

W. H. a.

AGENDA COVER MEMORANDUM

Agenda Date: June 29, 2005

DATE: June 15, 2005
TO: Board of County Commissioners
DEPARTMENT: Management Services
PRESENTED BY: Jeff Turk, Property Management Officer

SUBJECT: ORDER/IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1, LLC AND AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON DEPT. OF ENVIRONMENTAL QUALITY TO EFFECT THE LEASE, TRANSFER AND ENVIRONMENTAL CLEANUP OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)

1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE A LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1 LLC AND AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON DEPT. OF ENVIRONMENTAL QUALITY TO EFFECT THE LEASE, TRANSFER AND ENVIRONMENTAL CLEANUP OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)
2. **ISSUE/PROBLEM:** The county has been awarded a grant from the EPA to cleanup the subject property. Pursuant to previous Board direction, staff has been negotiating agreements with Sequential Retail Station #1, LLC (SQ) for the lease and eventual purchase of the property and with the Oregon Dept. of Environmental Quality (DEQ) to act as the county's contractor to complete the cleanup. The agreements are substantially complete and the Board's authorization to execute them is being requested.

3. **DISCUSSION:**

3.1 Background

The county acquired the subject property through tax foreclosure in September, 2004. The property was formerly a gas station and was identified as containing substantial petroleum contamination in the soil and groundwater. The DEQ estimated cleanup costs could exceed \$200,000.

SQ, a private for profit company which markets bio-diesel fuel, contacted the county prior to the foreclosure to inquire about a partnership with the county to cleanup and purchase the subject property. The DEQ was contacted as well. The basic proposal was for the county to apply to the EPA for a cleanup grant for \$200,000 which requires a 20% match. SQ would contribute \$50,000 towards the cleanup which would include the county's 20% match (\$40,000). SQ would lease the property from the county during the estimated 2 year cleanup period (grant funds must be expended within 2 years) and develop the property as a retail fueling station for bio-diesel fuels. Upon completion of cleanup activities the county would transfer ownership of the property to SQ. In addition, SQ would enter into a Prospective Purchaser Agreement (PPA) with the DEQ which would note SQ's responsibilities during the cleanup and remove liability for the existing contamination. The county would also enter into an intergovernmental agreement (IGA) with the DEQ to act as the county's consultant/contractor for cleanup of the property.

In November 2005, the Board authorized applying for the EPA grant with the understanding of the partnership with SQ and the DEQ as noted above

The county was awarded the EPA grant for an amount of \$197,520. Documents to finalize the grant need to be signed by the county and forwarded to the EPA (authorization for the CAO to sign those documents has already been granted by the Board in the Order authorizing the grant application). County, DEQ and EPA staff are in the process of finalizing those documents which will be submitted to the EPA by the end of June. EPA expects funds to be available by September 15, 2005.

To summarize, three separate agreements (exclusive of the EPA grant) will be used to effect the lease/transfer and cleanup of the property:

- a. Lease/Purchase agreement between SQ and the County
- b. Perspective Purchaser agreement between SQ and the DEQ
- c. IGA between the County and the DEQ.

All three agreements need to be in effect in order for SQ to occupy the property and begin its development and for cleanup work to commence (some cleanup work can begin using SQ's \$50,000 prior to availability of EPA grant monies)

3.2 Analysis

Lease/Purchase Agreement: The lease portion of the agreement would be for a term through December 1, 2007 to coincide with the term of the EPA grant and the expected completion of cleanup actions. The agreement contains typical language requiring SQ to indemnify the county, maintain liability insurance, payment of property taxes by SQ and provisions for default. It also provides for demolition of the existing improvement on the property (office and garage) and construction of new improvements by SQ. Consideration for the agreement is SQ's \$50,000 contribution for the cleanup which must be deposited with the DEQ within 60 days of execution. The Purchase portion of the agreement provides for the transfer of the property to SQ with a Quitclaim deed upon the sooner of completion of the cleanup, expenditure of grant funds or expiration of the 2 year period in which grant funds must be spent.

IGA: The IGA between the county and the DEQ will provide for the DEQ to act as the county's contractor for completing the cleanup and outlines the work to be performed. The DEQ will be responsible for securing subcontractors, overseeing the project and generating reports for submittal to the EPA. The IGA provides for \$193,163 of grant funds to be paid to the DEQ for having the cleanup work performed (\$24,663 for DEQ oversight & contracting costs and \$168,500 directly to subcontractors for performing cleanup actions). All costs for the project must be itemized and invoiced to comply with EPA regulations. Approximately \$4,300 of the grant funds will go to the county as reimbursement for administering the EPA grant.

Having the DEQ act as the county's contractor for the cleanup work is advantageous as the DEQ has subcontractors under competitively bid State agreements to perform cleanup activities (the alternative would be for the county to seek bids for the work) and DEQ's direct involvement in the project will insure that cleanup actions will meet DEQ standards.

PPA: This is an agreement between the DEQ and SQ. The PPA addresses the cleanup measures to be taken, development of the property by SQ as a retail fueling station for bio-diesel and payment of \$50,000 by SQ for cleanup activities. Once signed, the PPA would absolve SQ from any liability for the existing contamination on the property.

EPA Grant: As the county is the grantee, it will be responsible for administering the grant. Requirements include processing invoices to access grant funds, submitting quarterly progress reports and general oversight of cleanup activities.

3.3 Alternatives/Options

- a. The Board can approve executing the lease/purchase agreement and IGA as presented.
- b. The Board can direct staff to negotiate other terms desired by the Board.

3.4 Recommendation

It is recommended that the agreements be approved as presented (option a.)

3.5 Timing

Upon execution of the agreements, SQ will occupy the property and begin redevelopment and the DEQ will initiate the first phase of cleanup actions.

4. **IMPLEMENTATION/FOLLOW-UP:** Upon approval by the Board, the agreements will be processed for execution by the County Administrator.
5. **ATTACHMENTS:**
 - Board Order
 - Lease/Purchase Agreement
 - IGA
 - Prospective Purchaser Agreement (PPA)

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1, LLC AND AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON DEPT. OF ENVIRONMENTAL QUALITY TO EFFECT THE LEASE, TRANSFER AND ENVIRONMENTAL CLEANUP OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)

WHEREAS Lane County acquired through tax foreclosure in September 2004 real property identified as Assessor's map # 18-03-10-10-03200 and

WHEREAS said real property has been identified as containing hazardous materials in the soil and ground water in the form of petroleum products and

WHEREAS Lane County has been awarded a grant from the federal Environmental Protection Agency to effect cleanup of said real property and

WHEREAS Lane County has identified SeQuential Retail Station #1, LLC to contribute \$50,000 in funds to cleanup activities and redevelop said real property as a retail fueling station for bio-diesel fuels and

WHEREAS said contribution and redevelopment will return said real property to the tax roll and provide economic development and

WHEREAS in consideration for said contribution Lane County will lease said real property to SeQuential Retail Station #1, LLC during cleanup activities and transfer title to said real property to them upon completion of cleanup activities and

WHEREAS Lane County wishes to have the Oregon Department of Environmental Quality act as the county's project manager for cleanup activities at said real property and

WHEREAS said real property was offered as a Sheriff's sale on February 14, 2005 with a minimum bid of \$20,000 and remained unsold at the close of said sale

IT IS HEREBY ORDERED that pursuant to ORS 275.200, ORS 275.275 and ORS 190.110, the County Administrator is authorized to execute a Lease/Purchase agreement with SeQuential Retail Station #1, LLC substantially similar to attached Exhibit "A" and is also authorized to execute an Intergovernmental Agreement with the Oregon Dept. of Environmental Quality substantially similar to attached Exhibit "B"

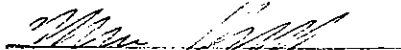
IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this _____ day of _____, 2005

Anna Morrison, Chair, Board of County Commissioners

APPROVED AS TO FORM

Date 6-20-05 Lane County,


OFFICE OF LEGAL COUNSEL

LEASE/PURCHASE AGREEMENT

This lease is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter "LESSOR", and SEQUENTIAL Retail Station #1 LLC a private for-profit corporation, hereinafter "LESSEE".

