

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of Commissioners
FROM: Jefferson County Marine Resources Committee
DATE: March 21, 2012

SUBJECT: CZM310 Grant Agreement No. G1200420 for \$33,000 between the State of Washington Department of Ecology and JEFFERSON COUNTY (Northwest Straits Project: Marine Resources Committee Administration)

STATEMENT OF ISSUE:

The Marine Resources Committee (MRC) is requesting approval on the consent agenda of the above referenced grant agreement. The effective date of this agreement is January 1, 2012; the completion date is June 30, 2012.

ANALYSIS:

This grant will be used to fund administration for the Jefferson County Marine Resources Committee. The tasks include coordination of MRC meetings, grant administration, MRC website, annual report, workplan and training. Services will be provided by existing staff and contractor.

FISCAL IMPACT:

The project is 100% grant funded. There is no match requirement. The grant is administered by WSU Jefferson County Extension at no cost to the County.

RECOMMENDATION:

We request three originals of this contract be approved and signed by the Jefferson County BOCC.

REVIEWED BY:


County Administrator

3/27/12
Date

Grant Agreement No. G1200420

between the

State of Washington Department of Ecology and

JEFFERSON COUNTY

Northwest Straits Project: Marine Resources Committee Administration and Operations

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology, (PO Box 47600, Olympia, Washington, 98504-7690) hereinafter referred to as the "DEPARTMENT" and Jefferson County, hereinafter referred to as the "RECIPIENT" or "MRC" to carry out the activities described herein. This grant is subject to Congressional actions.

Recipient Name: Jefferson County

Project Coordinators: Pat Pearson
Telephone Number: 360-379-5610 x204
e-mail: pearsonp@wsu.edu

Fiscal Contact / phone: Kate Driehaus
e-mail: kdriehaus@co.jefferson.wa.us

Payee on Warrant: WSU Jefferson County Extension
201 West Patison
Port Hadlock, WA 98339

Project Officer for the Department: Sasha Horst
Northwest Straits Commission/Padilla Bay NERR
10441 Bayview-Edison Road
Mount Vernon WA 98273
Telephone Number: 360-428-1084 /Fax: 360-428-1491
e-mail: horst@nwstraits.org

The Source of funds provided by the DEPARTMENT are federal Puget Sound Partnership Technical Investigations and Implementation (Environmental Protection Agency, CFDA #66.456) and federal Coastal Zone Management 310 funds. (National Oceanic and Atmospheric Administration, Department of Commerce, CFDA #11.419). These funds are subject to congressional actions.

Total Eligible Project Cost: \$ 33,000
Total State Share: \$ 33,000
Local Match: - 0 -

The effective date of this agreement is January 1, 2012; the completion date is June 30, 2012.

Scope of Work

Project Title: MRC Administration and Operations

Description: This grant will be used to fund administration and operations for the Jefferson County Marine Resources Committee.

Work Program: In performing the following tasks The RECIPIENT shall comply with the local Shoreline Master Program, local Growth Management Act Comprehensive Plan, SEPA and zoning ordinances. If GIS work or environmental measurement data is to be collected under this agreement, refer to paragraphs B1 and B2 of Special Terms and Conditions of this agreement for compliance with Ecology standards.

TASK 1: MRC Operations: the Recipient will:
Description:

1.1 MRC Meetings and Communication: schedule and hold meetings; prepare and distribute agenda; invite speakers on topics of community interest; prepare and distribute minutes, other logistical and communication functions as needed.

1.2 Grant administration: Prepare progress reports, final report and completion report for Northwest Straits Commission; track and administer budget; document matching funds and volunteer time; contract management and preparing grant applications for MRC projects.

1.3 MRC Web Site: Provide ongoing maintenance of MRC web site and/or development of content, design, images or other web site features.

1.4 Annual Report: This report will summarize MRC activities and progress on projects, including progress in achieving the Initiative's performance benchmarks, successes and failures in the workplan priorities, training, etc.

