

**WASTEWATER RECLAMATION
AGREEMENT
AND EASEMENT**

THIS AGREEMENT is entered into this 30th day of December, 1999, between the CITY OF MOLALLA, an Oregon municipal corporation ("the City"), P.O. Box 248, Molalla, Oregon 97038, and STEVE D. COLEMAN and CATHY COLEMAN ("User"), 15151 Feyrer Park Road, Molalla, Oregon 97038.

RECITALS

WHEREAS, User owns or operates approximately 170.15 acres of real property identified as Tax Lot 700, T5S, R2E, W.M., Section 15, more particularly described in attached Exhibit "A" ("User's Property"); and

WHEREAS, the City owns and operates a wastewater treatment plant that generates treated wastewater that the City desires to dispose of on agricultural lands during certain times of the year; and

WHEREAS, User desires, subject to the terms of this Agreement, to receive reclaimed water from the City's wastewater treatment plant for irrigation of its aforementioned real property; and

WHEREAS, the City desires to use User's Property as a reclaimed water use site and believes the irrigation of User's Property is a permissible use of such water and consistent with all applicable regulatory standards.

NOW, THEREFORE, the parties do hereby agree to the following terms and conditions for the use and delivery of such reclaimed water.

AGREEMENT

1. Term

The term of this Agreement shall commence on the date of this Agreement and end November 1, 2025, unless otherwise terminated earlier pursuant to the terms of this Agreement. It is understood by the parties, however, that reclaimed wastewater shall first be available to User approximately 12 months from the date of this Agreement.

2. Use of Reclaimed Water

User agrees to use the City's reclaimed wastewater, subject to the terms of this Agreement, on User's Property. It is understood that the portions of User's Property on which the reclaimed wastewater is used may change from time to time depending on User's then-current operations. City and User agree to jointly determine the portions of User's Property

3. Delivery and Application of Reclaimed Wastewater

3.1 The City agrees to supply reclaimed wastewater for the irrigation of User's Property subject to the available supply of such reclaimed water which can meet the standards for Level II effluent and quality as described in OAR Chapter 340, Division 55, Table 1.

3.2 The reclaimed water will be delivered to User at a location mutually agreed upon by and between the City and User and at a mutually agreed upon rate of flow as said flow is available through City facilities. Such flow shall be estimated to be approximately 1000 GPM. However, no guarantee is expressed or implied for the actual rate of delivery. The maximum quantity of reclaimed water that may be available for use by User on an annual basis is 104 million gallons. User agrees to accept up to this quantity of water on an annual basis for the term of this Agreement and so long as such application is in compliance with Section 3.4 below.

3.3 User agrees to accept and apply the maximum amount of reclaimed waste water per acre per year for User's property, to the extent that such application is consistent with good farming practices relative to the pasture and cropping program followed on User's land, and is further consistent with restrictions on runoff, ponding, and environmental matters, and is not harmful to crops and pastures.

3.4 User understands that the normal reclaimed wastewater delivery and application period is May 1 through October 31 of each year. To meet certain operational criteria established by regulatory agencies, User understands that it may be necessary to apply reclaimed wastewater to land at times between November 30 and April 30. However, during such times of necessity, City agrees to provide User with formal written notice of said applications of reclaimed wastewater to User's land at times between November 30 and April 30.

3.5 User agrees, when requested by the City, to accept and apply reclaimed wastewater during such periods so long as application is not harmful to User's pasture and cropping program and is consistent with restrictions on runoff, ponding, and environmental matters. With respect to User's acceptance of wastewater upon such requests by the City, User is relying on the City's warranty that such requests will not be in violation of any legal and/or regulatory restrictions.

3.6 User shall at no time during the life of this Agreement transfer delivery of the reclaimed water to other parties without first providing the City with prior written notice of such diversions. Each such succession of ownership of the reclaimed water shall first be established by a legally-enforceable contract on file with the City and which notifies the succeeding reclaimed water user of the requirements of OAR Chapter 340, Division 55, and the permit for such sewage system.

4. Limitations on Delivery

4.1 Notwithstanding the requirements herein, both parties recognize and agree that delivery of treated wastewater may at times be precluded for reasons beyond the City's control,

agencies. The City shall be under no obligation to deliver treated wastewater during any times in which bonafide reasons exist precluding the City from delivery.

4.2 The City agrees that it shall not transfer, divert, or deliver treated wastewater to other third parties unless City shall have first, in writing, offered such additional treated wastewater to User under the same terms and conditions of this Agreement. Within 14 days after such offer, User may elect to accept such treated wastewater from City. If such offer is not accepted by User within said 14 days, City may deliver such additional treated wastewater to any prospective third party.

