



Agreement No. G1400367

SHORELINE MASTER PROGRAM GRANT AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF PASCO

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" or "DEPARTMENT" and the City of Pasco hereinafter referred to as the "RECIPIENT" to carry out activities described herein.

GENERAL INFORMATION

Project Title:	Comprehensive SMP Update for the City of Pasco
Total Cost:	\$ 125,000
Total Eligible Cost:	\$ 125,000
Eligible Ecology Share <i>this biennium</i> :	\$ 100,000
Recipient Share:	\$0
Funding Source:	State: Environmental Legacy Stewardship Account (ELSA)
The Effective Date of this Agreement is:	July 1, 2013
The Expiration Date of this Agreement is no later than:	June 30, 2015
Project Type:	Planning
Project Short Description:	Comprehensive Shoreline Master Program Update for the City of Pasco

RECIPIENT INFORMATION

RECIPIENT's Name:	City of Pasco
Federal Tax ID:	91-6001264
DUNS Number:	009974598
Mailing Address:	City of Pasco Community & Economic Development PO Box 293 Pasco, WA 99301
Physical Address:	City of Pasco Community & Economic Development 525 N 3 rd Avenue Pasco, WA 99301
RECIPIENT's Email:	
RECIPIENT's Fax:	509-545-3499

Recipient Contacts

Project Manager	Name: Jeffrey B. Adams Department: Community & Economic Development Address: 525 N 3 rd Avenue City, State, Zip: Pasco, WA 99301 Phone: 509-545-3441 Email: adamsj@pasco-wa.gov
Billing Contact	Name: Dunyele Mason Department: Community & Economic Development Address: 525 N 3 rd Avenue City, State, Zip: Pasco, WA 99301 Phone: 509-545-3441 Email: masond@pasco-wa.gov
Authorized Signatory	Name: Gary Crutchfield Title: City Manager Phone: 509-545-3404 Email: crutchfieldg@pasco-wa.gov

ECOLOGY INFORMATION

Mailing Address:	Department of Ecology, Headquarters Office Shorelands and Environmental Assistance (SEA) Program PO Box 47600 Olympia, WA 98504-7600
Physical Address:	Shorelands and Environmental Assistance Program 300 Desmond Drive SE Lacey, WA 98503

Ecology Contacts

Project Manager / Technical Advisor	Name:	Jaime Short
	Program / Region:	SEA Program / Easter Regional Office WA State Department of Ecology
	Address:	4601 N Monroe
	City, State, Zip:	Spokane, WA 99205
	Phone:	509-329-3411
	Email:	Jaime.Short@ecy.wa.gov
Financial Manager	Name:	Amy Krause
	Program / Region:	SEA Program / Headquarters Office WA State Department of Ecology
	Address:	PO Box 47600
	City, State, Zip:	Olympia, WA 98504-7600
	Phone:	360-407-7107
	Email:	Amy.Krause@ecy.wa.gov

ALL WRITINGS CONTAINED HEREIN

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

RECIPIENT agrees to read, understand, and accept all information contained within this entire Agreement. Furthermore, RECIPIENT acknowledges that they have reviewed the terms and conditions of this Agreement, Scope of Work, attachments, all incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement.


This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement.

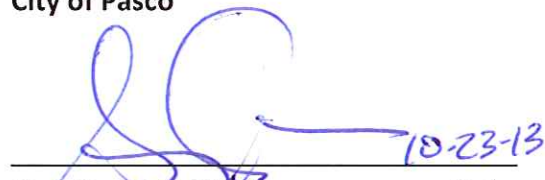
IN WITNESS WHEREOF, the parties hereby sign this Agreement:

Washington State
Department of Ecology



Gordon White Date
Program Manager
Shorelands and Environmental

City of Pasco



Gary Crutchfield Date
City Manager
City of Pasco

Approved as to form by
The Assistant Attorney General

SCOPE OF WORK

RECIPIENT will complete an update of the Shoreline Master Program (SMP) that is developed and adopted in a manner consistent with the procedural and substantive requirements of the Shoreline Management Act (SMA) and its implementing rules, RCW 90.58.130 and Chapter 173-26 WAC including the Shoreline Master Program Guidelines (Guidelines).

The SMP update process includes completion of inventory and analysis reports with corresponding maps and illustrations that characterize shoreline ecological conditions; development of shoreline policies, environment designations, and use regulations; as well as analysis of cumulative impacts and uses, and preparation of a shoreline restoration plan. The RECIPIENT will incorporate public participation throughout the SMP process. The RECIPIENT may use consultant support as appropriate.

Some of the tasks included in this scope of work will overlap in time and may be completed simultaneously with other tasks. Some tasks are iterative (e.g., analyzing cumulative impacts, developing regulations) and may involve various steps conducted at different times in the process before they are completed.

Further planning details can be found at:

<http://www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox.html> .

