

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel.
LEAH FELDON, DIRECTOR
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

v.

CITY OF PORTLAND, a municipal
corporation,

Defendant.

Case No. 24CV16446

CONSENT JUDGMENT
General Judgment

ORS 20.140 - State fees deferred at filing

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1 **1. Purpose**

2 This Consent Judgment is filed simultaneously with and for the purpose of resolving the
3 underlying complaint by the State of Oregon against Defendant, the City of Portland (City)
4 (collectively, the Parties). The Parties desire to resolve this action without litigation and have
5 agreed to entry of the Consent Judgment without admission or adjudication of any issue of fact
6 or law. The mutual objectives of the Parties are to (a) protect public health, safety, and welfare
7 and the environment by the implementation of remedial measures in accordance with
8 ORS 465.200 through 465.410 and regulations promulgated pursuant thereto, and (b) resolve
9 Defendant’s potential liability at the Facility described in 2.B.(1) below.

10 **2. Stipulations and Findings**

11 A. Defendant stipulates:

- 12 (1) To entry of this Consent Judgment;
- 13 (2) To perform and comply with all provisions of this Consent Judgment; and
- 14 (3) In any proceeding brought by the Oregon Department of Environmental
15 Quality (DEQ) to enforce this Consent Judgment, not to litigate this Court’s jurisdiction over this
16 matter or the validity of the Consent Judgment.
- 17 (4) To waive any right Defendant might have under ORS 465.260(7) to seek
18 reimbursement from the Hazardous Substances Remedial Action Fund for costs incurred under
19 this Consent Judgment.

20 B. Defendant and DEQ stipulate that, for the purposes of this Consent Judgment:

- 21 (1) “Facility,” as defined in ORS 465.200(13), means: the Columbia Slough;
22 including the full extent of existing known or unknown contamination by hazardous substances of
23 any media in, above, or below the Columbia Slough, or that has migrated, might have migrated, or
24 hereafter migrates to anywhere from the Columbia Slough, including but not limited to: (i)
25 migration to the waters and sediment of the Columbia Slough, and (ii) any sediment or uplands on
26 properties adjacent to or in the vicinity of the Columbia Slough.

1 (2) “Columbia Slough” or “Slough” means the waterway, bed and banks of the
2 approximately 19-mile main channel that parallels the Columbia River, as well as approximately
3 12 additional miles of secondary waterways and as generally depicted in Exhibit A. The Upper
4 Slough starts at the mouth of Fairview Lake on the east and flows west to the mid-dike levee at
5 NE 142nd Avenue. The Middle Slough extends from the mid-dike levee near NE 142nd Avenue
6 to the Pen 2 levee near NE 18th Avenue. The Lower Slough starts at the Pen 2 levee, near NE
7 18th Avenue, and extends approximately 8.5 miles to the Willamette River. Secondary
8 waterways include a substantial complex of sloughs, wetlands, and lakes, including Prison Pond,
9 Mays Lake, Johnson Lake, Whitaker Slough, Whitaker Ponds, and Buffalo Slough. Pumps are
10 used to move water from the Upper and Middle Slough to the Columbia River or the Lower
11 Slough. The Columbia Slough receives water from stormwater outfalls, natural springs,
12 overland flow, and groundwater.

13 (3) For the purposes of this Consent Judgment, “Matters Addressed” means:
14 (a) all investigation, removal, and remedial actions taken or to be taken and all remedial action
15 costs incurred or to be incurred at or in connection with a release of hazardous substances at the
16 Facility, including per- and polyfluoroalkyl substances (PFAS), at the Facility and (b) all State
17 Natural Resource damages for loss of use, injury to or destruction of any natural resources at or
18 in connections with a release of hazardous substances at or from the Facility.

19 C. DEQ finds, and Defendant neither admits nor denies:

20 (1) Defendant, the City of Portland (City) is a municipal corporation in the State
21 of Oregon.

