
EXHIBIT K-6
ROYALTY FEES FOR
STATE-OWNED DREDGED MATERIAL
(REVISED)

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Royalty Fees for State-Owned Dredged Material (Revised)
from the
Columbia River Channel Improvement Project

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Royalty Fees for State-Owned Dredged Material (Revised) from the Columbia River Channel Improvement Project

Introduction

Washington and Oregon laws require that royalties be paid to the respective state for dredged material (sand) removed from the Columbia River navigation channel and subsequently used for commercial purposes. The Oregon Division of State Lands and the Washington Department of Natural Resources, who administer the sand and gravel program for their respective states, have indicated a need to be able to track the location and volume of dredging, dredged material placement at upland disposal sites, and the sale of the dredged material from the Columbia River Channel Improvement Project. These materials, such as sand taken from the Columbia River channel, are at a premium and are being used for fill material related to construction, roads, filters for city water systems, golf courses, and sand for concrete and all of its many uses.

Background

Oregon Revised Statute (ORS) 274.550 indicates that, “The removal of material from submersible and submerged lands of any navigable stream, owned by the State of Oregon, is authorized when the material is removed for channel or harbor improvement or flood control”. ORS 274.550 further specifies “No payment of royalty shall be required for the material unless it is removed from the place deposited and sold or used as an article of commerce. Before any material may be removed from the place deposited and sold or used as an article of commerce, the division shall be duly notified in writing of the intended removal and sale or use as an article of commerce and payment shall be made to the division of a royalty determined by the Division of State Lands.” Additionally, Oregon Administrative Rule, Division 14, *Rules of Administrative Procedure for Audit of Sand and Gravel Leases* (OAR 141-014-0070 to 141-014-0120) states that, “Unless otherwise specifically exempted, all material removed from state-owned submerged and submersible lands is subject to royalty if it is removed from the place deposited and sold or used as an article of commerce” (141-014-0090). The definition for article of commerce (141-014-0080) reads, “Article of Commerce is any state-owned material which is bought, sold, traded, or bartered for other good or services, or is used for a beneficial purpose and which would otherwise have to be acquired from alternate sources (such as material used for the purpose of ‘surcharging’).”

Washington State Statute, RCW 79.90.150, *Material Removed for Channel or Harbor Improvement or Flood Control - Use for Public Purpose* states that, “When gravel, rock, sand, silt or other material from any aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the Department of Natural Resources for a public purpose on land owned or leased by the state or any municipality, county, or public corporation: PROVIDED, That when no public land site is available for deposit of such material, its deposit on private land with the

landowner's permission is authorized and may be designated by the Department of Natural Resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the Department of Natural Resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose: PROVIDED, That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of RCW 75.20.100 or eliminate the necessity of obtaining a permit for such removal from other state or federal agencies as otherwise required by law" (RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000 c107 §129).

For the Columbia River Channel Improvement Project, the Sponsor Ports shall be responsible for obtaining all local and state permits and/or authorizations required prior to placement of state-owned dredged materials on sites identified in the selected plan. Such authorizations include appropriate agreements with Oregon Division of State Lands and Washington Department of Natural Resources regarding placement of dredged material on public property, including port property, and subsequent use of such materials.

However, if a private property owner desires to have state-owned dredged materials deposited on their property and said property is not included in the selected plan or considered to be in the best interest of the Government, it is the property owner's responsibility to obtain all required local, state and federal permits and/or authorizations for use as a dredge material disposal site. When the property owner has fulfilled all of the aforementioned obligations, they are allowed to have state-owned dredged materials placed on their property and no royalty fee is due at this point. However, if the owner decides to sell any of the state-owned material for commercial purposes or to use it for their own benefit, such as fill to increase the value or use of the land, then a royalty payment is due to the state for the material sold or used to improve the property. The person that has dredged material placed on their property becomes responsible for the material and must meet all applicable insurance and/or bond requirements specified in the state agreements referenced herein as Attachment A and B. Should a person decide to sell the material, they must obtain approval to do so from either the Oregon Division of State Lands for Oregon property owners by obtaining a "Sand and Gravel License" or from the Washington Department of Natural Resources for Washington property owners by obtaining an "Agreement for Deposit, Sale and Use of State Owned Dredge Material".

Potential Impacts

If the location and volume of dredging, as well as the placement of dredged material at upland disposal sites, are not adequately tracked during dredging and disposal operations for the channel improvement project, Oregon and Washington revenues from royalty fees generated from the sale of dredged material could be reduced.

Assessment of Impacts

The Corps will report verified contractor data to the Oregon Division of State Lands and the Washington Department of Natural Resources (see Implementation Plan, below). Therefore, the ability to track the royalty fees paid to Washington and Oregon from the sale of dredged material should be improved.