Task 1: Project Coordination

Task Cost: \$ 18,300

The RECIPIENT will:

- A. Coordinate throughout the SMP update process with ECOLOGY and other applicable federal, state and local agencies. The RECIPIENT will provide ECOLOGY opportunities to review draft deliverables at appropriate intervals. ECOLOGY will provide ongoing technical assistance on data sources and approaches, and will evaluate consistency of deliverables with the Shoreline Management Act and applicable guidelines throughout the update process.
- B. Coordinate with other applicable federal, state and local agencies, neighboring jurisdictions, and Indian tribes as provided in the Guidelines and SMA procedural rules. In addition, the RECIPIENT will consult with all other appropriate entities which may have useful scientific, technical, or cultural information.
- C. Coordinate with adjacent jurisdictions that share areas within shoreline jurisdiction (example: jurisdictions on the same lake or stream) for the purpose of efficiently using grant funds; sharing information and methods of analysis; drafting compatible SMP policies, regulations, environment designations; and coordinating public involvement.
- D. Attend, or may attend, training to assist with the Shoreline Master Program and the public process. These include ECOLOGY-sponsored coordination meetings as well as other relevant training such as on the ordinary high water mark, floodplain or wetland training, etc.

Task Goal Statement: To assure that recipients gather useful scientific, technical, and cultural information, share information and methods of analysis, consider agency and tribal positions, and consult regularly with ECOLOGY.

Task Expected Outcome: Update in each quarterly progress report as to the significant issues, coordination activities and participants.

Deliverables:

Task 1	Description	Date Due
1.	Description of all project coordination activities updated in each progress report submitted to Ecology's Project Manager.	Quarterly (see General Terms and Conditions)

Task 2: Secure Consultant and/or Interlocal Services

Task Cost: \$ 0

If applicable, the RECIPIENT will:

- A. **Secure qualified consultant services:** In accordance with the County's procurement procedures, (if none, then State procurement procedures), the RECIPIENT will enter into a contract with the selected consultant(s) and prepare a sub agreement in accordance with the scope of work in this agreement.
- B. **Enter into Interlocal Agreements:** The RECIPIENT will enter into interlocal agreements with the City(s) of _____ and the City(s) of _____ to provide resources for each of these communities to participate in county-wide and community-specific coordination in a regional Shoreline Master Program effort.

Task Goal Statement: To ensure the RECIPIENT has qualified personnel to conduct the scope of this project. In the event of an interlocal SMP effort, the RECIPIENT will further ensure all participating jurisdictions have equal access to resources, processes, and coordination opportunities as well as an opportunity to contribute time and expertise to a collective SMP update.

Task Expected Outcomes: Contract and sub-agreement with consultant(s) and interlocal agreement(s) with neighboring jurisdictions (if applicable).

Deliverables:

Task 2	Description	Date Due
1.	Final signed consulting contract.	N/A
2.	Interlocal agreement with all affected jurisdictions.	N/A
3.	Update in Progress Report.	Quarterly

Task 3: Public Participation

Task Cost: \$ 5,000

The RECIPIENT will:

- A. Develop Public Participation Plan:** Prepare a public participation plan that ensures active public involvement throughout the SMP update process. The plan shall identify specific objectives, outreach strategies, key parties (Planning Commission and elected officials, shoreline property owners, state agencies, Tribes, local residents, neighboring jurisdictions, and other stakeholders), and a timeline for public participation activities consistent with the objectives of the Shoreline Management Act (see RCW 90.58.130) and WAC 173-26. Public involvement strategies can include but are not limited to open houses, workshops, user surveys, and web sites.
- B. Conduct public participation activities;** Implement the public participation plan throughout the course of the SMP update process.

Task Goal Statement: To inform and involve all stakeholders in the SMP update process.

Task Expected Outcomes: Continuous public participation activities throughout the SMP update process.

Deliverables:

Task 3	Description	Date Due
1.	Public Participation Plan.	03/20/14
2.	Updates in Quarterly Progress Reports with public outreach activities.	Quarterly

Task 4: Preliminary Assessment of the Shoreline Jurisdiction

Task Cost: \$ 5,500

The RECIPIENT will:

Identify Preliminary Shoreline Jurisdictions: The RECIPIENT will identify the preliminary geographic scope for the comprehensive SMP update project consistent with RCW 90.58.030(2). Use available information to map required and optional Shorelines of the State as defined by statute and rule in order to identify the initial area under SMA shoreline jurisdiction. The shoreline jurisdiction area will be refined during later tasks to identify and eliminate shorelines from the local SMP that are under sole jurisdiction of federal and tribal governments and within the National Scenic Area as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663. The preliminary jurisdiction mapping will include:

- Statutory minimum areas consisting of the following Shorelines, Shorelines of Statewide Significance and Shorelands (per RCW 90.58.030(2)). This includes national forests and other federal or tribal areas that are not under sole jurisdiction of the federal government or tribes.
 - Rivers and streams with mean annual flow over 20 cubic feet per second.
 - Lakes and reservoirs exceeding 20 acres.
 - Associated wetlands of these areas.
 - Lands extending landward 200 feet from the ordinary high water mark, floodways and floodplain areas landward 200 feet from the ordinary high water mark.

