CITY

DEPARTMENT OF ECOLOGY
State of Washington

2013-15 MUNICIPAL STORMWATER CAPACITY GRANT

PROGRAM

FISCAL YEAR 2014

GRANT AGREEMENT

NUMBER G1400279

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF EVERETT

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2013-15 MUNICIPAL STORMWATER CAPACITY GRANT PROGRAM
Grant Agreement
Between
The State of Washington Department of Ecology
And
City of Everett

THIS is a binding agreement entered into, by, and between the state of Washington Department of Ecology (DEPARTMENT), and the City of Everett (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:	**2013-15 Municipal Stormwater Capacity Grant Program**
State Fiscal Year:	**FY2014**
Grant Number:	**G1400279**
RECIPIENT Name:	**City of Everett**
Mailing Address:	**3200 Cedar St, Everett, WA 98201**
RECIPIENT Federal ID Number:	**91-6001248**
Total Eligible Cost:	
($50,000 AND $120,000):	**$170,000**
DEPARTMENT Funding Sources:	
ELSA - Operating:	**$50,000**
ELSA - Capital Budget Provision:	**$120,000**
DEPARTMENT Share:	**$170,000**
DEPARTMENT Maximum Percentage:	**100%**
Effective Date Of This Grant Is:	**July 1, 2013** Any work performed prior to the effective date of this agreement is not eligible for reimbursement.
This Grant Agreement Expires On:	**January 31, 2015**

RECIPIENT Contact:	**Heather Kibbey**
Telephone Number:	**425-257-8889**
E-Mail Address:	**hkibbey@everettwa.gov**
RECIPIENT Billing Contact:	**Matt Welborn**
Telephone Number:	**425-257-8974**
E-Mail Address:	**mwelborn@everettewa.gov**
DEPARTMENT Project/Financial Manager:	**Layne Slone**
Mailing Address	**Water Quality Program** **Washington State Department of Ecology** **P.O. Box 47600** **Olympia, WA 98504-7600**
Telephone Number:	**360-407-6225**
Fax Number:	**360-407-7151**
E-Mail Address:	**Layne.Slone@ecy.wa.gov**
Designated Local Government Partners (if applicable):	

PART II. PERFORMANCE MEASURES

A. Water Quality Goal

Improved stormwater oversight and water quality protection through the direct development and implementation of a comprehensive stormwater management program.

B. Project Outcomes

Implementation of Phase I and II municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

PART III. PROJECT DESCRIPTION

RECIPIENT will address implementation or management of municipal stormwater programs. Additionally, the RECIPIENT's project will include project specific planning and design for a retrofit project which includes low-impact development techniques.

PART IV. PROJECT BUDGET

Municipal Stormwater Capacity Grants Program, FY2014	
Elements/Objects	**TOTAL ELIGIBLE COST (TEC)***
Task 1 – Project Administration/Management (limited to $5,000 ELSA Operating Funds)	**$5,000**
Task 2 – Implementation And Management Of Stormwater Program	**$45,000**
Task 3 – Pre-Construction Planning And Design (limited to $120,000 ELSA Capital Budget Provisions)	**$120,000**
Total (limited to $170,000 per RECIPIENT partner)	**$170,000**
***The DEPARTMENT's Fiscal Office will track to the Total Eligible Project Cost.**	
MATCHING REQUIREMENTS (There are no matching requirements)	
DEPARTMENT Share FY 2014 (100% of TEC)	**$170,000**

PART V. SCOPE OF WORK

RECIPIENT will 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.

Task 1 - Project Administration/Management

A. RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; 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. RECIPIENT will manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. RECIPIENT will maintain effective communication with the DEPARTMENT, RECIPIENT's designees; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT will carry out this project in accordance with any completion dates outlined in this agreement.

C. RECIPIENT will submit all invoice voucher submittals and supportive documentation to the DEPARTMENT's Project/Financial Manager.

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

- Draft project completion report – one electronic copy
- Final project completion report – one paper copy, one electronic copy

RECIPIENT will 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. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT must ensure funds are used to attain compliance where applicable.

B. RECIPIENT may conduct work related to implementation of additional activities required by the municipal stormwater NPDES permits. The following is a list of elements RECIPIENT's project may include.

1) Public education and outreach activities, including stewardship activities.
2) Public involvement and participation activities.
3) Illicit discharge detection and elimination (IDDE) program activities, including:
   a) Mapping or geographic information systems of municipal separate storm sewer systems (MS4s).
   b) Staff training.
   c) Activities to identify and remove illicit stormwater discharges.
   d) Field screening procedures.
   e) Complaint hotline database or tracking system improvements.

