

CONSTRUCTION GRANT  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY,  
OFFICE OF COLUMBIA RIVER (OCR)  
and  
TROUT UNLIMITED, WASHINGTON WATER PROJECT

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology (P.O. Box 47600, Olympia, Washington, 98504-7600), hereinafter referred to as the DEPARTMENT and Trout Unlimited, Washington Water Project., hereinafter referred to as the RECIPIENT to carry out the activities described herein.

RECIPIENT's Legal Address:

Recipient Name: Trout Unlimited, Washington Water Project  
Street Address: 103 Palouse Street, Suite #14  
City, State, Zip: Wenatchee, WA 98801

RECIPIENT's Project Coordinator: Aaron Penvose  
RECIPIENT's Telephone Number: (509) 881-7689  
RECIPIENT's E-mail: apenvose@tu.org

The source of funds provided by the DEPARTMENT will be the **Columbia River Basin Water Supply Development Account**

For the purpose of this agreement, the Project Officer assigned for the DEPARTMENT will be Al Josephy, (360) 407-6456.

Grant Amount: \$1,100,000  
Eligible Project Cost: \$1,100,000  
DEPARTMENT Share: \$1,100,000

The effective date of this grant is November 1<sup>st</sup>, 2010. Any work performed prior to the effective date of this agreement without prior written authorization and specified in the Scope of Work will be at the sole expense and risk of the RECIPIENT. This agreement shall expire no later than June 30, 2014, unless the DEPARTMENT extends the expiration date in writing.

**Trout Unlimited, Washington Water Project / Washington Department of Ecology****Lower Wenatchee Instream Flow Enhancement Project**

**PROJECT DESCRIPTION:** The objective of this project is to assist landowners and agriculturalists, while improving instream flow in the lower 7 miles of the Wenatchee River by up to 15 cubic feet per second. This will be achieved by converting the Pioneer Water User's Association (PWUA) ditch, from an open ditch to an enclosed, pressurized and efficient delivery system. To complete the project there will also be a change in the point of diversion (POD) from the current location, near Monitor, to a location near the confluence of the Wenatchee and Columbia Rivers. The new POD will consist of 2 or 3 wells, which will provide a clean and reliable source of water to pump back upstream to the PWUA shareholders. This project is complex with numerous phases, but some of the main tasks completed under this grant include permitting, the change and trust applications, design and engineering, construction and development of the groundwater source, and construction and material costs associated with replacing nearly 6 miles of open ditch with an enclosed pipe. Trout Unlimited Washington Water Project will work closely with DEPARTMENT throughout the duration of this project to insure thorough coordination.

**PROJECT LOCATION:** The PWUA project is located in the Wenatchee Subbasin (WRIA #45). The PWUA operates the Gunn Ditch adjacent to the Wenatchee River between the cities of Monitor and Wenatchee, Washington. The Pioneer Ditch currently diverts water from the Wenatchee River near the town of Monitor and delivers water through a gravity system to users along the ditch within the place of use of the PWUA water right, which includes areas on the south side of the Wenatchee River within Wenatchee. The proposed project replaces the gravity diversion on the mainstem Wenatchee River with water pumped from the Columbia River near the mouth of the Wenatchee River. The water will be delivered upstream from the new diversion through the new alignment of pressurized pipe. The lands served under PWUA's irrigation system are located in Sections 13 and 14 in Township 23 North, Range 19, E.W.M. and Sections 19, 20, 21, 22, 28, 33 and 34, all in Township 23 North, Range 20, E.W.M.

**WORK PROGRAM:** The RECIPIENT shall comply with the State Environmental Policy Act (SEPA), and shall acquire all federal, state, and/or local permits necessary for this project.

Copies of all permits, plans, specifications, and documentation for compliance with necessary permits related to the project phase will be submitted to DEPARTMENT prior to commencement of construction.