5. Permission to Enter

5.1 User agrees to allow the City to install or remove any necessary equipment, including pumps, electric services, meters, appurtenances, and portable irrigation equipment on land controlled by User and intended for reclaimed wastewater irrigation. In addition, User hereby grants the City, its authorized employees, agents, representatives and contractors, reasonable access to User's property to do any work reasonably necessary and associated with the installation of equipment required by this Agreement, meter reading, verification of reclaimed water use, or any other monitoring or reclaimed wastewater-related activity on User's Property. This permission to enter, however, is limited in scope in that any such entrances onto User's land shall be for the purpose of fulfilling the terms and conditions of this Agreement.

6. Conditions Required by OAR 340-055-0015

6.1 Quality. The reclaimed wastewater delivered to User shall be of a quality that is in accordance with all applicable governmental regulations pertaining to reclaimed wastewater.

6.2 Quantity. The maximum quantity of treated wastewater that shall be released by the City for all Users on an annual basis is 150 million gallons. The maximum quantity that shall be used by User on an annual basis is 20 inches per acre.

6.3 Specific Use. The specific use to which the reclaimed water will be used by the User is crop irrigation on User's Property. User agrees that User will not use the reclaimed wastewater for other purposes or on other properties without the written consent of City.

6.4 Release of Reclaimed Water. User agrees to not allow the direct release of any reclaimed wastewater to surface waters of the State of Oregon.

6.5 Responsible Parties. User shall be responsible for compliance with the requirements of OAR Chapter 340, Division 55, which pertain to the application of treated wastewater to lands. The City shall be responsible for compliance with all regulatory requirements concerning its sewage treatment system.

6.6 Interruption of Service. In addition to other provisions of this Agreement regarding limitations on delivery, the City shall be allowed to cease providing reclaimed

wastewater if the Department of Environmental Quality or the City determines that the requirements of OAR Chapter 340, Division 55 are not being met.

6.7 **Reporting Requirement.** User agrees to report to City any and all violations of which it is aware of the terms of OAR Chapter 340, Division 55, and any and all violations of the terms of this Agreement.

7. **Other Restrictions on Use of Treated Water**

User shall not apply treated wastewater within one hundred feet of any well or in violation of any governmental rule, regulation, or law. User shall not allow treated wastewater to run off from the application area into depressions or drainageways leading off User's Property, and shall not allow excessive ponding of wastewater which could cause vector problems. Violation of these provisions by User shall entitle the City to immediately curtail further delivery of treated wastewater and User shall immediately take steps to remedy such violations.

8. **General Conditions**

8.1 This Agreement shall be construed and interpreted under the laws of the State of Oregon.

8.2 This Agreement contains all agreements of the parties with regard to the subject of the Agreement and cannot be changed in any respect except by written agreement of the parties.

8.3 The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render other provisions unenforceable, invalid, or illegal.

8.4 This Agreement shall be binding on the heirs, successors, lessees, sublessees, assigns, and transferees of User.

9. **Breach; Termination**

Should either party breach any of the terms and conditions of this Agreement, the other party shall give notice of the breach to the breaching party, in writing, by first-class mail, to the address stated for that party in this Agreement, or at such other address as may have been provided to the other party in writing. If reasonable steps toward correcting the breach are not undertaken within ten days from the date of mailing of such notice, the other party may, in addition to any other remedies provided in this Agreement or by law, terminate the Agreement. Notice of termination shall be in writing, sent by first-class mail, to the address stated for that party in this Agreement, or at such other address as may have been provided to the other party in writing. Termination shall be effective ten days from the date of mailing of such notice of termination.

10. **Remedies**

reclaimed wastewater on land and is not permitted to discharge wastewater into the watershed during certain months of the year. City is therefore relying on User's good-faith performance of the terms and conditions of this Agreement in accepting and using the reclaimed wastewater. If User, as reasonably determined by the City, fails to accept and dispose of the reclaimed wastewater as agreed herein, User and the City agree that the City will suffer irreparable harm and will not be adequately compensated by money damages for said harm. The parties agree that under such circumstances, the City may seek injunctive relief, specific performance, and such other relief, either at law or equity, as may be allowable by law.

10.2 City likewise understands and acknowledges that User is relying on City's good faith performance of the terms and conditions of this Agreement in accepting and using the reclaimed water as such wastewater, and its reclamation as presented by the City is to be in compliance with, among other governing regulations, OAR Chapter 340, Division 55. If City, as determined by the User, fails to perform as agreed herein, City and the User agree that the User will suffer irreparable harm and will not be adequately compensated by money damages for such harm. The parties agree that under such circumstances, User may seek injunctive relief, specific performance, and such other relief, either at law or equity, as may be allowable by law.

