SMA Grant Agreement No. G1000041

between the

State of Washington Department of Ecology and the

CITY OF FIFE

Project: Comprehensive Shoreline Master Program Update

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 the City of Fife, hereinafter referred to as the "RECIPIENT" to carry out activities described herein, and as authorized by the Washington State Legislature under Chapter 173-26 of the Washington Administrative Code (WAC) for shoreline implementation.

RECIPIENT Name:	**City of Fife**
Department:	Community Development
Address:	5411 23rd St E, Fife 98424
RECIPIENT Project Coordinator:	**Chris Pasinetti, Planner 1**
Telephone Number:	253-896-8628/FAX: 253-922-5355
E-mail address:	cpasinetti@cityoffife.org
Fiscal Contact for RECIPIENT:	**Steven Marcotte**
Telephone Number:	253-896-8611
E-mail Address:	smarcotte@cityoffife.org
Payee on Warrant:	**City of Fife** (same as above)
Project Officer for the Department:	**Kim VanZwalenburg** SEA Program, Southwest Regional Office Washington State Department of Ecology PO Box 47775 Olympia, WA 98504-7775
Telephone Number:	360-407-6520 / Fax: 360-407-6305
E-mail address:	kvan461@ecy.wa.gov

The source of funds provided by the DEPARTMENT are from the 2009-2011 Washington State General Fund for Shoreline Implementation, §302; and the Local Toxics Control Account, §302, Subsection 7.

Maximum Grant Amount, Fiscal Years 1 and 2 (7/1/09-6/30/11):	$ 34,000
Maximum Grant Amount, Fiscal Year 3 (7/1/11 – 6/30/12) *:	$ 16,000
Total Grant Amount:	**$ 50,000**

State Maximum Cost Share Rate over all three years: 100% UP TO a maximum of $50,000

The effective date of this agreement is from July 1, 2009 to June 30, 2012.*

*Year 3 funding is subject to legislative appropriation in Fiscal Year 2011-2012 and will be made available via formal amendment to this agreement.

General Note: This Standard Scope of Work is presented in three one-year increments that correspond to the steps needed to prepare a locally adopted comprehensive SMP update, The planning tasks in this scope of work correspond to the phases in Figure 1: Shoreline Master Program Planning Process

- Year 1 includes the tasks addressed in SMP updates Phases 1 & 2.
- Year 2 addresses the tasks in Phase 3.
- Year 3 completes the tasks contained in Phases 4 and 5.

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.

Scope of Work

Project Description: The City of Fife 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, 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, preparation of a shoreline restoration plan and a formal local adoption process. The City will incorporate public participation and use a consultant support, as appropriate.

Project Deliverables:

The (City) shall perform the following tasks with deliverables sent to Ecology's Project Officer, indicated on Page 1 of this agreement.

All deliverables per the scope of work below will include 1 digital and 1 hard copy with the following exceptions:

- **final draft SMP: 1 digital and 3 hard copies.**
- **quarterly reports and payment requests: one hard copy each to be submitted with original signatures in blue ink per the schedule below and in paragraph 2 of Special Terms and Conditions.**

Work Program: The Recipient shall perform the following tasks:

Task A: Coordination

Coordinate throughout the SMP update process with Ecology and other applicable state agencies, neighboring jurisdictions, and Indian tribes as provided in the Guidelines and SMA procedural rules. In addition, consult with all other appropriate entities which may have useful scientific, technical, or cultural information, including federal agencies, watershed management planning units, salmon recovery lead entities, universities and other institutions, local individual outdoor recreationists and conservationists, and organizations with special expertise representing these interests.

Coordinate with adjacent jurisdictions that share areas within shoreline jurisdiction (for 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.

Attend Ecology-sponsored coordination meetings, which occur on a regular basis, for the duration of the project. Provide Ecology opportunities for review of draft deliverables at appropriate intervals. When requested, the recipient shall include a written response to Ecology's comments on draft deliverables.