**SCOPE OF WORK:**

**TASK 0: PIONEER WATER USERS ASSOCIATION/ TROUT UNLIMITED AGREEMENT TO TRANSFER WATER SAVED THROUGH THE PROJECT TO THE STATE WATER TRUST**

As a prerequisite to proceeding to Phase One and subsequent tasks, an agreement has been executed between Pioneer Water Users Association (PWUA) and Trout Unlimited (TU) (RECIPIENT) authorizing RECIPIENT to enter into a Trust Water Agreement to transfer 4931.34 acre feet of water per year (see page 4 of 15) to the State Trust Water Right Program for instream flow in the Wenatchee River. In addition, PWUA and TU's agreement outlines obligations for filing change applications for the entire right as desired by PWUA, and as agreed to by TU, concurrently to the Department of Ecology's Office of the Columbia River. As described in the agreement the transfer to trust and any change applications will be submitted within 60 days of signature of this agreement, which occurred on January 10<sup>th</sup>, 2011. The agreement shall be delivered to the DEPARTMENT and appended to this agreement.

The agreement also outlines a number of obligations that must be satisfied before TU is vested with complete authority to implement the project and transfer net water savings to trust. Verification of performance under these obligations is required.

Deliverables: Signed agreement between PWUA and TU assigning authority to RECIPIENT to enter into agreement with DEPARTMENT (Office of the Columbia River) to transfer to the State Water Trust 4931.34 acre feet of water annually in perpetuity from Claim 117629 and Claim 022119. (See Task 2, below).

Letter from PWUA and TU agreeing that all prerequisite obligations to moving forward with the project have been satisfied and that TU is authorized upon project completion to transfer the 4931.34 acre-feet of water into the Trust Water Right Program.

Timeline: December 31, 2011

Budget: \$3,000

**PHASE ONE: PLANNING**

**TASK 1: PROJECT COORDINATION/MANAGEMENT**

1.1: COORDINATION WITH DEPARTMENT: To assist the RECIPIENT and ensure project results are consistent with State Laws and regulations, including the Columbia River Program (CRP), the RECIPIENT, shall coordinate with DEPARTMENT's designated Project Officer. This task will also include coordination with other partners, such as the Pioneer Water Users Association, Washington State Conservation Commission, Washington Department of Fish and Wildlife, United States Fish and Wildlife Service, Bureau of Reclamation and others to insure project coordination and quality assurance.

1.2 1.4 PERMITTING, DESIGN SUPPORT AND TECHNICAL ASSISTANCE. Coordinate with funders and permitting agencies, work with consultant to identify appropriate permits to be acquired and set a schedule for securing permits. Continue work with consultants.

Deliverables:

- Monthly meeting/conference call with DEPARTMENT and stakeholders as appropriate.
- Project Coordination with agencies, partners and landowners as needed
- Monthly Reports detailing project status, coordination activities and progress to date.
- SEPA Compliance Plan

Timeline: Continuous for project coordination, development and construction with monthly update through completion.

Budget: \$40,000. However, this amount is limited to \$15,000 until Task 0, 2, 3 and 4 are completed, unless otherwise approved by Ecology.

• **TASK 2: WATER RIGHTS DUE DILIGENCE AND TRUST TRANSFER –**

2.1 Compile information and conduct water right due diligence sufficient for DEPARTMENT to tentatively determine the extent and validity and the annual consumptive quantity (ACQ) of the water right under RCW 90.03.380. Collect, transcribe data, confirm cfs and calculate irrigated acres and annual quantity served by each shareholder within the PWUA, north of the Wenatchee River. Work with PWUA and shareholders on Water Rights Assessment and due diligence of water right. This will include verification of historic water use under the PWUA place of use. DEPARTMENT will make aerial photographs and Landsat imagery available to the RECIPIENT from its files. Determine return flow quantities and impacted reaches as a result of the pumping water back upstream to users along the lower Wenatchee River.

