

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT/DIVISION: Environmental Services/Solid Waste and Environmental Education

DATE: September 30, 2014

REQUEST: Authorize the Environmental Services Director to sign a Grant Agreement with the Washington Department of Ecology for \$75,000 to fund a Pilot Resource Recovery Project at the Central Transfer and Recycling facility operated by Columbia Resource Company, LP, through a contract with Clark County.

CHECK ONE: ☒ Consent ☐ Hearing ☐ Chief Administrative Officer

BACKGROUND: Clark County applied for a Coordinated Prevention Grant (CPG) offset cycle grant and the project was selected by the WA Department of Ecology based on a competitive basis. The offset cycle got its name because it is "offset" from the effective dates of the CPG regular cycle. Grants begin on July 1, 2014, and end June 30, 2015. Offset cycle funds come from unrequested funds from the 2013-15 regular cycle. The CPG program is funded from the Local Toxics Control Accounts (LTCA) authorized by RCW 82.21.030.

COMMUNITY OUTREACH: The Grant Agreement is consistent with program services for County residents identified in the Solid Waste Management Plan. The Solid Waste Advisory Commission has been advised of and endorses the resource recovery pilot program. Clark County Public Health is supportive of the pilot project. As the Solid Waste Program is regional, the County will coordinate with all municipalities for this pilot program.

BUDGET AND POLICY IMPLICATIONS: Local government agencies are eligible to apply to Ecology for CPG offset cycle funding as part of a competitive process. Recipients are required to provide a 25% cash only match. Staff applied for and has been awarded CPG funding with a maximum eligible cost of \$75,000. The grant will fund 75% of the proposed pilot project (\$56,250) and Clark County will fund 25% (\$18,750). The funding by Environmental Services for the Grant Agreement is included in the approved Environmental Services 2013-14 budget in Fund 4014. No General Fund moneys will be used to fund the Grant Agreement.

FISCAL IMPACTS: ☒ Yes (see Fiscal Impacts Attachment) ☐ No

ACTION REQUESTED: Authorize the Environmental Services Director to sign a Grant Agreement with the Washington Department of Ecology for \$75,000 to fund a Pilot Resource Recovery Project.

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



Peter DuBois
Solid Waste and Environmental Education Manager



Don Benton
Environmental Services Director

APPROVED: 
CLARK COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

9/30/14 SR 218-14



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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 Environmental Services Director to sign a Grant Agreement with the Washington Department of Ecology for \$75,000 to fund a Pilot Resource Recovery Project at the Central Transfer and Recycling facility operated by Columbia Resource Company, LP, through a contract with Clark County.

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Ecology Coordinated Prevention Grant	\$0	\$0		\$56,250	\$0	\$0
Fund 4014 - Solid Waste Fund	\$0	\$0		\$18,750	\$0	\$0
Total:	\$0	\$0	\$0	\$75,000	\$0	\$0

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

The funding by Environmental Services for the Grant Agreement is included in the approved Environmental Services 2013-14 budget in Fund 4014. The costs of the Grant Agreement do not impact the General Fund.

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
Fund 4014 - Solid Waste Fund		\$0	\$303,681	\$0	\$75,000	\$0	\$75,000
Total:		\$0	\$303,681	\$0	\$75,000	\$0	\$75,000

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits	\$0	\$0	\$0	\$0	\$0	\$0
Contractual	\$0	\$0	\$0	\$75,000	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0	\$0
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total:	\$0	\$0	\$0	\$75,000	\$0	\$0



COORDINATED PREVENTION GRANT (CPG) AGREEMENT

BETWEEN THE

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CLARK COUNTY ENVIRONMENTAL SERVICES

Grant No. G1500019

This is a binding agreement entered into by and between the state of Washington Department of Ecology, hereinafter referred to as the "DEPARTMENT" or as "ECOLOGY", and **Clark County Environmental Services** hereinafter referred to as the "RECIPIENT", to carry out the activities described herein.

