



**FY 2007**

**On-Site Septic Repair and  
Replacement Grant and Loan  
Program Guidelines**

**August 2006**  
Ecology Publication 06-10-068

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Financial Management Section  
Water Quality Program

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# Chapter 1: Overview, Application, and Award Provision

## 1.1 How to Use These Guidelines

These guidelines describe how to apply for water quality financial assistance under the On-Site Septic Repair and Replacement Grant and Loan Program from the Washington State Department of Ecology (Ecology) Water Quality Program. The guidelines also explain requirements of an applicant once Ecology awards a loan or grant. The guidelines are not a comprehensive listing and explanation of all rules and policies that may apply to this funding program. The guidelines help facilitate the application process and initial steps of administering a funded project. Applicants should request additional information and consultation whenever needed.

The appendices to these guidelines contain additional information that will be useful to most applicants. Please review the list of appendices and use them as a resource. For example, Appendix A: *FY 2007 On-Site Septic Repair and Replacement - At A Glance*, summarizes main program features.

## 1.2 Overview and Purpose of the Program

The Puget Sound On-Site Septic Repair and Replacement (OSS) Financial Assistance Program identified in Governor Christine Gregoire's Puget Sound Initiative, 2005-07 Biennium Budget, and 2006 Supplemental Budget is funded with up to \$7.5 million in appropriations through the Water Pollution Control State Revolving Fund (SRF) and the Centennial Clean Water Program (Centennial). The purpose of the OSS program is to provide grants and low-interest loans to the 12 Puget Sound counties and tribal governments to establish new or expand existing on-site septic system repair and replacement local loan programs.

The OSS financial assistance program will provide local governments and tribes with funding for grants and low-interest loans to facilitate and encourage the repair and replacement of failing on-site septic systems. Grant dollars will be used to assist financially distressed homeowners and for program implementation and administration. Local projects funded through this program will improve water quality, protect public health, and protect and restore critical commercial and recreational shellfish areas by reducing fecal coliform bacteria and nutrient levels in Puget Sound.

## 1.3 Eligible Program Activities

The following list outlines eligible activities for the OSS program. Other elements related to the OSS program may be eligible if in accordance with the program purpose and the negotiated agreement.

- Implement and manage on-site septic system repair and replacement local loan programs within the Puget Sound region.
- Offer attractive funding opportunities to homeowners for repair or replacement of aging or failing septic systems.

- Provide financial assistance to low-income or financially distressed homeowners for on-site septic system repair.
- Establish and maintain a revolving reserve account. Up to 10% of eligible expenses for individual system repair and replacement may be placed in a dedicated reserve account to secure the risk of homeowner loan default.

## 1.4 Evaluation Criteria and Process

Projects will be evaluated by Ecology with recommendations from the Puget Sound Action Team and the Washington State Department of Health. Evaluators will score projects based on the application information submitted by the local governments.

The following table outlines four of the criteria and weighting that will be used to score project proposals:

### Scoring Criteria

#### **Water Quality Protection, Restoration, and Other Positive Impacts (30%)**

Applicants need to show how the project addresses the local on-site septic system problems. The proposal should provide a detailed explanation on the immediate risks within the project area that are associated with deteriorating septic systems.

#### **Overall Quality of Project Proposed and Likelihood of Success (20%)**

Applicants need to identify outcomes and milestones and explain the environmental benefits the project will likely achieve. Proposals should have a clear scope of work and project plan and should identify the project team.

#### **Local Efforts and Continued Commitment (20%)**

Proposals should address community outreach measures. Applicants are also asked to discuss the local partnerships established that will contribute to continued OSS project implementation and management. Applicants need to identify methods for the distribution of project information and results supporting OSS both within and outside the local community. Applicants are also asked to describe the long-term on-site septic program and to identify components of the local project that will address long-term on-site septic system operation and maintenance.

#### **Readiness to Proceed (30%)**

Applicants must demonstrate their ability to move forward and implement the project and must include in the project proposal the most recent local on-site septic system survey information and provide information on the dates that surveys were conducted, the current survey status, and other planned surveys.



