

Exhibit A

Proposed City and State Settlement Agreement with the U.S. Environmental Protection Agency

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated by the Region 10, Regional Administrator (Regional Administrator) to the Region 10, Director, Environmental Cleanup Office, and Program Managers thereunder by EPA Delegations R10 14-14-C and 14-14-D (November 30, 2017).

2. This Settlement Agreement is made and entered into by EPA and the State of Oregon, by and through its Department of Transportation and Department of State Lands, and the City of Portland (“Settling Funding Parties”). Each Settling Funding Party consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Portland Harbor Superfund Site (Site) located in Portland, Oregon. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). In response to the releases or threatened releases of hazardous substances at or from the Site, EPA expects potentially responsible parties (PRPs) to complete Remedial Design (RD) at the Site in accordance with the Record of Decision issued in January 2017.

4. EPA alleges that the State of Oregon, by and through its Department of Transportation and its Department of State Lands and State Land Board (“State”) and the City of Portland are potentially responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are among the PRPs jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

5. This Settlement Agreement is being entered into before the deadline that EPA announced in its March 2019 letter to numerous PRPs at the Site that stated EPA’s intention to have the Site committed to 100% RD by June 30, 2019. The terms of this Settlement Agreement recognize the importance to EPA of prompt and productive response at the Site. EPA recognizes the good faith efforts of the Settling Funding Parties in stepping forward in this Agreement to offer funding to Performing Parties in order to incentivize those parties’ performance of RD at the Site. EPA also recognizes the Settling Funding Parties’ commitments to perform RD and other work at the Site, and their leadership efforts in helping to initiate response action at the Site.

6. To facilitate completion of RD at the Site, the State and City have agreed to make funds available to other PRPs if those PRPs commit to perform RD at the Site under a Funded RD ASAOC during the Offer Period with EPA on the terms described in this Settlement

Agreement. The State and City will provide funds to EPA to be deposited into the RD Special Account pursuant to an agreed upon schedule and formula. EPA will disburse those funds to Performing Parties, as set out in Disbursement Terms executed and incorporated into those Funded RD ASAOCs.

7. EPA and Settling Funding Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Funding Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by either Settling Funding Party. Settling Funding Parties do not admit and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Settlement Agreement.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Funding Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Funding Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Funding Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

“ASAOC” shall mean an Administrative Settlement Agreement and Order on Consent.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Disbursement Special Account” shall mean the special account established pursuant to a Funded RD ASAOC for the purpose of reimbursing Performing Parties for a portion of the costs they incur under that Funded RD ASAOC.

“Disbursement Terms” shall mean the terms that EPA and the Performing Parties execute and incorporate into Funded RD ASAOCs for the purpose of reimbursing Performing Parties for Eligible Expenses incurred under their Funded RD ASAOC.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVI.

“Eligible Acre” or “Eligible Acreage” shall mean the acreage depicted as sediment management areas for the selected remedy in Figure 30 of the Record of Decision for the Portland Harbor Site, for SMA Alternative F Mod, as shown in Appendix B with the associated acreage. The Eligible Acres shown in Appendix B are used solely to provide a rough apportionment of funds to areas identified in the ROD as requiring active remediation and do not reflect, nor will be adjusted to incorporate, subsequent data collected, modifications to the ROD including explanations of significant differences, claims of errors in depictions in Figure 30 of the ROD, or actual acreage that is determined to require active remediation during design or any other process. For purposes of this Agreement, the work areas as of January 1, 2019 identified in the orders listed in Appendix C of this Settlement Agreement further identified as the following CERCLA Docket Numbers, are excluded from the definition of Eligible Acres:

- CERCLA Docket No. 10-2004-0009 (Terminal 4 Removal Action Area);
- CERCLA Docket No. 10-2009-0255 (Gasco Sediments Site); and
- CERCLA Docket No. 10-2013-0087 (RM11E Project Area).

In addition, the Willamette Cove area depicted on the map provided in Appendix C is excluded from Eligible Acres.

“Eligible Expenses” shall mean only those costs necessary to complete RD work under a Funded RD ASAOC and do not include costs associated with negotiating the Funded RD ASAOC; EPA, Oregon Department of Environmental Quality, or Tribal Response Costs; costs associated with dispute resolution, penalties, or costs incurred if EPA takes over RD work under the terms of any given Funded RD ASAOC; or any other costs specified in any Funded RD ASAOC that are not eligible for reimbursement.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Funded RD ASAOC” for purposes of this Settlement Agreement shall mean an ASAOC for 100% RD between Performing Parties and EPA with an effective date before the later of January 1, 2020 or the end of the applicable Offer Period that includes Disbursement Terms for special account disbursement to Performing Parties and contains the terms and conditions specified in Paragraph 21 and Appendix D of this Agreement.

“Initial Payment” shall mean the payment made by Settling Funding Parties to EPA as described in Section VI, Paragraph 18 below.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Notice of Completion” shall be defined as is provided in a Funded RD ASAOC.

“Offer Period” shall mean the period during which Performing Parties may execute Funded RD ASAOCs to be eligible for funding from this Settlement, which shall run from the Effective Date through December 31, 2019, unless extended in writing by the Parties to this Agreement for a specific area(s).

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Settling Funding Parties.

“Performing Party” or “Performing Parties” shall mean each entity who signs a Funded RD ASAOC (as defined herein) with EPA to perform RD at the Site, pursuant to Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

“Portland Harbor Remedial Design Special Account” or “RD Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), to receive the funds from this Settlement Agreement.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site, signed on January 3, 2017, by the Administrator of EPA, and all attachments thereto. A copy of the ROD can be found at <https://semspub.epa.gov/work/10/100036257.pdf>.