1.5 Program Development and Workplan: The Recipient will seek to identify support for tasks outlined in the workplan. The workplan will include the objectives, timeframe, products, and benchmarks addressed.

1.6 Training: The MRC members will attend the annual Northwest Straits Commission (NWSC) training and additional conferences as appropriate. A representative of the MRC will attend each Northwest Straits Commission meeting.

Deliverables (one hard copy and one electronic copy of each):

1. Update in progress reports (all tasks)– due June 30, 2012
2. Meeting agendas and minutes – due June 30, 2012
3. Web site address and CD of site contents – due June 30, 2012
4. List of NWSC meetings attended and name of MRC member attending in the progress reports – due June 30, 2012
5. Matching funds/volunteer time tracking – due April 2, 2012 and June 30, 2012

TASK 2: Local Integrating Organization

Description: The MRC will participate in the development and discussions of the Puget Sound Partnership's Local Integrating Organization (LIO) in order to contribute a marine water and nearshore focus to the process.

Deliverables (one hard copy and one electronic copy of each):

1. Update in progress reports (all tasks)– due June 30, 2012

TASK 4: Voluntary Marine Protected Areas (MPAs)

Description: The MRC will provide program development for the Eelgrass, Mystery Bay and other (Lower Hadlock) MPAs as identified by the MRC and project partners. The MRC will also provide volunteer coordination, oversight and maintenance of the two existing MPAs (Eelgrass and Mystery Bay).

Deliverables (one hard copy and one electronic copy of each):

1. Update in progress reports (all tasks)– due June 30, 2012

TASK 5: Maynard Beach Restoration Project

Description: The MRC will participate in the design and permit preparation to be completed by a consultant by July, 2012. Engineering of additional project components of trail and waterline design to be completed with funding from a Fish America grant to the North Olympic Salmon Coalition.

Deliverables (one hard copy and one electronic copy of each):

1. Update in progress reports (all tasks)– due June 30, 2012

Deliverables

All products, reports, and payment requests shall be sent to the attention of:

Sasha Horst
Northwest Straits Commission
10441 Bayview-Edison Road
Mount Vernon WA 98273

The RECIPIENT shall submit one hard copy and one electronic copy of each Progress Report and one copy of each Payment Request as defined in the Special Terms and Conditions section of this agreement and **one hard copy and one electronic copy of each deliverable** as defined in the Scope of Work.

All deliverables (reports, maps, etc.) are to include the Northwest Straits logo and acknowledgement on the front cover (see Special Terms and Conditions of this agreement).

Budget

Budget Conditions

1. **Project Administration:** For the administration of this agreement the RECIPIENT must follow the current edition of the *Administrative Requirements for Ecology Grants and Loans* (Yellow Book). These documents are available at Ecology's websites:
 - Forms – <http://www.ecy.wa.gov/biblio/9118A.html>
 - Yellow Book – <http://www.ecy.wa.gov/biblio/9118.html>
2. **Invoicing:**
 - Expenditures will be monitored by the DEPARTMENT's Fiscal Office for compliance with the PROJECT LEVEL BUDGET (listed below).
 - The RECIPIENT must **maintain complete backup documents** including but not limited to all invoiced costs and time sheets – signed and dated by employee and supervisor. The RECIPIENT must keep these expenses in grant files according to budget task for a period of three years after project completion and make them available at any time for inspection by the DEPARTMENT.
 - **Budget deviations** from the line-item EXPENDITURE budget (listed below) are allowed, but in no circumstances may the RECIPIENT exceed the total project cost. If deviations exceed 10% within any task, the DEPARTMENT's Project Officer may require a written budget redistribution
 - When submitting invoices to the DEPARTMENT, the RECIPIENT must **itemize all costs by task** and provide subtotals by task on the DEPARTMENT's Form C2, Voucher Support Form. All payment requests must have forms A, B, C (and D if applicable).

