

AGREEMENT FOR WILLAMETTE PARK ENVIRONMENTAL OBLIGATIONS

This Agreement for Willamette Park Environmental Obligations ("this Agreement") is between Willamette Oaks Building, LLC ("WOB") and the City of Portland ("the City"), individually referred to herein as "Party" and collectively as "Parties."

RECITALS

- A. WOB owns property with a street address of 6720 SW Macadam Avenue, Portland, Oregon ("the WOB Property").
- B. The City owns Willamette Park located on SW Macadam Avenue, with a legal description as shown on Appendix A.
- C. Historical releases of hazardous substances from the WOB Property have entered the groundwater and have migrated beneath Willamette Park.
- D. On or about December 15, 2004, the Oregon Department of Environmental Quality ("DEQ") issued a Record of Decision describing remedial actions to be taken to address the historical releases of hazardous substances from the WOB property ("the Remedial Actions"). Included in the Remedial Actions were (1) maintaining a pump-and-treat system for groundwater and (2) long-term monitoring of the groundwater beneath Willamette Park.
- E. DEQ has confirmed to WOB that WOB has performed the Remedial Actions. Accordingly, WOB has engaged DEQ in discussions to obtain a No Further Action letter for WOB related to the cessation of the Remedial Actions. WOB expects that the No Further Action letter will require the recordation of an Easement & Equitable Servitudes on the Willamette Park property in a form substantially similar to that found on Exhibit A ("the EES"). The EES requires the City to follow a Contaminated Media Management Plan ("CMMP") for activities that disturb subsurface media in Willamette Park.
- F. This Agreement is intended to allow the recording of the EES and the resolution of claims and obligations as specified herein between the Parties arising out of or related to releases of hazardous substances from the WOB Property.

THEREFORE, for adequate consideration, the sufficiency of which is acknowledged by entry into this Agreement, the Parties agree to the terms and conditions set forth below:

TERMS AND CONDITIONS:

- 1. **Recordation of EES:** Upon receipt of a No Further Action letter from DEQ related to the historical releases of hazardous substances from the WOB Property, the City will, within a reasonable period of time, execute and record the EES on the Willamette Park Property in the official records of Multnomah County, Oregon.
- 2. **Payment:** WOB will pay the City ninety thousand dollars (\$90,000) by certified check on the following schedule:
 - a. forty-five thousand dollars (\$45,000) on or before March 30, 2018, and

- b. forty-five thousand dollars (\$45,000) on or before March 29, 2019.

The City agrees that this payment will constitute adequate compensation for the restrictions the EES will place on the Willamette Park property and the reduction of the property's future development potential.

3. **Limited Indemnity:** Subject to the limitations set forth in Section 4 below, WOB agrees to indemnify the City for Incremental Costs (as defined below) up to a maximum of ten thousand dollars (\$10,000) ("Indemnity Limit"). As used in this Agreement, "Incremental Costs," means the additional, incremental costs incurred by the City to comply with the CMMP that are:
- (a) attributable to the presence of chlorinated volatile organic compounds (VOCs) as described in the ROD ("WOB Contaminants") and would not be incurred but the presence of the WOB Contaminants, and
 - (b) incremental in the sense that they reflect only the increase above and beyond the cost the City would incur in the absence of the WOB Contaminants. By way of example and illustration, Incremental Costs include consultant charges, contractor charges, agency fees, or other costs arising from the following:
- (a) Segregating soil, water, or groundwater known or suspected of containing WOB Contaminants from soil, water, or groundwater not anticipated to contain WOB Contaminants;
 - (b) Treating, excavating, hauling or disposing of soil, water or groundwater containing WOB Contaminants;

Notwithstanding anything to the contrary in this Section, WOB shall indemnify the City for all sampling and laboratory costs incurred by the City to test or characterize soil, water or groundwater pursuant to the CMMP that are known or suspected of containing WOB Contaminants, and any such costs shall be limited to, and deducted from, the Indemnity Limit.