Implementation Plan

As part of the reporting procedure for the Columbia River channel improvement project, the Corps will report verified contractor data to the Oregon Division of State Lands and the Washington Department of Natural Resources.

The Corps will meet with representatives from Oregon Division of State Lands and Washington Department of Natural Resources to draft and review construction contract language to address reporting requirements, such as dredging and disposal site locations, depths, volumes, and timeframes for removal and placement of materials, as well as other pertinent information yet to be determined jointly by the aforementioned agencies.

The aforementioned agencies will also discuss, formulate and agree upon notification procedures to transmit information from the Corps to Oregon Division of State Lands and Washington Department of Natural Resources.

References

Oregon Division of State Lands. December 12, 2000. Letter to Eric Braun, U.S. Army Corps of Engineers, Re: Columbia River Maintenance Dredging/Dredge Spoils Placement Sites.

United States Army Corps of Engineers (USACE) – Northwest Division, United States Environmental Protection Agency – Region 10, Oregon Department of Environmental Quality, Washington Department of Ecology, and Washington Department of Natural Resources, 1998. Dredged Material Evaluation Framework, Lower Columbia River Management Area.

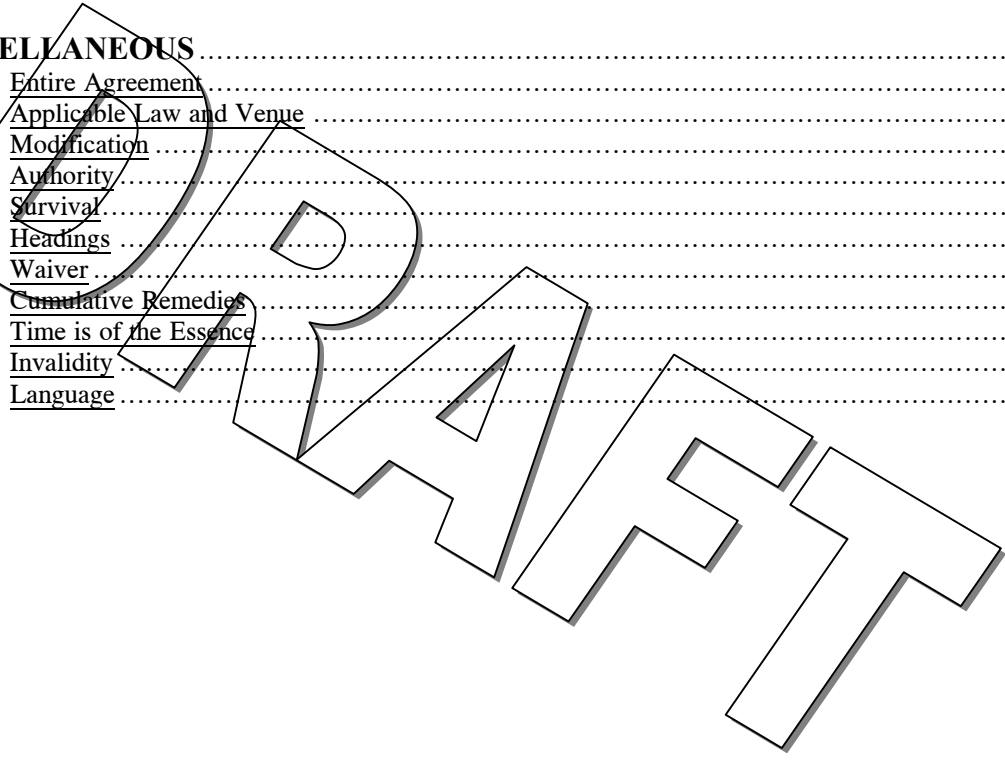
STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND
Commissioner of Public Lands
Olympia, Washington 98504

AGREEMENT FOR DEPOSIT, SALE, AND USE
OF STATE-OWNED DREDGED MATERIAL

(For use when material is deposited
on land not administered
by DNR)
Sept 16, 2002 Draft
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**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND
Commissioner of Public Lands
Olympia, Washington 98504**

**AGREEMENT FOR DEPOSIT, SALE, AND USE
OF STATE-OWNED DREDGED MATERIAL**

AGREEMENT NO. XXXXXX

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources (the "State"), and <Grantee's Name>, a <Enter> ("Grantee").

