

**NORTH BEACH WATER DISTRICT
PACIFIC COUNTY, WASHINGTON**

RESOLUTION 02-2015

**A RESOLUTION OF THE NORTH BEACH WATER DISTRICT OF
PACIFIC COUNTY, WASHINGTON, APPROVING DEPARTMENT
OF ECOLOGY COST REIMBURSEMENT AGREEMENT AND FIVE
THOUSAND DOLLAR SECURITY DEPOSIT**

WHEREAS, on November 24, 2014, the District, made Application for a Change of Water Rights (#G2-00174C) to change the existing points of withdrawal commonly known as South Well #1, South Well #2, and South Well #4 to the proposed points of withdrawal commonly known as Wiegardt Well #1, Wiegardt Well #2 Wiegardt Well #3, future Wiegardt Well #4, future Wiegardt Well #5, future Wiegardt Well #5, and future Wiegardt Well #6; and

WHEREAS, the Department of Ecology currently has a backlog of up to ten years to process decisions on water rights applications ; and

WHEREAS, the Washington State Legislature, during its 2000 regular session, passed Engrossed Substitute Senate Bill 6277 creating a Cost Reimbursement alternative whereby water rights applicants may enter an agreement with the Department of Ecology to expedite the decision-making process of their water rights applications by assuming the full cost of processing their water right application with some or all of the work being performed by a consultant of the applicants choosing working for the Department of Ecology; and

WHEREAS, the District's general manager negotiated a Cost Reimbursement Agreement with the Department of Ecology which is attached hereto and incorporated herein as "Exhibit A"; and

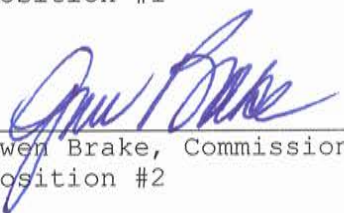
WHEREAS, the District's attorney, Brent Dillie, has reviewed and approved the Cost Reimbursement Agreement as to form; now, therefore

BE IT RESOLVED, by the Board of Commissioners of North Beach Water District, Pacific County, Washington, as follows:

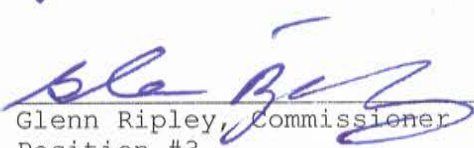
1. The Board does hereby approve the Cost Reimbursement Agreement with the Department of Ecology; and
2. The Board does hereby authorize the general manager to execute the Cost Reimbursement Agreement with the Department of Ecology; and
3. The Board des hereby approve the issuance of a five thousand dollar (\$5,000.00) deposit to the Department of Ecology as security for payment of invoiced balances for work completed under the Cost Reimbursement Agreement.

Adopted by the Board of Commissioners of North Beach Water District, Pacific County, Washington at its regular meeting held on the 23rd day of February, 2015.

Brian Sheldon, Commissioner
Position #1

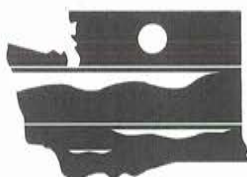


Gwen Brake, Commissioner
Position #2



Glenn Ripley, Commissioner
Position #3

"Exhibit A"



DEPARTMENT OF
ECOLOGY
State of Washington

Cost-Reimbursement Agreement (CRA)

**Between the
Washington State Department of Ecology
and
North Beach Water District**

**CRA Project No. 9RK1
Phase 2**

PART A SPECIAL TERMS AND CONDITIONS AND SCOPE OF WORK

Effective Date: date of signature by the Washington State Department of Ecology

End Date: December 31, 2015

Applicant Information		
	Project Manager/ Primary Point of Contact	Billing Contact
Name	William Neal	Jack McCarty
Company	North Beach Water District	North Beach Water District
Address	PO Box 618 Ocean Park, WA 98640	PO Box 618 Ocean Park, WA 98640
Telephone	(360) 665-4144 (360) 244-0068	(360) 665-1444
Fax	(360) 665-4641	(360) 665-4641
E-mail	bneal@northbeachwater.com	officemanager@northbeachwater.com

