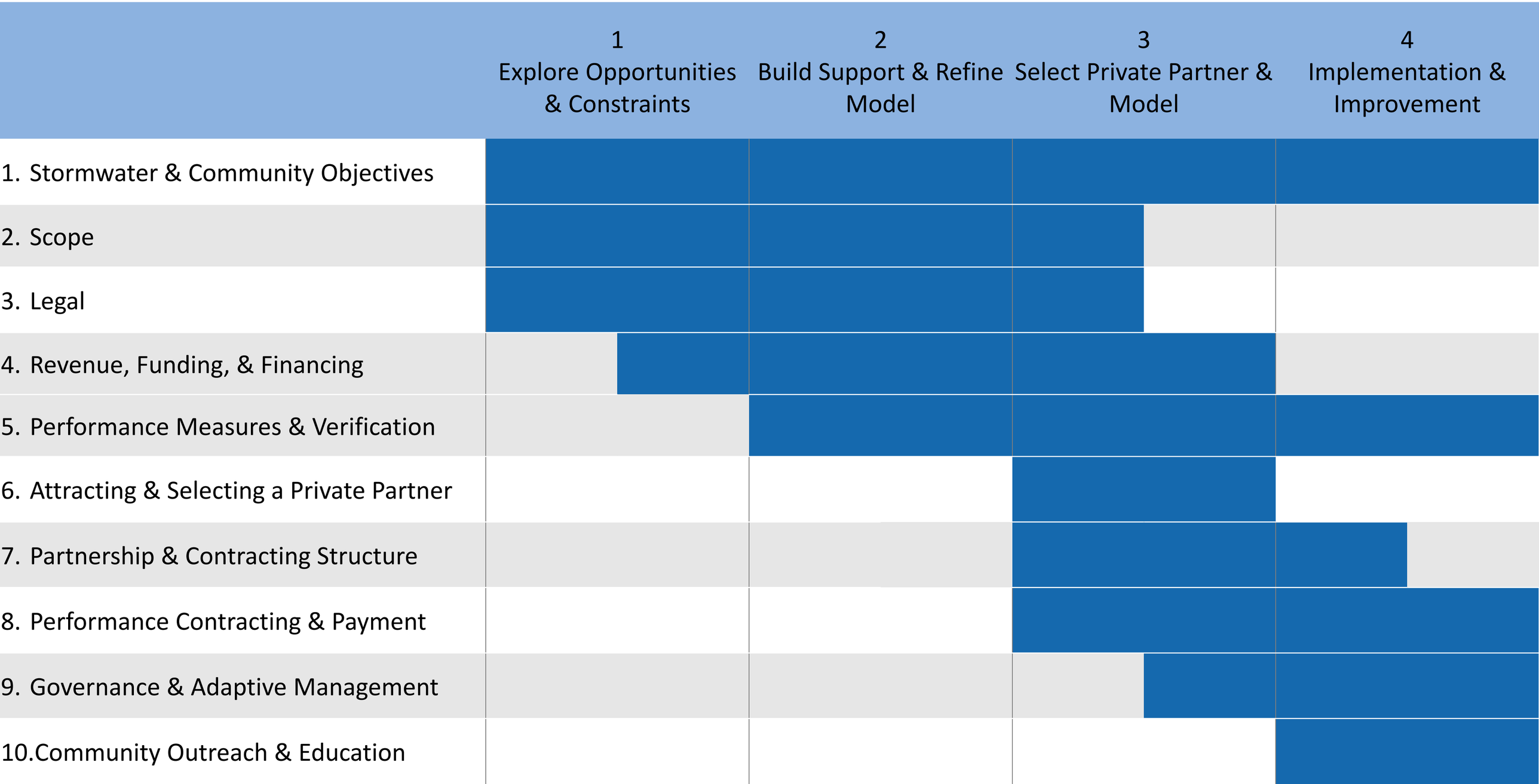
WHAT IS THE BEST FIT FOR YOUR PROJECTS?



*All green infrastructure projects require some level of community support.

**If there are legal barriers to using the CBP3 approach yet there is motivation for change, consult with your legal department to consider policy changes.

