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# Tooele County Clerk

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OF  
ADJ

Dennis D. Ewing  
Tooele County Clerk

Tooele County Courthouse  
47 South Main Street  
Tooele, UT 84074-2194  
(435) 843-3148  
FAX (435) 882-7317

Marilyn K. Gillette  
Chief Deputy Clerk

## TELECOMMUNICATION INFORMATION PAGE

Date: 5-23-00

To: Diane Nielson

Department: \_\_\_\_\_

Fax No: 1-801-536-0061

From Dennis Ewing  
Tooele County Clerk's Office

Phone No: (435) 843-3148

Fax No: (435) 882-7317

Pages: 0  
(Including Cover Sheet)



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USNRC

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ADJUDICATIONS STAFF

NUCLEAR REGULATORY COMMISSION

Docket No. 72-22 Official Ent. No. State 35  
In the matter of Private Fuel Storage  
Staff \_\_\_\_\_ IDENTIFIED ✓  
Applicant \_\_\_\_\_ RECEIVED ✓  
Intervenor ✓ \_\_\_\_\_ REJECTED \_\_\_\_\_  
Other \_\_\_\_\_ WITHDRAWN \_\_\_\_\_  
DATE 6/27/00 Witness Sheehan  
Clerk Vicki McDaniel

SF

**AGREEMENT**

THIS AGREEMENT (this "Agreement") is made and entered into as of this 23<sup>RD</sup> day of May, 2000 by and among Private Fuel Storage L.L.C., a Delaware limited liability company (together with its successors and assigns, "PFS"), and Tooele County, a body corporate and politic of the State of Utah (together with its successors and assigns, the "County"). The County and PFS are collectively referred to herein as the "Parties," and individually as a "Party."

WHEREAS, PFS intends to develop, construct, own, operate and maintain an independent storage installation (the "Facility") for the temporary storage of spent nuclear fuel on approximately 820 acres of land that PFS has leased from the Skull Valley Band of Goshute Indians (the "Band") on the Skull Valley Indian Reservation (the "Reservation"), and to transport spent nuclear fuel to and from the Facility (the "Project");

WHEREAS, PFS has applied to the United States Nuclear Regulatory Commission (the "NRC") for a license permitting it to transfer, receive and possess spent nuclear fuel for storage at the Facility (the "License");

WHEREAS, the County has determined that the Project would serve the best interests of the County by providing economic development, job creation and financial revenue the County while creating little if any risk to the health and safety of the County or its residents;

WHEREAS, PFS recognizes that the County has deployed County resources over the past several months to analyze the potential effects of the development of the Project on the County and its residents, and in this regard it is expected by the Parties that the County and its departments and agencies have incurred and will continue to incur administrative costs and expenses in connection with such analysis, disseminating accurate information about the Project to the public and addressing the public's concerns about the Project;

WHEREAS, the County has entered into a Cooperative Law Enforcement Agreement with the Band and the Bureau of Indian Affairs, pursuant to which the County has agreed to provide law enforcement services on the Reservation;

WHEREAS, the Parties expect that should the Facility be successfully developed, the County may have to anticipate and make appropriate adjustments in the services which it provides for projects and residents within its jurisdiction and on the Reservation;

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WHEREAS, PFS wishes to partially compensate the County for the additional administrative costs and expenses described above and, as a good corporate citizen, to contribute financially to the public revenues of the County of which it will be a part if the Facility is successfully developed and constructed;

WHEREAS, the Parties considered a number of factors in determining the appropriate amount to be paid by PFS, including the taxes and mitigation fees paid by the existing capital facilities located in the County; and

WHEREAS, the Parties wish to enter into a mutually beneficial agreement as more fully set forth herein,

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties hereto hereby agree as follows:

**1. MITIGATION OF POTENTIAL IMPACTS ON COUNTY'S EXISTING RESOURCES**

**1.1. Pre-Operational Payments**

As a contribution for mitigation of additional administrative costs and expenses which the County has incurred or will incur in connection with studying the impact of the Project, planning for the proposed needs of the Facility and its employees, assessing the impact of the Facility on the County's existing resources and otherwise responding to the public's concerns in the areas of emergency response, improvement of roads, additional fire protection, health care and law enforcement services, PFS agrees to pay to the County a pre-operational fee of Five Thousand Dollars (\$5,000) per month (the "Pre-Operational Fee"). The Pre-Operational Fee shall be paid in arrears on or before the last business day of each month, commencing on the last business day of the month immediately following the date of this Agreement and ending on the date on which the first Canister containing spent nuclear fuel is accepted by PFS for storage at the Facility (the "Commercial Operations Date"). The Pre-Operational Fee for any partial month shall be proportionally reduced. For purposes of this Agreement, "Canister" means an NRC approved container that is used to store spent nuclear fuel.

**1.2. Fees During Operation**

As a contribution for mitigation of expenses which may be incurred by the County in connection with providing the Facility and its employees with emergency response services and other governmental services, such as fire protection and law enforcement services, as more fully described in Section 3

and in order to further PFS's desire to be a good corporate citizen and contribute to the public revenues of the County, PFS agrees to make the following payments to the County:

(a) On July 31 of each year commencing with the July 31 immediately following the Commercial Operations Date until PFS is no longer storing spent nuclear fuel at the Facility, a canister fee (the "Canister Fee") equal to: (i) Two Thousand Six Hundred Dollars (\$2,600) multiplied by the number of Canisters containing spent nuclear fuel owned by Eligible Members, as defined below, stored at the Facility on June 30 of such year and (ii) Three Thousand Two Hundred and Fifty Dollars (\$3,250) multiplied by the number of Canisters containing spent nuclear fuel owned by persons or entities which are not Eligible Members stored at the Facility on June 30 of such year. The Canister Fee shall be adjusted every two (2) years based upon the inflation escalator used by PFS to adjust the price of the Canisters charged to its customers. For purposes of this Section 1.2 (a), "Eligible Member" shall mean any person or entity which has become or becomes a member of PFS on or before January 1, 2001.

(b) On June 30 of each year commencing with the June 30 immediately following the Commercial Operations Date until PFS is no longer storing spent nuclear fuel at the Facility, an annual fee (the "Annual Fee") equal to Five Hundred Thousand Dollars (\$500,000); provided, however, that in the event the aggregate amount of spent nuclear fuel accepted for storage at the Facility during the immediately preceding calendar year is less than 500 metric tonnes of uranium (MTU), then the Annual Fee shall be equal to the number of MTU accepted for storage at the Facility during such year multiplied by One Thousand Dollars (\$1000).

The fees provided in this Section 1.2 are based on a good faith effort on the part of the Parties to determine the costs of the impacts of the Facility on the County and its residents and the expected revenue of PFS from the operation of the Facility. The Parties acknowledge that the expected revenue of PFS is based on the number of Canisters stored at the Facility, and, therefore, have determined that a fee structure based on the number of Canisters stored at the Facility is appropriate.

### 1.3. Taxes

Each of the Parties agree that the fees paid by PFS hereunder are in lieu of taxes and any taxes, licensing or registration fees or any other fees, assessments, penalties or similar charges of any type of the County or any commission, agency or department of the County, whether existing as of the date hereof or becoming effective at any time hereafter (collectively, "Taxes"), due or payable by PFS or its customers, vendors or contractors shall be

deemed to be included in, and shall be satisfied solely through payment to the County of, the payments set forth in Sections 1.1 and 1.2 hereof. The County shall not, and shall not permit any commission, agency or department of the County, at any time, to impose, directly or indirectly, any taxes upon PFS, its customers, vendors or contractors, the Project, the Facility or any activity or action directly or indirectly related to PFS, the Project or the Facility, including, without limitation, transportation of spent nuclear fuel to and from the Facility; provided, however, that vendors and contractors engaging in activities which would subject such businesses to County taxes and fees on the date of this Agreement shall be required to pay such taxes and fees to the same extent as if such businesses were not vendors or contractors of the Project. In the event that valid Taxes are imposed contrary to this Section 1.3, the County agrees that (i) the full amount of such Taxes shall reduce by an equal amount the payments set forth in Section 1.1 and 1.2 hereof and (ii) the total amounts payable as Taxes and payments hereunder shall not exceed the amount which would otherwise be paid hereunder.

