

SOIL SPREADING AGREEMENT

THIS CONTRACT is made as of the 13th day of April, 1992 at Seattle, Washington, by and between Time Oil Co., a Washington corporation ("Time" herein), located at 2737 West Commodore Way, Seattle, Washington 98199, and The City of Newberg, an Oregon Municipal Corporation ("the City" herein), located at 414 East First Street, Newberg, OR 97132 for work relating to environmental cleanup at 1415 East 1st Street, Newberg, Oregon.

Whereas the City is the owner of property located at 2301 Wynooski Road, Newberg, Oregon ("Spreading Site" herein); and,

Whereas the City, Time and appropriate government authorities have agreed that said property is suitable for the purpose of aerating soil owned by Time that contains gasoline ("the soil" herein); and,

Whereas Time owns certain property located at 1415 1st St., Newberg, Oregon ("the 1st Street property" herein) which is currently contaminated; and,

Whereas, the City desires to use the 1st Street property for public purposes;

NOW THEREFORE in consideration of the covenants conditions contained herein and as an inducement to the execution of hereof,

It is agreed by and between the parties hereto as follows:

1. The City will immediately provide a clear, level and accessible area at the spreading site having dimensions of approximately 100 feet by 200 feet on which Time may spread approximately 450 cubic yards of the soil.
2. Time will provide sufficient plastic sheeting to form a liner on which Time will spread the soil to a thickness of one foot or less.
3. Using clean soils, Time will form an earthen berm around the soil to direct surface runoff so it does not flow through the soil.
4. The City will periodically inspect the berm around the soil and repair it as needed.
5. Any permits required for this work will be obtained by Time at its expense.
6. The City will till the soil not less than 2 times per month. Three months after the soil has been spread, or sooner if field screening indicates that the soil has been remediated to acceptable levels, Time will take samples of the soil and have them analyzed as required by the appropriate government authorities. Results will be submitted to the appropriate government authorities, with copies to The City, for a determination by the appropriate government authorities as to whether or not the soil has met applicable cleanup standards.
7. If the soil has not met applicable cleanup standards after three months, then Time will arrange for the soil to be tilled. After sufficient time (in Time's judgment) following tilling has elapsed, the sampling and government review process described in paragraph 6 above will be repeated. This procedure will be repeated until the soil has met applicable cleanup standards.
8. Time retains ownership of the soil and affirms that any future liability which might arise with respect to this spreading and aerating operation rests solely with Time until such time as the soil has met applicable cleanup standards, at which time title to the soil shall pass to The City.
9. Time will install and maintain a remediation system ("the System") at the 1st Street property, using its best efforts to have the System operable on or before January 1, 1993.

10. At such time as the System is operable, Time agrees to lease the 1st Street property to the City on the terms and conditions set in Example A, attached hereto and incorporated herein.
11. At such time as the remediation of the 1st Street property is complete to the satisfaction of the appropriate government authorities and a finding that no further monitoring or remediation will be required has been made, Time agrees to convey the 1st Street property to the City by means of a donation deed free and clear of all liens and encumbrances.

DATED

4/20/92

DATED

April 15, 1992

TIME OIL CO.

BY:

[Signature]

The City of Newberg, Oregon

BY:

[Signature]
City Manager

BY: _____

THIS INDENTURE, executed in triplicate this

day of

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by and between TIME OIL CO., a Washington corporation

(hereinafter designated as the lessor), and

THE CITY OF NEWBERG, an Oregon Municipal corporation

(hereinafter designated as the lessee).