RECITALS:

- A. LESSOR is the owner of real property due to tax foreclosure located at 86714 McVay Hwy., Eugene, Oregon (premises). Said real property is more particularly described in attached Exhibit "A".
- B. Said real property was formerly a gas station. Releases of petroleum have occurred at and from the property resulting in soil and groundwater contamination.
- C. LESSEE can use said real property as a site for its business as an operator of a retail/commercial biofuel station.
- D. LESSOR has been awarded \$197,520 in Brownfield Cleanup Grant funds from the Environmental Protection Agency (EPA) to clean up the hazardous materials on the premises. Said grant funds would require a 20% match of funds from LESSOR.
- E. LESSEE is also willing to contribute funds towards the cleanup of the premises
- F. LESSOR is willing to lease and transfer title to said real property to LESSEE pursuant to the following terms and conditions:

SECTION 1. AGREEMENT TO LEASE

1.1 LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the Premises on the terms and conditions set forth below.

SECTION 2. TERM

2.1 The term of this lease shall begin upon full execution by both parties and shall continue until midnight December 1, 2007 unless it is sooner terminated as provided in this lease.

2.2 This agreement shall not be effective until a Prospective Purchaser Agreement for the leased premises has been fully executed between LESSEE and the Oregon Dept. of Environmental Quality (DEQ) and an Intergovernmental Agreement between LESSOR and the DEQ has been fully executed. Said agreements are attached as Exhibits "B" and "C" respectively.

Exhibit "A"

SECTION 3. CONSIDERATION

3.1 Consideration for this Agreement shall be LESSEE'S financial contribution to cleanup of the Property as described in Section 15.

SECTION 4. USE OF PREMISES

4.1 LESSEE shall use the Premises for the operation of its business as a operator of a retail/commercial biofuel station provided that said use is consistent with terms set forth in a Prospective Purchaser Agreement (PPA) which LESSEE shall obtain from DEQ prior to commencing any use of the property, and is also consistent with the terms of the EPA grant LESSOR has or may obtain.

4.2 LESSOR has been awarded a grant from the Environmental Protection Agency for the cleanup of hazardous materials present on the Premises. LESSOR, LESSEE and the Oregon Dept. of Environmental Quality (DEQ) will be cooperating with each other to clean up the property pursuant to the terms of the grant and other agreements between the parties. LESSEE shall give its full cooperation to LESSOR and DEQ in facilitating clean up of the Premises. Such cooperation shall include, but not be limited to, providing access to the Premises to LESSOR, DEQ and or/their agents for the purposes of conducting site assessments, obtaining soil samples, installing equipment for removal of hazardous waste and/or monitoring of said waste.

SECTION 5. TAXES AND ASSESSMENTS; UTILITIES

5.1 Payment by LESSEE. LESSEE shall pay before delinquency all real and personal property taxes, general and special assessment, and other charges of every description levied on or assessed against the Premises including the land and improvements thereon and personal property of LESSEE. LESSEE shall make all such payments directly to the taxing authority. If any such tax, assessment or charge may be paid in installments, LESSEE may elect to do so as long as each installment together with interest is paid before it becomes delinquent.

5.1.1 LESSEE shall notify the county Tax Assessor that LESSEE will be responsible for payment of property taxes and provide the Assessor with an address for mailing of property tax statements.

5.2 Right to Contest. LESSEE may contest in good faith the validity or amount of any tax, assessment or charge in accordance with the procedures established by statute or administrative rule for such contest so long as the Premises are not subjected to any lien as a result of the contest. LESSEE may prosecute such contest in the name of LESSOR

Exhibit "A"

as LESSOR'S attorney in fact. All tax contests shall be at the sole expense of LESSEE. Any return or rebate from any taxing authority on account of any tax or assessment which was originally paid by LESSEE shall be the sole property of LESSEE.

- 5.3 Substitute Taxes. For purposes of paragraph 5.1 "real property taxes" include any tax levy or assessment enacted after the date of this lease in substitution for all or part of ad valorem real property taxes LESSEE would have been obligated to pay under paragraph 5.1, the purpose of which is more closely related to that of an ad valorem or use tax than to an income tax on LESSOR'S income, or any other tax, levy, assessment, imposition or charge measured by or based upon the Premises and imposed upon LESSOR. All such taxes shall be paid by LESSEE as provided above.
- 5.4 Proof of Compliance. LESSEE shall furnish to LESSOR receipts or other proof of payment of taxes and assessments within 30 days of making payment.
- 5.5 Utilities. LESSEE shall pay when due all charges for electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the Premises.

SECTION 6. CONSTRUCTION/MAINTENANCE OF IMPROVEMENTS

- 6.1 LESSEE, at LESSEE'S sole expense, may construct improvements on the Premises necessary to conduct its business. LESSEE shall obtain and pay for all necessary land use approvals, permits or any other governmental (federal, state or local) permit or approval required prior to construction and throughout the term of this lease. LESSOR, in its capacity as the landowner, shall cooperate with LESSEE in obtaining such approvals and permits. Such cooperation shall include signing all applications and other documents requested by LESSEE that may reasonably be related to such matters, provided that LESSOR approves the form and substance of all such documents. Such approvals shall not be unreasonably withheld. All costs and expenses incurred with respect to such approvals shall be paid by LESSEE.
- 6.2 Maintenance/Alterations. LESSEE shall be responsible for maintaining the Premises and all improvements in good condition and repair throughout the term of this lease, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and ordinances of federal, state, county, municipal or other governmental agencies having or claiming jurisdiction. LESSEE shall be responsible for all alterations and remodeling to the improvements made during the lease term. All such work shall be done in a good and skillful manner in compliance with all applicable building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having, or claiming to have, jurisdiction. Said maintenance includes water, sewerage and drainage lines serving the Premises. LESSEE shall also be responsible for maintenance of the grounds – mowing, weed control and similar activities.

Exhibit "A"

- 6.3 **Reconstruction After Damage.** If any building or other improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the lease term, with the cost to repair said damage being 50% or greater of the improvement's value, it shall be at the option of the LESSEE whether or not to repair said damage. Damage which is less than 50% of the value of the improvements shall be repaired by LESSEE. Notwithstanding the aforesaid, LESSEE shall be liable to repair, replace, or otherwise remediate any damage to the Premises during the term of this agreement unless said damage was caused by LESSOR.

SECTION 7. OWNERSHIP OF THE IMPROVEMENTS

- 7.1 All improvements on the Premises constructed by LESSEE shall be deemed as owned by LESSEE until expiration or sooner termination of this lease. Except as provided for in Section 7.2 and except for transfer of the Premises pursuant to Section 15 of this agreement, all improvements located on the Premises at the expiration or sooner termination of this lease shall become the property of LESSOR, free and clear of all claims of LESSEE or anyone claiming under LESSEE, and LESSEE shall indemnify and defend LESSOR, its Commissioners, officers, employees and agents, against all liability and loss arising from such claims. LESSOR may require LESSEE, at LESSEE's expense, to remove LESSEE constructed improvements upon expiration or sooner termination of this lease.
- 7.2 LESSEE shall have the option of removing the improvements from the Premises upon expiration or sooner termination of this lease. If LESSEE chooses to remove the improvements from the Premises it shall notify LESSOR in writing not less than ninety (90) days prior to expiration of the lease. If this lease is terminated prior to its expiration, LESSEE shall notify LESSOR in writing within sixty (60) days of said termination whether it wishes to remove the improvements from the Premises. LESSEE shall remove all improvements from the premises within 90 days of the lease's expiration or termination if it has chosen to remove the improvements.
- 7.3 LESSEE, with prior consent from LESSOR which shall not be unreasonably withheld, and at LESSEE's sole expense, may demolish or otherwise remove existing improvements on the Premises. LESSEE shall obtain all necessary permits and regulatory approvals prior to said demolition or removal.

