



**AGREEMENT
FOR FUNDING OF REMOVAL AND REMEDIAL ACTIONS
FROM THE SOLID WASTE ORPHAN SITE ACCOUNT**

BETWEEN: Deschutes County

AND Oregon Department of Environmental Quality

I. Recitals

II. Agreement

- A. Performance of Waste Processing Pilot Test
- B. Funding of Waste Processing Pilot Test
- C. Reimbursement of Funds Paid From the Solid Waste Orphan Site Account
- D. Project Management
- E. Dispute Resolution
- F. Failure to Implement Agreement and Reservation of Rights
- G. Hold Harmless
- H. Modification
- I. Duration and Termination

I. RECITALS

A. Oregon Revised Statutes (ORS) 190.110 permits units of a local government and a state agency to enter into an agreement for the performance of authorized actions.

B. ORS 459.236(7) authorizes the Department of Environmental Quality (DEQ) to provide funding to a local government unit to pay for removal and remedial action costs related to solid waste disposal sites owned or operated by a local government.

C. The Deschutes County Demolition Landfill (the "Site") is located on SW Simpson Avenue in Bend, Oregon. A site map is included in Attachment A to this Agreement. The Site is also referred to in DEQ records as the Bend Demolition Landfill.

D. As described in Recitals E, F and G below:

- 1. The wastes disposed of at the Site are "solid wastes" under ORS 459.005(24);
- 2. The Site is a solid waste "disposal site" under ORS 459.005(8)(a);
- 3. The Site was owned and operated by Deschutes County;
- 4. Deschutes County is a "local government unit" under ORS 459.005(15);
- 5. Deschutes County is responsible for conducting removal or remedial actions at the Site under ORS 465.200;
- 6. The Site is a "facility" under ORS 465.200(13);
- 7. The substances described in this section are "hazardous substances under ORS 465.200(16) and under Oregon Administrative Rule 340-122-0115(30);

8. The presence of hazardous substances in the subsurface at the Site constitutes a “release” or “threat of release” into the environment under ORS 465.200(22);

9. The work described in II.A. constitutes “removal” or “remedial actions” under ORS 465.200(23) and 465.200(25); and

10. Costs incurred for removal or remedial actions at the Site are “remedial action costs” under 465.200(24) and ORS 459.236(7).

E. The Deschutes County Demolition Landfill is an inactive, unlined landfill that accepted primarily construction and demolition debris.

F. The landfill covers approximately 72 acres. Waste was deposited to depths of up to 110 feet below ground surface. Wastes included sander dust, fine wood waste, general wood waste, pond sludge, and construction and demolition wastes. Waste disposal occurred between the 1960s and 1997. Much of the landfill has the potential for significant settlement. In addition, portions of Area 1, on the east side of the Site, contain material that is thermally unstable. Deschutes County is considering ways to mitigate these conditions.

II. AGREEMENT

The parties agree as follows:

A. Performance of Waste Processing Pilot Test

Deschutes County and DEQ agree that the proposed waste processing pilot test is necessary to evaluate subsequent mitigation measures. The Work will be performed as stated in the Scope of Work attached as Exhibit B to this agreement.

Mitigation will likely involve waste processing activities, including removal of clean overburden soil, excavation of waste, and segregation of waste into salvageable materials, clean materials, solid waste, and other materials (e.g., tires) that must be removed and disposed of at off-site licensed disposal facilities. Funds provided to Deschutes County under this agreement will be used to conduct a waste processing pilot test (the “Work”).

B. Funding of Waste Processing Pilot Test

1. Deschutes County desires to receive funding pursuant to ORS 459.236(7) to pay for this waste processing pilot test.

2. DEQ agrees to make available from the Solid Waste Orphan Site Account funding necessary to perform a portion of the work described in the Scope of Work. The costs will be paid from the Solid Waste Orphan Site Account as provided in ORS 459.236. Funding under this Agreement will not exceed \$100,000.

3. Following receipt and approval by DEQ of the final report identified in Exhibit B, Deschutes County shall submit a single invoice for allowable contractor costs incurred in performing the Work under this Agreement to Contracts Office, Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204. Invoices are subject to the review and approval of the DEQ Agreement Administrator. Invoice payments shall be made out to Deschutes County Property & Facilities Department, PO Box 6005, Bend OR 97708, and sent to the Project Manager designated in Paragraph D., below. Subject to receipt of documentation acceptable to DEQ, DEQ agrees to accept the invoice, or reject and return it to Deschutes County with an explanation of additional information needed in the invoice, within 10 days of DEQ's receipt. DEQ agrees to pay all invoices not rejected by it within 30 days of receipt.

4. Deschutes County will not be charged for DEQ's oversight costs.

5. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DEQ's obligation to provide funding under this Agreement is conditioned upon DEQ's continued ability to access Solid Waste Orphan Site Account funds sufficient to allow DEQ, in the exercise of its reasonable administrative discretion, to meet its funding obligations under this Agreement.

C. Reimbursement of Funds Paid From the Solid Waste Orphan Site Account

ORS 459.236 requires a local government to repay funds provided to the local government from the Solid Waste Orphan Site 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 Deschutes County for the waste processing pilot test from the Solid Waste Orphan Site Account under this Agreement. Deschutes County is not required to repay the funds provided under this Agreement. If Deschutes County receives additional Solid Waste Orphan Account funding for this site in the future, Deschutes County will be required to repay any funds received in excess of a total of \$100,000.

D. Project Management

Deschutes County and DEQ Project Managers overseeing activities under this agreement are listed below. To the extent possible, all reports, notices, and other communications required under, or relating to this Agreement shall be directed to the Project Managers.

