

After recording return to: Kathy Busse  
Planning Director  
Department of Sustainable Community Development  
Land Use Planning Division  
Rita Magionos PLW 12/28/01

## CONTRACT AFFECTING A FEE INTEREST IN LAND

This agreement is entered into between Multnomah County, a political subdivision of the State of Oregon ("County"); Raymond Smith, Shirlee Lenske, as personal representative of the estate of Reuben Lenske (Smith and the Lenske estate are collectively referred to as "Owners"); and Interstate Rock Products, Inc., a corporation of Washington ("Interstate").

### RECITALS

- a. Owners own property in Multnomah County, Oregon where a rock quarry known as the Howard Canyon Quarry has been operating and continues to operate. Specifically, Smith and the Lenske estate, either jointly or separately own the following real property:

1S4E, Sec 1A, Tax Lots 100 (R341075)(R994010010)  
1S4E, Sec 1A, Tax Lot 200 (R341076)(R994010020)  
1S4E, Sec. 1B, Tax Lot 100 (R341090)(R994010170)  
1N4E, Sec. 36D, Tax Lot 500 (R322815)(R944360130);and  
1S4E, Sec. 1B, Tax Lot 1000 (R341089)(R994010160)

The mineral and mining rights to real property described as 1N4E, Sec. 36C, Tax Lot 200 (R322815)(R944360710).

The legal description for all the property is attached hereto as Exhibit A and incorporated by this reference.

- b. Interstate operates the Howard Canyon Quarry.
- c. County has land use jurisdiction over the Howard Canyon Quarry.
- d. County's Planning Commission conducted a duly noticed public hearing on October 15, 2001 and has recommended to the County Board of Commissioners that a moratorium on expansion of the existing quarry use be adopted by emergency. The Resolution by the Planning Commission is attached as Exhibit B and incorporated by this reference.
- e. The intent of this agreement is to provide the parties an alternative means to achieve the same objective as the proposed moratorium, which the County believes, conforms to ORS 197.505 to 197.540 and all other legal requirements. That objective is to provide the County the opportunity to accomplish its State

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk

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Planning Goal 5 analysis as well as address issues raised by the County Board of Commissioners regarding the protection of the Lower Columbia River Steelhead, and other species, and their critical habitat and the need for improved stream and water quality protection and also resolve the zoning status of the subject properties. The mutually agreed upon terms of this agreement reflect an interest to conduct both the County's obligations as well as the Owners and Interstate's obligations in good faith. County does not intend the moratorium to affect any authorized, existing operation in conformance with OAR 632-030-0016 grant of Total Exemption as administered and required by the Oregon Department of Geology and Mineral Industries currently occurring on the property.

#### AGREEMENT TERMS

1. The County Board of Commissioners shall continue the hearing on the proposed moratorium until a date certain. The hearing may be continued to a Board of Commissioners meeting in six months or any other scheduled meeting unless the County has received written notice that Owners or Interstate intends to file for a land use pre-application conference as required by the County zoning code or other land use application with Multnomah County.
2. In exchange for County's commitment to continue the moratorium hearing and to not take any action on the moratorium, Owners and Interstate agree to not file any land use application on the subject property without additionally providing written notice of an intent to schedule a pre-application conference to the County Planning Director at least 60 days before scheduling a pre-application conference. Owners agree not to file or consent to the filing of any land use application. In the event of such notice or receipt of a pre-application request or application, the County shall immediately exercise its right to proceed with the adoption of the moratorium.
3. All parties agree that this Agreement covers actions that have a direct effect on real property and on the authority of the County and that monetary damages would not be an adequate remedy for the County. Therefore, the parties agree that the County is entitled to specific performance in case of a breach by Owners or Interstate and that the County is also entitled to a declaration, injunction or other judicial order declaring void and without effect any land use application filed by Owners (or any of them) or Interstate in violation of this Agreement.
4. The parties further agree that this Agreement runs with the land and shall be recorded.
5. This agreement shall be governed by Oregon law and the parties agree that any lawsuit relating to this agreement shall be brought in the Multnomah County Circuit Court and challenges to the moratorium can only be brought to the Land Use Board of Appeals. The parties further agree that in the event of Circuit Court litigation, the

prevailing party shall be entitled to an award of reasonable attorney fees at any stage of any litigation (including arbitration) or appeal as determined by the court.

6. Owners and Interstate agree, that in exchange for the County suspending adoption of the moratorium, they will cooperate fully with the County to provide information regarding the proposed mining operation, allow the County and their consultants on the property, and provide the documentation of any expert reports upon request.
7. County agrees to provide the Owners and Interstate copies of expert reports which will be produced upon request.
8. The parties have read this Agreement carefully. They fully understand its content and fully understand that no other consideration or payment of any kind will be made and that there is no other agreement, promise or inducement of any kind whatsoever for this Release other than that which is herein expressed.
9. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital.
10. This Agreement shall be effective when signed by all parties and shall remain in effect until the effective date of the County's final action adopting the Comprehensive Plan Amendment revising the Howard Canyon Reconciliation Report unless sooner terminated under the terms of this Agreement or by mutual agreement of the parties. In any event this agreement shall terminate December 31, 2002 unless extended by the agreement of the parties.

THOMAS SPONSER, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

Date: 12.18.01

By: Sandra N. Duffy  
Sandra N. Duffy, Deputy County Attorney

Raymond Smith  
Raymond Smith

Date: Dec 10 01

Reuben Lenske  
Personal Representative of the  
Estate of Reuben Lenske

Date: \_\_\_\_\_

INTERSTATE ROCK PRODUCTS, INC.,  
A corporation of Washington

Jim R. Katz  
By: President

Date: Dec 18/01

Its: \_\_\_\_\_

STATE OF OREGON                     )  
  ) ss  
County of Multnomah County        )

Personally appeared before me this 10<sup>th</sup> day of December 2001, the above-named Raymond Smith, who, being duly sworn, acknowledged said instrument to be his voluntary act and deed.



Julia Carpenter  
NOTARY PUBLIC for Oregon

My Commission Expires: 01-30-2005

STATE OF OREGON                     )  
  ) ss  
County of Multnomah County        )

Personally appeared before me this 7<sup>th</sup> day of December 2001, the above-named Shirlee Lenske, who, being duly sworn, did say that she is the Personal Representative of the Estate of Reuben Lenske, and that said instrument was signed on behalf of the Estate of Reuben Lenske; and acknowledged said instrument to be her voluntary act and deed.

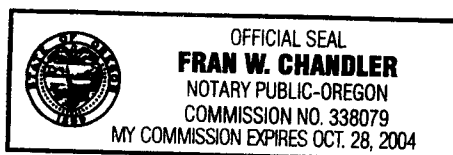


Julia Carpenter  
NOTARY PUBLIC for Oregon

My Commission Expires: 01-30-2005

STATE OF OREGON                     )  
  ) ss  
County of Multnomah County        )

Personally appeared before me this 18<sup>th</sup> day of December 2001, the above-named Jerry R. Cates, who, being duly sworn, did say he is a member of Interstate Rock Products, Inc., a corporation of Washington, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and acknowledged said instrument to be his voluntary act and deed.



Fran W. Chandler  
NOTARY PUBLIC for Oregon

My Commission Expires: 10-28-2004