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NJC - 65375

UPON RECORDING RETURN TO:

Klamath County  
Attention: Rod Davis  
305 Main Street  
Klamath Falls, OR 97601

Vol M04 Page 37711

State of Oregon, County of Klamath  
Recorded 06/11/2004 3:24 p m  
Vol M04 Pg 37711-20  
Linda Smith, County Clerk  
Fee \$ 66.00 # of Pgs 10

**GROUND LEASE**

**BETWEEN**

**KLAMATH COUNTY, OREGON  
AND**

**REGIONAL DISPOSAL COMPANY**

**FOR**

**THE KLAMATH REGIONAL DISPOSAL TRANSFER STATION**

*600*

**GROUND LEASE**

37712

DATED: June 8, 2004

**PARTIES:**

Klamath County ("Lessor")

Regional Disposal Company ("Lessee")

**RECITALS**

1. In accordance with an Agreement dated January 14, 2003 ("Agreement"), Klamath County ("County") and Regional Disposal Company ("RDC") contracted for RDC to obtain the real property and build the Klamath Regional Disposal Transfer Station ("Transfer Station"). The Agreement in Section 1.2a further specifies that upon the payment of one-million and 00/100 dollars (\$1,000,000.00) that a deed from Regional Disposal Company to Klamath County would be recorded and that the parties would execute and record a Ground Lease to Regional Disposal Company.

2. The purpose of this Ground Lease Document is to fulfill the lease requirement of the January 14, 2003 Agreement and to memorialize the obligations of the parties. This lease is to be construed to be consistent with the January 14, 2003 Agreement.

3. It is the intent of the parties that the deed for the Transfer Station site, without improvements, from RDC to County and this Ground Lease be recorded once executed.

NOW THEREFORE, in consideration of the mutual covenants contained herein and in the January 14, 2003 Agreement, the parties agree as follows:

**LEASE TERMS**

**Section 1. The Property.** This property and the facilities thereon will be known as the "Klamath Regional Disposal Transfer Station" and signage and publicity for the use of the property and facilities will so reflect. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain real property situated in Klamath County, Oregon, described in Exhibit A, attached hereto. RDC to furnish Exhibit A at a later time, but as soon as possible.

**Section 2. Occupancy.**

**2.1 Original Term.** The term of this Lease commences on the date of this Lease and runs through July 1, 2014.

**2.2 Possession.** Lessee's is currently in possession of and operating the Transfer Station. Lessee shall continue operation through July 1, 2014 unless sooner terminated or extended pursuant to the provisions of this Lease and the Agreement.

**2.3 Termination.** This Ground Lease may be terminated in accordance with Section 13 of the Agreement. In addition to the Termination provisions of the Agreement, this Lease may also be terminated under the provisions of Section 14, Condemnation, of this Ground Lease.

**2.4 Option.** In accordance with Section 20.1 of the Agreement, in the event Lessor desires that Lessee operate the Transfer Station beyond July 1, 2014, Lessor in its sole discretion will provide notice to Lessee no later than October 1, 2011 or 2016, respectively.

**Section 3. Rent.** Lessee shall pay to Lessor as rent for the Property one dollar (\$1.00) in advance for the initial term through July 1, 2014. If Lessor exercises its option to extend the operation of the Transfer Station by Lessee the rent will be renegotiated.

**Section 4. Additional Rents.**

**4.1 Real Property Taxes.** As additional rent, Lessee shall pay all real property taxes applicable to the Property during the term of this Lease. All such payments shall be made at least ten (10) days prior to the delinquency date of the payment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes paid by Tenant shall over any period of the time prior to or after the expiration of the term of this lease, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Lessor shall reimburse Lessee to the extent required. If Lessee fails to pay such taxes, Lessor shall have the right to pay the same, in which case Lessee shall repay such amount to Lessor with Lessee's next rent installment with interest at the rate of 10% per annum. If the Property is not separately assessed, Tenant's liability shall be in equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets and such other information as may be reasonably available to Lessor. Lessor shall, in all instances, act in good faith in regards to valuations. All real property taxes shall include any form of assessments, license fees, rent taxes, levies, penalties, or any other tax imposed by any authority having direct or indirect power

to tax. Such authorities shall include city, county, state, and federal government, and any improvement districts including school, agricultural, lighting, drainage, or other improvement districts.

**4.2 Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon leasehold improvements, trade fixtures, furnishings, equipment and all personal property of Lessor contained in the Property. Lessee shall cause the improvements upon the Property, including trade fixtures, furnishings, equipment, and all personal property to be assessed and billed separately from the real property taxes of Lessor.

**Section 5. Utilities.** Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the property, together with any taxes thereon.

**Section 6. Use of the Property.** Lessee constructed a Transfer Station with related improvements on, under, and over the premises. The Transfer Station and all the related improvements referred to in this Lease as the Transfer Station. Lessee hereby accepts the Property in its current condition subject to all applicable zoning, municipal, county and state land use laws, ordinances and regulations.

