

**PERSONAL PROPERTY TRANSFER
MEMORANDUM OF UNDERSTANDING
DE-GM07-04ID11457**

**BETWEEN
THE DEPARTMENT OF ENERGY IDAHO OPERATIONS OFFICE
AND
THE COMMUNITY REUSE ORGANIZATION, INC.**

I. INTRODUCTION

This plan establishes conditions under which personal property may be transferred from the United States Department of Energy, Idaho Operations Office (DOE-ID), an agency of the United States Government, to the Community Reuse Organization, Inc. (CRO), an Idaho Corporation.

A. Background

Section 3155 of Public Law 103-160, the National Defense Authorization Act for Fiscal Year 1994, authorizes the Secretary of Energy to transfer, for consideration, all rights, title, and interest of the United States in and to personal property and equipment if the Secretary determines that such transfers will mitigate the adverse economic consequences that might otherwise arise from the closure or reconfiguration of the DOE facility.

B. Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish an economic development personal property transfer program between DOE-ID and CRO, the designated property management representative as outlined in DOE Personal Property Letter Number 970-1.

Objectives

The objectives of this program will be to identify personal property located at the Idaho National Laboratory (INL), which is excess to the needs of DOE-ID and/or DOE as having possible application to local economic development projects, and to utilize this property in helping to offset the local consequences of DOE's downsizing.

II. RESPONSIBILITIES

A. CRO

1. CRO will act as the single point of contact for economic development issues for the identification and request of DOE excess personal property.

2. CRO must publicly describe the purpose, scope, and method of their community transition economic development efforts. These efforts should reach a broad segment of the community in an inclusive and timely way. This will assume fairness of opportunity for participation in the planning and subsequent projects they support.

III. ADMINISTRATION

A. Eligible Excess Personal Property

1. This plan applies to property of DOE from DOE-ID. As outlined in PPL 970-1, only property with a condition codification of "property in new or unused condition and can be used immediately without modification or repair" and "property which has some wear but can be used without significant repair," is eligible for disposal to the CRO under this plan.

DOE-ID currently plans to offer excess personal property using the following priorities:

- (a) DOE-ID and other DOE site usages
 - (b) Mathematics and Science Equipment GIFT program (Executive Order 12999 and Stevenson Wydler Technology Innovation Act of 1980)
 - (c) CRO, under this plan
 - (d) Other federal, state, or local government groups
 - (e) The general public.
2. These priorities are subject to change depending upon DOE-ID program needs and goals.

B. Request/Approval for Transfer of Personal Property

1. DOE-ID has contractual agreements with Battelle Energy Alliance, LLC (BEA) and CH2M-WG Idaho, LLC (CWI) to manage the DOE owned personal property located at the INL. BEA's and CWI's respective property managers, or the respective property managers of BEA's or CWI's successor-in-interest, will provide to DOE-ID, by the fifth working day of each month, a list of property meeting the reporting requirement of PPL 970-1. DOE-ID will then forward these lists to CRO for consideration. Unless other arrangements are made, CRO will be offered the property for acquisition through the twentieth working day of that month.
2. In the event that CRO desires to acquire property under this plan, Attachment 1 (CRO Local Economic Development Request) will be completed and submitted by CRO to the DOE-ID Economic Development Program Manager. The DOE-ID Program Manager will review and approve the transfer of the personal property. DOE-ID then provides the approved request to the respective BEA or CWI property manager, or the respective property manager of BEA's or CWI's successor-in-

interest. The respective BEA or CWI property manager, or the respective property manager of BEA's or CWI's successor-in-interest, will then execute a transfer that includes the passage of title to CRO. For routine (not high risk and valued at less than \$1 million) property transfers, DOE-ID will endeavor to complete the review and approval process within 30 calendar days from the date the personal property becomes available to CRO.