## **2. OTHER PFS ASSISTANCE**

### **2.1. Employment**

To the extent it is commercially reasonable and technically practical, PFS shall use its commercially reasonable efforts to employ businesses and persons located in Tooele County during the construction and operation of the Facility.

### **2.2. Support Efforts to Obtain Federal Funds**

To the extent such payments are available to the County, PFS shall use commercially reasonable efforts to cooperate with the County in its efforts to obtain direct payments from the Department of Energy of the United States and any other agency of the United States Government in connection with the storage of spent nuclear fuel at the Facility; provided, however, that the ability of the County to obtain any payments from the Department of Energy shall not affect the payment obligations of PFS hereunder.

## **3. COUNTY SERVICES**

To the extent that the Project requires improvements or extensions to any road located in the County, the County shall facilitate such improvements and extensions, and will cooperate with any other governmental entities necessary to obtain approvals for such improvements or extensions. Further, the County shall assist PFS in obtaining any necessary easements, rights-of-way, waivers and permits in connection with the Project, including,

without limitation, easements, rights-of-way, waivers and permits for road upgrades, for rail line installation and operation and for the construction and operation of any intermodal transfer facility. The County agrees that it shall provide emergency response services to the Facility in accordance with the Facility emergency plan as approved by the NRC in connection with the granting of the License, and shall confirm its willingness to provide such services in writing as necessary to assist PFS in obtaining any licenses or permits, including the NRC license. The County also agrees that it will provide routine governmental services as necessary for the safe and efficient construction and operation of the Facility, including, without limitation, snow removal on county roads, law enforcement, fire response, public health, public safety and telecommunications. To the extent that any such services are required to be performed on the Reservation, the County's obligation to perform such services are subject to the receipt by the County of the consent of the Band.

#### 4. TERMINATION AND SUSPENSION OF OBLIGATIONS

##### 4.1. Termination

PFS may terminate this Agreement (a) immediately in the event that the County withdraws its public support of the Project, (b) before the Commercial Operations Date if the Board of Managers of PFS decides not to go forward with the Project or (c) after the Commercial Operations Date if the Board of Managers decides to terminate the business of PFS in Tooele County upon six (6) months prior written notice to the County. Unless otherwise earlier terminated, this Agreement shall immediately terminate on the date on which the lease agreement between PFS and the Skull Valley Band of Goshute Indians terminates, as such termination date shall be advised by PFS to the County.

##### 4.2. Suspension of Payments

In the event that any federal, state, county, municipal or tribal governmental authority by means of police, judicial, legislative or administrative action or inaction or individual or group of individuals through the use of force or by physical intimidation or through judicial, legislative or administrative action (collectively, "Suspension Actions," and, individually, a "Suspension Action") effectively delays, suspends, impedes, enjoins, materially increases the cost of or otherwise adversely affects the licensing, development, permitting, construction, ownership, operation or maintenance of the Facility or transportation of spent nuclear fuel to or from the Facility, PFS may in good faith suspend the performance of its payment obligations set forth in Sections 1.1, and 1.2 hereof during such time upon written notice to the County in

accordance with Section 6.1 hereof, which notice shall set forth the reasons for such suspension in reasonable detail; provided, however, that PFS shall not suspend such payment if (a) the County did not cause, directly or indirectly, such Suspension Act, or otherwise actively support such Suspension Action, and (b) at least 10,000 MTU of spent nuclear fuel is being stored by PFS at the Facility at such time.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1. Representation and Warranties of the County**

The County hereby represents and warrants as follows: (a) the execution, delivery and performance of this Agreement by the County has been duly and effectively authorized by all necessary action of the County and the Board of Commissioners of the County, which authorization has not been modified or rescinded and is in full force and effect; (b) no other proceedings or actions are necessary to authorize the execution and delivery of this Agreement; (c) this Agreement, after execution and delivery by each member of the Board of Commissioners of the County, will be a valid and binding obligation of the County, enforceable against the County in accordance with its terms; (d) neither the execution and delivery of this Agreement nor the compliance by the County with any of the provisions contained herein do or will (i) violate or conflict with the constitution or any organizational or governing document of the County in effect on the date of the Agreement or (ii) violate or conflict with, any order, writ, injunction, judicial decree, statute, rule or regulation applicable to the County; and (e) other than the action threatened by the State of Utah to acquire county roads leading to the proposed site of the Facility, there is no litigation, administrative proceeding or other action against the County existing, pending or threatening which would affect the ability of the County to fulfill its obligations under this Agreement.

