



Gregory L. Geist
Director

June 2, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Permit of Use for Three Acres of Land at the Tri City WRRF Property to Kiewit Infrastructure West Co. to Support the Construction of the ODOT I-205 Bridge Project.
No County General Funds are involved.

Purpose/Outcome	Approval of Permit of Use for Three Acres of Land at the Tri City WRRF Property to Kiewit Infrastructure West Co. to Support the Construction of the ODOT I-205 Bridge Project.
Dollar Amount and Fiscal Impact	Kiewit Infrastructure West Co. will pay Water Environment Services \$18,000/quarter for the duration of the agreement from June 2022 – December 2025. The anticipated total to be collected is \$252,000.
Funding Source	This agreement is a revenue agreement and does not involve the expenditure of any funds.
Duration	June 2022 through December 2025.
Previous Board Action/Review	Presented at Issues on May 31, 2022.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This agreement supports the County Strategic Plan of building a strong infrastructure that delivers services to customers by supporting another state agency completing a project in Clackamas County. 2. This agreement supports infrastructure strategy and performance by utilizing a piece of WES property to improve local roadways while providing a source of revenue for WES.
Counsel Review	<ol style="list-style-type: none"> 1. Date of Counsel review: 5/16/2022 2. Amanda Keller
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? No Permit of Use does not need to go through the procurement process.
Contact Person	Jeff Stallard, WES Capital Supervisor, 503-278-2311
Contract No.	N/A

Background:

WES has been working closely with the Oregon Department of Transportation (“ODOT”) on two major projects in the area, the Tri City Outfall and the new Water Environment Services (“WES”) force main being built on the bridge as part of the I-205 Project. ODOT has selected Kiewit Infrastructure West Co. (“Kiewit”) to complete the I-205 Bridge Improvements Project. In order to support the delivery of that project, Kiewit has a need for a place to build temporary

Page 2

construction trailers. WES owns property adjacent to the Tri City Water Resource Recovery Facility ("WRRF") and close to the I-205 Bridge that is currently unoccupied and is willing to allow Kiewit to use the property to support this need. In addition to the fees charged for use,

WES will also gain the benefit of having activity on a part of our property that is seldom used, which should reduce the illegal dumping that has occurred in this area recently.

Recommendation:

WES Staff respectfully recommends that the Board approve the Permit of Use for Three Acres of Land at the Tri City WRRF Property to Kiewit Infrastructure West Co. to Support the Construction of the ODOT I-205 Bridge Project.

Sincerely,

A handwritten signature in blue ink that reads "Greg Geist". The signature is written in a cursive style with a long horizontal stroke at the end.

Greg Geist,
Director, Water Environment Services

**PERMIT OF USE
BETWEEN WATER ENVIRONMENT SERVICES
AND KIEWIT INFRASTRUCTURE WEST CO.
FOR THE TRI-CITY WRRF SITE**

THIS AGREEMENT to permit the use of three (3) acres of land on the Tri-City Water Resource Recovery Facility property (this “Agreement”), is made and entered into by and between Water Environment Services, a municipal partnership formed under ORS 190 (the “District”), and **Kiewit Infrastructure West Co.**, a Delaware corporation (the “Permittee”).

RECITALS

WHEREAS, the Permittee desires to use three (3) acres at the Tri City Water Resource Recovery Facility (“WRRF”), described more particularly below, for the purposes of construction trailers and storage;

WHEREAS, District intends to allow Permittee to enter onto the Property (defined below) for the purposes stated above, subject to the terms of this Agreement;

NOW, THEREFORE, the District and the Permittee for the considerations hereinafter set forth agree as follows:

TERMS

ARTICLE 1 – PROPERTY; DISTRICT RESPONSIBILITIES

1.1 Property. The District hereby grants the Permittee a non-exclusive and revocable-at-will permit to access the following property (the “Property”), limited to the areas identified in Exhibit A, attached hereto and incorporated herein, under the terms of this Agreement:

Property Name	Taxlot	Document Date	Document No.
Tri City WRRF	22E29 01509	July 7, 2017	2017-054627

1.2 Use. The allowable use of the Property is for a construction office trailer, vehicle and equipment storage, and nonhazardous construction material storage only within the Property area identified in Exhibit A. Any other use of the Property is unauthorized and shall constitute a trespass of District’s Property and a material breach of this Agreement. Use of the Property is at the Permittee’s sole risk. The Permittee shall ensure that any use of the Property by its subcontractors or agents complies with all terms of this Agreement.

