

Grant No. G0900217  
South Park Landfill  
Seattle Public Utilities

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Ecology - SWFA

REMEDIAL ACTION GRANT AGREEMENT  
BETWEEN THE  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
SEATTLE PUBLIC UTILITIES

This is a binding agreement entered into by and between the state of Washington Department of Ecology, hereinafter referred to as the DEPARTMENT, and the Seattle Public Utilities, hereinafter referred to as the RECIPIENT, to carry out the activities described herein.

RECIPIENT ADDRESS	700 5 <sup>th</sup> Avenue PO Box 34018 Seattle, WA 98124-4018
RECIPIENT REPRESENTATIVE	Ray Hoffman, Acting Director
RECIPIENT PROJECT MANAGER	Sheila Strehle
RECIPIENT TELEPHONE NUMBER	206-684-5846
RECIPIENT FAX	206-684-4631
RECIPIENT ADMINISTRATION CONTACT	<i>Phil Yamamoto 684-4619</i> <del>Shirley Lacy, 206-684-5179</del>
DEPARTMENT GRANT MANAGER	Lydia Lindwall, 360-407-6067
DEPARTMENT SITE MANAGER	Ching-Pi Wang, 425-649-7134
FUNDING SOURCE	LTCA
MAXIMUM ELIGIBLE COST	\$1,000,000
STATE GRANT SHARE	\$500,000
RECIPIENT GRANT SHARE	\$500,000
MAXIMUM STATE SHARE PERCENT	50%
FEDERAL TAX IDENTIFICATION NUMBER	91-6001275
EFFECTIVE DATE OF THE AGREEMENT	January 1, 2007
EXPIRATION DATE OF THE AGREEMENT	June 30, 2013

## **PART 1: SITE HISTORY AND BACKGROUND**

The South Park Landfill is located at 8100 & 8200 2nd Avenue South, in the South Park neighborhood of Seattle, Washington (County Assessor's Parcel Numbers 7328400005 & 3224049005). The site currently includes the land on which Seattle's South Transfer Station is located and a parcel owned by South Park Property Development. The site was historically used for waste disposal beginning in the 1930's or earlier. The City of Seattle and King County owned and/or operated portions of the landfill at various times. Operations historically included refuse burial and burning. Aerial photos taken in the 1950's also indicate portions of the site were used as an automobile wrecking yard.

The DEPARTMENT negotiated with the RECIPIENT to conduct a remedial investigation/feasibility (RI/FS) to collect and analyze enough information necessary for the development of a cleanup action plan for the site. The outcome of this project will ultimately include implementation of a cleanup design and construction needed to properly close the landfill.

## **PART 2: SCOPE OF WORK**

The task(s) set forth below summarize the RECIPIENT'S activities to be performed under this agreement. Costs are limited to those approved by the DEPARTMENT in the current budget plan. All activities in the following tasks, including deliverables, must be completed by the expiration date of this agreement unless otherwise stated in this agreement or approved by the DEPARTMENT in writing.

The RECIPIENT shall submit all sampling data to the DEPARTMENT in both printed and electronic formats in accordance with WAC 173-340-840(5) and the DEPARTMENT'S Toxics Cleanup Program Policy 840: Data Submittal Requirements. Monthly/Quarterly Progress Reports must indicate if sampling data was submitted to the DEPARTMENT during that billing period. Failure to properly submit sampling data will result in the withholding of grant funding.

**Any work performed or costs incurred prior to the effective date of this agreement will be at the sole expense of the RECIPIENT.**

### **TASK 1: Remedial Investigation/Feasibility Study (RI/FS)**

This task funds the recipient staff and consultant's/contractor's work reasonable and necessary to plan and perform the Remedial Investigation/Feasibility Study (RI/FS) for the site.

The Remedial Investigation will characterize the nature and extent of contamination at the site and the RECIPIENT shall produce the deliverables set out in the scope of work of the cleanup agreement in affect at that site. Eligible costs include any scoping and final investigations, draft and final reports, and sampling and analysis costs.

The Feasibility Study will present and evaluate remedial alternatives to address the identified contamination at the site. Based on the evaluation of alternatives, the Feasibility Study will identify a preferred remedial alternative for the Site and evaluate any interim actions performed relative to the preferred remedial alternative to determine completeness of the interim actions. Eligible costs include costs of any draft and final FS related reports and the public participation process needed to evaluate and select the preferred alternative for the site. Meeting room costs and refreshments must be approved by the DEPARTMENT in advance.

