

OCT 28 2010

Shorelands & Environmental  
Assistance Program

## Grant Agreement No. G1100142

between the

**State of Washington Department of Ecology and**

**Thurston County**

### Project: Deschutes River Wetland Project

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology, (PO Box 47600, Olympia, Washington, 98504-7600) hereinafter referred to as the "DEPARTMENT" or as "ECOLOGY" and Thurston County, hereinafter referred to as the "RECIPIENT" to carry out the activities described herein. The DEPARTMENT'S source of funds was appropriated by the 09-11 biennium Capital Budget, Section 3056.

**RECIPIENT Name:** **Thurston County**  
Resource Stewardship/Water Resource Program  
929 Lakeridge Drive SW Bldg. 4, Room 100  
Olympia, WA 98502

**RECIPIENT Project Coordinator:** **Richard Doenges**  
Telephone Number: (360) 754-4106  
E-mail address: [doenger@co.thurston.wa.us](mailto:doenger@co.thurston.wa.us)

**Fiscal Contact for RECIPIENT:** **Katie Sullivan**  
Telephone Number: (360) 754-3355 ext. 7604  
E-mail Address: [sullivk@co.thurston.wa.us](mailto:sullivk@co.thurston.wa.us)

**Payee on Warrant:** **Thurston County Water Resources**  
2000 Lakeridge Dr SW, Bldg 1, Second Floor  
Olympia, WA 98502

**Project Officer for the Department:** **Yolanda Holder**  
SEA Program, Headquarters  
Washington State Department of Ecology  
300 Desmond Dr SE  
Lacey, WA 98504-7600  
Telephone Number: 360-407-7186  
Fax: 360-407-6902  
E-mail address: [yhol461@ecy.wa.gov](mailto:yhol461@ecy.wa.gov)

Eligible Project Cost:	\$1,800,000
State Grant Share:	\$1,800,000
Estimated Local Share:	\$-----0-----

State Cost Share Rate: 100% UP TO a maximum State Share of \$1,800,000

**The effective date of this agreement is August 1, 2010.**  
**The expiration date of this agreement is June 30, 2013.**

## Scope of Work

**Project Title:** DESCHUTES RIVER WETLAND PROJECT

**Background:** The Puget Sound Partnership (PSP) is developing a Pilot In-Lieu Fee (ILF) Mitigation Program. PSP's ILF Program intends to mitigate for impacts to aquatic and other resources. The Pilot ILF Mitigation Program, however, will focus primarily on freshwater wetlands. PSP will operate its Pilot ILF Mitigation Program in pilot areas, which include the following watersheds in Pierce and Thurston Counties that drain into Puget Sound:

- Pierce – WRIA 10 (Puyallup/White), WRIA 11 (Nisqually), and WRIA 12 (Chambers-Clover)
- Thurston – WRIA 11 (Nisqually) and WRIA 13 (Deschutes)

In 2009 the Washington State Legislature allocated approximately \$4 million dollars to develop pilot mitigation projects prior to the collection of mitigation fees. This pre-capitalization money will help ensure no net loss of ecological function as the Pilot ILF Mitigation Program is being established. Developing pilot mitigation projects will also help PSP gain experience, work through any issues, and refine the Pilot ILF Mitigation Program.

To identify potential projects to use the pre-capitalization money, PSP solicited government entities in the pilot areas for information about sites suitable for the Pilot ILF Mitigation Program. Nine projects were proposed, five within Thurston County. These projects were reviewed and ranked by a Site Selection Review Team, comprised of representatives from PSP, Ecology, the Corps of Engineers, the Squaxin Island Tribe, the Environmental Protection Agency, and Cascade Land Conservancy. Projects were ranked based on how well they met ecological criteria, in addition to demonstrating consistency with feasibility conditions.

For Thurston County, the Site Selection Review Team recommended the Deschutes River Wetland Project. PSP and Ecology agreed with this recommendation. This Scope of Work describes the Deschutes River Wetland Project and identifies the tasks necessary to implement this pilot project.

**Project Description:** The Deschutes River Wetland Project is a 160-acre site in the Deschutes watershed (WRIA 13). The Deschutes River bisects the site providing 9,000 linear feet of riparian shoreline. The project involves the acquisition and legal protection of the site, as well as the hydrologic monitoring and modeling that will be used to inform the project design/mitigation plan. This project will be implemented in phases, as funding allows.