WITNESSETH: That in consideration of the covenants and agreements of the lessee, hereinafter set forth, and of the sum of ONE DOLLAR (\$1.00) Dollars, now paid to the lessor by the lessee, the receipt whereof is hereby acknowledged, the said lessor does hereby lease and demise unto the said lessee those certain premises situated in the City of Newberg, Yamhill County, Oregon

, particularly described as follows, to-wit:

Beginning at the Northeast corner of Block "B" of Hobson's Addition to the Town of Newberg in Yamhill County, Oregon, and running thence West 135 feet; thence North to the center of the Dayton-Portland Road; thence along the center of said Road in an Easterly direction to the West line of Church Street, and thence South to the place of beginning.

known as 1415 East First Street

for the purpose of conducting therein a public park and for no other purpose whatsoever.

for the term commencing on the day of 19 and ending

at the expiration of the day of 19, at the yearly rental of

ONE DOLLAR (\$1.00) Dollars

in legal tender of the United States of America, payable in advance on the first day of each and every month during said term, at the office of

, or at such other place as the lessor may from time to time designate, which said sum the lessee expressly covenants and agrees to pay at the time and in the manner herein stated.

The above payment of One Dollar (\$1.00) Dollars now made shall be returned to the lessee at the normal expiration of this agreement provided all the terms and conditions by the lessee to be performed have been complied with but not otherwise.

No warranty or representation as to condition of the premises has been made by lessor or lessor's agent. Lessee acknowledges it has had ample opportunity to fully inspect the premises and said premises are accepted by lessee in their present condition. The premises shall be kept in good order, condition and repair during the term of this lease by the lessee at his sole cost and expense, and the lessee agrees that at the expiration of the said term or sooner termination of this lease, he will quit and surrender the said premises without notice and in good order, condition and repair, normal wear and tear and damage by the elements or fire excepted.

Lessee agrees that the lessor or its agents, shall not be held liable for any damage to property or personal injuries caused by any defects now in said premises or hereafter occurring in or about said premises. Lessee during the entire term of this lease, shall, at the Lessee's sole cost and expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the leased premises. The limitation of liability of such insurance shall be not less than \$100,000 in respect to injury or death of one person and not less than \$300,000 in respect to any one occurrence and not less than \$100,000 in respect to property damage. All such policies of insurance shall name lessor as an additional insured and shall be cancellable only after 10 days written notice to lessor. Upon request by lessor, lessee will deliver to lessor evidence satisfactory to lessor of the existence of such insurance.

It is further agreed that all personal property in said demised premises shall be at the risk of lessee only, and that lessor or its agents shall not be liable for any damage, either to person or property, sustained by lessee or other persons for any reason including any damage caused by defects now in the premises or hereafter occurring in them or due to the building in which said demised premises are situate, or any part or appurtenances thereof becoming out of repair or caused by fire or rising from bursting or leaking of water, gas, sewer or steam pipes, or from any act or neglect of employees, co-tenants or other occupants of said building, or any other person, or due to the happening of any accident from whatsoever cause in and about said building.

Neither this lease nor the premises covered thereby nor any part hereof shall be sublet or assigned by lessee, or by operation of law or by death of lessee, or otherwise, without the written consent of the lessor, and in the event such written consent shall be so given, no other or subsequent assignment or assignments, or subletting, shall be made by such assignee or assignees or sublessee without previous consent of lessor first had and obtained in writing.

* Except as otherwise agreed in that certain Soil Spreading Agreement between the parties dated _____, 1992,

~~In the event the lessee hereunder desires to assign this lease the lessor reserves the right to make a charge for the assignment - provided lessor consents to said assignment -~~

* The lessor shall not be called upon to make any improvements or repairs of any kind upon said premises, and said premises shall at all times be kept in good order, condition and repair as aforesaid, by lessee, and shall also be kept in accordance with the laws of the State, County and City in which said premises is situated, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper officer of said city, at the sole cost and expense of said lessee and lessee shall keep the said premises in a clean, wholesome and safe condition in accordance with all directions of all proper officers of said City, County and State, and will perform all requirements of law, ordinance or otherwise, touching said premises; that lessee will permit no waste, damage or injury to said premises, and at its own cost and expense, will keep all drainage pipes free and open and will protect water, heating and other pipes so that they will not freeze or become clogged, and will repair all leaks, and will also repair all damages, caused by leaks or by reason of his failure to protect and keep free, open and unfrozen any of the pipes and plumbing on said premises.