1.3 Access. In accordance with applicable District, local, state or federal laws or statutes, ordinances, rules or regulations, District will allow access and make all necessary provisions required for the Permittee to use the Property under this Agreement.

1.4 Term. This Agreement is effective upon execution by both parties (“Effective Date”). The District agrees to provide Permittee with access to the Property beginning on **June 2, 2022** (“Commencement Date”) and terminating on **December 31, 2025**. Permittee shall have the option of two extension periods beyond such termination date of six (6) months each. Each such extension period may be exercised by Permittee giving the District 30 days prior written notice.

1.5 Condition of Property. The District makes no representations or warranties, express or implied, as to the condition of the Property or its fitness for any particular use by the Permittee.

ARTICLE 2 – PERMITEE’S RESPONSIBILITIES

- 2.1 Use Payment.** Permittee shall make quarterly payments to District for use of the Property in an amount of Eighteen Thousand Dollars (\$18,000.00) starting on Commencement Date (“Use Payment”). The first Use Payment is due within seven days of the Effective Date, with subsequent payments occurring every 90 days therefrom. Permittee shall have no right to offset payment due under this Agreement.
- 2.2 Schedule.** Prior to use of the Property, Permittee agrees to provide the District with an estimated schedule of use, including updates as circumstances change, to ensure Permittee use of the Property does not interfere with District operations.
- 2.3 Restrictions of Use.** Permittee agrees follow all legal requirements and to comply with any restrictions of use related to the Property as required by the District, including, but not limited to:
- a) No activity shall impair the District’s use of the Property.
 - b) No activity shall be conducted outside of the authorized areas, as indicated on the map in Exhibit A.
 - c) No excavation of any kind on the Property is allowed, as the Property is on the site of a former landfill and any disturbance is governed by the terms of an agreement between District and the Oregon Department of Environmental Quality (“DEQ”), a copy of which is attached hereto and incorporated herein as Exhibit B. Permittee will be responsible for any and all damages that result from a violation of District’s agreement with DEQ resulting from the acts or omissions of Permittee or anyone Permittee has a right to control. Ground settlement of the Property can be expected to occur.
 - d) At no time shall Permittee or its agents locate a storage tank on the Property.
- 2.4 Additional Requirements.**
- a) Permittee shall obtain the required Oregon City land use approval for its use of the Property.
 - b) Permittee will be responsible to clean up and restore the area back to original condition prior the expiration or termination of this Agreement.
 - c) District will be constructing an Outfall Pipeline along Agnes Ave to the Willamette River. During construction of the outfall adjacent to the Property, Permittee shall coordinate with District to accommodate construction of the outfall pipeline.
 - d) Permittee will be responsible to place temporary fencing along the perimeter of the Property to be occupied. District will not be held responsible for any damage or theft to Permittee’s property that occurs while Permittee occupies the Property.
 - e) Permittee will be responsible for modifications to the fencing along Agnes required to provide driving access to the Property. Permittee is responsible to locate Property corners and ensure that any fencing modifications are located within the Property. Permittee will restore perimeter fencing to original condition at completion of the project.
 - f) Permittee is responsible to mitigate any impacts caused by Permittee or its agents to the existing storm water drainage on and adjacent to the Property.
 - g) This Property is located within the floodplain and use of Property is at Permittee’s risk.
 - h) Permittee is responsible to install any erosion control measures required to ensure that no soil or rock material is tracked onto adjacent public streets by Permittee or its agents from this

Property.

- i) Permittee is responsible for securing and monitoring any personal property stored on the Property. District shall not be responsible for any damage or theft to Permittee's property.

2.5 Safety Hazards. Permittee agrees to immediately report any potential safety hazards or suspicious activity observed on the Property to District.

2.6 Insurance. Permittee agrees to maintain Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the District, its officers, commissioners, and employees. Such insurance shall include "Water Environment Services and Clackamas County, and their agents, officers, and employees" as additional insureds.

2.7 Certificate of Insurance. As evidence of the insurance coverage required by this Agreement, Permittee shall furnish a Certificate of Insurance to District upon request. No contract shall be effected until the required certificates have been received, approved and accepted by the District. The certificate will specify that all insurance-related provisions within the Agreement have been complied with. A renewal certificate will be sent to the District ten (10) days prior to coverage expiration.

2.8 Licenses and Certifications. Permittee agrees to hold all licenses and certifications required by District, local, state or federal laws or statutes, ordinances, rules or regulations, for its use during the entire term of the Agreement.