The project proposes to re-establish historic side channels from the mainstem and connect them with created side channel wetlands. This will provide additional flood storage and facilitate sediment deposition and nutrient removal. The side channel wetlands will provide high flow refuge for anadromous and resident fish, habitat for amphibians and invertebrates, and foraging habitat for birds and mammals.

The project proposes to plant trees and shrubs in the riparian buffer, which will help to stabilize the bank. In addition, the project will involve placing large woody debris (LWD) and engineered logjams into the river channel to slow velocities and reduce erosion and channel down cutting.

The project will be an integrated effort between the RECIPIENT and Capitol Land Trust (CLT). The CLT is a key partner for the success of this project and recognized as such by the parties involved with the ILF Pilot Program.

**Permit Requirements:** The RECIPIENT shall apply for and obtain necessary federal, state, and local permits. Copies of all permits, plans, specifications, and documentation for compliance shall be submitted on commencement of work. Work tasks include:

**Task 1**                      **Project Administration/Management**  
Estimated cost: NOT TO EXCEED \$100,000

**Sub-task 1.1:**            The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; attainment of all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

**Sub-task 1.2:**            The RECIPIENT will manage the project. Efforts will include conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees, the DEPARTMENT, all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT will carry out this project in accordance with any completion dates outlined in this agreement.

**Sub-task 1.3:**            The RECIPIENT will submit the project documents as requested by the DEPARTMENT's Project Manager or Financial Manager.

- Sub-task 1.4:** Required Performance:
- Effective administration and management of this grant project;
  - Maintenance of all project records; and
  - Submittal of all required performance items, progress reports, financial vouchers, and maintenance of all project records.

**Task 2: Acquisition of Property**  
Estimated cost: \$1,000,000

**Sub-task 2.1: Due Diligence.** Conduct due diligence activities including, but not limited to:

- Investigate acquisition of additional properties adjacent to the project site;
- Complete an appraisal and review appraisal for parcel numbers: 12701130000, 12701440100, 12701430100, 12701440000, and 12701430000. Appraisal will be consistent with the Uniform Appraisal Standards for Federal Land Acquisitions.
- Complete title review for parcel numbers: 12701130000, 12701440100, 12701430100, 12701440000, and 12701430000;
- Survey of project area; Identify all rights-of-ways, liens, easements, or other encumbrances on the property; and
- Conduct an environmental assessment of the property, including a Phase 1 report, and Phase 2 report if necessary.

**Deliverables:** The Recipient will submit two hard copies and one electronic copy of the following documents:

- An appraisal and review appraisal for each potential acquisition for review and approval;
- Title reports;
- Any supplemental information or documentation regarding any rights-of-way, liens, easements, or other encumbrances on the property, if any, and their compatibility and / or conflict with the project; and
- A survey.

**Due Date:** December 31, 2010, prior to purchase of land acquisition(s).

**Sub-task 2.2: Acquisition.** Negotiate with the parties, informing them of the appraisal results and complete a purchase and sale agreement. Acquisition will be for no more than the appraised value. Acquire properties of willing sellers. Conduct baseline documentation.

**Deliverables:** The Recipient will submit two hard copies and one electronic copy of the following documents:

- A map showing location of the properties to be purchased.
- Acquisition documents including:
  - Legal description of the properties;
  - Purchase and sale agreements;
  - Title insurance policies;

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- Title certification (deeds);
- Settlement statement; and
- Phase 1 Report and Phase 2 Report if necessary.
- Photographs of properties including photo point locations.

**Due Date:** April 30, 2011.

**Sub-task 2.3:** **Encumbrances.** Identify all rights-of-ways, liens, easements or other encumbrances on the property. Vacate liens, rights-of-ways, easements or other encumbrances found to be in conflict with the project.

**Deliverables:** The Recipient will submit two hard copies and one electronic copy of the following documents:

- A map showing all rights-of-ways, liens, easements or other encumbrances on the project property; and
- Any supplemental information or documentation regarding any rights-of-way, liens, easements, or other encumbrances on the property, if any, and their compatibility and / or conflict with the project.