## 1.5 Water Quality Goals, Outcomes, and Milestones

Recipients will measure and report on project goals, outcomes, and milestones. These will become part of the agreement.

**Goals** - *tangible positive environmental changes achieved or directly addressed by the project*

The overall goal of all on-site septic program projects will be similar to the statement below:

“Restore and protect the water quality of Puget Sound through the repair and replacement of failing on-site septic systems.”

**Outcomes** - *realistic quantitative results that will directly lead to the goal*

### Examples

- Number of on-site septic systems repaired and/or replaced
- Amount of financial assistance directed towards low-income homeowners
- Levels of reduced fecal coliform bacteria at site and adjacent water body

**Milestones** - *actions that measurably lead to achieving the outcomes and goal*

### Examples

- On-site septic system grant and loan program developed and initiated by June 2007
- Outreach to specific number of households in the project area by November 2007
- Financially distressed homeowners with on-site septic repair needs identified by December 2007

## 1.6 Eligible Recipients, Available Funding, and Application

### Eligible Recipients

All projects must have a positive impact on Puget Sound. The 12 Puget Sound counties (Clallam, Island, Jefferson, King, Kitsap, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom) and local tribal governments are eligible recipients.

### Available Funding

The total amount of funds available from this program is \$7.5 million:

\$1,000,000	Funds available in SRF loans for the three Hood Canal counties: Mason, Kitsap, and Jefferson (2005-07 Biennium Budget)
\$5,000,000	Appropriated for SRF loans directed towards the Puget Sound region, 12 counties and tribes (2006 Supplemental Budget)
\$1,000,000	Available for Centennial grants to be used by local governments, in conjunction with SRF loans, to establish or expand local loan programs and to aide financially distressed homeowners (2006 Supplemental Budget)
\$500,000	Centennial grant funds available, in conjunction with SRF loans, to aid local governments plan, implement, and administer local OSS assistance programs (2006 Supplemental Budget)

Projects that provide a cash, in-kind, or interlocal match will receive additional priority points; however, providing a match is not required.

Applicants should request the funding levels they feel are needed to address the repair and replacement of failing on-site systems in their jurisdiction.

Grant and loan ceiling amounts will be initially set at \$50,000 and \$250,000, respectively. However, if the demand for funds is limited, grant and loan ceiling amounts will be increased.

1. Applicants are required to request a minimum loan amount to match their grant request.
2. Ecology will provide a seven-percent (7%) administration grant based on the total grant and loan package awarded to successful applicants
3. SRF loan funds for local loan programs continue to be available through the Water Quality Program's normal funding cycle application process
4. SRF interest rate structure\*: Initial rates are set at 1.3% for a 5-year repayment term and 2.6% for 6-20 year repayment term under the FY2007 funding cycle. The proposed process will involve building a blended rate at the end of the project that reflects the proportion of SRF dollars provided to low income homeowners that may be at 0% or other low percentage and the proportion used for standard income homeowners at 2.6%. For example, if the proportion ends up at 50:50 the end rate would be at 1.3% for a 20 year term.

*\*Interest rate will be adjusted at the close of the project*

### **Application**

The *Fiscal Year 2007 On-Site Septic System Repair and Replacement Grant and Loan Application* is online at:

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

The application may also be requested by contacting the Water Quality Program Financial Management Section Secretary at (360) 407-6502.

## 1.7 Important Dates to Remember

This program is on a fast track to award grant and loan money to the local governments for high-priority projects. Ecology must obligate all funds to applicants before **June 30, 2007**.

The application period is from August 23, 2006 – September 29, 2006 (5:00 p.m.). Ecology will issue an Offer and Applicant List and letters to the applicants chosen for funding by October 16, 2006.

Applicants offered funding need to sign a grant and loan agreement by December 31, 2006.

For those applicants offered funding who do not execute an agreement by December 29, 2006, their funding offer will be made available to the next highest applicant on the Offer and Applicant List.