3. CRO must provide, for each request, justification indicating how the personal property will be used to benefit the local community. The justification will include, but not be limited to, (a) how the local community will benefit, (b) marketing and sales approaches to be used, and (c) a description of the end use for the property.
4. If the cumulative bare costs (defined as DOE original acquisition costs less shipping and installation costs) of a one-time transaction to the same business exceeds \$1 million, CRO must supply within 60 days:
 - a. A summary business plan for the use of the property,
 - b. A Financial Statement Summary, and
 - c. A due diligence report on the business involved in the transfer.

C. Compliance Review

DOE-ID may review CRO's compliance with this plan at any time. The review may include examination and audit of all books, records, documents, and other data required to assess compliance with this agreement. If CRO is found to be out of compliance with the terms of this plan, the agreement may be terminated by DOE-ID.

D. High Risk Personal Property

No high-risk personal property (as defined in 41 CFR 109-1.100-51) will be eligible for transfer under this agreement.

E. No Warranty

The DOE and the United States Government, their agents, successors, and employees and/or its contractors and their agents, successors and employees make no guaranty, warranty, or representation, expressed or implied, as to the kind, size, weight, quality, character, description, or condition of any of the property; as to its fitness for any use or purpose, as to whether the property will or will not cause injury or damage to persons or property; as to the correctness of any information furnished with regard to the property, its radioactive contamination, or as to any other matters that may concern it. In no event shall the DOE, U.S. Government, its contractors, or subcontractors be liable for actual, consequential, incidental or special damages whatsoever arising out of the use or inability to use the property being transferred.

The property may be contaminated with quantities of radioactive material so small as not to have been recovered or removed by previous treatment. To the best of the knowledge and belief of the Government the surface radioactive contamination of such property is within the permissible levels of contamination established by the DOE for the sale of government-owned property. A government representative will prepare, at the government's expense, a radiation survey report

covering the property and a copy of this report will be made available to CRO for such property and equipment offered for transfer.

F. Claims Liability

CRO agrees to hold the Government, its contractors and subcontractors, and their officers, agents, and employees harmless from any and all claims, demands, actions, losses, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property or the injuries to or the death of any and all persons whatsoever arising out of or in any way connected with the removal, storage, possession, use, sale, or transfer of personal property transferred to CRO from DOE-ID.

CRO shall obtain an executed waiver, and release of liability and indemnity agreement from any of CRO's selected industrial participants, economic development partners, property assignees, their agents, servants, or employees, including any third party participating in the program developed pursuant to this MOU. The waiver and release of liability and indemnity agreement shall substantially conform to Attachment 2, and shall be executed prior to the entry of any of the above named parties upon government property for any purpose, including but not limited to the purpose of inspection, removal, use or operation of personal property. A copy of the fully executed waiver shall be provided to the DOE-ID Economic Development Program Manager before entry of any of the above named parties upon government property. The waiver and release of liability and indemnity agreement shall, upon its execution, remain in full force and effect for an indefinite period of time.

G. Limitation on Agent's or Government's Liability

In any case where the liability of DOE or CRO has been established, the extreme measure of each party's liability shall not in any event exceed the percentage of fault attributable to that party.

H. Consideration

Consideration to DOE for the transferred property shall be in the form of an annual report showing the economic development benefits derived from the use or sale of the property. This report shall cover the period October 1 through September 30 of each year and is due to the DOE-ID Economic Development Program Manager by November 30 of each year. The report must, at a minimum, provide the following information:

1. A description of the property transferred and the date of transfer;
2. The number of businesses that have been assisted through the use of the property;
3. The gross revenue generated from the sale of the property;
4. A description of the program uses of the revenue generated from sales;
5. An estimate of the number of full-time jobs that have been created by entities using transferred property or businesses that have benefited from the sales revenues.

I. Covenant against Contingent Fees

CRO warrants that no person or agency has been employed or retained to solicit or obtain this MOU upon an agreement or understanding for a fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this MOU without liability, or in its discretion, to deduct from the contract price or consideration, or otherwise the full amount of the contingent fee.

Definitions:

“Bona Fide Agency” as used in this clause, means as an established commercial or selling agency, maintained by CRO for the purpose of securing business that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.