**6.1 Sole use.** The property shall be used and occupied by the Lessee solely for the purpose of maintaining, and operating the Transfer Station.

**6.2 Compliance with Laws.** Lessee shall, at Lessee's sole expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term of any part of this Lease. Lessee shall not use the Property nor permit the use of the Property in any manner that will tend to create a nuisance upon the Property. Lessee further covenants that they shall not cause to be stored or put upon the Property any hazardous materials or hazardous waste. Lessee shall indemnify and hold Lessor harmless from any condition created upon the Property by Lessee.

**6.3 Liens.** Lessee shall not suffer or permit any liens to attach to the interest of Lessor in all or any part of the premises by reason of work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee. If any such lien shall at any time be filed against the premises, the Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing the same by either payment, deposit, or bond.

**6.4 Alterations, additions, and new improvements.** Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor,

expressed or implied, by inference or otherwise, to any person, firm, or corporation for performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the premises or to the improvements. Lessee is not intended to be an agent of Lessor for the construction of improvements on the premises. Lessor shall have the right to post and keep posted at all reasonable times on the premises and on the improvements any notices that Lessor shall be required to post for the protection of Lessor and of the premises and of the improvements from any such lien. The foregoing shall not be construed to diminish or vitiate the rights of Lessee in this Lease to construct, alter, or add to the improvements.

**Section 7. Repairs and Maintenance.**

**7.1 Lessee obligations.** Lessee shall have the obligation to repair and maintain the premises and the improvement to the extent necessary to comply with the requirements of Section 2.11 of the Agreement.

**7.2 Facilities and Services.** Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during this lease such as, but not limited to, water, heat, gas, hot water, electricity, lights and power. Lessor shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs during the term.

**Section 8. Title to Improvements.** Title to Improvements shall be and remain in the Lessee until the expiration of the term, unless this Lease is terminated sooner as provided. Upon such expiration or sooner termination, title to the Improvements shall pass as specified in Section 13 of the Agreement.

**Section 9. No Waste.** Lessee shall not do or suffer any damage, disfigurement, or injury to the premises or the improvements.

**Section 10. Inspection and Access.** Lessee shall permit Lessor or its authorized representative to enter the premises and the improvements at all reasonable times for the purpose of inspecting the same. Nothing in this Lease shall imply any duty or obligation on the part of Lessor to do any work or make any improvements of any kind whatsoever to the premises or improvements.

**Section 11. Lessor's Exculpation and Indemnity.**

**11.1 Lessee exclusive control.** Lessee is and shall be in exclusive control of the premises and of the improvements, and Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the premises or the improvements or any injury or damage to the premises or the improvements or to any property, whether

belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the premises or of the improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the premises or the improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the improvements or from any kind of injury that may arise from any other cause whatsoever on the premises or in or on the improvements, including defects in construction of the improvements, latent or otherwise.

**11.2 Indemnification.** Lessee hereby covenants and agrees to defend and indemnify Lessor, its agents, officers and employees harmless from any losses, claims, actions, costs, expenses, judgments, subrogation or other damages resulting from injury to any person including and resulting in death, or damage including loss or destruction to property, arising or resulting from the fault, negligence, wrongful act or wrongful omission of the Lessee, including loss or liability contributed to by the Lessor's own negligence. This right of indemnification is in addition to and not in replacement of any other right that the Lessor may have under any statute or under the common law.

**Section 12. Insurance.**

**12.1 Insurance.** Lessee shall obtain and at all times during the duration of this Lease keep in effect comprehensive liability insurance and property damage insurance covering the premises as prescribed in Exhibit 7.1 of the Agreement.

**12.2 Certificates of Insurance.** Certificates of Insurance shall be provided to the Lessor prior to the commencement of any work on the premises. These Certificates shall contain provision that coverage is afforded under the policies and cannot be cancelled or materially altered until at least thirty (30) days prior written notice has been give to the Lessor. Certificates which state merely that the carrier "will endeavor to mail written notice" are not sufficient. Lessee shall include Klamath County and its officers, agents and employees as additional insured or shall furnish an additional insured endorsement naming the same as additional insured to Lessees existing public liability and property damage insurance, for Lessee's activities pursuant to the performance of this Lease.

**12.3 Renewal.** Lessee shall ensure that the Lessor is provided with a renewal certificate at least fifteen (15) days prior to the expiration date of the coverage in the event that the original certificate expires prior to the scheduled termination of this Lease.

**Section 13. Assignment and Subletting.** Lessee shall not voluntarily, or by operation of law, assign, transfer, encumber, or otherwise sublet any or all of the Property subject to this

Lease or the improvements.

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**Section 14. Condemnation.** If the Property is substantially or totally taken under the powers of eminent domain, or sold by Lessor under threat of the exercise of said power, this Lease shall terminate immediately. If the Property is not substantially or totally taken, either Lessor or Lessee may terminate this Lease. If the Property is not substantially or totally taken and if the Lease is not terminated by either Lessor or Lessee, it shall remain in full force and effect as to the portion of the premises remaining.

