

ECOLOGY GRANT No. G0900153 between the
 STATE OF WASHINGTON DEPARTMENT OF ECOLOGY,
 and
 KLICKITAT COUNTY NATURAL RESOURCE DEPARTMENT

THIS is a binding agreement between the State of Washington, Department of Ecology, referred to as DEPARTMENT and the Klickitat County Natural Resource Department, referred to as the RECIPIENT to carry out the activities described in this agreement.

RECIPIENT's Legal Address:

Recipient Name: Klickitat County
 Street Address: 228 West Main Street, MS-CH-37
 City, State, Zip: Goldendale, Washington 98620

RECIPIENT's Project Coordinator: Dave McClure
 RECIPIENT's Telephone Number: (509) 773-2481
 RECIPIENT's E-mail: DaveM@co.klickitat.wa.us
 RECIPIENT's Billing Contact: Dave McClure
 RECIPIENT's Telephone Number: (509) 773-2481
 RECIPIENT's Fax Number: (509) 773-xxxx

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

DEPARTMENT 's Project Coordinator: Al Josephy
 DEPARTMENT 's Telephone Number: (360) 407-6456
 DEPARTMENT's E-mail: ajos461@ecy.wa.gov

Grant Amount: \$170,000.00
 Eligible Project Cost: \$170,000.00
 DEPARTMENT Share: \$170,000.00

The effective date of this grant is January 1, 2009. 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:

WRIA 31 Pre-Feasibility Storage Assessment

PROJECT DESCRIPTION: Evaluate the feasibility of siting and/or constructing water storage options for WRIA 31.

PROJECT LOCATION: Water Resource Inventory Area 31 (WRIA 31)

WORK PROGRAM:

Many water supply and conveyance concepts have been developed at the conceptual level for WRIA 31. In this project the focus will be to compile these into one list and evaluate the feasibility of actually completing one or more of these projects. The primary focus of this list will be regional water supply and storage projects that provide water to the northern portion of Horse Heaven, which currently relies on groundwater for over 20,000 acres of irrigated agriculture. The sustainability of irrigated agriculture reliant on groundwater is threatened due to depletion of the resource. Secondary focus will be on opportunities for increased productivity through irrigation of additional acreage currently in dry land farming, or, as may be needed as a consequence of climate change. New water storage in the Horse Heaven can also potentially provide additional water for holders of interruptible water rights along the Columbia River and for diversion in other WRIsAs downstream on the Columbia River.

Task 1 –Project Administration and Performance Coordination:

1.1 Detailed Work Plan: In consultation with the WRIA 31 Water Resource Planning and Advisory Committee (the Committee), develop detailed scope of work and schedule.

1.2 Project Administration: Perform project management and grant administration, to include quarterly reporting, billing, technical consultant contract administration, project oversight and coordination, and project completion report.

1.3 Performance Coordination: To assist the RECIPIENT and ensure project results are consistent with State laws and regulations, including 90.90 RCW, the RECIPIENT, shall coordinate with Ecology: Al Josephy or Rick Roeder.

Deliverable(s):

FY 09:

Detailed Work Plan
Quarterly reports

FY 10:

Quarterly reports
Project completion report

Estimated Cost:

FY 09: \$10,000.

FY 10: \$7,000

Due Date(s):

FY 09:

Detailed Work Plan: within two months from the grant effective date.

Quarterly Reports: quarterly from date of grant effective date until June 30, 2009.

FY 10:

Quarterly Reports: quarterly from July 1, 2009 though the end date of the grant.

Project completion report: 30 days from the end date of the grant.

Task 2 – Identify Range of Water Storage Project Alternatives

2.1 Compile and review existing information and reports on water storage in WRIA 31. A list and summary of applicable water storage project alternatives will be developed and presented to the Committee. The list of alternatives will consider conveyance and storage strategies considered in concept studies conducted to date.