2.2 Compile all available material for completion of the Washington State Trust Water Right Application and Change in Point of Diversion. It is anticipated that a single application requesting a change in point of diversion, and adding a purpose of use will be required. The DEPARTMENT understands that additional changes to the water right may be necessary to authorize some changes in use that have already occurred. TU will coordinate with the DEPARTMENT to determine how best to address these: either in the application for change for this project, through administrative division of the water right, or other means. Provide a draft Record of Examination in Ecology format<sup>1</sup>. Provide administrative division of water right forms, if necessary. Assist PWUA in information gathering any and all information needed for draft Record of Examination for Point of Diversion Change Application.

2.3: Change to Existing Water Right: RECIPIENT will work directly with DEPARTMENT to finalize the draft Report of Examination for this project; coordinate publication of public notices for the transfer under RCW 90.03.380, and notices for protection of the trust water right under RCW 90.42.040(5); and coordinate with SEPA lead agency to make a threshold determination for environmental impacts associated with the change. DEPARTMENT will utilize materials provided by TU to process an application for change and associated trust authorization.

2.4: Trust Water Conveyance: Trout Unlimited will develop and submit a trust water conveyance in Ecology format (e.g. deed). TU will coordinate with PWUA and the DEPARTMENT to execute the conveyance for transfer to the State Water Trust, but such conveyance shall not become effective until 60

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<sup>1</sup> Exception: Ecology staff will develop any hydrogeologic analysis and provisions.

days after the date of Project Completion. PWUA has agreed to convey to Ecology 4,931.34 acre feet of water for the CRP in return for the funding provided by this grant agreement. This water will be trusted from the current point of diversion, near Monitor to the new Point of Diversion, near Wenatchee. (Appendix) Water trusted shall be made available as follows:

The volume of water available to DEPARTMENT shall be distributed in accordance with the following annual schedule:	Acre Feet	CFS
Month		
April	557.4	10.99
May	742.59	12.08
June	753.14	12.66
July	836.03	13.6
August	841.25	13.68
September	751.95	12.64
October	448.98	12.16
<b>Total</b>	4931.34	N/A

Deliverables:

- TU shall provide the DEPARTMENT with documents necessary to tentatively determine the extent and validity of the water right and the ACQ, as well as water quantities to be transferred to the State Water Trust.
- TU shall provide all documentation of historic use and de-facto changes associated with this project to support the point of diversion change and trust water approval from the state.
- TU shall provide a draft Report of Examination in Ecology format.
- If the DEPARTMENT does not issue a draft Report of Examination within 180 days of the date the applications are filed, TU may file the applications with the Chelan County Water Conservancy Board
- TU shall provide administrative division of water right forms, if necessary.
- TU shall provide the completed Trust Water agreement signed by Pioneer Water Users Association in partnership with Trout Unlimited and DEPARTMENT, including appropriate documents attesting to conveyance agreement for Net Water Savings.
- Following receipt of the deliverables identified herein and compliance with existing laws, the DEPARTMENT shall issue the final Report of Examination. In the event that the DEPARTMENT does not issue said decision within 180 days of receipt of all deliverables in this agreement, TU may co-file the application with the Chelan County Water Conservancy Board and provide the deliverables to the board for processing.
- The DEPARTMENT shall issue a final Report of Examination within 30 days after completion of the required SEPA process.

Timeline: November 1<sup>st</sup>, 2010 - August 20<sup>th</sup>, 2011

Budget: \$17,000

**TASK 3: REGULATORY APPROVALS:**

Perform all required tasks needed to permit the complete project:

3.1: Identify and acquire all applicable local, state, and federal permits. Provide permits and letters from permitting authorities attesting to level of permitting required, or releases from requirements.

3.2: SEPA Permit. Determine scope and lead agency for the SEPA checklist and permit process.

3.3: Develop a list of required permits for use by DEPARTMENT and other stakeholders.