Ecology Information		
	Technical Project Manager/Primary Point of Contact	Program Primary Point of Contact
Name	Tammy Hall	Rose Bennett
Address	PO Box 47775 Olympia, WA 98504-7775	PO Box 47600 Olympia, WA 98504
Telephone	(360) 407-6099	(360) 407-6027
Fax	(360) 407-6305	(360) 407-6574
E-mail	thal461@ecy.wa.gov	rose.bennett@ecy.wa.gov

Project Description

North Beach Water District filed change application G200174@2 to change the points of withdrawal to three existing wells and up to three proposed wells not yet drilled to the existing certificate. The applicant has requested to enter into a cost reimbursement agreement and has selected Robinson Noble to process the application.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Statement of Work

Ecology shall furnish through its consultant and internal staff resources the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Scope of Work and Deliverables.

Performance Security

Performance Security Option Selected and Dollar Amount (Pursuant To Section II.B.6. Of Part B — General Terms and Conditions): \$5,000 Security Deposit

Terms of Agreement

Consistent with the provisions of Part B — General Terms and Conditions as well as the provisions of RCW 43.21A.690 and RCW 90.03.265, the following describes the specific tasks, budget detail, and schedule for the scope of work to be performed by Ecology and its consultant(s) to be subsequently reimbursed by the Applicant pursuant to this CRA. This Cost Reimbursement Agreement is to expedite Ecology's decisions and may or may not result in the issuance of permits. Accordingly, the Parties signatory to this Agreement agree:

All eligible costs incurred by Ecology must be reimbursed by the Applicant. Eligible costs include all reasonable and necessary direct and indirect costs that arise from processing the permit, legal costs for processing your application, cost of staff replacement for time spent working on this project and decision-making through any final decision by Ecology. Ecology will bill you monthly for both the direct portion of staff costs and the staff replacement costs.

SCOPE OF WORK AND DELIVERABLES

Task 1: Compile and Review Documents and Information from Pertinent Ecology Files

The consultant will compile an information package that will serve as a source for analytical input and as a defensible basis for the analyses associated with the processing of the District's water right change application. If the review suggests amendment of the application is appropriate, recommendations for those amendments will be made as part of this task and the amendment process will be accomplished within this task.

Task 2: Describe/Assess Hydrogeologic Setting and Senior Water Rights Issues

The consultant will use the work already accomplished by Robinson Noble and the District to describe a conceptual model of the peninsula and its aquifer. This will provide context for analyses related to processing of the application. This will include a review of existing documents to provide sufficient description of the hydrogeologic setting to facilitate the processing of the change application. The consultant will assess the potential for well-hydraulics differences to impair neighboring water rights with particular attention to the difference in the well-hydraulics relationship with neighboring wells. Language generated from this task will be used directly in generating the Draft Report of Examination (ROE).

Task 3: Assess Potential for Impacts to Surface Water Features

The consultant will use Map- and air-photo-based studies of the greater wellfield area to identify the surface waters in proximity to the wellfield. If surface waters of significance are identified, an assessment of the hydrologic implications of the proposed water right change will be accomplished. The findings of the task will be written to be directly importable to the Draft ROE.

Task 4: Generate Draft Report of Examination

The consultant will draft the ROE using work from the previous tasks and in part from work needed within this task. The product will be a preliminary draft for review by the Department of Ecology and the District and a formal Draft ROE suitable for posting on the Department of Ecology web page.

Task 5: Contracting with Department of Ecology and Coordination with Other Agencies

Throughout the accomplishment of the proposed work, it will be necessary to maintain the contract with the Department of Ecology and to coordinate efforts with the Department of Health and the Department of Fish and Wildlife. The consultant assumes a meeting to present findings and discuss the form and content of the Draft ROE before it is written. It is possible that this aspect could be accomplished through emails or perhaps a conference call. In addition to the meeting, routine contract-related communication with Ecology will be needed as the work progresses. It may also be necessary for the consultant to coordinate their findings with Department of Health personnel as the work is accomplished to clarify the implications of various approaches to analysis and reporting.

Deliverables:

The consultant will prepare a draft Report of Examination (ROE), in a timely manner, that is legally and scientifically defensible. The report must adequately address the four-part test of beneficial use, water availability (physical and legal), impairment, and public welfare.