**Due Date:** Prior to land acquisition.

**Task 3:** **Project Design**  
Estimated cost: \$285,000

**Sub-task 3.1:** Delineate and assess functions of existing wetland area according to Ecology guidance. The report should document the acreage and location of existing wetland areas as well as provide brief descriptions of vegetation, soils, and hydrologic regimes. The report will also provide a wetland rating and credit/debit tool assessment of existing wetlands. This will provide a baseline from which future gain in function will be compared.

**Deliverable:** Submit two hard copies and one electronic copy of the Wetland Delineation and Assessment Report.

**Due Date:** October 31, 2011.

**Sub-Task 3.2** Coordinate with PSP to develop an Inter-Agency Agreement (IAA) between Thurston County and PSP regarding the ILF Pilot Program. The IAA shall specify mechanisms for permanent protection and management of the properties funded under this grant.

**Deliverable:** Submit one hard copy and one electronic copy of the Inter-Agency Agreement and all amendments, as appropriate.

**Due Date:** December 31, 2011.

**Sub-task 3.3:** Install four groundwater monitoring wells and two test pits to adequately observe and collect data on water levels and hyporheic zone.

**Deliverable:** Submit two hard copies and one electronic copy of a map of the groundwater well and test pit locations.

**Due Date:** December 31, 2010.

**Sub-task 3.4** Collect and provide groundwater and hyporheic zone monitoring data for at least 12 months

**Deliverable:** Submit two hard copies and one electronic copy of the groundwater and hyporheic zone data and analysis from the monitoring wells located on site.

**Due Date:** December 31, 2011.

**Sub-Task 3.5:** Perform hydrologic modeling using monitoring data and design scenario assumptions.

**Deliverable:** Submit two hard copies and one electronic copy of the results of the monitoring and modeling.

**Due Date:** March 30, 2012.

**Sub-task 3.6:** Produce draft Wetland Restoration Design and Plan Set including:

- Grading plans,
- Planting plans,
- Specifications for any structures; and
- Construction timing and schedules.

**Deliverable:** Submit two hard copies and one electronic copy of the draft Wetland Restoration Design and Plan Set for review.

**Due Date:** The draft documents will be submitted on the following schedule:

- 30% - March 30, 2012
- 60% - September 30, 2012
- 90% - December 31, 2012

**Sub-Task 3.7** Produce Draft Performance Standards which are measurable and based on achievement of the site's objectives and goals.

**Deliverable:** Submit two hard copies and one electronic copy of the performance standards.

**Due Date:** July 31, 2012.

**Sub-Task 3.8** Produce a Draft Contingency/Adaptive Management Plan which includes, but is not limited to: goals and objectives of the project, identification of potential causes for project site failure, a management strategy to address unforeseen changes in site conditions or if the monitoring indicates that the site will not achieve performance standards, and the process for reporting and implementing adaptive management activities.

**Deliverable:** Submit two hard copies and one electronic copy of the Contingency/Adaptive Management Plan.

**Due Date:** July 31, 2012.

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**Sub-Task 3.9** Produce a Draft Monitoring Plan which includes, but is not limited to: a description of the variables that will be monitored, a description of the methods or protocols used to monitor those variables, and how they will be evaluated, the monitoring protocols must be sufficient to provide an accurate representation of site conditions, a schedule of monitoring including the time of year, frequency, and duration, and a description of proposed photo documentation of the site.

**Deliverable:** Submit two hard copies and one electronic copy of the Monitoring Plan.  
**Due Date:** July 31, 2012.

**Sub-task 3.11:** Produce a Draft Conservation Easement, including baseline documentation, which identifies the easement holder and will ensure the permanent protection and preservation of the entire Deschutes River Wetland project site.

**Deliverable:** The Recipient will submit two hard copies and one electronic copy of the Draft Conservation Easement.  
**Due Date:** June 30, 2011.

**Task 4:** **Project Permitting and Final Plans**  
Estimated Cost: \$30,000

**Sub-task 4.1:** Apply for and obtain necessary federal, state, and local permits including, but not limited to: SEPA, HPA, 404–NWP 27, 401 WQC, DNR use authorization, Stormwater construction general permit, Thurston County Shoreline and Critical Area permits, and Cultural Resource Review.

**Deliverable:** Submit two hard copies and one electronic copy of all permits, authorizations, certifications, etc.  
**Due Date:** January 31, 2013.