22 (2) The Columbia Slough Watershed drains approximately 32,700 acres of land
23 including portions of Portland, Troutdale, Fairview, Gresham, Maywood Park, Wood Village,
24 and unincorporated Multnomah County. The watershed once contained a vast system of
25 channels, lakes, ponds, wetlands, and numerous streams covering the floodplain of the Columbia
26 River between the mouths of the Willamette and Sandy Rivers.

1 (3) Industrial, agricultural, and urban development along the Columbia Slough
2 has resulted in the accumulation of a variety of contaminants in Slough sediments.
3 Contaminants have reached the Columbia Slough through a variety of pathways including, but
4 not limited to, direct discharge of industrial wastewater, direct discharge of sanitary wastes
5 before City annexations, historic combined sewer overflows, and stormwater flowing overland or
6 discharging through municipal or private outfalls, discharges from contaminated upland sites,
7 erosion from contaminated channel banks, leachate from contaminated soil, and/or mobilization
8 of legacy pollution already accumulated in the streambed.

9 (4) More than 200 City stormwater outfalls and more than 500 non-City
10 stormwater outfalls discharge to the Columbia Slough.

11 (5) In 1947, the City constructed the first interceptor sewers to carry dry weather
12 flows to the Columbia Boulevard Wastewater Treatment Plant in North Portland.

13 (6) In the 1970s, the City began massive projects to “separate” the stormwater
14 and sanitary sewer system. Historically, thirteen combined sewer outfalls discharged stormwater
15 and sanitary waste into the Lower Columbia Slough. By 2000, this project resulted in three
16 combined sewer outfalls being sealed off, and the remaining ten outfalls being controlled at
17 99.6% of the annual combined sewer overflow volume. Additional projects were completed by
18 the City to reduce stormwater runoff into the combined sewer including installing street sumps
19 (i.e., dry wells), disconnecting residential downspouts, diverting underground streams, and
20 building separate pipes for stormwater runoff. As a result of these projects, reduced instances
21 and volumes of discharge reach the Columbia Slough. The combined discharge is now conveyed
22 to the Columbia Boulevard Wastewater Treatment Plant and treated effluent is discharged into
23 the Columbia River after treatment under a DEQ-issued National Pollutant Discharge
24 Elimination System (NPDES) permit.

25 (7) The City’s storm system collects and discharges stormwater from over 200
26 outfall drainage basins within the Columbia Slough Watershed, which accounts for 13% of the

1 total stormwater drainage of the Watershed. Stormwater pollutants associated with stormwater
2 outfall discharges originate from public roadways and upland private properties. Pollutants from
3 rights-of-ways may include metals (e.g., copper, lead, zinc), petroleum hydrocarbons and
4 polycyclic aromatic hydrocarbons (PAHs). Pollutants from upland properties include metals,
5 phthalates, chlorinated pesticides, polychlorinated biphenyls (PCBs), PFAS, dioxin/furans,
6 petroleum hydrocarbons, and PAHs.

7 (8) In addition to stormwater discharges through City outfalls, as a municipality,
8 the City provides services and acquires property that may result in the release of contaminants to
9 the Slough. Such activities include, but are not limited to:

- 10 a. Operation of sanitary and combined-sewer overflow systems;
- 11 b. Acquisition of public utilities, roads, and conveyance systems through
12 construction or annexation;
- 13 c. Solid waste management and disposal;
- 14 d. Acquisition of former agricultural and industrial lands;
- 15 e. Aerial spraying of DDT in coordination with Multnomah County from
16 1947 until 1968;
- 17 f. Full or partial ownership of contaminated properties, including properties
18 within the locality of facility of the following sites listed on the Oregon DEQ, Environmental
19 Cleanup Site Information Database (ECSI) database: 24, 88, 186, 104, 268, 783, 916, 1311,
20 1503, 2086, 2101, 2251, 3928, 3985, 4166, 5455, 5692, 5808, 5950, and 6267;
- 21 g. Ownership of property with industrial, commercial, or public tenants that
22 handle, store, or use hazardous substances; and,
- 23 h. Firefighting and firefighting training.

