DEPARTMENT OF
ECOLOGY
State of Washington

FY 2012 Statewide Stormwater Grant Program
Funding Agreement
Between
The State of Washington Department of Ecology
and

City of Redmond

Grant Agreement Number
G1200499

Redmond Stormwater Decant Facility Improvements

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FY 2012 STATEWIDE STORMWATER GRANT PROGRAM
Funding Agreement
Between
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
CITY OF REDMOND

THIS is a binding agreement between the state of Washington Department of Ecology (DEPARTMENT) and the City of Redmond (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT, who will carry out the requirements described in this agreement.

PART I. GENERAL INFORMATION

Project Title:	Redmond Stormwater Decant Facility Improvements
Grant Number:	G1200499
State Fiscal Year:	FY 2012
Total Project Cost:	$1,684,913
Total Eligible Cost:	$1,333,333
DEPARTMENT Share:	$1,000,000
RECIPIENT Share:	$333,333
DEPARTMENT Maximum Percentage:	75 %

RECIPIENT Information

RECIPIENT Name:	City of Redmond
Mailing Address:	City of Redmond Public Works 15670 NE 85th Street Redmond, WA 98052
Fax Number:	425-556-2820
Federal Taxpayer ID Number:	91-6001492
PROJECT Manager:	Andy Rheaume
Email Address:	ajrheaume@redmond.gov
Phone Number:	425-556-2741
PROJECT Financial Officer:	Gloria Hulskamp
Email Address:	ghulskamp@redmond.gov
Phone Number:	425-556-2702

DEPARTMENT Contact Information

Project Manager: Melisa Snoeberger

Email Address: melisa.snoeberger@ecy.wa.gov

Phone Number: 425-649-7047

Project Engineer: Douglas C. Howie, P.E.

Email Address: douglas.howie@ecy.wa.gov

Phone Number: 360-407-6444

Address:

☒ **Northwest**
WA State Department of Ecology
Northwest Regional Office
3190 160th Ave SE
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Fax (425) 649-7098

☐ **Central**
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Yakima, WA 98902-3452
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☐ **Southwest**
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Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
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☐ **Eastern**
WA State Department of Ecology
Eastern Regional Office
N. 4601 Monroe
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WA State Department of Ecology
Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, WA 98225
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WA State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Fax (360) 407-6426

Financial Manager: Sean Mellon

Email Address: sean.mellon@ecy.wa.gov

Phone Number: 360-407-6570

Fax Number: 360-407-7151

Address: WA State Department of Ecology
Water Quality Program, FMS
P.O. Box 47600
Olympia, WA 98504-7600

CHECK ALL THAT APPLY:

- FY 2012 Stormwater Grant Funds (state funds): ☒ Yes Amount: $1,000,000
  Funded with Local Toxics Control Account – State

- Prior Authorization Granted: ☒ Yes If yes, Effective Date: **May 1, 2012**

  - Increased Oversight? ☐ Yes ☒ No

The effective date of this agreement is the Prior Authorization date.

This agreement expires: **December 31st, 2014.**

Post Project Assessment date – three years after the expiration date of the agreement (see Post Project Assessment in Attachment I): December 31st, 2017

PART II. PROJECT SUMMARY

This project will address water quality for the state of Washington. Redmond's Decant Facility upgrades will protect Bear Creek and support citywide stormwater infrastructure cleaning. The project includes: bioretention, treating industrial runoff from 3.7 acres; expanding existing decant facility to increase capacity; retrofitting decant facility with adequate source control measures; and installing downspout infiltration facilities.

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PART III. PROJECT BUDGET

Redmond Stormwater Decant Facility Improvements			
TASKS/ELEMENTS	TOTAL PROJECT COST	ELIGIBLE PROJECT COST	**TOTAL ELIGIBLE COST (TEC)
1 - Project Administration/Management	$12,500	$12,500	$12,500
2 - Design Plans and Specifications	$296,413	$296,413	$223,174
3 - Construction Management	$226,000	$226,000	$104,750
4 - Construction	$1,150,000	$1,150,000	$992,909
Total	$1,684,913	$1,684,913	$1,333,333
** **The DEPARTMENT's Fiscal Office will track to the Total Eligible Cost.**			
MATCHING REQUIREMENTS			
DEPARTMENT Share: maximum 75% of TEC			$1,000,000
RECIPIENT Share: minimum 25% of TEC Cash Match $333,333 **Other types of in-kind, such as volunteer work <u>are not eligible</u>**			$333,333

PART IV. PROJECT GOALS AND OUTCOMES

A. <u>Financial Assistance Water Quality Project Goals:</u> The overall goals of this project are focused on the protection of Bear Creek and include one or more of the following:

- ☐ Stormwater System Retrofit
- ☒ Low Impact Development Best Management Practices (BMP)
- ☐ Designated beneficial uses will be restored or protected, 303(d)-Listed water bodies restored to water quality standards, healthy waters prevented from being degraded.