**Sub-task 4.2:** Produce final versions of the following reports/documents:

- Wetland Restoration Design and Plan Set,
- Performance Standards,
- Contingency/Adaptive Management Plan, and
- Monitoring Plan.

**Deliverable:** Submit two hard copies and one electronic copy of the final:

- Wetland Restoration Design and Plan Set,
- Performance Standards,
- Contingency/Adaptive Management Plan, and
- Monitoring Plan.

**Due Date:** February 28, 2013.

**Sub-task 4.3:** Produce a Final Conservation Easement which identifies the easement holder and will ensure the permanent protection and preservation of the entire Deschutes River Wetland project site.  
**Deliverable:** The Recipient will submit two hard copies and one electronic copy of the Final Recorded Conservation Easement.  
**Due Date:** December 30, 2011.

**Task 5: Phased Project Implementation**  
Estimated Cost: \$360,000

**Sub-task 5.1** The Recipient shall remove and/or demolish all existing structures, foundations and other underground fixtures. Septic tanks, drain fields, and sewer connections will be sealed or removed. Electrical utilities will be terminated, and any wells capped. This work will include removal of framed house(s), framed outbuildings, vehicles, old equipment, domestic debris, hazardous materials, and utilities.  
**Deliverable:** Submit two hard copies and one electronic copy of Photo documentation including a brief explanation of activities conducted.  
**Due Date:** September 20, 2012.

**Sub-task 5.2:** Complete construction activities including earthwork and installing necessary fencing.  
**Deliverable:** Submit two hard copies and one electronic copy of photo documentation of construction including a brief explanation of activities conducted.  
**Due Date:** March 31, 2013.

**Sub-task 5.3:** Complete planting, seeding, and installation of temporary irrigation system.  
**Deliverable:** Submit two hard copies and one electronic copy of the Irrigation Layout Plan.  
**Due Date:** April 15, 2013.

**Sub-task 5.4:** Produce an As-built Report that accurately documents the post-construction conditions of the site within ninety days after the completion of grading, planting, or both. The As-Built Report shall state any variations from the approved Wetland Restoration Design Report and Plan Set.  
**Deliverable:** Submit two hard copies and one electronic copy of the As-Built Report.  
**Due Date:** April 30, 2013.

**Task 6: Long Term Maintenance and Management Plan**  
Estimated Cost: \$25,000

**Sub-task 6.1:** Produce a Draft Long Term Maintenance and Management Plan that includes the party responsible for the long-term management of the site, the management needs, annual cost estimates for these needs, monitoring and maintenance schedule, and identifying the funding mechanism used to meet those needs.

**Deliverable:** Submit two hard copies and one electronic copy of the Draft Long Term Maintenance and Management Plan.

**Due Date:** June 30, 2012.

**Sub-task 6.2:** Produce a Final Long Term Maintenance and Management Plan including the party responsible for the long-term management of the site, management needs, monitoring and maintenance schedule, and annual cost estimates for these needs, and identifying the funding mechanism to meet those needs.

**Deliverable:** Submit two hard copies and one electronic copy of the Final Long Term Maintenance and Management Plan.

**Due Date:** December 31, 2012.

### Budget Summary and Conditions

**1. Project Administration:** For the administration of this agreement the RECIPIENT must follow the current edition of the Administrative Requirements for Ecology Grants and Loans (Yellow Book).

**2. Invoicing:**

- Grants are awarded on a reimbursable basis. The Recipient initially pays project costs in full. Upon presentation of an invoice to Ecology, Ecology's share of the project is reimbursed to the Recipient. An exception to the reimbursement requirement would be that in the case of land acquisition, Ecology may make payments to an escrow agent instead of the RECIPIENT. If this happens, the RECIPIENT will provide the name, address, contact information, and any electronic routing information needed to complete the transaction.

- Expenditures will be monitored by the Ecology Fiscal Office for compliance with the budget (see below). 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% of the entire project cost, the Ecology Project Officer may require a written budget redistribution. When submitting invoices to Ecology, **the RECIPIENT shall itemize all costs by task** and provide subtotals by task on Ecology's Form C2, Voucher Support Form. All payment requests must have forms A, B, C (and D

if applicable), be accompanied by copies of corresponding receipts, a commensurate progress report, and receive Ecology Project Officer approval before payment can be released.

**NOTE:** For payment requests, the RECIPIENT must use the Ecology forms contained in the Yellow Book. Otherwise, Ecology will return requests to the RECIPIENT for submittal on the correct forms.

