

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 15-11-10-07

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE DEPT. OF ENVIRONMENTAL QUALITY FOR HAZARDOUS WASTE CLEANUP OF COUNTY OWNED PROPERTY IDENTIFIED AS MAP NO. 17-03-31-13-05900 COMMONLY KNOWN AS MCAYEAL'S CLEANERS, 1060 OLIVE ST., EUGENE AND APPROVING AN INCREASE IN APPROPRIATIONS IN THE SPECIAL REVENUE FUND 266, DEPT. OF PUBLIC WORKS, TAX FORECLOSED PROPERTY PROGRAM IN THE AMOUNT OF \$400,000

WHEREAS real property identified as map no. 17-03-31-13-05900 was acquired by Lane County due to property tax foreclosure

WHEREAS a dry cleaning business had been operating on the property prior to the County's acquisition

WHEREAS it has been documented that hazardous waste from the dry cleaning operation is present on the property

WHEREAS the Board has authorized acceptance of a \$200,000 grant and a \$200,000 loan from the Oregon Business Development Dept. and a \$200,000

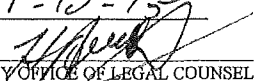
WHEREAS ORS 190.110 provides for cooperation between State and local governments

NOW, **THEREFORE**, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That the County Administrator is authorized to execute an intergovernmental agreement with the Dept. of Environmental Quality substantially similar to attached Exhibit "A" for the environmental remediation of the above described property
2. That the Board authorizes an increase in appropriations in the special revenue fund 266, Dept. of Public Works, Tax Foreclosed Property program of \$400,000.

ADOPTED THIS 10th day of Nov., 2015

  
\_\_\_\_\_  
Jay Bozievich, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM  
Date 11-10-15  
  
\_\_\_\_\_  
LANE COUNTY OFFICE OF LEGAL COUNSEL

## EXHIBIT "A"

**INTERGOVERNMENTAL AGREEMENT**  
**McAyeal's Wardrobe Cleaners**

This Agreement is between Lane County and the State of Oregon, acting by and through its **Department of Environmental Quality** (DEQ).

LANE COUNTY CONTACT DATA	DEQ CONTACT DATA
Agreement Administrator: <b>Jeff Turk</b> Organization: <b>Lane County Public Works Program</b> Address: Property Management, Lane County Public Works Department 3050 N. Delta Highway Eugene, OR 97408  Email: <a href="mailto:jeff.turk@co.lane.or.us">jeff.turk@co.lane.or.us</a> Phone: 541-682-3859	Agreement Administrator: <b>Don Hanson</b> <b>Dept. of Environmental Quality</b> 165 East 7th Avenue, Suite 100 Eugene, OR 97401  Email: <a href="mailto:hanson.don@deq.state.or.us">hanson.don@deq.state.or.us</a> Phone: 541-687-7349

- 1. Purpose.** The purpose of this Agreement is to describe the roles and responsibilities of DEQ and Lane County with respect to environmental cleanup activities performed at the former McAyeal's Wardrobe Cleaners site at 1060 Olive St. in Eugene, Lane County (the Property).

In general and subject to the terms and conditions set forth in this Agreement and Exhibit A, DEQ will provide regulatory oversight and conduct cleanup actions at the Property using DEQ's Environmental Contractors (Contractor). Lane County will reimburse DEQ for all costs incurred by DEQ in carrying out actions pursuant to this Agreement. Nothing in this Agreement obligates DEQ to conduct assessment or cleanup or take any other actions with respect to the Property or obligates Lane County to pay costs or take any other actions at the Property other than according to the terms of this Agreement.

- 2. Background.** The Property is approximately 0.22 acres in size and located in a commercial area of downtown Eugene. Prior to 1972, a paint and repair shop for a Eugene Dodge car dealership was located on the Property. From 1972 until 2010, McAyeal's Wardrobe Cleaners, an operating dry cleaners, was located at the Property. The Property has been vacant since the cleaners closed in 2010. Lane County foreclosed on the Property for lack of payment of property taxes on September 21, 2012.

