

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approving Amendment #1 to an Intergovernmental Agreement with the Department of Environmental Quality, Board Order 20-246, and Delegating Authority to Sign

BOARD ORDER 22-386

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (“the Board”) sat for the transaction of county business in formal session on December 22, 2022, commissioners Lindsey Berschauer, Mary Starrett, and Casey Kulla being present.

THE BOARD ADOPTS THE FOLLOWING FINDINGS:

- A. WHEREAS, The Board approved a Department of Environmental Quality (DEQ) intergovernmental agreement for the installation and monitoring of soil gas probes at the Newberg Landfill via Board Order 20-246 (see Exhibit A); and
- B. WHEREAS, There is a need to extend the agreement in order to complete the work; and
- C. WHEREAS, An extension would be in the best interests of the County as it would allow the Yamhill County Solid Waste program to continue mediating the environmental issues found to exist on the property; and now, therefore

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

- 1. Amendment #1 to BO 20-246, as provided in the attached Exhibit 2, is hereby approved; and it is further ordered that
- 2. Ashley Watkins, the Yamhill County Solid Waste Coordinator, is hereby delegated authority to execute Exhibit 2 on behalf of the County.

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DONE at McMinnville, Oregon on December 22, 2022.

ATTEST

Keri Hinton
County Clerk



By: *Carolina Rook*
Deputy CAROLINA ROOK

YAMHILL COUNTY BOARD OF
COMMISSIONERS

Lindsay Berschauer

Chair LINDSAY BERSCHAUER

Casey Kulla

Commissioner CASEY KULLA

FORM APPROVED BY:

Jodi Gollehon

JODI GOLLEHON
Assistant Yamhill County Counsel

Mary Starrett

Commissioner MARY STARRETT

INTERGOVERNMENTAL AGREEMENT
Newberg Landfill – Install and Monitor Soil Gas Probes

This Agreement is between the State of Oregon, acting by and through its Department of Environmental Quality (DEQ) and Yamhill County (County) (each a "Party" and together, "Parties").

COUNTY DATA	DEQ DATA
Agreement Administrator: Ashley Watkins Organization: Yamhill County Address: 525 NE 4 th St McMinnville, OR 97128 Phone: 503-434-7516 Email: watkinsa@co.yamhill.or.us Federal Tax ID: 93-600-2318	Agreement Administrator: Tim Spencer Dept. of Environmental Quality 700 NE Multnomah St., Ste 600 Portland, OR 97232 Phone: 503-229-5826 Email: spencer.tim@deq.state.or.us

1. **Background** The Newberg Landfill (Site) is a closed landfill approximately one mile south of Newberg, in Yamhill County, Oregon. A residential development is planned to occur immediately north of the Site. Because of its close proximity to the landfill this development could potentially be reached by subsurface migration of landfill gas towards the development. Therefore, DEQ has requested landfill gas probes be installed and monitored between the landfill and the development.
2. **Authority** Under Oregon Administrative Rule (OAR) 340-122-0530(1)(a) the Solid Waste Orphan Site Account may be used for investigation and cleanup of a release of hazardous substances at solid waste disposal sites owned or operated by a local government unit. This includes sites where a local government unit conducts a removal or remedial action pursuant to an ORS 465.260 agreement with DEQ.

 DEQ has authority under Oregon Revised Statutes (ORS) 190.110 to cooperate for any lawful purpose with a unit of local government, and has authority under ORS 465.200 et seq. to undertake in cooperation with others or by contract, any activity necessary to conduct removal or remedial action necessary to protect public health, safety, welfare and the environment.
 - A. County is a "local government unit" under ORS 459.005(15).
 - B. The site is a "facility" under ORS 465.200(13).
 - C. The substances are "hazardous substances" under ORS 465.200(16) and under Oregon Administrative Rule 340-122-0115(30).
 - D. The presence of exposed hazardous substances at Site constitutes a "release" or "threat of release" into the environment under ORS 465.200(22).
 - E. The Work described in Exhibit A consists of "remedial actions" or "removals" under ORS 465.200(23) and 465.200(25).
 - F. Costs incurred for removal or remedial actions at the Site are "remedial action costs" under 465.200(24) and ORS 459.236(7).
3. **Effective Date and Duration** This Agreement is effective on the date that every party has signed this Agreement and, when required, the Agreement has been approved by the Department of Justice. Unless earlier terminated or extended, this Agreement expires December 31, 2022.
4. **Agreement Documents** This Agreement consists of this document and the attached Exhibit A (Statement of Work) and Exhibit B (Subcontractor Insurance Requirements).
5. **Statement of Work** The Statement of Work (Work) is contained in attached Exhibit A. County agrees to perform the Work in accordance with the terms and conditions of this Agreement.
6. **Consideration**
 - A. The maximum, not-to-exceed compensation payable to County under this Agreement, which includes any allowable expenses, is **\$100,000**. Interim payments to County will be made only in accordance with the schedule and requirements described in Section 7 below.
 - B. ORS 459.236 requires a local government to repay funds provided to the local government from the Solid Waste Orphan Site Account (Account) to conduct removal and remedial actions. However, ORS 459.236(7)(b) provides that a local government is not required to repay the first \$100,000 the local government receives from the Account for such work. Funding up to \$100,000 will be provided to County for site investigation work at this Site from the Account under this Agreement. County is not required to repay funds up to \$100,000.
7. **Invoicing/Payments**
 - A. County will not submit invoices for, and DEQ will not pay, any amount in excess of the maximum not-to-exceed compensation amount identified in Section 6. If this maximum compensation amount is increased by amendment of this Agreement, the

amendment must be fully effective before County performs Work subject to the amendment.

