



REMEDIAL ACTION GRANT AGREEMENT G1400515  
BETWEEN THE  
STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY  
AND THE  
CITY OF MARYSVILLE

This is a binding agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and the City of Marysville, hereinafter referred to as the “RECIPIENT,” to carry out the activities described herein.

|                                   |   |
|-----------------------------------|---|
| RECIPIENT ADDRESS                 | 80 Columbia Avenue<br>Marysville, WA 98270-5130 |
| RECIPIENT REPRESENTATIVE          | Jon Nehring, Mayor                              |
| RECIPIENT PROJECT MANAGER         | Shawn Smith, P.E., 360-363-8224                 |
| RECIPIENT FINANCIAL MANAGER       | Tonya Miranda, 360-363-8122                     |
| ECOLOGY FINANCIAL MANAGER         | Lydia Lindwall, 360-407-6210                    |
| ECOLOGY PROJECT MANAGER           | John Means, 360-407-7188                        |
| FUNDING SOURCE                    | Local Toxics Control Account (LTCA)             |
| MAXIMUM ELIGIBLE COST             | \$200,000                                       |
| STATE GRANT SHARE                 | \$200,000                                       |
| RECIPIENT GRANT SHARE             | \$0   |
| MAXIMUM STATE SHARE PERCENT       | 100%  |
| FEDERAL TAX IDENTIFICATION NUMBER | 91-6001459                                      |
| EFFECTIVE DATE OF THE AGREEMENT   | November 1, 2013                                |
| EXPIRATION DATE OF THE AGREEMENT  | June 30, 2015                                   |

## **PART 1: SITE HISTORY AND BACKGROUND**

The RECIPIENT is currently evaluating redevelopment opportunities for the blighted Waterfront Property, located at 1326 First Street, also known as Geddes Marina. The five-acre site is located just south of downtown along Ebey Slough in Marysville Washington. Since the 1800s, the site has been the location of timber industry and marine-related operations. In the early 1990s, the Waterfront Property was converted for use as a marina and boat launch. These uses have resulted in on-site contamination with hazardous substances, including arsenic, cadmium, and polycyclic aromatic hydrocarbons, likely resulting from fuel and oil storage and handling, as well as boat sanding and painting. In addition, the site has been impacted by stormwater discharge from adjacent properties, including a former, nearby lumber mill (former Welco Property, now Ebey Waterfront Park, FSID 43566392), which is to the east of the Waterfront Property.

The RECIPIENT purchased the Waterfront Property in 2010 after conducting a Phase I and Phase II Environmental Site Assessment (ESA). The Phase II ESA, conducted in June 2010, identified soil, sediment, and groundwater contamination. Soil samples collected in 21 locations revealed contamination of arsenic, cadmium, and lead above Model Toxics Control Act (MTCA) cleanup levels in approximately half of those locations. Groundwater sampling results revealed arsenic in all seven samples and diesel, motor oil, chromium, copper, lead, and barium above cleanup levels in at least one groundwater sample. Sediment samples collected from eight locations showed zinc, mercury, diesel, and motor oil in excess of marine water quality standards. Additional assessment is needed to fully characterize the nature and extent of these impacts.

The property's waterfront location also creates concern about off-site impacts. The marina is located along Ebey Slough, a habitat for salmon and other fish populations along the Snohomish River. Sediment contamination in the marina has the potential to impact the ecological health of the slough. This threat is heightened by the presence of the municipal stormwater runoff that currently runs through the site and into Ebey Slough. The project proposes to integrate Low Impact Development (LID) stormwater management solutions with site remediation in order to protect the fish and wildlife that depend on the health and habitat of the river.

The Waterfront Property is a keystone site in the RECIPIENT'S ongoing efforts to reclaim its formerly industrial waterfront and revitalize its downtown. Through previous public planning efforts, the RECIPIENT has crafted a broad vision for re-use of the property for multi-family housing, public open space, and a waterfront trail.

The RECIPIENT will use this Integrated Planning Grant (IPG) to re-engage the public's vision for a mixed-use retail center with recreation and open space. Redevelopment plans will address potential impacts on Ebey Slough by remediating current contamination and addressing on-going stormwater and source control issues.

The cleanup and redevelopment of the Waterfront Property will provide the community economic benefits by increasing public access to Ebey Slough, leveraging the adjacent newly developed Ebey Waterfront Park and Boat Launch Facility, creating new housing opportunities, and supporting existing businesses, including the Town Center Mall. This IPG will also leverage a \$200,000 U.S.

Environmental Protection Agency (US EPA) Brownfield Cleanup Grant the RECIPIENT has received to implement remedial actions on the Waterfront Property.

