



DEPARTMENT OF
ECOLOGY
State of Washington

National Estuary Program Toxics and Nutrients Grant Program

Funding Guidelines for 2012-2013

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To ask about the availability of this document in a format for the visually impaired, call the Water Quality Program at 360-407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

National Estuary Program Toxics and Nutrients Grant Program

Funding Guidelines for 2012-2013

Water Quality Program
Washington State Department of Ecology
Olympia, Washington

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Summary

In January of 2011, the Washington Department of Ecology (DEPARTMENT) entered into a cooperative agreement with the Environmental Protection Agency (EPA) to reduce toxics and nutrients in Puget Sound. This cooperative agreement is part of the federal National Estuary Program (NEP).

The funds from the NEP are subdivided into different funding categories to create grant programs that address various subjects and concerns identified as needs in the Puget Sound. As a result, the DEPARTMENT is administering a series of competitive grant programs for eligible applicants with projects to reduce toxic or nutrient issues in the marine waters of Puget Sound or fresh waters in the Puget Sound watershed. Detailed eligibility requirements are included in each application that will be available from fall 2012 through winter 2013 on the DEPARTMENT's website at www.ecy.wa.gov/puget_sound/grants_fed_toxics.html.

How to Use These Guidelines

These guidelines describe the application process for the NEP Toxics and Nutrients Grant Program. Within this program, there are a number of grant funding opportunities. Specific eligibility requirements are detailed in the grant applications for each funding opportunity. This funding guideline describes general requirements applicable to all these grants. The guidelines also explain what will be required once a grant is awarded. These guidelines are not intended to be a comprehensive listing and explanation of all rules and policies that may apply to funding, but rather will provide initial information on the grant approval process and the outline how to administer a funded project.

Eligibility

Eligible applicants

State and federal agencies, institutions of higher learning, tribal governments and technical consortia, local governments, special purpose districts, conservation districts, watershed planning units, local management boards, salmon recovery lead entities, regional fisheries enhancement groups, and non-profit entities are eligible to apply. For-profit entities are not eligible.

Eligible applicants may partner on projects with non-eligible entities. The DEPARTMENT will consider the eligible applicant the lead agency on the agreement; the lead agency is the responsible party to accomplish project goals and collaborate and coordinate with their partners.

Available funding

Funding varies for each specific grant. See the grant application for details.

Eligible projects

Eligible projects vary for each specific grant. See the grant application for details.

Ineligible projects

Planning activities and re-creating programs that are already up-and-running at other entities are ineligible.

Application Process

Potential applicants may request an application packet, including the application form and these guidelines. Application materials are also available electronically on the DEPARTMENT's web site at: www.ecy.wa.gov/puget_sound/grants_fed_toxics.html.

Application Submittal:

1. Mail one hardcopy with original signature and an electronic copy. Include a MS-WORD version of the complete application. (E-mail electronic copies to sarah.ralph@ecy.wa.gov and andrew.kolosseus@ecy.wa.gov or include a CD with written materials.)
2. All application materials must be received at the DEPARTMENT headquarters prior to the date specified in the grant application. *Application packets received after the deadline date and time will not be considered for funding. Postmarks not accepted.*
3. Faxed submittals will not be accepted.

Submit original signed paper version and copies to:

U.S. Postal Mailing Address:

Department of Ecology
Water Quality Program
Financial Management Section
P.O. Box 47600
Olympia, WA 98504-7600

Overnight Mail or Hand Delivery Address:

Department of Ecology
Water Quality Program
Financial Management Section
300 Desmond Drive
Lacey, WA 98503

For more information or financial questions, contact Sarah Ralph at 360-407-6703 or sarah.ralph@ecy.wa.gov. For technical questions, contact Andrew Kolosseus at 360-407-7543 or andrew.kolosseus@ecy.wa.gov.

Application Requirements

At time of application

Applicants must submit a completed application, available at www.ecy.wa.gov/puget_sound/grants_fed_toxics.html.

At time of contract negotiations

Projects must meet the following requirements prior to receiving grant funding:

- State Environmental Policy Act (SEPA).
- Cultural Resource Review, coordinated through the DEPARTMENT, with the Department of Archaeology & Historic Preservation (DAHP) and affected tribes to comply with the Governor's Executive Order 05-05.