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.

Deliverables:

1. Documentation of contacts in quarterly progress reports

Due Dates: January 20, April 20, July 20, and October 20, each year for three years.

2. Written responses to Ecology's comments on draft deliverables, when requested. (May be provided in email format.)

Due Dates: Following receipt of Ecology's comments.

YEAR 1

Project Initiation

Task B: Secure qualified consultant services

Prepare a detailed scope of work for consultant services consistent with the grant scope of work, publish a Request for Proposals, form a review committee to evaluate respondents, and enter into a contract with the selected consultant.

Deliverable:

1. Final executed consulting contract

Due Date: March 17, 2010

The Recipient shall prepare a complete, locally approved Draft SMP by completing Phases 1 through 5 described below and in the *Shoreline Master Program Planning Process:*
http://www.ecy.wa.gov/programs/sea/grants/smp/pdf/SMP_Planning_Process.pdf

PHASE 1: PRELIMINARY ASSESSMENT of SHORELINE JURISDICTION and PUBLIC PARTICIPATION PLAN

Task 1.1: Identify preliminary shoreline jurisdiction

Identify the preliminary geographic scope for the comprehensive SMP update project. 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. 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.
    - Marine shorelines.
    - 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.

Contact the Ecology project officer 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.

Deliverables:

1. Preliminary jurisdiction map of Shorelines of the State subject to local SMP.

   Due Date: ***March 1, 2010***

Task 1.2: Prepare plan for public participation

Throughout Phases 1 through 5 of the SMP update planning process, inform and involve the public in updating the SMP consistent with the Shoreline Management Act (see RCW 90.58.130) and WAC 173-26. Prepare a public participation plan that identifies specific objectives, outreach strategies, key parties (Planning Commission and elected officials, shoreline property owners, state agencies, Tribes, local residents, neighboring jurisdictions, etc.), and establishes timelines for public participation activities. Engage all parties early and continuously in the update process, particularly those relevant individual recreationists and conservationists or organizations that may not typically seek involvement in new shoreline regulations. The City will document all public outreach and public events related to SMP development. The City will designate a facilitator to coordinate the public participation process.

Deliverables:

1. Public participation plan
   Due Date: March 1, 2010

2. Public participation updates in quarterly progress reports.
   Due Dates: January 20, April 20, July 20, and October 20 of each fiscal year (2010, 2011 and 2012).

Task 1.3: Demonstrate how Phase 1 complies with the Guidelines

Fill in the SMP Submittal Checklist for the tasks that the City has completed under Phase 1.

Deliverables:

1. An SMP Submittal Checklist completed as relevant to task.

Due Date: March 1, 2010

PHASE 2: SHORELINE INVENTORY, ANALYSIS & CHARACTERIZATION

Task 2.1: Complete shoreline inventory

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

- 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 the 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.
- Policies and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use plans and regulations (Critical Areas Ordinance, flood ordinance, etc.).

Deliverables:

1. Draft list of inventory data sources (digital copy) for review and comment.
   Due Date: March 1, 2010
2. Digital working maps of inventory information displayed at appropriate scales.
3. An SMP Submittal Checklist completed as relevant to task
   Due Date April 1, 2010:

***(Note:** The City will provide Ecology with sufficient time, approximately 30 days, to review and comment on the draft inventory data sources list and working maps.)*

Task 2.2: 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 Fife, identify shoreline management challenges, and present recommendations for protection and restoration of shoreline functions. (Please see description of this report in Task 2.3.)

Conduct an analysis of the inventory information and data collected in Task 2.1 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 as they are relevant to shorelines in Fife.

(***Note:*** *The City will rely on the broad-scale characterization of ecosystem-wide processes that Ecology intends to prepare for Puget Sound jurisdictions and provide Fife in spring 2010.)*

2.2.1 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.

2.2.2 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). Describe functions that are associated with each shoreline reach. 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 shoreline jurisdiction. Identify functions that are healthy, functions that are adversely impacted and functions that may have existed and are now missing.