DEQ Project Manger

Bob Schwarz
Oregon DEQ
400 E. Scenic Drive, Suite 307
The Dalles, Oregon 97058
Phone: 541-298-7255 x230
Fax: 541-298-7330
Email: Schwarz.bob@deq.state.or.us

Deschutes County Project Manager:

Susan Ross
Deschutes County Property & Facilities
Department
PO Box 6005
Bend OR 97708
Phone: 541-383-6713
Fax: 541-317-3168
Email: susan.ross@deschutes.org

Deschutes County's and DEQ's Project Managers shall be available and have the authority to make day-to-day decisions necessary to complete the scope of work provided in Exhibit B of this Agreement.

E. Dispute Resolution

In the event of disagreement between Deschutes County and DEQ regarding implementation of this Agreement, Deschutes County and DEQ will, 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 each other their respective positions in writing and refer the dispute for resolution by DEQ's Administrator of the Operations Division or the appropriate Regional Administrator and Deschutes County's Property & Facilities Director.

F. Failure to Implement Agreement and Reservation of Rights

1. If Deschutes County fails to comply with this Agreement, DEQ may terminate this Agreement after fifteen (15) days written notice to Deschutes County.

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

3. Nothing in this Agreement will prevent Deschutes County from exercising any rights of contribution or indemnification Deschutes County might have against any person regarding activities under this Agreement. Except as provided in the Agreement, Deschutes County waives any right it might have under ORS 459.236 to seek reimbursement from the Solid Waste Orphan Site 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.

G. Hold Harmless

1. Subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to 30.300), Deschutes County shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, and agents, and indemnify them from and against claims that arise out of Deschutes County's negligent or wrongful conduct in performance of this Agreement.

2. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon shall save and hold harmless Deschutes County and its officers, employees, contractors and agents and indemnify the foregoing from and against any and all claims arising from acts or omissions related to this Agreement of the State of Oregon or its commissions, agencies, officers, employees, contractors or agents (except for acts approving or omissions constituting approval of any activity of Deschutes County under this Agreement). Deschutes County shall not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Agreement.

H. Modification

DEQ and Deschutes County may modify this Agreement by mutual written agreement.

I. Duration and Termination

1. This Agreement will be in effect until the Work is completed as provided in the Exhibit B, Scope of Work, or June 30, 2016, whichever is sooner.

2. Either party may terminate this Agreement at will, provided that: (a) the terminating party provides written notice to the other party of its intent to terminate no less than 15 working days before termination; (b) the notice describes the reason for termination and any efforts to resolve related issues; and (c) if required by the non-terminating party, the terminating party makes itself available within the 15 working-day period for a conference call or meeting to discuss the termination. Termination shall be effective unless withdrawn in writing by the terminating party within the 15 working-day period.

3. The obligation to hold harmless and indemnify under subsection II.G. of this Agreement, as to claims arising from acts or omissions occurring up to the date of termination, shall survive termination. For purposes of ORS 465.315(3), termination of this Agreement will void any DEQ approval previously granted under this Agreement for

activities continuing after termination.

DESCHUTES COUNTY

Tom Anderson, County Administrator

Date

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

Lydia Emer, Operations Division Administrator

Date

Joni Hammond, Deputy Director

Date

Jim Roys, Financial Services Manager

Date

DEQ Fund Code: 16-13300-39377-145145

EXHIBIT A – SITE LOCATION

EXHIBIT B

SCOPE OF WORK

The primary goal of the Work to be performed under this Agreement is to design and implement a waste processing pilot test at the landfill. The purpose of the pilot test is to evaluate the feasibility, costs, and time for waste processing. Specifically, the pilot test will be used to evaluate: (1) whether landfill materials [e.g., clean overburden, construction debris, hazardous materials, other solid waste] can be segregated in a cost-effective manner; (2) what amount of waste reduction is possible as a result of segregation; (3) the time required to segregate materials; and (4) processes necessary to prevent nuisance conditions [e.g., dust, odors, noise, etc.). Pilot test details will be presented in a Pilot Test Work Plan. The County will use information developed during the pilot test to re-evaluate the scope and costs for landfill mitigation and to plan for site-wide mitigation if feasible.

A Pilot Test Report will be prepared following the field activities. The Pilot Test Report will:

- Document pilot test methods and observations;
- Summarize types and quantities of encountered debris;
- Discuss waste processing techniques;
- List the amounts and types of materials that were transported off-site for recycling and identify the recycling facilities;
- Document site restoration methods;
- Present and evaluate air and noise monitoring data;
- Summarize problems encountered and solutions; and
- Provide an opinion regarding the feasibility of large scale waste processing at the facility, and provide recommendations for large-scale waste processing, including suitable cost-effective local recycling facilities.

The Pilot Test Report will include diagrams depicting pilot test area, photo-logs documenting site conditions, and detailed listings of the amount and types of materials encountered at each pilot test area, and transported off-site for disposal/recycling.

Work plans and reports will be provided in draft to DEQ for review and approval.

Estimated costs and schedule for this work are provided below:

Task	Estimated completion date	Estimated Cost
Task 1. Project coordination	Feb. 2016	\$4,000
Task 2. Pilot Test Work Plan	Nov. 2015	\$5,000
Task 3. Pilot test implementation	Jan. 2016	\$82,000
Task 4. Air and noise monitoring	Jan. 2016	\$1,000
Task 5. Pilot Test Report	Feb. 2016	\$8,000
	Total:	\$100,000

Under the terms of this agreement DEQ will pay up to \$100,000. Any additional costs will be the responsibility of Deschutes County.