“Remedial Design” or “RD” shall mean those remedial design activities to be undertaken to develop the final plans and specifications for the remedial action for the Portland Harbor Site.

“RD Payment(s)” shall mean the payments made by the Settling Funding Parties to EPA in accordance with this Settlement Agreement, including the Initial Payment and Subsequent Payments.

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Funding Parties” shall mean the City of Portland and State of Oregon, by and through its Department of Transportation and its Department of State Lands (the administrative arm of the State Land Board).

“Site” or “Portland Harbor Superfund Site” for purposes of this Settlement shall mean the in-river portion of the site in Portland, Multnomah County, Oregon listed on the National Priorities List (NPL) on December 1, 2000. 65 Fed. Reg. 75179-01 and for which a final remedy was selected in the January 2017 Record of Decision. As described in the Record of Decision, the Site extends in-river from approximately river mile (RM) 1.9 to 11.8.

“Subsequent Payment” for purposes of this Settlement shall mean the payments made by Settling Funding Parties to EPA pursuant to Section VI, Paragraph 19 below.

“Trust” for purposes of this Settlement shall mean the private trust established by the Settling Funding Parties to receive funds from each Settling Funding Party for payment of funds to EPA as provided under this Settlement Agreement.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. GENERAL PROVISIONS

10. The objective of this Settlement Agreement is for Settling Funding Parties to provide funds, up to a total of \$24.0 million, as set out in this Settlement Agreement as an incentive for the performance of RD at the Portland Harbor Site by other PRPs under Funded RD ASAOCs, under terms for payment of such funds as provided in this Settlement Agreement and as provided under Disbursement Terms in the respective Funded RD ASAOCs, consistent with this Agreement. The intent of the Parties is that this Settlement Agreement will work in conjunction with the Funded RD ASAOCs, and the Funded RD ASAOCs will include the terms and conditions set out in Paragraph 21 and Appendix D of this Agreement.

11. As provided by this Settlement Agreement, and as summarized by Subparagraphs 11.a.-11.b., Settling Funding Parties agree to fund RD in accordance with this Settlement Agreement.

a. Settling Funding Parties shall make payments for RD as set forth in Section VI. EPA, in its enforcement discretion, will initially seek performance of remedial design work from other potentially responsible parties at the Portland Harbor Site, and not from the Settling Funding Parties, during the time from the Effective Date of this Agreement to June 30, 2020. EPA and the Settling Funding Parties agree to meet in December 2019 to discuss the status of RD at the Site.

b. Notwithstanding the above, EPA's exercise of enforcement discretion under this Settlement Agreement will have no effect on the RD work and cost reimbursement obligations of the Settling Funding Parties under the orders identified in Appendix C.

12. Settling Funding Parties represent they have entered into an Intergovernmental Agreement (IGA) to establish a Trust for the purpose of collecting funds from each Settling Funding Party and holding the funds to be paid to EPA under the terms of this Settlement Agreement. Settling Funding Parties represent that they will together transfer a total of \$12.0 million into the Trust by July 15, 2019. Settling Funding Parties represent that by July 15, 2020 they will transfer additional funds as necessary so that the total cumulative funds in the Trust equal at least 75% of EPA's anticipated disbursements for all Eligible Acres included in Funded RD ASAOCs. Settling Funding Parties represent that by July 15, 2021 they will transfer additional funds as necessary so that the total cumulative funds in the Trust equal at least 100% of EPA's anticipated disbursements for all Eligible Acres included in Funded RD ASAOCs. In total, Settling Funding Parties will transfer to the Trust no more than \$24.0 million by July 15, 2021.

13. Nothing in this Settlement Agreement requires EPA to reimburse Performing Parties if Settling Funding Parties have not made payments as required under Paragraphs 18 or 19, or if sufficient funds are not available in the RD Special Account, or work has not been performed consistent with the requirements of the Funded RD ASAOCs. Nothing in this Agreement requires Settling Funding Parties to make direct payments to Performing Parties under this Agreement or any Funded RD ASAOC.

14. In the event any funds paid to EPA by Settling Funding Parties pursuant to Paragraphs 18 and 19 of this Settlement Agreement are not fully obligated or disbursed under Funded RD ASAOCs, such funds shall remain in the RD Special Account and will be available to EPA for RD work at or in connection with the Site. If there is no RD work remaining, such funds may be used by EPA for other response actions at or in connection with the Site or transferred by EPA to the Hazardous Substance Superfund.

15. Notwithstanding anything in this Settlement Agreement to the contrary, and without prejudice to any claims against its insurers, the State of Oregon's payment obligations under this Settlement Agreement, if not paid by the State's insurers, are payable only from available monies in the Portland Harbor Cleanup Fund established in the State Treasury by SB 5530 (2017); Oregon Laws 2017, Chapter 748, Section 11, to which sufficient funding is transferred by HB 5046 (2019).

VI. PAYMENT OF FUNDS FOR REMEDIAL DESIGN

16. **Payment by Settling Funding Parties to EPA.** Through this Agreement, Settling Funding Parties agree to submit payment to EPA as specified in this Section.

17. **Funding Formula.** Settling Funding Parties agree to fund up to \$80,000 per Eligible Acre (up to a total payment of \$24 million) identified in Funded RD ASAOCs. The Parties intend that funding shall occur as set forth in Paragraphs 18 and 19 of this Agreement and

that the disbursement of funds by EPA to Performing Parties will be made as set forth in Paragraph 21 of this Agreement.