3.4: Submit copies of all permits to DEPARTMENT as they are processed.

Deliverables:

- Permits and letters from permitting authorities, SEPA checklist, permit list, and payment of all permit fees.
- SEPA shall be completed prior to the RECIPIENT receiving a decision on the proposed water right changes described in Task 2.

Timeline: January 1<sup>st</sup>, - November 1<sup>st</sup> 2011

Budget: \$20,000

**TASK 4: CULTURAL RESOURCES STUDY AND FIELD WORK –**

4.1 A Cultural Resources baseline assessment that complies with the requirements of Executive Order 05-05 and that meets the Washington State Department of Archaeology and Historic Preservation (DAHP) Reporting and Documentation Standards for a cultural resources assessment shall be conducted. This assessment must include a detailed background and literature review, correspondence with affected Tribes, and field investigations.

4.2 Field investigations must include a comprehensive field survey, including subsurface testing, of the area of potential effect. Any cultural resources that could be affected by the project must be identified prior to project construction. If required, archaeological monitoring during construction will be conducted. Requirement for this activity will be determined by Ecology following review of the draft Cultural Resources Assessment.

**4.3 Acceptance and approval of the Cultural Resources Assessment is required prior to construction commencement.**

Timeline: March 1<sup>st</sup>, 2011 to April 15<sup>th</sup> 2012

Budget:

Task 4.1 \$5,000

Task 4.2      \$25,000

**PHASE TWO: DESIGN**

**TASK 5: PROJECT DESIGN COMPLETION**

**Note: Project Design is 75% as of the date of signing of this agreement. 90% design review will occur following signing of this agreement.**

5.1: Project Design: The design effort will provide designs, drawings, and cost estimates of the project which includes design of the well field in the Wenatchee area, electrical service and pumps for the wells, collection and distribution piping totaling about 1,500 feet in length to the connection point with the existing ditch system on the north end of an existing pipe trestle over the Wenatchee River. This task includes the design and layout of approximately 25,000 feet of infrastructure improvement, including turnouts, meters etc from the connection point near the trestle to the ditch terminus, near Monitor, Washington.

The design work includes analysis of two potential well field areas, design work on the preferred well field, electrical service, equipment, and piping, preparation of a preliminary construction cost estimate and bid schedule, and analysis of life cycle costs for operation of the well field and piping system for a period of 40 years, with specific concentration on annual pumping cost estimates.

DEPARTMENT will receive design documents at the 30% and bid document stage of development. Documents will include plans, specifications, construction cost estimates and construction schedules appropriate to that level of design.

The final design submittal will include with those items discussed above the form of contract for construction.

Each phase will include at a minimum one design review meeting allowing DEPARTMENT to comment on the completeness of the deliverables associated with that phase of design.

Deliverables: Completed Construction Documents

Timeline:      November 1<sup>st</sup> – June 15<sup>th</sup> 2011

Budget:        \$34,000

**Note: Task 0 through 5, 8.1 and 8.2 will be substantially complete and accepted by DEPARTMENT prior to the commencement of Task 6 and beyond. Approval to proceed beyond Task 5 will also be contingent on demonstration of full funding in place to complete the entire project as described in the introduction to this agreement’s Scope of Work on page 2 of 15.**

**PHASE THREE: CONSTRUCTION****TASK 6: CONSTRUCTION**

6.1: Construction Bid: Upon DEPARTMENT's review and incorporation of DEPARTMENT'S comments regarding the completeness of the of Final Design Documents, RECIPIENT will conduct the construction bid process and select a contractor (or contractors) to complete the project. Contractor selection will be in accordance with Administrative Requirements for Recipients of Ecology Grants and Loans (The Yellow Book) and appropriate RCWs. The RECIPIENT will, at a minimum, complete a competitive process to allow for multiple proposals.

