

CONSTRUCTION GRANT
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY,
OFFICE OF COLUMBIA RIVER
and
THE BARKER RANCH, LTD

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 the Barker Ranch Ltd., hereinafter referred to as the RECIPIENT to carry out the activities described herein.

RECIPIENT's Legal Address:

Recipient Name: The Barker Ranch, Ltd.
Street Address: 85305 Snively Road
City, State, Zip: West Richland, WA 99353

RECIPIENT's Project Coordinator: Michael Crowder
RECIPIENT's Telephone Number: (509) 967-3023
RECIPIENT's E-mail: barkerranch@verizon.net

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: \$5,600,000
Eligible Project Cost: \$5,600,000
DEPARTMENT Share: \$5,600,000

The effective date of this grant is November 1, 2008. 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 December 31, 2010, unless the DEPARTMENT extends the expiration date in writing.

SCOPE OF WORK:

The Barker Ranch / Washington Department of Ecology

Horn Rapids Canal Piping Project

Scope of Work

PROJECT DESCRIPTION: Convert the Horn Rapids Canal from an open ditch to a closed pipe system. This will include the permitting, design, and construction of approximately 3.06 miles of closed piping capable of carrying water flows of approximately 62 cubic feet per second.

PROJECT LOCATION: Horn Rapids Canal is in Benton County, Washington starts at the Wannawish (Horn Rapids) Dam and runs approximately 3.06 miles to Barker Ranch.

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 will be submitted to Ecology prior to commencement of construction.

TASK 1: PROJECT COORDINATION/MANAGEMENT

1.1: COORDINATION WITH ECOLOGY: To assist the RECIPIENT and ensure project results are consistent with State Laws and regulations, including the CRWMP, the RECIPIENT, shall coordinate with Ecology: Al Josephy and Rick Roeder.

Deliverables: Monthly meeting/conference call with Ecology.

Timeline: November 1, 2008 - December 31st, 2010

Budget: \$183,900

TASK 2: REGULATORY APPROVALS:

Perform all required tasks needed to permit the complete project:

2.1: 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.

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

2.3: Develop a list of required permits for use by Ecology and other stakeholders.

2.4: Submit copies of all permits to Ecology

Deliverables: Permits and letters from permitting authorities, SEPA checklist, permit list, and payment of all permit fees.

Timeline: February 9th, 2009 - April 19th, 2009

Budget: \$12,650

TASK 3: CULTURAL RESOURCES ASSESSMENT

A Cultural Resources review will be conducted in accordance with WA State Historical and Preservation Office including: identifying conditions or circumstances that would impact the success of the project. Recipient will assure that this study is carried out to comply with the requirements of The Governor's Executive Order 05-05, Archaeological and Cultural Resources.

Deliverables: The Cultural Resource Assessment will be completed and delivered to Ecology prior to the commencement of construction,

Timeline: February 9th, 2009 - April 19th, 2009

Budget: \$15,000

TASK 4: PROJECT DESIGN:

4.1: Develop preliminary and final design documents for the proposed pipeline project (design documents may be phased to include a schematic design, detail design, and final construction bid set). Basic design criteria including flow requirements should be outlined in a document made available with the preliminary design submittal to Ecology.

Each design phase will be accompanied with cover documents (transmittal describing the documents) and a construction budget appropriate to that phase of design. Document reviewers (permit agencies, Ecology) will be given 15 working days to review and comment on the documents.

The final design submittal will be accompanied with a Design Specification specifying materials and standards required for completion of the construction of the project.

The construction documents will include bid drawings and final specifications, an engineer's "best estimate of costs", and a copy of the general requirements of the bidder.

Each phase will include at minimum one design review meeting allowing Ecology to comment on the completeness of the deliverables associated with that phase of design. 3.2: Bidding: Upon Ecology's approval of Final Design Documents, Barker Ranch will conduct 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). The RECIPIENT will, at a minimum, complete a competitive process to allow for multiple proposals.

Deliverables:

Two copies each: Preliminary Plan and Final Plan including all supporting documentation signed and sealed by a professional engineer licensed in the State of Washington.

Construction Contract including pricing information, exceptions to the construction agreement and a construction schedule

Timeline: February 9th, 2009 - April 19th, 2009

Budget: \$164,450

TASK 5: CONSTRUCTION

5.1: Initiate construction of approved plans: Install approximately 3.06 miles of pipeline and necessary appurtenants including but not limited to: Sediment traps, trash racks, fencing, gates, access road improvements, outlet piping, and connections to water metering system.

5.2: Quality control, field inspection, and progress reporting. Barker Ranch and/or its agents or assigns will construct the project and will provide at a minimum monthly reports documenting progress, field inspections, and problems encountered, to support invoicing. Payments during construction will based on Barker Ranch reports on percent complete and will be verified in the field by Ecology technical staff prior to payment.

Deliverables: Construction Contract including pricing information, exceptions to the construction agreement and a construction schedule. Monthly reports will be produced and sent to Ecology.

Two sets: As-built drawings signed and sealed by a professional engineer licensed in the State of Washington.

Timeline: April 19th, 2009 – August 31st, 2009

Budget: \$5,000,000

TASK 6: PROJECT CLOSEOUT AND TRUST WATER CONVEYANCE

6.1: 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.

6.2 Trust Water Conveyance: Ecology will perform the final assessment of Net Water Savings at this stage of the project. Barker Ranch and Ecology will develop the Trust Agreement and conveyance agreement for the water to go to Trust within 60 days of the date of Project Completion.