BUDGET AND SCHEDULE SUMMARY				
	Estimated Hours	Estimated Rate	Estimated Cost	Estimated Completion Date
Ecology Direct	24	\$57.00	\$1,368.00	December 31, 2015
Staff Replacement Cost	24	\$78.00	\$1,872.00	December 31, 2015
Ecology Consultant			\$16,800.00	October 31, 2015
Total Cost Estimate			\$20,040.00	

Informational task, budget, and schedule summary presented here is for informational purposes only. Ecology tracks and manages costs at the total project level. A formal written and signed amendment to this CRA is required to increase the total project budget amount or extend the completion date. This budget estimate does not include potential costs associated with appeals following issuance of the final decision.

Entire Agreement and Signatures

This Agreement contains all the terms and conditions agreed upon by the parties. This entire agreement consists of Part A, Special Terms and Conditions and Statement of Work and Part B, General Terms and Conditions. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

This contract may be amended by mutual agreement of the parties. A formal written and signed amendment to this CRA is required to increase the cost.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Applicant Authorized Official:		Ecology Authorized Official:	
Name		Name	Thomas Loranger
Signature		Signature	
Date		Date	
Address		Address	PO Box 47600 Olympia, WA 98504
Telephone		Telephone	(360) 407-6000
Fax		Fax	(360) 407-6574
E-mail		E-mail	tlor461@ecy.wa.gov

PART B
-Water Right -
GENERAL TERMS AND CONDITIONS

Recitals

- A. Pursuant to RCW 43.21A.690, RCW 90.03, and RCW 90.44 Ecology may enter into voluntary cost-reimbursement agreements with applicants to provide for the recovery of Ecology decision-making expenditures, on behalf of that applicant, related to permit coordination, environmental review, application(s) review, technical studies, permit processing, independent consultants, current staff review, staff technical assistance, and reasonable and necessary direct and indirect costs that arise from processing the permit.
- B. Further pursuant to, RCW 43.21A.690, RCW 90.03, and RCW 90.44 the Washington State Legislature has stated its intent that cost-reimbursement agreements free permitting agency resources to work on review of other project permits and, in particular, small-project permits. The use of cost-reimbursement agreements must not reduce agency staff available to work on application(s) not covered by cost-reimbursement agreements. Accordingly, this intent cannot be met unless all eligible costs incurred by Ecology are reimbursed by the Applicant. Eligible costs include legal costs for processing and decision-making through any final decision by Ecology and any such subsequent venue of first legal review, e.g., Pollution Control Hearings Board, Environmental and Land Use Hearings Board, Superior Court, etc.
- C. Fully aware of the above provisions and the full scope and intent of RCW 43.21A.690, RCWs 90.03, and RCW 90.44, and in consideration of Ecology processing any application(s) as provided in RCW 90.03.265, the Applicant will reimburse Ecology for Ecology's decision-making costs associated with this Agreement as well as for any other such decision-making costs associated with any other application(s) which must be acted upon before the Applicant's.

Agreement

The Parties hereto agree as follows:

A. Cost-Reimbursement Agreement.

1. Scope of Reimbursable Activities. This CRA (i.e., both Part A — Special Terms and Conditions and Scope of Work, and Part B — General Terms and Conditions) provides for reimbursement to Ecology by the Applicant for all reasonable and necessary direct and indirect costs generally described in the body of this CRA, and further described by tasks, budget detail, and schedule in Part A — Special Terms and Conditions and Scope of Work.

B. Reimbursement by the Applicant.

1. Liability for Reimbursement. Except as otherwise specifically excepted in this CRA, the Applicant is liable to Ecology for all actual and reasonable costs necessary for the tasks set forth in Part A — Special Terms and Conditions and Scope of Work to process and make decisions concerning the Applicant's permit application(s), as well as any other application(s) must be acted upon first (see Eligible Costs at II.B.2. below). Each individual applicant is responsible for his or her own appeal costs that may result from a water right decision made by the department. These tasks are more fully described in Part A — Special Terms and Conditions and Scope of Work including the identification of any senior application(s) which potentially must be acted upon before the Applicant's, without limiting the eligible costs as incurred by Ecology and reimbursable by the Applicant.

[Note — Any listing of application(s) names and numbers of senior application(s) referenced in Part A — Special Terms and Conditions and Scope of Work is based on a preliminary analysis and may not represent a complete list of senior affected application(s). Ecology may add or withdraw application(s) from the list as needed.]