BACKGROUND

- A. The U.S. Army Corps of Engineers conducts capital and maintenance dredging for public channel or harbor improvements or flood control.
- B. Sediments dredged from the Columbia River ("Dredged Material") may be deposited on public land or private land with the landowner's permission.
- C. These Dredged Materials are "valuable materials" as defined in RCW 79.90.060 and owned by the State of Washington.
- D. Under RCW 79.90.150, State must authorize this deposition and subsequent use of the Dredged Material.
- E. This agreement provides authorization to deposit Dredged Material on Grantee's property and for Grantee's use and sale of this Dredged Material.

THEREFORE, the parties agree as follows:

1. SITE AREA

The U.S. Army Corps of Engineers or its contractors will deposit Dredged Material from the Columbia River at a site designated as W- *[[insert identification number]]* and described in more detail in exhibit A, attached ("Site Area").

2. TERM

This Agreement will remain in effect for as long as Dredged Material remains at the Site Area or until the Dredged Material is used or sold as provided for in this Agreement. *[[This Agreement shall commence on _____ and will remain in effect until _____ (inclusive) for a term of 30 years.]]*

3. REPORTS

3.1 Deposition Reports. The Grantee will report annually, no later than the 1st of March of each year, the volume of Dredged Material placed within the Site Area between January 1 and December 31 of the previous year, as reported by the U.S. Army Corps of Engineers using the Technical Memorandum for Royalty Fees for State-owned Dredged Material from the Columbia River Channel Improvement Project or Columbia River channel maintenance dredging.

3.2 Sale and Use Reports. Grantee shall report to State the quantity and description of the Dredged Material used, sold, or removed from the Site Area under Sections 4 and 5, below. Unless otherwise provided in this Agreement, Grantee shall submit these reports to State within thirty (30) days of the use, sale or removal of Dredged Material from the Site Area.

4. USE FOR PUBLIC PURPOSE OR ON SITE

This section governs the use of Dredged Material for a public purpose by public entities under RCW 79.90.150 and Grantee's use of the material within the Site Area. Section 5, below, shall govern Grantee's sale of the material and Grantee's use of the material for a non public purpose at a location other than within the Site Area.

4.1 Use for Public Purpose. Any state agency, municipality, county, or public corporation ("Public Entity") may use Dredged Material for a public purpose as defined in RCW 79.90.150 ("Public Purpose") free of charge. A Public Entity shall not sell Dredged Material to another Public Entity, but may charge fees for transportation and storage. Agencies of the federal government or a Tribal governments shall not be deemed Public Entities entitled to free use of Dredged Materials under this Agreement.

4.2. Use in the Site Area. Grantee may use Dredged Material solely within the Site Area without charge subject to the provisions of Section 7 below, and in accordance with RCW 79.90.150.

4.3 Notice and Approval. Grantee shall not use or remove Dredged Material from the Site under this Section 4 without first obtaining the state's prior written verification that the proposed use or removal qualifies for free use under RCW 79.90.150. Prior to removing or using Dredged Material under this Section 4, Grantee shall notify State thirty (30) days in advance of the proposed removal or use of the Dredged Material. This notification shall include a description and volume estimate of the Dredged Material proposed for use or removal, the intended recipient if other than Grantee, and a description of the intended use. State shall verify that the proposed removal or use qualifies for free use under RCW 79.90.150 and State shall then provide Grantee written notice of this verification. If State determines the proposed use or removal is not entitled to free provided in RCW 79.90.150, then the use or removal shall be deemed a sale or off-site use and Section 5, below, shall govern. If Grantee fails to notify State and obtain the State's prior approval, then any use or sale of Dredged Material shall be deemed a sale or off-site use and Section 5, below, shall govern.

5. SALE AND OFF-SITE USE

This section governs Grantee's sale of Dredged Material. This section also governs Grantee's removal of Dredged Material from the Site Area and use for a purpose other than a Public Purpose.

5.1. Sale of Dredged Material

a. Condition of Dredged Material. State does not warrant the volume, grade, quality, merchantability, and condition of the Dredged Material or its fitness for any particular purpose.

b. Quantity of Dredged Material. Except as provided in Section 4, above, Grantee shall have the right sell **<Enter amount>** cubic yards of Dredged Material from the Site Area during the Term. Each one (1) cubic yard of Dredged Material shall be referred to as a "Unit."

c. Royalty Payment. Grantee shall pay to State a monthly Royalty Payment based upon the volume of Dredged Material sold. The Royalty Payment shall be ~~[[XXcents (\$0.XX) which shall be adjusted on January 31 of each calendar year, using a rate established by the State of Oregon under OAR 141-014-0120, or, if that is not available, the adjustment will be made using the most recently published Producer Price Index ("PPI") for construction sand as published by the US Department of Commerce, Bureau of Labor Statistics, or, if those are not available, as otherwise established through amendment –OR– _____ percent (____%)]]~~ of the Fair Market Value ("FMV") established by State. ~~FMV will be determined in January of each calendar year using an average of the local retail sand prices. State shall determine the average local retail sand price by calling each retail distributor selling a like product, in the county of the Site Area, then dividing the total of the prices by the number of prices received. State shall establish the Fair Market Value for each calendar year and adjust the Royalty Payment no later than January 31 of each year, for each Unit of Dredged Material sold during that calendar year]].~~