Optional areas to be considered for inclusion in the SMP:

- **Floodplains:** All or part of the floodplain landward of the 200-foot mark from the floodway (per RCW 90.58.030(2)(f)(i)).
- **Buffers:** Buffers necessary for the protection of Critical Areas as defined in Growth Management Act regulations (per RCW 90.58.030(2)(f)(ii)).
- **Future annexation areas:** For cities, SMPs may include Shoreline Environment predesignation within designated unincorporated Urban Growth Areas.

RECIPIENT will contact the ECOLOGY Project Manager for the most recent maps of stream segments meeting the 20 cfs threshold and other available information. If federal or tribal areas are proposed for exclusion, provide documentation that the area is under sole jurisdiction which precludes application of local and state authorities.

Task Goal Statement: To preliminarily identify all Shorelines of the State within the jurisdiction's geographic area so that supporting documents such as the inventory and characterization and restoration plan are adequate to support final decisions regarding shoreline jurisdiction.

Task Expected Outcomes: Preliminary identification of all shorelines of the State within the jurisdiction.

Deliverables:

Task 4	Deliverable Description	Date Due
1.	Preliminary (digital) jurisdiction map of Shorelines of the State subject to local SMP.	07/20/14
2 .	SMP submittal checklist for work completed under this task.	07/20/14

Task 5: Shoreline Inventory, Analysis, and Characterization

Task Cost: \$ 24,000

The RECIPIENT will:

A. Conduct Shoreline Inventory

Compile all pertinent and reasonably available data, plans, studies, inventories, maps, and other applicable information. To the extent that such information is relevant and reasonably obtainable, the RECIPIENT will collect the following information:

- Shorelines of the State (all marine shorelines, streams >20 cfs mean annual flow, lakes >20 acres, and shorelands) as defined in RCW 90.58.030, located in the RECIPIENT's jurisdiction.
- General location of channel migration zones, floodplains and floodway.
- Critical areas, including wetlands, aquifer recharge areas, fish and wildlife conservation areas, geologically hazardous areas, and frequently flooded areas, as defined in RCW 36.70A, the Growth Management Act.
- Shoreline and adjacent land use patterns/density and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and

shoreline modifications within shoreline jurisdiction. Platted lots including undeveloped lots (except those not developable under local subdivision ordinance).

- Degraded areas and sites with potential for ecological restoration.
- Areas of special interest, such as priority habitats, rapidly developing waterfronts, previously identified toxic or hazardous material clean-up sites, and eroding shorelines.
- Existing and potential shoreline public access sites, including public rights-of-way and utility corridors. The inventory will include descriptions of recorded public access easements, their prescribed use, maintenance and terms.
- Historical aerial photographs documenting past conditions to assist in preparing an analysis of cumulative impacts of development.
- Archaeological and historic resources in shoreline jurisdiction.

(Note: Please provide ECOLOGY with sufficient time, approximately 30 days, to review and comment on the draft inventory data sources list and working maps).

B. Conduct Shoreline Analysis

Conducting the shoreline analysis will result in a shoreline characterization report. The report will define the ecological functions of the shorelines in the RECIPIENT's jurisdiction, identify shoreline management challenges, and present recommendations for protection and restoration of shoreline functions. (Please see description of this report in Task 5.B.5 below).

Conduct an analysis of the inventory information and data collected in Task 5.A. above as it relates to development of an effective SMP. Develop a characterization of the ecosystem processes and shoreline functions. Identify opportunities for shoreline protection and restoration. Identify current and potential public access sites. Conduct a shoreline use analysis. Identify measures and actions to protect and restore shoreline functions and ecosystem wide processes (e.g. appropriate land use activities or environment designations, regulations, development standards, etc.). These tasks will be conducted only as they are relevant to shorelines in the RECIPIENT's jurisdiction.

1. Characterize ecosystem-wide processes

This characterization will include a coarse-scale analysis of the broader area that influences the shoreline jurisdiction. It will include a narrative with reference to maps that describes and illustrates the processes in the larger drainage area that are linked to the shoreline through hydrologic flows. These processes include the uptake, transport and deposition of sediment, nutrients, woody debris, and pollutants. Specifically, this characterization will:

- Present the geographic context for shoreline jurisdiction areas – with geology, soils, topography, vegetation, and drainage patterns of the watersheds. Describe how these large scale upland areas relate to and affect the shoreline. Review existing regional watershed or natural resource related plans for inclusion of relevant information.

- Identify areas throughout the watersheds, or, within and beyond shoreline jurisdiction, that are important to maintaining shoreline ecological functions (e.g. wetlands, forest cover, floodplains, higher permeability deposits, discharge, organic/clay soils, etc.).
- Identify areas that are key impairments (e.g. forest clearing, impervious cover, channelized streams, altered wetlands, roads and ditches, dams/diversions, groundwater withdrawals, and listed impairments such as those published in the 303(d) list.
- Identify opportunities for protection/restoration of upland and adjacent areas essential for maintaining shoreline processes and function.