NOTE: For payment requests, the RECIPIENT must use the DEPARTMENT's forms contained in the Yellow Book. Otherwise, we will return requests to the RECIPIENT for submittal on the correct forms.

 - All payment requests must be accompanied by a **commensurate progress report**, and receive the DEPARTMENT's Project Officer approval before payment can be released.
 - Requests for reimbursement must be **submitted at least semi-annually** but not more than once per month by the RECIPIENT on state invoice voucher forms.
 - The **indirect rate must not exceed 25 percent** of direct (staff) labor and benefit costs. This rate covers space utilities, miscellaneous copying, telephone, motor pool, janitorial services, records storage, rental, county fiscal and legal services, etc. Items not included in this list must be reported with the first payment request and must remain consistent for the life of the grant.
 - The **rate for in-kind** (voluntary services) is valued at \$15/individual/hour. See the Administrative Requirements for Ecology Grants and Loans \ for the "Valuation of Donated Property or Services."

- An **estimate** is the dollar amount the recipient anticipates requesting from the DEPARTMENT for project costs incurred through June 30, 2012 and are not yet submitted for reimbursement.

The DEPARTMENT will contact recipients for this anticipated amount for final billing to ensure sufficient funds are reserved to reimburse the recipient for expenditures incurred,

- Final payment of grant projects is contingent on receipt of viable work products as listed in the grant document.
- Expenditure Budget (for RECIPIENT reporting and DEPARTMENT tracking purposes):

Maximum Eligible Project Cost: **\$33,000**
 Maximum State Grant Share: **\$33,000**
 Estimated Local Share: **\$0**

6. Estimated budget (for information only):

Task		Salaries / Benefits	Indirect	Contracted/ Consultant Services	Travel	Supplies	Copying	Total
1	MRC Operations	\$4,200	\$840	\$10,970	\$800	\$300	\$200	\$17,310
2	Local Int. Org.	\$4,200	\$840	\$2,000	\$0	\$0	\$0	\$7,040
3	Voluntary MPAs	\$0	\$0	\$2,450	\$0	\$200	\$0	\$2,650
4	Maynard Beach	\$0	\$0	\$6,000	\$0	\$0	\$0	\$6,000
TOTAL								\$33,000

The Source of funds provided by the Department are federal:

- Coastal Zone Management 310 funds (National Oceanic and Atmospheric Administration, Department of Commerce, CFDA #11.419) and
- PSP Technical Investigations and Implementation (Environmental Protection Agency, CFDA #66.456). These funds are subject to congressional actions.

_____ balance of page left blank intentionally _____

CZM 310 Special Terms & Conditions

A. Coastal Zone Management Provisions

1. **Planning Area:** The services under this grant will be provided in connection with and respecting the following areas, herein called the "ADMINISTRATION AREA":

The administration area of the coastal zone management program shall include all those saltwater and tidally influenced shorelines of the state defined in the Shoreline Management Act of 1971, and designated in Chapters 173-18, 173-20, and 173-22 WAC for all the incorporated and unincorporated areas of the city/county, plus those fresh waters which could have a direct and significant impact on coastal waters.

2. **Identification of Project Materials** - All reports, maps, and other documents produced as part of this grant agreement shall carry the name of the RECIPIENT, the DEPARTMENT's grant number (in the upper right hand corner), title, the specific task number of the product and date centered on the front cover or title page (or in the case of maps, the block which contains the name of the Government unit or Department) and acknowledgment of the source of funding as follows:
3. **Format for Publications and Brochures: Any (hard copy) publications or brochures** required as a product of this agreement shall conform to minimum standards of size, 8-1/2" x 11" white, recycled paper equivalent in weight to 20 lb. bond, single spaced, printed both sides, no less than 1" margins. Photos, illustrations, and graphs must be of reproducible quality. Any publications or brochures intended for public distribution shall comply with graphic requirements as specified in the DEPARTMENT's "Publications Handbook", publication number 91-41 and any additional specifications as may be outlined in the Scope of Work.
4. **Submittal of Project Materials / Deliverables:** A disk containing copies of all digital deliverables compatible with Microsoft WORD and the DEPARTMENT's GIS Standards will be accepted and contain the following project completion materials:
 - Progress reports: ① E-mail on the Padilla Bay NERR Progress Report Form (available electronically): to the DEPARTMENT's Project Officer and Grant Coordinator by date due in scope of work;
② Copy included on Project Completion CD
 - Report and Map Deliverables: Digital on Compact Disk
 - Final Completion Report – (for contents, see paragraph 5 below) Digital on Compact Disk
 - Payment Requests – only hard copy invoices on the DEPARTMENT's forms with original signatures in blue ink will be accepted at this time.
5. **Project Completion Requirements:** On completion of the project, the RECIPIENT's Project Coordinator shall submit the following information and materials to the DEPARTMENT:

- a. **Digital Project Completion Report:** The purpose of this report is to **document that the project and each of its tasks has been completed.** The project completion report contains the following documents:
- (1) **Digital Copy** of all Semi-Annual Progress Reports by date.
 - (2) **Digital Summary Account** - a brief summary (approximately 200-300 words) of the work accomplished under the /grant with respect to each of the surveys, studies, plans, and other planning activities listed in the grant or any amendments to that grant.
 - (3) **Digital Reports, Maps, Plans, Exhibits, etc.** - The Completion Report must include a **list** of all reports, maps, plans, and other documents prepared under this grant.

For each digital report, map, plan, or other document included, identify the project title, task title, the grant number, the municipality or county, and date prepared per paragraph 2 above "Identification of Project Materials".

6. **Semi-annual Progress Reporting:** Semi-annual reporting requirements begin on the effective date of the agreement. Reports cover the following periods:

2012	Reporting Period	Date Due
Semi-Annual Report	January 1, 2012-June 30, 2012	June 30, 2012

For timely preparation and review, semi-annual reports need to convey essential information in a simple, concise manner through the use of bulleted summary statements, lists, and tables and include the following:

- a. A comparison of actual accomplishments by task to the objectives established for the reporting period
- b. List deliverables due to DEPARTMENT by date of this progress report and their status.
- c. Status of project schedule
- d. Financial and funds disbursement status
- e. Personnel changes
- f. Any difficulties encountered during the reporting period

7. **Responsibilities of the Project Coordinator:** The RECIPIENT's Project Coordinator shall be responsible for the procedural obligations under this agreement in addition to his/her duty to coordinate the planning effort hereunder. He/She shall cooperate with all parties concerned in every way possible to promote successful completion of the services described in the Scope of Work.

8. **Access to Records and Right to Audit:**

- a. The RECIPIENT agrees that the Comptroller General of the United States or any of his duly authorized representatives and the Secretary of Commerce or any of his duly authorized representatives shall, until the expiration of three (3) years after expenditure of funds under this grant, have access to and the right to examine any directly pertinent books, documents, papers, and records of the RECIPIENT involving transactions related to this grant. The RECIPIENT agrees to include the substance of this paragraph into all grants and subcontracts payable from contract funds in whole or in part.

b. The RECIPIENT agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The RECIPIENT shall refund by check payable to the DEPARTMENT the amount of such reduction of payments under completed or terminated grants.

9. **Maintenance of Records:** All required records shall be maintained until a federal audit is completed and all questions arising therefrom are resolved, or three (3) years after completion of a project, whichever is sooner.

10. **Refund of Payment:** If, through any cause, the National Oceanic and Atmospheric Administration (NOAA) disallows reimbursement to the DEPARTMENT for failure to fulfill the grant or stipulations of this grant, the RECIPIENT will reimburse the DEPARTMENT to proportionate amount of the federal share of the total grant funds paid by the DEPARTMENT to the RECIPIENT through this grant, or that portion thereof constituting NOAA reimbursement of state grant funding under the terms of this grant.