5.2 Off-Site Use. If Dredged Material is removed from the Site Area, either as raw material or as a component of some other material, and used for a purpose other than a public purpose as provided in RCW 79.90.150, then Grantee shall pay State a Royalty Payment of ~~[[XXcents (\$0.XX) which shall be adjusted on January 31 of each calendar year, using a rate established by the State of Oregon under OAR 141-014-0120, or, if that is not available, the adjustment will be made using the most recently published Producer Price Index ("PPI") for construction sand as published by the US Department of Commerce, Bureau of Labor Statistics, or, if those are not available, as otherwise established through amendment –OR– _____ percent (____%)]]~~ of the Fair Market Value ("FMV") established by State. ~~FMV will be determined in January of each calendar year using an average of the local retail sand prices. State shall determine the average local retail sand price by calling each retail distributor selling a like product, of the Site Area, then dividing the total of the prices by the number of prices received. State shall establish the Fair Market Value and adjust the Royalty Payment no later than January 31 of that same year, for each Unit of Dredged Material used off-site during that calendar year]].~~

5.3 Notification. Grantee shall notify State at least thirty (30) days in advance of any proposed sale or off-site use under this Section 5. This notification shall describe the estimated

amount of material proposed for sale or use and a description of the proposed use, if known to Grantee.

5.4. Reporting and Payment for Dredged Material Sold or Removed. Grantee shall keep accurate records and accounts of all Dredged Material sold or removed from the Site Area. Grantee shall utilize and maintain consecutively numbered load tickets to record all removal and transporting of Dredged Material from the Site. The load tickets must be prepared by a designated representative of Grantee at the Site at the time any Dredged Material is transported from the Site. The load tickets shall indicate the date of removal of Dredged Material from the Site, the specific source, the amount transported, the equipment number, the trucking or hauling firm, the operator, and the delivery point. The Grantee's designated representative shall attest to the accuracy of information on the load ticket and shall sign the load ticket. Grantee shall provide to State, on or before the fourteenth (14th) day of each month, on a form provided by State, an itemized account of the quantities of Dredged Material removed during the preceding month. At the time of providing the statement or account, Grantee shall pay to State the full amount due for the quantity of Dredged Material removed during the preceding month, computed in accordance with Subsections 5.1 or 5.2, above.

5.5. Audit. State shall be allowed to inspect and audit the books, contracts, and accounts of Grantee to determine whether or not State is being paid the full amount owed to it for the removal of Dredged Material as provided in this Agreement. If the audit discloses that Grantee has underpaid the amount due to State by two percent (2%) or more, Grantee shall pay to State, on demand, the cost of the audit. In addition, because it will be impossible to reliably determine the exact amount of Dredged Material removed but not reported, the Royalty Payment associated with any under-reported Units disclosed by an audit shall be paid to State within thirty (30) days of delivery of the audit to Grantee. Any overpayments by Grantee shall be refunded by State within ninety (90) days of delivery of the audit to Grantee.

5.6. Late Charge. If any payment is not received by State within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the amount of the payment, but not less than Fifty Dollars (\$50), to defray the overhead expenses of State as a result of the delay.

5.7. Interest for Past Due Payments and Other Sums Owed. If any payment is not received by State within thirty (30) days of the date due, Grantee shall, in addition to paying late charges determined under Subsection 5.6, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State advances any amount on behalf of Grantee, Grantee shall reimburse State for the amount advanced and shall pay interest on the amount advanced at the rate of one percent (1%) per month from the date State notifies Grantee of the advance.

5.8. No Counterclaim, Setoff, or Abatement of Fixed Minimum Annual Payments, Royalty Payments, and Other Sums Owed. Except as expressly provided in this Agreement, Royalty Payments and all other sums payable by Grantee pursuant to this Agreement, shall be

paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction, defense, or abatement.

6. NO ASSIGNMENT

The benefits and duties accorded the Grantee under this agreement are personal to the Grantee and shall not be assigned or transferred.

7. SALE OF SITE AREA

7.1 Prior Notification. If Grantee transfers or conveys title, possession or control of the Site Area or any portion of the Site Area ("Conveyed Site Area"), Grantee shall provide State thirty (30) days notice in advance of the transfer or conveyance. Such notice shall contain an estimation of the volume of Dredged Material remaining on the Conveyed Site Area and the identity of the entity that will receive title, possession or control of the Conveyed Site Area.