**Section 15. Party Entitlement in Condemnation.**

**15.1 Lessee Entitlement.** Lessee shall be entitled to a award for a proportion of the loss or damage to the buildings and improvements based on the buyout amount found at Exhibit 13.1.a.(1)(iv).

**15.2 Lessor Entitlement.** Lessee will be entitled to all of the land award and compensation for the condemnation or taking of any part of the real property. In addition, the Lessor will be entitled to an award for the proportion of the loss or damage to buildings or improvements to which Lessee is not entitled.

**15.3 Parties Acknowledgement.** Parties acknowledge that the Oregon Department of Transportation (ODOT) has future plans in regard to the Old Midland Highway, that may result in alteration of the access to the Transfer Station and also may result in the condemnation of a portion of the leased property. The parties agree that compensation awarded for the taking of any leased land by ODOT will be used to return the access roads to the Transfer Station to be fully usable and serviceable.

**Section 16. Defaults and Remedies.**

**16.1 Events of Default.** In addition to those events of default defined in Section 12 of the Agreement, failure by the Lessee to observe or perform any of the covenants, conditions, or provisions of this Ground Lease where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee shall also constitute a default.

**16.2 Remedies Upon Default.** Remedies available shall be in accordance with Section 13 of the Agreement.

**16.3 Prior Acts Hold Harmless.** Upon signature of this Agreement all parties agree to waive all rights that each has had or now has, whether known or unknown, and arising on or before the date of this Agreement with respect to any and all actual or potential claims against the parties and their employees, officials, agents, attorneys and insurers, based on the common law, the U.S. Constitution, the Oregon Constitution or any federal, state, local or public policy, law or regulation.

**Section 17. Miscellaneous Provisions.**

**17.1 Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any provision hereof.

**17.2 Incorporation of Agreement.** This Lease implements the Agreement referred to in the Recitals, including its Exhibits. This Lease together with the Agreement embodies the entire Agreement between the Parties and to the extent that the terms of this Lease are inconsistent with any of the terms and provisions of the Agreement, the terms and provisions of the Agreement shall control. No prior written leases, negotiations or offers shall be effective.

**17.3 Choice of Law.** This Lease agreement shall be interpreted and construed and governed by the laws of the State of Oregon.

**17.4 Time of the Essence.** Time is of the essence in the performance of each of Lessee's obligations under this Lease.

**Section 18. Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposited in the United States mail, to the address shown below or to such other address as may be specified from time to time by either of the parties in writing.

Tom Crist  
Klamath County  
305 Main Street  
Klamath Falls, OR 97601

Pete Keller  
Regional Disposal Company  
54 South Dawson Street  
Seattle, WA 98134

(541) 883-5121

(206) 332-7795

**Section 19. Attorney Fees.** If suit or action is instituted in connection with any controversy arising from the Lease, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

**Section 20. Non-Waiver.** Waiver by either party of strict performance of any provision of the Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

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"LESSOR"

KLAMATH COUNTY

37719


  
Chairman

  
Commissioner


**OUT OF OFFICE**  
Commissioner

"LESSEE"

REGIONAL DISPOSAL COMPANY

  
By: PETE KEWER  
its: VICE PRESIDENT

Approved as to  
Legal Sufficiency

  
Reginald R. Davis  
Klamath County Counsel

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**37720**

**PARCEL 1:**

A parcel of land situated in the NE1/4 SW1/4 of Section 9, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and being a portion of Ewauna Park Subdivision, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the Easterly right of way line of Tingley Lane (formerly Manzanita Way), said point being the intersection of said Easterly line with the South right of way line of Birch Street now vacated of said Ewauna Park Subdivision; thence South 70° 19' 42" East along the South right of way line of said vacated Birch Street, a distance of 191.00 feet to a point; thence North 19° 40' 18" East perpendicular to the said South right of way line, a distance of 50.00 feet to a point on the North right of way line of said vacated Birch Street; thence South 70° 19' 42" East along said North right of way line, a distance of 325.34 feet to a point on the East line of the NE1/4 SW1/4 of said Section 9, said point being South 00° 06' 02" West 561.65 feet from the Northeast corner of said NE1/4 SW1/4; thence South 00° 06' 02" West along said East line of the NE1/4 SW1/4, a distance of 477.59 feet to the Southeast corner of Lot 1, Block 20 of said Ewauna Park Subdivision; thence North 70° 19' 42" West along the Southerly lines of the following Lots; Lot 1 of Block 20, Lots 10 and 17 of Block 18 and Lots 8, 9 and 10 of Block 15, a distance of 676.32 feet to the Southwest corner of said Lot 8; thence North 19° 40' 18" East along the West line of Block 15 a distance of 400.00 feet to the point of beginning.

Tax Account No:     3909-009C0-00601-000

**PARCEL 2:**

Parcel 1 of Land Partition 10-03, being a parcel of land situated in the SE1/4 of Section 9, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Tax Account No:     3909-009D0-00700-000