

CLARK COUNTY  
STAFF REPORT

**DEPARTMENT/DIVISION:** Environmental Services / Policy and Planning / Clean Water Program

**DATE:** March 25, 2014

**REQUEST:** Authorize the County Administrator to sign a FY 2014 Stormwater Grant Program Proviso Funding Agreement under which the Washington State Department of Ecology will provide \$1,531,000 to fund two stormwater capital projects for construction between 2014-2016.

**CHECK ONE:**  Consent  Hearing  Chief Administrative Officer

**BACKGROUND:** The 2013 Washington State Legislature approved \$1,531,000 in proviso funding to the Department of Ecology to fund two stormwater capital projects submitted by Clark County. There is no local match requirement for this funding. Clark County will utilize the proviso funding to design and construct the Harding Farms Stormwater Facility Retrofit project and the Heritage Farm Parking Lot LID Project.

- 1) Harding Farms project – improve an existing stormwater facility, rehabilitate natural wetlands, install flow control structures, and provide treatment for runoff prior to discharge to wetlands (\$1,000,000 grant)
- 2) Heritage Farm project – install a variety of Low Impact Development features in the parking lot to reduce stormwater runoff and improve water quality in Cougar Creek; provide a viewing area with interpretive signage to showcase sustainable stormwater management practices (\$531,000 grant)

**COMMUNITY OUTREACH:** The County will actively coordinate with neighboring residents and homeowners associations where projects are located. Both projects offer outreach and education opportunities; in particular the Heritage Farms project includes interpretive signage and is specifically intended to provide an accessible, highly visible demonstration site for the application of Low Impact Development stormwater management techniques. Project information will also be maintained on the Environmental Services website.

**BUDGET AND POLICY IMPLICATIONS:** These projects support the capital improvement policies and goals in the county's 2013 Stormwater Management Plan. The Harding project meets municipal stormwater permit requirements for retrofitting the existing stormwater system. Preliminary design work was completed under the 2011-12 and 2013-14 biennial budgets. The Washington Department of Ecology will fund the remaining project cost using proviso funding allocated through the Washington State Legislature.

**FISCAL IMPACTS:**  Yes (see Fiscal Impacts Attachment)  No

**ACTION REQUESTED:** Authorize the County Administrator to sign a FY 2014 Stormwater Grant Program Proviso Funding Agreement under which the Washington State Department of Ecology will provide \$1,531,000 to fund two stormwater capital projects for construction between 2014-2016.

**DISTRIBUTION:** Please return the approved staff report to Environmental Services Administration.

  
\_\_\_\_\_  
Ron Wierenga  
Policy and Planning Manager

  
\_\_\_\_\_  
Don Benton  
Environmental Services Director

APPROVED:   
\_\_\_\_\_  
CLARK COUNTY, WASHINGTON  
BOARD OF COMMISSIONERS

March 25, 2014 SR 61-14

RW/RW/bt

# FISCAL IMPACT ATTACHMENT

## Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

Authorize the County Administrator to sign a FY 2014 Stormwater Grant Program Proviso Funding Agreement under which the Washington Department of Ecology will provide \$1,531,000 to fund two stormwater capital projects for construction between 2014-2016. These projects support the capital improvement policies and goals in the county's 2013 Stormwater Management Plan, and also meet municipal stormwater permit requirements for retrofitting the existing stormwater system.

## Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
WA Dept of Ecology Grant	\$0	\$95,803	\$0	\$1,435,197	\$0	\$0
<b>Total:</b>	<b>\$0</b>	<b>\$95,803</b>	<b>\$0</b>	<b>\$1,435,197</b>	<b>\$0</b>	<b>\$0</b>

II.A - Describe the type of revenue (grant, fees, etc.)

The 2013 Washington State Legislature approved \$1,531,000 in proviso funding to the Department of Ecology to fund two stormwater capital projects submitted by Clark County (Harding Farms Stormwater Facility Retrofit Project and Heritage Farm Parking Lot LID Project). There is no local match requirement for this funding.

## Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
4420/Clean Water Fund		\$0	\$45,000	\$0	\$955,000	\$0	\$0
5193/Major Maint. Fund		\$0	\$531,000	\$0	\$0	\$0	\$0
<b>Total:</b>		<b>\$0</b>	<b>\$576,000</b>	<b>\$0</b>	<b>\$955,000</b>	<b>\$0</b>	<b>\$0</b>

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits -4420	\$0	\$45,000	\$0	\$70,000		
Contractual -4420	\$0	\$0	\$0	\$885,000		
Contractual-5193	\$0	\$531,000	\$0	\$0		
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
<b>Total:</b>	<b>\$0</b>	<b>\$576,000</b>	<b>\$0</b>	<b>\$955,000</b>	<b>\$0</b>	<b>\$0</b>



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

August 28, 2013

The Honorable Steve Stuart, Chairman  
Clark County Board of Commissioners  
PO Box 5000  
Vancouver, WA 98666

**Re: 2013-15 Biennial Capital Budget Proviso  
Harding Farms SWF Retrofit; Heritage Farm Parking Lot LID**

Dear Chairman Stuart:

I am pleased to inform you that an amount up to \$1,531,000 has been offered as a special proviso in the 2013-15 Biennial Capital Budget for your above-referenced project.

The Department of Ecology (Ecology) is committed to negotiating and signing a funding agreement by November 1, 2013. To meet this timeline and ensure timely use of limited state funds, it is essential that negotiations and funding agreement development begin as soon as possible. Project eligible costs may be incurred from July 1, 2013. However, incurred eligible project costs are the sole responsibility of the recipient and will not be reimbursed until there is a fully negotiated and signed agreement.

Ecology has assigned the following Grant and Loan Project Management Team for your project:

Deborah Cornett	Southwest Regional Office	Project Manager	360-407-7269
Sean Mellon	Headquarters Office, Lacey	Financial Manager	360-407-6570

Ecology's Project Manager will contact you soon to schedule a negotiation date. If you are not contacted by September 15, 2013, please call your Project Manager directly.

If you have any questions regarding this funding program or other Water Quality Program financial assistance programs, please contact Jeff Nejedly at 360-407-6572. For more information about this funding cycle and upcoming training opportunities, please visit the Water Quality website:

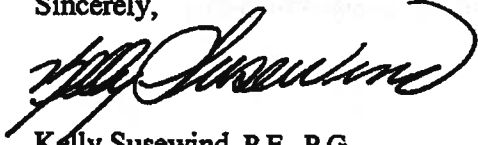
<http://www.ecy.wa.gov/programs/wq/funding/funding.html>



Clark County  
August 28, 2013  
Page 2

We appreciate your commitment to improving Washington's water quality and look forward to working with you to complete this high priority project.

Sincerely,

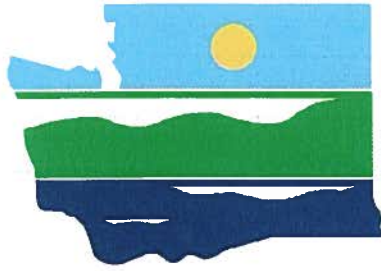


Kelly Susewind, P.E., P.G.  
Water Quality Program Manager

KS:JAS:mb

Enclosures

cc: Ron Wierenga, Clark County  
Deborah Cornett, Ecology



DEPARTMENT OF  
**ECOLOGY**  
 State of Washington

**FY 2014 STORMWATER GRANT PROGRAM PROVISIO  
 FUNDING AGREEMENT  
 BETWEEN  
 THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
 AND  
 CLARK COUNTY**

**PROVISIO AGREEMENT NUMBER**

**HARDING FARMS STORMWATER FACILITY RETROFIT & HERITAGE FARM  
 PARKING LOT LID PROJECT**

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**FY 2014 STORMWATER GRANT PROGRAM PROVISIO**  
**Funding Agreement**  
**Between**  
**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**  
**AND**  
**CLARK COUNTY**

THIS is a binding agreement between the state of Washington Department of Ecology (DEPARTMENT) and Clark County (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT, who will carry out the requirements described in this agreement.