4. **Limitations on Indemnity:** The Limited Indemnity set forth in Section 3 shall expire on March 27, 2025 ("Indemnity Period"). Notwithstanding the preceding sentence, the City shall have until September 23, 2025 to notify WOB of a claim for recovery of any costs subject to the Limited Indemnity that are incurred during the Indemnity Period. WOB's obligation to indemnify the City for Incremental Costs shall be further prescribed by the following:
- (a) If the City encounters and manages only WOB Contaminants pursuant to the CMMP, WOB will indemnify the City for all of the City's Incremental Costs up to the Indemnity Limit;
 - (b) If the City encounters and manages WOB Contaminants that are mixed or comingled with other hazardous substances that are not WOB Contaminants, WOB will indemnify the City for fifty percent (50%) of the City's Incremental Costs up to up to the Indemnity Limit;
5. **Limited Release of Claims:** The City releases any and all claims arising out of related to the WOB Contaminants except for claims asserting a breach of this Agreement or arising under ORS Ch. 465 (2017) or CERCLA, 42 U.S.C. 9601 et seq. .
6. **CMMP Modifications:** Independent of its limited indemnity obligations in Section 3, WOB will modify or update the CMMP upon request by DEQ during the Indemnity Period.

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7. **Further Assurances.** The Parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
8. **No Third-Party Beneficiaries.** The Parties do not intend to confer any right or remedy on any third party.
9. **Effective Date.** The Effective Date of this Agreement shall be the last dated signature of either Party below.
10. **Entire Agreement.** This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.

SIGNATURES:

Willamette Building, LLC:

By: Dave Heater

Its: _____

Date: _____

City of Portland

By: _____

Its: _____

Date: _____

APPROVAL AS TO FORM

APPROVED AS TO FORM



CITY ATTORNEY
City Attorney

APPENDIX A**Legal Description of the Willamette Park Property****R175534 – 1943 Deed Book 763, Page 118**

Lots "B" and "C", HANNAH MASON'S ADDITION and undivided 2/3 of Lot "A", HANNAH MASON'S ADDITION, within the corporate limits of the City of Portland, according to the duly recording on file in the office of the County Clerk of Multnomah County.

The above described property is conveyed for playground and park purposes only.

R273480 – 1969 Deed , Book 667, Page 600

River Lots 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and the South 27 feet of River Lot 11, including the extension of said lots to the harbor line of the Willamette River, in SOUTHERN PORTLAND, in the City of Portland, Oregon.

R330300 – 1942 Deed, Book 680, Page 188

Beginning at the intersection of the south line of S.W. Nevada Street and the east line of S.W. Macadam Avenue as now laid out and established; thence south 89°23' east along the south line of S.W. Nevada Street, 121.62 feet to the intersection of the south line of S.W. Nevada Street with the east line of the Southern Pacific Company's right of way which is the true point of beginning of the following described tract; thence continuing along the south line of S.W. Nevada Street and its easterly projection south 89°23' east 714 feet, more or less, to a point in the U.S. Harbor Line of the Willamette River; thence south 9°14'23" west along said U.S. Harbor Line of the Willamette River, 406.31 feet; thence north 89°52' west 616 feet; more or less, to a point in the east line of the Southern Pacific Company's right of way; thence north 4°50' west along the east line of said right of way 199.70 feet; thence north 4°52' west continuing along the east line of said Southern Pacific Company's right of way 202.98 feet to the point of beginning (being all of Tax Lots No. 1 and 2, lying east of the Southern Pacific Company's right of way in Section 22, Township 1 South, Range 1 East of the Willamette Meridian, as shown on the tax roll for Multnomah County, Oregon for 1941)

R2773094 – 1946 Deed

That portion of Lots 1 and 3, Block 6, Southern Portland Addition in and to the City of Portland, Oregon, lying West of the Quarterly line of the Southern Pacific Railroad right of way.

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EXHIBIT A

DRAFT EASEMENT & EQUITABLE SERVITUDES

EXHIBIT B

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
Northwest Region
700 NE Multnomah Street, Ste 600
Portland OR 97232-4100
Attention: Robert Hood

Grantor

City of Portland
Property and Business Development Director
Portland Parks and Recreation
1120 SW Fifth Avenue
Portland, OR 97204
Attention: Trang Lam,

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on _____, 2018 between the City of Portland ("***Grantor***") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("***DEQ***" or "***Grantee***").