18. **Initial Payment From Trust to RD Special Account.** After the Effective Date of this Agreement but on or before July 15, 2019, Settling Funding Parties agree to submit payment to EPA in the amount of \$3.0 million.

19. **Subsequent Payments to RD Special Account.** If the Initial Payment is not sufficient to fully fund Performing Parties under Funded RD ASAOCs in accordance with the Funding Formula, EPA shall provide written notice to Settling Funding Parties to provide further funding to EPA in the following manner:

a. Installment Payment 1. Within 15 days of written notice by email from EPA that a Funded RD ASAOC has been signed by Performing Parties, Settling Funding Parties shall submit to EPA a payment in the amount of \$40,000 per Eligible Acre identified in that Funded RD ASAOC. Notwithstanding the foregoing, any remaining Initial Payment in the RD Special Account will be applied toward Installment Payment 1 and the amount due from Settling Funding Parties for Installment Payment 1 adjusted accordingly.

b. Installment Payment 2. Within 15 days of written notice by email from EPA that a Performing Party has completed the RD work required under its Funded RD ASAOC (as documented by EPA's Notice of Completion) and has requested a disbursement pursuant to the terms of its Funded RD ASAOC and consistent with Paragraph 21 of this Settlement Agreement, Settling Funding Parties shall submit to EPA a payment in the amount of \$40,000 per Eligible Acre identified in that Funded RD ASAOC. Notwithstanding the foregoing, any remaining Initial Payment in the RD Special Account will be applied toward Installment Payment 2 and the amount due from Settling Funding Parties for Installment Payment 2 adjusted accordingly.

20. **EPA Deposit of Payment to Disbursement Special Accounts.** EPA shall deposit and disburse the funds in accordance with this Agreement and Funded RD ASAOCs. Upon receipt of funds pursuant to Paragraphs 18 and 19 from Settling Funding Parties, EPA shall deposit such funds in the RD Special Account. Once a Funded RD ASAOC has been finalized, EPA will transfer the amount necessary to fund Disbursement Phase 1 under that Funded RD ASAOC from the RD Special Account to a Disbursement Special Account established under that Funded RD ASAOC. Once a Performing Party has requested a disbursement following EPA's Notice of Completion and EPA approves such request, EPA will transfer the amount necessary to fund Disbursement Phase 2 under that Funded RD ASAOC from the RD Special Account to a Disbursement Special Account established under that Funded RD ASAOC.

21. **Required Conditions in Funded RD ASAOCs for Disbursement of Eligible Expenses.** Performing Parties will be eligible to receive disbursement from the EPA-established Disbursement Special Account if they comply with Disbursement Terms contained in their Funded RD ASAOC and their Funded RD ASAOC is wholly consistent with the terms and conditions below:

a. The Performing Parties execute a Funded RD ASAOC that contains Disbursement Terms within the Offer Period.

b. A Disbursement Special Account will be established only under Funded RD ASAOCs and funded in an amount not to exceed \$80,000 per Eligible Acre. Eligible acreage will be calculated to the nearest 1/10th of an acre of the total Eligible Acres in the Funded RD ASAOC. Each Eligible Acre, or portion thereof, may only be claimed once within the Site. Eligible Acreage is determined at the time the Funded RD ASAOC is executed. If an existing order identified in Appendix C is amended within the Offer Period to include 100% RD for Eligible Acres, then those Eligible Acres are eligible for funding under the terms of this Settlement Agreement. Eligible Acreage is determined at the time the amendment of the existing order identified in Appendix C is executed. Performing Parties may receive reimbursement only of Eligible Expenses and must be in compliance with the terms of their Funded RD ASAOC or have secured a Notice of Completion from EPA at the time reimbursement is requested, as described in Paragraph 21.c. and 21.d.

c. Disbursement Phase 1. Performing Parties shall be eligible to receive reimbursement of \$40,000 per Eligible Acre as Eligible Expenses as provided in the Funded RD ASAOC. Timing for EPA's payment under Phase 1 to Performing Parties shall be set forth in the Funded RD ASAOC.

d. Disbursement Phase 2. Performing Parties shall be eligible to request reimbursement of an additional \$40,000 per Eligible Acre as Eligible Expenses for Phase 2 disbursement, upon EPA's issuance of a Notice of Completion. Reimbursement for Disbursement Phase 2 will only be provided for claims made on or before December 31, 2027. Timing for EPA's payment under Phase 2 to Performing Parties shall be set forth in the Funded RD ASAOC.

e. All other terms and conditions related to disbursement in the Funded RD ASAOC are met.

f. Reimbursement of Eligible Expenses provided under this Agreement is contingent upon Performing Parties including in their Funded RD ASAOCs the terms and conditions attached as Appendix D.

g. No funds from the RD Special Account will be made available to any party working under a unilateral administrative order from EPA to perform RD work within the Site.