**PART I. GENERAL INFORMATION**

Project Title:	Harding Farms Stormwater Facility Retrofit & Heritage Farm Parking Lot LID Project
Grant Number:	
State Fiscal Year:	FY 2014
Total Project Cost:	\$1,555,531,129,000
Total Eligible Cost:	\$1,531,000
DEPARTMENT Share:	\$1,531,000
RECIPIENT Share:	\$0
DEPARTMENT Maximum Percentage:	100 %

**RECIPIENT Information**

RECIPIENT Name:	Clark County
Mailing Address:	P.O. Box 9810 Vancouver, WA 98666-9810
Fax Number:	360-397-2062
Federal Taxpayer ID Number:	91-600129
PROJECT Manager:	Jeff Schnabel
Email Address:	<a href="mailto:jeff.schnabel@clark.wa.gov">jeff.schnabel@clark.wa.gov</a>
Phone Number:	(360) 397-2121 x4583
PROJECT Financial Officer:	Tom Donovan
Email Address:	<a href="mailto:tom.donovan@clark.wa.gov">tom.donovan@clark.wa.gov</a>
Phone Number:	(360) 397-2121 x4773

**DEPARTMENT Contact Information**

**Project Manager:**

**Nikki Guillot**

**Email Address:**

**[nikki.guillot@ecy.wa.gov](mailto:nikki.guillot@ecy.wa.gov)**

**Phone Number:**

**360-690-4782**

**Project Engineer:**

**Daniel S. Gariepy, P.E.**

**Email Address:**

**[daga461@ecy.wa.gov](mailto:daga461@ecy.wa.gov)**

**Phone Number:**

**360-407-6470**

**Address:**

**Southwest**  
WA State Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775  
Fax (360) 407-6305

**Financial Manager:**

**Justin Rogers**

**Email Address:**

**[juro461@ecy.wa.gov](mailto:juro461@ecy.wa.gov)**

**Phone Number:**

**360-407-7196**

**Fax Number:**

**360-407-7151**

**Address:**

WA State Department of Ecology  
Water Quality Program, FMS  
P.O. Box 47600  
Olympia, WA 98504-7600



**CHECK ALL THAT APPLY:**

- FY 2014 Stormwater Grant Program Proviso (state funds):  Yes  
Amount: \$1,531,000, Funded with Local Toxics Control Account – State
  - Increased Oversight?  Yes  No

The effective date of this agreement is the **July 1, 2013**.

This agreement expires: December 31, 2016.

Post Project Assessment date – three years after the expiration date of the agreement (see Post Project Assessment in Attachment I): June 30, 2019

**PART II. PROJECT SUMMARY**

This project will address water quality for the state of Washington and consists of two distinct projects slated to provide stormwater improvements for Clark County:

- A) Harding Farms Stormwater Facility Retrofit will improve an existing stormwater facility and will expand and enhance natural wetlands adjacent to the facility through rehabilitation of wetland function and installation of improved flow control structures. The existing facility treats stormwater runoff from the 5-acre Harding Farms subdivision. Adjacent wetlands receive untreated stormwater from an additional 75 acres of residential development. A portion of that runoff will also be treated prior to discharge to the wetland area. Drainage from the project site enters Salmon Creek in a reach with impacted water quality subject to multiple 303(d) listings and active Total Maximum Daily Loads (TMDLs).
- B) Heritage Farm LID Parking Lot Demonstration Project will install a variety of Low Impact Development (LID) features including grasspave pavers, pervious asphalt, permeable concrete, and bioretention cells. A viewing area with interpretive signage will also be included. Located at the headwaters of Cougar Creek, the project will reduce stormwater runoff and improve water quality in a 303(d) listed stream subject to several active TMDLs. The county-owned Heritage Farm site is maintained as an accessible, agricultural, educational, recreational, community-based asset that reflects the area's history and provides a healthy and sustainable environment. Currently the site supports community and Food Bank gardens, plant sales, agricultural research, Washington State University (WSU) Extension offices, Master Gardeners, Partners in Careers, and a historical cemetery.