2.2.3 Conduct Shoreline Use Analysis; analyze opportunities for public access

- Conduct shoreline use analysis:
  - Identify current patterns of land uses in shoreline areas.
  - Identify likely or projected uses in shoreline areas.
  - As applicable, analyze potential use conflicts and identify possible adverse impacts those could have on current ecological functions.
  - Estimate future demand for shoreline space consistent with WAC 173-26-201(3)(d)(ii) requirements.
  - Identify opportunities and demand for SMA preferred uses and potential use conflicts based on current use patterns and projected trends.
- Identify current public access sites and opportunities for future access sites.

Task 2.3 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/city location in the state and delineating county/city 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.

Deliverables (digital copy including shapefile(s) and necessary GIS files with accompanying maps):

1. Shoreline characterization and analysis report with map portfolio that addresses the above task requirements in 2.1, 2.2 and 2.3, above.

Due Date: July 15, 2010

2. Final shoreline inventory and characterization report with map portfolio.

Due Date: October 15, 2010

(The City will provide Ecology with sufficient time, approximately 45 to 60 days, to review and comment on the draft characterization and analysis report.)

Task 2.4: Demonstrate how Phase 2 complies with the Guidelines

Fill in the SMP Submittal Checklist for the tasks that you have completed under Phase 2.

Deliverables:

1. An SMP Submittal Checklist completed as relevant to task (adding incrementally to earlier completed tasks).

Due Date: October 15, 2010

YEAR 2

PHASE 3: COMPLETE DRAFT SMP and CUMULATIVE IMPACTS ANALYSIS

Task 3.1 Conduct community visioning process

Conduct a community visioning process that includes as many citizens as possible to determine goals for future use of the shoreline. This process should be conducted with respect to the findings of the shoreline inventory and characterization report. The visioning process will identify shoreline problems and opportunities. It will result in a strategy for shoreline uses, public access, resource protection, and restoration that is consistent with SMA policy and SMP Guidelines objectives.

Deliverable: (digital copy)

1. Strategy for shoreline uses, public access, resource protection and restoration (Task 3.1).

Due date: March 15, 2011

Task 3.2: 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.

Task 3.3: 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. Optional shoreline jurisdiction areas, including entire floodplains and buffers for critical areas, should be mapped and designated if they are included within shoreline jurisdiction. 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.

Task 3.4: Develop environment-specific shoreline use & modification policies, 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.

Optional SMP components may include:

- Shoreline use and dimensional standards listed in matrices, by environment designation. (*Strongly encouraged.*)

Task 3.5 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 should be prepared. Definitions should be particular to SMP administration, consistent with the SMP's implementing rules. Definitions should be clearly and concisely written.

Optional SMP components may include additional administrative provisions, if not inconsistent with SMA procedural rules and the guidelines. An SMP "user's guide" may be prepared.

Deliverables (three hard copies and one digital copy, with accompanying maps):

1. Complete Draft SMP, including:
   - Draft general goals and policies and optional general regulations. (Task 3.2)
   - Draft environment designations and draft environment maps. (Task 3.3)
   - Draft environment-specific shoreline use and modification policies, regulations, and standards. (Task 3.4)
   - Draft administrative provisions. (Task 3.5)
   - Maps showing environment designations within shoreline jurisdiction

2. An SMP Submittal Checklist completed as relevant to task (adding incrementally to earlier completed tasks).

Due Dates: June 15, 2011

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

Task 3.6 Prepare preliminary cumulative impacts analysis

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.)
Deliverable (three hard copies and one digital copy, with accompanying maps):

1. A cumulative impacts analysis of the SMP demonstrating how no net loss of ecological functions will be achieved over time in the jurisdiction.

Due Date: June 15, 2011

(Note: Please provide Ecology with sufficient time, approximately 45 to 60 days, to review and comment on the draft cumulative impacts analysis.)