7.2 Sale to Entity not a Public Entity. If Grantee transfers or conveys title, possession, or control of the Conveyed Site Area to an entity other than a Public Entity, then the Dredged Material within the Site Area shall be deemed sold under section 5.1 above. Grantee shall pay to State an amount equal to the Royalty Payment as provided in Section 5.1, above.

7.3 Sale to a Public Entity. If title, possession, or control of the Conveyed Site Area is transferred or conveyed to a Public Entity, then the Grantee shall not be treated as a sale of Dredged Material so long as the receiving Public Entity enters into an Agreement for Deposit, Sale and Use of State-Owned Dredged Material for the Conveyed Site Area with State.

8. INDEMNITY and INSURANCE

8.1 Indemnity. Grantee shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability (including liability arising from federal and state laws imposing liability for release hazardous waste or hazardous substances), damages (including damages to land, aquatic life, and other natural resources), expenses, causes of action, suites, claims, costs, fees (including attorneys fees), penalties, or judgments, of any nature whatsoever, arising out of the placement, deposition, use, control, or subsequent transfer or use of the Dredged Material, except as may arise solely out of the willful or negligent act of State or States elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Grantee shall not be required to indemnify, defend, and hold State harmless from States sole or concurrent negligence.

8.2 Insurance. At its own expense, Grantee shall procure and maintain during the Term of this Agreement, the insurance coverages and limits described in Subsections 8.2(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

(1) Commercial General Liability Insurance. Grantee shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators

Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Grantee's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	
Each Occurrence	\$ 1,000,000.00
General Aggregate Limit	\$ 1,000,000.00

State may impose changes in the limits of liability:

- (i) Upon a material change in the condition of the Property or any improvements; or,
- (ii) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

(2) Worker's Compensation/Employer's Liability Insurance. Grantee shall procure and maintain:

- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Grantee's employees on or about the Property and on any improvements;
- (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

<u>By Accident</u>	<u>Each Employee</u> <u>By Disease</u>	<u>Policy Limit</u> <u>By Disease</u>
\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00

- (iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Grantee's employees on or about the Property and on any improvements.

(3) Business Auto Policy Insurance. As applicable, Grantee shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

(b) Terms of Insurance. The policies required under Subsection 8.2 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 8.2 shall meet the following requirements:

- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;

- (2) Policies shall expressly provide that such insurance may not be canceled or non-renewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
 - (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Grantee;
 - (4) All liability policies must provide coverage on an occurrence basis; and
 - (5) Liability policies shall not include exclusions for cross liability.
- (c) Proof of Insurance. Grantee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 8, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Grantee acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Grantee must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Grantee from liability for losses and settlement expenses greater than these amounts.

8.3 State's Acquisition of Insurance. If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Grantee shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 5.7, above, from the date of State's notice of the expenditure until Grantee's repayment.

9. NOTICE

Any notices or reports required under this agreement may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State: DEPARTMENT OF NATURAL RESOURCES
 SOUTHWEST REGION, AQUATIC COORDINATOR
 PO BOX 280
 CASTLE ROCK, WA 98611

Grantee:

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three days after being mailed as set forth above, whichever is applicable.

10. MISCELLANEOUS

10.1 Entire Agreement. This Agreement, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations and statements relating to this transaction, if any, are merged into this Agreement.

10.2 Applicable Law and Venue. This Agreement is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington. This Agreement shall be interpreted and construed in accordance with and shall be subject to the laws of the State of Washington. Any reference to a statute enacted by the State of Washington shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

10.3 Modification. Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

10.4 Authority. Grantee and any and all persons executing this Agreement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee will provide evidence satisfactory to State confirming these representations. This Agreement is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

10.5 Survival. Obligations of Grantee to be performed after the Termination Date shall not cease upon the termination of this Agreement, but shall continue as obligations until fully performed.

10.6 Headings. The headings used in this Agreement are for convenience only and in no way define, limit, or extend the scope of this Agreement or the intent of any provision.

10.7 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach or default of the same or any other term, covenant, or condition of this Agreement. State's acceptance of a Royalty Payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular Royalty Payment that was accepted.

10.8 Cumulative Remedies. The rights and remedies of State under this Agreement are cumulative and in addition to all other rights and remedies afforded to State by law or equity.