B. <u>Water Quality and Environmental Outcomes</u>: The following are the anticipated water quality and environmental improvements from the project.

1. Support stormwater infrastructure cleaning.
2. Reduce pollution reaching Bear Creek from the Maintenance and Operations Center.
3. Reduce pollution discharged directly to Puget Sound.

C. Performance Items and Deliverables: The following are the anticipated action items that will play an integral role in implementation of the project.

1. Construct additional decant bays to increase capacity.
2. Construct a bioretention swale to treat runoff from 3.7 acres of Redmond's Maintenance and Operations Center (MOC), including decant facility runoff.
3. Construct stormwater source controls.
4. Construct an on-site stormwater management system to reduce the quantity of heavy industrial runoff entering Bear Creek from the MOC and encourage infiltration of roof runoff.

PART V. SCOPE OF WORK

Task 1 - Project Administration/Management

A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement.

C. The RECIPIENT must ensure this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project-related work.

Required Performance:

1. Effective administration and management of this grant project.
2. Timely submittal of all required performance items, progress reports, and financial vouchers.
3. Submit at least three hard copies and one electronic copy of the final project report after a draft has been approved by the DEPARTMENT.
4. Write and submit a one to two page summary of project accomplishments and outcomes at project completion, including pictures, to be published in the DEPARTMENT's Annual Water Quality Financial Assistance Report following the DEPARMENT's water quality stories format.

Task 2 – Design Plans and Specifications

A. The RECIPIENT will submit to the DEPARTMENT's Project Manager, a copy of the State Environmental Review Act (SEPA) Lead Agency's signed and dated SEPA determination.

B. During the planning and design stage and prior to any ground disturbing activities, the RECIPIENT will submit to the DEPARTMENT's Project Manager one of the following:

a. If Cultural Resources Review (Executive Order 05-05) is complete, a copy of the letter of concurrence from the Department of Archaeology and Historic Preservation (DAHP) and correspondence from any tribes.

b. If Cultural Resources Review (Executive Order 05-05) is not complete, the RECIPIENT will submit a DAHP EZ-1 form to the DEPARTMENT's Project Manager to initiate review of project activities by DAHP and tribal governments.

C. The RECIPIENT will submit two hard copies and one digital copy of the Pre-design report to the DEPARTMENT for review. At its discretion, the DEPARTMENT may request 60 percent complete design plans for review. Based on receipt of the Pre-design report or the 60 percent complete design plans, the DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans.

D. Prior to advertising for contractor bids, the RECIPIENT will submit two hard copies and one digital copy of the final plans and specifications to the DEPARTMENT's Project Manager for review. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the plans and specifications for consistency with the appropriate design criteria and grant requirements. The RECIPIENT must justify significant deviations from the following:

1. The appropriate guidance manual below depends on the region that your project is conducted:

   Stormwater Management Manual for Western Washington (SWMMWW), or the
   Stormwater Management Manual for Eastern Washington (SWMMEW), both can be found at:
   http://www.ecy.wa.gov/programs/wq/stormwater/tech.html, or the
   Low Impact Development Technical Guidance Manual for Puget Sound found at: http://www.psp.wa.gov/downloads/LID/LID_manual2005.pdf, or equivalent design manuals, or
2. Equivalent manual as developed by the local jurisdiction and approved by the DEPARTMENT.
3. Good engineering practices and generally recognized engineering standards.
4. The project pre-design report.

E. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal to the DEPARTMENT.

F. The RECIPIENT will prepare and submit a projected construction schedule to the DEPARTMENT.

G. The RECIPIENT will submit to the DEPARTMENT a current, updated construction cost estimate and updated project schedule, along with each plans and specifications submittal.