2. Characterize shoreline functions

This will be a more detailed analysis of the shoreline jurisdiction that includes a narrative with reference to maps and GIS data. Delineate shoreline reaches based on land use and ecological processes (such as man-made physical features, stream confluences, or littoral drift cell boundaries). Functions that are associated with each shoreline reach will be described. Specifically, this characterization will:

- Detail the physical, biological, and land-use components within the shoreline jurisdiction.
- Evaluate and assess shoreline ecological function using current scientific understanding of the relationship between the conditions of ecosystem-wide processes and functions within the County's shoreline jurisdiction. Identify functions that are healthy, functions that are adversely impacted and functions that may have existed and are now missing.

3. Conduct Shoreline Use Analysis

- Identify current patterns of land uses in shoreline areas.
- Identify likely shoreline uses and estimate future demand for shoreline space.
- Identify opportunities for SMA preferred uses and potential use conflicts.

4. Analyze opportunities for public access

- Identify current public access sites and opportunities for future access sites.

5. Prepare shoreline inventory and characterization report

Prepare a shoreline inventory and characterization report with accompanying maps that provides an analysis of the inventory data, ecosystem characterization and shoreline functions, shoreline use and public access findings as it relates to development of an effective SMP. The report will present findings and recommendations in a way that is useful for making SMP planning decisions. This report will provide a foundation for establishing environment designations, policies, and implementing regulations. The report should identify data gaps, focusing on

information that would be useful to support shoreline program development and implementation. The report should:

- Present the geographic and jurisdictional context for the SMP update.
- Characterize ecosystem processes and functions.
- Present reach level analysis information. Detailed information on shoreline reaches will identify opportunities and constraints in:
 - Protecting intact and restoring degraded ecological processes and functions.
 - Addressing the requirements for shorelines of statewide significance per WAC 173-26-251.
 - Providing public access.
 - Accommodating appropriate water-oriented uses.
- Identify potential use conflicts to inform environment designation and allowed use decisions.
- Develop shoreline management measures for protection and restoration of ecological functions, SMP policies, regulations, and environment designations based on the findings of the inventory and characterization. (For example, recommendations may include appropriate land use activities or environment designations, regulations, development standards, restoration and protection actions and strategies).
- Organize relevant data for efficient review and use in the cumulative impact analysis. (A table is recommended).

The report will also include refined shoreline jurisdiction boundaries and synthesis maps at appropriate viewing scales that will inform the report and illustrate findings that correspond with the narrative. For example, the user will be introduced to the area with coarser resolution vicinity maps indicating the county location in the state and delineating county and watershed boundaries. Maps at the shoreline reach scale will clearly differentiate the land and water contained within SMA jurisdiction from adjacent lands and contributing drainages. Maps at this scale will present the significant geologic, hydrologic, and ecologic features most essential to maintaining shoreline form and function and those land uses that may have altered upland processes influencing shoreline function. The reach scale maps also will indicate applicable inventory features such as known presence of listed species, critical riparian or aquatic vegetation, existing land uses, designated critical areas, and shoreline modifications. Potential areas for shoreline uses, public access, restoration, and/or protection will be indicated. The portfolio will include a comprehensive list and map of public access to shorelines.

Task Goal Statement:	To identify the ecological functions of the shorelines in the RECIPIENT's jurisdiction so that appropriate shoreline management challenges can be identified, and recommendations for protection and restoration of shoreline functions can be presented.
-----------------------------	---

Task Expected Outcomes: A comprehensive shoreline inventory and characterization report.

Deliverables:

Task 5	Deliverable Description	Date Due
1.	Digital & 1 hard copy: Draft list of inventory data sources for review and comment (Task 5.A).	07/20/14
2.	Digital and one hard copy: working maps of inventory information displayed at appropriate scales.	07/20/14
3.	Digital & 1 hard copy: Shoreline inventory and characterization report with map portfolio that addresses task requirements of Subtasks A, B, C (Task 5.E).	Draft: 10/30/14 Final: 12/20/14
4.	Update SMP Checklist completed as relevant to Task 5.	12/20/14

Task 6: Draft Shoreline Master Program

Task Cost: \$ 29,500

The RECIPIENT will:

A. Conduct community visioning process

Conduct a community visioning process with as many participants representing as many interests as possible to help determine goals for future use of local shoreline jurisdiction. Conduct this visioning process with respect to the SMP Shoreline Inventory and Characterization findings, SMA policies, and the SMP Guidelines. The visioning process should help identify shoreline issues and opportunities. The product will be a community visioning report that summarizes visioning activities, comments, recommendations, and goals. The report should be used to help determine shoreline environment designations, appropriate uses and activities, development standards, shoreline resource protection, and opportunities for public access and restoration.