JURISDICTION: Clark County Environmental Services
MAILING ADDRESS: PO Box 9810
CITY, STATE, ZIP: Vancouver, WA 98666-9810

RECIPIENT GRANT COORDINATOR: Peter DuBois
TELEPHONE: 360-397-2121 ext. 4961
E-MAIL: pete.dubois@clark.wa.gov

RECIPIENT BILLING/INVOICE COORDINATOR: Nick Cimmiyotti
TELEPHONE: 360-397-2121 ext. 4464
E-MAIL: nick.cimmiyotti@clark.wa.gov

ECOLOGY PROJECT/FINANCIAL MANAGER: Tami M. Ramsey
TELEPHONE: 360-407-6612
E-MAIL: tami.ramsey@ecy.wa.gov

FUNDING SOURCE: Local Toxics Control Account
MAXIMUM ELIGIBLE COST: \$75,000
STATE GRANT SHARE: \$56,250
LOCAL SHARE: \$18,750
STATE MAXIMUM GRANT PERCENT: 75 %
FEDERAL TAX IDENTIFICATION NO.: 91-6001299

EFFECTIVE DATE OF THE AGREEMENT: 07-01-2014
EXPIRATION DATE OF THE AGREEMENT: 06-30-2015

PART 1: SCOPE OF WORK

The task(s) set forth below summarize the RECIPIENT'S activities to be performed under this agreement. Costs are limited to those approved by ECOLOGY as outlined in the current scope of work and budget. The RECIPIENT must complete all deliverables by the expiration date of this agreement, including delivery of purchases, unless otherwise stated in the scope of work or approved by ECOLOGY in writing.

Note: The term "task" as used in this agreement is interchangeable with the term "project" as used on the online Solid Waste Information Clearinghouse and "element" as used on payment request forms.

The "Maximum Eligible Cost" is the maximum amount of eligible costs incurred by a RECIPIENT that ECOLOGY can reimburse at a rate of 75 percent under this grant.

RECIPIENT shall identify the work plan and activities by "Quarter." A quarter is defined by calendar year and begins with the first three months of the grant period. RECIPIENT may negotiate changes to the work plan with the ECOLOGY financial/project manager. ECOLOGY shall document mutually agreed changes to the plan in writing.

Expenses relating to the collection and recycling of mercury containing lights shall be eligible for CPG reimbursement until such time that the Mercury Light Recycling program is fully implemented or the grant agreement expires, whichever is the earliest date.

CATEGORY: WRR

1. **TASK TITLE:** REUSABLE MATERIALS RECOVERY PILOT
Task Coordinator – Peter DuBois, 360-397-2121, pete.dubois@clark.wa.gov

Maximum Eligible Task Cost: \$75,000

Task Description: Pursuant to Part 4, Section E. and F. of this agreement, RECIPIENT may contract for assistance in recovering and transporting reusable materials at the transfer station, and for marketing and analyzing the pilot program. ECOLOGY must review new and existing contracts prior to reimbursement of eligible contractor costs. ECOLOGY will determine the eligibility of costs and identify them in writing, including the documentation required prior to cost reimbursement.

This pilot was inspired by an existing educational exhibit called "Tossed and Found". Items for this exhibit are recovered from disposed items at the transfer station and then displayed for public view to raise awareness. This exercise demonstrates the potential opportunity for recovering reusable materials on a full time basis rather than just a sampling for the event.

ECOLOGY recognizes that in order to promote behavior change, the public must be aware of the magnitude of reusable materials being thrown away. Raising this awareness may promote the desired behavior change which is then anticipated to benefit not only the environment but residents in three ways: 1. Reducing their tipping fees; 2. By self selecting a charity and delivering materials themselves, residents get to choose the charity of choice; 3. Residents get the tax incentive when donating themselves. RECIPIENT agrees to report progress (as described in the Method of Evaluation below) to the public using an existing webpage and or

by way of a Public Service Announcement (or the like) to raise awareness and encourage behavior change.