24 (9) In 1994, DEQ placed the Columbia Slough on the State of Oregon's 303(d)
25 list, which identifies bodies that are water-quality limited.

26 (10) Since 1995, the City has operated pursuant to a DEQ-issued NPDES

1 Municipal Separate Storm Sewer System (MS4) Permit (Permit No. 101314).¹ The City’s MS4
2 Permit regulates discharges from the City’s municipal stormwater system (which is separate
3 from the City’s sanitary sewer system).

4 (11) The City manages stormwater outfall discharges to the Columbia Slough in
5 compliance with the City’s MS4 Permit, including the Total Maximum Daily Load waste load
6 allocations for urban stormwater for the Columbia Slough. This permit is implemented, in part,
7 through the City’s DEQ-approved Stormwater Management Program. Through these regulatory
8 programs, the City has implemented a wide range of source control action to reduce wide-spread
9 source contributions to the Slough.

10 (12) Pursuant to the City’s MS4 Permit and a 2010 Intergovernmental Agreement
11 (IGA)² between the City and DEQ, the City administers DEQ NPDES 1200-A and 1200-Z
12 permits for facilities located within the City of Portland that discharge to the municipal
13 stormwater system or directly to surface waters. Under this IGA, the City reviews new NPDES
14 permit applications, which include facilities’ stormwater pollution control plans (SWPCPs);
15 conducts inspections to ensure compliance with the SWPCP and permit conditions; and reviews
16 Discharge Monitoring Reports to determine compliance with Schedule B of DEQ’s industrial
17 stormwater permits. The City also provides technical assistance to facilities to identify
18 additional activities and best management practices to minimize pollutants in stormwater.

19 (13) Between approximately 1989 and 2005, the City and DEQ conducted
20 numerous water, sediment, and fish-tissue quality investigations, which documented the presence
21 of hazardous substances in sediments of the Slough.

22 (14) In a Record of Decision dated July 2005 (ROD), DEQ’s Northwest Region
23

24 ¹ The Port of Portland is a co-permittee to the City’s MS4 permit.

25 ² *Intergovernmental Agreement Between the State of Oregon, Department of Environmental Quality and the City of*
26 *Portland for Administration of the National Pollutant Discharge Elimination System (NPDES) 1200-Z, 1200-COLS*
and 1200-A General Permits for Stormwater Discharges from Industrial Activities. City of Portland Agreement No.
30001293.

1 Administrator set forth the framework for addressing sediment contamination in the Slough. In
2 the ROD, DEQ acknowledged “because there are multiple wide-spread sources of contaminants
3 to the Slough throughout the Slough watershed, source control is not straightforward and will
4 likely be a complex long-term effort.” The ROD set forth a remedial approach that includes the
5 following actions.

- 6 • Identify current and historical sources of contamination in Slough sediments
7 and potential sources that contribute to, or have contributed to, sediment
8 contamination.
- 9 • Provide a framework for integrating upland source control activities with in-
10 water Slough remedial actions.
- 11 • Remediate elevated levels of sediment contamination to Slough baseline levels.
- 12 • Implement measures in upland areas within the Slough to reduce widespread
13 sources of contamination and prevent future discharges from potential sources.
- 14 • Conduct long-term monitoring and evaluation to assess the effectiveness of
15 remedial measures and modify the approach as warranted.
- 16 • Complete evaluation of the adequacy of remedial measures implemented, and,
17 ultimately, on the achievement of protective cleanup levels for segments of the
18 Slough identified by water-flow characteristics.

19 (15) The City and DEQ have entered into a series of Intergovernmental

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1 Agreements (IGAs; 2006,³ 2010,⁴ 2016,⁵ 2021⁶) to implement elements of the ROD using a
2 watershed approach. The intent of this approach has been to implement watershed-wide actions
3 that address specific sources of sediment contamination as well as improve the overall health of
4 the watershed. The watershed approach integrates watershed management and multiple
5 environmental regulations to address watershed health concerns.