Task 3.7: Demonstrate how Phase 3 complies with the Guidelines

Fill in the SMP Submittal Checklist for the tasks that you have completed under Phase 3.

Deliverables:

1. An SMP Submittal Checklist completed as relevant to task (adding incrementally to earlier completed tasks).

Due Date: June 15, 2011

YEAR 3

PHASE 4: RESTORATION PLANNING, REVISITING PHASE 3 PRODUCTS AS NECESSARY

Task 4.1 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.

Deliverables (three hard copies and one digital copy, with accompanying maps):

1. A complete restoration plan.

Due Date: September 15, 2011

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

Task 4.2: 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 developed in Phase 3 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 1.1 that will be subject to the local SMP.

Deliverables (with accompanying maps):

1. Revised designations, policies, and regulations that address the findings of the cumulative impacts analysis.
2. Revised cumulative impacts analysis.
3. Final SMP jurisdiction maps and boundary descriptions

Due Date: December 15, 2011

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

Task 4.3: 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 2.3, together with the findings of the cumulative impacts analysis and the restoration plan, are reflected in the proposed SMP and achieve no net loss.

Deliverables (one digital copy)

1. A report that demonstrates how no net loss will be achieved through SMP implementation.

Due Date: December 15, 2011

Task 4.4: Demonstrate how Phase 4 complies with the Guidelines

Fill in the SMP Submittal Checklist for the tasks that you have completed under Phase 4.

Deliverables:

1. An SMP Submittal Checklist completed as relevant to task (adding incrementally to earlier completed tasks).

Due Date: December 15, 2011

PHASE 5: LOCAL SMP ADOPTION PROCESS

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.

Task 5.1: Assemble complete draft SMP

Assemble a complete draft SMP and submit it to Ecology for informal review together with supporting documentation.

Goal: December 15, 2012

Task 5.2: Complete SEPA review and documentation

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

Goal: December 15, 2012

Task 5.3: Provide GMA 60-day notice of intent to adopt

Upon conclusion of Tasks 5.1, and 5.2, local governments planning under the Growth Management Act must notify Ecology and the Department of Community, Trade and Economic Development of its intent to adopt the SMP as least sixty days in advance of final local approval, pursuant to RCW 36.70A.106 and WAC 173-26-100 (5).

Task 5.4: 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.

Task 5.5: 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.

Task 5.6: Adopt SMP and submit to Ecology

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

Task 5.7: Demonstrate how Phase 5 complies with the Guidelines

Fill in the SMP Submittal Checklist for the tasks that you have completed under Phase 5.

Deliverables (with accompanying maps):

1. A complete, locally adopted SMP including maps, with relevant supporting documentation. (Tasks 5.1 and 5.7)
2. SEPA products (checklist, MDNS or EIS; SEPA notice. (Task 5.2)
3. Evidence of compliance with GMA notice requirements. (Task 5.3)
4. Public hearing record. (Task 5.4)
5. Response to comments received. (Task 5.5)
6. A complete SMP Submittal Checklist.

Due Dates: April 30, 2012

_____balance of page left blank intentionally_____

Budget Summary and Conditions

Budget Conditions

Very Important Note: *Due to state law, all state funds that are disbursed to local governments under these grants are appropriated in the state budget on a biennial basis. Funds appropriated for each biennia of the grant must be spent on eligible activities within that two-year period. Local governments are not allowed to carry unexpended funds past that date.*

We are aware that state and local fiscal years are not on the same schedule; however, state law requires strict adherence to the state biennial funding cycles for state agreements. Grantees are strongly encouraged to actively manage their projects to ensure that spending occurs at budgeted levels.

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). http://www.ecy.wa.gov/biblio/9118.html

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.

   - 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 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 provided. Otherwise, Ecology will return requests to the RECIPIENT for submittal on the correct forms.

   - 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.** Timely receipt of estimates also helps Ecology more effectively manage the overall SMP grant fund.