2.2 Incorporate instream benefit evaluation: Many of the water supply and conveyance concepts developed to date do not address instream benefits beyond those that would be achieved by changing the timing of water diversions to periods of relatively high stream flow. Therefore, another focus of this task will be incorporating a broader instream benefit dimension in the list of water storage concepts. This may include such considerations as stream flow augmentation and/or creation of thermal refugia.

Deliverable(s):

FY 09:

Storage Summary Memo identifying a range of water supply and storage project alternatives.

Estimated Cost:

FY 09: \$17,000.

FY 10: \$0

Due Date(s):

FY 09: June 30, 2009.

Task 3 - Water Supply and Demands

3.1: Identify current and future water demands: Working with the Committee and other stakeholders, current and future water demands will be identified and quantified. In accordance with the Watershed Management Plan, this includes increased supplies for out-of-stream demands (e.g., irrigation) and instream demands (e.g., increased flow and

reduced temperature in tributary streams that are listed as critical habitat, reduce temperature in the Columbia River mainstem).

3.2 Identify current and potential supply: Working with the Committee and other stakeholders, current and future water supplies will be identified and quantified. This will rely heavily upon the work completed in TASK 2.

3.3 Comparison of Supply and Demand: Existing demands and potential demands will then be compared with the potential water supply and storage projects identified in Task 3.2.

Water supply availability will be identified, as well as potential limitations to use (seasonal, drought year). The volume of water required will be estimated and compared to the potential timing of pumping from the Columbia River. Estimates of water storage volumes required to meet demands under a seasonal pumping scheme will be prepared.

Deliverable(s):

FY 09: Supply/Demand Summary Memo describing potential water availability and supply to regional system compared to potential water demands.

Estimated Cost:

FY 09: \$27,000

FY 10: \$0

Due Date(s):

FY 09: June 30, 2009

Task 4 - Preliminary Screening of Alternatives

Key natural resource element, potential limitations, and/or "fatal flaws" associated with each alternative storage project will be identified. This will be accomplished by:

4.1 Inventory: Natural resource elements and the geologic setting associated with potential storage areas and alternatives will be inventoried. This baseline assessment will include the compilation of available information and review of the following elements:

- Topography (USGS 7.5-minute Topo)
- Geo-rectified aerial photos
- Critical areas including National Wetland Inventory maps (USFWS)
- Streams
- Priority Habitats and Species (WDFW)
- Hydrologic conditions (stream flow, run-off, instream flow needs)
- Shallow hydrogeologic conditions and surface water – groundwater interaction
- Hydrogeologic conditions for Aquifer Storage and Recovery
- Geologic mapping and available geotechnical reports
- Fish habitat reports
- Climate change reports

4.2 GIS: Construct a GIS database to manage the data sets and identify key natural resources elements, potential limitations and/or “fatal flaws” associated with each alternative storage project area.

4.3 Identification of screening criteria: The relative attributes of each of the potential water storage alternatives will be compared utilizing a set of initial screening criteria. These Criteria will be assembled with input from the Committee and must include the requirements of Chapter 90.90 RCW. Criteria will likely include items such as increased or more reliable water supply, augmenting aquifer levels, and improving instream habitat or water quality conditions. The specific screening criteria for this comparative analysis will be developed with the Committee prior to their use in the initial or screening evaluation of the different project alternatives.

The screening criteria will also contain a ranking of implementation factors such as cost, the implementation complexity (permitting, land ownership, water rights, funding, etc) and technical complexity (geotechnical, hydrologic, or civil engineering issues).

4.4: Alternatives Analysis: The initial screening criteria will then be applied to each of the project alternatives. The initial screening criteria will be evaluated with the Committee to ensure agreement on the project alternatives. A summary document will be prepared that lists and describes the potential storage project alternatives, summarizes the results of the screening criteria and ranks the projects from high priority to low priority. The information will be presented in a public workshop and refined as needed to guide the assessment described in the next subtasks. The outcome of this task will be selection of one or more water storage alternative(s) to be carried forward for more detailed feasibility evaluation (Task 5).