The outcomes of this IPG project will include:

- A refined understanding of the nature and extent of contamination.
- An analysis of appropriate cleanup options that address economic, environmental, and community impacts and align with future use plans.
- An approach for the integration of low impact development and stormwater management techniques for the purpose of remedy protection.
- A strategy for cleanup and redevelopment based on community support, risk management, and financial viability.

## **PART 2: SCOPE OF WORK**

The tasks set forth below summarize the RECIPIENT's activities to be performed under this agreement. Costs are limited to those approved by ECOLOGY in the current budget.

Copies of all reports and deliverables must be provided to the ECOLOGY project manager.

### **TASK 1: J003 REMEDIAL INVESTIGATIONS**

This task funds the RECIPIENT's eligible costs ECOLOGY deems reasonable and necessary to plan and perform Remedial Investigations at the site to fill data gaps from previous site investigations and inform future remedial actions. Eligible work will comply with the requirements of the Model Toxics Cleanup Act. This includes work plan development, sampling and analysis costs, identification and testing of sources of contamination, surveying/mapping, data management, reports, and project management. Grant funds may not be used to challenge ECOLOGY decisions about appropriate actions for the site.

### **TASK 2: J004 FEASIBILITY STUDY AND REMEDY SELECTION**

This task funds the RECIPIENT's eligible costs ECOLOGY deems reasonable and necessary to plan and perform Feasibility Study type activities at the site. This includes evaluating potential cleanup options for the site and cost estimates for implementing the cleanup options.

### **TASK 3: J008 INTEGRATED PLANNING ACTIVITIES**

This task funds the RECIPIENT's eligible costs ECOLOGY deems reasonable and necessary to plan and perform integrated planning activities at the site needed for developing a redevelopment and cleanup plan for the site. This includes three categories of activities:

1. Community Involvement
2. Redevelopment Analysis, including the following:
  - a. Developer Engagement Options
  - b. Physical Site Assessment
  - c. Regulatory Analysis
  - d. Market Analysis

- e. Conceptual Site Planning

### 3. Implementation Strategy

#### **Community Involvement:**

The RECIPIENT shall conduct an open public process to engage the local community and elicit public feedback on redevelopment options for the site. This includes hosting a community open house to update residents, business, and other interested persons on the status of the project and opportunities to be involved.

#### **Redevelopment Analysis:**

- a. Developer Engagement Options: Technical memorandum on developer RFP: The RECIPIENT shall conduct an analysis of opportunities to engage developers in the redevelopment of the site and the feasibility of using an RFP process. Additional analysis will be performed as part of the Implementation strategy.
- b. Physical Site Assessment: The RECIPIENT will contract with technical experts to conduct an analysis of the physical characteristics of the site. This includes the following assessments: geotechnical, cultural resources, stormwater analysis, and hydrogeologic.
- c. Regulatory Analysis: Integrated summary of regulatory requirements and critical path analysis for completing environmental review and permitting redevelopment activities. A primary focus of this analysis will be to understand the regulatory implications of conducting cleanup and redevelopment actions in the basin of the former marina.
- d. Market Analysis: The RECIPIENT will conduct a focused study of the local and regional real estate market with the objective of confirming potential market opportunities for implementing the existing conceptual plans envisioned through previous planning efforts. The study will provide a preliminary pro-forma, including cost estimates, absorptions rates, and vacancy rates for competing development sites.
- e. Conceptual Site Planning: The RECIPIENT will develop a conceptual site plan that integrates redevelopment and remedial actions. Site plan alternatives will include solutions for stormwater and source control, and demonstrate opportunities for Low Impact Development (LID) infrastructure.

**Implementation Strategy:** The RECIPIENT will develop an integrated cleanup and redevelopment strategy report. This will address an implementation strategy for the site that includes the key steps needed to provide a pathway for regulatory compliance and examine future funding opportunities for cleanup and redevelopment. This will include a risk management strategy and approaches for phased development.

**PART 3: FUND SOURCE AND BUDGET**

**A. FUND SOURCE**

|                                     |                        |                            |
|-------------------------------------|------------------------|----------------------------|
| Total Eligible Project Cost         |                        | \$200,000                  |
| <b>Fund</b>                         | <b>Fund Share (%)</b>  | <b>Maximum Fund Amount</b> |
| Local Toxics Control Account (LTCA) | 100%                   | \$200,000                  |
| <b>Match Requirement</b>            | <b>Match Share (%)</b> | <b>Match Amount</b>        |
| Cash Match                          | 0%                     | \$0                        |