4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
   a) Development of an ordinance and associated technical manual or update of applicable codes.
   b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
   c) Training for plan review and/or inspection staff.
   d) Participation in applicable watershed planning effort.
5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
   a) Inspecting and/or maintaining the MS4 infrastructure.
   b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
6) Annual reporting activities.
7) Establishing and refining stormwater utilities, including stable rate structures.
8) 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 (QAPP) that the DEPARMENT approves prior to awarding funding for monitoring.
   Monitoring, including:
   a) Development of applicable QAPPs.
   b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
9) Structural stormwater controls program activities (Phase I permit requirement)
10) Source control for existing development (Phase I permit requirement), including:
   a) Inventory and inspection program.
   b) Technical assistance and enforcement.
   c) Staff training.
11) 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 use pick-up truck). Qualified equipment purchases include but are not limited to:
   a) Illicit discharge testing equipment and materials.
   b) Vactor truck or sweeper truck or MS4 maintenance activities.
   c) Electronic devices dedicated to mapping of MS4 facilities and attributes.
   d) Software dedicated to tracking permit implementation activities.

Task 3 – Preconstruction Planning and Design

A. Project Summary. RECIPIENT will submit to the DEPARTMENT's Project Manager for review and acceptance and no later than October 1, 2013, an initial one to two page

Project Summary. The Project Summary will include a description of the proposed project identifying: 1) the area where the proposed project is to be installed or constructed (including maps), 2) the stormwater best management practice(s) to be designed, 3) the name of the appropriate design manual planned for use in the final design (see item D), and 4) the water quality issue mitigated by the proposed project. The DEPARTMENT will provide comments to the RECIPIENT within 14 calendar days of receipt of the Project Summary. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the Project Summary for consistency with the appropriate design criteria and grant requirements. Detailed calculations and/or drawings are not required at this time.

B. Pre-Design Report. RECIPIENT will submit two hard copies and one digital copy of the Pre-design report to the DEPARTMENT's Project Manager for review and acceptance. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the Project Summary for consistency with the appropriate design criteria and grant requirements. Detailed calculations and/or drawings are required in the Pre-design Report. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans.

C. 90 Percent Design Plans. RECIPIENT will submit two hard copies and one digital copy of the 90 percent design plans to the DEPARTMENT's Project Manager for review and acceptance. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the plans and specifications for consistency with the appropriate design criteria and grant requirements.

D. For above items A-C, the RECIPIENT must justify significant deviations from the following:

1) The appropriate guidance manual below depends on the region that your project is conducted:
   - **2005 or 2012 Stormwater Management Manual for Western Washington (SWMMWW),** (the appropriate manual depends on the requirements of the jurisdiction) or
   - **2004 Stormwater Management Manual for Eastern Washington (SWMMEW),** both can be found at: http://www.ecy.wa.gov/programs/wq/stormwater/tech.html, or
   - **Low Impact Development Technical Guidance Manual for Puget Sound** found at: http://www.psp.wa.gov/downloads/LID/20121221_LIDmanual_FINAL_secure.pdf, or
   - Equivalent design manuals, **Eastern Washington Low Impact Development Manual.**
2) Equivalent manual as developed by the local jurisdiction and approved by the DEPARTMENT.
3) Good engineering practices and generally recognized engineering standards.

E. SEPA. If applicable, the RECIPIENT will submit to the DEPARTMENT's Project Manager, a copy of the State Environmental Review Act (SEPA) Lead Agency's signed and dated SEPA determination.

F. DAHP EZ-1. If applicable, the RECIPIENT will submit to the DEPARTMENT's Project Manager a Department of Archaeology and Historic Preservation (DAHP) EZ-1 form to initiate review of project activities by DAHP and tribal governments.

G. RECIPIENT will submit all pre-design figures and construction plans to the DEPARTMENT, reduced to 11" x 17" in size. The RECIPIENT may bind them with the specifications or related construction contract documents or bind as a separate document. All reduced drawings must be legible.

H. Summary of Deliverables:

1. Submit a Project Summary including maps, no later than October 1, 2013, for review and acceptance of the proposed design project.
2. Submit a Pre-design report to the DEPARTMENT, no later than January 31, 2014 for review and acceptance.
3. Submit 90 percent design plans to the DEPARTMENT, no later than August 1, 2014 for review and acceptance.
4. If applicable, submit a copy of the signed and dated SEPA determination to the DEPARTMENT.
5. If applicable, submit a copy of the DAHP EZ-1 form, for DEPARTMENT coordination on compliance with Executive Order 05-05.

