

**AGREEMENT**

**Between the**

**State of Washington, Department of Ecology**

**and**

**FFP Project 101, LLC**

This Agreement is made and entered into between the Washington State Department of Ecology (Ecology) and FFP Project 101, LLC, a limited liability company duly organized under the laws of the state of Delaware, (Obligor), collectively, the Parties.

WHEREAS, Ecology is responsible for the implementation of the Model Toxics Control Act (chapter 70A.305 RCW, hereinafter "MTCA") and its implementing regulations (chapter 173-340 WAC);

WHEREAS, Obligor owns or is considering the acquisition of properties, legally described in Attachment A hereto, that are contaminated by hazardous substances as defined under MTCA;

WHEREAS, Ecology is limited, by its budget, to cleaning up and/or ordering the cleanup of only the highest priority contaminated sites;

WHEREAS, Obligor agrees to provide Ecology with funds which will be used by Ecology to hire or maintain staff person(s) to negotiate a consent decree with Obligor that will enable Ecology to timely review reports of investigations and develop any cleanup activities deemed necessary on the site(s) described in Attachment A hereto; and

WHEREAS, the funds paid by Obligor pursuant to this Agreement are remedial action costs under chapter 70A.305 RCW; however, Obligor may incur costs for this remedial action that are separate and beyond the costs paid pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises hereinafter contained, the parties agree to the following:

**PAYMENT OBLIGATIONS.**

Obligor agrees to pay Ecology for the services described herein and in Attachment B. Obligor agrees to pay to Ecology the initial sum of one hundred thousand dollars (**\$100,000**) as a deposit (Deposit) against the costs that will be incurred for these services within ten (10) days after the Parties' execution hereof. Obligor's payment shall be deposited in the Model Toxics Control Capital Account hereinafter referred to as the "Account," and remain there for the duration of the Agreement. Ecology shall thereafter invoice Obligor on a quarterly basis for services rendered the previous quarter. Failure to pay Ecology's costs within ninety (90) days of receipt of a quarterly invoice may result in interest charges at a rate no greater than allowed by law. Ecology reserves the right to recover its costs from the Deposit if there is a failure to pay the quarterly invoice. Within ten (10) days of written notice by Ecology, Obligor agrees to pay additional funds if the deposit amount falls below \$100,000. All interest earned on the deposited funds shall remain in State accounts.

Compensable services shall include, but not be limited to, Consent Decree preparation, negotiation, oversight, administration, and related work, provided however, that if Obligor chooses to conduct an independent remedial action, Ecology may be compensated for services contemplated by WAC 173-340-130(3). Obligor costs incurred shall include costs of direct activities and support costs of direct activities. Costs of direct activities shall include salary for all time attributable to this Agreement, including salary and employee benefits of other departmental staff who work to fulfill the obligations of this Agreement; goods and services,

travel, equipment, and equipment necessitated by the addition of the staff hired for this Agreement, as well as laboratory costs and contractual costs attributed to this Agreement. Staff costs shall be charged according to WAC 173-340-550(2) which is based on the equivalent of salaries, benefits, and indirect costs (both program and agency) on all hours worked on this Agreement. Hours worked shall include supervision, training, and other reasonable support functions. Other direct costs shall be charged at cost. All equipment paid for under this Agreement, shall become Ecology property and will remain the property of Ecology after termination of this Agreement.

For sites where Obligor conducts independent remedial actions, they do so at their own risk and may be required to take additional remedial actions if Ecology deems such actions necessary.

Once this Agreement is no longer in effect, due to termination as provide herein or due to the completion of the agreed period of performance, Ecology will invoice Obligor for services rendered within 90 days after the final quarter of the Agreement. The Deposit funds shall then be returned in full to Obligor within ninety (90) days of the date all outstanding invoiced costs have been paid in full or, if Obligor so requests in writing, Ecology shall deduct any outstanding invoiced costs from the deposited funds and return the remaining Deposit balance to Obligor.

#### **COSTS RECOVERED FROM OTHER PARTIES**

The parties intend that Ecology will, in all cases involving cleanup of the Obligor sites described herein and consistent with MTCA, achieve 100 percent recovery for its costs as defined in WAC 173-340-550. Ecology does not intend to recover more than 100 percent of costs of any project.

## **PERIOD OF PERFORMANCE**

This Agreement shall be effective on the date it is executed by the parties and shall remain in effect unless terminated as provided herein.

## **HOLD HARMLESS**

To the extent allowed by state and federal law, each party shall defend, protect and hold harmless the other party from and against all claims, suits or actions arising from any intentional or negligent act or omission of its employees, agents and/or authorized subcontractor(s) while performing under the terms of this Agreement.