10.9 Time of Essence. TIME IS OF THE ESSENCE as to each and every provision of this Agreement.

10.10 Invalidity. If any provision of this Agreement shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Agreement.

10.11 Language. The word "Grantee" as used in this Agreement shall be applicable to one or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Grantee, their obligations shall be joint and several. The word "persons" whenever used shall include individuals, firms, associations, and corporations.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

Dated: _____, 20____ By: _____
Title: _____
Address: _____
Phone: _____

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20____ By: _____
Title: _____
Address: 1234 WADNR Drive Olympia

Standard Authorization for
Deposit of Dredged Material,
Sale, and Use
Approved as to Form by
Christa L. Thompson,
Assistant Attorney General
on August 01, 2002

**STATE OF OREGON
DIVISION OF STATE LANDS
DREDGE SPOILS EXCLUSIVE LICENSE**

SG-INSERT NUMBER

1. PARTIES

The parties to this License are the STATE OF OREGON, acting by and through the Division of State Lands, ("STATE") and INSERT NAME, ("LICENSEE")

2. DESIGNATED REMOVAL SITE

STATE, for the consideration and upon the terms and conditions herein mentioned, does hereby authorize the LICENSEE to remove state-owned sand and silt (dredge spoils) from the following described property:

INSERT LEGAL DESCRIPTION
(check page breaks and page #'s)

hereinafter referred to as the Removal Site.

3. LAND OWNER PERMISSION

If the above described lands are not owned by the State of Oregon, the LICENSEE must provide STATE with written permission from the owner to enter upon said lands prior to any removal.

4. PURPOSE

LICENSEE shall have the EXCLUSIVE right to remove dredge spoils from the Removal Site. Removal shall be undertaken in an environmentally appropriate manner, and as stipulated by the terms and conditions of this License.

5. TERM

Subject to compliance with the terms and provisions of this License, the LICENSEE shall be authorized to remove dredge spoils from the Removal Site from INSERT DATE through INSERT DATE.

6. ROYALTIES

- a. LICENSEE shall pay a royalty of INSERT \$\$ AMT cents per cubic yard or INSERT \$\$ AMT cents per ton for all dredge spoils taken from the Removal Site. STATE reserves the right to redetermine and adjust the royalty rates, in accordance with royalty rates, established by the Land Board.
- b. For determining royalty rate per ton, the weight of a cubic yard of dredge spoils is N/A pounds as determined by OAR 141-14-115, and may be adjusted only in accordance with that rule as now in effect or as hereafter amended.

7. PAYMENT

LICENSEE shall make full payment of any royalties due to STATE as herein provided within twenty (20) days after the end of any calendar month in which dredge spoils are removed, and shall provide with such payment a certified true and correct written statement of LICENSEE, on a form provided by STATE, showing the volume of dredge spoils removed. If no dredge spoils are removed, LICENSEE shall still submit said statement, showing no dredge spoils removed. Payment shall be made to STATE at the address listed in paragraph 30, NOTICES. Any sums due STATE as a result of an audit adjustment under paragraph 9, RECORDS AND AUDITS, shall be paid within ten (10) days of the date the audit report becomes final. Any unpaid amounts shall bear interest pursuant to paragraph 23, INTEREST ON ROYALTIES AND OTHER CHARGES.

8. BOND

LESSEE shall, prior to the issuance of this License furnish to STATE, if required, a surety bond in an amount not less than \$INSERT \$\$ AMT (or cash deposit or certificate of deposit in an amount equal to the amount required for a surety bond, and which names the State of Oregon as co-owner) to ensure that the LICENSEE will perform in accordance with all terms and conditions of the License.

9. RECORDS AND AUDITS

LICENSEE agrees to establish an accounting system for recording and reporting amounts of dredge spoils removed from the Removal Site, and agrees to maintain this system in accordance with generally accepted principles of accounting. LICENSEE further agrees that STATE may at reasonable times and upon reasonable notice examine or audit all such records and supporting documents at

the LICENSEE's office, and that he will keep these records for a period of not less than 6 years from the latest date of removal authorized under paragraph 5 or any extension, or as destruction may be otherwise authorized by audit.

Authorized employees and agents of STATE shall have the right at all reasonable times to enter the Removal Site and/or any other location used or believed to be used for storage of removed dredge spoils to inspect, examine, survey or measure the volume of removed dredge spoils or to ensure compliance with this License, provided that the exercise of said rights shall be conducted in such a way as not to unreasonably interfere with the operations of LICENSEE.

After any such inspection, examination or survey, STATE may issue an audit report which may adjust the amount of royalty owed by LICENSEE and/or any other operational procedure that may not be in compliance with applicable rules and conditions of this License. LICENSEE shall have thirty (30) days from the date of the audit report to review and accept or object to said audit report. If LICENSEE fails to object in writing to the audit report within thirty (30) days from the date of the report, the LICENSEE shall be deemed to have accepted the report and the report shall become final without further notice to LICENSEE.