RECIPIENT is currently in contract with Waste Connections for transfer station operations, has cleared the pilot with the contractor, and is ready to proceed.

The following activities and associated costs are generally eligible for reimbursement under this task. Time accounting and payable invoices submitted with RECIPIENT's request for reimbursement must support eligible costs.

- **Staff time**
 - Facilitate contracts
 - Plan and implement task
- **Purchases**
 - ECOLOGY prior approval required for costs not specifically identified in this agreement
 - Costs associated with education and outreach
- **Contracts**
 - Materials recovery, marketing, transport
 - Consultant to implement, monitor, and or analyze pilot

Goal Statement: The goal of this task is to help the RECIPIENT determine if it is feasible to construct a permanent facility to recover reusable materials at the transfer station.

Outcome Statement: Over the 12 month grant period, RECIPIENT expects to recover 250 tons of reusable material, diverting them from a landfill, and to make a decision about developing permanent operations.

Work Plan, Deliverables and Activities Timeline:

Jul - Sep 2014	Execute necessary contracts for a reuse crew, for a consultant, and for transportation of materials to market.
Oct - Dec 2014	Continue operations, start developing a business case for the project.
Jan - Mar 2015	Continue operations and business case development.
Apr - Jun 2015	Continue operations, finalize and present business case, decide feasibility to transition from pilot to on-going.

Method of Evaluation: RECIPIENT will track the number of loads and weight of reusables recovered, and transported to end market; will track market rate for reusables; and will track tons of reusables diverted from a landfill. RECIPIENT will make a decision on permanent operations.

PART 2: BUDGET

Budget Information by CATEGORY/TASK	Maximum Eligible Cost	State Grant Share
CATEGORY: WRR	\$ 75,000	\$ 56,250
1. REUSABLE MATERIALS RECOVERY PILOT	\$ 75,000	\$ 56,250

TOTAL GRANT BUDGET	
TOTAL MAXIMUM ELIGIBLE COST	\$ 75,000
STATE GRANT SHARE (75%)	\$ 56,250
LOCAL CASH MATCH (25%)	\$ 18,750
INTERLOCAL COSTS (0 %)	\$ - 0 -

PART 3: BUDGET CONDITIONS

- A. ECOLOGY requires the RECIPIENT to provide a match of 25 percent of the maximum eligible cost with cash or interlocal costs. Interlocal costs are the only type of in-kind contributions RECIPIENT may use as match.
- B. If parties are contributing to the local share of task costs (match) through interlocal-in kind contributions, RECIPIENT shall negotiate a memorandum of understanding or other written agreement confirming the contribution between the parties. These agreements shall specify the exact work to be accomplished and be signed by all parties contributing to the local match of this task. Copies of these agreements shall be made part of RECIPIENT'S grant file and submitted to ECOLOGY.
- C. Overhead is eligible at a rate up to 25 percent of staff salaries and benefits for actual time spent on tasks outlined in this agreement. Salaries and benefits to administer the grant agreement are eligible (excluding time spent to write a CPG grant application).
- D. RECIPIENT must submit a written request to ECOLOGY to amend budgets between grant tasks, to modify a scope of work, or for a budget increase or decrease. To increase or decrease the agreement's total maximum eligible cost or change the scope of work for any tasks as outlined in this grant agreement, ECOLOGY requires a formal amendment.
- E. RECIPIENT must provide ECOLOGY with an updated Spending Plan when requested by ECOLOGY.

- F. Any work performed or costs incurred prior to the effective date or after the expiration date of this agreement will be at the sole expense of RECIPIENT.