11. Indemnification

11.1 Indemnification By User. User shall forever indemnify and hold the City, its officers, agents, and representatives harmless and, at the City's election, defend the City from and against any and all claims, losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with User's breach of the terms of this Agreement, to the extent the same is not caused or contributed to by the City. In the event of any litigation or proceeding brought against the City and arising out of or in any way connected with any of the above events or claims, against which User agrees to defend the City, User shall, upon notice from the City, vigorously resist and defend such actions or proceedings in consultation with the City through legal counsel reasonably satisfactory to the City. These obligations to indemnify and defend shall survive any termination of this Agreement.

11.2 Indemnification by City. City shall forever indemnify and hold User, its officers, agents, and representatives harmless and, at User's election, defend User from and against any and all claims, losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with City's breach of the terms of this Agreement, to the extent the same is not caused or contributed to by User. In the event of any litigation or proceeding brought against User and arising out of or in any way connected with any of the above events or claims, against which City agrees to defend User, City shall, upon notice from User, vigorously resist and defend such actions or proceedings in consultation with User through legal counsel reasonably satisfactory to User. These obligations to indemnify and defend shall survive any termination of this Agreement.

12. Recordation

This Agreement may be recorded by either party. The party recording this Agreement

recording.

IN WITNESS WHEREOF, the City and User have executed this Agreement as of the date and year first written above.

CITY OF MOLALLA:

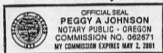
USER:

By: Mike Clark
Mayor

Steve Coleman
Steve D. Coleman

Cathy Coleman
Cathy Coleman

STATE OF OREGON)
) ss.
County of Clackamas)



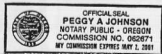
This instrument was acknowledged before me on the 29th day of October, 1999, by Mike Clark, as Mayor of the City of Molalla, a municipal corporation and political subdivision of the State of Oregon.

Peggy A. Johnson
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on the 1st day of December, 1999, by Steve D. Coleman and Cathy Coleman, who acknowledged the foregoing as their voluntary act and deed.

Peggy A. Johnson
Notary Public for Oregon



This instrument was acknowledged before me on the 31st day of December, 1999, by Cathy Coleman, who acknowledged the foregoing as her voluntary act and deed.

Peggy A. Johnson

EXHIBIT A

PARCEL I

A tract of land in Sections 15 and 16, Township 5 South, Range 2 East, of the Willamette Meridian, in Clackamas County, Oregon described as follows:

Beginning at a stone monument on the South boundary of the John Wright D. L. C. No. 39, that bears South 89° 46' 45" East, 1792.17 feet from the southwest corner thereof, said point of beginning is also the southwest corner of that tract of land sold on contract to Earl D. Buche, by instrument recorded September 22, 1915, as Recorder's Fee No. 75-27313, Clackamas County Records; thence north 17° 54' 00" East, 592.07 feet, more or less, to the north line of the Crown Zellerbach Weyerhaeuser Private Road and the true point of beginning; thence continuing North 17° 54' 00" East, 3650.22 feet to the south line of Levi Robbins County Road No. 925; thence North 88° 00' East along said south line 1595.78 feet to the west line of W. A. Shaver County Road No. 2147; thence South along the west line of W. A. Shaver County Road No. 2147; thence South along the west line of said County Road 3141.32 feet to the North line of the aforementioned Private road; thence South 75° 04' 45" West, 1234.80 feet along the North line thereof; thence on a curve to the right with a radius of 1910.88 feet through a central angle of 14° 33' for an arc length of 485.06 feet to a point on tangency; thence continuing along said North line South 89° 37' 45" East, 1030.20 feet to the true point of beginning.

PARCEL II

Part of the John Wright D. L. C. in Section 15, Township 5 South, Range 2 East, of the Willamette Meridian, in Clackamas County, Oregon, described as follows:

Beginning at an iron pipe driven on the North boundary of the said Wright D. L. C. at a point North 88° East, 704.93 feet distant from a stone on the North boundary of said Claim, 3557.75 feet distant from the Northwest corner thereof, the same being the Northeast corner of a tract of land conveyed by G. B. Dimick Trustee et al, to W. A. Shaver by deed dated June 3, 1904, and recorded June 14, 1904 in Volume 90, page 200, Clackamas County Deed Records; running thence South 0° 25' West, 1268.10 feet to an iron pipe; thence South 89° 55' East, 1185.52 feet to an iron pipe; thence North 0° 25' East, 1311.22 feet to an iron pipe driven on the north boundary of said claim; thence south 88° West on claim line 1186.67 feet to the place of beginning. EXCEPT that portion on the North line conveyed to Clackamas County by deed recorded June 4, 1915 in Book 139, page 510.