- Forms - <http://www.ecy.wa.gov/biblio/9118a.html>
- Yellow Book - <http://www.ecy.wa.gov/biblio/9118.html>

- The RECIPIENT must **maintain complete backup documents** 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 the DEPARTMENT.
- Requests for reimbursement must be **submitted at least quarterly** but not more than once per month by the RECIPIENT on state invoice voucher forms.
- The **indirect rate must not exceed 25 percent** of direct (staff) labor and benefit costs. This 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 the DEPARTMENT the amount of such reduction of payments under completed or terminated grants.

**3. Estimates:** Near the end of each fiscal year, RECIPIENTS will receive an Estimate Form from Ecology's Fiscal Office. An **estimate** is the dollar amount you anticipate requesting from Ecology for project costs incurred through June 30 and have not yet submitted for reimbursement. RECIPIENTS must fill out and submit the form to Ecology by the specified due date. Ecology must have these estimates to ensure sufficient funds are reserved to reimburse RECIPIENTS for expenditures incurred within that specific fiscal year ending June 30. **Failure to submit the Estimate Form by the due date could result in a considerable delay in payment from Ecology.**

**4. Final payment** of grant projects is contingent on receipt of viable work products as listed in the grant document.

**5. Budget** (for RECIPIENT reporting and Ecology tracking purposes). This Scope of Work will be accomplished by Thurston County staff or designee(s).

Contracts, purchases and other expenses associated with this scope of work are not to exceed \$1.8 million.

Budget Category	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Total
Acquisition (including title insurance, purchase price, closing costs)		850,000					\$ 850,000
• Survey		20,000					\$20,000
• Appraisal		25,000					\$25,000
• Hazardous assess		5,000					\$5,000
Salaries and benefits	100,000	50,000	50,000	10,000	25,000	10,000	\$245,000
Materials			25,000		25,000		\$50,000
Equipment			10,000		10,000		\$20,000
Contracts		50,000	200,000	20,000	300,000	15,000	\$585,000
Other							\$0
<b>Total Eligible Cost</b>	<b>100,000</b>	<b>1,000,000</b>	<b>285,000</b>	<b>30,000</b>	<b>360,000</b>	<b>25,000</b>	<b>1,800,000</b>

By task costs are estimates and funds may be used across tasks. The RECIPIENT must receive approval from the DEPARTMENT prior to shifting funds in Task 2. For the purpose of shifting funds across tasks, the RECIPIENT agrees to furnish all necessary documentation as requested by the DEPARTMENT and the DEPARTMENT agrees not to unreasonably withhold approval.

<b>Special Terms and Conditions</b>
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- Responsibilities of the Project Coordinator:** The Recipient's Project Coordinator 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.
- Progress Reports:** The RECIPIENT shall prepare and submit quarterly progress reports to the DEPARTMENT 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 20
Second Quarter	October 1 – December 31	January 20
Third Quarter	January 1 – March 31	April 20
Fourth Quarter	April 1 – June 30	July 20

**Report Contents:** Quarterly reports should be concise and should include the following:

- a. Comparison of actual accomplishments by task to the objectives established for the reporting period
- b. List deliverables due to Ecology by date of this progress report and their status.
- c. Status of project schedule
- d. Budget status
- e. Personnel changes
- f. Any difficulties encountered during the quarter

**3. Identification of Project Materials:** All reports, maps, and other documents published 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 as follows:

County Name Grant No. G_____
Project Title Task Title Task Number Date

**4. Quality Assurance Project Plan (QAPP):** IF this project involves the collection of environmental measurement data, the Recipient needs to prepare a QAPP to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating this data. The plan shall be conducted in accordance with the DEPARTMENT's Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies, current edition, (Ecology Publication No. 91-16). The plan must describe the monitoring and data quality objectives, procedures, and methodologies which will be used to ensure that all environmental data generated will meet these requirements. The size and complexity of the plan should be cost effective and in proportion to the magnitude of the sampling effort. The RECIPIENT may also reference Technical Guidance for Assessing the Quality of Aquatic Environments, February 1994 (Ecology Publication No. 91-78), available at <http://www.ecy.wa.gov/biblio/9178.html> in developing the plan. The QAAP report shall be limited to a concise description of the environmental measurement aspects of this project. Ecology's Project Officer shall review and approve this plan prior to initiation of work.