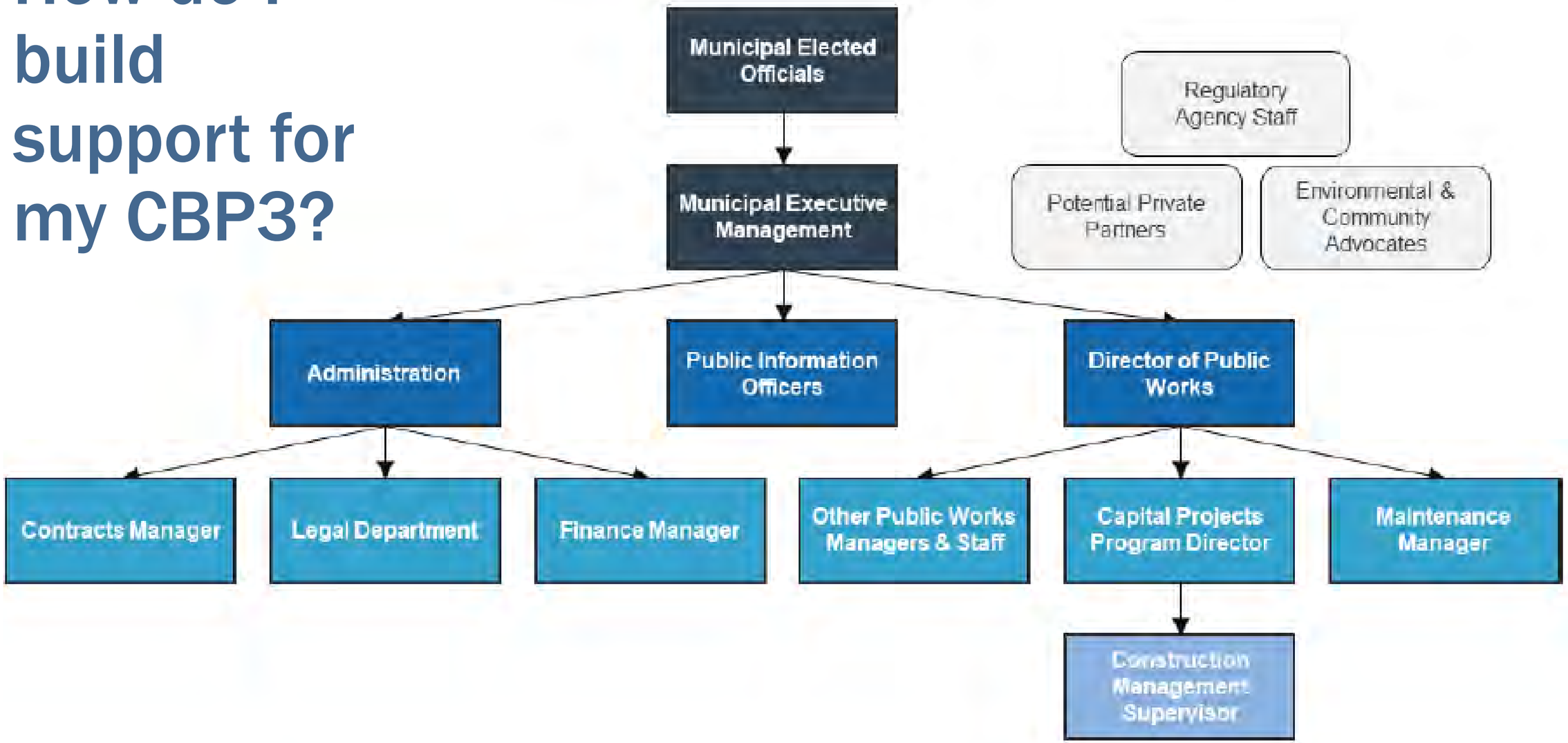
CBP3 STEPS & DESIGN ELEMENTS



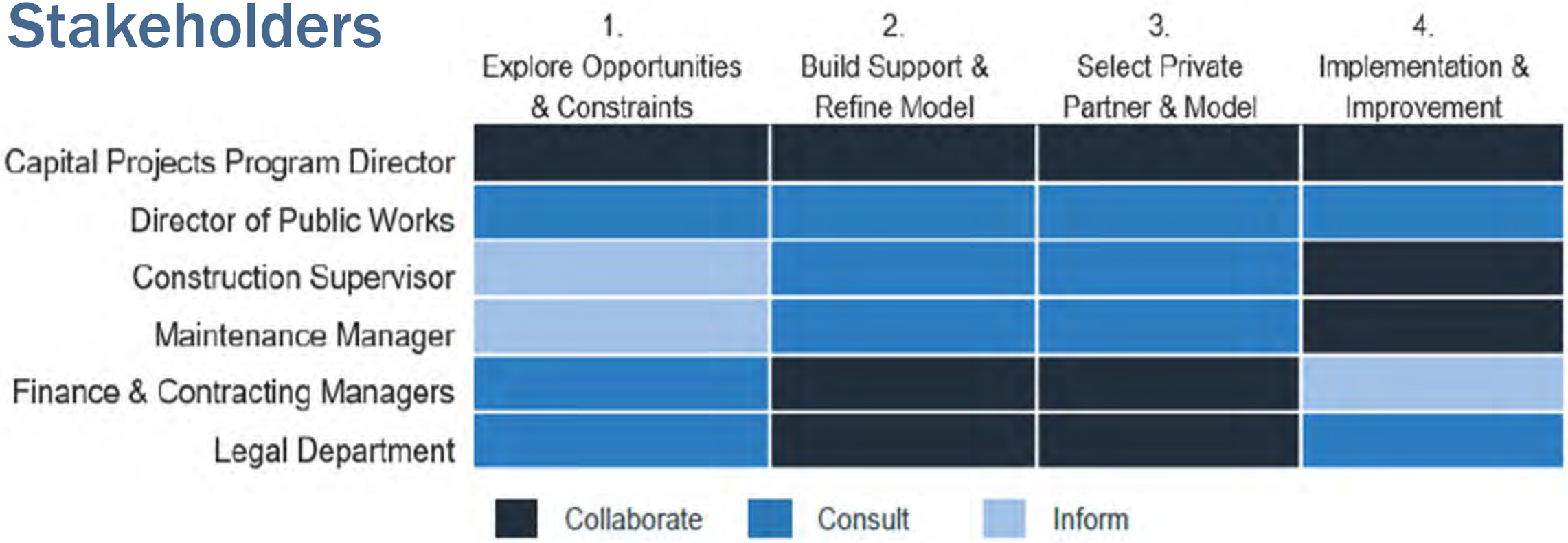
For each Design Step the Guidebook Provides:

- Options
- Recommendations
- Key Stakeholders
- Case Study

How do I build support for my CBP3?



Creating Relationships with Internal Stakeholders



For each Internal Stakeholder the Guidebook Provides:

- Potential Perspective on CBP3s
- Key Engagement Points
- Questions & Concerns to Anticipate (and resouces to help answer these questions)

2 Director of Public Works

The Director of Public Works is responsible for planning, organizing, controlling, directing, and coordinating the Public Works operations. They manage multiple teams spanning transportation, facilities, drainage, and potentially many others. The Director of Public Works manages budgets for capital improvements as well as operations and maintenance. They report directly to the municipal executive and may provide updates directly to elected officials. The Director of Public Works relies on the Capital Projects Program Director and the Maintenance Manager to ensure projects are delivered and maintained without causing delays, cost overruns, or injuries. Coordination between the Director of Public Works' multiple departments can be challenging, particularly in larger agencies.

Potential Perspective on CBP3s

The Director of Public Works may see CBP3 as a mechanism to reduce the potential that allocated funds are either not spent in a timely manner or project budgets are significantly exceeded. The private partner may be able to stabilize costs across budget cycles and take on both project risk and some portion of political risk. Bundling multiple projects and project stages could reduce the number of time-consuming procurement processes. The CBP3 may improve project delivery and create local private sector jobs without increasing the number of long-term staff positions needed, which may be appealing to management and elected officials.

The potential for the private partner to identify innovative approaches that use private land and produce multiple benefits may be appealing or, otherwise, could seem like an unnecessary new risk. Additionally, long-term contracts that allow the private partner to finance upfront project costs can enable rapid, large-scale project implementation that your municipality may not be able to fund with annual budget allocations. However, the long-term payment terms may be perceived as a hindering liability. The Director of Public Works is unlikely to support a CBP3 approach if it is likely to cause labor disputes by threatening jobs or upsetting staff.

Key Engagement Points

The Director of Public Works and must actively support the move to develop a CBP3. They may be responsible for department coordination and you should consult them at each step of the process.

Questions & Concerns to Anticipate

The **Director of Public Works** will likely have the following questions.

- How do we ensure the CBP3 delivers projects that we can maintain?
- How can we make sure agreements with private landowners don't end up in court?
- How will a CBP3 arrangement affect staffing and avoid union conflicts?
- Will the private partner deliver benefits that serve multiple divisions within the Department of Public Works, and how will they work with other divisions to ensure multiple service delivery issues don't pile up within a neighborhood?