### **5.2. Representations and Warranties of PFS**

PFS hereby represents and warrants as follows: (a) PFS is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, (b) the execution, delivery and performance of this Agreement by PFS has been duly and effectively authorized by all necessary action of PFS, which authorization has not been modified or rescinded and is in full force and effect; (c) no other proceedings or actions are necessary to authorize the execution and delivery of this Agreement; (d) this Agreement, after execution and delivery by PFS, will be a valid and binding obligation of PFS, enforceable against PFS in accordance with its terms; (e) neither the execution and delivery of this Agreement nor the compliance with PFS with any of the provisions contained herein do or will (i) violate or conflict



with the certificate of formation or the limited liability company agreement of PFS in effect on the date of the Agreement or (ii) violate or conflict with, any order, writ, injunction, judicial decree, statute, rule or regulation applicable to PFS; and (f) there is no litigation, administrative proceeding or other action against PFS existing, pending or threatening which would affect the ability of PFS to fulfill its obligations under this Agreement.

**6. MISCELLANEOUS PROVISIONS**

**6.1. Notices**

All notices, demands and other communications hereunder shall be made in writing, and shall be deemed given or made: (a) as of the date of personal delivery; (b) when delivered to the United States Postal Service, on the third business day following the deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid; (c) when delivered by a nationally or internationally recognized delivery service promising delivery within a period of twenty-four (24) hours, receipt obtained, charges prepaid, on the business day following the deposit with such delivery service; or (d) when delivered by facsimile; and, in any case, when addressed as follows or to such other address as a party hereto may from time to time designate in writing to the other parties:

(i) If to the County:

Tooele County Commission  
Tooele County Courthouse  
47 South Main Street  
Tooele, Utah 84074

Attention: *Terul Hunsaker*  
Telecopy No.: *435-843-3400*

(ii) If to PFS:

Private Fuel Storage L.L.C.  
c/o Genoa FuelTech, Inc.  
3200 East Avenue  
LaCrosse, Wisconsin 54601

Attention: John D. Parkyn  
Telecopy No.: 608-787-1462

Any notice of a change in address shall be effective only on receipt.

**6.2. Amendment**

No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought.

**6.3. Construction**

Each Party acknowledges that the Parties participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than against the other.

**6.4. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to payments to be made to the County in respect of the Project, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

**6.5. Headings**

Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**6.6. Governing Law**

This Agreement, the rights and obligations of the Parties, and any claims or disputes relating thereto, shall be governed by and construed under the laws of the State of Utah (but not including the choice of law rules thereof).

**6.7. Execution**

This Agreement may be executed in as many counterparts as may be required. All counterparts shall collectively constitute a single agreement. This Agreement may be executed and delivered by the Parties by facsimile.

**6.8. Binding Effect**

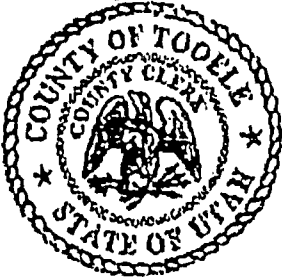
This Agreement shall be binding and shall inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the day and year first hereinabove set forth.

TOOELE COUNTY, a body corporate and politic of the State of Utah, acting by and through its Board of Commissioners

Attest:

*[Handwritten Signature]*  
County Clerk



By: *[Handwritten Signature]*  
Name: Paul Hunsaker  
County Commissioner

By: *[Handwritten Signature]*  
Name: Donna M. Hunsaker  
County Commissioner

By: *[Handwritten Signature]*  
Name: Dennis L. Rockwell  
County Commissioner

PRIVATE FUEL STORAGE L.L.C.

By: \_\_\_\_\_  
Name: John D. Parkyn  
Title: Chairman of the Board

Approved as to form and substance by:

*[Handwritten Signature]*  
County Attorney

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