The QAPP plan may describe the following elements:

- a. Assumptions that direct the collection and analysis;
- b. Resources used (such as flights for aerial photos);
- c. Resource documents that will be consulted;
- d. Field methods employed;
- e. Office methods employed;
- f. Training level of staff involved in data collection and analysis;
- g. Equipment/materials to be used and accurate calibration assurance.

**5. Coordination with Ecology's Geographical Information System (GIS):** If this project involves developing GIS data, the RECIPIENT shall coordinate with Ecology's GIS office in an effort to promote compatibility and to encourage sharing of geospatial data. To facilitate data sharing, the DEPARTMENT utilizes the following standards:

Ecology's GIS Standards	
ESRI's ARC/INFO	Current version
ESRI's ArcView	Current Version
Horizontal Datum	NAD 83 HARN
Vertical Datum	NGVD 88
Projection System	Lambert Conic Conformal
Coordinate System	WA State Plane Coordinates
Coordinate Zone	South
Coordinate Units	Feet
Accuracy Standard	+/-40 Feet (1:24,000) minimum accuracy to within a foot of the true North American datum system
Vector Import Format	ArcExport, DLG and/or DXF, shapefiles
Raster Import Format	TIFF, BIL/BIP, RLC, GRID, ERDAS, SID

Whenever possible, the RECIPIENT is encouraged to utilize the standards listed above when compiling data. The State's data management information is also available at the following website: <http://www.dis.wa.gov/portfolio/>. Please contact John Tooley (360-407-6418, [jtoo461@ecy.wa.gov](mailto:jtoo461@ecy.wa.gov)) for more information.

The RECIPIENT shall submit copies to Ecology's Project Officer with complete documentation as it relates to all digital data, GIS coverages, shape files, related tables and map products.

**6. Washington State Minority and Women's Business Participation:** The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees to utilize the DEPARTMENT'S goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders.

No contract award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

- a. Include qualified minority and women's businesses on solicitation lists.

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- 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

By signing this Agreement, the RECIPIENT certifies that the above steps were, or will be followed. Any contractor engaged by the RECIPIENT under this agreement shall be required to follow the above five affirmative steps in the award of any subcontract(s).

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. The report will address:

- a. Name and state OMWBE certification number of any qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
- b. The total dollar amount paid to qualified firms under this invoice.

**7. 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.

**8. Grant Closeout:** All products for this project shall reflect an end date on or before the grant expiration date and shall be submitted to the DEPARTMENT on or before 30 days after the grant expiration date or as otherwise specified in the Scope of Work. Completed end-of-biennium estimate forms and final payment requests must be submitted in accordance with notification provided by Ecology's Fiscal Office.

**9. All Writings Contained Herein:** This agreement, the appended "General Terms and Conditions", and 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 except those set forth or incorporated by reference herein. 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.

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In Witness Whereof, the parties hereby execute this grant agreement

**Washington State  
Department of Ecology**

**Thurston County**

*Gordon White*  
*10/29/10*

Date

Gordon White  
Program Manager  
Shorelands and Environmental  
Assistance Program

*[Signature]* *10/22/2010*

Signature, Authorized Official

Date

*DOUG D. KRUP*  
Print Name of Authorized Official

*COUNTY MANAGER*  
Title of Authorized Official

Approved as to form by Assistant  
Attorney General

Federal I.D. # 91-6001375

Approved as to form:

EDWARD G. HOLM  
PROSECUTING ATTORNEY

*Elizabeth Petrich*  
Deputy Prosecuting Attorney

**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 not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

**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. 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.

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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 \$300,000 or more in a year in Federal funds. The \$300,000 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 twenty (20) 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 certified 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. Budget deviation. Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT's request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.

3. Period of Compensation. Payments shall only be made for action 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.

4. Final Request(s) for Payment. The RECIPIENT must 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.

5. 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 and a financial bond.

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.

6. Unauthorized Expenditures. All payments to the RECIPIENT shall 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.

7. 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.

8. 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. RECYCLED/RECYCLABLE PAPER**

All documents and materials published under this agreement shall be produced on recycled paper containing the highest level of post consumer and recycled content that is available. At a minimum, paper with 10 percent post consumer content and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite.

As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

#### **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 annum 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.