

## **APPENDIX D**

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### **Property Use Agreement**



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

February 25, 2016

Mr. John Rotondo  
Rotondo Environmental Solutions, LLC  
4950-C Eisenhower Ave  
Alexandria, VA 22305

**RE: Ship Canal Property Use Agreement**

Dear Mr. Rotondo:

Attached please find the signed Property Use Agreement between the Washington State Department of Ecology (Ecology) and Rotondo Environmental Solutions, LLC for use of the Ship Canal site for field monitoring. The purpose of the field monitoring is to collect treatment data from the Biopod Treatment System to submit to the Technology Assessment Protocol – Ecology (TAPE).

Before you can move onto the site, Ecology needs to receive a copy of your \$5,000 Performance Bond as stated in Section 5.3 of the Agreement. Once we receive the bond, the Quality Assurance Project Plan (QAPP), and fee you can move your equipment onto the site and set up for monitoring. Please coordinate your move-in schedule with Ecology.

The enclosed Agreement outlines the restrictions and use guidelines for the Ship Canal Site.

If you have any questions, please contact me at [douglas.howie@ecy.wa.gov](mailto:douglas.howie@ecy.wa.gov) or (360) 407-6444.

Sincerely,

Douglas C. Howie, P.E.  
Stormwater Engineer  
Water Quality Program

cc: Carla Milesi, TAPE Technical Lead, Washington Stormwater Center

Enclosure





DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **PROPERTY USE AGREEMENT**

### **RE: LAKE UNION SHIP CANAL RESEARCH FACILITY STORMWATER TREATMENT DEVICE**

This Property Use Agreement is made and entered into between the WASHINGTON STATE DEPARTMENT OF ECOLOGY (hereinafter ECOLOGY) and Rotondo Environmental Solutions, LLC dba Rotondo Environmental Solutions, LLC, (hereinafter RES) collectively referred to as "Parties," and individually, the "Party."

WHEREAS, RES has a stormwater treatment system (System) that has been tested, approved, and is in use elsewhere in the country but would like it to be approved for use in Washington State; and

WHEREAS, ECOLOGY has an agreement with the Washington State Department of Transportation dated September 14, 2015, for research on storm water treatment technologies, a copy of which is attached as an exhibit to this Agreement, at the WSDOT Lake Union Ship Canal Research Facility (Facility) located at 650 NE 40th St in Seattle, WA; and

WHEREAS, ECOLOGY agrees to sublet the use of the Facility to RES; and

WHEREAS, RES desires to use a test bay at the Facility for the purpose of installing up to two storm water treatment devices for filtering, testing, and monitoring of stormwater runoff to support approval of its System; and

WHEREAS, the installation of the storm water treatment devices will reduce the amount of untreated storm water discharging from the Facility during the test period, and permit RES the opportunity to test and apply for approval of their System for use in Washington State; and

WHEREAS, ECOLOGY agrees to permit the use of the System, subject to the terms and conditions herein;

NOW, THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants and performances contained herein, the Parties hereto agree as follows:



## 1. PROJECT USE

- 1.1 In consideration of ECOLOGY's desire to sublet the Facility and RES's desire to perform further research on and obtain ECOLOGY approval of its System, ECOLOGY authorizes RES to use BAY #1 of the Facility to install the System, for the period of the testing program, namely, RES to screen particulates from stormwater prior to discharge into the drainage system, together with monitoring and data storage equipment to facilitate such research. RES shall test the effectiveness of such devices and monitor the type, quantity, and volume of such particulates. ECOLOGY's authorization is subject to the terms and conditions of this Agreement.
- 1.2 RES shall monitor the stormwater treatment System on a schedule pre-approved in writing by ECOLOGY. RES shall report to ECOLOGY the results of the testing and monitoring activities ("Data"), the report format will be agreed upon in advance. At the conclusion of the monitoring period, RES agrees to uninstall its Systems from Bay #1 at RES's sole cost within thirty (30) days, unless otherwise agreed upon. Upon completion of such action, this Agreement shall terminate, unless amended.
- 1.3 RES shall be solely responsible for the maintenance and repair of the System during the term of this Agreement. If, for any reason, ECOLOGY decides, in its sole discretion, that the System should be removed, RES agrees to remove the System at RES's sole cost and expense, within thirty (30) days, unless otherwise agreed upon. Upon completion of such action, this Agreement shall terminate, unless amended. RES agrees to remove all obstacles from the Bay #1 site at their cost prior to beginning field monitoring. Moving the materials to other locations within the overall site is not acceptable. RES agrees to return the site to the original condition following completion of monitoring. This includes removing all equipment brought to the site, filling in any excavations, and removing soil brought to the site, at a minimum.
- 1.5 RES shall be fully responsible for the actions of its employees, the contractor who will physically install the System, and the consultant who will be monitoring the testing process while at the Facility pursuant to this Agreement.
- 1.6 ECOLOGY'S authorization under the Agreement does not constitute an endorsement of RES's stormwater treatment device(s) or System(s), before, during, or after the performance of this Agreement. However, RES may use the monitoring data and project information in satisfying the submittal requirements for product acceptance by ECOLOGY and to support other regulatory agency performance documentation requirements.
- 1.7 RES may secure Bay #1, and its equipment installed in Bay #1 in such a manner as it may determine, including by installing fencing around Bay #1, and/or secure containers for its monitoring equipment, for which only RES and Ecology shall have access. RES agrees that no such installation securing Bay #1 shall preclude ECOLOGY or its authorized persons and licensees from accessing any of the other bays at the Facility.
- 1.8 ECOLOGY agrees that should it authorize any person to use another bay at the Facility, it shall cause any such person to not alter the flow-rate to Bay #1, as ECOLOGY understands and



acknowledges that RES's testing and monitoring in Bay #1, downstream, may be adversely affected by any such alterations.

## **2. TERM**

- 2.1 This Agreement shall become effective on the date of the Party's last signature executed below, and shall expire on February 28, 2018, unless terminated earlier pursuant to Section 6 herein.

## **3. FACILITY USE**

- 3.1 RES shall not disrupt or adversely affect in any way the use, operation, and maintenance of the Facility. ECOLOGY shall continue to use, operate, maintain, and sublet the other Bays of the Facility during RES's activities. ECOLOGY will coordinate with RES to ensure that ECOLOGY's activities at the Facility are not disrupted or delayed and that any other authorized parties have reasonable access to these other ECOLOGY approved locations at the Facility to complete its installation, testing, and monitoring activities.
- 3.2 ECOLOGY shall not be responsible for providing equipment of any kind.
- 3.3 RES shall pay all charges for electricity and other services and utilities used by RES at the Facility during the term of this Agreement unless otherwise expressly agreed in writing by ECOLOGY.
- 3.4 RES may, after receiving ECOLOGY's written authorization, authorize its employees, contractor, and consultant to access the Facility for the installation, testing, and monitoring of their System.
- 3.5 RES shall require its employees, contractor, and consultant to comply with all applicable federal, state, and municipal laws, rules, and regulations while conducting its installation, operation, testing, monitoring, and repairing its System. Failure of RES to comply with any such laws, rules, and regulations shall be cause for immediate termination of the Agreement.
- 3.6 RES agrees and shall be fully responsible for all clean-up costs and/or Facility damage arising from its activities authorized pursuant to the Agreement. ECOLOGY shall notify RES in writing of the need to clean-up the Facility or correct Facility damages, and RES agrees to perform the work as ECOLOGY directs in its notification. If, for any reason, ECOLOGY determines it is in ECOLOGY's best interest to perform the necessary clean-up and/or corrective damage work itself, ECOLOGY shall provide a detailed invoice to RES for such work, and RES agrees to and shall pay the invoiced costs within thirty (30) calendar days following the invoice date.
- 3.7 Upon completion or termination of the Agreement, RES shall have no further access to the Facility for any testing purposes.