**TASK 2: Cleanup Action Plan (CAP) Development**

This task funds RECIPIENT staff and consultant costs reasonable and necessary to develop a Cleanup Action Plan for the site. The DEPARTMENT approved Cleanup Action Plan will select cleanup standards for the Site. Eligible costs include the development of draft and final plans or reports, any required engineering design reports or plans, and any public involvement process required to finalize the cleanup action plan. This also includes the Construction Quality Assurance and Health and Safety Plan, the development of project construction schedules, and engineering design analyses.

**PART 3: FUND SOURCE AND BUDGET PLAN**

Costs are approved consistent with the most recently approved budget plan. To change how funds are allocated among the grant tasks, the RECIPIENT must submit a written request to the DEPARTMENT. The DEPARTMENT must approve the revised budget plan in writing. Revised and approved budget plans are incorporated into this agreement by reference.

**A. FUND SOURCE**

Total Eligible Project Cost		\$1,000,000
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	50%	\$500,000
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$500,000

**B. BUDGET PLAN**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$1,000,000	\$500,000
2. CAP Development	\$0	\$0
TOTAL:	\$1,000,000	\$500,000

**PART 4: BUDGET CONDITIONS**

- A. **Any work performed or costs incurred prior to the effective date of this agreement will be at the sole expense of the RECIPIENT.**
- B. Overhead is eligible at a rate of 25 percent of staff salaries and benefits for time devoted to tasks outlined in this agreement.
- C. The DEPARTMENT'S Fiscal Office tracks expenditures at the project level. The grant manager tracks expenditures at the task level. To increase or decrease state funding or change the scope of work, the DEPARTMENT requires a formal amendment. The expiration date may be changed by letter amendment.
- D. In-kind services are not eligible for match.
- E. Payments to the RECIPIENT from the DEPARTMENT shall be made payable to Seattle Public Utilities, PO Box 4018, Seattle, WA 98124-4018.

**PART 5: SPECIAL TERMS AND CONDITIONS**

**A. BILLING**

1. Unless otherwise approved in writing by the DEPARTMENT, the RECIPIENT shall submit a payment request to the DEPARTMENT at least quarterly, but no more often than once per month.
2. Payment requests shall be submitted on State Voucher forms that include an A-19, B2, C2, and shall include a Progress Report for the billing period.
3. The final payment request shall include a Final Project Report.
4. The RECIPIENT shall provide the Progress Report and Final Project Report on DEPARTMENT provided forms unless otherwise approved by the DEPARTMENT.
5. The budget plan is organized by task; therefore, the RECIPIENT shall itemize costs by task on C2 form and summarize costs by task on the B2 form.
6. The RECIPIENT shall submit one copy of each payment request and backup documentation to the DEPARTMENT'S grant manager, and one copy to the DEPARTMENT'S regional site manager. Failure to submit copies to both the grant manager and the site manager shall constitute an incomplete submission and the payment request will not be reviewed or processed until both copies have been submitted.

**B. DOCUMENTATION**

1. The RECIPIENT shall include the supporting documentation for all expenses, including RECIPIENT salary and benefits.
2. Supporting documentation includes contractor and subcontractor invoices and receipts, accounting records, or any other form of record that establishes the appropriateness of an expense.
3. The DEPARTMENT may request additional documentation if needed to determine if a cost will be allowed.
4. Supporting documentation shall be clear and legible and organized by task in the order it was placed on the C2 by the RECIPIENT.
5. RECIPIENT accounting procedures shall include maintaining supporting documentation in a grant file. This includes cancelled checks, invoices, purchase receipts, payroll records, time and attendance records, contract award documents, and vouchers sent to the DEPARTMENT. The Recipient shall keep all supporting documentation for audit purposes for at least three years after agreement closeout.

6. The RECIPIENT shall use the DEPARTMENT provided Form E, or an equivalent time sheet approved by the DEPARTMENT, to record staff hours being billed to the grant. Upon request, these records must be made available to the DEPARTMENT.

### **C. OTHER SPECIAL TERMS**

#### **1. ON-LINE CONTRACTS AND GRANTS MANAGEMENT**

Washington State's Office of Financial Management is developing an on-line contracts and grants management system. When the system becomes available, all new or active contract and grant agreements in the state must be managed in the system. The RECIPIENT agrees to register in the state vendor registration program and to use the on-line system.