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**PART III. PROJECT BUDGET**

Harding Farms Stormwater Facility Retrofit & Heritage Farm Parking Lot LID		
TASKS/ELEMENTS	TOTAL PROJECT COST	**TOTAL ELIGIBLE COST (TEC)
1 - Project Administration/Management	\$15,000	\$15,000
2 - Designs, Plans and Specifications	\$227,008	\$227,008
3 - Construction/Construction Management	\$1,313,288,12 1992	\$1,288,992
Total	\$1,555,531,12 9000	\$1,531,000
<b>** The DEPARTMENT's Fiscal Office will track to the Total Eligible Cost.</b>		
MATCHING REQUIREMENTS		
DEPARTMENT Share: maximum 100% of TEC		\$1,531,000

**PART IV. PROJECT GOALS AND OUTCOMES**

A. Financial Assistance Water Quality Project Goals: The overall goals of this project are focused on the protection of wetlands and Cougar and Salmon Creeks and include one or more of the following:

- Stormwater System Retrofit
- Low Impact Development Best Management Practices (BMP)
- Designated beneficial uses will be restored or protected, 303(d)-Listed water bodies restored to water quality standards, healthy waters prevented from being degraded.

B. Water Quality and Environmental Outcomes: The following are the anticipated water quality and environmental improvements from the project.

1. Protection/enhancement of degraded wetland areas.
2. Improved wetland function, infiltration, and stormwater control.
3. Reduced pollutant loading to downstream impaired waters.
4. Reduced stormwater runoff to erosion-prone stream channel.
5. Improved hydrologic function in headwater area.

- C. Performance Items and Deliverables: The following are the anticipated action items that will play an integral role in implementation of the project.
1. Design, construction, and expansion of stormwater treatment wetlands.
  2. Design and construction of permeable parking areas, bioretention cells, and interpretive signage.

## **PART V. SCOPE OF WORK**

### **Task 1 - Project Administration/Management**

- 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.

#### **Required Performance:**

1. Administer and manage the project and records.
2. Submit all required requests for reimbursement and corresponding documentation, progress reports, 2-page Project Outcomes Summary, and recipient Final Report and performance items, in a timely manner.

### **Task 2 – Design Plans and Specifications**

- A. The RECIPIENT will submit to the DEPARTMENT's Project Manager, a copy of the State Environmental Review Act (SEPA) Lead Agency's signed and dated SEPA determination.
- B. During the planning and design stage and prior to any ground disturbing activities, the RECIPIENT will submit to the DEPARTMENT's Project Manager one of the following:
- a. If Cultural Resources Review (Executive Order 05-05) is complete, a copy of the letter of concurrence from the Department of Archaeology and Historic Preservation (DAHP) and correspondence from any tribes.

- b. If Cultural Resources Review (Executive Order 05-05) is not complete, the RECIPIENT will submit a DAHP EZ-1 form to the DEPARTMENT's Project Manager to initiate review of project activities by DAHP and tribal governments.
- C. The RECIPIENT will submit two hard copies and one digital copy of the Pre-design report to the DEPARTMENT for review. At its discretion, the DEPARTMENT may request 60 percent complete design plans for review. Based on receipt of the Pre-design report or the 60 percent complete design plans, the DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans. The RECIPIENT agrees to respond to the DEPARTMENT's comments prior to project construction. The DEPARTMENT reserves the right to refuse payment for project elements that are inconsistent with the appropriate design criteria and grant requirements.
- D. Prior to advertising for contractor bids, the RECIPIENT will submit two hard copies and one digital copy of the final plans and specifications to the DEPARTMENT's Project Manager for review. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the plans and specifications for consistency with the appropriate design criteria and grant requirements. The RECIPIENT must justify significant deviations from the following:
1. The appropriate guidance manual below depends on the region that your project is conducted:  
**Stormwater Management Manual for Western Washington (SWMMWW),**  
or the  
**Stormwater Management Manual for Eastern Washington (SWMMEW),**  
both can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/tech.html>, or the  
**Low Impact Development Technical Guidance Manual for Puget Sound**  
found at: [http://www.psp.wa.gov/downloads/LID/LID\\_manual2005.pdf](http://www.psp.wa.gov/downloads/LID/LID_manual2005.pdf), or  
equivalent design manuals, or  
**Eastern WA LID Low Impact Development Guidance Manual,** or  
<http://www.wastormwatercenter.org/eastern-washington-lid-manual>
  2. Equivalent manual as developed by the local jurisdiction and approved by the DEPARTMENT.
  3. Good engineering practices and generally recognized engineering standards.
  4. The project pre-design report.
- E. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal to the DEPARTMENT.
- F. The RECIPIENT will prepare and submit a projected construction schedule to the DEPARTMENT.
- G. The RECIPIENT will submit to the DEPARTMENT a current, updated construction cost estimate and updated project schedule, along with each plans and specifications submittal.