Growth Management Act compliance

The DEPARTMENT does not require applicants to comply with the Growth Management Act (GMA) prior to applying for or receiving funding from this program. However, the DEPARTMENT strongly encourages GMA compliance, because other funding sources may require it to be eligible for funding.

Evaluation criteria

Evaluation criteria vary for each specific grant. See the grant application for details.

The DEPARTMENT reserves the right to award the grant to the Applicant whose proposal is deemed to be in the best interest of the DEPARTMENT and the state of Washington.

Ecology's Project Management Team

The funding agreement is the formal written contractual arrangement signed by authorized representatives of the recipient and Ecology. The agreement includes at a minimum: an approved scope of work, total project costs, a budget, and performance schedule. Ecology assigns a Project Management Team to each funded project. The team consists of:

- A *project manager* from the regional office nearest the recipient (primary contact for technical assistance and day-to-day questions).
- A *financial manager* from the Lacey headquarters office.

The financial manager reviews and approves payment requests and helps the project manager negotiate agreements and track performance. The project manager is the point of contact for day-to-day project and technical related questions and works with the financial manager to

resolve payment or eligibility issues if they arise. The following will be the project management team for grant agreements funded through this guidance and application process:

Ecology Project Manager

Department of Ecology
Water Quality Program
Attn: Andrew Kolosseus
P.O. Box 47600
Olympia, WA 98504-7600
360-407-7543

andrew.kolosseus@ecy.wa.gov

Ecology Financial Manager

Department of Ecology
Water Quality Program
Attn: Sarah Ralph
P.O. Box 47600
Olympia, WA 98504-7600
360-407-6703

sarah.ralph@ecy.wa.gov

Agreement Development

The DEPARTMENT Project Management Team will use information contained in the application as the basis for developing the funding agreement. It will take less time to develop a funding agreement with a clearly defined project proposal that includes measurable objectives and an accurate budget. To speed development and negotiations, the DEPARTMENT standardizes much of the funding agreement content with boilerplate language that includes general and special terms and conditions and other requirements that are necessary because of state and federal law. These requirements are incorporated as attachments.

After the agreement is developed, the final draft goes through an internal funding program review. The financial manager will then send the funding agreement to the applicant for signature. The applicant will send the funding agreement back to the DEPARTMENT for the final signature by Ecology's authorized designee.

The agreement becomes effective once signed by the DEPARTMENT's designee. A fully signed original will be returned to the RECIPIENT. (Note that the applicant becomes the RECIPIENT once the agreement is signed).

Project budget

The funding agreement must include a project budget that establishes eligible costs for task elements or budget objects. The budget will also detail funding sources, amounts, and requirements. The DEPARTMENT's financial manager will help answer additional questions about budget development during project negotiations.

There are no additional funds available to cover project overruns. The DEPARTMENT will obligate all of the money available through the NEP. The applicant must be certain that all deliverables can be accomplished as budgeted.

Disbursement of funds

The DEPARTMENT will disburse funds on a cost-incurred basis.

Amendment process

Modifications and changes to the funding agreement may become necessary. The RECIPIENT and the DEPARTMENT's Project Management Team must negotiate changes and execute a formal amendment to the funding agreement to reflect those changes.

Extensions

Time extensions are discouraged by the DEPARTMENT. RECIPIENTS should request a time extension at least three months prior to the expiration date of the funding agreement.

Progress reports

The DEPARTMENT requires recipients to submit progress reports on a regular basis. Progress reports that include a disbursement request must describe the scope of work item for which disbursement is requested. Unless specified in the funding agreement, progress reports are submitted quarterly for the following periods:

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

Quarterly progress reports are due 15 days following the end of the quarter being reported.

Administrative general terms and conditions

General Terms and Conditions are general requirements contained in all the DEPARTMENT grant agreements and are not negotiable. The General Terms and Conditions are found in Attachment A.

Special terms and conditions

Special Terms and Conditions are written into an agreement to modify or clarify project elements that are specific to the project or the program guidelines. Special Terms may be different, more specific or restrictive to General Terms and Conditions and have precedence over conditions outlined in the agreement attachments. The Special Terms and Conditions are found in Attachment A.

