Burien Contract # 4083

City of Burien, Washington
City Hall Contract Routing Sheet

Name of Contracting Party: Washington State Dept. of Ecology

Project Name/Description: Municipal Stormwater Capacity Grant – Local Toxics Control Account – Grant No. G1100025 215 **FY2010 Funding Cycle**

Contract Amount: $ 50,000

Type of Contract:

☐ Architectural/Engineering ☐ From MSRC Engineering Roster ☐ RFQ Process Done ☐ Consulting/Services (Non-Engineering)	☐ Construction/Public Works ☐ Informal Bidding Process Done-3 bids (less than $35,000) ☐ From MRSC Small Works Roster ($35,000 to $300,000) ☐ Competitive/Advertised Bidding Done (Over $300,000) ☐ Other: Sole Source - Emergency	☐ Human Services/ Arts &Culture ☒ Other: Grant ☐ Contract Amendment to Contract No. _____

Is this contract authorized in the current year's budget? ☐ Yes ☐ No

If budgeted, list Fund/Dept.: _____

Page # in Budget: _____ Budget line item amount: $_____

BARS Account Number: _____

CONTRACT ROUTING INSTRUCTIONS:

Contract Manager Directions/Approval: H.K *Date:* _____

- ☐ Draft contract, get contract file checklist items
- ☐ Prepare Contract Package (Contract Routing Sheet, contract, and checklist items)
- ☐ Obtain *Dept. Director Approval* _____ *Date:* _____

Legal Dept. Directions/Approval: _____ *Date:* _____

- ☐ Review insurance
- ☐ Review by City Attorney (non-routine contracts)

Finance Dept. Directions/Approval: _____ *Date:* _____

- ☐ Review contract budget/administrative review.

Contract Manager Directions:

- ☐ Obtain signatures on contract.
- ☐ Provide fully signed copy of contract to other party.
- ☐ Make copy of contract for own files, if desired.
- ☐ Return original Contract Package to Finance Dept.

Finance Dept. Directions:

- ☒ Assign contract number.
- ☐ E-mail contract number to Contract Manager.
- ☒ Provide Contract Package to Scanner.

Contract File Checklist:

- ☐ W-9 Taxpayer ID Form
- ☐ Burien Business License #_____
- ☐ Insurance Certificate
- ☐ Bids, if applicable ☐ N/A
- ☒ Contract Fully Signed

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

November 5, 2009

RECEIVED
NOV 16 2009
CITY OF BURIEN
PUBLIC WORKS

Heunkook Lim
City of Burien
400 SW 152nd St., Suite 300
Burien, WA 98166

Re: **Burien Phase II Stormwater Pass-through Grant**
Local Toxics Control Account
Grant No. G1000215, FY 10 Funding Cycle

Dear Mr. Lim:

I am pleased to inform you that the stormwater grant agreement for the Burien Phase II Stormwater Pass-through Grant project has been signed. A signed original of the agreement has been sent to you for project files and future reference.

We appreciate this opportunity to assist you with financial and technical assistance. Ecology's Water Quality Program staff in Lacey is available to assist you with your project.

If you have any questions or need additional information, please call Tracy Farrell, Ecology's financial manager, at 360-407-7039.

Sincerely,

STEPHEN BERNATH for
Kelly Susewind, P.E., P.G.
Water Quality Program Manager

KS:MT:sb

cc: Heungkook Lim, SWM Engineer
Tracy Farrell, Ecology HQ/WQ

DEPARTMENT OF
ECOLOGY
State of Washington

FY 2010-2011 PHASE II STORMWATER PASS-THROUGH GRANTS PROGRAM GRANT AGREEMENT BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY AND THE CITY OF BURIEN

THIS is a binding agreement entered into, by, and between the state of Washington Department of Ecology (DEPARTMENT), and the City of Burien (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT to carry out the requirements described herein.