6.2: Initiate construction of approved plans: Install and develop alternate water source from the Columbia River, construct pump house, and approximately 25,000 feet of distribution piping including turnouts, flow restriction orifices, and valves This work will include mobilization, demobilization, contracting, construction oversight, professional services, drilling services, and all labor. This work will include proper installation and alignment of pipe type and size, route selection and alignment, road crossing maintenance and traffic control, turnouts, meter installation, pump and motor installation, and fish screen development.

6.3: Quality control, field inspection, and progress reporting. RECIPIENT will construct the project and will provide at a minimum monthly reports documenting progress, field inspections, and problems encountered, to support invoicing and report progress. Payments during construction will be based on a mutually agreed formula and will be verified in the field by DEPARTMENT technical staff prior to payment.

**Deliverables:**

- Construction Bid Documents.
- Executed Construction Contract including pricing information, exceptions to the construction agreement and the construction schedule.

Monthly construction progress reports will accompany invoices.

Timeline: August 1<sup>st</sup>, 2011 – December 1<sup>st</sup>, 2012

Budget: \$826,000

**TASK 7: PROJECT CLOSEOUT**

7.1: Closeout Inspection and Verification: Demonstration of full operation of the facility as designed. Operation will function at design criteria levels as verified in the field from Construction Document level specifications design drawings.

7.2: Construction Completion Documentation. Two copies of a Final Project report, signed and sealed by a professional engineer licensed in the State of Washington will be submitted to DEPARTMENT. This report will include As-built drawings, final specifications markups, and lien releases from contractor(s) and major vendors. It will also include a declaration, signed and stamped by the engineer, that the project

was, to the best of his/her knowledge, constructed and completed in accordance with the construction plans and specifications and generally accepted engineering/construction practice.

Deliverables:

- Two sets: As-built drawings signed and sealed by a professional engineer licensed in the State of Washington. Include complete electronic copy of same.
- Complete construction closeout documents:
  - As-built drawings,
  - Final specifications markups
  - lien releases from contractor(s) and major vendors.
  - A declaration, signed and stamped by the engineer, that the project was, to the best of his/her knowledge, constructed and completed in accordance with the construction plans and specifications and generally accepted engineering/construction practice.

Timeline: June 1<sup>st</sup> – December 15<sup>th</sup>, 2012 or December 15<sup>th</sup>, 2013, and is dependent on construction starts in 2011 or 2012.

Budget: \$20,000

(2% of the contract amount has been reserved for Closeout)

## **PHASE FOUR: HABITAT IMPROVEMENT**

### **TASK 8: Habitat Improvement Project for Sunnyslope Slough**

Anadromous fish utilize an oxbow/side channel just below Sleepy Hollow Bridge for rearing. This area is also known as Sunnyslope Slough. Return flows maintain water in this channel early in the irrigation season but as summer progresses and water in the Wenatchee River recede, juvenile fish are trapped in the slough. The extreme temperatures and receding water in the slough are lethal to the juvenile salmon. Implementation of the pump exchanged will eliminate the return flows at the slough and exacerbate the situation. Task 8 addresses the elimination of return flows.

8.1: Work with Washington Department of Fish and Wildlife, Yakima Nation, U.S. Fish and Wildlife Service, and the Department of Ecology to improve fish habitat in the Sunnyslope Slough.

8.2: Develop an alternatives analysis and feasibility report that defines options for maintaining fish productivity of Sunnyslope Slough and identify best option for implementation. The report should include but is not limited to the following.

- Identify the outlet of Sunnyslope Slough and the potential water course.
- Identify limitations to fish productivity in the slough and provide solutions. Address flow and temperature issues.
- Identify the flow necessary to maintain year round rearing habitat in the slough.
- Investigate potential physical/technological solutions to maintain water in the slough year round.
- Incorporate upwelling ground water where possible.
- Address land ownership in the project area.

- Investigate the level of habitat restoration acceptable to landowners.

8.3: Finalize design/option with Washington Department of Fish and Wildlife, Yakama Nation, USFWS, and the Department of Ecology.