Federal administrative and programmatic terms and conditions

Grants awarded through this process are federal NEP funds and the federal administrative and programmatic conditions provided under Attachment A apply.

Equipment purchase/equipment fees

Equipment purchase will be considered on a project-by-project basis and must be approved by the DEPARTMENT Project Management Team. If equipment is owned by the RECIPIENT, an appropriate use fee may be charged.

A use fee for equipment owned by the RECIPIENT or used through a valid interlocal agreement:

- Must be justifiable, fair, and reasonably attributed to the project.
- Must directly satisfy the project scope of work.
- Must be shown to be cost effective.
- Cannot exceed the acquisition cost of the equipment or facilities.
- Cannot exceed the rental rate or purchase price for comparable equipment or facilities in the recipient's market.

Incurring eligible costs

The RECIPIENT can begin incurring costs on the date that the funding agreement is signed by Ecology. In some instances, eligible costs can be incurred before the effective date of an agreement.

Incurring costs prior to an agreement

Prior Authorization is written authorization that allows the RECIPIENT to incur eligible project costs before the funding agreement is effective. Prior Authorization is determined on a case-by-case basis. It does not guarantee funding, work is performed at the risk of the applicant, and the DEPARTMENT cannot release funds before the effective date of the agreement.

To request Prior Authorization:

- The RECIPIENT signatory must write a letter to the DEPARTMENT's Water Quality Program Manager requesting and justifying Prior Authorization with estimated costs to be incurred and the time frame.
- Costs incurred before the Prior Authorization date are the sole responsibility of the public body.
- The RECIPIENT assumes responsibility for costs incurred before a loan or grant agreement has been signed, as the DEPARTMENT cannot guarantee that a loan or grant will be awarded.

Reasons for Prior Authorization include, but are not limited to:

- Work must be done in a specific environmental window.
- To meet required schedules in compliance order, consent decrees, or permits.
- The RECIPIENT is ready to proceed immediately.
- The project would otherwise be substantively delayed as the grant agreement was prepared.

Performance measures

Post project assessment of performance measures

The Legislature directed Ecology to implement an outcome-focused approach. As a result, Ecology is including a special condition in each loan and grant agreement that requires RECIPIENTS to develop a post project assessment plan and to participate in a brief survey or possible interview to assess project results. The month and year of the project assessment will typically occur three years after project completion. This date will be negotiated between the RECIPIENT and Ecology's Project Management Team.

Environmental Review Requirements

SEPA and state environmental review process

All RECIPIENTS must comply with the State Environmental Policy Act (SEPA). The RECIPIENT must complete SEPA requirements prior to receiving state funds. Additionally, RECIPIENTS must comply with all other applicable state and federal environmental statutes, regulations, and executive orders.

Attachment A: Grant Terms and Conditions

Payment request submittals

1. Unless otherwise approved in writing by the DEPARTMENT, the RECIPIENT shall submit a payment request to the DEPARTMENT at least quarterly, but no more often than once per month. Payments will be made on a cost-reimbursable basis.
2. The RECIPIENT shall submit payment requests on state voucher forms that include an A-19, B2, C2 and forms D and E if applicable. The RECIPIENT shall include a Progress Report for the billing period, and an updated copy of the spending plan if changes have occurred since the previous spending plan was submitted.
3. The final payment request shall include a final project report.
4. The RECIPIENT shall provide the progress report and final project report on DEPARTMENT provided forms unless otherwise approved by the DEPARTMENT.
5. The budget plan is organized by task; therefore, the RECIPIENT shall itemize costs by task on the C2 form and summarize costs by task on the B2 form.
6. The RECIPIENT shall submit one copy of each payment request and backup documentation to the DEPARTMENT's financial manager.