22. Payments made by Settling Funding Parties pursuant to Paragraphs 18 and 19 shall be made by EFT in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check or checks made payable to the "Portland Harbor Remedial Design Special Account" within the EPA Hazardous Substance Superfund, referencing the name and address of the party making the payment, the Site name, the EPA Region, the account number 10RP, and the EPA docket number for this action. Settling Funding Parties shall send the check to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Settling Funding Parties shall use the following address for payments made by overnight mail:

U.S Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

At the time of payment, Settling Funding Parties shall send notice that payment has been made to EPA to the Region 10, Remedial Project Manager and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

23. **Interest on Late Payments.** If Settling Funding Parties fail to make any payment required by Paragraphs 18 or 19 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

24. In addition to the Interest payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Funding Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Funding Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Funding Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

25. The obligations of Settling Funding Parties to make the RD Payments to EPA under this Settlement Agreement are joint and several. In the event of the insolvency of any Funding Party or the failure by any Funding Party to make the payments required under this Settlement Agreement, the remaining Settling Funding Parties shall be responsible for such payments.

VIII. COVENANTS BY EPA

26. **Covenants for Settling Funding Parties by EPA.** Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Funding Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for RD Payments paid by Settling Funding Parties to EPA pursuant to this Settlement Agreement. This covenant shall take effect upon receipt by EPA of such RD Payments. These covenants are conditioned upon the satisfactory performance by Settling Funding Parties of their RD Payment obligations under this Settlement Agreement. These covenants extend only to Settling Funding Parties and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

27. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Funding Parties with respect to all matters not expressly included within Paragraph 26 (Covenants for Settling Funding Parties by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Funding Parties with respect to:

- a. liability for failure of Settling Funding Parties to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not paid under this Settlement Agreement;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

28. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTLING FUNDING PARTIES

29. Settling Funding Parties covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to RD Payments. Such claims or causes of action, include but are not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site funded by monies paid under this Settlement Agreement, including any claim under the United States Constitution, the Constitution of the State Oregon, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and
- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, 42 U.S.C. § 6972(a), or state law for RD Payments.

30. Settling Funding Parties covenant not to sue and agree not to assert any claims or causes of action in any forum, judicial or otherwise, against the Performing Parties or their contractors or employees, with respect to Eligible Expenses reimbursed pursuant to this Settlement Agreement under any Funded RD ASAOC. Settling Funding Parties agree that Performing Parties have the right to enforce this covenant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

31. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement, except as provided to the Performing Parties in Paragraph 30 above. Except as provided in Section VIII (Covenants by EPA) and Section X (Covenants by Settling Funding Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

32. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Funding Party has, as of the Effective Date, resolved liability to the United States for RD Payments within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the RD Payments paid.

33. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Funding Party has, as of the Effective Date, resolved liability to the United States for RD Payments within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

34. Each Settling Funding Party shall, with respect to any suit or claim brought by it related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Funding Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Funding Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

35. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Funding Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

36. Effective upon signature of this Settlement Agreement by a Settling Funding Party, such Settling Funding Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Funding Party the payment(s) required by Section VI (Payment of Funds for Remedial Design) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 32, and that, in any action brought by the United States related to the “matters addressed,” such Settling Funding Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Funding Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. RETENTION OF RECORDS

37. Until 10 years after completion of the Remedial Action, each Settling Funding Party shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site; provided, however, that Settling Parties as potentially responsible parties at the Site must retain, in addition, all Records that relate to the liability of any person under CERCLA with respect to the Site. These record retention requirements shall apply regardless of any corporate retention policy to the contrary.

38. After the conclusion of the 10-year record retention period, Settling Funding Parties shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 39 (Privileged and Protected Claims), Settling Funding Parties shall deliver any such Records to EPA.

39. Privileged and Protected Claims

a. Settling Funding Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 39.b, and except as provided in Paragraph 39.c.

b. If Settling Funding Parties assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Funding Parties shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Settling Funding Parties shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Funding Parties’ favor.

c. Settling Parties may make no claim of privilege or protection regarding the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

40. **Business Confidential Claims.** Settling Funding Parties may assert that all or part of a Record submitted to EPA under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Funding Parties shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Funding Parties assert a business confidentiality claim. Records that Settling Funding Parties claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Funding Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Funding Parties.

41. Notwithstanding any provision of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions relating thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

42. Each Settling Funding Party certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIII. NOTICES AND SUBMISSIONS

43. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Sean Sheldrake
Remedial Project Manager
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
sheldrake.sean@epa.gov

Stephanie Ebright, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155, M/S 11-C07
Seattle, WA 98101
ebright.stephanie@epa.gov

As to Settling Funding Parties:

State of Oregon:

Jim McKenna
Natural Resources Policy Analyst
Office of Governor Kate Brown
1600 SW 4th Avenue, Suite 109
Portland, Oregon 97201
jim.j.mckenna@oregon.gov

Lynne Perry
Senior Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
lynne.perry@doj.state.or.us

City of Portland:

Annie Von Burg
Environmental Policy Manager
Bureau of Environmental Services
888 SW 5th Avenue, Suite 400
Portland, Oregon 97204
Annie.VonBurg@portlandoregon.gov

Nanci Klinger
Sr. Deputy City Attorney
Office of Portland City Attorney
1221 SW 4th Avenue
Portland, OR 97204
Nanci.Klinger@portlandoregon.gov

As to the Trustee: Parties will be provided the name and address of the Trustee once the Trust has been established.

XIV. INTEGRATION/APPENDICES

44. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

- “Appendix A” is a map of the Site;
- “Appendix B” is a map of Eligible Acres;
- “Appendix C” is a list of the orders whose work areas (as of January 1, 2019) are excluded from the definition of Eligible Acres and a map of the Willamette Cove area that is excluded from the definition of Eligible Acres; and
- “Appendix D” contains terms and conditions to be included in Funded RD ASAOCs.