8.4: Obtain all necessary permits.

8.5: Construction, quality control, field inspection, and progress reporting. TU or agents or assigns will implement the design for improving and maintaining fish productivity and refugia in the Sunnyslope Slough and will provide at a minimum quarterly reports documenting progress, field inspections, and problems encountered, to support invoicing.

Deliverables:

- Quarterly progress reports
- Report, including designs, drawings, and cost estimates of the alternatives. Specific attention will be given to the site hydrology and ensuring coordination with other restoration activities in the area.
- Final Design
- Implementation and monitor preferred alternative for Sunnyslope Slough.
- Final wrap-up report of fish productivity task.

Timeline: Project implementation shall not commence on this task until all deliverables under Task 0 have been satisfied.

June 1<sup>st</sup>, 2011: Report

August 1<sup>st</sup>, 2011: Finalize design, have necessary permits to begin implementation

December 1<sup>st</sup>, 2012: Complete implementation of final design

Budget: \$100,000

Tasks 8.1 through 8.4	Feasibility Report and Project Planning	\$20,000
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Task 8.5	Project Implementation/ Construction	\$80,000
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**PROJECT BUDGET BY TASK**

PHASE	TASK	COSTS
	<b>Task 0: PWUA/ TU Agreement</b>	<b>\$3,000</b>
<b>PHASE ONE</b>	<b>Task 1: Project Coordination/Management</b>	<b>\$40,000</b>
	<b>Task 2: Water Rights/ Trust Transfer</b>	<b>\$17,000</b>
	<b>Task 3: Regulatory Approvals</b>	<b>\$20,000</b>
	<b>Task 4: Cultural Resource Study</b>	
	<b>Task 4.1 Cultural Resource Baseline Assessment</b>	<b>\$5,000</b>
	<b>Task 4.2 Cultural Resource Field Work</b>	<b>\$25,000</b>
<b>PHASE TWO</b>	<b>Task 5: Project Design</b>	<b>\$34,000</b>
<b>PHASE THREE</b>	<b>Task 6: Construction</b>	<b>\$836,000</b>
	<b>Task 7: Project Closeout</b>	<b>\$20,000</b>
	<b>Task 8: Side Channel Habitat Alternatives</b>	<b>\$100,000</b>
	<b>TOTAL</b>	<b>\$1,100,000</b>

**SCHEDULE**

**This schedule assumes a fall of 2011 construction start date, if construction is delayed to 2012, all scheduled tasks and associated timeline will be postponed accordingly**

TASK		START	COMPLETE
<b>Task 0:</b>	<b>PWUA/ TU Agreement</b>		<b>1/10/2011</b>
<b>Task 1:</b>	<b>Project Coordination/Management</b>	<b>N/A</b>	<b>1/31/2013</b>
<b>Task 2:</b>	<b>Water Rights/ Trust Transfer</b>	<b>1/1/2011</b>	<b>8/20/2011</b>
<b>Task 3:</b>	<b>Regulatory Approvals</b>	<b>1/1/2011</b>	<b>11/1/2011</b>
<b>Task 4:</b>	<b>Cultural Resource Study</b>		
	<b>Task 4.1 Cultural Resource Baseline Assessment</b>	<b>3/1/2011</b>	<b>8/1/2011</b>
	<b>Task 4.2 Cultural Resource Field Work</b>	<b>8/15/2011</b>	<b>4/15/2012</b>
<b>Task 5:</b>	<b>Project Design</b>	<b>11/1/2010</b>	<b>6/15/2011</b>
<b>Task 6:</b>	<b>Construction</b>	<b>8/15/2011</b>	<b>12/1/2012</b>
<b>Task 7:</b>	<b>Project Closeout</b>	<b>6/15/2012</b>	<b>11/15/2012</b>
<b>Task 8:</b>	<b>Side Channel Habitat Alternatives</b>	<b>3/1/2011</b>	<b>12/1/2012</b>

2/1/2011-1/31/2013 Manage and administer project, including working with the Department of Ecology and other agencies on all aspects of the project design, project coordination, project implementation and closeout.