Documentation

1. The RECIPIENT shall include the supporting documentation for all expenses, including RECIPIENT salary and benefits.
2. Supporting documentation includes contractor and subcontractor invoices and receipts, accounting records, or any other form of record that establishes the appropriateness of an expense.
3. The DEPARTMENT may request additional documentation if needed to determine if a cost will be allowed.
4. Supporting documentation shall be clear and legible and organized by task in the order it was placed on the C2 by the RECIPIENT.
5. RECIPIENT accounting procedures shall include maintaining supporting documentation in a grant file. This includes cancelled checks, invoices, purchase receipts, payroll records, time and attendance records, contract award documents, and vouchers sent to the DEPARTMENT. The RECIPIENT shall keep all supporting documentation for audit purposes for at least three years after the expiration date of the agreement.
6. The RECIPIENT shall use the DEPARTMENT provided Form E, or an equivalent time sheet approved by the DEPARTMENT, to record staff hours being billed to the grant. Upon request, the RECIPIENT shall provide these records to the DEPARTMENT.

Special terms and conditions

- A. *Failure to Commence Work.* In the event the RECIPIENT fails to commence work on the project within four months of the signatory date, the DEPARTMENT reserves the right to terminate this agreement.

All writings contained herein

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

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

No subsequent modifications or amendments of this agreement will be of any force or effect unless signed by authorized representatives of the RECIPIENT and the DEPARTMENT and made a part of this agreement, *except* that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the grant budget. The DEPARTMENT or the RECIPIENT may change their respective staff contacts without the concurrence of either party.

General project management requirements

Certification regarding suspension, debarment, ineligibility or voluntary exclusion

1. The RECIPIENT, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT shall provide immediate written notice to the DEPARTMENT if at any time the RECIPIENT learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and

voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the DEPARTMENT for assistance in obtaining a copy of those regulations.

4. The RECIPIENT agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT further agrees by signing this agreement, that it will include this clause titled “CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to the DEPARTMENT upon request. RECIPIENT must run a search in www.epls.gov and print a copy of completed searches to document proof of compliance.

Cultural and historic resources protection

The RECIPIENT must comply with all requirements listed in Section 106 of the National Historic Preservation Act prior to implementing any project that involves ground disturbing activities.

The RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to the DEPARTMENT’s project manager prior to any ground disturbing activities. The DEPARTMENT will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to fulfill Section 106 of the National Historic Preservation Act requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Another agency’s cultural resources review must have prior approval from the DEPARTMENT in order to be adopted to meet Section 106 of the National Historic Preservation Act requirements for the project.

Any ground disturbing activities that occur prior to the completion of the Section 106 of the National Historic Preservation Act process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

www.dahp.wa.gov/governors-executive-order-05-05

Education and outreach

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

The RECIPIENT must also check the Washington Waters website www.ecy.wa.gov/washington_waters/index.html for useful educational materials. These materials are available for public use and can be downloaded directly from the website.

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

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

Equipment purchase

The following equipment will be eligible for purchase through this project: none. The total cost of all equipment purchased under this project will not exceed \$0. Changes in equipment type must have prior approval from the DEPARTMENT.

Federal funding accountability and transparency act (ffata) reporting requirements:

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

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

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

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

Funding recognition

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

Increased oversight

If this project is selected for increased oversight (as indicated on page 3 of this agreement), the RECIPIENT must submit all backup documentation with each payment request submittal. In addition, the DEPARTMENT's Project Manager must establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

Indirect rate

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

Light refreshments

The RECIPIENT may spend up to \$0 per meeting for light refreshments associated with this project. The total amount spent for light refreshments under this agreement cannot exceed \$0.

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:

- a. Include qualified minority and women's businesses on solicitation lists.
- b. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
- c. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

- d. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

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

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

Procurement

The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services.

Progress reports

The RECIPIENT must submit electronic quarterly progress reports to the DEPARTMENT's Financial Manager and Project Manager. Payment requests will not be processed unless all progress reports have been submitted to the DEPARTMENT.

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

Required document submittals

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

- Electronic copy of draft and final project completion report – 1 copy
- Final project completion reports – 1 copy
- Educational products developed under this agreement – 1 copy
- Documents that require DEPARTMENT Approval – 1 copy
- Interlocal agreements – 1 copy
- Professional services procurement agreements – 1 copy

Special condition for recipients in snohomish and king county

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

Training

The following training will be eligible for payment through this project: *to be determined based on individual grant*. The total cost of all training under this project will not exceed \$*to be determined based on individual grant*. Changes or modifications must have prior approval from the DEPARTMENT.

