

EXCAVATED MATERIAL DEPOSIT AGREEMENT

Date: _____

Contractor Information:

Name: _____

Owner: _____

License number: _____

Address: _____

This EXCAVATED MATERIAL DEPOSIT AGREEMENT (this "Agreement") is entered into between J.W. Underground Enterprises, Inc., an Oregon corporation ("JW Underground") and the above named Business and Owner (collectively, the "Contractor") as of the date first written above.

RECITALS

- A. JW Underground owns and operates a gravel pit, located at 1300 SE 190th Ave., Gresham, OR 97233 (the "Site").
- B. Owner is a licensed commercial contractor registered with the Oregon Construction Contractors Board and owner of Business.
- C. Contractor will lawfully excavate certain non-hazardous materials from the project sites described in the attached Exhibit A (collectively, the "Project"), and Contractor desires to deposit, and JW Underground has agreed to allow Contractor to deposit, such materials at the Site, on the terms and conditions of this Agreement.

Now therefore, for good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows.

AGREEMENTS

1. Authorized Materials.

Contractor may only deposit at the Site non-hazardous soil, rock, concrete rubble without rebar, and sand excavated from the Project ("Authorized Materials"). For the avoidance of doubt, Authorized Materials shall not include any of the following (collectively, "Explicitly Prohibited Materials"):

- a. Liquids;
- b. Trees, bushes, or other vegetation, including parts thereof;
- c. Wood or wood products, in any form;
- d. Road ditch cleanings;
- e. Metal, of any type and in any form (lead, copper, chromium, zinc, etc.) in soil;

- f. Glass or plastics, of any type and in any form;
- g. Biodegradable materials of any type;
- h. Polychlorinated biphenyls (“PCBs”);
- i. Polyfluoroalkyl substances (“PFAS”), including but not limited to perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS);
- j. Pesticides;
- k. Hazardous Materials (defined below);
- l. Sweeper truck spoils;
- m. Catch basin spoils.

JW Underground may reject any load proposed to be deposited at the Site by Contractor if, in its sole and absolute discretion, JW Underground suspects the presence of any Explicitly Prohibited Materials in such load.

2. Vacuum Trucks.

Vacuum Trucks (“Vac Trucks”) may not deposit any materials at the Site without prior authorization. Authorization will be granted to Vac Trucks requesting to deposit at the Site rock less than ¾ of an inch (¾- gravel), dirt, sand, clay, small native rock, and clean water (notwithstanding the prohibition on liquids set forth in Section 1). Small quantities of bentonite may be accepted, in JW Underground’s sole and absolute discretion.

3. Contaminants.

Without limiting the list of Explicitly Prohibited Materials set forth in Section 1, Contractor may not deposit at the Site Authorized Materials containing any contaminants above non-detect limits. Contractor agrees to comply with any testing requirements (including third-party certifications) imposed by JW Underground with respect to loads proposed to be deposited at the Site. If JW Underground, in its sole discretion, requires Contractor to obtain third-party certification that none of the material proposed to be deposited at the Site contains Hazardous Materials, then Contractor’s failure to obtain and provide accurate third-party certifications would be a breach of this Agreement.

4. Hazardous Materials.

Without limitation, “Hazardous Materials” includes substances that are hazardous, toxic, corrosive, flammable, or ignitable; any flammable explosives, asbestos, oil, petroleum and petroleum products, radioactive materials, hazardous wastes, hazardous substances, toxic substances, or related injurious materials; and substances defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “pollutants,” “toxic substances,” or “oil and petroleum products” under any Environmental Law. Without limitation, “Environmental Law” includes all federal, state and local statutes, regulations, directives, codes, and policies having the force of law, and all court orders, decrees, judgments and arbitration awards, and the common law, relating to pollution or protection of the environment, natural resources or worker health and safety including those related to the use, handling, transport, treatment, recycling, labeling, manufacture, exposure of others to, sale, or disposal, release or discharge of hazardous substances or any product or waste containing a hazardous substance, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), the Occupational Safety and

Health Act of 1970 (29 U.S.C. § 651 et seq.) and any other applicable law in effect in any country, state, city or political subdivision with jurisdiction with respect to the Site, as each has been or may be amended and the regulations promulgated pursuant thereto.