B. Develop general SMP goals, policies and regulations

Prepare general shoreline goals and policies **that are applicable** throughout the area within shoreline jurisdiction. Optional SMP components may include general SMP regulations that apply in all environment designations.

C. Develop environment designations

Develop environment designations that are appropriate to current waterfront conditions per the findings of the shoreline inventory and characterization. Shoreline environment designations may be comprised of those recommended in the guidelines; the existing local SMP; unique, locally developed environments; or any combination of these, so long as they are consistent with WAC 173-26-211 environment designation criteria.

Prepare draft maps illustrating the land and water area contained within mapped shoreline designation boundaries together with justification and rationale for the proposed designations. Boundaries of shoreline environment designations shall be clearly mapped. A map clearly illustrating existing designations compared to proposed designations should be prepared. A narrative rationale describing reasons for maintaining or changing the designations shall be included.

1. Develop environment-specific shoreline use and modification policies, and regulations and standards

Prepare draft policies and regulations for environment designations, all uses discussed in the SMP Guidelines, and shoreline modifications. The draft policies and regulations for shoreline environment designations shall, at a minimum, identify:

- Shoreline use and modification activity goals and policies.
- Shoreline uses and modifications that are prohibited and allowed by Substantial Development Permit or Conditional Use Permit.
- Bulk dimensional standards (buffers, setback, density, etc.).
- Shoreline modification activity standards.
- Any local policies or regulations adopted by reference, if relied upon to satisfy SMA or guidelines requirements.
- Shoreline use and dimensional standards listed in matrices, by environment designation.

2. Develop SMP administrative provisions

Prepare draft provisions for SMP administration, including necessary elements and timelines for permit administration, compliance, and enforcement. Statements about the role of ECOLOGY in permit decisions should be included. A definitions section will be prepared. Definitions should be particular to SMP administration, consistent with the SMP's implementing rules. Definitions should be clearly and concisely written.

3. Demonstrate how Task 6 complies with the Guidelines

Fill in SMP Submittal Checklist for the tasks that you have completed under Task 6.

Task Goal Statement: To determine the community's vision for the shoreline area within the framework of the SMA and SMP Guidelines and local conditions and carry out that vision through development of a draft comprehensive SMP update.

Task Expected Outcomes: A draft comprehensive SMP update and analysis of its potential cumulative impacts.

Deliverables:

Task 6	Description	Date Due
A complete draft Shoreline Master Program including:		
1.	A community visioning report that summarizes visioning activities, comments, recommendations and goals.	03/20/15
2.	Draft general goals and policies and optional general regulations.	Draft: 06/30/15 2 nd Draft: 01/15/16
3.	Digital & one hard copy: Draft environment designations and draft environment maps within shoreline jurisdiction.	Draft: 06/30/15 2 nd Draft: 01/15/16
4.	1) Draft environment-specific shoreline use and modification policies, regulations, and standards.	Draft: 06/30/15 2 nd Draft: 01/15/16
5.	2) Draft Administrative Provisions.	Draft: 06/30/15 2 nd Draft: 01/15/16
6.	An updated checklist completed as relevant to Task 6 (adding incrementally to earlier completed tasks).	Draft: 06/30/15 2 nd Draft: 01/15/16

Task 7: Prepare Preliminary Cumulative Impacts Analysis

Task Cost: \$ 6,800

The RECIPIENT will:

Evaluate and analyze draft SMP policies, regulations, and environment designations to show how they achieve no net loss of shoreline ecological functions during the planning period. The analysis will include incremental and cumulative impacts of future uses and development allowed by the proposed SMP as an ongoing part of the update process. The analysis will identify how proposed SMP regulations and standards, and restoration activities will avoid and offset expected impacts of future permitted and exempt shoreline development. Scenario-based impacts analysis is encouraged. The cumulative impacts analysis may need to be revised if the initial document shows that cumulative impacts would result from the draft SMP.

(Note: The preliminary cumulative impacts analysis should be submitted at the same time as the Draft SMP).

Deliverables:

Task 7	Description	Date Due
1.	Digital & one hard copy: A draft cumulative impacts analysis of the SMP demonstrating how no net loss of ecological functions will be achieved.	Draft: 06/30/15 2 nd Draft: 01/15/16

Task 8: Restoration Plan

Task Cost: \$ 3,300

The RECIPIENT will:

Prepare Restoration Plan

Based on the Inventory and Characterization report, develop a plan for restoration of impaired ecological functions in specific shoreline reaches. Restoration plans should include:

- Identification of degraded areas, impaired ecological functions, and sites with potential for ecological restoration.
- Goals and priorities for restoration of degraded areas and impaired ecological functions.
- Existing and ongoing restoration projects and programs.
- Additional projects needed to achieve restoration goals and implementation strategies, including identification of prospective funding.
- Times and benchmarks for achieving restoration goals.
- Mechanisms to ensure that restoration projects and programs will be implemented.