Volunteer time documentation

The RECIPIENT must report to the DEPARTMENT the total number of volunteer (unpaid) hours contributed to the restoration or monitoring project, including time not being credited for matching purposes. This information will be conveyed to the Governor of the state of Washington in fulfillment of a request for state agencies to collect information about volunteers working for clean water.

Water quality monitoring

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

The RECIPIENT must submit the QAPP to Ecology's project manager for review, comment, and must be approved before starting the environmental monitoring activities. The RECIPIENT must use an environmental laboratory accredited by Ecology to analyze water samples for all parameters to be analyzed that require bench testing. Information on currently accredited laboratories and the accreditation process is provided on Ecology's Environmental Assessment Program's website, available at: www.ecy.wa.gov/programs/eap/labs/search.html.

The RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the "ten-year rule." The ten-year rule means that data documentation is sufficient to allow an individual not directly familiar with the specific

monitoring effort to understand the purpose of the data set, methods used, results obtained, and quality assurance measures taken ten years after data are collected.

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

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

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

Federal provisions

The Sub-Recipients shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

Administrative conditions

1. Cost principles

Sub-Recipient agrees to comply with the cost principles of the below listed federal regulations are applicable as appropriate to this award.

2 CFR 225 (A-87) for State, Local, and Indian Tribal Governments

2 CFR 220 (A-21) for Educational Institutions

2 CFR 230 (A-122) Nonprofit Organizations

FAR 31.2 for Commercial Organizations

An electronic copy of all the Circulars and applicable CFR's may be obtained via the OMB home web page at http://www.whitehouse.gov/omb/circulars_default. Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.

2. Audit requirements

The Sub-Recipient shall fully comply with requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations", if applicable.

3. Hotel-Motel Fire Safety Act

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the Sub-Recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended. Sub-Recipient may search the Hotel-Motel National Master List at:

<http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

4. Recycled paper

Institutions of Higher Education, Hospitals and Non-Profit Organizations

In accordance with 40 CFR 30.16, Sub-Recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

State Agencies and Political Subdivisions

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth.

Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

State and Local Institutions of Higher Education and Non-Profit Organizations

In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

State Tribal and Local Government Recipients

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub-Recipient agrees to use recycled paper and double-sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

5. Lobbying

Sub-Recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. Sub-Recipient shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

Part 30 Recipients

All contracts awarded by Sub-Recipient shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30. Pursuant to Section 18 of the Lobbying Disclosure Act, Sub-Recipient affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

Lobbying and Litigation

Sub-Recipient's chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Sub-Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

6. Suspension and debarment

Sub-Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transaction (Doing Business with Other Persons)". Sub-Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. Sub-Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Sub-Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Sub-Recipient may access the Excluded Parties List System at: www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters".

7. Drug-free workplace certification

Sub-Recipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230. Additionally, in accordance with these regulations, Sub-Recipient organization must identify all known workplaces under its federal award; and keep this information on file during the performance of the award. Sub-Recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300. The consequences for violating this condition are detailed under Title 40 CFR 36.510. Sub-Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at: www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html

8. Management fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. Reimbursement limitation

If Sub-Recipient expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government is not legally obligated to reimburse Sub-Recipient for costs incurred in excess of the approved budget.

10. Trafficking in persons

The following prohibition statement applies to Sub-Recipient, and all sub-awardees of Sub-Recipient. Sub-Recipient must include this statement in all sub-awards made to any private entity under this Agreement.

"YOU AS THE SUB-RECIPIENT, YOUR EMPLOYEES, SUB-AWARDEES UNDER THIS AWARD, AND SUB-AWARDEES' EMPLOYEES MAY NOT ENGAGE IN SEVERE FORMS OF TRAFFICKING IN PERSONS DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; PROCURE A COMMERCIAL SEX ACT DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; OR USE

FORCED LABOR IN THE PERFORMANCE OF THE AWARD OR SUB-AWARDS UNDER THIS AWARD.”