XV. MODIFICATION

45. The requirements of this Agreement may be modified in writing by the mutual agreement of the Parties. However, no such modification may alter the terms of a Funded RD ASAOC without the written mutual agreement of the signatories to that Funded RD ASAOC.

XVI. EFFECTIVE DATE

46. This Settlement Agreement shall become effective upon the date of signature of the EPA Region 10, Superfund and Emergency Management Division Director.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

Sheryl Bilbrey, Director
Region 10, Superfund and Emergency Management
Division

Signature Page for Settlement Agreement

FOR THE STATE OF OREGON:

Dated

Vicki Walker
Interim Director
Oregon Department of State Lands

Dated

Matt Garrett
Director
Oregon Department of Transportation

Signature Page for Settlement Agreement

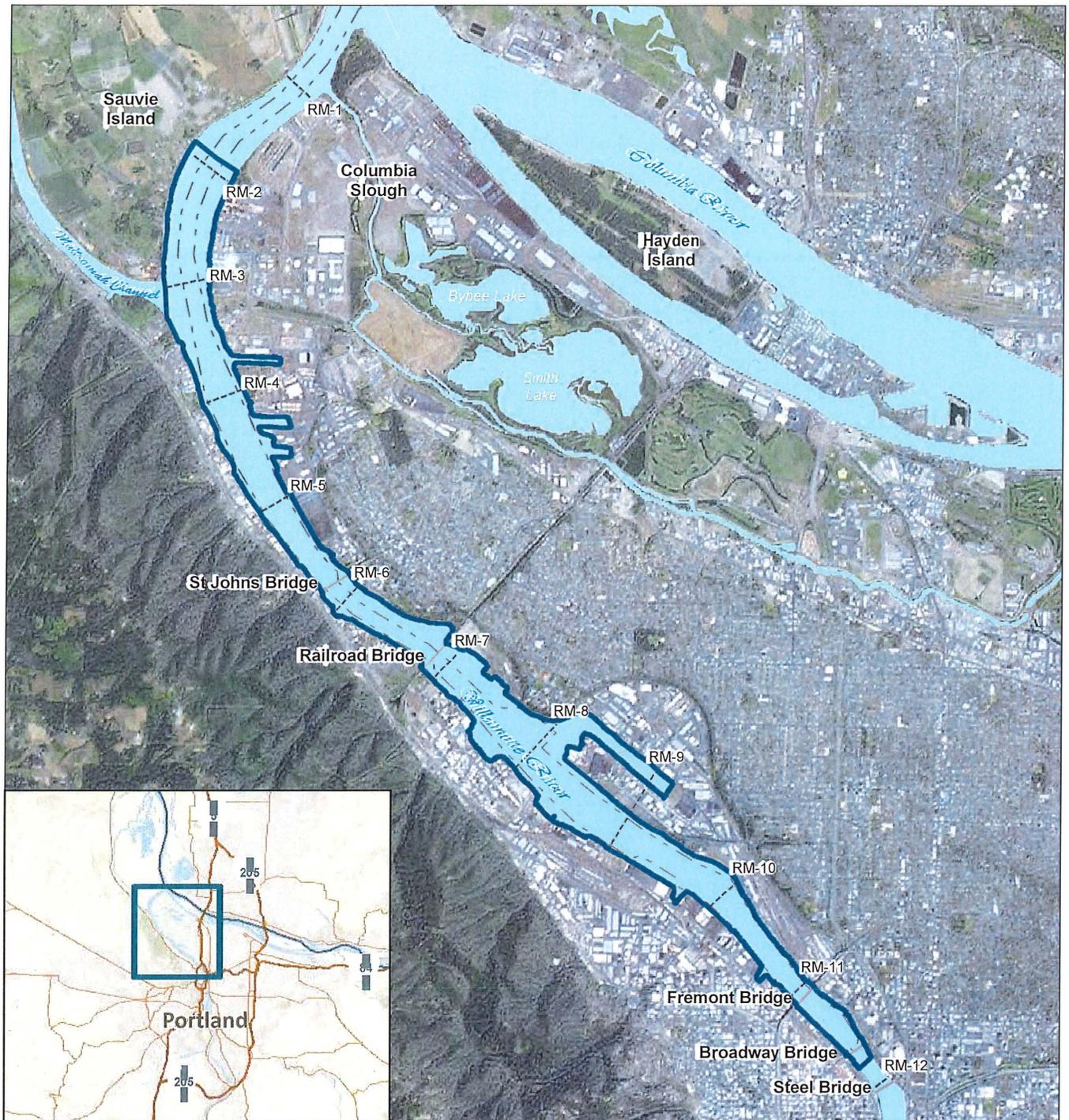
FOR THE CITY OF PORTLAND, OREGON

Dated

Michael Jordan
Director of the Bureau of Environmental Services

Appendix A

Figure 1. Site Area



LEGEND

- Portland Harbor Study Area
- River miles
- Navigation Channel

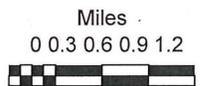
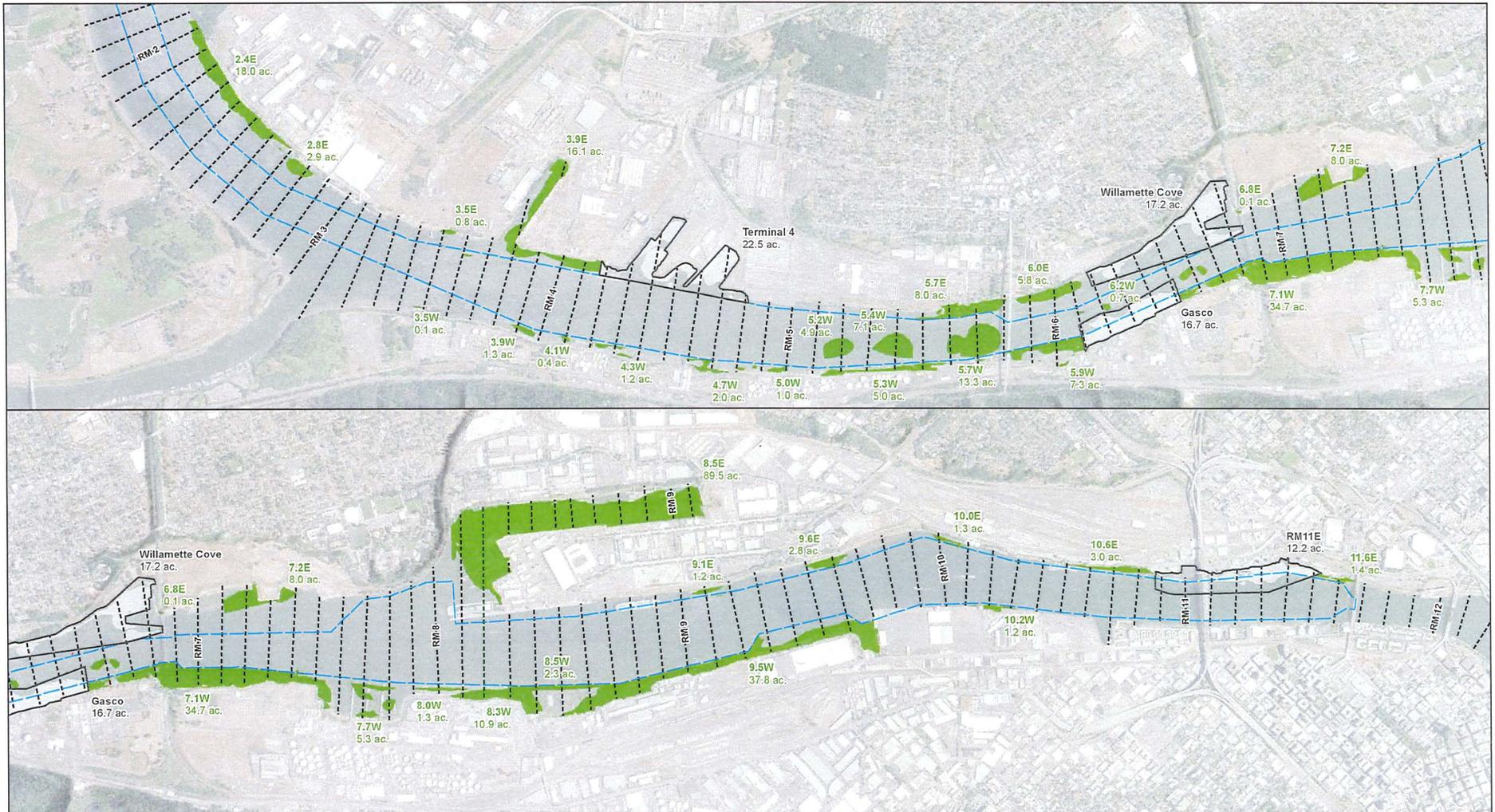


Figure 1. Site Area

Portland Harbor Superfund Site

Appendix B

Map of Eligible Acres



ROD SMA Alternative F Mod Footprint Selected Remedy, 365.3 ac.¹

- Eligible Acres, 296.7 ac.
- Not Eligible Acres, 68.6 ac.

All Other Features

- River Mile (RM)
- Excluded Work Areas
- U.S. Army Corps of Engineers Navigation Channel

NOTES:

1. Portland Harbor Record of Decision January 2017, Based on Figure 30, SMA Alternative F Mod. SMA: Sediment Management Area
ROD: Record of Decision

Map generated by EPA R code output on May 3, 2019