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

5. **Funding Budget** (for RECIPIENT reporting and Ecology tracking purposes):

   The source of funds provided by the DEPARTMENT are from the 2009-2011 Washington State General Fund for Shoreline Implementation, §302; and the Local Toxics Control Account, §302, Subsection 7.

Maximum Grant Amount, Fiscal Years 1 and 2 (7/1/09-6/30/11):	$ 34,000
Maximum Grant Amount, Fiscal Year 3 (7/1/11 – 6/30/12) *:	$ 16,000
Total Grant Amount:	**$ 50,000**

   State Maximum Cost Share Rate over all three years: 100% UP TO a maximum of $50,000

   *Year 3 funding is subject to legislative appropriation in Fiscal Year 2011-2012 and will be made available via formal amendment to this agreement.

Expenditure Budget

Phase / Task	Year 1 09-10	Year 2 10-11	Year 3 11-12	Total Project
A . Project Coordination	2,000	2,000	1,000	5,000
B. Secure Consult Services	2,000			2,000
1. Preliminary Assessment / Public Participation Plan	3,000			3,000
2. Shoreline Inventory, Analysis, and Characterization	10,000			10,000
3. Complete Draft SMP and Cumulative Impacts Analysis		15,000		15,000
4. Restoration Planning / Revisit Phase 3 products as necessary			10,000	10,000
5. Local Adoption Process			5,000	5,000
Subtotal	**$17,000**	**17,000**	**16,000**	**$50,000**

_____balance of page left blank intentionally_____

Special Terms and Conditions

1. **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.

2. **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

For Report Contents and Ecology's form: Please visit our website at:

http://www.ecy.wa.gov/programs/sea/grants/smp/forms.html

County or City Name
Grant No. G1000__

Project Title
Task Title
Task Number
Date

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:

4. **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.

5. **Quality Assurance Project Plan (QAPP).** IF this project involves the collection of environmental measurement data, the RECIPIENT must 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 for the Preparation of Quality Assurance Project Plans for Environmental Studies, current edition, (Ecology Publication No. 04-03-030).

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), in developing the plan. The QAPP shall be composed of 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 should describe the following elements:

- Assumptions that direct the collection and analysis of data;
- Resources used (such as flights for aerial photos);
- Resource documents that will be consulted;
- Field methods employed;
- Office methods employed;
- Training level of staff involved in data collection and analysis;
- Equipment / materials to be used
- Procedures to assure accurate calibration of field instruments.

Other supporting documentation, including example QAPPs, QAPP templates, and field SOPs may be found at Ecology's Quality Assurance website: www.ecy.wa.gov/programs/eap/quality.html

6. **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 ArcGIS	9.x
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 of the true North American datum system
Vector Import Format	ArcExport, shapefiles, file or personal tabase
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. To discuss the usage of other standards, please contact Jerry Franklin at 360 407-7470; Fax: 360 407-6902; E-Mail: jfra461@ecy.wa.gov or Dan Saul at 360-407-6419; E-Mail: dsau461@ecy.wa.gov for further data sharing and compatibility 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.

7. **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. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Construction/Public Works	10% MBE	6%WBE
Architecture/Engineering	10% MBE	6%WBE
Purchased Goods	8% MBE	4%WBE
Purchased Services	10% MBE	4%WBE
Professional Services	10% MBE	4%WBE

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.

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.

8. **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.

9. **Grant Closeout:** All products for this project shall reflect an end date on or before June 30, 2012 and shall be submitted to the DEPARTMENT on or before **July 20, 2012** 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.

10. **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.

In Witness Whereof, the parties hereby execute this grant agreement

Washington State
Department of Ecology

_____

Gordon White Date
Program Manager
Shorelands and Environmental

Approved as to form by
The Assistant Attorney General

City of Fife

_____

Signature, Authorized Official Date

_____

Print Name of Authorized Official

_____

Title of Authorized Official

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.

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.