SECTION 8. ASSIGNMENT; SUBLETTING

8.1 Assignment

- 8.1.1 LESSEE shall not assign or otherwise transfer LESSEE'S interest in this lease or the estate created by this lease without the prior written consent of LESSOR which shall

Exhibit "A"

not be unreasonably withheld. No consent in one instance shall remove the requirement for consent in any subsequent instance.

- 8.1.2 For purposes of this section 8.1, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of LESSEE, or of the interest of any general or joint venture partner or syndicate member or co-tenant if LESSEE is a corporation, partnership, joint venture, syndicate or co-tenancy, which shall result in changing the control of LESSEE shall be construed to be an assignment of this lease and shall require LESSOR's consent to any such assignment.
- 8.1.3 The terms of any assignment, whether or not the assignment requires the consent of LESSOR, shall include a covenant by the assignee that it assumes and agrees to pay and perform all of LESSEE'S obligations under this lease. No assignment shall release LESSEE of its obligations under this lease unless LESSOR so agrees in writing.
- 8.2 Right to Sublet. Provided that a sublease of the Premises is permitted by any agreement LESSEE has entered into with the Oregon Department of Environmental Quality (DEQ) and provided that any sublease will not cause LESSOR to lose its immunity from liability for existing contamination on the Premises, LESSEE may sublease a portion of the Premises or improvements thereon with prior approval from LESSEE which shall not be unreasonably withheld. However, no sublease will be approved which will cause the Premises to no longer be used for the marketing and distribution of biofuels by LESSEE.

SECTION 9. INSURANCE; INDEMNIFICATION; LIENS

- 9.1 Fire and Hazard Insurance. LESSEE shall throughout the lease term keep the construction and all buildings on the Premises insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance shall not be less than the replacement cost of the insured improvements and shall also be sufficient to prevent LESSEE from becoming a co-insurer under the provisions of the policies. LESSOR shall not carry any insurance that would result in a reduction of the protection of payment to LESSEE under any insurance described above.
- 9.2 Proceeds of Fire and Hazard Insurance
 - 9.2.1 The proceeds of the policies described above shall be used to repair, restore and replace any damaged or destroyed improvements. LESSOR shall cooperate fully with LESSEE to obtain the largest possible recovery but LESSOR shall have no expense or cost in that connection.
 - 9.2.2 If LESSEE chooses not to repair, restore, replace or reconstruct any damaged or destroyed improvements as provided for in paragraph 6.3, the insurance proceeds shall be used as follows:

Exhibit "A"

A. First to pay any property taxes owing on the real property, improvements, loans, mortgages or other debts incurred by LESSEE for which the funds were used to construct, remodel or repair the Premises.

B. Second, to repay loans, mortgages or other debts incurred by LESSEE in which the improvements were used as security

C. Third, to raze and/or otherwise remove the damaged improvements from the Premises.

D. Fourth, to pay claims of third parties for damage to or loss of equipment used in connection with the environmental clean up of the Premises .

E. Fifth, to LESSEE.

9.2.3 All policies of insurance required by paragraph 9.1 shall provide that the proceeds shall be paid to LESSEE and the proceeds shall be deemed to be held in trust by LESSEE for the uses and purposes required by this lease.

9.3 Public Liability Insurance. LESSEE shall procure and continuously maintain during the term of this lease public liability and property damage insurance with limits of \$1 million per occurrence. The insurance shall specifically provide coverage from risks from underground hazards and explosions and collapse. The insurance shall be in a form sufficient to protect LESSOR and LESSEE against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises or LESSEE'S failure to perform the terms of this lease. Lane County, its commissioners, officers, agents, and employees shall be named as additional insureds.

9.3.1 LESSEE shall secure insurance to cover costs associated with the release of hazardous materials on the premises by LESSEE, its employees, agents, contractors or invitees. Said costs shall include, but not be limited to, cost of cleanup and any liability resulting from the release of hazardous materials.

9.4 General Insurance Provisions. All policies of insurance which LESSEE is required by this lease to carry shall:

9.4.1 Provide that the insurer waives the right of subrogation against LESSOR and that any loss shall be payable notwithstanding any negligence or affirmative act of LESSOR.

9.4.2 Be issued by a responsible insurance company which is licensed to practice in the State of Oregon.

Exhibit "A"

9.4.3 Be primary policies

9.4.4 Be evidenced by certificates furnished to LESSOR bearing endorsement requiring ten (10) days' written notice to LESSOR prior to any change or cancellation of the policies.

9.5 Indemnification. LESSEE shall indemnify, hold harmless and defend LESSOR, its commissioners, officers, employees and agents from any and all claims, losses, damages, expenses and liability arising out of or related to LESSEE's possession of the Premises or any activity of LESSEE, its employees, contractors, agents or invitees upon or related to the Premises, or LESSEE'S failure to perform the terms of this lease.

9.6 Liens. LESSEE shall pay as due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any claims, liens, encumbrances and security interests of any nature and shall indemnify, defend and hold harmless LESSOR from the imposition of any such claims, liens, encumbrances and security interests. If LESSEE fails to pay any such claims or to discharge any lien, LESSOR may do so and collect the cost as additional rent or a separate charge to LESSEE. Any such payment by LESSOR shall bear interest at the prime rate as published in the Wall Street Journal plus 3 points per annum from the date expended by LESSOR and shall be payable on demand. Such action by LESSOR shall not constitute a waiver of any right or remedy which LESSOR may have on account of LESSEE'S default.

9.6.1 LESSEE may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as LESSOR'S property interests are not jeopardized. If a lien is filed as a result of nonpayment, LESSEE shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with LESSOR cash or sufficient corporate surety bond or other surety satisfactory to LESSOR in an amount sufficient to discharge the lien plus any reasonably anticipated costs, attorney fees and other charges that could accrue as a result of a foreclosure of sale under the lien.

9.7 Environmental Hazards: LESSEE shall not dispose of, permit the escape of, introduce or release onto or beneath the surface of the Premises any hazardous substance or contaminant.

9.7.1 Hold Harmless: LESSEE shall indemnify, defend and hold LESSOR, its commissioners, officers, agents and employees harmless from and against all removal, remediation, containment and other costs caused by, arising out of, or in connection with the handling, storage, discharge, transportation or disposal of any hazardous substance or contaminant brought to, placed on, used at or generated on the Premises by LESSEE.

Exhibit "A"

9.7.2 Existing Contamination: Due to LESSOR acquiring the Premises through tax foreclosure, LESSOR has protection under State and Federal laws from liability associated with existing contamination on the Premises. LESSEE shall indemnify, defend and hold LESSOR, its commissioners, officers, agents and employees harmless from any liability, damages or claims, and against all removal, remediation, containment and other costs associated with the contamination and hazardous materials existing on and in the soil of the Premises at the time this lease agreement was executed if LESSEE'S use or occupation of the Premises causes LESSOR to lose its protection from liability.

SECTION 10. CONDEMNATION

10.1 If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Premises or a portion sufficient to render the Premises unsuitable for Lessee's use, then either party may elect to terminate this lease effective on the date that possession is taken by the condemning authority. All condemnation proceeds attributable to the land resulting from either a partial or total taking shall belong to LESSOR, and LESSEE shall have no claim against LESSOR or the condemnation award because of the taking. All condemnation proceeds attributable to the improvements shall belong to LESSEE and shall be disbursed in the following order of priority:

- a. To pay any real and personal property taxes or other assessments which may be a lien on the Premises.
- b. To pay any other liens on the Premises incurred by LESSEE.
- c. To LESSEE.

Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt.