Several environmental site assessments have been performed at the Property beginning in the 1990s. The assessments have documented the dry cleaning solvent tetrachloroethylene (PCE) in samples of soil and groundwater at the Property. Groundwater containing PCE and its daughter products, attributed to the Property were detected in samples collected in 1998 during pre-construction investigations for a city library. The city library is located immediately north of the Property. An air stripper water treatment system was constructed at the Property to treat water removed during library construction as well as continual library basement dewatering water following construction. The treatment system remains in operation today to treat persistent PCE and daughter products in the water before

discharging into the storm drain under an NPDES Permit. Soil and groundwater sampling has identified PCE contamination exceeding DEQ's acceptable risk levels in shallow soil and groundwater. Untreated water from the library basement discharged to the storm drain could present an unacceptable risk to ecological receptors in the Willamette River. Cleanup is needed to address risks to human health and the environment.

On August 14, 2014, a Consent Judgment settlement was agreed upon by DEQ, the owners of the Property and their insurer. The settlement required payment to DEQ of \$410,000 for past and future remedial action costs at the Property, and provided the owners and the insurers a release from liability for the contamination. On December 4, 2014 an Assessment of Brownfield Cleanup Alternatives (ABCA) report was completed for the Property that recommended a remedial action for the Property.

In February 2015, Lane County applied for funding from the Oregon Coalition Brownfields Cleanup Fund administered by the Oregon Business Development Department (OBDD) for cleanup of the property. Lane County was awarded \$400,000. \$200,000 has been allocated for DEQ to perform initial remedial actions as listed in Exhibit A. Lane County and OBDD have entered into a grant contract to obtain sufficient funds for the costs of this Agreement. The *State of Oregon, Business Development Department, Grant Contract* between OBDD and Lane County is included as Exhibit B.

3. **Authority.** DEQ has authority under Oregon Revised Statute (ORS) 190.110 to cooperate for any lawful purpose. DEQ has authority under ORS 465.200 *et seq.* to undertake (or authorize any other person to undertake) any removal or remedial action necessary to protect public health, safety, welfare and the environment.
4. **Effective Date and Duration.** This Agreement is effective on the date of the last required signature. Unless earlier terminated or extended, this Agreement expires insert date (needs to match expiration date of Lane County/OBDD Agreement).
5. **Statement of Work.** Work authorized by this Agreement is set forth in the statement of work attached as Exhibit A. All work performed pursuant to this agreement shall be in accordance with Exhibit A.
6. **Consideration.**
  - (a) Lane County will reimburse DEQ for actual costs of work authorized by this Agreement. Actual costs include, but are not limited to, salary, other payroll expenses, indirect, overhead, and other related direct costs. Invoices will include a list of costs by the following categories:
    - Personal Services (salaries at regular/overtime rates, related benefits, agency and LQ indirect costs)
    - Attorney General (Department of Justice)
    - Travel
    - Services & Supplies
    - Contract Payments
    - Capital Outlay
  - (b) The maximum, not-to-exceed compensation payable to DEQ under this Agreement is \$200,000.

(c) Lane County will make payment within thirty (30) days of receipt of invoices from DEQ. Invoices will be sent to:

Jeff Turk  
Property Manager  
Lane County Public Works  
3050 N. Delta Highway  
Eugene, OR 97408

7. **Agreement Documents.** This Agreement consists of this document and the attached Exhibit A and Exhibit B.
8. **Amendments.** The terms of this Agreement may not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. If the maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before DEQ performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement.
9. **Termination.** This Agreement may be terminated by mutual consent of both parties, or by either party upon 30 days written notice to the other party. This notice may be transmitted in person, by mail, facsimile, or Email. If this Agreement is terminated under Section 9, Lane County must pay DEQ for actual costs of work authorized by this Agreement but not yet paid.
10. **Funds Available and Authorized.** Lane County certifies at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.
11. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
12. **Compliance with Applicable Law.** DEQ will comply with all federal, Oregon, and local laws, regulations, rules, orders and ordinances applicable to this agreement.
13. **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 Lane 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 Lane County in such proportion as is appropriate to reflect the relative fault of the State, on the one hand, and of Lane 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 Lane 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 Lane County is jointly liable with the State (or would be if joined in the Third Party Claim), Lane 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 Lane 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 Lane 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. Lane 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.

- 14. 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.
- 15. No Third Party Beneficiaries.** The State of Oregon and Lane County are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. DEQ is an intended beneficiary of the terms of this Agreement.
- 16. Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.
- 17. Access to Records.** Lane County, DEQ, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives will have access to the books, documents, papers, and records not otherwise privileged under law of the

State of Oregon that are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcript.