2.9 Reservation of Rights. The District reserves all rights of every kind and nature whatsoever in connection with use of the Property by Permittee. The District shall have full and unfettered access to and use of the Property at any time when Permittee is occupying the Property, regardless of whether such access and use conflicts with Permittee's use of the Property.

2.10 Compliance with Applicable Law. Permittee shall observe and comply with all "Legal Requirements," defined below, that may apply to the Premises, or to the use or manner of uses of the Premises. Permittee will pay all costs of compliance with the Legal Requirements.

- a) "Legal Requirements" means all applicable present and future federal, state, and local laws, ordinances, orders, rules, regulations, codes, and requirements that now or hereafter apply to the Property, or any component hereof or any activity conducted thereon, including, but not limited to, those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).
- b) "Environmental Laws" means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 et seq.), the Clean Air Act (42 USC § 7401 et seq.), amendments to the foregoing, and any rules and regulations promulgated thereunder.
- c) "Hazardous Substances" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste,

toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

ARTICLE 3 – GENERAL PROVISIONS

- 3.1. Revocable at Will.** The Permittee’s license to use the Property under this Agreement is non-exclusive and revocable at will by District, for any reason and in District’s sole discretion, without additional notice to the Permittee. The license provided herein conveys no interest in the Property.
- 3.2 Suspension.** If Permittee’s use of the Property interferes with District’s use of the Property for any reason, District may suspend Permittee’s use of the Property upon ten (10) days’ notice. District may resume the arrangement and allow Permittee to use the Property moving forward once the conflict is no longer present.
- 3.3 Termination.** District may terminate this Agreement at any time by providing notice of revocation of the permit granted herein. Either party may, upon thirty (30) day’s written notice to the other party, terminate this Agreement for convenience. In addition, District may terminate this Agreement at any time District fails to receive appropriation of sufficient funds, as determined by District in its sole discretion, to perform under this Agreement. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
- 3.4 Release, Assumption of Risk, and Indemnification.** The Permittee agrees to waive, release, and discharge District and Clackamas County (“County”), and their officers, employees, officials, and agents, from any and all claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with the use of the Property by the Permittee or anyone whom the Permittee has the right to control, except for those claims, causes of action, demands, damages, and costs caused by the gross negligence or willful misconduct of the District or the County.

The Permittee understands and appreciates the risks involved in its use of the Property and hereby expressly assumes any and all risks arising out of or relating to its use of the Property, whether or not specified herein, and understand District and County are not a guarantor of Permittee’s safety.

The Permittee agrees to indemnify and defend the District and County, and their officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or caused by the errors, omissions, fault, or negligence related to the use of the Property of the Permittee or Permittee’s officers, owners, employees, agents, subcontractors, or anyone over which Permittee has a right to control. This indemnification obligation specifically includes any costs, damages, claims or actions arising from the disturbance of the landfill site under the Property, in violation of the requirements imposed by the Oregon Department of Environmental Quality.

However, neither Permittee nor any attorney engaged by Permittee shall defend the claim in the name of District or County, purport to act as legal representative of District or County, or settle any claim on behalf of District or County, without the approval of the County Counsel’s Office. District or County may assume their own defense and settlement at their election and expense.

3.5 Default.

- a) The following constitute a default under this Agreement: (i) Permittee’s failure to pay any amount

required to be paid under this Agreement within 10 days after written notice of such nonpayment is given to Permittee; (ii) Permittee's violation of any term or condition in this Agreement following 10 days' notice and opportunity to cure after written notice of such violation; or (iii) Permittee becomes insolvent, makes an assignment for the benefit of creditors, or a receiver is appointed for Permittee's properties.

- b) Upon an event of default, District may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Agreement:
 - i. Termination. District may terminate this Agreement by written notice to the Permittee, which is effective immediately.
 - ii. Removal. District or District's agent may immediately or at any time thereafter, with or without terminating this Agreement, at District's sole discretion, enter the Property without being liable to indictment, prosecution or damages, and may remove any person from the Property, to the end that District may have, hold and enjoy the Property.
 - iii. Damages. Whether or not District retakes possession of the premises, District may recover its damages from Permittee, including without limitation, all lost Use Payments and all costs incurred by District in restoring the Property.
 - iv. All Other Remedies. The District shall have any remedy available to it in law or equity, whether or not specified herein.

- c) Each right and remedy provided for in this Agreement is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise.

3.6 Property Condition on Termination. Upon expiration of the Term or earlier termination of this Agreement, the Permittee shall deliver the Property to the District in good condition, free and clear of all liens and encumbrances other than those existing on the date of this Agreement or not created by Permittee, if any.