1/1/2011-11/1/2012 Work with funding and permitting agencies to complete required permitting and requirements prior to initiating construction

3/15-8/15 2012 Coordinate with PWUA and shareholders prior to construction, communicate with PWUA board and shareholder base to inform them on what to expect during construction of the project

6/15/2011- 11/15/2011 Work with Engineer and sub-contractor to order and stage pipe, place order of pipeline design inventory and prepare staging areas in preparation for pipeline construction

7/15/2011 – 9/15/2011 Work with consultant, contractors and project manager to outline project timeline. Mobilize construction contractors and begin construction.

9/1/2011- 12/15/2011 Install Pump Station, Housing, Screening for new Diversion on Columbia River. Upon completion of approved change in point of diversion from Washington Department of Ecology, TU and contractors will begin development and construction of the new point of diversion on the Columbia River. This work will include installation of a new cone screen (approved by NMFS and WDFW), connection pipeline from the fish screen to pump house, which will contain two ~ 250hp pumps for redundancy and all mechanical and electrical components for operating the new system. This phase also includes construction of the initial 5,000 feet of pipeline from Confluence State Park to the end of Horan Road in Wenatchee.

11/15/2011-4/15/2012 Convert approximately 25,000 linear feet of unlined canal to pressurized pipeline, connect to 5,000 linear feet of transmission pipeline, connection to or modify existing roadway crossings and siphons, installation of service connections at existing irrigation delivery points, and installation of water control and devices to each turnout.

SPECIAL TERMS AND CONDITIONS

A. PAYMENTS TO THE RECIPIENT

Request for reimbursement for development and administrative costs shall be submitted Monthly by the RECIPIENT on a state invoice form (A19-1A, Form A) provided by the DEPARTMENT. All requests for payment shall be consistent with the budget tasks as listed in the budget section of this agreement with sufficient supporting detail identifying total project costs, reimbursement requested from the DEPARTMENT. The DEPARTMENT shall pay the RECIPIENT no later than 30 days after receipt of a properly completed request for payment

B. FINANCIAL GUIDELINES

The RECIPIENT shall comply with the DEPARTMENT's current edition of the "Administrative Requirements for DEPARTMENT Grants and Loans" (DEPARTMENT publication number 91-18). The RECIPIENT shall be responsible for maintaining appropriate financial records throughout the life of the project and in accordance with these guidelines.

C. NET WATER SAVINGS

RECIPIENT agrees that an instantaneous quantity 13.68 cfs and an annual total of at least 4,931.34 acre feet of water saved by this project will be made available by the RECIPIENT as required under RCW 90.90.

By this agreement, the RECIPIENT shall convey the net water savings each year to the DEPARTMENT. The conveyance shall be submitted according to the schedule for Task 2, but shall not become effective until 60 days after the end of project construction. Conveyance of title shall be made in a manner acceptable to the DEPARTMENT.

D. PERMITS

All permits required for the completion of the project funded under this grant shall be the responsibility of the RECIPIENT. It shall further be the responsibility of the RECIPIENT to plan for the timely acquisition of all permits required. Reimbursement for monies spent on this project shall be dependent on the RECIPIENT demonstrating to the DEPARTMENT'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. The DEPARTMENT will cooperate and assist, where appropriate, in obtaining said permits.

E. MINORITY AND WOMEN'S BUSINESS (MWBE) 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 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 shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, 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.