Consult with organizations conducting restoration work for assistance in developing restoration strategies. The restoration plan should identify overlaps in how and where restoration work is being conducted. An implementation strategy should include recommendations for coordination between groups doing restoration work. A list of specific prioritized restoration projects may be included as an appendix to the SMP.

(Note: Please provide ECOLOGY with sufficient time, approximately 30 to 45 days, to review and comment on the draft restoration plan).

Task Goal Statement: To identify potential opportunities for shoreline restoration, including projects, timelines and funding.

Task Expected Outcomes: A shoreline restoration plan.

Deliverables:

Task 8	Description	Date Due
1.	Digital & one hard copy: A complete restoration plan and implementing strategy.	Draft: 06/30/15 2 nd Draft: 06/30/16

Task 9: Develop Final Draft SMP and Supporting Documents

Task Cost: \$ 4,600

The RECIPIENT will:

- A. Revisit draft SMP and cumulative impacts analysis;** finalize SMP jurisdiction maps based on findings in the cumulative impacts analysis, re-evaluate and revise the draft SMP environment designations, policies, and regulations in response to ECOLOGY comments on the preliminary draft materials developed in Task 6 as necessary to assure that they are adequate to achieve no net loss of ecological functions. Revise the cumulative impacts analysis as needed to reflect changes in the draft SMP. Prepare final jurisdiction maps (digital) of Shorelines of the State identified in Task 4 that will be subject to the local SMP.

(**Note:** Please provide ECOLOGY with sufficient time, approximately 45 to 60 days, to review and comment on the revised draft SMP and other documents).

B. Prepare a report that demonstrates how no net loss will be achieved

Prepare a report that demonstrates how the recommended shoreline management measures in Task 5.5, together with the findings of the cumulative impacts analysis and the restoration plan, are reflected in the proposed SMP and achieve no net loss.

C. Demonstrate how Task 9 complies with the Guidelines

Fill in SMP Submittal Checklist for the tasks that you have completed under Task 9.

Task Goal Statement: To aid in achieving the goal of no net loss of shoreline ecological functions and finalizing a draft SMP.

Task Expected Outcomes: A report that demonstrates how the SMP will achieve no net loss and revised draft SMP, cumulative impacts analysis and shoreline jurisdiction maps, as necessary.

Deliverables:

Task 9	Description	Date Due
1.	Digital & one hard copy: a) Revised designations, policies, and regulations that address the finding of the cumulative impacts analysis. b) Revised Cumulative Impacts Analysis. c) Final SMP jurisdiction maps and boundary descriptions.	Target: 03/30/16
2.	A report that demonstrates how no net loss will be achieved through SMP implementation.	Target: ~03/30/16
3.	Update the submittal Checklist completed as relevant to Task 7 (adding incrementally to earlier completed tasks.	Target: ~03/30/16

Task 10: Local SMP Adoption Process

Task Cost: \$ 3,000

The RECIPIENT will:

Conduct a local review and adoption process for the proposed SMP as provided in the SMA, WAC 173-26, and the State Environmental Policy Act. The SMP shall contain shoreline policies, regulations, environment designations, definitions, required administrative provisions, and a clear description of final SMP jurisdiction boundaries together with copies of any provisions adopted by reference.

A. Assemble complete Final Draft SMP

Assemble a complete draft SMP for review and approval by the local jurisdictional governing body, and formal submittal to ECOLOGY. This draft includes response to ECOLOGY comments on the preliminary draft submitted under Tasks 4.3 and 4.4 deliverables.

B. Complete SEPA review and documentation

Conduct and document SEPA review pursuant to chapter RWC 43.21C, the State Environmental Policy Act.

C. Provide GMA 60-day notice of intent to adopt

Upon conclusion of subtasks 10.1 and 10.2, local governments planning under the Growth Management Act must notify ECOLOGY and the Department of Commerce of its intent to adopt the SMP at least 60 days in advance of final local approval, pursuant to RCW 36.70A.106 and WAC 173-26-100 (5).

D. Hold public hearing

Hold at least one public hearing prior to local adoption of the draft SMP, consistent with the requirements of WAC 173-26-100. The names and mailing addresses of all interested parties providing comment shall be compiled.

E. Prepare a responsiveness summary

Prior to adoption of the draft SMP by the local elected body, prepare a summary responding to all comments received during the public hearing and the public comment period, discussing how the draft SMP addresses the issues identified in each comment.

F. Adopt SMP and submit to ECOLOGY

Complete the adoption process for the SMP update and submit the locally-adopted Draft SMP to ECOLOGY.

G. Demonstrate how Task 10 complies with the Guidelines

Fill in the SMP Submittal Checklist for the tasks that you have completed under Task 10.

Task Goal Statement: To achieve a locally adopted Shoreline Master Program.

Task Expected Outcomes: A locally adopted Shoreline Master Program.