For more information to help answer these questions, refer to Governance & Adaptive Management, Legal Authorities, Partnership & Contracting Structure, Attracting & Selecting a Private Partner, and/or Stormwater & Community Objectives.

4 Maintenance Manager

The Maintenance Manager determines whether work complies with standards and identifies the scope of maintenance work required. Effective maintenance is critical in a CBP3 to ensure that projects create a lasting impact and are not a liability. The Maintenance Manager is a valuable resource and his or her support is necessary.

Potential Perspective on CBP3s

In a CBP3, the private partner is often contracted for multiple project phases. This arrangement incentivizes projects to be designed and built in a way that optimizes maintenance; this can be attractive to the Maintenance Manager in comparison to the typical procurement process where roles are separated. Contracting for maintenance also reduces project liability and can significantly leverage municipal staff's time. However, if there are not constraints on staff's time, the Maintenance Manager may consider contracting a private partner for the staff's work as redundant or threatening.

Key Engagement Points

It is important to gain the Maintenance Manager's support regardless of whether the project's ongoing operations and maintenance are the responsibility of the municipal staff or the private partner. Engage them in partner selection to build confidence that the municipal staff's review time will not be excessively burdensome. If maintenance responsibilities remain with your municipality, the Maintenance Manager must trust that the private partner's project design will allow for effective ongoing maintenance. Engage the Maintenance Manager in the development of the contracting model to understand and influence the allocation of maintenance responsibilities. Directly address any concerns related to deferred maintenance and associated liabilities (e.g., flooding, public health, etc.).

Questions & Concerns to Anticipate

The **Maintenance Manager** will likely have the following questions.

- Will a CBP3 arrangement help me overcome staff limitations and tight budgets, or just result in losing valued staff members?
- What is the process for addressing unforeseen issues that complicate maintenance activities?
- How will we track maintenance needs?
- Can the private partner reduce our reporting and paperwork requirements?
- How can we leverage the private partner's expertise or access to specialized equipment?
- How will we handle negative perception if projects fail?

For more information to help answer these questions, refer to Governance & Adaptive Management, Performance-Based Contracting & Payment Terms, and/or Partnership & Contracting Structure.

Getting Started: Checklists & Resources

- Essentials for an RFP or RFQ
- Essentials for a Performance Contract

Washington State Department of Commerce

ACKNOWLEDGMENTS

- This Guidebook was commissioned by the Washington State Department of Commerce and funded by the Washington State legislature through the 2018 capital budget (Engrossed Substitute Senate Bill 6095). Environmental Incentives, LLC led development of the Guidebook with support from Corvias, Geosyntec Consultants, and FutureWise. It was guided by a steering committee with the following members: Tom Gilmore (Dept. of Commerce); Bruce Lund (Dept. of Commerce); Cecilia Gardener (Dept. of Commerce); Jessica Schwing (Dept. of Ecology); and Peter Dykstra (Plauché & Carr LLP).

Environmental Incentives

Corvias

Geosyntec consultants

future wise

Why Is Ecology Interested in CBP3?

DEPARTMENT OF
ECOLOGY
State of Washington

WATER QUALITY COMBINED FUNDING PROGRAM

Section 2.3.5 Eligibility Summary

BMPs installed as part Community Based-Public-Private Partnership (CBP3) pilot project, may be eligible for grant or loan funding, and will be reviewed on a case by case basis. Information to help you decide if a Stormwater CBP3 is a good fit for your community is available from the Washington State Department of Commerce at: https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Report-LGD-Stormwater-II_1b84a971-5351-4c74-b85e-0a9bcae01c5a.pdf

In addition to the ineligible items described in Chapter 1, stormwater facility projects or project components that are ineligible to receive funding through WQC include, but are not limited to:

- Projects or project objectives previously funded by Ecology. Multiple phases of the same project may be eligible. However, phases should address stormwater from additional geographic areas and provide additional water quality benefits beyond those identified in

Ecology CBP3 Pilot Program

Phase 1

- Education and Outreach
- Technical Assistance

Future Phases

- Implementation Funding

Thank You

Jessica Schwing

Stormwater Financial Assistance Unit Supervisor

Jessica.Schwing@ecy.wa.gov

546-999-1267

DEPARTMENT OF ECOLOGY
State of Washington