The lessee will allow the said lessor, or its agent, free access at all reasonable times to said premises for the purpose of inspection or of making repairs to the premises or any property owned or controlled by lessor, but this right shall not be construed as an agreement on the part of the lessor to make any repair, all of such repairs to be made by the lessee as aforesaid.

In the event the lessee becomes voluntarily or involuntarily bankrupt, or if a receiver is appointed for the business of said lessee by any court, or if lessee seeks release under any of the Federal Moratorium Statutes, then this lease shall be void, if the lessor shall so elect.

In the event said premises shall be destroyed or damaged by the elements or earthquake or fire to such an extent as to render the same untenable in whole or in substantial part it shall be optional with the lessor to rebuild or repair the same; and after the happening of any such contingency, lessee shall immediately give written notice to lessor of such damage thereafter, the lessee shall have the right to declare this lease terminated by written notice served upon the lessor unless the lessor or its agents shall within thirty days after receipt of notice of destruction or damage from lessee notify the lessee in writing of lessor's intention to rebuild or repair said premises or the part so damaged as aforesaid, and if lessor elects to build or repair said premises lessor shall prosecute the work of such rebuilding or repairing without unnecessary delay, and during such period the rent of said premises shall be abated in the same ratio that the portion of the said premises rendered for the time unfit for occupancy shall bear to the whole of said leased premises.

~~It is further provided and agreed that, in the event the buildings located on the property herein described and leased shall be destroyed or damaged by fire, earthquake or other casualty (even though said premises hereby leased shall not be affected by fire, earthquake or other casualty) to such an extent that in the opinion of lessor it shall not be practicable to rebuild or repair, then it shall be optional with lessor to terminate this lease by written notice served on lessee within thirty days after such destruction or damage.~~

It is further mutually covenanted and agreed between the parties hereto that no waiver by lessor of the breach by lessee of any covenant, agreement, stipulation or condition of this lease shall be construed to be a waiver of any succeeding breach of the same covenant, agreement, stipulation or condition of a breach of any other covenant, agreement, stipulation or condition; also that all the covenants, stipulations, conditions and agreements herein contained shall extend to and be binding on the heirs, executors, administrators, successors and assigns of the parties hereto.

~~It is understood and agreed that all rents accruing for commercial advertising signs on the above property shall be payable to the lessor and such portions of said property that could advantageously be used for commercial signs without in any way interfering with the operation or the proper conduct of the business is automatically excluded from the terms of this lease and the lessee herein agrees to such exclusion.~~

~~The lessee agrees that he will not display on the premises or in the windows or doors of the premises herein leased, or upon any exterior part of the building, any signs, symbols or advertising matter without the permission of lessor, in writing first had and obtained.~~

The said lessee will not carry any stock of goods, or do anything in or about said premises which will in any way tend to increase the insurance rate on said premises.

It is expressly agreed that the lessee shall not sell, give away or otherwise dispose of intoxicating liquors upon said premises.

The lessee agrees to pay for all light, heat, power, gas, telephone, water and sewer charges used in or charged against said premises during the term of this lease.

~~The lessee shall not make any alterations, additions or improvements in said premises, without the consent of lessor in writing first had and obtained and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of lessee, and shall become the property of the said lessor, and shall remain in and be surrendered with the premises as a part thereof at the termination of this lease, without disturbance, molestation or injury, and free of all mechanics' liens and encumbrances of any nature whatsoever, and lessee hereby assigns to the lessor, any right, title, or interest which he has or acquires in any equipment placed on the premises as additional lease deposit, to be held by the lessor for the full and faithful performance of this lease.~~

~~The lessor shall have the right to conspicuously place on the premises and maintain "For Sale" signs at any time, and "For Rent" signs for a period of thirty days prior to the expiration of this lease, and to show the premises to prospective tenants or purchasers at all reasonable times.~~