#### **2. TRAINING**

The RECIPIENT agrees to participate in any DEPARTMENT recommended trainings to manage agreements and prepare, process, and receive payments

#### **3. 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. MBE/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.

The RECIPIENT should report payments made to qualified firms to the DEPARTMENT at the time of submitting each invoice. Please include the following information on the DEPARTMENT provided form (Form D):



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

4. PROCUREMENT AND CONTRACTS

- a) The RECIPIENT shall provide written certification that it will follow its standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must certify that they have complied with the "Standards for Competitive Solicitation," found in the *Administrative Requirements for Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005).
- b) Upon issuance, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to the DEPARTMENT'S site manager.
- c) Prior to contract execution, the RECIPIENT shall submit all draft documents and a copy of the draft proposed contract to the DEPARTMENT'S site manager for review and approval. Following the contract execution, the RECIPIENT shall submit a copy of the final contract to the DEPARTMENT'S site manager and grant manager.

5. USE OF EXISTING CONTRACTS

The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall notify the DEPARTMENT if it used contracts entered into prior to the execution of the grant agreement for performance of grant-funded activities. The RECIPIENT shall submit a copy of the contract to the DEPARTMENT'S site manager and grant manager. The grant eligibility of products or services secured by the RECIPIENT under existing contracts used to perform the scope of work in this agreement must be deemed allowable and reasonable by the DEPARTMENT prior to cost reimbursement.

6. FAILURE TO COMMENCE AND SUSTAIN WORK

In the event the RECIPIENT fails to commence work on the project funded herein within six (6) months after the effective date of this grant, or fails to sustain work in accordance with the work schedule established in the order or decree, the DEPARTMENT reserves the right to terminate this grant.

## 7. GRANT PROJECT REPORTING

- a) Progress Reports: Progress reports are due at least quarterly. The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request, and no less frequently than quarterly, even if a payment request is not submitted. These reports shall be in accordance with the DEPARTMENT-approved reporting format as indicated in the *Remedial Action Grant Guidelines, Publication #07-07-032 (Revised 2007), Appendix 3*. The DEPARTMENT shall not approve payments without the required progress reports.
- b) Spending Plans: The RECIPIENT shall complete and submit to the DEPARTMENT a spending plan projecting monthly expenditures for the project time period. The RECIPIENT shall update the spending plan as needed throughout the term of the agreement.
- c) Ten-Year Project Forecast: The RECIPIENT shall submit a 10-year budget forecast to the DEPARTMENT for the project and provide updates as appropriate or requested by the DEPARTMENT.
- d) Final Project Report: In addition to the progress report that identifies the work performed during the last billing period, the final payment request shall include a copy of the final project report. This report summarizes the project goals, purpose of the actions conducted, and outcomes of the project.
- e) Progress report, final project report, and spending plan forms can be found on the DEPARTMENT'S website at <http://www.ecy.wa.gov/programs/swfa/grants/rag.html>, and in the Remedial Action Grant Guidelines, Ecology Publication #07-07-032 (Revised 2007).

## 8. INDEMNIFICATION

- a) The DEPARTMENT shall in no way be held responsible for direct payment of salaries, consultant's fees, or any other costs related to the project described herein.
- b) 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 omissions of the party or that party's agents or employees, while performing under this agreement.



9. ALL WRITINGS CONTAINED HEREIN

This agreement, including the appended "General Terms and Conditions," the latest approved budget plan, and the DEPARTMENT'S *Administrative Requirements for Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005), contain the entire understanding between the parties, and there are no other understandings or representations except as those set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this grant agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT and made part of this agreement; **EXCEPT** a letter of amendment will suffice to extend the period of performance as set forth in the grant agreement. The DEPARTMENT'S grant manager may approve, by date stamp and signature, a revised budget plan.

10. ARCHEOLOGICAL AND CULTURAL RESOURCES

The RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to the archeological or cultural resources. RECIPIENT shall immediately cease work and notify the DEPARTMENT if any archeological or cultural resources are found while conducting work under this agreement. In the event that historical or cultural artifacts are discovered at the project site, the RECIPIENT shall also notify the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. Applicability of the National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact historic properties (such as invasive sampling, dredging, or cleanup actions).