**B. BUDGET**

| <u>Grant Tasks</u>                            | <u>Estimated Eligible Cost</u> | <u>Estimated Maximum Fund Amount</u> | <u>Estimated Start Date</u> | <u>Estimated End Date</u> |
|---|--------------------------------|--------------------------------------|-----------------------------|---------------------------|
| 1. <b>J003 REMEDIAL INVESTIGATIONS</b>        | \$95,000                       | \$95,000                             | 1/1/2014                    | 9/30/2014                 |
| 2. <b>J004 FEASIBILITY STUDY</b>              | \$20,000                       | \$20,000                             | 1/1/2014                    | 9/30/2014                 |
| 3. <b>J008 INTEGRATED PLANNING ACTIVITIES</b> | \$85,000                       | \$85,000                             | 1/1/2014                    | 9/30/2014                 |
| TOTAL:  | \$200,000                      | \$200,000                            |                             |                           |

**C. BUDGET CONDITIONS**

1. Any work performed or costs incurred prior to the effective date or after the expiration date of this agreement is at the sole expense of the RECIPIENT.
2. Overhead is eligible at a rate of up to 25 percent of RECIPIENT staff salaries and benefits for time devoted to tasks outlined in this agreement.
3. The RECIPIENT shall provide ECOLOGY a list of staff that will be working on the project, their title and role, the percentage of time they will devote to grant projects, their salary rate, and their benefit rate.
4. To increase or decrease state funding or change the scope of work, ECOLOGY requires a formal amendment. Reallocating funds among grant tasks may be performed through a letter amendment.

**PART 4: SPECIAL TERMS AND CONDITIONS**

**A. ARCHEOLOGICAL AND CULTURAL RESOURCES**

The RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological or cultural resources. RECIPIENT shall immediately cease work and notify ECOLOGY if any archeological or cultural resources are found while conducting work under this agreement. In the event that historical or cultural artifacts are discovered at the project site, the RECIPIENT shall also notify the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. Applicability of the 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 historic properties (such as invasive sampling, dredging, or cleanup actions).

**B. BILLING**

1. Unless otherwise approved in writing by the ECOLOGY Financial Manager, the RECIPIENT shall submit a payment request to ECOLOGY quarterly.
2. The RECIPIENT shall submit payment requests on ECOLOGY provided forms that include an A-19, B2, C2, E, and a progress report, unless alternative forms are approved by the ECOLOGY Financial Manager.
3. Except for the A-19, ECOLOGY prefers the electronic submittal of payment requests and backup documentation. The RECIPIENT must submit two copies of the payment request, one copy to the ECOLOGY Financial manager, and one copy sent directly to the ECOLOGY Project Manager.
4. The final payment request shall include a Final Project Report on ECOLOGY provided forms unless otherwise approved by the ECOLOGY Financial Manager.
5. In-kind services are not eligible for match.
6. Legal costs are not grant eligible.
7. Some costs require the ECOLOGY Financial Manager's approval. It is the RECIPIENT's responsibility to understand the eligibility of costs and their responsibility to obtain approvals prior to incurring costs. Costs incurred without required prior approvals may be at the sole expense of the RECIPIENT.

**C. DOCUMENTATION**

1. RECIPIENT shall include the supporting documentation for all expenses, including RECIPIENT salary and benefits. Supporting documentation includes contractor and subcontractor invoices and receipts, accounting records, or any other form of record that establishes the appropriateness of an expense.
2. ECOLOGY may request additional documentation if needed to determine if a cost will be allowed.
3. RECIPIENT shall provide clear and legible supporting documentation and present it organized by task as entered on the C2.

4. RECIPIENT accounting procedures shall include maintaining supporting documentation in a common grant file. This includes cancelled checks, invoices, purchase receipts, payroll records, time and attendance records, contract award documents, and vouchers sent to ECOLOGY. The RECIPIENT shall keep all supporting documentation for audit purposes for at least three years after the expiration date of the agreement.

#### **D. EQUIPMENT ACQUISITION, USE MANAGEMENT, AND DISPOSITION**

**Equipment Acquisition:** The RECIPIENT may purchase equipment needed to accomplish the scope of work in the grant agreement, with written approval by ECOLOGY's Financial Manager. The RECIPIENT is responsible for any costs the Financial Manager does not approve.

Generally, the ECOLOGY Financial Manager will need the following information to evaluate requests to purchase equipment:

1. Description of the equipment, including identification of operation and maintenance items that are to be grant funded (such as insurance, repairs, fuel, etc.).
2. Justification for the purchase, including analysis of rent vs. purchase.
3. Total Cost, including estimate of operation and maintenance costs.
4. Useful life-expectancy of the equipment.

**Equipment Use:** During the effective dates of the agreement and any amendments thereto, equipment purchased with grant funds must be used to accomplish activities funded by the agreement. It may be used for activities not funded by the agreement as long as that use does not interfere with work on the originally authorized projects.