PART I. GENERAL INFORMATION

Project Title:	**Phase II Stormwater Pass-through Grant Program**
Grant Number:	**G1000215**
RECIPIENT Name and Address:	**Heungkook Lim** **City of Burien** **400 SW 152nd St, Suite 300** **Burien, WA 98166**
RECIPIENT Contact:	**Heungkook Lim**
Telephone Number:	**206-248-5516**
Fax Number:	206-248-5539
E-Mail Address:	heungkookl@burienwa.gov
RECIPIENT Billing Contact:	Heungkook Lim
Telephone Number:	206-248-5516
Fax Number:	206-248-5539
E-Mail Address:	heungkookl@burienwa.gov
RECIPIENT Federal ID Number:	**91-1576144**
DEPARTMENT Project/Financial Manager:	
Mailing Address:	**Water Quality Program** **Washington State Department of Ecology** **P.O. Box 47600** **Olympia, WA 98504-7600**
Telephone Number:	**360- 407-6502**
Fax Number:	**360- 407-7151**
E-Mail Address:	
DESIGNATED LOCAL GOVERNMENT PARTNERS (if applicable)	

For partnerships, the lead government and partners must submit a copy of the signed agreement in Appendix B with each copy of the grant agreement.

DEPARTMENT Funding Source:	**2010-2011 Biennial Operating Budget/Local Toxics Control Account**

Total Cost (up to $50,000 each recipient):	**$ 50,000**
Total Eligible Cost (up to $50,000 each Recipient):	**$ 50,000**
DEPARTMENT Share ($50,000 each Recipient):	**$ 50,000**
DEPARTMENT Maximum Percentage:	**100%**

The effective date of this grant agreement is July 1, 2009. Any work performed prior to the effective date of this agreement will be at the sole expense and risk of the RECIPIENT.

This agreement expires on **June 30, 2011.**

PART II. PERFORMANCE MEASURES

A. Water Quality Goal.

Improved stormwater management and water quality protection associated with development and implementation of a stormwater management program.

B. Project Outcomes.

Local Government Stormwater Grants for local governments to receive grants for municipal stormwater programs, including but not limited to implementation of Phase II municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

C. Post Project Assessment.

The RECIPIENT agrees to submit a brief survey three years after project completion regarding the key project outcomes and the status of environmental results or goals from the project. The DEPARTMENT's Performance Measures Lead will e-mail the RECIPIENT the Post Project Assessment Survey.

The DEPARTMENT may conduct on-site interviews and inspections, and may otherwise evaluate the Project. The DEPARTMENT will enter the information provided into its performance measures database to be provided to the Washington State Legislature, United States Environmental Protection Agency, and other natural resource agencies.

Approximate Post Project Assessment Date: June 30, 2012

PART III. PROJECT DESCRIPTION

The RECIPIENT's stormwater project will address implementation or management of municipal stormwater programs.

PART IV. PROJECT BUDGET

Phase II Stormwater Pass-through Grant Program	
ELEMENTS	**TOTAL ELIGIBLE COST (TEC)***
Task 1 – Project Administration/Management (limited to 10% of total)	$ 5,000
Task 2 – Implementation and management of Stormwater Program	$ 45,000
Total (limited to $50,000 per Recipient partner)	$ 50,000
***The DEPARTMENT's Fiscal Office will track to the Total Eligible Project Cost.**	
MATCHING REQUIREMENTS (There are no matching requirements)	
DEPARTMENT Share FY 2010-11 (100% of TEC)	$ 50,000

Payment Request Submittals. Payment requests will not be submitted more often than monthly, unless allowed by the DEPARTMENT's Project/Financial Manager. The DEPARTMENT's Project/Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Payment Schedule. Payments will be made on a cost-reimbursable basis.

PART V. SCOPE OF WORK

The RECIPIENT shall ensure that this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project related work. The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services. Eligible and ineligible project costs are separate and identifiable for billing purposes. If professional services are contracted, the RECIPIENT shall submit a copy of the final contract to the DEPARTMENT's Project/Financial Manager.

Task 1 - Project Administration/Management

A. The RECIPIENT shall 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; application for, receipt of, and compliance with all required

permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

B. The RECIPIENT shall 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 shall carry out this project in accordance with any completion dates outlined in this agreement.