Deliverables:

FY 09:

Initial Screening Criteria

FY 10:

Minutes/Notes Documenting Mid-Project Workshop
 Screening Summary Memo describing screening and priority ranking the alternative storage projects

Estimated Cost:

FY 09: \$19,000

FY 10: \$15,000

Due Date(s):

FY 09: Initial Screening Criteria: June 30, 2009

FY 10:

Workshop Minutes/Notes: August 30, 2009

Screening Summary Memo: August 30, 2009

Task 5 – Analysis of Preferred Alternative(s)

The preferred water storage alternative(s) (and, if necessary, a variant of the preferred alternative – e.g. surface versus groundwater storage component) will be further developed and evaluated in this task. The project will be developed into enough detail to quantify the benefits of the project alternative, and the planning/feasibility-level cost, the potential environmental issues and impacts that would need to be addressed in a detailed feasibility study, and potential implementation funding for the project if pursued. A detailed feasibility study of the preferred alternative(s) would be conducted as a subsequent project.

Task 5.1: Resource Evaluation

A detailed assessment of the natural resource elements of the potential storage project or areas, including but not limited to:

- Topography and ground cover
- Groundwater –surface water interaction
- Habitat conditions
- Hydrologic conditions (stream flow, run-off, instream flow needs)
- Shallow hydrogeologic conditions
- Deep hydrogeologic conditions

A site reconnaissance will be completed to field-verify the natural resource elements identified in Task 4 and 5.1. An impacts analysis of the storage option will be completed following the field reconnaissance and updating of the GIS database. Potential impacts will be evaluated using the GIS database and overlaying of the preferred storage project footprint.

Task 5.2: Planning-Level Engineering Evaluation

A review of geologic information and geotechnical engineering requirements will be performed, a preliminary layout of the water storage project features provided, and a planning-level cost estimate prepared. A preliminary layout of project facilities will be prepared using best available mapping. The layout of a surface storage alternative can show the preliminary locations of facilities such as pumping stations, pipelines, use of existing infrastructure, canals, laterals and reservoirs. For a subsurface storage (ASR) alternative, a literature review and preliminary hydrogeologic evaluation would be conducted to identify potential locations for Ranney collectors within the Columbia River gravels, with the assumption that bank filtration may provide most or all of the necessary water quality treatment to allow for subsurface recharge of the pumped water.

Project features will be preliminarily sized in order to prepare the cost estimate. The cost estimate will be prepared using best estimates of materials and unit prices from similar projects near the project area. Evaluation of potential phasing of storage project construction to meet project future demands (e.g., climate change impacts) can also be considered.

Estimates of the long-term operation & maintenance cost will also be provided, as often the operating cost of a project is a key factor in deciding whether to implement it. Issues relating to design, construction or permitting of the project will be identified. The potential water yield of the project will be described for both average conditions and drought conditions.

Task 5.3: Storage System Administration/Management

This task will identify alternatives for the administrative aspects of constructing and overseeing the long-term operations and maintenance of a regional water storage project. For an ASR alternative, the Committee may consider establishment of a groundwater management area under RCW 90.44.400, in consultation with Ecology. This may provide a regulatory mechanism to establish a specific aquifer zone designated for irrigation supply, not drinking water supply, as the highest beneficial use, and potentially provide a means to address ASR source water compliance issues with the state groundwater quality standards (anti-degradation policy) under chapter 173-200 WAC. Consideration of a groundwater management area for the Horse Heaven is a recommended action in the WRIA 31 Watershed Management Plan.

Task 5.4: Environmental Overview

This task will identify the potential environmental effects and associated regulatory elements of the preferred water storage project or areas, for example:

- SEPA/NEPA
- Permitting
- Water rights
- Instream flow
- Water quality
- ESA
- Archeological review

An early environmental analysis of the preferred water storage alternative will be completed to incorporate environmental information into the decision-making process. The environmental analysis will evaluate key environmental benefits and negative impacts associated with the preferred water storage project(s). A technical memorandum that identifies key environmental issues (benefits and negative impacts) associated with the preferred storage project(s) will be prepared. The memorandum will include a brief description of the project(s), summary description of the key environmental issues and identification of potential mitigation measures.