Barker Ranch has agreed to convey to Ecology an annual total of 6,435.5 acre feet of water for the CRWMP in return for 100% funding of the Horn Rapids Canal Piping project.

The volume of water available to Ecology shall be distributed in accordance with the following annual schedule:	Acre Feet	CFS
Month		
January	645.6	10.5
February	541.5	9.75
March	291.6	4.74
April	208.3	3.50
May	520.7	8.47
June	520.7	8.75
July	520.7	8.47
August	645.6	10.50
September	624.8	10.50
October	645.6	10.50
November	624.8	10.50
December	645.6	10.50
Total	6435.5	N/A

(4% of the overall construction budget has been reserved for Project Closeout.)

Deliverables:

Two copies of a Final Project report, signed and sealed by a professional engineer licensed in the State of Washington will be submitted to Ecology. 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: Completed Trust Water agreement signed by Baker Ranches and Ecology, and appropriate documents attesting to conveyance agreement for Net Water Savings.

Timeline: August 31st, 2009 – October 31st, 2009

Budget: \$224,000

PROJECT BUDGET BY TASK

TASK	COSTS
Task 1: Project Coordination/Management	\$183,900
Task 2: Regulatory Approvals	\$12,650
Task 3: Cultural Resources Assessment	\$15,000
Task 4: Project Design	\$164,450
Task 5: Construction	\$5,000,000
Task 6: Project Closeout And Trust Water Conveyance	\$224,000
TOTAL	\$5,600,000

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 Ecology Grants and Loans" (Ecology 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

In consideration for receiving funding the RECIPIENT agrees to permanently convey to the DEPARTMENT a portion of the net water savings (or "water supplies") that results from any projects constructed under this grant. Net water savings (from "conservation" projects) shall be conveyed into the Trust Water Rights Program., pursuant to RCW 90.38.030 or 90.42.030, for use by the DEPARTMENT in accordance with Chapter 90.90 010 (4) RCW.

The portion of the net water savings or "water supplies" that the RECIPIENT shall convey to the DEPARTMENT or to the Trust Water Rights Program (Chapter 90.42 RCW), shall be at least equal to the total percent cost share the RECIPIENT receives from the Program (Chapter 90.90.010 (4), or Chapter 90.90.020 (1) RCW).

For example, if the RECIPIENT receives 25% of the total project cost (feasibility study and construction) from the DEPARTMENT; the RECIPIENT shall permanently convey to the DEPARTMENT, 25% of the net water savings or "water supplies" each year. If the RECIPIENT receives from the Program 100% of the total project cost (feasibility study and construction) the RECIPIENT shall permanently convey to the DEPARTMENT 100% of the net water savings or "water supplies" each year

The RECIPIENT shall convey the net water savings each year to the DEPARTMENT within 60 days of the end of project construction, in a manner acceptable to the

DEPARTMENT. Net Water Savings from this project are estimated to be 6435.5 acre feet per year.

The RECIPIENT shall not place any conditions on the usage of this water when conveying it to TRUST. The DEPARTMENT shall determine the net water savings pursuant to guidelines established by the DEPARTMENT in accordance with RCW 90.42.050. Conveyance shall be effected using documents as required by 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:

The RECIPIENT will submit a Quarterly Project Report on project accomplishments and efforts. . The recipient will report progress, issues encountered, resolutions and budget status by task.

When the project is finished, 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 per the schedule in the Scope of Work.

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.

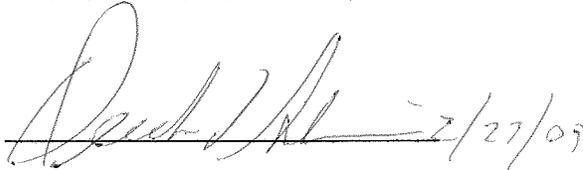
If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given 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.

H. ALL WRITINGS CONTAINED HEREIN

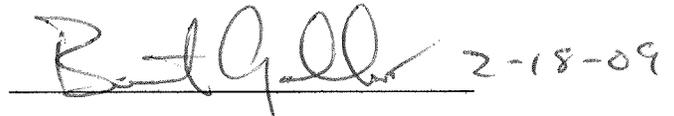
This agreement and the appended "General Terms and Conditions," the DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans," contains the entire understanding between the parties, and there are no other understandings or representations set forth or incorporated by reference. No subsequent modification(s) or amendment(s) of this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT, and made a part of this agreement.

IN WITNESS WHEREOF, the parties hereby execute this grant:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


_____ 2/27/09

Derek Sandison **Date**
OFFICE OF THE COLUMBIA RIVER
DEPARTMENT OF ECOLOGY


_____ 2-18-09

Bart Gallant **Date**
PRESIDENT
BARKER RANCH, LTD.

Approved as to form only by
Assistant Attorney General.

TAX ID# 91-1644514

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.

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

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

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

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

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

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

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g. recycled paper). For more information, see www.ecy.wa.gov/sustainability..

O. RECOVERY OF PAYMENTS TO RECIPIENT

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

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

P. PROJECT APPROVAL

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

Q. DISPUTES

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

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

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

R. CONFLICT OF INTEREST

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

S. INDEMNIFICATION

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

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

T. GOVERNING LAW

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

U. SEVERABILITY

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

V. PRECEDENCE

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