SECTION 11. DEFAULT

Each of the following events shall be a default by LESSEE and a breach of this lease:

11.1 Performance Failures. Failure of LESSEE to pay the required consideration for this agreement or to perform any other term, condition or covenant of this lease within twenty (20) days after written notice from LESSOR specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the twenty (20) day period, the failure shall not be a default if LESSEE begins correction of the failure within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

Exhibit "A"

- 11.2 Attachment. Attachment, execution, levy or other seizure by legal process of any right or interest of LESSEE under this lease if not released within thirty (30) days.
- 11.3 Bankruptcy. An assignment by LESSEE for the benefit of creditors, the filing by LESSEE of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of LESSEE'S operations on the Premises for any reason. For purposes of this paragraph the term "bankruptcy" includes all arrangements and chapters in the Bankruptcy Code.
- 11.4 Failure of LESSEE to use the Premises as a site for distributing, selling and marketing biofuels within twelve (12) months of execution of this agreement or failure to use the premises as stated above for four (4) consecutive months after the first year of this agreement.

SECTION 12. REMEDIES ON DEFAULT

- 12.1 In case of default as described in section 11, LESSOR shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law.
- 12.1.1 LESSOR may terminate the lease and retake possession of the Premises. All of LESSEE'S rights in the Premises and in all improvements on the Premises shall terminate as of the date of termination, however LESSEE shall have the option of removing the improvements pursuant to section 7.2. Promptly after such notice LESSEE shall surrender and vacate the Premises and all improvements broom clean and in good condition. LESSOR may reenter and take possession of the Premises and of all improvements and eject some or all parties in possession. Termination under this paragraph shall not relieve LESSEE from the payment of any sum then due to LESSOR or from any claim for damages previously accrued or then accruing against LESSEE.
- 12.1.2 LESSOR may recover damages caused by LESSEE'S default which shall include an amount equal to rentals lost because of the default, lease commissions paid for this lease, and the unamortized cost of any LESSEE improvements installed by LESSOR to meet LESSEE'S special requirements. LESSOR may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently occurring. LESSOR may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease. Such damages shall be measured by the difference between the rent under this lease and the reasonable rental value of the Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.
- 12.1.3 LESSOR may make any payment or perform any obligation which LESSEE has failed to perform, in which case LESSOR shall be entitled to recover from LESSEE upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of

Exhibit "A"

one-and-one-half percent per month. Any such payment or performance by LESSOR shall not waive LESSEE'S default.

- 12.2 In the event of a termination LESSOR shall be entitled to damages for the reasonable cost of: re-entry and re-letting, including the cost of any cleanup, broker's or finder's fees and attorney fees.

SECTION 13. SURRENDER ON TERMINATION

- 13.1 Surrender. Except as provided for in Section 7, upon expiration of the lease term, or any renewal term, LESSEE shall surrender possession of the Premises to LESSOR, including all improvements then located on the Premises, free of occupants and broom clean, all in good condition except for reasonable wear and tear since the last necessary restoration, repair or reconstruction made by LESSEE pursuant to this lease. All property that LESSEE is required to surrender shall become LESSOR'S property at the date of expiration of this lease. All property that LESSEE is not required to surrender, but that LESSEE does abandon shall, at LESSOR'S election, become LESSOR'S property on the date of expiration or termination of this lease.
- 13.2 Holdover. Failure by LESSEE to vacate the Premises at the time specified in this lease shall not constitute a renewal or extension or give LESSEE any rights in or to the Premises or any improvements. Upon such a holdover, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the failure or delay of LESSEE to timely surrender the Premises including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE'S failure to so surrender.
- 13.3 Force Majeure. If the performance by either of the parties of their respective obligations under this Agreement (excluding monetary obligations) is delayed or prevented in whole or in part by any legal requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind.

SECTION 14. MISCELLANEOUS

- 14.1 Nonwaiver. Waiver by either party of strict performance of any provision or term of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision.
- 14.2 Modifications: Any modifications or changes to this agreement must be in writing and executed by both parties.

Exhibit "A"

14.3 Notices. All written notices under this lease shall be effective on the earlier of actual receipt or two (2) days after deposit as registered or certified mail, return receipt requested, postage prepaid and addressed to LESSOR or LESSEE at the addresses stated below, or to such other address as either party may specify by notice to the other party:

LESSOR: LANE COUNTY
Property Management Division
125 E. 8th Avenue
Eugene, OR 97401

LESSEE: SeSequential Retail # 1 LLC
1900 Millrace Dr., Ste. 113
Eugene, OR 97403

14.4 Severability. The invalidity or illegality of any provision of this lease shall not affect the remainder of the lease.

14.5 No Waste: LESSEE shall not do or suffer any waste, damage or disfigurement to the premises or cause a nuisance.

14.6 No Third Party Beneficiaries: LESSOR and LESSEE are the only parties to this lease and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this lease.

14.7 Compliance With Applicable Law: LESSEE shall comply with all federal, state and local laws and ordinances applicable to its use of the Premises. Without limiting the generality of the foregoing, LESSEE expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973 (iii) the Americans with Disabilities Act of 1990, ORS 659A.142 and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

14.8 Governing Law. This lease and the party's rights under it shall be construed and regulated by the laws of the State of Oregon.

Exhibit "A"

SECTION 15. PURCHASE/TRANSFER OF OWNERSHIP

- 15.1 Intent to Transfer: It is the intention of LESSOR to transfer ownership of the Premises to LESSEE and it is LESSEE's intention to acquire ownership of the Premises from LESSOR.
- 15.2 Time of Transfer: LESSOR shall transfer ownership of the Premises to LESSEE, and LESSEE shall accept said transfer, at the sooner of;
- a) Completion of the environmental cleanup work on the Premises, the issuance of a "No Further Action" letter from the DEQ, or similar documentation from the DEQ stating required cleanup actions have been completed, and closure of the EPA grant;
 - b) Upon full expenditure of awarded Federal and State grant funds or expiration of period in which the grant funds must be expended, whichever is sooner, and closure of said grant. Said transfer shall occur regardless of whether the clean up of the property has been completed or whether a letter of "No Further Action" from the DEQ has been issued or not;
 - c) Upon full expenditure of any other Federal or State of Oregon grant funds, or expiration of period in which the grant funds must be expended, whichever is sooner, and closure of said grant. Said transfer shall occur regardless if the clean up of the property has been completed or if a letter of "No Further Action" from the DEQ has been issued;
- 15.3 Consideration for Transfer: As consideration for transfer of the Premises LESSEE shall contribute \$50,000 (Fifty Thousand Dollars) towards the cleanup of the Premises.
- 15.3.1 Within 60 days of execution of this Agreement, LESSEE shall deposit \$50,000 in the account described in the Prospective Purchaser Agreement (PPA) between LESSEE and DEQ dated _____ and by this reference incorporated herein. The deposited funds shall be used and drawn upon to pay costs associated with the cleanup of the Premises in conformance with said PPA and the Intergovernmental Agreement between LESSOR and DEQ dated _____.
- 15.3.2 If necessary, said \$50,000, or portions remaining thereof, shall continue to be used for the cleanup of the Premises after the Premises have been transferred to LESSEE.

Exhibit "A"

15.4 Form of Conveyance: LESSOR shall convey the Premises to LESSEE with a Quitclaim Deed. LESSOR shall deliver to LESSEE a recorded Quitclaim Deed within thirty (30) days from satisfaction of any of the conditions in Section 15.2. The Premises will be conveyed on an "as is, where is, with all faults" basis. LESSOR makes no warranties or guarantees pertaining to any matter concerning the Premises including, but not limited to, condition of title, ability to use the Premises for any particular purpose under land use laws and regulations, location of property lines or environmental condition of the Premises. Title insurance, if any, shall be at the option and expense of LESSEE. If LESSEE chooses to close the transfer using the services of an escrow company, LESSEE shall bear all costs associated with the closing.