H. The RECIPIENT will submit all pre-design figures and construction plans to the DEPARTMENT, reduced to 11" x 17" in size. The RECIPIENT may bind them with the specifications or related construction contract documents or bound as a separate document. All reduced drawings must be legible.

I. The RECIPIENT will develop and submit an operations and maintenance plan for the stormwater treatment and low impact development (LID) features. The operation and maintenance plan will describe how the RECIPIENT will ensure project success consistent with the design manual used. The operation and maintenance plan must also address long term activities to assure ongoing pollutant removal and flow-control capability of the project. (See the *Stormwater Management Manual for Western Washington* Volume 5, Section 4.6.)

Required Performance:

1. Submit a copy of the signed and dated SEPA determination to the DEPARTMENT.
2. Submit a copy of either: 1) Letter of Concurrence from DAHP; or, 2) the DAHP EZ-1 form, for DEPARTMENT coordination on compliance with Executive Order 05-05.
3. Submit a Pre-design report to the DEPARTMENT.
4. Submit final plans and specifications to the DEPARTMENT, which includes the DEPARTMENT's Bid Specification Clauses inserts found at: http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html

Task 3 – Construction Management

A. The RECIPIENT will provide construction oversight and management of the project.

B. The RECIPIENT will submit a detailed construction quality assurance plan to the DEPARTMENT before the start of construction. This plan must describe how adequate and competent construction oversight will be performed.

C. The RECIPIENT will submit a construction schedule to the DEPARTMENT within 30 days of the start of construction. The construction schedule will be revised and/or updated whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the construction schedule to the DEPARTMENT with the

quarterly report. When changes in the construction schedule affect previous cash flow estimates, revised cash flow projections must also be submitted to the DEPARTMENT.

D. Prior to execution, the RECIPIENT will submit eligible change orders that are a significant deviation from the DEPARTMENT reviewed plans and specifications in writing for DEPARTMENT review and approval for payment. All other change orders must be approved by the DEPARTMENT for technical merit and should be submitted within 30 days after execution. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to the DEPARTMENT for approval.

E. Upon completion of construction, the RECIPIENT will provide to the DEPARTMENT's Project Manager a Stormwater Construction Completion Form signed by a professional engineer, indicating that the project was completed in accordance with the plans and specifications and major change orders approved by the DEPARTMENT's Project Engineer and shown on the Record Drawings. The Stormwater Construction Completion form can be found at: http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html

Required Performance:

1. Submit the project construction quality assurance plan to the DEPARTMENT.
2. Submit the construction schedule to the DEPARTMENT.
3. Submit a signed and dated Stormwater Construction Completion Form to the DEPARTMENT.

Task 4 – Construction

A. The RECIPIENT, in accordance with DEPARTMENT reviewed plans and specifications, will expand and upgrade their existing decant facility, provide source control for stormwater runoff, provide treatment and promote infiltration of stormwater runoff through the installation of a bioretention swale, and install roof downspout infiltration.

B. The RECIPIENT will submit to the DEPARTMENT's Project Manager a copy of the construction contract within 30 days of execution.

Required Performance:

1. Submit a copy of the bid documents (e.g. bid announcement, bid award, bid tabulations) to the DEPARTMENT.
2. Submit a copy of the construction contract to the DEPARTMENT.
3. Construct additional decant bays and additional roof area.
4. Install downspout infiltration systems.
5. Construct a bioretention swale.

PART VI. SPECIAL TERMS AND CONDITIONS

A. Adjusted Construction Budget. The construction budget, as reflected in the agreement, will be adjusted once actual construction bids are received.

If the low responsive responsible construction bid(s) exceed the engineer's estimate of construction costs, the DEPARTMENT may approve, if funding is available and through formal amendment to this agreement, funding increases for up to ten percent of the engineer's original estimate.

If the low responsive responsible construction bid(s) come in lower than the engineer's estimate of construction costs, the DEPARTMENT may reduce the grant amount.

B. Change Orders. If funding is available, the DEPARTMENT may approve, through formal amendment to this agreement, funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s).

C. Documents for Review. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal for DEPARTMENT review.

D. 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.

E. Use of Force Account. In the event the RECIPIENT elects to use its own forces to accomplish eligible project work, the RECIPIENT acknowledges that it has the legal authority to perform the work and adequate and technically qualified staff to perform the work without compromising other government functions. The RECIPIENT must track and report the force account work submitted to the DEPARTMENT for reimbursement.