Deliverables:

Task 10	Deliverable Description	Target Date Due
1.	A complete, locally adopted SMP including maps, with relevant supporting documentation and the complete SMP submittal checklist. (Tasks 10. A and 10.G)	6/15/2016
2.	SEPA products (checklist, MDNS or EIS; SEPA notice. (Task 10.B)	6/15/2016
3.	Evidence of compliance with GMA notice requirements. (Task 10.C)	6/15/2016
4.	Public hearing record. (Task 10.D)	6/15/2016
5.	Response to comments received. (Task 10. E)	6/15/2016

Budget

The following budget constitutes anticipated costs for Years 1 and 2 of this project. Budget Year 3 (July 1, 2015 – June 30, 2016) will be addressed via an amendment to this agreement.

Task Description	Task Cost
1. Coordination	\$ 18,300
2. Secure Consultant and /or Interlocal Services	\$ 0
3. Public Participation	\$ 5,000
4. Preliminary Assessment of Shoreline Jurisdiction	\$ 5,500
5. Shoreline Inventory, Analysis, and Characterization	\$ 24,000
6. Draft Shoreline Master Program	\$ 29,500
7. Preliminary Cumulative Impacts Analysis	\$ 6,800
8. Restoration Plan	\$ 3,300
9. Develop Shoreline Master Program and supporting documents	\$ 4,600
10. Local Adoption Process	\$ 3,000
Total Project Cost	\$ 100,000

Budget Terms and Conditions

1. Project Administration:

For the administration of this agreement the RECIPIENT must follow the current edition of the [Administrative Requirements for Recipients of Ecology Grants and Loans](http://www.ecy.wa.gov/biblio/9118.html) (Yellow Book). <http://www.ecy.wa.gov/biblio/9118.html>. Please note that this document is being updated. In the event of inconsistency between these documents, unless otherwise provided herein, the inconsistency will 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 Recipients of Ecology Grants and Loans"; and
- e) the General Terms and Conditions.

2. Invoicing:

- Grants are awarded on a reimbursable basis. The RECIPIENT initially pays project costs as they incur. Invoicing to ECOLOGY is usually by quarter but not more often than once per month. Upon presentation of an invoice to ECOLOGY, ECOLOGY's share of the project is reimbursed to the RECIPIENT.
- The RECIPIENT must **submit complete backup documents with each invoice** including but not limited to all invoiced costs and time sheets - signed and dated by employee and supervisor. The RECIPIENT must keep these expenses in grant files according to budget task for a period of three years after project completion and make them available at any time for inspection by ECOLOGY.
- Expenditures will be monitored by ECOLOGY for compliance with the task budget (see above). When submitting invoices to ECOLOGY, **the RECIPIENT shall highlight (or otherwise indicate) all costs on backup documentation to avoid data searches for cost verification by ECOLOGY. These costs will be listed on ECOLOGY's Voucher Support Form (C2 form) with subtotals provided by task.** All payment requests must have forms A, B, C (and D if applicable for consultant services), be accompanied by a commensurate progress report, and receive Ecology Project Manager approval before payment can be released.
- Budget deviations are allowed between tasks (e.g., a grantee may spend less money on one task and more on another), but in no circumstances may the RECIPIENT exceed the total project cost. If the total of all budget deviations exceeds 10 percent of the entire project cost, the Ecology Project Manager may require a written budget redistribution.

- **NOTE:** For payment requests, the RECIPIENT must use the ECOLOGY forms provided. Otherwise, ECOLOGY will return requests to the RECIPIENT for submittal on the correct forms.
- Requests for reimbursement must be **submitted at least quarterly** but not more than once per month by the RECIPIENT on state invoice voucher forms.
- If indirect is an allowable cost as documented in the Recipient's *SMP Budget Worksheet*, the indirect rate must not exceed 25 percent of direct (staff) labor and benefit costs. If allowed, the use of indirect must be reported on a separate line item on the C2 invoicing form. The indirect rate covers space utilities, miscellaneous copying, telephone, motor pool, janitorial services, records storage, rental, county fiscal and legal services, etc. Items not included in this list must be reported with the first payment request and must remain consistent for the life of the grant.
- **Right to Audit:** The RECIPIENT agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The RECIPIENT shall refund by check payable to ECOLOGY the amount of such reduction of payments under completed or terminated grants.
- All travel costs shall not exceed State travel rates: <http://www.ofm.wa.gov/resources/travel.asp>
- If light refreshments are deemed appropriate, a *Light Refreshments Approval Form – Grants* will be requested and approved by Ecology/s Program Manager prior to the event, an agenda of the event, and a roster of attendees will be submitted as part of the payment request.
- Payment of invoices is contingent on receipt of viable deliverables as determined by ECOLOGY's Program Manager.

ATTACHMENT I: Special Terms And Conditions

1. Administrative Guidelines:

The RECIPIENT shall comply with ECOLOGY's the current edition of the [Administrative Requirements for Recipients of Ecology Grants and Loans](#) (Yellow Book). The RECIPIENT shall be responsible for maintaining appropriate financial records throughout the life of the project and in accordance with these guidelines.