PART VI. SPECIAL TERMS AND CONDITIONS

None

PART VII. ALL WRITINGS CONTAINED HEREIN

The following 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:

- This agreement.
- Attachment I: General Project Management Requirements for the Municipal Stormwater Capacity Grants Program.
- Attachment II: General Terms and Conditions.
- The effective edition, at the signing of this agreement, of the DEPARTMENT's "Administrative Requirements for Recipients of Ecology Grants and Loans."
- The associated funding guidelines that correspond to the fiscal year in which the project is funded.
- The applicable federal and state statutes and regulations.

No subsequent modifications or amendments of this agreement will be of any force or effect unless signed by authorized representatives of the RECIPIENT and the 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 the RECIPIENT may change their respective staff contacts without the concurrence of either party.

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

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

IN WITNESS WHEREOF, the parties sign this grant agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Donald L Sus 12/06/2013

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

CITY OF EVERETT

Ray Stephanson 11-18-2013

RAY STEPHANSON DATE
MAYOR

Approved As To Form Only
Assistant Attorney General

ATTEST:

City Clerk

APPROVED AS TO FORM

JAMES D. ILES, City Attorney

ATTACHMENT I: General Project Management Requirements For 2013-15 Municipal Stormwater Capacity Grants Program Funding Agreement

A. Archeological and Cultural Resources

RECIPIENT must comply with all requirements listed in Executive Order 05-05 prior to implementing any project that involves soil disturbing activity.

RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to the DEPARTMENT's project manager prior to any soil disturbing activities. The DEPARTMENT will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to meet Executive Order 05-05 requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Any soil disturbing activities that occur prior to the completion of the Executive Order 05-05 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

The Department of Archaeology and Historic Preservation has provided guidance that can be accessed online at:
http://www.dahp.wa.gov/pages/Documents/EnvironmentalReview.htm and
http://www.dahp.wa.gov/pages/EnvironmentalReview/documents/eo0505Guidance_000.pdf.

B. Education and Outreach

RECIPIENT must do a regional search for existing materials before producing any new educational flyers or pamphlets. The RECIPIENT must request the use of those materials before time and resources are invested to duplicate materials that are already available.

RECIPIENT must also check the Washington Waters website http://www.ecy.wa.gov/washington_waters/index.html for useful educational materials. These materials are available for public use and can be downloaded directly from the website.

RECIPIENT must provide the DEPARTMENT up to two copies and an electronic copy on a CD-ROM of any tangible educational products developed under this grant, such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, and media announcements or gadgets, such as a refrigerator magnet with a message. If this is not practical, the RECIPIENT must provide a complete description including drawings, photographs, or printouts of the product.

RECIPIENT must also supply the DEPARTMENT with the names and contact information of local project leads.

If there are a significant number of people in the community that speak languages other than English, then the RECIPIENT must produce all public outreach materials, pamphlets, fliers, meeting notices, reports, and other educational materials in English and in the other prevalent language.

C. Equipment Purchase

RECIPIENT must get written, prior approval from the DEPARTMENT for any equipment purchase.

D. Funding Recognition

RECIPIENT must inform the public about DEPARTMENT funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from the DEPARTMENT upon request.

E. Increased Oversight

If this project is selected for increased oversight, the RECIPIENT must submit all backup documentation with each payment request submittal. In addition, the DEPARTMENT's Project Manager must establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

F. Indirect Rate

To acknowledge overhead costs, the RECIPIENT may charge an indirect rate of up to 25 percent based on employees' direct salary and benefit costs incurred while conducting project-related work. The DEPARTMENT's Financial Manager may require a list of items included in the indirect rate at any time.

G. Minority and Women's Business Participation

RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

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

a) Include qualified minority and women's businesses on solicitation lists.
b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.

c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

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

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

H. Payment Request Submittals

Payment Request Submittals. 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.

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by the DEPARTMENT's Financial Manager.

Supporting Documentation. The RECIPIENT must submit all payment request vouchers and supportive documentation to the DEPARTMENT's Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Reporting Eligible Costs. The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Copies of all applicable forms must be included with an original A19-1A, and must 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)

I. Post Project Assessment

RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project three years after project completion.

DEPARTMENT's Water Quality Program Performance Measures Lead will contact the RECIPIENT before the Post Project Assessment date to request this data.

DEPARTMENT may also conduct site interviews and inspections, and may otherwise evaluate the Project, as part of this assessment.

J. Procurement

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 will submit a copy of the final contract to the DEPARTMENT's Project/Financial Manager.

K. Progress Reports

RECIPIENT must submit quarterly progress reports to the DEPARTMENT's Financial Manager and Project Manager. Payment requests will not be processed without a progress report.

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. The RECIPIENT must also attach all landowner agreements signed during the respective quarter to each progress report.