C. The RECIPIENT shall submit all invoice voucher submittals and supportive documentation, to the DEPARTMENT's Project/Financial Manager. Copies of all applicable forms shall be included with an original A19-1A, and shall be submitted to the DEPARTMENT. Blank forms are found in Administrative Requirements for Recipients of Ecology Grants and Loans at http://www.ecy.wa.gov/biblio/9118.html

Required Forms:	**Where Eligible Costs Have Incurred:**
Form A19-1A (original signature)	Form E (ECY 060-12)
Form B2 (ECY 060-7)	Form F (ECY 060-13)
Form C2 (ECY 060-9)	Form G (ECY 060-14)
Form D (ECY 060-11)	Form H (F-21)
	Form I (ECY 060-15)

D. If work conducted results in a report, the RECIPIENT shall submit the following to the DEPARTMENT's Project/Financial Manager and in the quantities identified:

- Draft project completion reports – one electronic copy
- Final project completion reports – five copies
- Electronic copy of final project completion report

The RECIPIENT shall submit two copies of any document(s) which requires DEPARTMENT approval. Once approval is given, one copy will be returned to the RECIPIENT. If the RECIPIENT needs more than one approved copy, the number of submittals should be adjusted accordingly.

Task 2 – Implementation of Stormwater Planning and Management Needs

A. The RECIPIENT shall address stormwater management needs that protect or restore water quality. The RECIPIENT may conduct work related to implementation of activities required by the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

B. Check the boxes that represent the activities funded under this grant:

- ☒ Public education and outreach activities
- ☒ Public involvement and participation activities
- ☒ Illicit discharge detection and elimination (IDDE) program activities, including:
  - ☒ Mapping or geographic information systems of municipal separate storm sewer systems (MS4s);
  - ☒ Staff training
  - ☒ Activities to identify and remove illicit stormwater discharges;
  - ☒ Dry weather outfall screening procedures and field activities;
  - ☒ Complaint hotline database or tracking system improvements.
- ☒ Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
  - ☒ Development of an ordinance and associated technical manual
  - ☒ Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
  - ☒ Training for plan review and/or inspection staff
- ☒ Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
  - ☒ Inspecting and/or maintaining the MS4 infrastructure
  - ☒ Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- ☒ Annual reporting activities, including developing a summary of identified barriers to the use of low impact development.
- ☒ Establishing and refining stormwater utilities, including stable rate structures.
- ☒ Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan that Ecology approves prior to awarding funding for monitoring.
- ☒ Developing a report to plan for monitoring the next permit cycle.
- ☒ Equipment purchases that result directly in improved compliance with permit requirements. Allowed costs for equipment purchases must be specific to implementing a permit requirement (such as a vactor truck) rather than general use (such as a general us pick-up truck). Qualified equipment purchases include but are not limited to:
  - ☒ Illicit discharge testing equipment and materials
  - ☒ Vactor truck or sweeper truck for MS4 maintenance activities
  - ☒ Electronic devices dedicated to mapping of MS4 facilities and attributes
  - ☒ Software dedicated to tracking permit implementation activities
- ☒ Other activities consistent with the funding purposes of this program that support stormwater management programs or permit compliance, which can be completed by the June 30, 2011, deadline. Provide brief description in the space below:

PART VI. SPECIAL TERMS AND CONDITIONS

A. Commencement of Work. In the event that 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.

B. DEPARTMENT Funding Recognition. The RECIPIENT shall acknowledge and inform the public about DEPARTMENT funding participation in this project as appropriate. Examples include project signs and/or acknowledgement in published materials and reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs.

C. Equipment Purchase. The purchase of equipment may be eligible under this project. If the RECIPIENT determines that equipment is needed to achieve the project outcomes, a request must be made to the DEPARTMENT. All equipment purchases must have prior approval by the DEPARTMENT. Allowable equipment purchases include equipment needed to implement permit requirements (such as a vactor truck) rather than for general use (such as general use pick-up truck).

D. Indirect Rate. To acknowledge overhead costs, the RECIPIENT may charge an indirect rate up to 25 percent based on RECIPIENT employee's direct salary and benefit costs incurred while conducting project related work, provided that prior to signature of this agreement, the DEPARTMENT's Project/Financial Manager may require a list of items included in the indirect rate during negotiations or thereafter. Items that are generally included in an indirect rate are identified in Administrative Requirements for Recipients of Ecology Grants and Loans.

E. Meetings/Light Refreshments. The RECIPIENT may spend up to $50 per meeting for light refreshments associated with this project. The total amount spent for light refreshments under this agreement cannot exceed $300.

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

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. Please include the following information:

1. Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
2. The total dollar amount paid to qualified firms under this invoice.