- H. The RECIPIENT will submit all pre-design figures and construction plans to the DEPARTMENT, reduced to 11" x 17" in size. The RECIPIENT may bind them with the specifications or related construction contract documents or bound as a separate document. All reduced drawings must be legible.

Required Performance:

1. Submit a copy of the signed and dated SEPA determination to the DEPARTMENT.
2. Submit a copy of either: 1) Letter of Concurrence from DAHP; or, 2) the DAHP EZ-1 form, for DEPARTMENT coordination on compliance with Executive Order 05-05.
3. Submit a Pre-design report to the DEPARTMENT.
4. Submit final plans and specifications to the DEPARTMENT, which includes the DEPARTMENT's Bid Specification Clauses inserts found at:  
<http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html>

**Task 3 – Construction Management/Construction (Total Task Cost: \$1,295,000)**

- A. The RECIPIENT will provide construction oversight and management of the project.
- B. The RECIPIENT will submit a detailed construction quality assurance plan to the DEPARTMENT before the start of construction. This plan must describe how adequate and competent construction oversight will be performed.
- C. The RECIPIENT will submit a construction schedule to the DEPARTMENT within 30 days of the start of construction. The construction schedule will be revised and/or updated whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the construction schedule to the DEPARTMENT with the quarterly report. When changes in the construction schedule affect previous cash flow estimates, revised cash flow projections must also be submitted to the DEPARTMENT.
- D. Prior to execution, the RECIPIENT will submit eligible change orders that are a significant deviation from the DEPARTMENT reviewed plans and specifications in writing for DEPARTMENT review and approval for payment. All other change orders must be approved by the DEPARTMENT for technical merit and should be submitted within 30 days after execution. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to the DEPARTMENT for approval.
- E. The RECIPIENT will maintain the constructed facility for the design life of the facility. Additionally, the RECIPIENT will develop and submit an operations and maintenance plan for the stormwater treatment and low impact development (LID) features. The operation and maintenance plan will describe how the RECIPIENT will ensure project success consistent with the design manual used. The operation and maintenance plan must also address long term activities to assure ongoing pollutant removal and flow-control capability of the project. (See the *Stormwater Management Manual for Western Washington Volume 5, Section 4.6*).

- F. Upon completion of construction, the RECIPIENT will provide to the DEPARTMENT's Project Manager a Stormwater Construction Completion Form signed by a professional engineer, indicating that the project was completed in accordance with the plans and specifications and major change orders approved by the DEPARTMENT's Project Engineer and shown on the Record Drawings. The Stormwater Construction Completion form can be found at:  
<http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html>
- G. The RECIPIENT will, in accordance with the DEPARTMENT reviewed plans and specifications, design, construct, and expand a stormwater treatment wetland.
- H. The RECIPIENT will also, in accordance with the DEPARTMENT reviewed plans and specifications, design/construct and install bioretention cells, permeable pavers, pervious asphalt and interpretive signage in an effort to demonstrate LID techniques.
- I. The RECIPIENT will submit to the DEPARTMENT's Project Manager a copy of the construction contract within 30 days of execution.