- B. This is an expense reimbursement Agreement. Disbursements for reimbursement of the Work will be subject to the conditions set forth in this Agreement. Supporting documentation must be provided for expenses for which reimbursement is claimed. Reimbursement requests must be accompanied by invoices that itemize and explain all expenses for which reimbursement is claimed. Reimbursement requests must be accompanied by a copy of all receipts for expenses for which reimbursement is being requested. County may not seek or receive from any third party any form of duplicate, overlapping or multiple payments for expenses reimbursed under this Agreement.
- C. Invoices must reference the DEQ Agreement # and must be emailed to DEQEXP@deq.state.or.us. Invoices are subject to the review and approval of the DEQ Agreement Administrator. **Invoice payments will be sent to Yamhill County Planning Dept., 525 NE 4th St, McMinnville, OR 97128.**
8. **Travel and Travel Related Expenses** It is the policy of the State that travel expenses will be allowed only when the travel is essential to the normal discharge of this Agreement. All travel will be conducted in the most efficient and cost-effective manner resulting in the best value to the State. Personal expenses will not be authorized at any time. All expenses are included in the total maximum Agreement amount. County understands and agrees that travel expenses will be reimbursed at rates not to exceed those rates approved by the Oregon Department of Administrative Services for State employees and in effect at the time the expense was incurred. **Receipts for lodging, car rental and airfare expenses must be provided to be eligible for reimbursement.** County understands and agrees that the rates are subject to change and, in such event, the changed rates will immediately become part of this Agreement and govern reimbursement of any travel expenses incurred after the date of the change.
9. **Amendments** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
10. **Termination** This Agreement may be terminated by mutual consent of both parties or by either party upon 30 days written notice from one party to the other party. This termination notice may be transmitted in person, or by mail, facsimile or Email. If this Agreement is terminated under this Section 10, DEQ will pay for approved unpaid invoices and services performed within any limits set forth in this Agreement.
11. **Funds Available and Authorized** County shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon. DEQ certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the DEQ's current biennial appropriation or limitation. County understands and agrees that DEQ's payment of amounts under this Agreement is contingent on DEQ receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DEQ, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
12. **Captions** The captions or headings in this Agreement are for convenience only and are not intended to define, limit or fully describe the scope or intent of any provisions of this Agreement.
13. **Access to Records** County will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County will maintain any other records pertinent to this Agreement in such a manner as to clearly document County's performance. DEQ, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County not otherwise privileged under the law of the State of Oregon that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. County will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
14. **Compliance with Applicable Law** County and its contractors will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement. Without limiting the generality of the foregoing, County expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (xi) ORS 279A, ORS 279B, ORS 279C as applicable to County. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.
15. **Recycled Products and Sustainable Practices** County shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)). In performance of this Agreement, County shall also seek to promote, support and implement sustainable practices that lessen the overall environmental

impacts of work conducted under this agreement.

- 16. Contribution** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- With respect to a Third Party Claim for which the State is jointly liable with County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of the State, on the one hand, and of County, on the other hand, in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State, on the one hand, and of County, on the other hand, shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- With respect to a Third Party Claim for which County is jointly liable with the State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of County, on the one hand, and of the State, on the other hand, in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County, on the one hand, and of the State, on the other hand, shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- 17. Indemnification by Subcontractors** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 18. Subcontractor Insurance Requirements** County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meet the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DEQ. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which County directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.
- 19. Federal Fund Requirements** Any recipient of federal grant funds, pursuant to this agreement with the State, shall assume sole liability for that recipient's breach of the conditions of the Grant, and shall, upon recipient's breach of grant conditions that requires the state to return funds to the federal grantor, hold harmless and indemnify the state for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of the recipient of grant funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- 20. Alternative Dispute Resolution** The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

21. Reservation of Rights

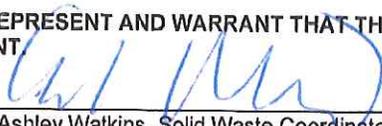
A. County does not admit any liability or violation of law by virtue of entering this Agreement.

B. Nothing in this Agreement will prevent County from exercising any rights of contribution or indemnification County might have against any person regarding activities under this Agreement. Except as provided in this Agreement, County waives any right it might have under ORS 459.246 to seek reimbursement from Account or any right it might have to seek reimbursement from the Hazardous Substance Remedial Action Fund 465.260(7) for costs incurred under this Agreement.

22. **Merger Clause** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
23. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

THE PERSONS SIGNING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY HAVE THE POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT

Approved by County:



Ashley Watkins, Solid Waste Coordinator

8/18/2020

Date

Approved by DEQ:

Lydia Emer, Land Quality Division Administrator

Date

41510-39377-688010-00
Index/PCA/Project

Brian Boling, Central Services Division Administrator

Date

AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
Newberg Landfill – Install and Monitor Soil Gas Probes

- A. This is Amendment No. 1 to Agreement No. 168-20 between the State of Oregon acting by and through its Department of Environmental Quality (“DEQ”) and Yamhill County (“County”), collectively “The Parties”.
- B. The Agreement as amended entered into on August 27, 2020 shall be amended to add the underlined bold language and delete the language enclosed in [brackets and stricken] as follows:

3. Effective Date and Duration

Unless earlier terminated or extended, this Agreement expires [~~December 31, 2022~~] December 31, 2023.

- C. Counterparts. This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment shall constitute an original.
- D. Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment. This Amendment shall become effective on the date which every party has signed.

AGREED TO BY COUNTY:

Ashley Watkins, Solid Waste Coordinator _____ Date

AGREED TO BY DEQ:

Lydia Emer for Brian Boling, _____ Date
Central Services Administrator – DPO

41510-39377-688010
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