F. REPORTS

The RECIPIENT shall prepare and send the following reports to ECOLOGY:

1. The RECIPIENT will submit a Quarterly Project Report on project accomplishments and efforts. The Quarterly Project Report will be submitted with each payment request. The recipient will report progress, issues encountered, resolutions and budget status by task.
2. This Agreement includes reporting requirements for new jobs created or existing jobs retained as a result of this funding. The RECIPIENT is required to include this information in each progress report in the form of a table in the report form. All new jobs created and filled or old jobs retained during the reporting period must be reported to DEPARTMENT for each invoicing period. This should include all jobs similarly created or retained by contractors associated with the work. RECIPIENT is

advised to avoid double counting from period to period, and report only new activity for each period.

Please do not include social security numbers, gender or immigration status when reporting this information.

3. When the project is complete, the recipient will submit a Final Programmatic Report. This report must summarize the accomplishments achieved during the term of the Agreement. Submit digital photos showing the various project phases as part of the report. The RECIPIENT shall provide three (3) printed copies and an electronic copy of the Final Programmatic Report to the DEPARTMENT.

The recipient will submit all required reports as indicated in the Scope of Work or the Special Conditions to this Agreement. Copies of the suggested report forms for progress reporting as well as the Final Programmatic Report is included as an attachment.

#### G. TERMINATION

Either party may terminate this Agreement upon 30 days prior written notification to the other party. 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, plus reasonable cancellation charges for construction termination, if applicable.

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 30 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.



ATTACHMENTS

Monthly/ Quarterly Progress Report

WASHINGTON STATE DEPARTMENT OF ECOLOGY  
OFFICE OF THE COLUMBIA RIVER  
MONTHLY/QUARTERLY PROGRESS REPORT

Agreement# G1000xxx

WRIA # 30

Title:

Recipient:

Start Date:

End Date:

Please circle applicable quarter:

JUL – SEP

OCT – DEC

JAN – MAR

APR – JUN

**I. A description of work performed throughout the quarter including estimated percent complete. Please be specific and detailed:**

Task #1: *(Add title and description of work accomplished by task)*

Task #2: *(etc.)*

**II. Status of project schedule**

A. **Overall % complete** *(Add description (we are ahead of schedule and why, or we are behind schedule and why)).*

**III. Personnel notes:**

**IV. Any difficulties encountered during the quarter**

**V. Financial and funds disbursement status**

	<b>Current Period</b>	<b>Project to Date</b>
Salaries		
Benefits		
Overhead		
Contracted Services		
Goods/Services		
Travel		
Equipment		
<b>Total</b>		

**VI. Jobs Report**

{PROJECT TITLE}						
{JOB LOCATION}						
(REPORTING PERIOD)						
Employer Name	Employee last name	Employee first name	Job Title	Hire Date	Hours Worked this Period	

**GENERAL TERMS AND CONDITIONS****Pertaining to Grant and Loan Agreements of  
the Department of DEPARTMENT****A. RECIPIENT PERFORMANCE**

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

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

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

**C. THIRD PARTY BENEFICIARY**

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

**D. CONTRACTING FOR SERVICES (BIDDING)**

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

**E. ASSIGNMENTS**

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

**F. COMPLIANCE WITH ALL LAWS**

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

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

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

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

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

**G. KICKBACKS**

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

**H. AUDITS AND INSPECTIONS**

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

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

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

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

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

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

**I. PERFORMANCE REPORTING**

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

**J. COMPENSATION**

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

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for DEPARTMENT 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 thereunder and/or terminate this agreement by giving written notice of termination.

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

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

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

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

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

**L. WAIVER**

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

**M. PROPERTY RIGHTS**

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

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

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

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for DEPARTMENT 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..](http://www.ecy.wa.gov/sustainability..)

#### **O. RECOVERY OF PAYMENTS TO RECIPIENT**

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

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

#### **P. PROJECT APPROVAL**

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

#### **Q. DISPUTES**

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

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized

representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**R. CONFLICT OF INTEREST**

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

**S. INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

**T. GOVERNING LAW**

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

**U. SEVERABILITY**

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

**V. PRECEDENCE**

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