- Applications due to Ecology by **September 29, 2006, at 5:00 p.m.**
- Ecology will issue the Offer and Applicant List by **October 16, 2006.**
- Original applicants need to sign the agreement by **December 29, 2006.**
- The second round of applicants must sign Letters of Intent by **February 15, 2007.**
- The project must begin no later than four (4) months after the effective date of the agreement.

*(Remainder of page left intentionally blank.)*

## **Chapter 2: Developing and Managing the Grant and Loan Agreement**

### **2.1 Grant and Loan Overview and Offer**

The grant and loan agreement is the formal written contractual arrangement signed by authorized representatives of the local government referred to as “the recipient” and “Ecology”. At a minimum, the agreement includes an approved scope of work, total project costs, and a budget.

Ecology expects to have the Offer and Applicant List available by October 16, 2006.

Ecology sends individual funding offer letters to priority applicants. In the letters Ecology assigns a project manager and a financial manager to work with each applicant to develop an agreement. These managers will contact the recipient to discuss the scope of work, conditions of the offer, timelines, special conditions, and any additional information.

### **2.2 Scope of Work**

The agreement must contain a detailed scope of work describing the project work elements and milestones that relate to the outcomes and goals. Ecology’s project manager will contact the applicant and develop a schedule for the negotiation of the agreement.

### **2.3 Required Performance**

The agreement will contain milestones listed from the recipient’s application. These become required performances and ensure that outcomes and goals are achieved.

### **2.4 Project Budget**

The agreement must include a project budget that establishes eligible costs for task elements and/or budget objects. The budget also details funding sources, amounts, and type of matching options. Ecology’s financial manager will help answer questions about budget development during project negotiations.

### **2.5 Disbursement and Repayment of Grant/Loan Funds, Progress Reports**

#### **Loan Disbursement**

Funds are disbursed on a cost-incurred basis in accordance with the required performance milestones.

#### **Loan Repayment**

Dedicated sources of repayment to secure the loan include general obligation debt and revenue-secured debt (secured by Utility Local Improvement District assessments). Tribal governments may use enterprise revenue (e.g., leased property revenue, sales, etc.). Tribal governments that are not able to secure a loan will be considered for grant funding.

## **Progress Report**

Progress reports are due quarterly, with each payment request, or other schedule established in the agreement. If no schedule is established in the agreement, progress reports will be due quarterly. The recipient submits reports regardless of the level of work completed during the period. Progress reports are required for timely processing of payment requests.

## **2.6 General Terms and Conditions**

All Ecology agreements contain non-negotiable requirements called General Terms and Conditions. See Appendix E: *General Terms and Conditions*. These conditions can change depending upon program needs.

## **2.7 Special Terms and Conditions**

Special Terms and Conditions modify or clarify project elements specific to the project or to program guidelines. Special Terms and Conditions can modify and do take precedence of certain provisions in the General Terms and Conditions.

## **2.8 Signature Process**

Once a scope of work is negotiated between the applicant and Ecology, the financial manager routes it to Ecology staff to check legality, cost coding, etc. Once returned to the financial manager, three original agreements are sent to the recipient for signature.

The applicant should thoroughly review the agreement and have all three copies signed by the authorized signatory, or the signatory's designee, before returning them to the financial manager for final signature by the Water Quality Program Manager. One completed agreement is returned for the recipient's files. The agreement becomes effective on the date of signature by the Water Quality Program Manager, unless prior authorization states otherwise.

## **2.9 Prior Authorization**

Prior authorization gives the recipient the ability to incur eligible project costs before the Water Quality Program Manager signs the agreement. Work performed by the recipient that is not consistent with the conditions specified in Ecology's prior authorization letter, agreement, and applicable criteria will not be eligible for reimbursement.

Prior authorization, as of July 1, 2006, will be considered if project progress would otherwise be delayed.