Reporting Periods. Quarterly progress reports are due 15 days following the end of the quarter:

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

L. Required Document Submittals

RECIPIENT must submit the following documents to the DEPARTMENT as requested by the DEPARTMENT's Project Manager or Financial Manager:

- Draft project completion report – 1 copy.
- Electronic copy of final project completion report – 1 copy.
- Final project completion report – 1 copy.
- Educational products developed under this agreement – up to 2 copies.

- Documents that require DEPARTMENT Approval – 2 copies (one for the DEPARTMENT and one for the RECIPIENT).
- Interlocal agreements – 1 copy for the DEPARTMENT's Project/Financial Manager.
- Professional services procurement agreements – 1 copy to the DEPARTMENT's Project/Financial Manager.

M. Special Condition For Snohomish County And King County

For either Snohomish County or King County: When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein will be contingent upon appropriation of funds by the RECIPIENT's governing body; provided that nothing contained herein will preclude the DEPARTMENT from demanding repayment of funds paid to the RECIPIENT in accordance with Section O of the appended General Terms and Conditions.

N. Water Quality Monitoring

Quality Assurance Project Plan (QAPP). Prior to initiating water quality monitoring activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP). The QAPP must follow Ecology's *Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies*, February 2001 (Ecology Publication No. 01-03-003). The applicant may also reference the *Technical Guidance for Assessing the Quality of Aquatic Environments*, revised February 1994 (Ecology Publication No. 91-78) or more current revision, in developing the QAPP.

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

RECIPIENT must use an environmental laboratory accredited by the DEPARTMENT to analyze water samples for all parameters to be analyzed that require bench testing. Information on currently accredited laboratories and the accreditation process is provided on the Department of Ecology's Environmental Assessment Program's website, available at:

http://www.ecy.wa.gov/programs/eap/labs/search.html

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." The ten-year rule means that data documentation is sufficient to allow an individual not directly familiar with the specific monitoring effort to understand the purpose of the data set, methods used, results obtained, and quality assurance measures taken ten years after data are collected.

Monitoring Data Submittal / Environmental Information Management System. Funding recipients that collect water quality monitoring data must submit all data to the DEPARTMENT through the Environmental Information Management System (EIM). Data must be submitted by following instructions on the EIM website, currently available at:

http://www.ecy.wa.gov/eim

The data submittal portion of the EIM website provides information and help on formats and requirements for submitting tabular data. Specific questions about data submittal can be directed to the EIM Data Coordinator, currently available at:

eim_data_coordinator@ecy.wa.gov

If GIS data is collected, the DEPARTMENT's data standards are encouraged. An Ecology Focus Sheet entitled *GIS Data and Ecology Grants* (Publication No. 98-1812-SEA) outlines the standards. Common standards must be used for infrastructure details, such as geographic names, Geographic Information System (GIS) coverage, list of methods, and reference tables.

ATTACHMENT II: General Terms And Conditions
Pertaining To Grant And Loan Agreements Of The Department Of Ecology

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

B. SUBGRANTEE/CONTRACTOR COMPLIANCE
The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

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

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

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

F. COMPLIANCE WITH ALL LAWS
1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

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

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

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

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

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

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

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

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

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

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

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

I. PERFORMANCE REPORTING

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

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

J. COMPENSATION

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

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

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

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

4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5. herein.

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

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

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

K. TERMINATION

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

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

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

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

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

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed

upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

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

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.
2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
    a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
    b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

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

O. RECOVERY OF PAYMENTS TO RECIPIENT

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

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

P. PROJECT APPROVAL

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

Q. DISPUTES

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

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

R. CONFLICT OF INTEREST

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

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

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

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

W. SUSPENSION

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

SS-010 Rev. 04/04

Grant

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

#10

PROJECT TITLE:
Department of Ecology FY 2013-2015 Stormwater Capacity Grant

____	Briefing
____	Proposed Action
____	Consent
____	Action
____	First Reading
____	Second Reading
____	Third Reading
____	Public Hearing
____	Budget Advisory

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Heather Kibbey
Phone Number	425-257-8889
FOR AGENDA OF	Nov. 6, 2013

Initialed by:
Department Head ____
CAA db
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
City-wide		Grant agreement	

Amount Budgeted	$170,000 grant	
Expenditure Required	-0-	Account Number(s):401-5-600-123
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Department of Ecology (Ecology) is giving a $50,000 grant to the City of Everett. The grant must be used to implement portions of the Phase II National Pollutant Discharge Elimination System Stormwater permit. Ecology is also providing up to $120,000 in planning money to develop bioretention plans and specifications for retrofit along Evergreen Way. There is no match required for this money.

Council approved 11/6/13

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign the Department of Ecology FY 2013-15 Municipal Stormwater Capacity Grant agreement.