11. PRECEDENCE

In the event of inconsistency in this agreement, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) Scope of Work and most current approved budget plan; (c) Special Terms and Conditions; (d) Remedial Action Grant Program Guidelines (e) any terms incorporated herein by reference including the *Administrative Requirements for Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005); and (f) the General Terms and Conditions (SS-010 Rev. 05/02).

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

**A. RECIPIENT PERFORMANCE**

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT'S employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

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

**C. THIRD PARTY BENEFICIARY**

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

**D. CONTRACTING FOR SERVICES (BIDDING)**

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

**E. ASSIGNMENTS**

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

**F. COMPLIANCE WITH ALL LAWS**

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

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide

assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. **Discrimination.** The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. **Wages And Job Safety.** The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. **Industrial Insurance.** The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

#### **G. KICKBACKS**

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

#### **H. AUDITS AND INSPECTIONS**

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

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections. Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.
2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$300,000 or more in a year in Federal funds. The

\$300,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

## **I. PERFORMANCE REPORTING**

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

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

## **J. COMPENSATION**

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

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

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

2. Budget deviation. Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT'S request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.
3. Period of Compensation. Payments shall only be made for action of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
4. Final Request(s) for Payment. The RECIPIENT must submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15)

days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

5. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT'S performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT'S sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.
6. Unauthorized Expenditures. All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
8. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

## **K. TERMINATION**

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

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

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

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



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

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

#### **L. WAIVER**

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

#### **M. PROPERTY RIGHTS**

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

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

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT'S current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT'S possession, the



DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
  - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
  - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

#### **N. RECYCLED/RECYCLABLE PAPER**

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

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

#### **O. RECOVERY OF PAYMENTS TO RECIPIENT**

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

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

RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

**P. PROJECT APPROVAL**

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

**Q. DISPUTES**

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

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

**R. CONFLICT OF INTEREST**

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

**S. INDEMNIFICATION**

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

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

**T. GOVERNING LAW**

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

**U. SEVERABILITY**

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

**V. PRECEDENCE**

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions. SS-010 Rev. 05/02

IN WITNESS WHEREOF, the parties hereby execute this Grant:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

Laurie G. Davies 4/14/09  
Laurie G. Davies Date  
Program Manager  
Solid Waste and Financial Assistance

Ray Hoffman 4/2/09  
Ray Hoffman Date  
Acting Director

Approved as to form only Assistant Attorney General



Amendment No. 1  
 Ecology Grant No. G0900217  
 With Seattle Public Utilities  
 South Park Landfill

AMENDMENT NUMBER 1  
 TO GRANT NUMBER G0900217  
 REMEDIAL ACTION GRANT BETWEEN THE  
 STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
 AND  
 SEATTLE PUBLIC UTILITIES

Purpose: The purpose of this amendment is to add funds to continue the investigation and cleanup of the South Park Landfill

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$1,000,000 from \$1,000,000 to \$2,000,000.
2. The total state share of this grant increases by \$500,000 from \$500,000 to \$1,000,000.
3. The Fund Source and Budget Plan are replaced as follows.

**A. Fund Source**

Total Eligible Project Cost		\$2,000,000
Fund	Fund Share (%)	Maximum Fund Amount
Local Toxics Control Account (LTCA)	50%	\$1,000,000
Match Requirement	Match Share (%)	Match Amount
Cash Match	50%	\$1,000,000

**B. Budget Plan**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$2,000,000	\$1,000,000
2. Cleanup Action Plan	\$	\$
TOTAL:	\$2,000,000	\$1,000,000

The scope of work of this agreement is not changed. All other terms and conditions of the original grant agreement, and any amendments thereto, remain in effect.

The effective date of this amendment is April 1, 2009.  
The effective date of this agreement is January 1, 2007.  
The agreement expiration date is June 30, 2013.

IN WITNESS WHEREOF, the parties hereby sign this Agreement:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

Laurie G. Davies 6/1/09  
Laurie G. Davies Date  
Program Manager  
Solid Waste and Financial Assistance

Ray Hoffman 5/15/09  
Ray Hoffman Date  
Acting Director

Approved as to form only  
Assistant Attorney General



Amendment No. 2  
Ecology Grant No. G0900217  
With Seattle Public Utilities  
South Park Landfill

AMENDMENT NUMBER 2  
TO GRANT NUMBER G0900217  
REMEDIAL ACTION GRANT BETWEEN THE  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
SEATTLE PUBLIC UTILITIES

The purpose of this amendment is to add funds to continue remedial actions at the South Park Landfill. All other terms and conditions of the original agreement, and any amendments thereto, remain in effect.