SECTION 16 TERMINATION

16.1 This agreement, in addition to any other provisions for default or termination contained herein, may be terminated by LESSOR upon 30 days written notice to LESSEE if any of the following occur;

- a) LESEE's expiration, default or termination of its Prospective Purchaser's Agreement with DEQ.

- b) Any other event that would cause LESSOR to become liable for existing contamination on the Premises due to the presence or actions of LESSEE.
- c) LESSEE fails to abide by the terms of this agreement as set forth, described and conditioned in Section 11 hereto.

- d) If federal or state regulations or guidelines are modified, changed or interpreted in such a way that this agreement is no longer allowable or appropriate.
- e) Transfer of the property to LESSEE.

Exhibit "A"

LESSOR: LANE COUNTY

By: _____
William Van Vactor

Title: County Administrator

Date: _____

Pursuant to Board Order No. _____

STATE OF OREGON)
) ss
COUNTY OF LANE)

On _____, 2005 personally appeared William Van Vactor, County Administrator for Lane County, and acknowledged the foregoing instrument to be his/her voluntary act. Before me:

Notary Public for Oregon
My Commission Expires _____

LESSEE: SeQuential Retail # 1 LLC

By: _____

Title: _____

Date: _____

STATE OF OREGON)
) ss
COUNTY OF LANE)

On _____, 2005 personally appeared _____ and acknowledged the foregoing instrument to be his/her voluntary act. Before me:

Notary Public for Oregon
My Commission Expires _____

Exhibit "A"

EXHIBIT "A"

PROPERTY DESCRIPTION

Beginning at the Southeast corner of the A.H. Coryell Donation Land Claim No. 59, in Section 10, Township 18 South, Range 3 West of the Willamette Meridian; thence South 89° 43' 18" West 506.00 feet; thence North 17° 41' 30" West 926.80 feet to the intersection of the North line of County Road No. 1129 (Bloomberg Road) with the West line of Interstate 5 and the TRUE POINT OF BEGINNING of the following described tract of land; thence South 89° 56' 30" West 134.00 feet; thence North 18° 59' 10" West 207.78; thence North 89° 43' 20" East 138.77 feet to the Westerly right of way of Interstate 5; thence South 17° 41' 30" East along the Westerly right of way of Interstate 5 206.80 feet to the TRUE POINT OF BEGINNING, in Lane County, Oregon (map# 18-03-10-10-03200).

**INTERGOVERNMENTAL AGREEMENT
McVay Highway Biofueling Station Site Project**

This Agreement is between Lane County and the State of Oregon, acting by and through its Department of Environmental Quality (DEQ).

Lane County DATA	DEQ DATA
Project Officer: Jeff Turk Organization: Lane County, Property Mgmt. Department Address: 125 East 8th Avenue Eugene, OR 97401 Phone: (541) 682-4174	Project Officer: Jim Glass Department of Environmental Quality 750 Front Street NE, Suite 120 Salem, OR 97301 Phone: (541) 378-8240 x249

- Purpose** The purpose of the Agreement is to describe the roles and responsibilities of DEQ and Lane County with respect to cleanup actions at the McVay Highway Biofueling Station Site located at 86714 McVay Highway, Eugene, Lane County, Oregon (the Property) The legal description of the Property is set forth as Exhibit A to this Agreement. In general and subject to the terms and conditions set forth in this Agreement and all Exhibits, DEQ will conduct cleanup actions at the Property using DEQ's environmental contractors. Nothing in this Agreement obligates DEQ to conduct cleanup or take any other actions with respect to the Property other than according to the terms of this Agreement. In general and subject to the terms and conditions set forth in this Agreement and all Exhibits, the County will pay contract and oversight costs incurred by DEQ in carrying out cleanup actions pursuant to this Agreement. Nothing in this Agreement obligates the County to pay costs or take any other actions at the Property other than according to the terms of this Agreement.
- Background** The Property was operated as a gasoline service station from approximately 1976 until August 1991. In November 1990, Franko Oil Company, the Property owner and service station operator, filed a Chapter 7 bankruptcy action. The Property was subsequently sold by the bankruptcy estate. However, the Property has not been in productive use since August 1991. The Property was acquired by Lane County through property tax foreclosure in September 2004.

In March 1996, Lucky Sites LLC, the Property owner at that time, decommissioned and removed five underground storage tanks (USTs) at the site. USTs decommissioned were: one 5,000-gallon, one 7,000-gallon and one 12,000-gallon gasoline tanks, one 550-gallon waste oil tank and one 200-gallon heating oil tank. Soil and groundwater contamination from leaking USTs were detected during and after the decommission actions. Monitoring wells installed by Lucky Sites in 1997 revealed groundwater contaminated with petroleum hydrocarbons near and downgradient of the removed USTs. One monitoring well sample in 2000 revealed measurable free product. In March 2005, DEQ's Site Assessment Program performed a Site Specific Assessment (SSA) to further delineate contamination at the Property. Information from that Assessment will be used to plan, design, and implement cleanup actions conducted at the Property.

In October 2004, Lane County applied for a Brownfield Cleanup Grant from the US Environmental Protection Agency (EPA) for cleanup of the Property. In May 2005, Lane County was awarded a \$197,520 Brownfield Cleanup Grant by EPA. Lane County, with DEQ participation, has developed and submitted to EPA a McVay Highway Biofueling Station Site Project Corrective Action Work Plan detailing cleanup activities, timelines, and budget details. Lane County's Cooperative Agreement with EPA for implementation of the Cleanup Grant project is expected to be signed no later than September 30, 2005. The Cooperative Agreement Corrective Action Work Plan, identification number BF-XXXX-YY-Z, between EPA and Lane County is included as Exhibit B.

On [DATE], SeSequential Retail Station #1 LLC (SeSequential) and Lane County entered into a Lease/Purchase Agreement under which Lane County agreed to lease and ultimately convey to SeSequential and SeSequential agreed to lease and ultimately take title to the Property. The Lease/Purchase Agreement is set forth as Exhibit C to this Agreement and by this reference incorporated herein.

On [DATE] SeSequential entered into a Prospective Purchaser Agreement (PPA) with DEQ concerning SeSequential's Lease/Purchase of the Property. In the PPA, SeSequential agreed to participate in the cleanup of the Property, including providing funding for certain cleanup actions. The PPA is set forth as Exhibit D to this Agreement and by this reference incorporated herein.

In accordance with Oregon Revised Statutes (ORS) Chapters 465 and 466 and rules promulgated thereunder, the DEQ has the authority to investigate and remediate sites at which a release of hazardous substances, including petroleum, has occurred. This authority encompasses a wide range of activities including conducting or contracting for technical data gathering, performing investigations and analyses, and conducting or contracting for the removal and/or remediation of hazardous substances, hazardous wastes, and petroleum products where there has been or is a potential for release which could pose a threat to public health, safety, welfare or the environment.

DEQ has awarded Agreements to Agree ("ATAs") to multiple consultants. When the DEQ identifies specific projects requiring Environmental Services, it enters into Task Orders with individual consultants under the ATAs.

3. **Authority** DEQ has authority under Oregon Revised Statutes (ORS) 190.110 to cooperate by agreement with a unit of local government. DEQ has authority under ORS 465.200 *et seq.* to undertake (or authorize any other person to undertake) any removal or remedial action necessary to protect public health, safety, welfare and the environment.
4. **Effective Date and Duration** This Agreement is effective on June 15, 2005. Unless earlier terminated or extended, this Agreement will expire on September 30, 2007.
5. **Work to be Performed**

The County shall have no obligations to conduct any actions at the Property or provide any funds for actions at the property except as specifically set forth in this Agreement. In general, the parties agree that DEQ's contractor will prepare documents required for investigation and cleanup under DEQ's direction; DEQ will review and recommend approval of those documents; the County will give final approval to the documents; DEQ's contractor will implement the planned actions pursuant to the documents; DEQ will invoice the County for DEQ oversight and contractor costs for grant funded activities; and the County will pay the invoices as described below.