11. **Federal Circular Compliance:** As a subrecipient of federal funds, the RECIPIENT must comply with the following federal regulations:

OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organization
OMB Circular A-133, Compliance Supplement
OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments
OMB Circular A-102, Uniform Administrative Requirements

These federal regulations can be found at: <http://www.whitehouse.gov/omb/circulars/>

12. **Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements:**

In order to comply with the FFATA, the RECIPIENT must complete the FFATA Data Collection Form, copy attached, and return it to the DEPARTMENT. The DEPARTMENT will report basic agreement information, including the required DUNS number, for all federally-funded agreements at www.fsr.gov. This information will be made available to the public at www.usaspending.gov. Recipients who do not have a DUNS number can find guidance at www.grants.gov. **Please note that the DEPARTMENT will not pay any invoices until it has received the completed FFATA Data Collection Form.**

Any recipient that meets each of the criteria below must also report compensation for its five top executives, using the DEPARTMENT's Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form.

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

See www.fsr.gov for details of this requirement. If your organization falls into this category, you must report the required information to the DEPARTMENT

13. **Government Debarment and Suspension:** This agreement is subject to Federal Executive Orders 12549, 12689 and 15 CFR Part 26, Debarment and Suspension and Requirements for a Drug-free Workplace:.

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 the DEPARTMENT 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 the department 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 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 the DEPARTMENT upon request. RECIPIENT/CONTRACTOR must run a search in www.epls.gov and print a copy of completed searches to document proof of compliance.

- 12. **Officials Not to Benefit:** No member of or delegate to the Congress of the United States, or resident Commissioner, shall be admitted to any share or part of this grant or to any benefit that may arise therefrom.
- 14. **Restrictions on Lobbying:** Each bidder/applicant/recipient/ subrecipient of this agreement is generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award. This agreement is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code. The new section is explained in the common rule, 15 CFR Part 28 (55 FR 6736-6748, 2/26/90).

B. Ecology Provisions

1. Coordination with Ecology's Geographical Information System (GIS)

IF this project involves developing GIS data, the RECIPIENT shall coordinate with Ecology's GIS office in an effort to promote compatibility and to encourage sharing of geospatial data. To facilitate data sharing, the DEPARTMENT utilizes the following standards:

Ecology's GIS Standards	
ESRI's ARC/INFO	Current version
ESRI's ArcView	Current Version
Horizontal Datum	NAD 83 HARN
Vertical Datum	NGVD 88
Projection System	Lambert Conic Conformal
Coordinate System	WA State Plane Coordinates
Coordinate Zone	South
Coordinate Units	Feet
Accuracy Standard	+/-40 Feet (1:24,000) minimum accuracy to within a foot of the true North American datum system
Vector Import Format	ArcExport, DLG and/or DXF, shapefiles
Raster Import Format	TIFF, BIL/BIP, RLC, GRID, ERDAS, SID

Whenever possible, the RECIPIENT is encouraged to utilize the standards listed above when compiling data. To discuss the usage of other standards, please contact Jerry Franklin at 360 407-7470; Fax: 360 407-6902; E-Mail: jfra461@ecy.wa.gov or John Tooley at 360-407-6418; E-Mail: jtoo461@ecy.wa.gov for further data sharing and compatibility information.

The RECIPIENT shall submit copies to Ecology's Project Officer with complete documentation as it relates to all digital data, GIS coverages, shape files, related tables and map products.

- 2. **Quality Assurance Project Plan (QAPP).** IF this project involves the collection of environmental measurement data, the RECIPIENT must prepare a QAPP to ensure the

consistent application of quality assurance principles to the planning and execution of all activities involved in generating this data. The plan shall be conducted in accordance with the DEPARTMENT's Guidelines for the Preparation of Quality Assurance Project Plans for Environmental Studies, current edition, (Ecology Publication No. 04-03-030). The plan must describe the monitoring and data quality objectives, procedures, and methodologies which will be used to ensure that all environmental data generated will meet these requirements. The size and complexity of the plan should be cost effective and in proportion to the magnitude of the sampling effort. The RECIPIENT may also reference Technical Guidance for Assessing the Quality of Aquatic Environments, February 1994 (Ecology Publication No. 91-78), in developing the plan. The QAPP shall be composed of a concise description of the environmental measurement aspects of this project. Ecology's Project Officer shall review and approve this plan prior to initiation of work.