2. Responsibilities of the Project Coordinator:

The RECIPIENT's Project Manager shall be responsible for the procedural obligations under this agreement in addition to his/her duty to coordinate the planning effort hereunder. He/She shall cooperate with all parties concerned in every way possible to promote successful completion of the services described in the Scope of Work.

3. Progress Reports:

The RECIPIENT shall prepare and submit quarterly progress reports to ECOLOGY throughout the life of the grant. Reports shall be submitted no later than 20 calendar days after the end of the reporting period as follows:

Progress Report	Reporting Period	Date Due
First Quarter	July 1 – September 30	October 30
Second Quarter	October 1 – December 31	January 30
Third Quarter	January 1 – March 31	April 30
Fourth Quarter	April 1 – June 30	July 30

For Report Contents and Ecology's form: Please visit our website at:
<http://www.ecy.wa.gov/programs/sea/grants/smp/forms.html>

4. Contracting for Goods And Services:

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

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

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs

incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

5. Identification of Project Materials:

All reports, maps, and other documents developed as part of this grant agreement shall carry the name of the RECIPIENT, ECOLOGY's grant number (in the upper right hand corner), title, the specific task number of the product and date centered on the front cover or title page (or in the case of maps, the block which contains the name of the Government unit or Department) and acknowledgment of the source of funding.

6. Format for Publications and Brochures:

Any (hard copy) publications or brochures required as a product of this agreement shall conform to minimum standards of size, 8-1/2" x 11" white, recycled paper equivalent in weight to 20 lb. bond, single spaced, printed both sides, no less than 1" margins. Photos, illustrations, and graphs must be of reproducible quality. Any publications or brochures intended for public distribution shall comply with graphic requirements as specified in ECOLOGY's "Publications Handbook", publication number 91-41 and any additional specifications as may be outlined in the Scope of Work.

7. Amendments and Modifications:

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

8. Environmental Standards:

- a) RECIPIENTS who collect environmental monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: <http://www.ecy.wa.gov/eim>.
- b) RECIPIENTS are required to follow ECOLOGY's data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: <http://www.ecy.wa.gov/services/gis/data/standards/standards.htm>. RECIPIENTS shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.
- c) RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004

(Ecology Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.

9. Minority and Women's Business Enterprises (MWBE)

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

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

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

10. Presentation and Promotional Materials

The RECIPIENT shall obtain ECOLOGY's approval for all communication materials or documents related to the fulfillment of this Agreement, steps for approval:

- a) Provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution of any documents or materials compiled or produced.
- b) ECOLOGY reviews draft copy and reserves the right to require changes until satisfied.
- c) Provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets, such as a refrigerator magnet with a message as well as media announcements, and any other online communication products such as Web pages, blogs, and Twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT must provide a complete description including photographs, drawings, or printouts of the product that best represents the item.

The RECIPIENT shall include time in their project timeline for ECOLOGY's review and approval process.

The RECIPIENT shall acknowledge in the materials or documents that funding was provided by ECOLOGY.

11. Consistency:

It is the responsibility of the RECIPIENT to ensure that all sub-RECIPIENTS and contractors comply with the terms and conditions of the agreement and that the State of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

12. Biennium Close:

All deliverables due in June of the odd calendar year at the end of the State biennium shall have an end date of June 30. These deliverables and invoices will be due on or before **July 18, 2015** or as otherwise specified by Ecology's Fiscal Office.

ATTACHMENT II: General Terms And Conditions

Pertaining To Grant And Loan Agreements Of The Department Of Ecology

A. RECIPIENT PERFORMANCE

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

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

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

C. THIRD PARTY BENEFICIARY

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

D. CONTRACTING FOR SERVICES (BIDDING)

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

E. ASSIGNMENTS

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

F. COMPLIANCE WITH ALL LAWS

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

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

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

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

H. AUDITS AND INSPECTIONS

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

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

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within 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 RECIPIENTS of 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.5. herein.
5. **Unauthorized Expenditures.** All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
6. **Mileage and Per Diem.** If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
7. **Overhead Costs.** No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

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

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

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

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

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

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

L. WAIVER

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

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.
2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

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

N. SUSTAINABLE PRODUCTS

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

O. RECOVERY OF PAYMENTS TO RECIPIENT

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

Interest shall accrue at the rate of twelve percent (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 Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

W. SUSPENSION

The obligation of the DEPARTMENT to make payments is contingent on the availability of funds. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this agreement, the DEPARTMENT may elect to renegotiate the agreement subject to new funding limitations and conditions or terminate the agreement, in whole or part. The DEPARTMENT may also elect to suspend performance of the agreement until such time as the DEPARTMENT determines that the funding insufficiency is resolved in lieu of terminating the agreement. The DEPARTMENT will provide written notice to RECIPIENT if funding is not available.