

**YAMHILL COUNTY, OREGON /  
CHEHALEM PARKS AND RECREATION DISTRICT**

**ACCESS AGREEMENT**

This agreement ("Agreement") is between YAMHILL COUNTY ("County"), a political subdivision of the State of Oregon and the CHEHALEM PARKS AND RECREATION DISTRICT, a Special District of the State of Oregon ("CPRD").

The parties mutually covenant and agree as follows:

**1. Effective Date and Duration.**

This Agreement is effective on the date it is fully executed. It will terminate on December 31, 2019, unless modified by mutual agreement of the parties or earlier terminated pursuant to Section 10 of this Agreement.

**2. Statement of Purpose.**

CPRD desires access to the County property known as the former Newberg Landfill identified as R3230-01600 in Yamhill County (the "Property"). The Property is further described in Exhibit A, which is attached hereto and incorporated herein by reference.

County is willing to provide CPRD access to the Property for purposes of performing a Phase One Environmental Site Assessment ("ESA"), in accordance with the terms and conditions of this Agreement.

**3. License. Authorization. Assumption of Risk.**

By executing this Agreement, County grants CPRD a limited license to enter onto the Property for the sole purpose of performing an ESA. CPRD shall obtain all applicable permits and licenses required to perform any work on the Property. CPRD is not relying upon any warrant or representation from the County concerning the condition of the Property. CPRD acknowledges that the Property is a former solid waste disposal facility that is still under permit with the Oregon Department of Environmental Quality (DEQ) and therefore protection of the Property is of extreme importance since any disruption or disturbance could negatively impact County's ongoing monitoring and compliance obligations with DEQ resulting in added work and/or costs. CPRD shall be responsible for and assumes all risk related to any work performed on the Property pursuant to this Agreement, including claims by contractors, subcontractors, employees, DEQ, agents or the public.

**4. Consideration.**

The consideration for this Agreement shall be that CPRD will defend, save, hold harmless, and indemnify County as provided herein.

**5. Indemnity and Hold Harmless.**

CPRD shall defend, save, hold harmless, and indemnify County from all claims, suits, injuries, costs, expenses, fees or actions of whatsoever nature resulting from or arising out of CPRD's entrance upon and use of the Property, including but not limited to the performance of the ESA.

**6. No Disruption to Current Operation of Property; Prior Notice; Restoration.**

The Property is in ongoing use by County and any and all actions by CPRD its agents, employees and contractors upon the Property shall be conducted in a discreet manner so as not to disturb or disrupt County staff or County's ongoing operations on the Property.

CPRD will arrange access to the Property through Ashley Watkins, Solid Waste Coordinator, Yamhill County (503) 434-3644.

In the event the County authorizes CPRD to take down any fence or in any manner move or disturb any of the other property of the County in connection with the work to be performed by CPRD, then in that event CPRD shall, as soon as possible and at its sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and CPRD shall indemnify and hold harmless the County, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the County.

**7. Protection of Workers, Property and the Public; Liens.**

CPRD shall take all necessary precautions for the safety of all personnel on the Property, including compliance with all applicable provisions of federal, state or municipal safety laws and codes to prevent accidents or injury to persons on, about or adjacent to the Property where the work is being performed.

CPRD shall pay in full all persons who perform labor or provide materials for the work to be performed by CPRD. CPRD shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against the Property or any property of the County for any such work performed. CPRD shall indemnify and hold harmless the County from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

**8. No Third-Party Beneficiaries.**

County and CPRD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified in this Agreement and expressly described as intended beneficiaries of the terms of this Agreement.

**9. Successors in Interest.**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

**10. Termination.**

- a. County and CPRD, by mutual written agreement, may terminate this Agreement at any time.
- b. Either party may terminate this Agreement for any reason upon thirty days written notice to the other party' provided however that, prior to termination, CPRD restores County's property to the condition it was in at the time of execution of this Agreement. In the case of such a termination, the hold harmless and indemnity provisions of this Agreement continue for any claims, suits, or actions occurring before the termination date.
- c. Either CPRD or County may terminate this Agreement in the event of a breach by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

**11. Governing Law**

The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon and ordinances of Yamhill County, Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Yamhill County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

**12. Severability**

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, 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 the Agreement did not contain the particular term or provision held invalid.

**13. 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. BY ITS SIGNATURE, CPRD ACKNOWLEDGES IT

HAS READ AND UNDERSTANDS THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

**YAMHILL COUNTY**

**CHEHALEM PARKS AND RECREATION DISTRICT**

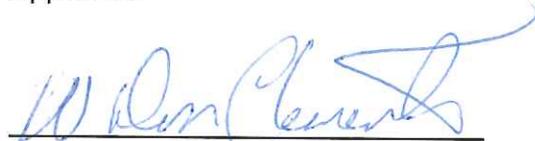
Approved:

Approved:



\_\_\_\_\_  
Commissioner

5-26-19  
Date



\_\_\_\_\_, CPRD

24 May 2019  
Date

Approved as to Form:



\_\_\_\_\_  
County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
6/6/19 by Board Order  
# 19-171

**Exhibit A**

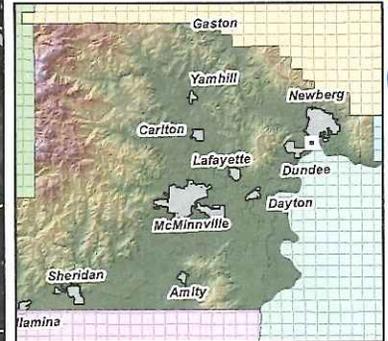
(see attached)

B.O. 19-171  
Exhibit "A"  
Pg 1 of 2



**YAMHILL COUNTY**

**TAX LOT  
INFORMATION &  
CONTEXTUAL MAP**



Bo. 19-171  
Exhibit "A" Pg. 2 of 2

**Property Information**

*Docket: N/A*

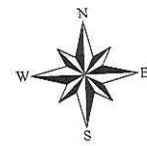
*NE Waterfront St*

 Newberg Landfill  
Property

**Tax Lot: R3230 01600**

**Lot Acreage: 38.75**

1 inch = 500 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community