~~Lessee agrees that this lease may be cancelled at any time by the lessor by lessor giving the lessee thirty (30) days written notice, and in such event lessor agrees to pay to the lessee the sum of ten dollars as compensation to lessee for such cancellation, which lessee agrees to accept in full satisfaction therefor, and lessee shall have no other right or remedy, except that lessor shall return to lessee the lease deposit hereinabove mentioned, less any accrued unpaid rentals or other accounts receivable, at the time the lessee surrenders the premises and delivers the keys to the premises to the lessor.~~

If for any reason the lessee continues in possession of the herein described premises after the expiration or termination of this lease, then the lessee shall hold possession of said premises from month to month under the same terms and conditions as herein set forth, except that the rental shall be increased by 50%. This agreement may not be modified or cancelled and no provisions herein contained may be waived, except by written instrument executed by lessor.

If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if lessee shall violate or default in any of the covenants, agreements, stipulations or conditions herein, then it shall be optional for the lessor to declare this lease forfeited and the said term ended, and to re-enter said premises, with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and the lessor shall not be liable for damages by reason of such re-entry or forfeiture; or the lessor may elect to continue this lease in full force and virtue, notwithstanding any breach or default on the part of the lessee, and may nevertheless re-enter said premises if abandoned by the lessee, and remove all persons or chattels therefrom, and shall not be liable for any damage by reason thereof, and may rent or re-rent said premises to others and apply the rentals upon the amount due and to become due hereunder and the lessee shall be liable for any balance of rentals accruing under the terms of this lease and remaining unpaid for the balance of the term.

In the event of any retaking of possession of the premises by Lessor as herein provided, Lessee shall remove all personal property located thereon, and, upon failure to do so, the Lessor may remove and store the same in any place selected by Lessor, including but not limited to a public warehouse, at the expense and risk of Lessee. If Lessee shall fail to pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Lessor may sell any or all of such property at public or private sale and shall apply the proceeds of such sale first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money which may be due from Lessee to Lessor under the terms of this lease, and the balance, if any, to Lessee.

Lessee hereby waives all claims for damages that may be caused by Lessor's lawfully removing and storing the property of Lessee as herein provided, and will save Lessor harmless from loss, costs, or damages occasioned Lessee thereby; and no such lawful re-entry shall be considered or construed to be a forcible entry.

Any notice required to be served in accordance with this lease or under any statutes governing this lease shall be sent by certified mail, the notice from the lessee to be sent to the lessor at its principal office in this state, and the notice from the lessor to be sent to lessee at the premises hereinbefore described.

The words "Lessor" and "Lessee" wherever and whenever used herein, though expressed in the singular number, shall nevertheless be taken to apply to the persons, one or more, male or female, and to the firms or corporations, though plural in number respectively, as the same may be described as lessor or lessee hereinabove, and all pronouns used herein and referring to said parties shall be construed accordingly, regardless either of number or gender thereof.

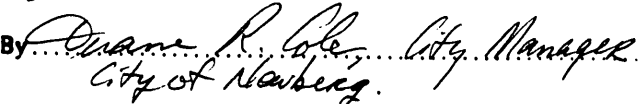
Nothing in this agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this agreement and any material statute, law, public regulation, or ordinance, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements. Lessee shall be responsible for and agrees to indemnify Lessor, its agents, employees, shareholders, subsidiaries and affiliated entities and hold the same harmless from and against any liability, claim or damage (including attorney's fees) attributable or alleged to have been attributable, directly or indirectly, to the Lessee's use or occupancy of the leased premises, or to the business or activities conducted therefrom by or on behalf of the Lessee, the Lessee's agents, employees, licensees or invitees, unless said liability, claim or damage is attributable to the sole negligence of the Lessor, its agents, employees, subsidiaries or affiliated entities.

The Lessee acknowledges that the making, execution and delivery of this agreement has not been induced by any representations, statements, warranties or agreements other than those herein expressly set forth.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year in this instrument first above written:

TIME OIL CO.

..... Lessor

By ..... City Manager.....
City of Newberg..... Lessee