3.7 Non-Waiver of Governmental Rights. Subject to the terms and conditions of this Agreement, District is specifically not obligating itself with respect to any discretionary action relating to the Property including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.

3.8 Notice. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the District: Water Environment Services
 150 Beaver Creek Road, 4th Floor
 Oregon City, Oregon 97045
 ATTN:

Copy to: County Counsel
 c/o Water Environment Services
 2051 Kaen Road, 2nd Floor
 Oregon City, Oregon 97045
 ATTN: Amanda Keller

If to Permittee: **Kiewit Infrastructure West Co.**
1550 Mike Fahey Street
Omaha, NE 68102
ATTN: Real Estate Department
Email : realestate@kiewit.com

- 3.9 Assignment.** Permittee shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the District, which may be granted or withheld in its sole and absolute discretion. District may assign this Agreement at any time and shall provide Permittee with notice of such assignment within thirty (30) days of such assignment.
- 3.10 No Third Party Beneficiaries.** The District and Permittee are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Agreement.
- 3.11 Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.
- 3.12 Integration.** This Agreement contains the entire agreement between the District and the Permittee and supersedes all prior written or oral discussions or agreements.
- 3.13 Amendments.** The District and the Permittee may amend this Agreement at any time only by written amendment executed by the District and the Permittee.
- 3.14 Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without sixty (60) days written notice by the Permittee.
- 3.15 Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- 3.16 Waiver.** The District and the Permittee shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.
- 3.17 No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

3.18 Debt Limitation. This Agreement is expressly subject to the debt limitation set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

3.19 Counterpart Originals. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

PERMITTEE:

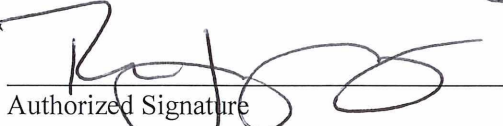
WATER ENVIRONMENT SERVICES:

Kiewit Infrastructure West Co.

Chair

1550 Mike Feibey St Omaha NE
Address 68102

Date


Authorized Signature

Approved as to Form:

Manager
Title

County Counsel

Date

47-0647803
Federal Tax ID Number

May 18, 2022
Date

Exhibit A
Tri City WRRF Property
Tax Lot 22E29 01509
15941 S Agnes Ave, Oregon City, OR 97045

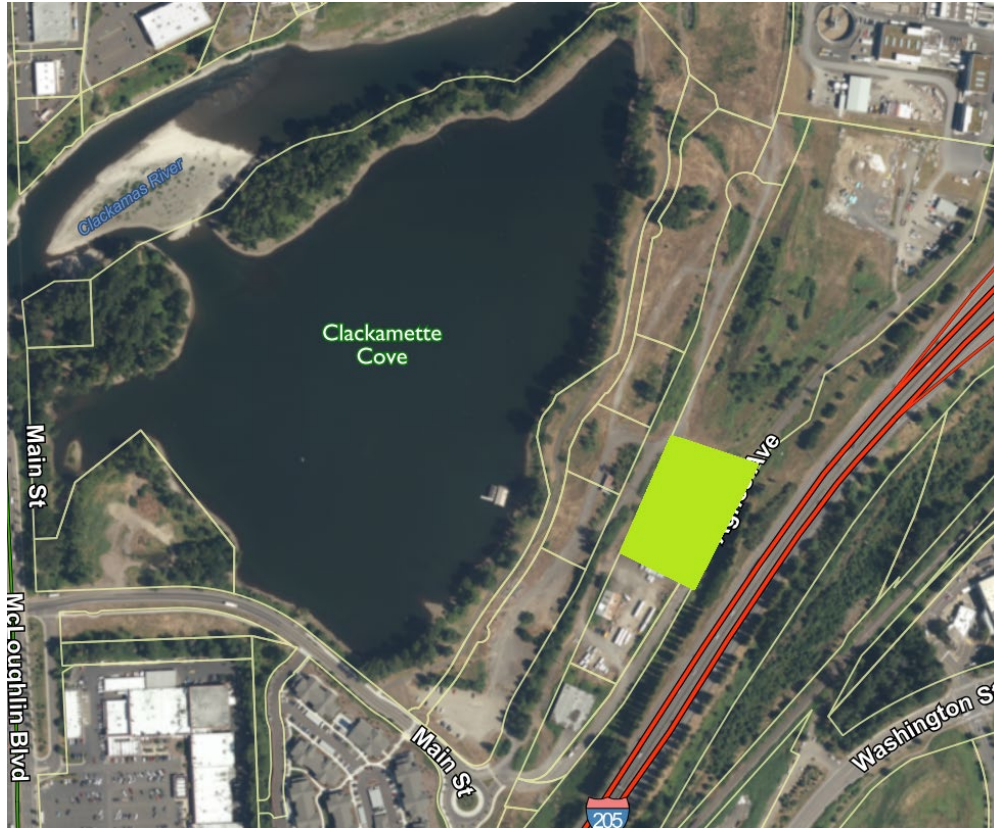


Exhibit B
Tri City WRRF Property DEQ Agreement for Rossman Landfill

PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 00-05

BETWEEN: Oregon Department of Environmental Quality

AND: Tri-City Service District

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and Tri-City Service District (TCSD) pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