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$1,125,172 from \$2,000,000 to \$3,125,172.
2. The total state share of this grant increases by \$562,586 from \$1,000,000 to \$1,562,586.
3. The Fund Source and Budget Plan are replaced as follows.

**A. Fund Source**

Total Eligible Project Cost		\$3,125,172
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
State Building Construction Account (SBCA)	50%	\$1,562,586
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$1,562,586

Amendment No. 2  
Ecology Grant No. G0900217  
With Seattle Public Utilities  
South Park Landfill

**B. Budget Plan**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
<b>1. RI/FS</b>	\$3,125,172	\$1,562,586
<b>2. Cleanup Action Plan</b>	\$	\$
<b>TOTAL:</b>	\$3,125,172	\$1,562,586

The effective date of this amendment is July 1, 2009.

IN WITNESS WHEREOF, the parties hereby sign this Agreement:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

Laurie G. Davies 7/1/10 Date Ray Hoffman 7/21/10 Date  
Laurie G. Davies Program Manager Waste 2 Resources Program  
Ray Hoffman Director

Approved as to form only  
Assistant Attorney General

Amendment No. 3  
Ecology Grant No. G0900217  
With Seattle Public Utilities  
South Park

AMENDMENT NUMBER 3  
TO GRANT NUMBER G0900217  
REMEDIAL ACTION GRANT BETWEEN  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND SEATTLE PUBLIC UTILITIES

The purpose of this amendment is to add funds. All other terms and conditions of the original grant agreement, and any amendments thereto, remain in effect. The effective date of this amendment is July 1, 2010.

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$600,000 from \$3,125,172 to \$3,725,172.
2. The total state share of this grant increases by \$300,000 from \$1,562,586 to \$1,862,586.
3. The Fund Source and Budget Plan are replaced as follows.

**A. Fund Source**

**LTCA 174-J37**

Total Eligible Project Cost		\$600,000
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	50%	\$300,000
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$300,000

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JUL 06 2010

SBCA 057-J19

Ecology W2R

Total Eligible Project Cost		\$3,125,172
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
State Building Construction Account (SBCA)	50%	\$1,562,586
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$1,562,586

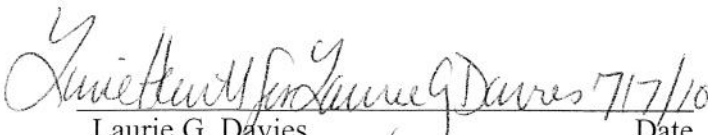
**B. Budget Plan**


<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$3,725,172	\$1,862,586
2. Cleanup Action Plan	\$0	\$0
TOTAL:	\$3,725,172	\$1,862,586

IN WITNESS WHEREOF, the parties hereby sign this Agreement:

STATE OF WASHINGTON  
 DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

  
 Laurie G. Davies  
 Program Manager  
 Waste 2 Resources Program  
 Date 7/17/10

  
 Ray Hoffman  
 Director  
 Date 6/30/10

Approved as to form only Assistant Attorney General

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OCT 31 2011

Ecology W2R

AMENDMENT NUMBER 4  
 TO GRANT NUMBER G0900217  
 REMEDIAL ACTION GRANT BETWEEN  
 STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
 AND SEATTLE PUBLIC UTILITIES

The purpose of this amendment is to increase funding. All other terms and conditions of the original grant agreement, and any amendments thereto, remain in effect. The effective date of this amendment is 7/1/2011.

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$5,100,000 from \$3,725,172 to \$8,825,172.
2. The total state share of this grant increases by \$2,550,000 from \$1,862,586 to \$4,412,586.
3. The Fund Source and Budget Plan are replaced as follows.

**A. Fund Source**

**LTCA**

Total Eligible Project Cost		\$5,700,000
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	50%	\$2,850,000
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$2,850,000

**SBCA**

Total Eligible Project Cost		\$3,125,172
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
State Building Construction Account (SBCA)	50%	\$1,562,586
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$1,562,586