### **Process for Obtaining Prior Authorization**

- The recipient signatory must write a letter to Ecology's Water Quality Program Manager.
- Ecology will reimburse costs for the time frame agreed to in the prior authorization letter from the Ecology Water Quality Program Manager after the grant and loan agreement is signed.

- Costs incurred before the prior authorization date are the sole responsibility of the recipient.
- The applicant assumes responsibility for costs incurred before an agreement has been signed, as Ecology cannot guarantee that a grant and loan will be awarded.

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## Appendix A: The FY 2007 On-Site Septic System Repair and Replacement Financial Assistance Pilot Program – At a Glance

<b>Purpose</b>	Provide grants and low-interest loans to local governments in the Puget Sound region to establish new or expand existing on-site septic system repair and replacement local loan programs. Local grant and loan programs offer funding options to homeowners for septic system repair as outlined in the Puget Sound Initiative and 2005-07 Biennium Budget and 2006 Supplemental Budget.
<b>Project Goals</b>	<ul style="list-style-type: none"> <li>• Provide outreach to homeowners in the Puget Sound region regarding the critical repair and replacement of failing on-site septic systems.</li> <li>• Establish and maintain grant and low-interest loan funding opportunities for OSS local loan programs.</li> <li>• Improve water quality and public health in the Puget Sound region.</li> </ul>
<b>Eligible Applicants</b>	Recipients of SRF and Centennial funds must be a <i>public body</i> . Public bodies are distinguished as Washington state, county, city or town, conservation district, or other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.
<b>Total Funds Available 2005-07 Biennium Budget 2006 Supplemental Budget</b>	<p>\$1,000,000 Funds available in SRF loans for the three Hood Canal counties: Mason, Kitsap, and Jefferson (2005-07 Biennium Budget).</p> <p>\$5,000,000 Appropriated for SRF loans directed towards the Puget Sound region, 12 counties and tribes (2006 Supplemental Budget).</p> <p>\$1,000,000 Available for Centennial grants to be used by local governments in conjunction with SRF loans, to establish or expand local loan programs, and to aid financially distressed homeowners (2006 Supplemental Budget).</p> <p>\$500,000 Centennial grant funds available, in conjunction with SRF loans, to aid local governments plan, implement, and administer local OSS assistance programs (2006 Supplemental Budget).</p>
<b>Financial Assistance</b>	<ol style="list-style-type: none"> <li>1. Ecology is providing to eligible applicants, adjustable interest rates (2.6% to as low as 0%) on SRF loan amounts based upon a weighted average of assistance directed towards financially distressed homeowners.</li> <li>2. Applicants are encouraged to apply for all funds needed for the local project: <ul style="list-style-type: none"> <li>• Initial ceiling amounts are set at \$250,000 in an SRF loan and a \$50,000 Centennial grant. If there is a limited demand for funds based upon applications received, grant and loan ceiling amounts will be increased.</li> <li>• At a minimum, a 50/50 loan-to-grant match is required. For example, a \$50,000 SRF loan must be taken in conjunction with the \$50,000 grant distribution.</li> </ul> </li> <li>3. An additional grant amount of up to 7% of the total loan/grant combination will be awarded for OSS program administration costs, which include but are not limited to the following: <ul style="list-style-type: none"> <li>• Program development and implementation;</li> <li>• Enhancement of current programs;</li> <li>• Program management and administration; and</li> <li>• Marketing, outreach, and advertising.</li> </ul> </li> <li>4. Public bodies have the flexibility to use an outside administrator of funds. SRF loan and Centennial grant agreements need to be between the Department of Ecology and the public body. If the public body opts to use an external administrator of funds, a contract or Memorandum of Understanding/Agreement between the public body and the qualified private lending institution or private nonprofit is required.</li> </ol>