2. Eligible Costs. Consistent with RCW 43.21A.690, RCW 90.03, and RCW 90.44 eligible costs of decision-making under this CRA, include both reasonable and necessary direct and indirect costs.
 - a. Direct Costs. Direct costs are costs incurred as a direct result of Ecology working to fulfill its decision-making responsibilities pursuant to this CRA and the provisions of RCW 43.21A.690, RCW 90.03, and RCW 90.44 including, as applicable, and without limitation, costs of:
 - i. Ecology personnel hours worked directly on the specific application(s) processing and decision-making being sought through this CRA, as well as any processing and decision-making associated with any such senior application(s) which must be acted upon before the Applicant's. Each individual applicant is responsible for his or her own appeal costs that may result from a water right decision made by the department. Hours worked directly include all work for purposes of determining whether the application(s) satisfies the "four-part" test of RCW 90.03.290 and any other applicable legal requirements. Hours worked directly also include any hours spent to review the work of any consultant hired as part of this CRA, provide necessary technical assistance in the absence of a consultant with comparable technical skills, attend coordination and decision-making meetings, routine or otherwise, convened to monitor progress, set critical pathways, and generally ensure efficient and straightforward implementation of this CRA, and provide for training for Ecology personnel as necessary to implement this CRA. Costs of Ecology personnel hours includes salaries, retirement plan benefits, Social Security benefits, health care benefits, and other benefits required by law to be paid to, or on behalf of, employees.

[Note —The personnel listed in this section are only representative of Ecology employees and their salary. The actual job class and rate on any project may vary.]

- Ecology personnel hours are based on position (hourly rates are approximate):

WMS Band 2 – \$71.00/hour	Environmental Specialist 4 – \$52.00/hour
WMS Band 1 – \$61.00/hour	Environmental Specialist 3 – \$44.00/hour
Hydrogeologist 3 – \$61.00/hour	Secretary Supervisor – \$36.00/hour
Hydrogeologist 2 – \$56.00/hour	Secretary Senior – \$30.00/hour

[Note - Benefit costs are calculated at a rate of 32.0% of Ecology salaries, the indirect rate is calculated at a rate of 32.75% of salaries and benefits and are included in the hourly rates shown above. This rate could change annually].

- ii. contracting with and managing independent consultants, whose work is identified, scoped, performed, and managed solely under the exclusive direction and oversight of Ecology, in accordance with the provisions of RCW 43.21A.690, RCW 90.03, and RCW 90.44 and Part A — Special Terms and Conditions and Scope of Work of this CRA, for decision-making work associated with processing and decision-making on the Applicant's application(s), as well as any processing and decision-making associated with any such senior application(s) which must be acted upon before the Applicant's. Each individual applicant is responsible for his or her own appeal costs that may result from a water right decision made by the department.
- iii. attorney, litigation, and expert witness fees and costs for decision-making work associated with processing and decision-making on the Applicant's application(s), including any legal costs for processing and decision-making through any final decision by Ecology and any such subsequent venue of first legal review;

[Note — Ecology's rate for assignment of Assistant Attorney General Counsel is calculated at \$127.49 an hour. This rate could change annually.]

- iv. travel directly related to this CRA, the Applicant's application(s), and any such senior application(s) which must be acted upon before the Applicant's at actual costs, or the current state rate, whichever is less;
- v. printing, production, and publishing of documents and other media directly related to this CRA, the Applicant's application(s), and any such senior application(s) which must be acted upon before the Applicant's at actual rates;
- vi. purchase or rental of equipment directly related to this CRA, the Applicant's application(s), and any such application(s) which must be acted upon before the Applicant's up to \$500, beyond which advance approval of the Applicant is required;

[Note — If, at the end of this CRA, Ecology wishes to retain any purchased equipment, it shall credit the Applicant with the remaining amortized value of the equipment; if Ecology does not wish to retain the equipment, the equipment shall be provided to the Applicant to take possession and ownership.]

- vii. room rental for meetings and/or public hearings directly related to this CRA, the Applicant's application(s), and any such senior application(s) which must be acted upon before the Applicant's; and

[Note — Ecology shall make reasonable efforts to use low- cost, convenient, and available facilities for such purposes.]

- viii. Other goods and services as reasonable and necessary to carry out the terms of this CRA at actual rates.