6 (16) Since the ROD was issued, the City has implemented a range of actions to
7 meet the objectives of the ROD and the IGAs, including, stormwater source control evaluation
8 and management, construction of stormwater treatment systems in various basins that discharge to
9 the Slough, investigating upland sources and referring those properties to appropriate regulatory
10 programs for source control actions, and developing with DEQ both the 2007 Columbia Slough
11 Watershed Long-Term Monitoring Plan (LTMP) and the 2011 Columbia Slough Watershed
12 Action Plan. The LTMP established the sampling plan for sediment, fish tissue, and other
13 monitoring. Results from the LTMP is used to track the progress in reducing pollutant
14 concentrations in the Slough, to identify pollutant trends in sediments and fish tissue in the
15 Slough, and to modify programmatic actions as needed to continue progress toward improving
16 overall watershed health.

17 (17) The City performed two rounds of slough-wide, long-term sediment
18 monitoring (2006 and 2017) and fish-tissue quality sampling (2006 and 2015) to evaluate the

19 _____
20 ³ *Intergovernmental Agreement for Oversight of Columbia Slough Sediment Remedial Action. Between: City of
21 Portland, by and through its Bureau of Environmental Services (BES) And: Oregon Department of Environmental
22 Quality (DEQ). DEQ No. LQVC-NWR-04-09. Effective Date: April, 2006.*

23 ⁴ *Amendment to Intergovernmental Agreement (DEQ NO. LQVC-NWR-06-01) Oversight of Columbia Slough
24 Sediment Remedial Action City of Portland, by and through its Bureau of Environmental Services (BES) and Oregon
25 Department of Environmental Quality (DEQ), Multnomah County, Oregon. Effective Date: July 1, 2010*

26 ⁵ *Intergovernmental Agreement for Oversight of Columbia Slough Sediment Remedial Action - City of Portland, by
and through its Bureau of Environmental Services and Oregon Department of Environmental Quality. DEQ
Agreement No. R008-16. Effective Date: January 1, 2016.*

⁶ *Intergovernmental Agreement for Oversight of Columbia Slough Sediment Remedial Action – City of Portland, by
and through its Bureau of Environmental Services and Oregon Department of Environmental Quality. DEQ
Agreement No. R004-21. Effective Date: January 1, 2021.*

1 overall improvement of watershed health related to sediments and to inform the Columbia
2 Slough Fish Advisory.

3 (18) On November 1, 2023, DEQ published notice of this proposed Consent
4 Judgment and provided opportunity for public comment in accordance with ORS 465.320(1) and
5 465.325(4)(d). A public information meeting was held November 15, 2023. The comment period
6 ended November 30, 2023. Three written responses were received. Two of the written responses
7 were received from two separate government agencies in support of the agreement. One written
8 comment was received from the public, requiring a clarification response. Comments were
9 considered non-substantive and did not change Consent Judgment scope.

10 (19) Defendant is a “person” within the meaning of ORS 465.200(21), and a
11 potentially liable person under ORS 465.255.

12 (20) Contaminants described in Section 2.C.(7) are “hazardous substances” within
13 the meaning of ORS 465.200(16). The presence of these hazardous substances at the Site
14 constitutes a “release” or “threat of release” to the environment within the meaning of
15 ORS 465.200(22).

16 (21) Based on the administrative record, the Director determines, in accordance
17 with ORS 465.325(1) and (7), that this Consent Judgment and all of Defendant’s commitments
18 under the Consent Judgment will expedite removal or remedial action, minimize litigation, be
19 consistent with rules adopted under ORS 465.400, and be in the public interest.