PART 4: SPECIAL TERMS AND CONDITIONS

A. BILLING

1. Unless otherwise approved in writing by ECOLOGY, the RECIPIENT shall submit a payment request to ECOLOGY at least quarterly (by calendar year), but no more often than once per month.
2. RECIPIENT must submit payment requests on approved State Invoice Voucher form, A19-1A, and submit forms B1/B2 and C1/C2. The RECIPIENT must submit an A19-1A signed by an authorized person. The B1, B2, C1, and C2 forms are acceptable in electronic format. Forms B1 and C1 are used only when interlocal costs are used towards the 25 percent match.
3. Any income directly generated as a result of the activities funded by this grant shall be reported as a credit against the expenses of that activity, as defined by ECOLOGY'S *Administrative Requirements for Recipients of Ecology Grants and Loans*, Ecology Publication #91-18.
4. RECIPIENT shall submit supporting documents with each payment request. This includes copies of invoices, purchase receipts, payroll records, time and attendance records, contract award documents, and any document deemed relevant by ECOLOGY to establish the approval of an expense listed on Form C1/C2. Documentation shall be clear and legible, and organized by task in the order in which it is itemized on Form C1/C2.
5. RECIPIENT shall maintain grant related material and supporting documents including invoice vouchers sent to ECOLOGY in a common file. RECIPIENT shall keep all supporting documents for audit purposes for at least three years from the date the agreement is closed by ECOLOGY.

B. REPORTING

Progress reports and Final Performance Analyses must be submitted through the web-based database, the Solid Waste Information Clearinghouse.

RECIPIENT must submit a progress report with each payment request. RECIPIENT is required to submit a progress report for a quarter even when a quarterly payment request was not submitted. These progress reports shall include information that supports incurred costs identified on the corresponding C1 or C2 of the payment request, and provide a brief update in support of the outcomes and/or method of evaluation in the grant agreement.

A Final Performance Analysis (FPA) report must be submitted for each task in a *Planning and Implementation* grant before ECOLOGY can process a final payment request.

C. COMPENSATION

Payment to RECIPIENT will be issued through Department of Enterprise Services' (DES) Statewide Vendor/Payee Services. DES maintains a central vendor file for state agencies to use to process payments.

RECIPIENTS must register as a state-wide vendor by submitting a state-wide vendor registration form and an IRS W-9 form to DES.

For details and forms go to: <http://des.wa.gov/services/IT/SystemSupport/Accounting/Pages/swps.aspx>. If you have questions about the vendor registration process, please contact DES at the Payee Help Desk at (360) 407-8180 or email to payeehelpdesk@des.wa.gov.

D. TRAINING

RECIPIENT is expected to participate in any ECOLOGY recommended trainings related to managing a CPG agreement unless exempted by ECOLOGY in writing.

E. PROCUREMENT AND CONTRACTS

1. RECIPIENT must follow local procurement procedures or current state procurement procedures, whichever is stricter. A RECIPIENT with no formal procurement procedures must certify that they have complied with the "Standards for Competitive Solicitation" found in Part V of the *Administrative Requirements for Recipients of Ecology Grants and Loans – Yellow Book*, Ecology Publication #91-18.
2. Upon issuance, the RECIPIENT may submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to the ECOLOGY financial/project manager to be placed in the file.
3. Prior to contract execution, the RECIPIENT may submit all draft documents and a copy of the draft proposed contract to the ECOLOGY financial/project manager. RECIPIENT assumes any risks associated with the failure to consult with the ECOLOGY financial/project manager. Following the contract execution, RECIPIENT shall submit a copy of the final contract to the ECOLOGY assigned financial/project manager to be placed in the file.
4. Unless a specific purchase of equipment or real property is already written into a task's scope of work, RECIPIENT must submit a written request to ECOLOGY to purchase any equipment or real property (Property) with a single unit purchase price of \$5,000 or more. The request must include the justification for the purchase of the property, the total cost, the intended use, and the anticipated useful life of the property. The request must be approved in writing by ECOLOGY prior to the purchase.