<b>Eligible OSS Activities</b>	<p>1. Projects must meet the following criteria:</p> <ul style="list-style-type: none"> <li>• Implement and manage critical on-site septic system repair and replacement local loan programs.</li> <li>• Offer funding opportunities to homeowners for the repair and replacement of their on-site septic systems.</li> <li>• Provide financial assistance to low-income or financially distressed homeowners for OSS repair and replacement.</li> </ul>
<b>Evaluation Criteria Used</b>	<ul style="list-style-type: none"> <li>• Water quality protection, restoration, and other positive impacts</li> <li>• Overall quality of project proposed and likelihood of success</li> <li>• Readiness to proceed</li> <li>• Ability of the proposed project to leverage completion of related OSS projects in the area</li> </ul>
<b>Share Findings</b>	<p>Circulating information about projects is of utmost importance to the program. Examples include, but are not limited to, OSS newsletters, local forums, local WEB pages, Ecology WEB pages, and publications such as <i>Water Quality Stories</i>, EPA's <i>Water Talk</i> and PSAT's <i>Sound Waves</i>. Information and outreach will become required performance measures in the loan and grant agreements.</p>
<b>Application and Evaluation Provisions</b>	<p>1. Eligible applicants apply for loans and grants in accordance with the Program Guidelines. The application period is:</p> <p>a. August 23      OSS application and guidelines will be available on Ecology's Water Quality Program internet site at:</p> <p style="padding-left: 40px;"><a href="http://www.ecy.wa.gov/programs/wq/funding/OSS.htm">http://www.ecy.wa.gov/programs/wq/funding/OSS.htm</a></p> <p>b. September 29      Applications due to Ecology, evaluation period begins</p>
<b>Offer and Award Provisions</b>	<ul style="list-style-type: none"> <li>• The Offer and Applicant List and offer letters will be issued by approximately October 16, 2006 and will identify Ecology staff that will negotiate the agreements.</li> <li>• Original offer list applicants need to sign the loan and grant agreements by Friday, December 29, 2006.</li> <li>• Prior authorization to incur costs on or after the offer list date may be issued by the Water Quality Program Manager if project progress would otherwise be delayed.</li> </ul>
<b>Disbursement of Loan and Grant Funds</b>	<p>Funds will be disbursed in accordance with required performance measures negotiated in the agreement on a cost-incurred basis.</p>
<b>Progress Reports</b>	<p>Date of progress report will be negotiated in the Loan/Grant agreement. Ecology will need to prepare reports on the overall efficacy and outcomes of the program as it progresses; reports may be standardized.</p>



## **Appendix B: General Terms and Conditions Pertaining to Grant and Loan Agreements of the Department of Ecology**

### **A. Recipient Performance**

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

### **B. Subgrantee/Contractor Compliance**

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

### **C. Third Party Beneficiary**

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

### **D. Contracting For Services (Bidding)**

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

### **E. Assignments**

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

### **F. Compliance with All Laws**

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

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

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

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

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

## **G. Kickbacks**

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

## **H. Audits and Inspections**

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

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

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

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$300,000 or more in a year in Federal funds. The \$300,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

## **I. Performance Reporting**

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted. Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

## **J. Compensation**

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

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

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

2. **Budget Deviation.** Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT's request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.
3. **Period of Compensation.** Payments shall only be made for action of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
4. **Final Request(s) for Payment.** The RECIPIENT must submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
5. **Performance Guarantee.** The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.
6. **Unauthorized Expenditures.** All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
7. **Mileage and Per Diem.** If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
8. **Overhead Costs.** No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

## **K. Termination**

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

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

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

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above. When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.
3. Failure to Commence Work. In the event that the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

## **L. Waiver**

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

## **M. Property Rights**

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same, but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable

license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

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

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT'S current edition of "Administrative Requirements for Ecology Grants and Loans," Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(ies) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
  - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
  - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies; Torrens certificates or abstracts; and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

**N. Recycled/Recyclable Paper**

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

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

**O. Recovery of Payments to Recipient**

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

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

**P. Project Approval**

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

**Q. Disputes**

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

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**R. Conflict of Interest**

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

**S. Indemnification**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement

**T. Governing Law**

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

**U. Severability**

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

**V. Precedence**

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans," and (e) the General Terms and Conditions.