Table of Contents

	<u>Page</u>
1. Recitals	2
2. Measures to be Undertaken	4
3. General Provisions	8
A. DEQ Oversight	8
B. DEQ Access	8
C. Use Restrictions	9
D. Project Managers	10
E. Progress Reports	10
F. DEQ Costs	10
G. Dispute Resolution	11
H. Enforcement of Agreement and Reservation of Rights	11
I. Waivers	12
J. Hold Harmless and Indemnification	12
K. Public Notice	13
L. Recording	13
M. Transfer of Ownership	13
4. Releases from Liability	13
5. Parties Bound	15
6. Effective Date	15
7. Signatures	16
Attachment A -- Legal Description of Property	
Attachment B -- Remedial Action Work Plan, Unpermitted Rossman Landfill	

1. RECITALS

A. The Unpermitted Rossman Landfill property (Property) is an approximate 14.4 acre area of an inactive landfill and located within Tax Lot 1509 in Oregon City, Oregon. The Property is located in the western half of Section 29, Township 2 South, Range 2 East of the Willamette Meridian in Clackamas County, and is bounded to the east by the Interstate 205 Highway right-of-way, to the north by the existing TCSD publicly owned treatment works, to the south by the KAF, Inc. property, and to the west by the former Portland Traction Railroad and vacant land adjoining Clackamette Lake. The legal description of the Property is set forth in Attachment A to this Agreement.

B. Between approximately 1960 and 1969, the Property was operated as a landfill accepting municipal waste. Between approximately 1970 and 1987, aggregate operations and industrial maintenance activities were conducted at the Property. In about 1986, the owner of the Property declared bankruptcy, and the Property has not been in productive use since that time. The following constituents of concern have been detected in the solid waste disposed at the Property, or in soils or groundwater at the Property: benzene, toluene, ethylbenzene, and xylenes, total petroleum hydrocarbons, arsenic, cadmium, lead, mercury, 1,4-dichlorobenzene, and bis(2-ethylhexyl)phthalate. These substances are "hazardous substances" within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a "release" of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a "facility" within the meaning of ORS 465.200(12). Removal or remedial action is necessary at the Property to protect human health and the environment.

C. On July 2, 1998, TCSD applied to DEQ for entry of a Prospective Purchaser

Agreement. TCSD is a government entity; therefore, the \$2500.00 deposit was waived. TCSD will be invoiced monthly for DEQ's costs of technical review and agreement preparation, and shall make payments in accordance with Subsection 3.F of this Agreement.

D. TCSD is a unit of local government, and a "person" within the meaning of ORS 465.200(20). According to information provided by TCSD, TCSD is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

E. TCSD has prepared, and DEQ has approved, the "Remedial Action Work Plan, Unpermitted Rossman Landfill" (Work Plan) to address the hazardous substance releases and solid waste disposed at the Property. The Work Plan is attached hereto and incorporated herein as Attachment B. On April 1, 2000, DEQ issued a public notice in the Secretary of State's Bulletin requesting comments on this Agreement and the Work Plan. On April 14, 2000, DEQ issued a public notice in a newspaper of general circulation requesting comments on this Agreement and the Work Plan.

F. The Work Plan describes the remedial measures that TCSD will implement. In addition to implementing the Work Plan, TCSD intends to return the Property to productive use through the development of: (1) expanded publicly owned treatment facilities needed to properly manage and treat existing wastewater pollutant loadings and the wastewater pollutant loadings from new growth; and (2) public open space, parking or recreational facilities. DEQ has determined that TCSD's proposed activities and uses at the Property will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property. DEQ further has determined that TCSD's proposed activities and uses will return the abandoned

industrial area to productive use, and that a "substantial public benefit" will result from this Agreement within the meaning of ORS 465.327 (1)(d).

G. In determining to enter this Agreement, DEQ has consulted with the City of Oregon City's Planning Department and has considered reasonably anticipated future land uses at the Property and surrounding properties.