RECITALS

A. Grantor is the owner of certain real property known as Willamette Park, a portion of which is described as Lot 100 of Tracts A, B, and C, Hannah Masons Addition, located between the Willamette River and SW Macadam Avenue in Multnomah County, Oregon, (the "***Property***") the location of which is more particularly described in Exhibit A to this EES.

B. Hazardous Substances have been documented as present in the environment at the Property as referenced in files and documents associated with the site name "Willamette Oaks Building," ECSI File No. 883. The Willamette Oaks Building file which contains reports and other documents that describe the Hazardous Substances identified on the Property and the risks from those Hazardous Substances, may be reviewed at the offices of DEQ's Environmental Cleanup Program at Northwest Region office located at 700 NE Multnomah St., Portland, Oregon, and telephone (503) 229-5263. Interested parties may contact the Northwest Region office to review these files.

C. On December 15, 2004, the Director of the Oregon Department of Environmental Quality or delegate selected the Remedial Action affecting the Property set forth in the Record of Decision ("***ROD***"), Willamette Oaks Building Site No. 883, December 2004. Relative to the Property, the Remedial Action selected requires, among other things,

- Groundwater extraction and *ex-situ* treatment with air stripping on the Willamette Oaks Building Site; and
- Groundwater monitoring on the Property and the Willamette Oaks Building Site

D. Willamette Oaks Building, LLC, 6729 SW Macadam Avenue, Suite 100, Portland Oregon, 97219, currently is obligated to conduct the Remedial Action set forth in the ROD and Conditional No Further Action Letter.

E. This EES does not alter or expand Owner's right or obligation relative to the Hazardous Substances identified on the Property or under the ROD except as set forth in this EES.

F. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

G. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

1. DEFINITIONS

- 1.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.2 "Hazardous Substance" has the meaning set forth in ORS 465.200.
- 1.3 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.4 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, for consideration agreed to by and between Grantor and Willamette Oaks Building, LLC, the sufficiency of which is acknowledged by Grantor, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further

conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. **Groundwater Use Restrictions:** Owner shall not extract through wells or by other means or use the groundwater at the Property for consumption, irrigation, or other beneficial uses. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2. **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

3.3 **Contaminated Media Management Plan (CMMP).** Owner will implement the CMMP for the property which includes protocols for characterizing, managing and disposing any contaminated media (expected to be either soil or groundwater) encountered during activities on the property that may penetrate ground surface. The CMMP has been developed by Amec Foster Wheeler Environment & Infrastructure Inc., on behalf of Willamette Oaks Building LLC , and approved by DEQ, prior to recording of this EES. A copy is available in DEQ's Northwest Region files. Owner will provide the CMMP to any future property owners.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2. Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to Hazardous Substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2. **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Multnomah County zoning code or any successor code. As of the date of this EES, the base zone of the Property is Open Space.

6.3. **Cost Recovery.** AMAA Enterprises, Inc., the owner of Willamette Oaks Building, LLC, will pay or cause to be paid DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the AMAA Enterprises to reimburse DEQ for all such eligible review and oversight costs. DEQ will use the existing cost recovery account or establish a cost recovery account for tracking and invoicing DEQ project costs as appropriate. DEQ will provide the AMAA Enterprises and the Owner with a monthly statement and direct labor summary as charges accrue. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4. **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.5. **Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.6. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: City of Portland, Parks and Recreation

By: _____ Date: _____
Michael Abbate, Parks and Recreation Director

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this _____ day of _____, 2018, by _____ of the City of Portland, on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires: _____

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GUARANTOR FOR COST RECOVERY PAYMENT UNDER 6.3: AMAA Enterprises, Inc.

By: _____ Date: _____
Dave Heater, President of AMAA Enterprises

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this _____ day of _____, 2018, by _____ of AMAA Enterprises on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
Kevin Parrett, Cleanup Manager, Northwest Region

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this _____ day of _____, 2018, by Keith Johnson of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A**Legal Description of the Property****R175534 – 1943 Deed Book 763, Page 118**

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R2773094 – 1946 Deed

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