**Required Performance:**

1. Submit the project construction quality assurance plan to the DEPARTMENT.
2. Submit the construction schedule to the DEPARTMENT.
3. Submit an Operations and Maintenance plan to the DEPARTMENT.
4. Submit the signed and dated Stormwater Construction Completion Form to the DEPARTMENT.
5. Submit a copy of the bid documents (e.g. bid announcement, bid award, bid tabulations) to the DEPARTMENT.
6. Submit a copy of the construction contract to the DEPARTMENT.
7. Design and construct a new biofiltration swale and expand and enhance a stormwater treatment wetland.
8. Design and construct an LID demonstration site that includes the installation of bioretention cells, pervious paving systems, and interpretive signage.

## **PART VI. SPECIAL TERMS AND CONDITIONS**

- A. Adjusted Construction Budget. The construction budget, as reflected in the agreement, will be adjusted once actual construction bids are received.

If the low responsive responsible construction bid(s) exceed the engineer's estimate of construction costs, the DEPARTMENT may approve, if funding is available and through formal amendment to this agreement, funding increases for up to ten percent of the engineer's original estimate.

If the low responsive responsible construction bid(s) come in lower than the engineer's estimate of construction costs, the DEPARTMENT may reduce the grant amount.

- B. Change Orders. If funding is available, the DEPARTMENT may approve, through formal amendment to this agreement, funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s).
- C. Documents for Review. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal for DEPARTMENT review.
- D. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project within four months of the signatory date, the DEPARTMENT reserves the right to terminate this agreement.
- E. Use of Force Account. In the event the RECIPIENT elects to use its own forces to accomplish eligible project work, the RECIPIENT acknowledges that it has the legal authority to perform the work and adequate and technically qualified staff to perform the work without compromising other government functions. The RECIPIENT must track and report the force account work submitted to the DEPARTMENT for reimbursement.

## **PART VII. ALL WRITINGS CONTAINED HEREIN**

The following contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein:

- This agreement.
- Attachment I: General Project Management Requirements.
- Attachment II: General Terms and Conditions.
- The effective edition, at the signing of this agreement, of the DEPARTMENT's "Administrative Requirements for Recipients of Ecology Grants and Loans" (Yellow Book).
- The associated funding guidelines that correspond to the fiscal year in which the project is funded.
- The applicable statutes and regulations.

No subsequent modifications or amendments of this agreement will be of any force or effect unless signed by authorized representatives of the RECIPIENT and the DEPARTMENT and made a part of this agreement, EXCEPT that in response to a request from the RECIPIENT, the



DEPARTMENT may redistribute the grant budget. The DEPARTMENT or the RECIPIENT may change their respective staff contacts without the concurrence of either party.

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

IN WITNESS WHEREOF, the parties hereby sign this agreement:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

CLARK COUNTY

\_\_\_\_\_  
DONALD A. SEEBERGER  
WATER QUALITY  
ACTING PROGRAM MANAGER

DATE

\_\_\_\_\_  
MARK MCCAULEY  
CLARK COUNTY  
ADMINISTRATOR

DATE

Approved As To Form:  
Office of the Attorney General



**ATTACHMENT I: General Project Management Requirements  
for the FY 2014 Stormwater Grant Program Proviso  
Funding Agreement**

**A. ARCHEOLOGICAL AND CULTURAL RESOURCES**

RECIPIENT must comply with all requirements listed in Executive Order 05-05 prior to implementing any project that involves soil disturbing activity.

RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to the DEPARTMENT's project manager prior to any soil disturbing activities. The DEPARTMENT will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to meet Executive Order 05-05 requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Any soil disturbing activities that occur prior to the completion of the Executive Order 05-05 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

The Department of Archaeology and Historic Preservation has provided guidance that can be accessed online at:

<http://www.dahp.wa.gov/pages/Documents/EnvironmentalReview.htm> and  
[http://www.dahp.wa.gov/pages/EnvironmentalReview/documents/eo0505Guidance\\_000.pdf](http://www.dahp.wa.gov/pages/EnvironmentalReview/documents/eo0505Guidance_000.pdf).

**B. EDUCATION AND OUTREACH**

RECIPIENT must do a regional search for existing materials before producing any new educational flyers or pamphlets. The RECIPIENT must request the use of those materials before time and resources are invested to duplicate materials that are already available.