H. TCSD and DEQ shall work together to ensure that development plans and activities for the Property, Property uses, and remedial activities at the Property are coordinated with one another. TCSD recognizes that implementation of remedial measures at the Property might interfere with TCSD's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. TCSD has already performed significant investigation activities at the Property in preparation for this Agreement and for development of the Work Plan. In addition, TCSD shall work under DEQ's oversight to perform the remedial actions at the Property as described in the Work Plan in a manner consistent with ORS 465.200 through 465.455 and related regulations.

- (1) Consistent with ORS 465.200 through 465.455, TCSD shall conduct the remedial actions described in the Work Plan to address the gasoline contaminated soils and pure-phase petroleum, if any, at the northern portion of the Property; and
- (2) Consistent with ORS 465.200 through 465.455, and ORS 459 as applicable, TCSD shall implement the remedial actions described in the Work Plan to address the solid waste disposed at the Property, and to properly manage hazardous wastes, if any, encountered during implementation of such remedial actions. These measures shall include ongoing maintenance activities as necessary, such as maintaining the engineered cap that is part

of the remedy, and conducting gas monitoring as specified in the Work Plan. TCSD shall ensure that its future uses of the Property are consistent with the remedial design for the southern portion of the Property; future uses shall not disturb the integrity of the cap or interfere with the drainage and vegetation system. Proposed uses that require disturbance of the cap, drainage, or vegetation system may trigger further remedial measures for that area of the Property.

B. If the actual Remediation Costs to implement the activities described in the Work Plan exceed \$2,000,000.00, TCSD shall incur those Remediation Costs. TCSD shall not be obligated to conduct any additional removal or remedial activities unless such activities are identified in the Work Plan, including modifications and adjustments to work contemplated in the Work Plan that are agreed to among the parties. If the Remediation Costs of the activities described in the Work Plan are less than \$2,000,000, TCSD shall dedicate "Remaining Funds" [the difference between \$2,000,000 and the costs of implementing the Work Plan] to activities at or near the Property as determined by DEQ. DEQ will consult with TCSD before DEQ undertakes any such activities.

C. Remediation Costs

(1) For purposes of this Agreement, Remediation Costs are defined as follows:

(a) Remediation Costs exclude monies spent by TCSD related to investigation or remedial activities at the Property before the effective date of this Agreement, and work performed which is beyond that work specified in the Work Plan, unless approved by DEQ.

(b) Remediation Costs include costs for remedial action or removal activities within

the meaning of ORS 465.200(22) and 465.200(24); provided that internal administrative costs incurred by TCSD and legal costs incurred by TCSD relating to activities performed pursuant to this Agreement are not Remediation Costs. Costs incurred by TCSD for its environmental consultants to prepare the reports, work plans, and cost estimates required by this Agreement, including the costs to prepare the attached Work Plan, and for DEQ costs charged to TCSD in connection with the Property and TCSD's implementation of this Agreement and the Work Plan, are included in the definition of Remediation Costs.

D. Subject to ORS 465.315(3), TCSD shall comply with all federal, state, and local laws and regulations applicable to the handling, disposal, management, or movement of hazardous wastes, hazardous substances, and pollutants associated with any activities at the Property by TCSD. As described in the Work Plan an "Area of Contamination" has been delineated for the treatment and management of soil impacted by the release of petroleum products at the Property.

E. Except for source control or removal required under the Work Plan, TCSD is not required to perform any monitoring, investigation or remedial activities with respect to groundwater. Nothing in this Agreement requires DEQ to perform any monitoring, investigation, or remedial activities at the Property.

F. Subject to final land use approvals, TCSD intends to design and construct expanded publicly owned wastewater treatment facilities on a northern portion of the Property adjacent to the existing TCSD publicly owned treatment works on a schedule to meet the wastewater treatment capacity needs of TCSD. TCSD intends to design and develop public open space consistent with

the final remedial design, which may include but is not limited to parking and recreational facilities, on that portion of the Property not otherwise used in connection with the expanded treatment facilities. TCSD shall incorporate the remedial measure considerations specified in the Work Plan in the design and development of the expanded treatment facilities and the public open space.

G. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with the remedial activities at the Property as described in the Work Plan. To ensure such consistency and prevent exacerbation of existing contamination at the Property, TCSD shall submit for DEQ review and approval development plans, building plans, statement of intended use or other similar and adequate documentation to DEQ at least 45 days before any material physical changes are made to the Property. DEQ shall respond to TCSD within 15 days of receiving the documentation to discuss whether any modifications to plans or remedial activities may be necessary, and to provide TCSD with a schedule for final determination on TCSD's proposal. In order to provide for adequate review of proposed land uses at the Property, TCSD shall upon request provide DEQ with the following: a map showing location of the proposed land use; construction plans; a map showing depth levels of any proposed excavation activity; summary of anticipated impacts to the environment as a result of the proposed land use; and any other information that DEQ reasonably deems necessary to adequately review the proposed land use to ensure that it will not exacerbate existing contamination at the Property or interfere with remedial activities. TCSD shall cause its employees, contractors, agents, and occupants of the Property who perform activities on the Property that might affect the contamination or the remedial measures provided under this Agreement to comply with the requirements of this paragraph. TCSD's obligations under this paragraph expire for the Property, or the relevant portion(s) of the Property,

upon receiving a No Further Action determination from DEQ regarding contaminated soils at the Property or the relevant portion(s) of the Property.

H. TCSD shall record and abide by use restrictions on the Property, which restrictions pursuant to ORS 465.327(5) shall run with the land. These restrictions are described in Subsection 3.C. of this Agreement.

3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ shall provide review, approval/disapproval, and oversight as described in Section 2 and Subsection 3.F of this Agreement and the Work Plan. Where DEQ approval is required for any plan or activity under this Agreement or the Work Plan, TCSD shall not proceed to implement the plan or activity until DEQ approval is received.

B. DEQ Access

(1) TCSD grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement and conducting remedial measures DEQ deems necessary.

(2) TCSD shall allow DEQ to inspect and copy all records in TCSD's possession or control relating to measures undertaken at the Property under this Agreement, to the extent such documents are not subject to attorney-client or work product privileges or other privileges afforded under Oregon or federal law. TCSD shall preserve all such records for six (6) years after the effective date of this Agreement and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying. DEQ reserves any rights to challenge TCSD claims that documents

withheld are privileged.

(3) TCSD may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410, et seq. If TCSD does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to TCSD.

C. Use Restrictions

(1) The following use restrictions shall be imposed on the Property:

(a) Groundwater may not be withdrawn or used for any purpose without prior written approval from DEQ.

(b) Except as provided in this Agreement and the attached Work Plan, contaminated soils may not be disturbed without prior written approval from DEQ, unless such soil disturbance is related to investigation, removal, or remedial activities performed in accordance with a DEQ-approved work plan for such activity. Disturbance of soils includes excavation, grading, paving, construction, or any other activity that might expose or move contaminated soils at the Property. DEQ acknowledges that soils will be disturbed during construction of the expanded wastewater treatment facilities; however, TCSD shall provide notice to DEQ and shall properly manage the soils disturbed.

(2) TCSD shall ensure that all employees, agents, occupants, and authorized users of the Property abide by the use restrictions set forth in Subsection 3.C (1). Pursuant to ORS 465.327(5), such use restrictions shall run with the land.

(3) The use restrictions required under this subsection are in addition to and not in lieu

of any institutional controls or other remedial measures required pursuant to performance of this Agreement and the attached Work Plan.

D. Project Managers

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

Don Pettit
DEQ Project Manager
2020 SW 4th Avenue, Suite 400
Portland, OR 97204
Ph: 229-5492; Fax: 229-6899

Theodore S. Kyle
Capital Projects Manager
Water Environment Services
Clackamas County, Oregon
9101 SE Sunnybrook Road
Clackamas, OR 97015
Ph: 353-4562; FAX: 353-4565

E. Progress Reports

TCSD shall submit progress reports to DEQ as provided in the Work Plan and in any subsequent schedules approved by DEQ. On a quarterly basis, TCSD shall include in its progress report a brief summary of the Remediation Costs incurred through the reporting period and a comparison of the Remediation Costs incurred to the cost estimate in the Work Plan.

F. DEQ Costs

(1) DEQ shall submit to TCSD a monthly statement of costs incurred by DEQ in connection with technical review, Prospective Purchaser Agreement preparation, and oversight of TCSD's implementation of this Agreement and the Work Plan, from the date of TCSD's application to enter a Prospective Purchaser Agreement.

(2) DEQ oversight costs payable by TCSD shall include both direct and indirect costs. The Cleanup Law Rewrite Surcharge is also a part of DEQ's oversight costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management, support, and program development costs of DEQ and the Waste Management and

Cleanup Division allocable to DEQ oversight of this Agreement and not charged as direct site-specific costs. Indirect costs are based on a percentage of direct personal service costs. The Cleanup Law Rewrite Surcharge is 12% of direct personal services expenditures.