Cleanup actions at the Property will proceed in three Phases, as described in the Corrective Action Work Plan attached to this Agreement as Exhibit B. In general, the Parties intend that the work that will be completed under each Phase will be as described below

(a) Phase 1

Completion of a remedial excavation in the vicinity of the dispenser islands to remove approximately 300 cubic yards of petroleum contaminated soil. The petroleum contaminated soil is to be transported to an approved landfill or soil remediation facility. Sampling activities will be completed following removal of petroleum contaminated soil in accordance with a sampling and quality assurance plan and placement of clean fill material consistent with site redevelopment plans.

DEQ and Lane County intend that Phase 1 actions will be completed before the County enters into a Cooperative Agreement with EPA for the Brownfield grant funding awarded by EPA to Lane County. DEQ and the County intend that costs incurred by DEQ for Phase 1 actions will be subject to the reimbursement provisions of Subsection 2.A. (1) of the PPA between DEQ and Sequential. Unless DEQ and the County agree otherwise, such costs will not be subject to the reimbursement provisions of Paragraph 6 of this Agreement. Funds expended for Phase 1 actions will be expended pursuant to EPA's authorization of pre-award expenditures as described in Paragraph 11 of this Agreement. DEQ intends to review invoices submitted by subcontractors for Phase 1 work completed and recommend payment, pending concurrence from the County. Such expenditures will be considered as part of the funds required to match the Brownfield grant awarded by EPA to Lane County, unless the parties agree that such expenditures will be reimbursed from the awarded grant funds.

(b) Phase 2

Phase 2 actions, including the delivery schedule for such actions, are described in the Corrective Action Work Plan attached hereto as Exhibit B. All Phase 2 actions shall be in accordance with Exhibit B, and in general will include the following:

Preparation of a FS/CAP/ABCA as required by EPA.

Drilling of borings using a hollow-stem auger and completing each boring with the construction of either 2-inch monitoring wells or 4- to 6-inch recovery wells. A sufficient number of wells will be installed to determine the extent and magnitude of soil and groundwater contamination and to complete remedial actions on the property. Soil samples will be collected from each boring and analyzed by a commercial laboratory.

Surveying of monitoring wells by a professional surveying contractor to enable assessment of groundwater direction and gradient.

Completing eight quarters of groundwater monitoring using the existing monitoring well network at the time of the sampling event. Groundwater monitoring events will include collection of groundwater depth, field parameters such as temperature, pH and conductivity and discrete samples for analysis by a commercial laboratory.

Designing and construction of a dual-phase extraction or similar remedial system that will assist in the removal of free-phase and dissolved-phase product in the groundwater and soil vapors from the unsaturated zone. The design will include the collection, treatment and disposal of product and wastewater.

Completing operation and maintenance of the remediation system as needed to operate effectively over the life of the system.

Injecting oxygen (e.g. hydrogen peroxide or ozone) into the subsurface through existing wells or probe points to enhance biodegradation of residual contaminants and to promote natural attenuation.

Developing a conceptual site model and risk-based evaluation consistent with DEQ's guidance document *Risk-Based Decision Making* dated September 22, 2003. The evaluation will include a beneficial land and water use survey within the area of the locality of the facility.

Phase 2 actions will be undertaken only after Lane County finalizes a Cooperative Agreement with EPA for use of the Brownfield funds awarded by EPA to Lane County. Costs incurred by DEQ for Phase 2 actions will be paid pursuant to the reimbursement provisions of Section 6 of this Agreement.

(c) Phase 3

Continued operation and maintenance of the remediation system as needed to operate effectively.

Additional injections of oxygen (e.g. hydrogen peroxide or ozone) into the subsurface through existing wells or probe points to enhance biodegradation of residual contaminants and to promote natural attenuation.

Completing additional quarters of groundwater monitoring using the existing monitoring well network at the time of the sampling event. Groundwater monitoring events will include collection of groundwater depth, field parameters such as temperature, pH and conductivity and discrete samples for analysis by a commercial laboratory.

Phase 3 actions will be commenced only after the Cooperative Agreement between EPA and Lane County has been completed and grant funds awarded by EPA to Lane County have been expended. Costs incurred by DEQ for Phase 3 actions will be paid from the account established under Section 2.A. (1) of the PPA between DEQ and Sequential, or other funding sources that may be identified after the date of this Agreement. Such costs will not be subject to the reimbursement provisions of Paragraph 6 of this Agreement. The parties anticipate that this Agreement will be terminated before Phase 3 actions begin.

6. Consideration

The provisions of this section apply only to Phase 2 actions, as described in Section 5 of this Agreement.

(a) Lane County will reimburse DEQ for actual costs of work authorized by this Agreement. Actual costs will include all DEQ oversight costs (not to exceed \$24,663) and all contract costs and all other related direct costs incurred when conducting remedial actions at the site (not to exceed \$168,500). DEQ oversight activities to be reimbursed under this Agreement include the management of the environmental contractor, review and approval of work plans and reports generated during remedial actions, preparation of the staff report and associated Record of Decision, site visits, assisting Lane County with grant management and reporting as needed, and participation in public meetings.

(b) The maximum, not-to-exceed compensation payable to DEQ under this Agreement is **\$193,163**.

(c) Lane County will reimburse DEQ within 90 days of receipt of invoices for work completed. Invoices will be sent to:
Jeff Turk, Property Management Division
Lane County
125 East 8th Avenue
Eugene, OR 97401

7. Agreement Documents This Agreement consists of this document and the attached Exhibit A, Exhibit B, Exhibit C, and Exhibit D.

8. Subcontracts DEQ expects to use contractors for all of the work authorized by this Agreement.

9. Amendments The terms of this Agreement may not be waived or modified in any manner, except by written instrument signed by both parties and, if required, approved by the Oregon Dept. of Justice.

10. Termination This Agreement will terminate when the Cooperative Agreement between EPA and Lane County has been completed and all grant funds awarded by EPA to Lane County have been expended. This Agreement may also be terminated by mutual consent of both parties, or by either party upon 30 days written notice to the other party. This notice may be transmitted in person, by mail, facsimile, or Email. If this Agreement is terminated under this section, Lane County will pay DEQ for unpaid invoices and authorized expenses incurred under this Agreement but not yet billed. Except as provided in this section, upon termination of this Agreement, neither DEQ nor the County shall have any obligations under this Agreement with respect to the Property.

11. Funds Available and Authorized Lane County certifies at the time this Agreement is written that Lane County and EPA are negotiating a Cooperative Agreement to obtain sufficient funds to be available and authorized for expenditure to finance costs of this Agreement. Lane County's Cooperative Agreement Corrective Action Work Plan with EPA has been submitted to EPA. The Cooperative Agreement between Lane County and EPA is expected to be signed no later than September 30, 2005. Prior to June 30, 2005, Lane County and DEQ will work together to seek EPA authorization to conduct pre-award work within the period 90 days prior to September 30, 2005. Expenditures for pre-award work will be considered as match to the EPA grant, unless the parties agree the expenditures will be reimbursable from awarded EPA grant funds. Pending authorization by EPA by June 30, 2005 to conduct pre-award work, activities authorized by this Agreement may begin on signature by the parties until Lane County has secured the required funding under the EPA Cooperative Agreement.

12. Liability

(a) Subject to the limitations of Article XI Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS.30.260

Exhibit ``B``

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT
McVay Highway Biofueling Station Site Project**

DEQ Agreement # **RXXX-05**

Legal Description of Property

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PROSPECTIVE PURCHASER AGREEMENT

DEQ No.

BETWEEN: Oregon Department of Environmental Quality

AND: SeQuential Retail Station #1 LLC

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and SeQuential Retail Station #1 LLC (SeQuential) pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

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Attachment A – Legal Description of Property	

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1. RECITALS

A. The subject property (Property) is located at 86714 McVay Highway, Eugene, Lane County, Oregon. The legal description of the Property is set forth as Attachment A to this Agreement.