## **RECORDS SUPPORTING REQUEST FOR PAYMENT**

Ecology shall maintain all records supporting every request to Obligor for payment in a manner which will provide an audit trail of all amounts paid by Obligor to Ecology pursuant to this Agreement and shall be available to Obligor or its representatives upon request. Ecology shall keep such records consistent with its records retention schedule.

## **TERMINATION**

Either party may terminate this Agreement for its convenience upon not less than ninety (90) days' prior written notice (Notice of Intent to Terminate for Convenience). Additionally, upon breach by the other party, either party may terminate upon thirty (30) days' written notice (Notice of Intent to Terminate for Breach). Prior to delivery of said Notice of Intent to Terminate for Breach, the terminating party must give the non-terminating party at least fifteen (15) days' written notice of the breach and an opportunity to remedy said breach. Obligor shall be obligated for payment pursuant to this Agreement and state law for all work performed prior to the effective date of termination.

## **DISPUTE RESOLUTION**

Except as otherwise provided in this Agreement, any dispute arising under this Agreement which is not disposed of either by agreement between the parties or by termination, shall be decided by Ecology's Solid Waste Management (SWM) Program Manager or other authorized official of Ecology, who shall reduce his/her decision to writing and furnish a signed copy to Obligor.

The decision of Ecology's SWM Program Manager or other authorized official shall be the final and conclusive decision of Ecology unless, within thirty (30) days from the date of receipt of such copy, Obligor mails or otherwise furnishes to Ecology's SWM Program Manager a written appeal addressed to the Director of Ecology. A decision of the Director, or the Director's duly authorized representative for the determination of such appeals, shall be the final and conclusive decision of Ecology.

Review of the decision of Ecology shall not be sought under chapter 43.21B RCW. Any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement shall be brought in the Superior Court of Thurston County. Pending final resolution of a dispute pursuant to this paragraph, both Parties shall proceed diligently with the performance of this Agreement and in accordance with Ecology's final decision.

## **CONTRACT MANAGEMENT**

The work described herein shall be conducted under the coordination of the individuals described in Attachment B.

## **COMPLIANCE WITH LAWS**

Both parties agree to comply with all applicable federal and state rules, and regulations.

## **ATTACHMENTS INCORPORATED BY REFERENCE**

All attachments identified in this Agreement and appended hereto are incorporated herein by this reference as if originally set forth in their entirety.

## **SEVERABILITY**

If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.

## **NOTICES**

All notices under this Agreement shall be in writing and shall be deemed to have been duly given if mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed. Notices shall be sent to:

If to Ecology:  
Garin Schrieve  
  
P.O. Box 47600  
Olympia, WA 98504-7600  
(360) 338-2638  
Garin.Schrieve@ecy.wa.gov  
with copy to:  
James.DeMay@ecy.wa.gov

If to Obligor:  
Rye Development, Attn:  
Erik Steimle  
220 Northwest 8th Avenue  
  
Portland, OR 97209  
(503) 998-0230  
[erik@ryedevelopment.com](mailto:erik@ryedevelopment.com)

With copy to:  
amp@cip.dk

## **CALCULATION OF DAYS**

All references to days in this Agreement shall be to calendar days.

## **AGREEMENT ON ALTERATIONS AND AMENDMENTS**

Ecology and Obligor may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by authorized representatives of both parties.

**ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties.

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.

In witness thereof the parties execute this Agreement.

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Laurie G. Davies  
Program Manager  
Solid Waste Management Program  
Department of Ecology

DocuSigned by:  
  
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Henrik Tordrup  
President  
FFP Project 101, LLC

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Dated this 17 day of March, 2021.

**Attachment A**  
**Legal Descriptions:**



## **Attachment B**

### **Agreement between Department of Ecology and Obligor**

The following are anticipated project elements for which Department of Ecology (Ecology) staff will provide services under the Agreement. Bulleted items are provided as examples of anticipated tasks for each element and are not intended to represent a comprehensive list of all necessary tasks.

#### **Project Planning**

- Identify deliverables, key milestones and draft schedule
- Identify interested parties and stakeholders

#### **Prepare Draft Remedial Investigation/Feasibility Study/Cleanup Action Plan**

- Define scope, screening levels, applicable requirements, etc.
- Address Resource Conservation and Recovery Act (RCRA) Treatment, Storage and Disposal (TSD) permit program compliance
- Review and provide comments on drafts

#### **Draft Prospective Purchaser Consent Decree (PPCD)**

- Negotiate PPCD language

#### **Governmental consultation**

- Consultation with tribal governments
- EPA review for RCRA TSD permit program compliance
- Address governmental input

#### **Public Participation**

- Public Participation Plan
- Public notices
- Preparation of informational materials
- Public meetings
- Response to comments

#### **State Environmental Policy Act Compliance**

- Review checklist
- Analyze project impacts/address comments
- Threshold determination

#### **Finalize PPCD**

- Obtain signatures
- Enter PPCD in superior court