APPENDIX B
Map of Eligible Acres
Willamette River
Portland, Oregon

Appendix C

Work Areas Excluded from the Definition of Remedial Design

APPENDIX C

WORK AREAS EXCLUDED FROM THE DEFINITION OF REMEDIAL DESIGN

For purposes of this Settlement Agreement, the work areas identified as of January 1, 2019 in the orders listed below are excluded from the definition of Eligible Acres.

Terminal 4 Removal Action Area CERCLA Docket No. 10-2004-0009;
Gasco Sediments Site, CERCLA Docket No. 10-2009-0255 and
RM11E Project Area, CERCLA Docket No. 10-2013-0087.

In addition, the Willamette Cove area depicted on the map of Eligible Acres in Appendix B is excluded from the definition of Eligible Acres.

Appendix D

Terms and Conditions to be Included in Funded RD ASAOC

APPENDIX D

TERMS AND CONDITIONS TO BE INCLUDED IN FUNDED RD ASAOC

Reimbursement of Eligible Expenses provided under this Agreement is contingent upon Performing Parties including in the Funded RD ASAOCs the terms and conditions in this Appendix.

Definitions to be Included in the Funded RD ASAOCs.

“Eligible Expenses” shall mean only those costs necessary to complete RD work under this Settlement Agreement [the Funded RD ASAOC] and do not include costs associated with negotiating this Settlement Agreement [the Funded RD ASAOC]; EPA, Oregon Department of Environmental Quality, or Tribal Response Costs; costs associated with dispute resolution, penalties, or costs incurred if EPA takes over RD work under the terms of this Settlement Agreement [the Funded RD ASAOC]; or any other costs specified in this Settlement Agreement [the Funded RD ASAOC] that are not eligible for reimbursement.

