



# Office of Columbia River Funding Guidelines/Application Instructions

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2021-2023 Biennium

For the

**Office of Columbia River**

Washington State Department of Ecology  
Union Gap, Washington

April 2021, Publication 21-12-004

## Publication Information

This document is available on the Department of Ecology's website at:  
<https://apps.ecology.wa.gov/publications/summarypages/2112004.html>

## Contact Information

### Office of Columbia River

Central Regional Office  
1250 West Alder Street  
Union Gap, WA 98903-0009  
Phone: 509-575-2490

**Website**<sup>1</sup>: [Washington State Department of Ecology](http://www.ecology.wa.gov)

## ADA Accessibility

The Department of Ecology is committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188.

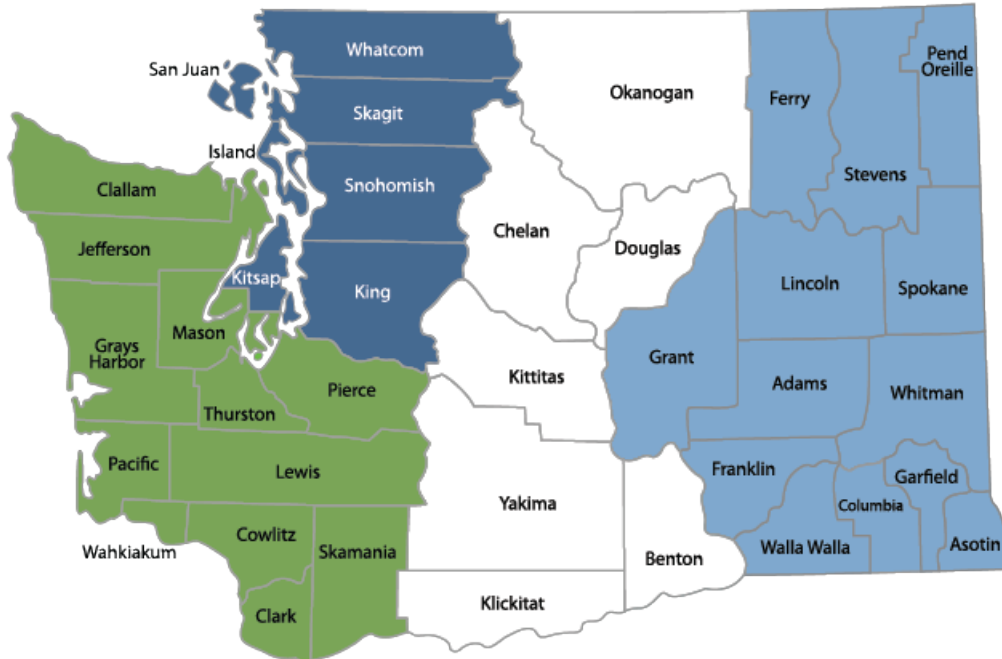
**To request an ADA accommodation, contact Ecology by phone at 509-454-4241 or email at [tim.poppleton@ecy.wa.gov](mailto:tim.poppleton@ecy.wa.gov). For Washington Relay Service or TTY call 711 or 877-833-6341. Visit Ecology's website for more information.**

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<sup>1</sup> [www.ecology.wa.gov/contact](http://www.ecology.wa.gov/contact)

# Department of Ecology's Regional Offices

## Map of Counties Served



**Southwest Region**  
360-407-6300

**Northwest Region**  
425-649-7000

**Central Region**  
509-575-2490

**Eastern Region**  
509-329-3400

Region	Counties served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	3190 160th Ave SE Bellevue, WA 98008	425-649-7000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Across Washington	PO Box 46700 Olympia, WA 98504	360-407-6000

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DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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Established in 2006 under Chapter 90.90 RCW, the Columbia River Water Management Program seeks to meet current and future water needs along the Columbia River and its tributaries. The Office of Columbia River (OCR) is charged with "aggressively pursuing" water solutions that concurrently meet water needs for families, industry, and farms (2/3 out-of-stream), and ecosystems and fish (1/3 instream). OCR works to resolve conflicts over water and provide water security in the face of drought and changing climate.