LICENSEE agrees to, and shall include in any License relating to or in connection with this License, a provision that STATE shall have the right to examine or audit the records and supporting documents of LICENSEE's subcontractors performing work in connection with this License.

10. RESERVATIONS

STATE expressly reserves from the operation of this License all prior and existing grants of rights of way, easements or other rights of use. It shall be the responsibility of LICENSEE to review all matters of record to ascertain the existence of any such grants. STATE further reserves the right to grant such other rights of way, easements or other rights of use as will not unreasonably interfere with the exercise of the rights and privileges herein granted to LICENSEE.

11. PUBLIC RIGHTS

Except as provided in paragraph 15, PUBLIC SAFETY, the rights and privileges granted under this License are subject to all valid rights of the public to engage in recreation, navigation and fishing.

12. COMPLIANCE WITH LAW

LICENSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations, and permits in its use of the Removal Site. This License does not give LICENSEE permission to conduct any use on the Removal Site which is not in conformance with applicable land use requirements.

LICENSEE shall use the property subject to this license only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons

without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

13. TAXES, LIENS, ASSESSMENTS, CHARGES

LICENSEE shall pay as they become due all taxes which result from this License or actions taken under this License, and all assessments, penalties, fines, charges, rates or liens of any nature whatsoever that may be levied, assessed, charged, imposed or claimed on or against the Removal Site or any improvements or fixtures thereon or appurtenances thereto. If LICENSEE fails to pay any taxes, assessments, penalties, fines, charges, rates or liens which result from this License or actions taken under this License, within ten (10) days after notice that such sums are due, STATE may pay such sums. Any such sums paid by STATE shall bear interest at the maximum legal rate from the date of expenditure by STATE until repaid in full.

14. PREVENTION OF WASTE, DAMAGE AND INJURY

LICENSEE shall exercise reasonable diligence in its operation on and from said Removal Site, shall carry on all operations hereunder in a good and workmanlike manner, having due regard for public safety and the prevention of waste, and shall take all reasonable steps to avoid unnecessary damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat, and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing recreational activities and scenic values; shall minimize alteration to the overall pre-removal contours of the dredge spoils, and not create steep and/or unstable slopes; and shall do all things reasonably necessary to minimize erosion. LICENSEE shall not construct or install any building, fixture, or other permanent improvement on the Removal Site without express written authorization by surface owner.

15. PUBLIC SAFETY

The LICENSEE (upon obtaining written authorization from the property owner, if not the state) may restrict entry to any portion of the Removal Site as may be necessary to protect persons and property from harm arising from or in connection with the LICENSEE's activities upon the Removal Site.

16. ASSIGNMENT

The LICENSEE shall not assign this License or any interest therein without the prior written consent of STATE. STATE may, in its sole discretion, consent to an assignment if LICENSEE has satisfied all conditions of the License to that point in time, and if STATE determines the assignment to be in the best interests of the STATE. LICENSEE and its proposed assignee shall be required to complete a

standard assignment form provided by STATE and to provide assurance that the assignee has the capability to perform on the License.

Any assignment, or attempted assignment, subletting, or attempted subletting, or grant of right of use or attempted grant of right of use without such consent, shall be absolutely null and void and shall, at the option of STATE, terminate all rights of the LICENSEE under or by virtue of this License.

17. DEFAULT

The following shall be events of default:

- a. Failure of LICENSEE to pay any royalty or any other charge within ten (10) days after the royalty or other charge is due.
- b. Failure of LICENSEE to comply with any term or condition, or to fulfill any obligation of the License within the time allowed, after written notice by STATE specifying the nature of the default with reasonable particularity. The time allowed shall be twenty (20) days, except for defaults governed by subparagraph (a) or (c) of this paragraph, or where STATE agrees in writing to a longer period.
- c. Insolvency of LICENSEE; an assignment of LICENSEE for the benefit of creditors; the filing by LICENSEE of a voluntary petition in bankruptcy; an adjudication that LICENSEE is bankrupt or the appointment of a receiver of the properties of LICENSEE; the filing of any involuntary petition of bankruptcy and the failure of LICENSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LICENSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days.

18. STATE'S RIGHT TO CORRECT CONDITIONS OF DEFAULT

If LICENSEE fails to perform any obligation under the License, STATE shall have the option to do so after thirty (30) days' written notice to LICENSEE or within a time frame otherwise specified in this License. All of STATE's expenditures to correct the default shall be reimbursed by LICENSEE on demand with interest at the maximum legal rate from the date of expenditure by STATE until repaid in full.