(3) Within thirty (30) days of receipt of the monthly statement, TCSD shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund." TCSD shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest shall begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked.

G. Dispute Resolution

In the event of any disagreement between DEQ and TCSD regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and TCSD shall, in the following order:

- (1) Make a good faith effort to resolve the dispute between project managers;
- (2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and
- (3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Waste Management and Cleanup Division or Northwest Regional Division Administrator, and the Director of Water Environment Services, a Department of Clackamas County. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.H. of this Agreement.

H. Enforcement of Agreement and Reservation of Rights

- (1) In the event of any failure of TCSD to comply with any obligation of this

Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. TCSD reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and TCSD reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(3) TCSD does not admit any liability or violation of law by virtue of entering this Agreement.

(4) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

I. Waivers

(1) TCSD waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) TCSD waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement.

J. Hold Harmless and Indemnification

Subject to the limitations in the Oregon Constitution and Oregon law, TCSD shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of TCSD or its officers, employees,

contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by TCSD or its agents in carrying out activities under this Agreement.

K. Public Notice

On April 1, 2000, DEQ provided public notice of this Agreement and the Work Plan in the Secretary of State's Bulletin describing the measures to be undertaken under this Agreement and provided an opportunity to comment until May 15, 2000. Copies of the Agreement and the Work Plan were made available to the public. On April 14, 2000, DEQ provided similar notice and an opportunity to comment until May 15, 2000, in a newspaper of general circulation.

L. Recording

Within thirty (30) days of the date TCSD acquires title or a similar interest in the Property, TCSD shall submit a copy or original of this Agreement (whichever is required by the county) to be recorded in the real property records of Clackamas County, State of Oregon. TCSD shall provide DEQ with written evidence of such recording within seven (7) days of recording.

M. Transfer of Ownership

Upon transfer of ownership of the Property, or any portion of the Property, from TCSD to another person or entity, TCSD and the new owner shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASES FROM LIABILITY

A. TCSD shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of a hazardous substance at the Property existing as of the date of TCSD's acquisition of ownership or operation of the Property, provided that TCSD satisfactorily performs its obligations under this Agreement. For purposes of this Section, migration of existing

contamination and performance of the remedial measures in accordance with this Agreement and the Work Plan shall not constitute a new release. TCSD shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

- (1) A new release of hazardous substances at the Property after the date of acquisition of ownership or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances at or from the Property after TCSD's acquisition of ownership or operation of the Property;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight, at the Property;
- (4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property; provided that compliance with this Agreement and with applicable federal, Oregon and local laws shall be prima facie evidence that TCSD exercised due care with respect to a release of hazardous substances existing as of the date of TCSD's acquisition of ownership or operation of the Property;
- (5) Violation of federal, Oregon, or local law by TCSD;
- (6) Any ownership, operation, or release of hazardous substances at the Property by TCSD before the date of TCSD's acquisition of ownership or operation of the Property;
- (7) Any ownership, operation, or other ground of liability of TCSD for a release of hazardous substances at an off-site location affecting the Property; and

(8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.J of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter TCSD's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

6. EFFECTIVE DATE. This Agreement shall become effective on the date TCSD acquires title or a similar interest in the Property.

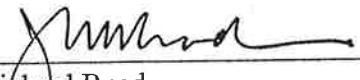
///

///

///

///

7. SIGNATURES



J. Michael Read
Director
Water Environmental Services

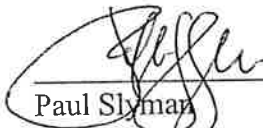
Date: 6/1/00

SUBSCRIBED AND SWORN TO BEFORE ME this 1st day of
June, 2000 by J. Michael Read.





NOTARY PUBLIC FOR OREGON
My Commission expires: 5/25/01



Paul Slyman
Administrator
Environmental Cleanup Division
Oregon Department of Environmental Quality

Date: 6/2/00

SUBSCRIBED AND SWORN TO BEFORE ME this 2 day of
June, 2000 by Paul Slyman in his capacity as Administrator of the
Environmental Cleanup Division





NOTARY PUBLIC FOR OREGON
My Commission expires: 6.27.03



RECORDING MEMO

New Agreement/Contract

Amendment/Change/Extension

Other: _____

Originating County Department: _____

Purchasing for: _____

Other party to contract/agreement: _____

Title from Business Meeting Agenda:

After recording please return to:

Clerk to the Board please complete below this line after Board approval _____

Board Agenda Date: _____

Agenda Item Number: _____