- b. Indirect Costs. Indirect costs of facilities, communications, personnel, fiscal, and other statewide and agency-wide services are also eligible costs. The agency indirect rate used shall be the rate approved by the agency's federal cognizant agency (which, as of the writing of this CRA, is the Environmental Protection Agency) for each fiscal year. The agency indirect rate shall be applied to the salaries and benefits paid to Ecology personnel working on this CRA, the Applicant's application(s), and any such senior application(s) which must be acted upon before the Applicant's.

[Note — The indirect rate is calculated at a rate of 32.75% of salaries and benefits. This rate changes annually.]

- c. Staff Replacement Costs. Consistent with RCW 43.21A690 (3) (4) The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

[Note — Contractor assistance is calculated at an average rate of \$135.00/hour (not including travel), based on consultant rates in Ecology's FY 2011-12 Water Resources Consultant Pool. This rate could change annually.]

- 3. Status Reports. Within 21 days of request, but not more often than once every 30 days, Ecology shall send to the Applicant a brief status report describing progress made under the terms of this CRA (consistent with the sample status report format provided herewith in Appendix A). Upon written request of the Applicant, Ecology shall provide the Applicant with copies of all written product produced by Ecology or by contracted assistance to Ecology, with respect to the agreed scope of

work. The exception to this is documents which are privileged or are exempt from disclosure under the state public records law, RCW 42.56.

4. Preparation of Invoices. Invoices will be prepared on a monthly basis and mailed within 45 days after the close of a month. During the close of a state fiscal year, a supplemental invoice may also be necessary. Invoices will include a summary of costs incurred per the sample invoice provided herewith in Appendix B. If the Applicant has chosen to make a pre-payment as described under 6.c. below, the Applicant will receive a monthly summary in lieu of an invoice. The summary will be similar to the sample invoice in Appendix B except that it will reflect the amount of the pre-payment, costs to date, and the current pre-payment balance.
5. Payment of Invoices. Invoices shall be paid within thirty (30) days upon receipt of the invoice from Ecology. If the Applicant fails to pay an invoice within the stated time, Ecology may stop all work under this CRA until the invoice is paid. The Applicant will be responsible to pay interest at the rate of one percent per month, or fraction thereof, and any additional charges by the independent consultant for expenses of stopping work and later starting up again.
6. Performance Security. Upon execution of this agreement, the Applicant shall deposit with Ecology a performance security to ensure Ecology is reimbursed for all eligible costs incurred as a result of Ecology entering into this CRA. The following performance security options are acceptable:
 - a. A security deposit for twenty-five thousand dollars (\$25,000) or in a lesser amount if agreed to by the Parties, but no less than five thousand dollars (\$5,000);
 - b. A full pre-payment of costs, mandatory for expedited processing (RCW 90.44). Ecology may stop work on the Applicant's application(s), as well as any such senior application(s) which must be acted upon before the Applicant's, when the Applicant's pre-paid funds have been fully expended. Ecology may restart work under this CRA after such time as subsequent pre-paid funds have been received from the Applicant and deposited by Ecology. Pre-payment does not excuse the Applicant from paying costs incurred up to and through any stop work date.

In the event performance security option of a, or b is selected, the Applicant is not excused from payment of eligible costs because the security deposit is held by Ecology. Ecology shall use the security deposit to resolve obligations incurred by Ecology as a result of entering into this CRA in the event such obligations are not reimbursed by the Applicant in accordance with the terms of this CRA. The security deposit amounts may be negotiated to a lower amount at the discretion of Ecology on the basis that maximum monthly financial obligations incurred by Ecology as a result of entering into this CRA will be substantially less than \$25,000.

The particular security deposit approach taken and dollar amount agreed to by the Parties shall be described in Part A – Special Terms and Conditions and Scope of Work, and effected through subsequent signature of the Parties, and if pre-payment is selected then such shall be directed to the Department of Ecology, Cashiering Unit, P.O. Box 47611, Olympia, Washington, 98504-7611.
7. Supplemental Performance Security for Administrative Review. Ecology may require the Applicant to post with Ecology acceptable performance security as a supplement to that already secured to cover all costs, as estimated by Ecology in conjunction with the Office of the Attorney General, of any legal expense associated with any legal review before any venue of first review (e.g., PCHB, ELUHB, Superior Court, etc.). Each individual applicant is responsible for his or her own appeal costs that may result from a water right decision made by the department. Such costs shall include the costs of any attorney's fees and other reasonable costs incurred by Ecology in connection with any first venue legal review proceedings. The Applicant shall not be liable for such administrative review costs incurred by Ecology in excess of the supplemental performance security amount.