**18. Waivers.** Lane County waives any right it might have under ORS 465.260(7) or any other law to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Property Account and any right it might have to seek reimbursement under ORS 459.236 for costs incurred under this Agreement.

**19. Survival.** Sections 6, 9 and 16 of this Agreement shall survive termination or expiration of this Agreement.

**20. 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. ALL PARTIES, BY THE SIGNATURE BELOW OF THEIR AUTHORIZED REPRESENTATIVES, HEREBY ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Agreed by DEQ:

Agreed by Lane County:

\_\_\_\_\_

\_\_\_\_\_

Lydia Emer  
Operations Division Administrator

Date

Steve Mokrohisky  
County Administrator

Date

\_\_\_\_\_  
Joni Hammond  
Deputy Director

Date

\_\_\_\_\_  
Jim Roys  
Financial Services Manager

Date

Approved for legal sufficiency by OR Dept. of Justice by separate document dated \_\_\_\_\_

**EXHIBIT A**

**INTERGOVERNMENTAL AGREEMENT  
McAyeal's Wardrobe Cleaners**

**STATEMENT OF WORK**

The primary goal of the work to be performed under this Agreement regarding the former McAyeal's Wardrobe Cleaners Site located at 1060 Olive St. in Eugene, Lane County (Property) is the cleanup of contamination remaining at the Property to ensure protection of human health and the environment. The cleanup implements remedial actions recommended in the Analyses of Brownfields Cleanup Alternatives (ABCA). In order to achieve this goal, the following work will be performed.

**DEQ Oversight**

DEQ's oversight costs (direct and indirect) that will be reimbursed under this Agreement may include managing the Contractors; assisting with consultations for Endangered Species Act Section 7 and the National Historic Preservation Act Section 106; reviewing and approving work plans and reports generated during cleanup actions; preparing public notices; property visits; assisting Lane County with grant management and reporting; and participating in public meetings and other outreach efforts, as needed.

**DEQ's Contractor**

The DEQ Agreement Administrator will be responsible for oversight of the Contractor and will report directly to the Lane County Agreement Administrator. DEQ currently has three Contractors under contract procured in accordance to federal and state requirements. DEQ will assign work to one or more of the Contractors and be responsible for oversight of the work.

Procurement activities have been and will continue to be performed in accordance with 2 CFR Part 200 Uniform Administrative Requirements. The DEQ Agreement Administrator will review and approve all bid documents and sub-contractor selections. Anticipated sub-contractors include but are not limited to utility locating, demolition/excavation, remediation products, surveyors, analytical laboratory, remediation system maintenance, and drillers.

Remedial actions necessary at the Property will be performed in one or more phases. Specific tasks DEQ may authorize the Contractors to perform include but are not limited to the items listed below.

- 1) Conducting a file review, preliminary site visit to develop an overall scope of work for the project.
- 2) Preparation of a Quality Assurance Project Plan (QAPP) and preparation of site-specific work plan including sampling analysis plans and health and safety plans. Multiple work plans may be prepared during the implementation of the remedial action.

- 3) Preparation of subcontractor procurement (bid) documents, soliciting bids from qualified subcontractors, evaluating bids and making subcontract award recommendations to the DEQ Agreement Administrator and Contracts Officer.
- 4) Conducting and overseeing cleanup activities. Cleanup activities may include, but are not limited to excavation; management and disposal of contaminated soil, water and other media; installation of remediation products (e.g., bioremediation or permeable reactive media), drilling, sampling, and operation and maintenance of groundwater treatment equipment.
- 5) Preparation of reports detailing the cleanup activities, performance monitoring, and recommendations for future phases of work. Reports will be prepared following the completion of each significant phase of remedial action or to document performance monitoring.

This Agreement between DEQ and Lane County may be amended from time to time to provide for additional activities related to the work contemplated herein. Such amendments may also include changes to the not-to-exceed compensation or the duration of the Agreement.



DEQ Agreement # R006-15

**EXHIBIT B**

**INTERGOVERNMENTAL AGREEMENT  
McAyeal's Wardrobe Cleaners**

Grant Contract between  
Oregon Business Development Department and Lane County