The Office of Columbia River is tasked with six directives:

- Find sources of water for pending water-right applications.
- Develop water sources for new municipal, domestic, industrial, and irrigation needs.
- Issue water supply and demand reports.
- Secure alternatives to groundwater for agricultural users in the Odessa Subarea.
- Find a new uninterrupted supply of water for those whose rights are curtailed on the Columbia mainstem when minimum flows are forecast to be unmet.
- Make water available for instream benefits when needed most.

Funding opportunities are undertaken pursuant to the provisions of the Chapter 90.90 RCW. To respond to the legislative directive, OCR, in coordination with stakeholders, develops and pursues implementation of a suite of water supply development projects that are vetted with the Columbia River Policy Advisory Group, a broad based stakeholder group. Funding opportunities are available to federal, state, local, and tribal government entities and quasi-government entities (ie. irrigation districts, and conservation districts).

Funded projects are governed by the agreement General Terms and Conditions, any Agreement Specific Terms and Conditions, and Ecology's Administrative Requirements for Ecology's Grants and Loans (current edition). The following sections highlight some, but not all, requirements from these documents.

The following are some general guidelines to help clarify Ecology's requirements for grants and loans:

**Become familiar with your General Terms and Conditions.** The current edition dated, 7/1/2019, can be found in **APPENDIX 1**. These are subject to change and may be updated prior to your agreement being finalized. By entering into the agreement you, the Recipient, agree to the terms and conditions without negotiation.

The general terms and conditions provide information on items such as:

1. **Payment Requests/Progress Reports (PRPR) – Section 20** Required quarterly even if no expenses are billed.

[How to submit a Payment Request/Progress Report video in EAGL -YouTube](#)<sup>2</sup>

This agreement is governed by the [Administrative Requirements for Recipients of Ecology Grants and Loans \(Yellow Book\)-current version](#)<sup>3</sup>. This document establishes the financial administrative requirements for all grants and loans administered by Ecology. Your agreement is covered by the version based on the effective date of your agreement.

2. **Records, Audits, and Inspections - Section 22**

Grant files must be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. See full text in the General Terms and Conditions

Please expect us to ask questions about expenditures, how they are arrived at, supporting documentation, project implementation, and so forth. We want any audit to go well for everyone.

3. **Contracting for Goods and Services - Section 10**

You may contract to buy goods or services related to its performance under this Agreement. All contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. You are required to follow procurement procedures that ensure legal, fair, and open competition.

You must have a standard procurement process or follow current state procurement procedures. You may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

4. **Order of Precedence - Section 18**

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<sup>2</sup> <https://www.youtube.com/watch?v=Lbl7gzh6pgA>

<sup>3</sup> <https://ecology.wa.gov/About-us/How-we-operate/Grants-loans/Grant-loan-guidance>

In the event of an inconsistency in the agreement, this outlines the order of precedence of documents for resolution.

#### **5. Communication – Section 6**

It is essential that you keep in contact with your Project Manager. Ecology Project and Contract Managers have many contracts and are sometimes “stretched” for time. We want to provide ongoing good service for you, and we need your help.

- If a concern or change in scope of work arises, please contact us.
- If there is a fiscal matter involved, please “cc” you Financial Manager.
- Include your contract number in all communication and on all deliverables and invoice documents.

#### **6. Archaeological and Cultural Resources - Section 4**

If your project disturbs the ground an Inadvertent Discovery Plan is required prior to the start of any work on the project site. For capital construction projects or land acquisitions for capital construction projects, if required, recipients are required to comply with Governor Executive Order 05-05, Archaeology and Cultural Resources. Please contact your project manager. See full text in the General Terms and Conditions.

#### **7. Environmental Data Standards - Section 12**

If your project collects environmental data a Quality Assurance Project Plan (QAPP), is required. Contact your project manager or Michael Callahan, OCRYBIP QAPP Coordinator (509-454-4270) for further information and a template. A QAPP must be completed and approved/signed by Ecology prior to sampling. See full text in the General Terms and Conditions.

### **Managing the Agreement – Beyond General Terms:**

Your agreement may contain **Agreement Specific Terms and/or Special Terms and Conditions**. Become familiar with these if you have them.