C. Decisions on Applicant's application(s).

Final decisions on any aspect of the Applicant's application(s), as well as any such senior application(s) which must be acted upon before the Applicant's, shall be made by Ecology. The Applicant shall have no control or direction over the work of Ecology staff, independent consultants working for Ecology, or attorneys representing Ecology. The Applicant shall have no direction or control of processing and decision-making on any application(s) processed pursuant to this CRA, either during processing and decision-making or through any such subsequent venue of first legal review

D. Termination.

1. For Cause. Either Party may terminate this CRA upon five (5) days written notice if the other Party has breached any of the terms of this CRA and has failed to remedy such breach within thirty (30) days following receipt of notice of the breach.
2. For Lack of Authorization. This CRA will terminate immediately if the Legislature repeals the law under which this CRA is authorized or the courts declare it unlawful if such repeal or declaration is intended to affect existing CRAs. In the event legislative authority to expend funding pursuant to RCW 43.21A.690, RCW 90.03, and RCW 90.44 is withdrawn or amended, Ecology may terminate the contract under the Termination for Convenience clause, without a 30-day notice requirement as required for termination for cause, subject to renegotiation under those legislative authority limitations and conditions.
3. For Convenience. Except as otherwise provided in this contract, either Party may, by five (5) days written notice to the other Party and any relevant contractors assigned pursuant to this CRA, with 5 days beginning on the second day after the mailing, terminate this contract for its convenience.
4. Procedure. If either Party terminates this CRA for any reason before Ecology has rendered a decision on the Applicant's application(s), or on any such senior application(s) which must be acted upon before the Applicant's, the Applicant shall reimburse Ecology for costs incurred under this CRA up to, and through, the effective date of termination. Upon termination, if the Applicant does not reimburse Ecology for the costs incurred within thirty-two (32) days of Ecology's mailing written demand, Ecology may recover the costs from any performance security posted with or delivered to Ecology as applicable, and shall return or release the unneeded portions of the performance security to the Applicant within thirty (30) days after obtaining satisfaction of all costs incurred. If such recovery is inadequate to obtain full reimbursement, the Applicant shall be liable to Ecology for any remaining unpaid costs;
 - a. If either Party terminates this CRA for any reason after Ecology has rendered a decision on the Applicant's application(s), or on any such senior application(s) which must be acted upon before the Applicant's, the Applicant shall continue to reimburse Ecology, even after termination, and this CRA shall remain in effect, for costs incurred under this CRA up to, and through, any final decision by any such subsequent venue of first legal review, on any and all decisions so rendered by Ecology before the Applicant terminated this CRA. Upon termination, if the Applicant does not reimburse Ecology for the costs incurred within thirty-two (32) days of Ecology's mailing written demand, Ecology may recover the costs from any performance security posted with or delivered to Ecology as applicable, and shall return or release the unneeded portions of the performance security to the Applicant within thirty (30) days after obtaining satisfaction of all costs incurred. If such recovery is inadequate to obtain full reimbursement, the Applicant shall be liable to Ecology for any remaining unpaid costs;

- b. Upon termination by either Party for any reason, if the Applicant does not withdraw the application(s) covered by this CRA, Ecology shall be released from any commitment under this CRA with respect to processing and decision-making associated with the application(s). Equipment purchased to process and make decisions concerning the Applicant's application(s), or on any such senior application(s) which must be acted upon before the Applicant's, may remain the property of Ecology per the provisions of II.B.2.a.vi. above;
- c. Upon termination by either Party for any reason, Ecology may, at its discretion, stop or continue its processing and decision-making work on any application(s) covered by this CRA, but the Applicant shall not thereafter be responsible to reimburse Ecology for direct or indirect costs incurred for processing and decision-making on the application(s) on which no decision was rendered before a Party terminated this CRA; and
- d. The rights and remedies of the Parties shall be limited to those expressly provided in this CRA and its Appendices, including those in this Termination section.