“Performing Parties” shall mean each entity who signs this Settlement Agreement [the Funded RD ASAOC] with EPA.

“Settling Funding Parties” shall mean the City of Portland and State of Oregon, by and through its Department of Transportation and its Department of State Lands.

“Settlement Agreement for Funding Remedial Design” shall mean the settlement agreement entered into by the EPA and the Settling Funding Parties under CERCLA Docket no. [REDACTED].

Effect of Settlement/Contribution Protection.

Nothing in this Settlement [the Funded RD ASAOC] shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement, other than the Settling Funding Parties as provided in Section [REDACTED] (Covenants by Performing Parties to Settling Funding Parties) of this Settlement.

Covenants by Performing Parties to Settling Funding Parties.

Performing Parties covenant not to sue and agree not to assert any claims or causes of action in any forum, judicial or otherwise, against the Settling Funding Parties, or their contractors or employees, with respect to the work under this Settlement Agreement [the Funded RD ASAOC] or the RD Payments provided under the Settlement Agreement for Funding Remedial Design. For purposes of this paragraph “work” shall mean all activities and obligations Performing Parties are required to perform under this Settlement Agreement [the Funded RD ASAOC], except those required by Section [REDACTED] (Record Retention). Performing Parties agree that Settling Funding Parties have the right to enforce this covenant.

FOR SETTLEMENT PURPOSES ONLY
JOINT DRAFT FINAL 5-6-2019

Insert into the Notices and Submissions Section of the Funded RD ASAOCs.

Respondent[s] shall deliver a copy of the fully-executed Funded RD ASAOC to the Settling Funding Parties and their Trustee within 7 days of the Effective Date of the Funded RD ASAOC.

As to Settling Funding Parties:

State of Oregon:

Jim McKenna
Natural Resources Policy Analyst
Office of Governor Kate Brown
1600 SW 4th Avenue, Suite 109
Portland, Oregon 97201
jim.j.mckenna@oregon.gov

Lynne Perry
Senior Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
lynne.perry@doj.state.or.us

City of Portland:

Annie Von Burg
Environmental Policy Manager
Bureau of Environmental Services
888 SW 5th Avenue, Suite 400
Portland, Oregon 97204
Annie.VonBurg@portlandoregon.gov

Nanci Klinger
Sr. Deputy City Attorney
Office of Portland City Attorney
1221 SW 4th Avenue
Portland, OR 97204
Nanci.Klinger@portlandoregon.gov

As to the Trustee: [To be provided]

Exhibit B

Proposed Intergovernmental Cooperative Agreement with the State of Oregon for the Portland Harbor
Remedial Design Offer

Intergovernmental Cooperative Agreement for Portland Harbor Remedial Design Offer

This Intergovernmental Cooperative Agreement is made between the City of Portland, an Oregon municipal corporation, acting through its Bureau of Environmental Services (City) and the State of Oregon, acting by and through its Department of State Lands and Department of Transportation (State). As used in this Agreement, the City and State are each a "Party" and collectively the "Parties." This Agreement is authorized pursuant to ORS §190.010.

Recitals

- A. The City and the State, through both its Department of State Lands and Department of Transportation, have been notified by EPA of their general potential liabilities for the Portland Harbor Superfund Site (Site).
- B. In December 2018, EPA notified the Parties and numerous other potentially responsible parties (PRPs) that it expects groups of parties to enter into Administrative Settlement Agreements and Orders on Consent for remedial design work (Design ASAOCs) that when taken together provide commitments to perform "100% remedial design for 100% of the Site designated for active cleanup." *Letter from Davis Zhen, dated December 17, 2018 Re: Request for offers to Perform Remedial Design at the Portland Harbor Superfund Site: Portland, Oregon.* The letter stated EPA's expectation that negotiations for remedial design work would be completed by June 2019 and further indicated that EPA would use its enforcement authorities if its expectations were not met. EPA reiterated its timeline for execution of Design ASAOCs again in March 2019. *Letter from Davis Zhen to PRPs, dated March 15, [2019].*¹
- C. To avoid potential enforcement actions regarding remedial design and address certain of the Parties' alleged liabilities related to the Portland Harbor Superfund Site, the Parties anticipate entering into an agreement with EPA (EPA Agreement) to provide a set amount of funding per acre of active remediation as previously identified in Figure 30 of the January 2017 Portland Harbor Record of Decision (ROD) to those parties who enter into a Design ASAOC in accordance with EPA deadlines and the conditions of the EPA Agreement (Design Parties).
- D. The Parties anticipate that the EPA Agreement will identify the mechanism by, and terms upon which, funds will be transferred to EPA and ultimately to those qualifying Design Parties. The likely mechanism is a trust that holds City and State funds and has the Parties as the sole beneficiaries. (For ease of reference, the term "trust" is used below to refer generally to the mechanism used by the Parties.) The trust would transfer funds to an EPA special account for Portland Harbor as provided in the EPA Agreement.
- E. The Parties would like to cooperate with each other to perform the work required to negotiate the EPA Agreement and establish the trust and, if successful in doing so, to cooperate with each other to perform the work required to implement the EPA Agreement and trust.

¹ Letter misdated as March 15, 2018, but postmarked March 15, 2019.