“Bona Fide Employee” as used in this clause, means a person, employed by CRO and subject to CRO’s supervision and control as to time, place, and manner of performance who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.

“Contingent Fee” as used in the clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.

“Improper Influence” as used in this clause, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

J. Officials not to Benefit

No member or delegate to Congress or Resident Commissioner shall be admitted to any part of this contract, or to any benefits that arise from it. This clause shall not apply to the extent this contract is made with a corporation for the corporation’s general benefit.

K. Equal Employment Opportunity

CRO shall comply with the provisions of the following subparagraphs if, during any 12-month period (including the 12 months preceding the effective date of this plan), CRO has been or is awarded non-exempt federal contracts or subcontracts having an aggregate value in excess of \$10,000. CRO shall provide information necessary to determine applicability of this requirement.

During performance of this contract, CRO agrees as follows:

1. CRO shall not discriminate against or harass any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, veteran status, sexual orientation, genetic information or status as a parent. Nor shall CRO retaliate against any employee or applicant for employment because the employee has filed a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful business practice.

2. CRO shall take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, age, disability, national origin, veteran status, sexual orientation, genetic information or status as a parent. Nor shall CRO retaliate against any employee or applicant for employment because the employee has filed a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful business practice. This shall include, but not be limited to (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection of training, including apprenticeship.
3. CRO shall post in conspicuous places available to employees and applicants for employment, the notices found on the Department of Labor website that explain this clause.
4. CRO shall, in all solicitations or advertisement for employees placed by or on behalf of CRO, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, national origin, veteran status, sexual orientation, genetic information or status as a parent.
5. CRO shall send, to each labor union, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice found on the Department of Labor website advising the labor union or worker representative of CRO's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
6. CRO shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
7. CRO shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any prescribed successor form, must be filed within 30 days following the award, unless the contractor has filed within the 12 months preceding the date of award.
8. CRO shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Program (OFCCP) for the purpose of investigation to ascertain CRO compliance with the applicable rules, regulations and orders.
9. If the OFCCP determines that CRO is not in compliance with this clause or any rule, regulations, or order of the Secretary of Labor, CRO may be declared ineligible for further government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against CRO as provided in Executive Order 11246, as amended, the rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.
10. CRO shall include the terms and conditions of subparagraph I through 11 of this clause in every subcontract or purchase order that is not exempt as provided in the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, to assure these terms and conditions are binding upon each subcontractor or vendor.

11. CRO shall take such action with respect to any subcontract or purchase order as the contracting agency may direct to enforce these terms and conditions, including sanctions for noncompliance; provided, however, should CRO become involved in litigation with a subcontractor or vendor, as a result of any direction, CRO shall ask the Contracting Officer if the United States desires to enter into the litigation to protect the interests of the United States.

Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

L. Termination

This MOU may be terminated upon 60 days written notification from either party to this agreement. In any event, this plan shall terminate five years from its effective date unless otherwise agreed to by both parties prior to the expiration of the agreement.

M. Failure of Parties to Insist on Compliance

The failure of either Party to insist, in any one or more instances, upon performance of any of the terms of this agreement shall not be construed as a waiver or relinquishment of the party's right to future performance of any such terms, covenants, or conditions and the other party's obligations with respect to such future performance shall continue in full force and effect.

N. Severability

Should any term or provision of this agreement, or any part thereof, be held unenforceable for any reason, such unenforceable term or provision, or part thereof, shall not affect the remainder of this agreement, it being agreed the provisions hereof are severable.