G. Progress Reports. The RECIPIENT shall submit quarterly Progress Reports to the DEPARTMENT's Project/Financial Manager. Payment requests will not be processed without a Progress Report.

Reporting Periods.

- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

Reporting Due Date. Quarterly Progress Reports are due 15 days following the end of the quarter.

Report Content. At a minimum, all Progress Reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement.

H. Water Quality Monitoring. Prior to initiating water quality monitoring activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP) that follows Ecology's *Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies*, February 2001 (Ecology Publication No. 01-03-003).

The RECIPIENT must submit the QAPP to the DEPARTMENT for review, comment, and must be approved before starting the environmental monitoring activities.

The RECIPIENT must use an environmental laboratory accredited by Ecology to analyze water samples for all parameters to be analyzed that require bench testing.

The RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the "ten-year rule."

Monitoring Data Submittal / Environmental Information Management System. Funding recipients that collect water quality monitoring data must submit all appropriate data to Ecology through the Environmental Information Management System (EIM).

PART VII. ALL WRITINGS CONTAINED HEREIN

This agreement, the appended GENERAL TERMS AND CONDITIONS, the DEPARTMENT's current edition of *Administrative Requirements for Recipients of Ecology Grants and Loans ("Yellow Book")*, and the *Local Government Stormwater Grants Program FY 2008* contain the entire understanding between the parties, and there are no other understandings or representations other than as 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 signed by authorized representatives of the RECIPIENT and DEPARTMENT and made a part of this agreement, EXCEPT that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the grant budget. The DEPARTMENT or RECIPIENT may change their respective staff contacts without the concurrence of either party.

IN WITNESS WHEREOF, the parties hereby execute this Grant:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

11/6/09
DATE

KELLY SUSEWIND, P.E., P.G.
WATER QUALITY PROGRAM MANAGER

CITY OF BURIEN
JURISDICTION

10/22/09
DATE

NAME: HEUNGKOOK LIM
TITLE: SWM ENGINEER

APPROVED AS TO FORM ONLY
ASSISTANT ATTORNEY GENERAL

(Revised 8/14/09)

Appendix A

GENERAL TERMS AND CONDITIONS
Pertaining to Grant and Loan Agreements of the Department of Ecology

A. RECIPIENT PERFORMANCE

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

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

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

C. THIRD PARTY BENEFICIARY

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

D. CONTRACTING FOR SERVICES (BIDDING)

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

E. ASSIGNMENTS

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

F. COMPLIANCE WITH ALL LAWS

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

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

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the

DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

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

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

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

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends $500,000 or more in a year in Federal funds. The $500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five(45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

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

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

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

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

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

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

L. WAIVER

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

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

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

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

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

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

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

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

N. SUSTAINABLE PRODUCTS

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

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the

DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

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

P. PROJECT APPROVAL

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

Q. DISPUTES

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

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

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

S. INDEMNIFICATION

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

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

T. GOVERNING LAW

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

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference

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.

Appendix B

PARTNERSHIP AGREEMENT FOR ECOLOGY GRANTS

FY2010-2011 PHASE II STORMWATER PASS-THROUGH GRANTS

The cities, towns, and counties listed below agree to partner under one grant agreement for the FY2010 -2011 Phase II Stormwater Pass-through Grants. The grant shall be administered on behalf of the partners by the Lead Phase II Local Government. Each partner local government is a city, town, or county permittee under the Phase II Western Washington Municipal Stormwater General Permit or the Phase II Eastern Washington Municipal Stormwater General Permit.

Lead Phase II Local Government: _____

Phase II permit coverage number: _____

Signature of authorized representative: _____
Title

Date _____

Partner Local Government #1: _____

Phase II permit coverage number: _____

Signature of authorized representative: _____
Title

Date _____

Partner Local Government #2: _____

Phase II permit coverage number: _____

Signature of authorized representative: _____
Title

Date _____

Partner Local Government #3: _____

Phase II permit coverage number: _____

Signature of authorized representative: _____
Title

Date _____

Partner Local Government #4: _____

Phase II permit coverage number: _____

Signature of authorized representative: _____
Title

Date _____

If you require special accommodations or need this document in a format for the visually impaired, call the Water Quality Program at 360-407-6502. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.