Intergovernmental Cooperative Agreement for Portland Harbor Remedial Design Offer

Purpose

By this Agreement, the Parties agree to use best efforts to negotiate the EPA Agreement with EPA and establish the trust and, if successful, jointly provide the funding and perform all work required of them under the EPA Agreement and trust. The funding mechanism and transfer process is not established at this time, but this Agreement's purpose includes cooperating to finalize that process and implement the required mechanisms. Without admitting any fact, responsibility, fault or liability, or waiving any rights, claims, privileges or defenses related to the Portland Harbor Superfund Site, the Parties wish to cooperate with each other to fulfill this purpose.

General Provisions

1. **Effective Date and Duration.** This Agreement is effective from the date of execution by all Parties. Unless earlier terminated, or extended by written agreement of the Parties, this Agreement is operative until all work required of Parties under the EPA Agreement and all administrative work necessary to effectuate and conclude the funding process in the EPA Agreement is completed, including disbursement of any remaining funds, final accountings and closure of the trust. This Agreement and the trust may be extended by written agreement of both Parties.
2. **Parties' Obligations.**
 - a. **Work Performance.** The Parties agree to diligently perform the tasks that may be agreed upon and determined necessary to effectuate this Agreement, including all obligations of the EPA Agreement, if successfully negotiated with EPA and executed by the Parties, and the trust established to administer funds as required by that EPA Agreement.
 - b. **Funding.**
 - i. The Parties each agree to provide funds to the trust as required in the EPA Settlement Agreement and as may be mutually agreed to by the City and State. Unless otherwise agreed to in writing, the only costs to be shared under this Agreement are the amounts paid to establish, fund and administer the trust in conformance with the EPA Agreement. Those costs will be shared equally by the City and State.
 - ii. Each Party confirms that it has secured or will secure funding sources sufficient to satisfy 50% of funding obligation under the EPA Agreement, not to exceed \$12 million per Party.
 - iii. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**Intergovernmental Cooperative Agreement for
Portland Harbor Remedial Design Offer**

- i.v. Either Party may pursue recovery of funds with interest from the other Party for failure to provide its share of funding to the trust as required for implementation of the EPA Agreement.
 - c. Each Party shall bear its own administrative costs for implementing this Agreement.
 - d. If the State or City is subject to an audit that includes this work, the Parties shall fully cooperate with the audit to account for all expenses as necessary to complete the audit.
6. **Party Representatives.** Representatives of each Party are listed below. Parties may change representatives as needed by providing written notice to the other Party.

City of Portland

Project Manager: Annie Von Burg

Organization: City of Portland, Bureau of Environmental Services

Phone: 503.823.7859

Email: Annie.VonBurg@portlandoregon.gov

State of Oregon

Project Manager: Jim McKenna

Organization: State of Oregon, Governor's Natural Resources Office

Phone: 503.510.9349

Email: jim.j.mckenna@oregon.gov

3. **Non-Waiver of Privileges.** The Parties are now and may become, collectively or individually, parties to separate joint defense, joint prosecution, confidentiality and/or common interest agreements related to liabilities associated with the Portland Harbor Superfund Site. Nothing in this Agreement alters or waives rights, duties or privileges under any such agreement.
4. **Termination.** This Agreement may be terminated by either Party upon 30 days' written notice to the other Party. Notwithstanding the foregoing, termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties or either of them prior to the termination, including their obligations under this Agreement, the EPA Agreement and trust agreement. .
5. **Amendments.** The terms of this Agreement may be modified only by written agreement by both Parties.
6. **Captions and Headings.** The captions and headings in this Agreement are for convenience only and do not define or limit the scope or intent of any provision of this Agreement.
7. **Denial of Liability.** Neither Party admits any liability or violation of law by virtue of entering this IGA. Neither this Agreement, nor any action taken by the Parties pursuant to this Agreement, shall constitute, be interpreted, construed or used as evidence of any admission of liability, law, or fact, a waiver of any right or defense, nor an estoppel against either Party.

**Intergovernmental Cooperative Agreement for
Portland Harbor Remedial Design Offer**

8. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve any dispute without litigation.

9. **Governing Law and Choice of Venue.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Multnomah County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding anything in this Section 9 to the contrary, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

10. **Severability/Survival.** If any provision of the Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

11. **No Third-Party Beneficiary.** The only beneficiaries to this Agreement are the Parties and thus the only parties entitled to enforce its terms. Nothing in this Agreement gives or will be construed to give or provide any benefit to third parties, including the parties to any Design ASAOC to whom funding is provided under the EPA Agreement.

12. **Third-Party Claims.** If EPA or any third-party makes any claim or brings any action, suit or proceeding arising from or related to this Agreement (Third-Party Claim) against one Party with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third-Party Claim and deliver to the other Party a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. With respect to any Third-Party Claim for which the Parties are jointly liable (or would be if joined in Third-Party Claim), each Party shall contribute to expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in such proportion as is appropriate to relative fault in connection with the events that resulted in such to expenses, judgments, fines and settlement amounts paid in settlement, as well as any other relevant equitable considerations.

13. **Merger.** This Agreement constitutes the entire understanding among the Parties with respect to its subject matter. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary

**Intergovernmental Cooperative Agreement for
Portland Harbor Remedial Design Offer**

approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Each person signing this Agreement confirms that he or she is duly authorized to enter into this Agreement on behalf of the specified Party.

City of Portland

State of Oregon, Department of State Lands

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

State of Oregon, Department of Transportation

By: _____

Title: _____

Date: _____