The RECIPIENT may not use the equipment to provide services for a fee to compete unfairly with private companies providing equivalent services, unless specifically permitted by statute.

The RECIPIENT agrees to make equipment purchased with grant funds available for use by ECOLOGY as long as that use does not interfere with work on the originally authorized projects.

**Equipment Management:** The RECIPIENT agrees to maintain and manage the equipment properly to optimize its life span. The RECIPIENT must have in place some form of inventory control system that includes a physical inventory to document where the equipment is being used, and a maintenance record that insures the equipment is being kept in good working condition.

**Equipment Disposition:** When the equipment is no longer needed for the originally authorized purpose, the RECIPIENT shall dispose of purchased equipment by sale for fair market value, ensuring the highest possible return. Proceeds shall be used for RECIPIENT's monitoring or other cleanup related activities.

**E. FAILURE TO COMMENCE AND SUSTAIN WORK**

In the event the RECIPIENT fails to commence work under this agreement within three months, or sustain work in accordance with the work schedule established in the scope of work, order, or decree for the site, ECOLOGY reserves the right to terminate this agreement.

**F. MINORITY AND WOMEN'S BUSINESS PARTICIPATION**

The 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:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. 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.
6. The RECIPIENT should report payments made to qualified firms to ECOLOGY at the time of submitting each invoice. Please include the following information on the ECOLOGY provided Form D:
  - i. Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
  - ii. The total dollar amount paid to qualified firms under this invoice.

**G. PROCUREMENT AND CONTRACTS**

- a) The RECIPIENT certifies that it will follow its standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must certify that they have complied with the "Standards for Competitive Solicitation," found in the *Administrative Requirements for Recipients of Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005).
- b) Upon issuance, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to ECOLOGY'S Project Manager.

Prior to contract execution, the RECIPIENT shall submit all draft documents and a copy of the draft proposed contract to the ECOLOGY Project Manager for review and approval. Following



the contract execution, the RECIPIENT shall submit a copy of the final contract to ECOLOGY's Project and Financial Managers.

## **H. REPORTING**

1. Progress Reports: The RECIPIENT shall submit progress reports with each payment request. The RECIPIENT shall submit a progress report no less frequently than quarterly, even if a payment request is not submitted. These reports shall be in accordance with the ECOLOGY-approved reporting format as indicated in the Remedial Action Grant Guidelines, or as otherwise approved by the ECOLOGY Financial Manager. ECOLOGY shall not approve payments without the required progress reports.
2. Spending Plans: The RECIPIENT shall submit a spending plan to ECOLOGY. The spending plan identifies the RECIPIENT'S quarterly billing projections. The RECIPIENT shall update the spending plan as needed throughout the term of the agreement upon request.
3. Final Project Report: In addition to the progress report that identifies the work performed during the latest billing period, the final payment request shall include a copy of the final project report. This report summarizes the project goals, purpose of the actions conducted, and outcomes of the project. ECOLOGY may withhold final payment pending RECIPIENT's submittal of the final project report.
4. Sampling data: The RECIPIENT shall submit all sampling data to ECOLOGY in both printed and electronic formats in accordance with WAC 173-340-840(5) and the Toxics Cleanup Program Policy 840: Data Submittal Requirements. ECOLOGY may withhold payment if the RECIPIENT does not submit sampling data.

## **I. STATE-WIDE VENDOR REGISTRATION**

RECIPIENT will receive payment for approved and completed work through Washington State's Department of Enterprise Services Statewide Payee Desk. To receive payment you must register as a state-wide vendor by submitting a state-wide vendor registration form and an IRS W-9 form at website,

<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.

Contact DES at the Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@des.wa.gov](mailto:payeehelpdesk@des.wa.gov) for any questions about the vendor registration process.

## **J. TRAINING**

The RECIPIENT agrees to participate in any ECOLOGY recommended or required trainings related to fulfilling the terms of the agreement.

**K. USE OF EXISTING CONTRACTS**

The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall submit a copy of the contract to ECOLOGY upon request. 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.

**L. ALL WRITINGS CONTAINED HEREIN**

This agreement, including the appended "General Terms and Conditions," the latest approved budget, Remedial Action Program Guidelines, and ECOLOGY'S *Administrative Requirements for Recipients of Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005), contains 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 the RECIPIENT and ECOLOGY and made part of this agreement.

IN WITNESS WHEREOF, the parties hereby sign this Grant Agreement:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

CITY OF MARYSVILLE

\_\_\_\_\_  
James J. Pendowski, Manager                      Date  
Toxics Cleanup Program

\_\_\_\_\_  
Jon Nehring    Date  
Mayor

Approved as to form only Assistant Attorney General

**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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