5. Indemnity.

Contractor agrees to defend with an attorney chosen by JW Underground, indemnify JW Underground and hold JW Underground harmless for, from and against any and all claims, liabilities, damages, demands, actions, costs, losses, penalties, and expenses (including attorneys' fees) (collectively, "Claims or Damages") of whatsoever nature arising out of any acts or omissions of Contractor, its agents, or employees or a breach of any representation, warranty or covenant made by Contractor, its agents, or employees under this Agreement. Contractor does not indemnify JW Underground to the extent that the Claims or Damages arise out of or result from the reckless or intentional wrongful acts of JW Underground. Contractor will promptly notify JW Underground if it becomes aware that it has deposited at the Site any materials other than Authorized Materials (including Explicitly Prohibited Materials), any contaminated Authorized Materials, or any Hazardous Materials. For the avoidance of doubt, if Contractor, its agents, or employees deposit any materials other than Authorized Materials (including Explicitly Prohibited Materials), any contaminated Authorized Materials, or any Hazardous Materials at the Site, Contractor shall be liable for all expenses incurred in connection with any reasonably necessary investigation or any clean up, remedial, removal or restoration work in relation to such deposit; (2) any resulting damages or injuries to the person or property of any third parties or to any natural resources, and (3) any other remedy. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6. Representations, Warranties and Covenants.

Contractor represents, warrants and covenants to JW Underground that, as of the commencement of this Agreement and as of the date of any deposit made by or on behalf of Contractor at the Site, (1) Contractor possesses all licenses and approvals required to be obtained from governmental agencies to excavate, haul, and deposit Authorized Materials at the Site; (2) all deposits made by or on behalf of the Contractor at the Site do and shall contain only Authorized Materials and do not and shall not contain any Explicitly Prohibited Materials or any Hazardous Materials; and (3) Contractor is not aware of the presence or prior use, storage or discharge of any PFAS at the Project.

7. Legal Fees.

In the event of any litigation or arbitration between the parties with respect to this Agreement, then all costs and expenses, including collection agency fees and reasonable attorneys' fees incurred by the prevailing party at and in preparation for such arbitration or litigation, including appeal, petition for review therefrom or in any proceeding before a U.S. Bankruptcy Court, shall be paid by the other party, such amount to be set by the court before which the matter is heard.

8. Remedies Not Exclusive.

Any remedies expressly provided herein are not exclusive and in the event of any breach or default by a party hereunder, the non-defaulting party may exercise such other rights and remedies as may be available at law or in equity.

9. No Partnership or Joint Venture.

Nothing contained in this Agreement shall be construed to make Contractor and JW Underground partners or joint venturers or to render any of said parties liable for the debts or obligations of the other, except as expressly provided in this Agreement.

10. Term.

This Agreement shall be effective as of the date first written above and it shall automatically terminate at the last End Date listed in the attached Exhibit A, unless earlier terminated by either party.

11. Survival.

The rights of the parties, including defense and indemnification rights, shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement effective as of the date first above written.

CONTRACTOR

Signature: _____

Name: _____

Title: Authorized Signer

J.W. UNDERGROUND ENTERPRISES, INC.

Signature: _____

Name: _____

Title: _____

Exhibit A

Project Information

Contractor: _____ Contact: _____

Phone Number: _____ Fax: _____ Email: _____

Job Name: _____ **Job #:** _____

Job Address: _____

Start Date: _____ End Date: _____ Quantity of Material _____

Material Description: _____

Knowledge of hazardous substances (diesel, gas, oils, PCBs, pesticides, etc.) in Excavation: Yes _No _

Job Name: _____ **Job #:** _____

Job Address: _____

Start Date: _____ End Date: _____ Quantity of Material _____

Material Description: _____

Knowledge of hazardous substances (diesel, gas, oils, PCBs, pesticides, etc.) in Excavation: Yes _No _

Job Name: _____ **Job #:** _____

Job Address: _____

Start Date: _____ End Date: _____ Quantity of Material _____

Material Description: _____

Knowledge of hazardous substances (diesel, gas, oils, PCBs, pesticides, etc.) in Excavation: Yes _No _

Job Name: _____ **Job #:** _____

Job Address: _____

Start Date: _____ End Date: _____ Quantity of Material _____

Material Description: _____

Knowledge of hazardous substances (diesel, gas, oils, PCBs, pesticides, etc.) in Excavation: Yes _No _