20 Based on the above Stipulations, the parties agree to entry of the following Consent
21 Judgment:

22 **3. Work to be Performed**

23 A. Remedial Activities

24 Defendant will perform remedial activities in accordance with the terms and schedules set
25 forth in the Scope of Work (SOW) attached to and incorporated by reference into this Consent
26 Judgment as Exhibit 2, and the terms and schedules set forth in DEQ-approved work plans

1 (including sampling and analysis plans or amendments to existing plans as required by the
2 SOW). The remedial activities consist of the following tasks as described in the SOW.

3 (1) Complete source control evaluations of City basins within the Columbia
4 Slough to achieve regulatory closure and as part of the Source Control task documented in the
5 Record of Decision.

6 (2) Design and implement stormwater treatment to reduce the discharge of
7 pollutants to the Columbia Slough from City rights of way in the 15 City stormwater basins
8 identified in the SOW.

9 (3) Conduct one Slough-wide sediment sampling event as a part of the Long
10 Term Monitoring task documented in the Record of Decision.

11 (4) Conduct one Slough-wide fish tissue sampling event to inform the Columbia
12 Slough fish advisory and assist with the Long Term Monitoring task documented in the Record
13 of Decision.

14 (5) Implement Additional Remedial Measures (also referred to as Alternative
15 Remedial Measures [ARMs]) documented in the Record of Decision to improve watershed
16 health in the Columbia Slough with a total implementation cost to the City of \$4,000,000.

17 B. Modification of SOW or Related Work Plans

18 (1) If DEQ determines that modification to the work specified in the SOW and/or
19 in work plans developed pursuant to the SOW is necessary to implement or maintain the
20 effectiveness of the remedy set forth in the ROD, DEQ may require that such modification be
21 incorporated in the SOW and/or such work plans; provided, any such modification may be
22 required pursuant to this paragraph only to the extent that the modification is consistent with the
23 scope of the remedy selected in the ROD and the objectives of the SOW.

24 (2) Subject to dispute resolution under Subsection 7.H, Defendant will modify the
25 SOW and/or work plans as required by DEQ and implement any work required by the
26 modifications. Before invoking dispute resolution under Subsection 7.H., Defendant and DEQ

1 will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by
2 informal discussions for no more than 45 days following notice from DEQ of a requested
3 modification. DEQ may approve an extension of this informal discussion period if progress is
4 being made towards informal dispute resolution.

5 C. Additional Measures

6 Defendant may elect at any time during the term of this Consent Judgment to undertake
7 measures, beyond those required under this Consent Judgment and the SOW, necessary to
8 address the release or threatened release of hazardous substances at the Site. Such additional
9 measures are subject to prior approval by DEQ. DEQ's approval will be granted if DEQ
10 determines that the additional measures are consistent with the remedial action objectives in the
11 ROD and will not threaten human health or the environment.

12 **4. Payment of Remedial Action Costs**

13 A. So long as the Court's entry of the Consent Judgment is not appealed or otherwise
14 set aside or vacated, a total of \$16,000,000 in remedial action costs shall be paid to DEQ by or
15 on behalf of Defendant as follows:

16 \$5,000,000 within 45 days of entry of this Consent Judgment by the Court,

17 \$6,000,000 no later than August 1, 2025, and

18 \$5,000,000 no later than August 1, 2026.

19 B. Payment under Section 4.A. shall be made by ACH electronic transfer using
20 instructions provided by DEQ. Documents shall reference the Hazardous Substances Remedial
21 Action Fund and Columbia Slough Sediment Remediation.

22 C. In the event the Court's entry of this Consent Judgment is appealed but upheld,
23 Defendant shall still comply with the payment schedule as described in Subsection 4.A, above.

24 D. Upon receipt of payment from Defendant pursuant to this Section 4, DEQ shall
25 deposit the payment into an interest-bearing, site-specific account within the Hazardous
26 Substances Remedial Action Fund, the Columbia Slough Sediment Remediation Account, to be

1 used by DEQ to fund performing or paying for investigation, removal, or remedial actions in the
2 Columbia Slough.