The QAPP should describe the following elements:

- Assumptions that direct the collection and analysis of data;
- Resources used (such as flights for aerial photos);
- Resource documents that will be consulted;
- Field methods employed;
- Office methods employed;
- Training level of staff involved in data collection and analysis;
- Equipment / materials to be used
- Procedures to assure accurate calibration of field instruments.

Other supporting documentation, including example QAPPs, QAPP templates, and field SOPs may be found at Ecology's Quality Assurance website:
www.ecy.wa.gov/programs/eap/quality.html

3. **Administrative Guidelines:** The RECIPIENT shall comply with the DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", ("Yellow Book") publication number 91-18. The RECIPIENT shall be responsible for maintaining appropriate financial records throughout the life of the project and in accordance with these guidelines.
4. **Reimbursement:** Grants are awarded on a reimbursable basis. The RECIPIENT initially pays project costs in full. Upon presentation of a billing to the DEPARTMENT, the DEPARTMENT's share of the project is reimbursed to the RECIPIENT.
5. **Minority and Women's Business Participation:** The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees to utilize the DEPARTMENT'S goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Construction/Public Works	10% MBE	6%WBE
Architecture/Engineering	10% MBE	6%WBE
Purchased Goods	8% MBE	4%WBE

Purchased Services	10% MBE	4%WBE
Professional Services	10% MBE	4%WBE

No contract award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

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

By signing this Agreement, the RECIPIENT certifies that the above steps were, or will be followed. Any contractor engaged by the RECIPIENT under this agreement shall be required to follow the above five affirmative steps in the award of any subcontract(s).

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. The report will address:

- f. Name and state OMWBE certification number of any qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
- g. The total dollar amount paid to qualified firms under this invoice.

- 6. All Writings Contained Herein:** This agreement, the appended "General Terms and Conditions", and the DEPARTMENT'S current edition of "Administrative Requirements for Ecology Grants and Loans", contains the entire understanding between the parties, and there are no other understandings or representations except those set forth or incorporated by reference herein. By signing this agreement with the DEPARTMENT, the RECIPIENT and any subrecipients state they are in compliance with the federal requirements for Debarment and Suspension and requirements for a drug-free workplace (15 CFR Part 26) (see Special Terms and Conditions). No subsequent modification(s) or amendment(s) of this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT, and made a part of this agreement.

GENERAL TERMS AND CONDITIONS
**Pertaining to Grant and Loan Agreements of
the Department of Ecology**

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The 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.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

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

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

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

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT 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 years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$300,000 or more in a year in Federal funds. The \$300,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and certified as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. **Budget deviation.** Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT's request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.

3. **Period of Compensation.** Payments shall only be made for action of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

4. **Final Request(s) for Payment.** The RECIPIENT must submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

5. **Performance Guarantee.** The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6 herein.

6. **Unauthorized Expenditures.** All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

7. **Mileage and Per Diem.** If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

8. **Overhead Costs.** No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. **For Cause.** The obligation of the DEPARTMENT 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 the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become DEPARTMENT property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

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

2. **Insufficient Funds.** The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate

or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent 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 the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT 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.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

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

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

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

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

a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

b. The 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 contemplated by this agreement.

6. **Conversions.** Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT 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.

N. RECYCLED/RECYCLABLE PAPER

All documents and materials published under this agreement shall be produced on recycled paper containing the highest level of post consumer and recycled content that is available. At a minimum, paper with 10 percent post consumer content and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite.

As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT'S sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of

Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall 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.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall 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.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. 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.

V. 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) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.