O. Interpretations

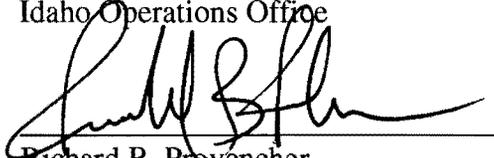
This MOU sets forth the conditions under which CRO may receive personal property from DOE-ID. Notwithstanding any other provisions of this document, this document does not grant to CRO any enforceable contractual rights against DOE-ID, including the right to receive any property. Rather, this document is intended to set forth conditions and terms under which CRO shall receive and hold any property that DOE-ID may, in its sole discretion, elect to transfer to CRO. Specifically, the use of the term "contract" or "agreement" in this document shall not be interpreted to mean that CRO shall have any contractual rights with respect to DOE-ID. However, CRO shall be bound to hold any property that it receives under the document in accordance with the terms herein.

P. Funding

This MOU shall not obligate funds of the United States.

PROMULGATED BY:

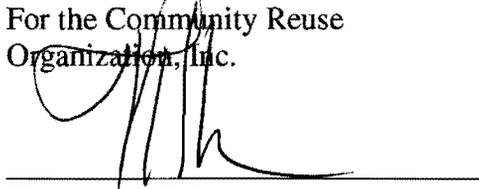
For the Department of Energy
Idaho Operations Office



Richard B. Provencher
DOE-ID Manager

1/11/11
Date

For the Community Reuse
Organization, Inc.



Timothy L. Solomon
CRO Executive Director

1/20/2011
Date

CRO LOCAL ECONOMIC DEVELOPMENT REQUEST

(Please Type or Print Legibly)

A. Organization:

1. Name of Applicant Organization

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2. Type of Business (*select one*)

For-Profit Business:	Non-Profit Business:
Business Function:	

3. Name of Contact Person

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4. Title of Contact Person

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5. Mailing Address

City:	State:	Zip Code:

6. Street Address (if different from above)

City:	State:	Zip Code:

7. Phone Number

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8. Fax Number

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9. E-Mail Address

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10. Total Number of Employees

Full Time:	Part-Time:
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11. Anticipated future Job Growth from 6 months to 1 year.

Full Time:	Part-Time:
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*Application will stay active for 60 days. Following this time period a new application must be completed to maintain eligibility.

B. Property Request Information

Property Request Table

#	Excess Tracking #	Description	Quantity

- 1) Economic Development Property Use Summary. How this property will be utilized for economic development.

Signature _____ **Date** _____

Print Name _____

WAIVER AND RELEASE OF LIABILITY AND INDEMNITY

THIS PROPERTY IS BEING TRANSFERRED TO THE PURCHASER WITHOUT ANY WARRANTIES AND THE UNITED STATES DEPARTMENT OF ENERGY (DOE) AND THE COMMUNITY REUSE ORGANIZATION, INC. (CRO) SPECIFICALLY DISCLAIM ANY WARRANTIES, EXPRESSED OR IMPLIED INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The property is being sold “as is, where is” without any guarantees or warranties of any kind.

By accepting possession of the property, the Buyer acknowledges that it has had an opportunity to examine the property and determine whether the property is appropriate for the Buyer’s intended use. The Buyer further agrees it is relying upon its own examination and inspection of the property and is not relying upon any representations made by DOE, CRO or their respective employees, agents or representatives. The Buyer waives notice of any defects or deficiencies in the property, whether known or unknown.

Buyer, his/her/its heirs, devisees and legatees, executors, administrators, successors and/or assigns, hereby agree to indemnify and hold harmless the United States Department of Energy, its Contractors, and CRO, and their agents, successors, assigns and employees from any and all claims, demands, loss, liability actions and/or causes of action, arising out of or in any way connected with the possession, use, sale, resale and/or the handling of the purchased property by any person or entity whatsoever, even if the loss, injury and/or damage is predicated upon the negligence of any of the aforementioned parties and/or their representatives. Buyer agrees to pay all attorneys’ fees, costs and expenses, judgments and/or damages that may be incurred by any of the entities and/or persons being hereby indemnified. Likewise, Buyer will defend at its own expense against any claim relating to the purchased goods, which is brought against any one or more of those entities being indemnified.

CRO Approval

Buyer’s Representative (Please print name)

Timothy L. Solomon
Executive Director

Date

Buyer’s Representative (signature) Date