**Amendments** - You may need to amend your agreement to update the scope of work or budget.

- Requests should be received at least 60 days prior to the proposed effective date.
- Please contact **both** your Project Manager and Financial Manager.
- Amendments need to be signed prior to the agreement end date.

**EAGL** – For the duration of the agreement all activity and documents will be done within EAGL. Please refer to the External User’s Manual to help manage your agreement in EAGL. If you have additional questions contact your Project Manager or Financial Manager for further assistance. The [EAGL External User’s Manual](#)<sup>4</sup> can be found at the following link. Complete instructions for EAGL can be found in under **“My Training Materials”** in the green ribbon at the top of each page in EAGL.

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<sup>4</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1701015.html>

## **Financial Management of PRPRs – Common Areas of Clarification:**

**Conditionally Approved Expenses** - The Yellow Book has a section starting on page 29 for “Conditionally Approved Expenses”. These are generally allowable, but need prior written approval. Examples are light refreshments, computers and other electronic devices, and equipment. The best way to deal with these is to write them in the agreement when it is developed.

**Purchasing and Contracts** - begins on page 48 of the Yellow Book. Be sure to follow the outlined processes in soliciting contracts and obtaining Goods and Services. Failure to do so may lead to expenses not being reimbursed to you.

**Indirect Rate** – We pay indirect based on your actual rate up to a maximum of 30% of salaries and benefits (Administrative Requirements for Recipients of Ecology Grants and Loans (Yellow Book) – Publication No 17-01-004-August 2017). This is a negotiated rate between the recipient and its Ecology funding program contact and is subject to Ecology approval. Please provide documentation of your actual indirect rate when you submit your application.



# APPENDIX 1

GENERAL TERMS AND CONDITIONS AS OF UPDATED 7-1-2019 VERSION. These are subject to change.

## 1. ADMINISTRATIVE REQUIREMENTS

- a. RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition."  
(<https://apps.ecology.wa.gov/publications/SummaryPages/1701004.html>)
- b. RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c. RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d. RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

## 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

## 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

## 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

- a. RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts

discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
- For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
- For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
- Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.

- b. If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.

- c. If any archeological or historic resources are found while conducting work under this Agreement:

- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.

- d. If any human remains are found while conducting work under this Agreement:

Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.

- e. Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

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

## 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 7. COMPENSATION

- a. Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b. Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c. RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d. RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e. ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report, and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f. ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g. RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form [here](#)<sup>5</sup>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email the help desks at [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h. ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i. Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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<sup>5</sup> <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>

- j. RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

## 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state, and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a. 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.
- b. RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c. RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d. RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

## 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

## 11. DISPUTES

- a. When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:
- b. RECIPIENT notifies the funding program of an appeal request.
- c. Appeal request must be in writing and state the disputed issue(s).
- d. RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- e. ECOLOGY reviews the RECIPIENT's appeal.
- f. ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

- a. RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a

QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
  - Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
  - Submit the QAPP to ECOLOGY for review and approval before the start of the work.
- b. RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.
- c. RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: <https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

### 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

### 14. INDEMNIFICATION

ECOLOGY will 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.

To the extent that the Constitution and laws of the State of Washington permit, each party will 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.

### 15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 16. KICKBACKS

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

## 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a. Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d. Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## 18. ORDER OF 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) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

## 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a. If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b. RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c. If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

## 20. PROGRESS REPORTING

- a. RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b. RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c. RECIPIENT shall use ECOLOGY's provided progress report format.
- d. Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e. RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

- a. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or



- patent the same but ECOLOGY 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.
- b. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
  - c. Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
  - d. Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
  - e. Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
  - f. Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
    - i. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
    - ii. 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 intended by this Agreement.
  - g. Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY 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.

## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a. Be kept in a manner which provides an audit trail for all expenditures.
- b. Be kept in a common file to facilitate audits and inspections.
- c. Clearly indicate total receipts and expenditures related to this Agreement.
- d. Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY 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 (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

#### 24. 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.

#### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

#### 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

#### 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a. Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b. Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging,

office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing, <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a. For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar day's prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY 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 ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

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

### b. For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar day's prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved.

ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c. By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d. In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

## 29. THIRD PARTY BENEFICIARY

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.

## 30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or 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 ECOLOGY.