19. TERMINATION

- a. In the event of a default, the License may be terminated at the option of STATE by notice in writing to LICENSEE. If the License is terminated by option of STATE or otherwise, STATE shall be entitled to recover damages from LICENSEE for the default. If the License is terminated, LICENSEE's liability to STATE for damages shall survive such termination. LICENSEE shall have thirty (30) days after date of termination to remove all personal property and equipment from the Removal Site. Failure to remove the above items within the thirty (30) day period will be considered to be abandonment by the LICENSEE and the STATE shall take

title to this property after the expiration of thirty (30) days. STATE may enter the Removal Site and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

b. In the event of termination on default, STATE shall be entitled to recover immediately, without waiting until the due date of any future payment or until the date fixed for expiration of the License term, the following amounts as damages: the reasonable costs of entry including but not limited to the cost of any clean up, removal of LICENSEE's property, or any other expense occasioned by LICENSEE's failure to quit the Removal Site upon termination and to leave it in the required condition, any restoration and/or reclamation costs, attorneys fees, court costs and advertising costs.

c. This License may also be terminated by mutual written consent of STATE and LICENSEE.

20. DELIVERY OF PREMISES: SURRENDER/DEPARTURE

In the event this License is terminated as herein provided or upon expiration, LICENSEE shall peaceably leave said Removal Site and surrender said License. The Removal Site shall be left insofar as possible in the same condition as that existing as of the commencement of the term of this License except as otherwise approved or ordered by STATE. Upon departure, LICENSEE shall continue to be obligated for the breach of any provision of this License occurring before or simultaneously with termination; for the performance of any restoration or reclamation required; and for the payment of all royalties, taxes, assessments, penalties, fines, charges, rates or liens of any nature accrued on or against the Removal Site, any improvements or fixtures thereon or appurtenances thereto. Departure shall not relieve LICENSEE from the indemnification required under paragraph 25, INDEMNIFICATION.

21. RIGHT TO SUE MORE THAN ONCE

STATE may sue periodically to recover damages during the period corresponding to the remainder of the License term and no action for damages shall bar later action for damages subsequently accruing.

22. REMEDIES CUMULATIVE

The foregoing remedies shall be in addition to, and shall not exclude any other remedy available to STATE under applicable law.

23. INTEREST ON ROYALTIES AND OTHER CHARGES

Any royalty or other sum due from LICENSEE under the terms of this License shall, if not paid within ten (10) days after it is due, bear interest at the maximum legal rate from the due date until paid.

24. INSURANCE

The LICENSEE, if required, agrees to maintain during the terms of this License, comprehensive or commercial general liability insurance covering personal injury and property damage, naming the STATE as additional insured. This insurance shall include contractual liability coverage for the indemnification provided under this Contract. Coverage limits shall not be less than the limits of liability set forth in the provisions of ORS 30.270(1) as now in effect or as hereafter amended. The statute currently provides that the coverage limits shall not be less than \$500,000.00 combined single limit per occurrence. The insurance shall be in a form and with companies acceptable to STATE. Such insurance shall be evidenced by certificates or by copies of policies. Such evidence shall be provided to STATE prior to the commencement of any operations or activity under this Contract.

25. INDEMNIFICATION

LICENSEE agrees to indemnify, defend and hold STATE, its officers, employees, and agents harmless from any and all damages, claims, actions, costs and expenses arising in whole or in part out of acts or omissions related to this License. STATE shall have no liability to LICENSEE for any loss or damage caused by third parties, or by any condition of the Removal Site.

26. ATTORNEY FEES

If suit or action is instituted in connection with any controversy arising out of or in connection with this License, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees.

27. MODIFICATION

This License may be changed, altered or amended only by mutual written consent of the parties.

28. MERGER

This License constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

29. EFFECT OF WAIVER

Failure of STATE to demand rigid adherence to any of the terms of this License on any occasion shall not be construed as a waiver of any of the terms of this License and such conduct shall not deprive STATE of the right thereafter to insist on strict compliance with any of the terms of this License.

30. NOTICES

Any notices required or permitted under this License shall be in writing and deemed given three (3) days after deposited, postage prepaid, in the United States mail as regular mail and directed to the address provided below or to such other address as may be specified from time to time by either of the parties in writing.

For STATE:

DIVISION OF STATE LANDS
775 Summer Street NE
Salem, OR 97301-1279

For LICENSEE:

Name (Print or Type)

Title

Current Mailing Address

City State Zip

Area Code Telephone Number

31. EXHIBITS

All exhibits hereto are expressly incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF the parties have executed this contract.

STATE OF OREGON
DIVISION OF STATE LANDS

LICENSEE

Authorized Signature

Authorized Signature

Date

Date

Attorney General Approved 11/98
FO\Forms\Authorization\Dredge Spoils Exclusive License.doc