RECIPIENT must also check the Washington Waters website [http://www.ecy.wa.gov/washington\\_waters/index.html](http://www.ecy.wa.gov/washington_waters/index.html) for useful educational materials. These materials are available for public use and can be downloaded directly from the website.

RECIPIENT must provide the DEPARTMENT up to two copies and an electronic copy on a CD-ROM of any tangible educational products developed under this grant, such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, and media announcements or gadgets, such as a refrigerator magnet with a message. If this is not practical, the RECIPIENT must provide a complete description including drawings, photographs, or printouts of the product.

RECIPIENT must also supply the DEPARTMENT with the names and contact information of local project leads.

If there are a significant number of people in the community that speak languages other than English, then the RECIPIENT must produce all public outreach materials, pamphlets, fliers, meeting notices, reports, and other educational materials in English and in the other prevalent language.

### **C. EQUIPMENT PURCHASE**

RECIPIENT must get written, prior approval from the DEPARTMENT for any equipment purchase.

### **D. FUNDING RECOGNITION**

RECIPIENT must inform the public about DEPARTMENT funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from the DEPARTMENT upon request.

### **E. INCREASED OVERSIGHT**

If this project is selected for increased oversight, the RECIPIENT must submit all backup documentation with each payment request submittal. In addition, the DEPARTMENT's Project Manager must establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

### **F. INDIRECT RATE**

To acknowledge overhead costs, the RECIPIENT may charge an indirect rate of up to 25 percent based on employees' direct salary and benefit costs incurred while conducting project-related work. The DEPARTMENT's Financial Manager may require a list of items included in the indirect rate at any time.

### **G. MINORITY AND WOMEN'S BUSINESS PARTICIPATION**

RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, 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.

RECIPIENT must report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. Please include the following information:

- a) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- b) The total dollar amount paid to qualified firms under this invoice.

**H. PAYMENT REQUEST SUBMITTALS**

Payment Request Submittals. The DEPARTMENT's Project/Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Payment Schedule. Payments will be made on a cost-reimbursable basis.

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by the DEPARTMENT's Financial Manager.

Supporting Documentation. The RECIPIENT must submit all payment request vouchers and supportive documentation to the DEPARTMENT's Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Reporting Eligible Costs. The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Copies of all applicable forms must be included with an original A19-1A, and must be submitted to the DEPARTMENT. Blank forms are found in Administrative Requirements for Recipients of Ecology Grants and Loans at <http://www.ecy.wa.gov/biblio/9118.html>.

Required Forms:	Where Eligible Costs Have Incurred:
Form A19-1A (original signature)	Form E (ECY 060-12)
Form B2 (ECY 060-7)	Form F (ECY 060-13)
Form C2 (ECY 060-9)	Form G (ECY 060-14)
Form D (ECY 060-11)	Form H (F-21)
	Form I (ECY 060-15)

## **I. POST PROJECT ASSESSMENT**

RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project three years after project completion.

DEPARTMENT's Water Quality Program Performance Measures Lead will contact the RECIPIENT before the Post Project Assessment date to request this data.

DEPARTMENT may also conduct site interviews and inspections, and may otherwise evaluate the Project, as part of this assessment.

## **J. PROCUREMENT**

RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services. Eligible and ineligible project costs are separate and identifiable for billing purposes. If professional services are contracted, the RECIPIENT will submit a copy of the final contract to the DEPARTMENT's Project/Financial Manager.

## **K. PROGRESS REPORTS**

RECIPIENT must submit quarterly progress reports to the DEPARTMENT's Financial Manager and Project Manager. Payment requests will not be processed without a progress report.

Report Content. At a minimum, all progress reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement. The RECIPIENT must also attach all landowner agreements signed during the respective quarter to each progress report.

Reporting Periods. Quarterly progress reports are due 15 days following the end of the quarter:

- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

## **L. REQUIRED DOCUMENT SUBMITTALS**

RECIPIENT must submit the following documents to the DEPARTMENT as requested by the DEPARTMENT's Project Manager or Financial Manager:

- Draft project completion report – 1 copy.
- Electronic copy of final project completion report – 1 copy.
- Final project completion report – 1 copy.
- Educational products developed under this agreement – up to 2 copies.

