

## USE AGREEMENT

THIS AGREEMENT is made by and between ROTSCHY, INC., 9210 NE 62<sup>nd</sup> Avenue, Vancouver, WA 98665, a private company, and PACIFIC COUNTY DEPARTMENT OF PUBLIC WORKS, on behalf of Pacific County ("the COUNTY"), a political subdivision and municipal corporation of the State of Washington.

WHEREAS, the COUNTY has obtained a permit for fill placement identified as Permit No. PL120005SB (expiration date 1/19/2014) through the Pacific County Department of Community Development for placement of 20,000 c.y. of materials to be placed on Parcel No. 13081414053 and is commonly known as Martin Farm – 15 Lilly Wheaton Road; and

WHEREAS, the COUNTY obtained the approved environmental permits by submitting a Wetland Delineation Report and Buffer Averaging Plan dated March 5, 2009 completed by Ecological Land Services, Inc. (see attached report) and submittal of a Monitoring Site Visit as referenced in a letter and exhibits dated 5/1/2012 from Ecological Land Services, Inc. (see attached); and

WHEREAS, ROTSCHY, INC. will be constructing the Willapa River Bridge Replacement Project for Washington State Department of Transportation on State Route 6 at MP 6.86 to MP 7.26 and require a close proximity fill site.

WITNESSETH, it is agreed by and between the parties hereto as follows:

USE – ROTSCHY, INC. is hereby permitted to place fill materials from the Willapa River Bridge Replacement Project at the approved fill site as referenced above. All permit conditions identified in Planning Permit shall be abided by in placement of fill materials and site cleanup.

TERMS – all fill materials shall be placed prior to the expiration date of the Planning Permit (1/19/2014).

OBLIGATIONS – ROTSCHY, INC. shall continuously abide by and adhere to the conditions of approval listed in the Planning Permit (expiration date 1/19/2014) and Wetland Buffering Monitoring Site Visit letter (dated 5/1/2012) as issued to PACIFIC COUNTY.

ROTSCHY, INC. agrees to obtain (through Pacific County Department of Community Development) a 15,000 c.y. fill permit at another location on Parcel No. 13081414053, Martin Farm – 15 Lilly Wheaton Road for PACIFIC COUNTY Department of Public Works future use. The permit approvals will be obtained before December 31, 2013. The costs for permit applications and approvals will be at no cost to the COUNTY.

INDEMNIFICATION –In accepting this Agreement, the CONTRACTOR, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or

negligent act(s) or omission(s), or strict liability of the CONTRACTOR or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the CONTRACTOR, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

INSURANCE – The CONTRACTOR shall maintain, and upon request of the COUNTY, provide proof of occurrence based general business professional liability insurance in the amount of (min of \$1,000,000) or greater per occurrence and \$2,000,000 aggregate for the term of this CONTRACT. The CONTRACTOR must name the COUNTY as an additional insured. The CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state. The CONTRACTOR shall be responsible at its own expense to provide any and all employment insurance coverage, including but not limited to, unemployment insurance, worker's compensation insurance, etc. for any and all of its employees as might apply.

NOTIFICATION – Should the need arise during the term of the USE AGREEMENT for either party to notify the other for a change in address or otherwise, the following contacts shall be used:

For the COUNTY:                    Michael W. Collins, Director of Public Works/County Engineer  
Pacific County Department of Public Works  
PO Box 66  
South Bend, WA 98586  
(360) 875-9368

For ROTSCHY, INC.:                Casey Danforth, Project Manager  
Craig Homola, Superintendent  
Rotschy, Inc.  
9210 NE 62<sup>nd</sup> Avenue  
Vancouver, WA 98665  
(360) 334-3100