F. USE OF EXISTING CONTRACTS

RECIPIENT may use existing contracts that conform to local adopted procurement procedures and applicable state laws. RECIPIENT shall notify ECOLOGY if intending to use contracts entered into prior to the execution of the grant agreement for performance of grant-funded activities. RECIPIENT shall submit a copy of the contract to its assigned ECOLOGY financial/project manager to be placed in the file. The grant eligibility of products or services secured by the RECIPIENT under existing contracts used to perform the scope of work in this agreement must be deemed allowable and reasonable by ECOLOGY prior to cost reimbursement.

G. PROPERTY AND EQUIPMENT MANAGEMENT AND DISPOSITION

For equipment or property purchased with a cost of at least \$5,000 per unit or functional system, the RECIPIENT must utilize an inventory control system, including physical inventory to document the ongoing use, a description of the item, including serial or vehicle identification number (VIN when possible), and location. The information shall be submitted to ECOLOGY upon request until final disposition is made. RECIPIENT shall investigate, document, and report to ECOLOGY any loss, theft or damage upon discovery of such conditions. RECIPIENT will follow manufacturer recommended maintenance procedures to keep the property in good operating condition.

RECIPIENT shall submit a written request to ECOLOGY for any intent to change the use of the equipment as outlined in this grant agreement, including uses past the expiration date of this agreement. Disposition of the equipment shall be determined by ECOLOGY and documented in writing. A copy of the determination will be provided to RECIPIENT upon ECOLOGY's closure of the grant agreement unless already identified in the task's scope of work.

- If the equipment is necessary for the continued operation of the project or other projects administered through ECOLOGY, the financial/project manager may instruct the RECIPIENT to retain the equipment with no further compensation to ECOLOGY.
- If the project has no further significant use for the equipment, the financial/project manager may instruct the RECIPIENT to retain or sell the equipment and pay ECOLOGY an amount equal to ECOLOGY's share of the current fair market value, sale proceeds or other price agreed upon by the financial/project manager.
- The financial/project manager may instruct the RECIPIENT to transfer title to ECOLOGY or to a third party named by ECOLOGY who is eligible under existing statutes.

H. ARCHEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological or cultural resources. Activities associated with archaeological and cultural resources are an eligible reimbursable cost subject to approval by ECOLOGY.

RECIPIENT shall:

1. Immediately cease work and notify ECOLOGY if any archeological or cultural resources are found while conducting work under this Agreement.
2. Immediately notify the Department of Archaeology and Historic Preservation at (360) 586-3064, in the event historical or cultural artifacts are discovered at a work site.
3. Comply with Governor Executive Order 05-05, Archaeology and Cultural Resources, for any capital construction projects prior to the start of any work.
4. Comply with RCW 27.53, Archaeological Sites and Resources, for any work performed under this Agreement, as applicable. National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact cultural or historic properties.

I. ENVIRONMENTALLY PREFERABLE PURCHASING

In a joint effort to save costs, produce energy savings and prevent waste, RECIPIENT agrees to use both sides of paper sheets for copying and printing when feasible. RECIPIENT also agrees to purchase paper products with a high level of post consumer recycled content when they are comparable in quality, available, and cost effective.

J. ALL WRITINGS CONTAINED HEREIN

This agreement, including the appended "General Terms and Conditions," the current cycle Program Guidelines - Coordinated Prevention Grants found at <https://fortress.wa.gov/ecy/publications/summarypages/1107008.html>, and ECOLOGY'S *Administrative Requirements for Recipients of Ecology Grants and Loans*, Ecology Publication #91-18, contain the entire understanding between the parties, and there are no other understandings or representations except as those set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this grant agreement shall be of any force or effect unless in writing, signed by authorized representatives of RECIPIENT and ECOLOGY, and made part of this agreement.

IN WITNESS WHEREOF, the parties sign this Agreement:

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**


**CLARK COUNTY
ENVIRONMENTAL SERVICES**

Laurie G. Davies
Program Manager
Waste 2 Resources Program

Date

Signature

Date


Printed Name and Title of Signatory

9-22-14

APPENDIX A

ATTACHMENT I: 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 to renegotiate the agreement subject

to new funding limitations and 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.

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