PART VII. 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.
- Attachment II: 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.

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

IN WITNESS WHEREOF, the parties hereby sign this agreement:

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY	CITY OF REDMOND
10/14/12	9/21/12
KELLY SUSEWIND, P.E., P.G. DATE WATER QUALITY PROGRAM MANAGER	JOHN MARCHIONE DATE MAYOR

Approved As To Form:
Office of the Attorney General

ATTACHMENT I: GENERAL PROJECT MANAGEMENT REQUIREMENTS FOR THE FY 2012 STORMWATER GRANT PROGRAM

ARCHEOLOGICAL AND CULTURAL RESOURCES

The RECIPIENT must comply with all requirements listed in Executive Order 05-05 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 Executive Order 05-05 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 Executive Order 05-05 requirements for the project.

Any ground disturbing activities that occur prior to the completion of the Executive Order 05-05 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

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

FUNDING RECOGNITION

The RECIPIENT must inform the public about DEPARTMENT or the Environmental Protection Agency (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.

MATCHING REQUIREMENTS

Cash Match Requirement. FY 2011 Stormwater Retrofit and LID Competitive grants and FY 2012 Statewide Stormwater Grant Program grants require cash match only.

Interlocal Match Requirement. The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements are consistent with all of the following:

- Terms of this grant agreement.
- The edition of "Administrative Requirements for Ecology Grants and Loans" that is effective at the signing of this agreement.
- Chapter 39.34 RCW Interlocal Cooperation Act.

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.

PAYMENT REQUEST SUBMITTALS

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by the DEPARTMENT's Financial Manager. The DEPARTMENT's Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Supporting Documentation. The RECIPIENT must submit all payment request vouchers and supportive documentation to the DEPARTMENT's Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Required Forms.

Any Match Combination	Cash Only Match	Where Applicable
Form A19-1A (original signature)	Form A19-1A (original signature)	Form E (ECY 060-12)
Form B1 (ECY 060-3)	Form B2 (ECY 060-7)	Form F (ECY 060-13)
Form C1 (ECY 060-8)	Form C2 (ECY 060-9)	Form H (F-21)
Form D (ECY 060-11)	Form D (ECY 060-11)	Form I (ECY 060-15)

Reporting eligible costs. The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Reimbursements. Payments will be made on a cost-reimbursable basis.

POST PROJECT ASSESSMENT

The RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project three years after project completion.

The DEPARTMENT's Water Quality Program Performance Measures Lead will contact the RECIPIENT before the Post Project Assessment date to request this data.

The DEPARTMENT may also conduct site interviews and inspections, and may otherwise evaluate the Project, as part of this assessment.

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 quarterly progress reports to the DEPARTMENT's Financial Manager and Project Manager. Payment requests will not be processed without a progress report.

Reporting Periods.

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

Reporting Due Date. Quarterly progress reports are due 15 days following the end of the quarter.

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.

REQUIRED DOCUMENT SUBMITTALS

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

- Draft project completion reports – one copy
- Electronic copy of final project completion report – one copy
- Final project completion reports – up to three copies
- Final project completion reports of statewide significance – up to 50 copies
- Educational products developed under this agreement – up to two copies
- Documents that require DEPARTMENT Approval – two copies (one for the DEPARTMENT and one for the RECIPIENT)
- Interlocal agreements – one copy for the DEPARTMENT's Financial Manager
- Professional services procurement agreements – 1 copy to the DEPARTMENT's Financial Manager

ATTACHMENT II: GENERAL TERMS AND CONDITIONS PERTAINING TO GRANT AND LOAN AGREEMENTS OF THE DEPARTMENT OF ECOLOGY

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

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

C. THIRD PARTY BENEFICIARY

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

D. CONTRACTING FOR SERVICES (BIDDING)

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

E. ASSIGNMENTS

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

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits. Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.
2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages and Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the state of Washington which affect wages and job safety.

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

G. KICKBACKS

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

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

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

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the state of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends $500,000 or more in a year in Federal funds. The $500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within 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 30 days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer. The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work.

   Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

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

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

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

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

   When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

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

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the

DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:

    a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

    b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include

use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see http://www.ecy.wa.gov/sustainability/.

O. RECOVERY OF PAYMENTS TO RECIPIENT

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

Interest shall accrue at the rate of twelve percent 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.

SS-010 Rev. 04/04