- Documents that require DEPARTMENT Approval – 2 copies (one for the DEPARTMENT and one for the RECIPIENT).
- Interlocal agreements – 1 copy for the DEPARTMENT’s Project/Financial Manager.
- Professional services procurement agreements – 1 copy to the DEPARTMENT’s Project/Financial Manager.

## **M. SPECIAL CONDITION FOR SNOHOMISH COUNTY AND KING COUNTY**

For either Snohomish County or King County: When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein will be contingent upon appropriation of funds by the RECIPIENT's governing body; provided that nothing contained herein will preclude the DEPARTMENT from demanding repayment of funds paid to the RECIPIENT in accordance with Section O of the appended General Terms and Conditions.

## **N. WATER QUALITY MONITORING**

Quality Assurance Project Plan (QAPP). Prior to initiating water quality monitoring activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP). The QAPP must follow Ecology’s *Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies*, February 2001 (Ecology Publication No. 01-03-003). The applicant may also reference the *Technical Guidance for Assessing the Quality of Aquatic Environments*, revised February 1994 (Ecology Publication No. 91-78) or more current revision, in developing the QAPP.

RECIPIENT must submit the QAPP to the DEPARTMENT’s project manager for review, comment, and must be approved before starting the environmental monitoring activities.

RECIPIENT must use an environmental laboratory accredited by the DEPARTMENT to analyze water samples for all parameters to be analyzed that require bench testing. Information on currently accredited laboratories and the accreditation process is provided on the Department of Ecology’s Environmental Assessment Program’s website, available at:

<http://www.ecy.wa.gov/programs/eap/labs/search.html>

RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the “ten-year rule.” The ten-year rule means that data documentation is sufficient to allow an individual not directly familiar with the specific monitoring effort to understand the purpose of the data set, methods used, results obtained, and quality assurance measures taken ten years after data are collected.

Monitoring Data Submittal / Environmental Information Management System. Funding recipients that collect water quality monitoring data must submit all data to the DEPARTMENT through the Environmental Information Management System (EIM). Data must be submitted by following instructions on the EIM website, currently available at:

<http://www.ecy.wa.gov/eim>

The data submittal portion of the EIM website provides information and help on formats and requirements for submitting tabular data. Specific questions about data submittal can be directed to the EIM Data Coordinator, currently available at:

[eim\\_data\\_coordinator@ecy.wa.gov](mailto:eim_data_coordinator@ecy.wa.gov)

If GIS data is collected, the DEPARTMENT's data standards are encouraged. An Ecology Focus Sheet entitled *GIS Data and Ecology Grants* (Publication No. 98-1812-SEA) outlines the standards. Common standards must be used for infrastructure details, such as geographic names, Geographic Information System (GIS) coverage, list of methods, and reference tables.

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REF

**ATTACHMENT II: 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 only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

**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. If the agreement is federally-funded, 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 \$500,000 or more in a year in Federal funds. The \$500,000 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 thirty (30) 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 approved 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 Recipients of 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. **Period of Compensation.** Payments shall only be made for actions 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.
3. **Final Request(s) for Payment.** The RECIPIENT should 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.
4. **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. 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.5. herein.
5. **Unauthorized Expenditures.** All payments to the RECIPIENT may 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.
6. **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.
7. **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 there under 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 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 Recipients of 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. SUSTAINABLE PRODUCTS**

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see <http://www.ecy.wa.gov/sustainability/>.

#### **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 year 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 Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

#### **W. FUNDING AVAILABILITY**

The DEPARTMENT'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 completion or expiration date of this agreement, the DEPARTMENT, 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. The DEPARTMENT may also elect to suspend performance of the agreement until the DEPARTMENT determines the funding insufficiency is resolved. The DEPARTMENT may exercise any of these options with no notification restrictions.

SS-010 Rev. 04/04

Modified 12/13