## **4. INDEMNITY**

- 4.1 RES shall protect, defend, indemnify, and hold harmless ECOLOGY and WSDOT, their officers, officials, employees, and agents while acting within the scope of their employment as such, from



any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the RES's authorized or unauthorized use of the Facility pursuant to the provisions of the Agreement. RES will not be required to indemnify defend, or save harmless ECOLOGY and WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence or intentional misconduct of ECOLOGY or WSDOT. Where such claims, suits, or actions result from the concurrent negligence of both parties, or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.

4.2 RES agrees that its obligations under this section extend to any claim, demand and/or action brought by, or on behalf of, any RES employees or agents while performing all actions while located on state of Washington property. For this purpose, RES, by MUTUAL NEGOTIATION, HEREBY WAIVES with respect to ECOLOGY and WSDOT only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of chapter 51.12 RCW.

4.3 This indemnification and waiver shall survive the termination of this Agreement.

## **5. INSURANCE**

5.1 At its sole expense, RES shall keep its activities and equipment, covered by the Agreement, continuously insured throughout the term of this Agreement against claims for personal injury or property damage, by an insurer licensed or authorized to conduct business in the State of Washington. The insurance shall be Commercial General Liability Insurance in an amount not less than a combined single limit of One Million Dollars (\$1,000,000) per occurrence. Coverage in the minimum amount set forth herein shall not be construed to relieve RES from liability in excess of such coverage.

5.2 The insurance policy or policies shall: (i) name ECOLOGY and WSDOT as an "additional insured" during the Agreement period; (ii) include a waiver of subrogation for ECOLOGY and WSDOT, and (iii) not be changed or canceled without prior notice to ECOLOGY. RES shall furnish ECOLOGY with proper evidence of such insurance prior to commencement of activities under the Agreement.

5.3 At its sole expense, RES shall provide an executed contract Bond in the amount of \$5,000. This contract bond shall:

1. Be signed by an approved Surety that is registered with the Washington State Insurance Commissioner.
2. Be conditioned on the faithful performance of the Contract by RES.
3. Guarantee that RES shall remove all equipment from the site and return the site to its condition when RES began use of the site.

## **6. TERMINATION**

6.1 Termination for Convenience:

Either Party may terminate this Agreement for convenience at any time. In such event, the terminating Party: (i) shall provide the other Party as much advance notice as reasonably possible, with no less than 30 days prior written notification; and (ii) shall not be liable to the other Party for any direct, indirect or consequential damages arising solely from the decision to terminate the Agreement.

**6.2 Termination for Default:**

Upon prior written notice, ECOLOGY may terminate this Agreement for RES's failure to perform or abide by any provision of this Agreement.

6.3 If this Agreement is terminated for any reason, RES agrees to be liable to ECOLOGY for: (i) all reasonable expenses, if any, incurred by ECOLOGY to enforce the terms of and terminate this Agreement prior to the termination; and (ii) any damages to the Facility.

6.4 Termination of this Agreement shall not modify, waive or cancel any rights of the Parties accrued prior to the termination of this Agreement, including, but not limited to ECOLOGY's rights under Sections 1.2 and 1.6.

## **7. ENTIRE AGREEMENT**

7.1 This Agreement constitutes the full agreement between the Parties. There are no terms, obligations, covenants or conditions other than those contained herein, either written or oral, that would obligate or bind either Party. This Agreement may not be modified except by a written amendment signed by both Parties.

## **8. VENUE**

8.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right of obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington. Each Party agrees to be responsible for its own attorney fees and costs.

[Signatures on following page]



IN WITNESS WHEREOF, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

WASHINGTON STATE  
DEPARTMENT OF ECOLOGY

BY: Heather Bartlett Date: 2/23/16  
Heather Bartlett  
Water Quality Program Manager

Rotondo Environmental Solutions, LLC

BY: Richard Rotondo Date: 2-15-16  
Richard Rotondo  
Manager

Federal I.D. No. : 20-2927806

Address: 4950-C Eisenhower Ave.  
Alexandria, VA 22304

Phone: 703-212-4830

Fax: \_\_\_\_\_

E-mail: rich@rotondo-es.com

Approved as to form only: Attorney General Office