E. Additional Provisions.

- 1. No Waiver. No Party shall be construed to have waived any of its respective rights or interests in this CRA by a failure, in any instance, to have asserted, or made claim on, such right at the time such Party was entitled to assert the same. Waiver of any default or breach shall be deemed neither to be a waiver of any subsequent or other default or breach, nor a modification of the terms of this CRA unless stated to be such in writing, signed by Ecology, and attached to the original CRA.
- 2. Entire Agreement. This CRA and its Appendices (i.e., Appendix A — Sample Acceptable Status Report, and Appendix B — Sample Invoice), together with subsequent amendments signed and agreed to by the Parties, constitute the entire CRA between the Parties.
- 3. No Modification. There shall be no modification, amendment, change, or alteration of this CRA recognized as valid and binding on the Parties hereto unless same shall be reflected in a written instrument executed by the Parties.
- 4. No Assignment. Neither this CRA, nor any claim arising under this CRA, shall be transferred or assigned by the Applicant without the prior written consent of Ecology.
- 5. No Effect on Legal Requirements or Processes. Nothing in this CRA shall be construed to limit Ecology from complying with its obligations under applicable laws or from considering public comments received in any environmental review or regulatory process. This CRA shall not be interpreted in any manner to predispose or predetermine the outcome of any application(s), permit, environmental review, or other legal process.
- 6. Indemnification. The Applicant shall defend, protect and hold harmless the State of Washington, Ecology, or any employees or contractors thereof, from and against all claims, suits or actions arising from the Applicant's acts which are libelous or slanderous, result in injury to persons or their rights or property, violate a right of confidentiality, or use or reproduce material of any kind which constitutes an infringement of any copyright, patent, trademark or trade name.
- 7. Dispute Resolution.
 - a. Except for disputes regarding decisions of Ecology on the Applicant's application(s), or any such senior application(s) which must be acted upon before the Applicant's, any dispute arising under this CRA shall be decided by the Ecology official signatory to this CRA, or other authorized official of Ecology, who shall reduce his/her decision to writing and furnish a signed copy to all Parties signatory to this CRA. The decision of the Ecology official signatory to this CRA, or other

authorized official of Ecology, shall be the final and conclusive decision of Ecology unless, within thirty (30) days from the receipt of a copy of such decision, either Party signatory to this CRA submits in writing to the other Parties a notice of its intent to appeal the decision of Ecology to a dispute resolution board. In such cases, the written request to appeal to a dispute resolution board must state the disputed issue(s), state the relative positions of the Parties, and be sent to all Parties. Parties must provide a written response within seven (7) days. Once a Party requests a dispute resolution board, each Party shall designate a representative, except that Ecology may designate a number of representatives equal to the number designated by all other Parties combined. The representatives shall mutually select a third member (or an additional member for disputes involving more than two Parties). The costs of the third or additional member shall be jointly shared. The dispute resolution board shall evaluate the facts, CRA terms, applicable statutes and rules, and make a determination by majority vote. The decision of the dispute resolution board shall be final and binding on all Parties and shall be governed by Chapter 7.04A RCW.

- b. Review of any decision of Ecology pursuant to sub-section 7.a. above shall not be sought under Chapter 43.21B RCW. Any action or proceeding brought to enforce or to review any decision otherwise arising out of or relating to this CRA, unless excepted in sub-section 7.a. above, shall be brought in the Superior Court of Thurston County. Pending final resolution of a dispute pursuant to this sub-section (i.e., 7.b.) the Parties shall proceed with the performance of this CRA in accordance with Ecology's final decision.
8. Governing Law. This CRA shall be governed by the laws of the State of Washington. The Applicant, by signing this CRA, acknowledges the jurisdiction of the courts of the State of Washington in this matter.
9. Severability. No provision of this CRA is severable from any and all other provisions of this CRA. Should any provision or provisions of this CRA be unenforceable for any reason, the Party finding itself unable to enforce said provision(s) may, at its sole discretion, declare this entire CRA to be null and void.
10. Records. Ecology shall maintain a complete record of publicly discloseable documents (i.e., correspondence, invoices, quarterly reports, work products, agreements, etc.) for the benefit of any Party interested in securing access to such record. Ecology does not waive its right to withhold documents privileged or exempt from RCW 42.56.
11. Notice. Any notice given under the provisions of this CRA by either Party to the other shall be deemed properly given upon receipt if in writing and delivered by hand or registered or certified mail addressed to the Parties.
12. Counterparts. This CRA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all of the Parties to the aggregate counterparts had signed the same instrument.