B. The site was formerly known as the Franko #15 service station, and operated as a gasoline service station until August 1991 when the operator and former owner filed Chapter 7 bankruptcy and the property was turned over to the bankruptcy estate. The property has not been in active use since August 1991; it was acquired by Lane County through property tax foreclosure on [DATE]. The service station building and canopy remain; however, the property is currently vacant and is not in active use.

C. Environmental concerns at the site include gasoline free product in groundwater and associated human exposure, health risks, and threat of migration of the plume to additional groundwater areas and surface waters, including the nearby Willamette River.

D. An initial site investigation was completed in April 1990. No reports exist from this site investigation but there are references to six borings being drilled and low levels of contamination being detected.

E. A second site investigation was completed at the site in August 1990. Four borings were drilled to depths of 20 to 31.5 feet. The locations of the borings were generally north and south of the gasoline tanks and dispenser islands. All soil samples collected from the borings detected TPH or gasoline concentrations below the site Soil

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Matrix Cleanup Level (i.e. 80 mg/kg). The samples collected at the 10 foot depth were also analyzed for BTEX compounds. Benzene was only detected in one sample, near the west dispenser island, at 1.43 mg/kg. The report indicates that groundwater was not encountered in any of the borings.

F. A complaint was received by the Oregon Department of Environmental Quality in February 1991 regarding gasoline in domestic water well for the residence (33556 Bloomberg Road) west of the property. The water well was sampled in May 1991 and analyzed for BTEX compounds. Benzene was detected at 3.3 ug/L, below the drinking water Maximum Contaminant Level of 5.0 ug/L. An additional water well sample was collected in June 1991 and also analyzed for BTEX compounds. Benzene was detected at 40 ug/L, well above the MCL of 5.0 ug/L. The residence was subsequently connected to a municipal water supply in July 1991.

G. Underground storage tanks at the former gasoline service station consisted of one 5,000-gallon, one 7,000-gallon and one 12,000-gallon gasoline tanks, one 550-gallon waste oil tank and one 200-gallon heating oil tank. All five underground storage tanks were decommissioned and removed by the former owner of the property in March 1996 from four separate excavations. Soil samples collected from the gasoline tank excavations detected gasoline-range petroleum hydrocarbons up to 1,800 mg/kg. No benzene was detected in any of the samples. Pit water was sampled and benzene was detected at 2,400 ug/L. Samples collected from the heating oil tank excavation did not detect any petroleum hydrocarbons. Samples collected from the waste oil tank excavation,

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directly adjacent to the west dispenser island, detected gasoline at 3,600 mg/kg and benzene at 20.2 mg/kg. A pit water sample from the waste oil tank excavation detected benzene at 630 ug/L.

H. Three monitoring wells were installed in January 1997. Initial samples were collected and analyzed for BTEX and the gasoline additives EDB and EDC. High concentrations of benzene were detected upgradient and downgradient of the sources at the site including 1,200 ug/L west of the former tanks and 33,000 ug/L southeast of the dispenser islands.

I. A limited soil investigation was completed in February 1999 which included the advancing of three probes near the center of the site. Gasoline was detected in one sample at 240 mg/kg. Groundwater samples were collected from the existing wells in March 1999. Free product was discovered (but not measured) in monitoring well MW-3. Three additional monitoring wells were installed and sampled in April 1999. Two new monitoring wells located downgradient had detections of benzene at 3,600 ug/L and 25,000 ug/L. In September 2000, the Oregon Department of Environmental Quality measured free product at the monitoring wells. Monitoring well MW-3 had measurable free product, at approximately 14.5 inches.

J. Lane County has been awarded grant funds in the amount of \$197,520 from the U.S. Environmental Protection Agency (EPA) to address contamination at the Property. Lane County will use the funds to conduct investigation monitoring and remedial actions in coordination with DEQ.

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K. Contaminants identified at the Property are benzene and gasoline in groundwater. These contaminants are "hazardous substances" within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a "release" of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a "facility" within the meaning of ORS 465.200. Removal or remedial action is necessary at the Property to protect human health and the environment.

L. On March 11, 2005, SeQuential applied to DEQ for entry of this Agreement, and agreed to reimburse DEQ's costs of technical review and agreement preparation.

M. SeQuential is an Oregon corporation and a "person" within the meaning of ORS 465.200(20). According to information provided by SeQuential, SeQuential is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

N. SeQuential agrees to perform the activities described in Section 2 of this Agreement at its expense. SeQuential will develop the Property as a fueling station, providing a retail outlet for biofuels. SeQuential also will contribute \$50,000 to be used for oversight, investigation and cleanup at the property. DEQ has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327 (1)(d).

O. Based upon the information submitted by SeQuential, DEQ has further determined that the proposed development activities at the Property will not contribute to

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or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property.

P. In determining to enter this Agreement, DEQ has consulted with Lane County and has considered reasonably anticipated future land uses at the Property and surrounding properties.

Q. SeQuential recognizes that implementation of remedial measures at the Property in the future might interfere with SeQuential's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. SeQuential will perform the following actions at its own expense:

(1) SeQuential will reimburse DEQ in the amount of \$50,000 for costs incurred by DEQ in conducting investigation and removal and remedial actions related to releases at the Property, and for DEQ oversight costs related to such actions. SeQuential shall reimburse DEQ only for DEQ costs incurred after the date that SeQuential is awarded a loan from the Oregon Economic and Community Development Department (OECDD).

(2) DEQ will invoice SeQuential beginning ninety (90) days after the OECDD loan is awarded to SeQuential for costs incurred by DEQ at the site after the date of the loan award. Thereafter, DEQ will invoice SeQuential every ninety (90) days. SeQuential agrees it will pay such invoices within thirty (30) days of receipt.

(3) Lane County has been awarded \$197,520 in grant funds as described in Paragraph 1.J. above. DEQ and SeQuential agree that funds provided by SeQuential to DEQ under this Agreement may be identified as funds that "match" the Brownfield grant

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awarded by EPA to Lane County. Notwithstanding the preceding sentence, DEQ, SeQuential and the County intend to seek other sources of funding or contributing actions that could be used to match the Lane County Brownfield Grant

(4) All funds provided by SeQuential to DEQ under this Agreement shall be used for investigation, removal, remediation and oversight costs at the site incurred by DEQ after the date of the OECDD loan awarded to SeQuential.

(5) DEQ will perform investigation and removal or remedial actions at the site, pursuant to the Intergovernmental Agreement (IGA) between DEQ and Lane County. DEQ's costs for such actions will be reimbursed by the County pursuant to the IGA, and by SeQuential pursuant to this Agreement.

(6) SeQuential will develop the Property into a fueling station, providing a retail outlet for biofuels. The facility will be developed with all required safeguards to assure the fueling station will not contribute to or exacerbate existing contamination at the site.

(7) SeQuential will coordinate site development activities with DEQ pursuant to Subsection 2.C. below to assure that development activities will be consistent with and not interfere with investigation and remedial actions that may be performed at the site. DEQ will plan and carry out investigation and removal actions to coordinate with SeQuential's site development actions to the greatest extent practicable.

(8) SeQuential will grant DEQ and its Contractors access to the property to perform continued and future remedial and monitoring activities of soil and groundwater beneath the site.

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(9) SeQuential will record and abide by any necessary restrictions on the use of the Property as described in Subsections 2.D., 2.E. and 3.C. below. Such use restrictions may include restrictions on the use of groundwater, restrictions on the location of structures on the property, and restrictions on the use of the Property for residential purposes.

B. Upon satisfactory completion of actions under Subsection 2.A. above by SeQuential, DEQ will provide a written notice that such measures have been completed. If DEQ issues a determination of No Further Action or a Certificate of Completion for the Property, such determination or Certificate shall serve as notice of completion of the remedial actions required under Subsection 2.A.

C. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination at the Property, SeQuential must notify DEQ before any material physical changes or disturbances are made to any area of the Property that is subject to use restrictions under Subsections 2.D., 2.E. and 3.C. At DEQ's request, SeQuential must submit for DEQ review and approval, any development, use, and building plans, or other similar and adequate documentation, for the proposed activities before any material changes or disturbances occur to any area of the Property that is subject to such use restrictions.

D. SeQuential shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that

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might affect the soils, groundwater, other contaminated media, or affect necessary investigative and/or remedial measures, to also submit development and/or construction plans to SeQuential for review by DEQ, pursuant to Subsection 2.C. of this Agreement.

This requirement is necessary to ensure that the actions of others do not exacerbate existing contamination. This review and approval requirement will expire upon the Property receiving an unconditional No Further Action determination or a Certificate of Completion from DEQ.

E. SeQuential shall record and abide by any necessary use restrictions on the Property, which restrictions, pursuant to ORS 465.327(5), shall run with the land. These restrictions are described in Subsection 3.C. of this Agreement. SeQuential shall also impose and abide by any use and/or deed restrictions on the Property required by the final remedy selected for the Property. The final remedy for the Property may incorporate, eliminate, or modify the restrictions in Subsection 3.C. of this Agreement. If the restrictions in Subsection 3.C. of this Agreement are incorporated into the final remedy, they will be restated as such and subject to public notice and comment requirements for proposed remedial actions. Any use restrictions contained in a final remedy selected or approved by DEQ after public participation will supersede the restrictions set forth in Subsection 3.C. of this Agreement.

F. Except as provided in Subsections 2.A.(1) – (5) above, nothing in this Agreement requires or obligates DEQ to take any action at the Property to address either current or future releases of hazardous substances at the Property.

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3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ shall provide review, approval/disapproval, and oversight as described in Section 2 and Subsection 3.F. of this Agreement. Where DEQ approval is required for any plan or activity under this Agreement, SeQuential shall not proceed to implement the plan or activity until DEQ approval is received. DEQ will make good faith efforts to conduct plan and activity review promptly so that any proposed development activities are not unduly delayed.

B. DEQ Access

(1) SeQuential grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement, or conducting removal or remedial measures DEQ deems necessary.

(2) SeQuential shall allow DEQ to inspect and copy all records in SeQuential's possession or control relating to measures undertaken at the Property under this Agreement. SeQuential shall preserve all such records for six (6) years after the effective date of this Agreement, and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) SeQuential may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents

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and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505. If SeQuential does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to SeQuential. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

C. Use Restrictions

After review of the sample data described above, DEQ may impose use restrictions and/or institutional controls on the Property. Such restrictions would be imposed only as necessary to prevent exposure to contaminated soil, surface water, vapors or groundwater that are contaminated, or to prevent exacerbation of existing contamination.

D. Notice

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

For DEQ:
Jim Glass
Department of Environmental Quality
750 Front Street NE, Suite 120
Salem, OR 97301
(503) 378-8240 x249

For SeQuential:
Ian Hill
SeQuential Biofuels
1900 Millrace, Suite 113,
Eugene, OR 97403
(541) 485-7994

E. Progress Reports

On a semi-annual basis upon commencement and continuing until completion of the development activities described in this Agreement, SeQuential shall submit to DEQ one (1) copy of a progress report describing its activities at the Property under this

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Agreement. DEQ anticipates that the progress report will not exceed two (2) pages in length. The progress report shall address, at a minimum, the following:

- (1) Activities undertaken by SeQuential at the Property during the previous reporting period;
- (2) Actions scheduled to be taken by SeQuential in the next reporting period;
- (3) Sampling and test results and any other data generated by SeQuential during the previous reporting period; and
- (4) A description of any problems experienced by SeQuential during the previous reporting period and the actions taken to resolve them.

F. Dispute Resolution

In the event of any disagreement between DEQ and SeQuential regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and SeQuential shall, in the following order:

- (1) Make a good faith effort to resolve the dispute between project managers;
- (2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and
- (3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Land Quality Division or Western Regional Division Administrator, and SeQuential. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.H. of this Agreement.

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G. Enforcement of Agreement and Reservation of Rights

(1) In the event of any failure of SeQuential to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. SeQuential reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) In addition, without limiting the foregoing, upon any failure of SeQuential to comply with any material obligation of this Agreement, DEQ may terminate this agreement by written notice; provided that before such termination: (a) DEQ initiates dispute resolution in accordance with Subsection 3.F., (b) DEQ gives SeQuential written notice of the deficiency describing what is necessary to correct the deficiency, and (c) SeQuential fails to cure the deficiency within 30 days of the notice, or conclusion of dispute resolution, whichever is later (or such longer period to which DEQ agrees in writing). Failure by DEQ to seek termination of this Agreement upon a failure of SeQuential to comply with any material obligation of this Agreement shall not constitute a waiver by DEQ of that or any other obligation. DEQ may not terminate this Agreement under Subsection 3.G.(2) during the pendency of any action to enforce or construe this Agreement.

(3) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and SeQuential reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

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(4) SeQuential does not admit any liability or violation of law by virtue of entering this Agreement.

(5) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

H. Waivers

(1) SeQuential waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) SeQuential waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement.

I. Hold Harmless and Indemnification

To the extent allowed under Oregon law, SeQuential shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of SeQuential or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by SeQuential or its agents in carrying out activities under this Agreement.

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J. Public Notice

(1) Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide SeQuential a draft of such notice and consider any comments by SeQuential on the draft notice, before publication. SeQuential is responsible for the publication costs, if any, of such notice.

(2) Before approval of any remedial action, DEQ will provide public notice and opportunity for comment on the proposed remedy in accordance with ORS 465.320.

K. Recording

(1) Within thirty (30) days of the date SeQuential receives an ownership interest in the Property, SeQuential shall submit a copy or original of this Agreement (whichever is required by the County) to be recorded in the real property records of Lane County, State of Oregon. SeQuential shall provide DEQ with written evidence of such recording within seven (7) days of recording.

(2) Upon any termination of this Agreement, DEQ may record, or require SeQuential to record, notice of such termination in the real property records of Lane County, State of Oregon.

L. Transfer of Interest

Until DEQ issues a No Further Action determination or a Certificate of Completion for the Property and SeQuential completes all obligations required under this Agreement,

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upon transfer of any interest in the Property, or a portion of the Property, from SeQuential to another person or entity, SeQuential shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by SeQuential of its obligations under this Agreement, SeQuential shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances described in Section 1 above at the Property existing as of the date of SeQuential's acquisition of its interest in or operation of the Property. SeQuential shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of its interest in or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

- (1) A release of hazardous substances at the Property after the date of acquisition of an interest in or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property
- (4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;
- (5) Violation of federal, state, or local law regarding hazardous substances;

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(6) Any ownership, operation, or release of hazardous substances at the Property by SeQuential before the effective date of this Agreement;

(7) Any ownership, operation, or other ground of liability of SeQuential for a release of hazardous substances at an off-site location affecting the Property; and

(8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.I of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter SeQuential's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

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6. EFFECTIVE DATE

This Agreement shall be effective upon signature by both parties and when SeQuential enters into the Lease/Purchase Agreement for the Property.

7. SIGNATURES

For SeQuential:

_____ Date: _____

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 2005 by _____ in his capacity as _____ of SeQuential Biofuels

NOTARY PUBLIC FOR OREGON
My Commission expires: _____

For DEQ:

_____ Date: _____

Alan Kiphut, Administrator
Land Quality Division
Oregon Department of Environmental Quality

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 2005 by Alan Kiphut in his capacity as Administrator of the Land Quality Division, Oregon Department of Environmental Quality.

NOTARY PUBLIC FOR OREGON
My Commission expires: _____

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Attachment A

**PROSPECTIVE PURCHASER AGREEMENT
McVay Highway Biofueling Station Site Project**

DEQ No.

DRAFT