A matrix will be created to identify the probable local, state, and federal permits and regulatory approvals that would be required for project implementation. The matrix will contain the permit type, permit timeline, applicability, and regulatory agency, and notes on the feasibility of acquiring said permits.

Task 5.5: Water Storage Appraisal Report

For this subtask, the information obtained in Tasks 5.1-5.4, along with input received from a public meeting held near the end of the process, will be compiled into a Water Storage Appraisal Report. The report will summarize the screening of project alternatives and define the concept and general scale of a preferred water storage alternative(s) that best meets the Planning Unit goals and objectives for the Horse Heaven.

The report will contain recommendations for additional work needed to further determine the feasibility of a preferred water storage alternative(s) to a level of detail required for agencies to consider for funding. A draft report will be prepared for Committee, Ecology, and public review. Comments received will be incorporated into a final report.

Deliverables:

FY 10:

Minutes/Notes Documenting Project Workshop
Draft and Final Water Storage Appraisal Reports, summarizing the work completed for Tasks 5.1 – 5.5.

Estimated Cost:

FY 09: \$0

FY 10: \$75,000

Due Date(s):

FY 10: All Task 5 Deliverables: December 31, 2010

BUDGET BY TASK

TASK	BUDGET
Task 1: Detailed Work Plan and Project Administration	\$17,000
Task 2: Identify Range of Water Storage Alternatives	\$17,000
Task 3: Water Supply and Demands	\$27,000
Task 4: Preliminary Screening of Alternatives	\$34,000
Task 5: Evaluation of Preferred Alternative and Reporting	\$75,000
PROJECT TOTAL	\$170,000

SPECIAL TERMS AND CONDITIONS

A. PAYMENTS TO THE RECIPIENT

Request for reimbursement for development and administrative costs shall be submitted Quarterly 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 each year to the DEPARTMENT a portion of the net water savings (or "water supplies") that results from any projects which are evaluated in this study and are ultimately constructed by the RECIPIENT. 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.

If a project identified in this study is constructed by the RECIPIENT, 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.

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 affected 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.

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 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 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 Quarterly Project Report will be submitted with each payment request. 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.

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 15 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

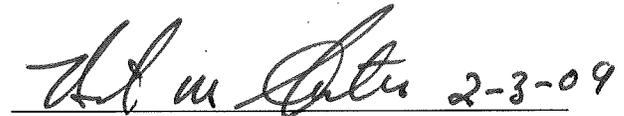
This agreement and the appended "General Terms and Conditions," the DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans," contains the entire understanding between the parties, and there are no other understandings or representations set forth or incorporated by 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.

The parties sign this grant:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

KLICKITAT COUNTY

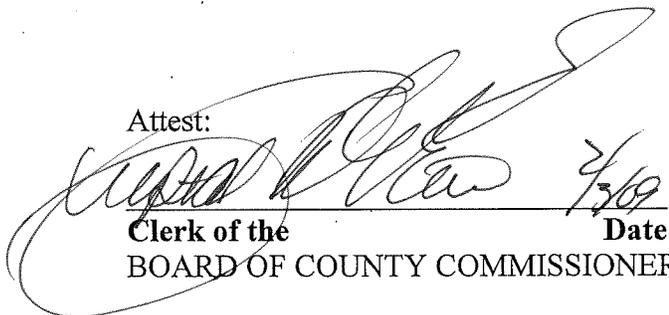
 2/12/09

 2-3-09

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

Chairman **Date**
BOARD OF COUNTY COMMISSIONERS

Attest:

 2/3/09
Clerk of the **Date**
BOARD OF COUNTY COMMISSIONERS

Approved as to form only:

 2/2/09
Timothy O'Neill **Date**
PROSECUTING ATTORNEY

Tax ID Number: 91-6001350

Approved as to form only by
Assistant Attorney General.

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 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 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 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.

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