11. DUNS and CCR requirements

Unless otherwise exempted from this requirement under 2 CFR 25.110, Sub-Recipient must maintain the currency of its information in the CCR until submission of its final financial report required under this Award or receive the final payment, whichever is later. Sub-Recipient may not make a sub-award to any entity unless the entity has provided its DUNS number to Sub-Recipient.

12. FY2011 ACORN funding restriction

No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

13. Disadvantaged business enterprise requirements, general compliance

Sub-Recipient agrees to comply with the requirements of EPA’s Program for Utilization of Small, Minority and Women’s Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

14. Sub-awards

If Sub-Recipient makes sub-awards under this Agreement, Sub-Recipient is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. Sub-Recipient agrees to:

- a. Establish all sub-award agreements in writing.
- b. Maintain primary responsibility for ensuring successful completion of the approved project (SUB-RECIPIENT CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUB-AWARDEE).
- c. Ensure that any sub-awards comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the sub-awardee.
- d. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
- e. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award.
- f. Obtain DEPARTMENT’s consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- g. Obtain approval from DEPARTMENT for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

Programmatic conditions

1. Semi-annual performance reports

Consistent with 40 CFR §35.115 and EPA Order 5700.7, the sub-recipient will submit performance reports using the Financial and Ecosystem Accounting Tracking System (FEATS) form every six (6) months during the life of the project. The FEATS form will be provided to the sub-recipient by the DEPARTMENT Project Manager. The reporting periods shall end March 31st and September 30th of each calendar year. Reports shall be submitted on or before April 15th and October 15th of each calendar year to the DEPARTMENT Project Manager. It is preferred that reports be submitted by electronic mail. In accordance with 40 CFR Part 30.51(d) and 40 CFR Part 31.40, as appropriate, the sub-recipient agrees to submit performance reports that include brief information on each of the following areas:

- a. A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan and sub-awards for the period.
- b. The reasons for slippages if established outputs/outcomes were not met.
- c. Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

In addition to the semi-annual performance reports, the sub-recipient shall immediately notify DEPARTMENT Project Manager of developments that have a significant impact on the award-supported activities. In accordance with 40 CFR Part 30.51(f) and 40 CFR Part 31.40(d), as appropriate, the sub-recipient agrees to inform the DEPARTMENT Project Manager as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

2. Recognition of EPA funding

Reports, documents, signage, videos, or other media, developed as part of projects funded by this Agreement shall contain the following statement:

“THIS PROJECT HAS BEEN FUNDED WHOLLY OR IN PART BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER PUGET SOUND ECOSYSTEM RESTORATION AND PROTECTION COOPERATIVE AGREEMENT GRANT PC-00J20101 WITH THE WASHINGTON DEPARTMENT OF ECOLOGY. THE CONTENTS OF THIS DOCUMENT DO NOT NECESSARILY REFLECT THE VIEWS AND POLICIES OF THE ENVIRONMENTAL PROTECTION AGENCY, NOR DOES MENTION OF TRADE NAMES OR COMMERCIAL PRODUCTS CONSTITUTE ENDORSEMENT OR RECOMMENDATION FOR USE.”

3. Copyrighted material

EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes. *The DEPARTMENT acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this Agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.*

4. Peer review

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the DEPARTMENT Project Manager prior to releasing any final reports or products resulting from the funded study.

5. Quality assurance

The RECIPIENT must first complete a Quality Assurance Project Plan (QAPP) waiver form (see www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html). Completing the waiver form may indicate that a detailed QAPP is required. *Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies* can be found at <https://fortress.wa.gov/ecy/publications/SummaryPages/0403030.html>. The RECIPIENT must submit a waiver or QAPP to the DEPARTMENT's QA Officer for review, comment, and final approval prior to conducting any work on the project (e.g., field measurements, sample collections, laboratory analyses, analysis of existing data, modeling). All relevant environmental data must be submitted to the DEPARTMENT in EIM format (see www.ecy.wa.gov/eim) unless specified otherwise by the QA Officer.

General terms and conditions

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.
2. 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.

3. 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.
4. 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.
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. 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 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.
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 there under and/or terminate this agreement by giving written notice of termination.
2. 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.

3. 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.
4. 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.
5. 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.
6. 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 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 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 Ecology Grants and Loans"; and (e) the General Terms and Conditions.