3 E. Upon Defendant's payments to DEQ pursuant to this Section 4, sole legal and
4 equitable right, title, and interest in such money and interest earned on the money irrevocably
5 vests in the State of Oregon, and Defendant waives, discharges, and releases any claim to or
6 recourse against the money.

7 **5. Payment of Natural Resources Damages**

8 A. Within 45 days of entry of this Consent Judgment by the Court, and so long as the
9 Court's entry of the Consent Judgment is not appealed or otherwise set aside or vacated,
10 \$2,000,000 shall be paid to DEQ by or on behalf of Defendant. Payment shall be made by ACH
11 electronic transfer using instructions provided by DEQ. Documents shall reference the
12 Hazardous Substances Remedial Action Fund and Columbia Slough Restoration.

13 B. Upon receipt of payment from Defendant pursuant to this Section 5, DEQ shall
14 deposit the payment into an interest-bearing, site-specific account within the Hazardous
15 Substances Remedial Action Fund, Columbia Slough Resource Restoration Account, dedicated
16 for use by DEQ in consultation with the Oregon Department of Fish and Wildlife to fund natural
17 resource restoration projects, including remedial actions that provide natural resource benefits in
18 the Columbia Slough.

19 C. Upon Defendant's payment to DEQ pursuant to this Section 5, sole legal and
20 equitable right, title, and interest in such money and interest earned on the money irrevocably
21 vests in the State of Oregon, and Defendant waives, discharges, and releases any claim to or
22 recourse against the money.

23 D. In the event the Court's entry of this Consent Judgment is appealed but upheld,
24 Defendant shall, within 45 days of such final resolution, comply with the payment described in
25 Subsection 5.A., above.

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1 **6. Payment of DEQ Source Control Personnel**

2 A. Under this Consent Judgment, and so long as the Court's entry of the Consent
3 Judgment is not appealed or otherwise set aside or vacated, up to \$1,500,000 shall be paid to
4 DEQ for DEQ Source Control Personnel by or on behalf of Defendant as follows:

5 (1) \$500,000 within 45 days of entry of this Consent Judgment by the Court,

6 (2) \$500,000 within 45 days of the City's receipt of DEQ's accounting
7 documenting that at least a total of \$300,000 has been expended pursuant to Section 6.E, and

8 (3) \$500,000 within 45 days of the City's receipt of DEQ's accounting
9 documenting that at least a total of \$800,000 has been expended pursuant to Section 6.E.

10 B. Defendant's obligation to provide payments as described in Subsection 6.A. expires
11 10 years after the date of entry of this Consent Judgment.

12 C. Payments under this Section 6 shall be made by ACH electronic transfer using
13 instructions provided by DEQ. Documents shall reference the Hazardous Substances Remedial
14 Action Fund and Columbia Slough Source Control Personnel Account.

15 D. In the event the Court's entry of this Consent Judgment is appealed but upheld,
16 Defendant shall, within 45 days of such final resolution, comply with the payment schedule as
17 described in Subsection 6.A. above.

18 E. Upon receipt of payment from Defendant pursuant to this Section 6, DEQ shall
19 deposit the payment into an interest-bearing, site-specific account within the Hazardous
20 Substances Remedial Action Fund, dedicated to use by DEQ for funding of the work of DEQ or
21 contract personnel to facilitate source investigation and control in the Columbia Slough. The
22 personnel performing this work may have other duties, but funds provided under this Section
23 may be used only for work directly associated with the investigation and control of potential
24 sources of contamination to the Slough. DEQ shall provide an annual accounting of its charges
25 made against these funds in a format similar to that used to document DEQ oversight
26 expenditures described in Section 7.F.

1 E. Upon Defendant's payment to DEQ pursuant to this Section 6, sole legal and
2 equitable right, title, and interest in such money and interest earned on the money irrevocably
3 vests in the State of Oregon, and Defendant waives, discharges, and releases any claim to or
4 recourse against the money.

5 **7. General Provisions**

6 A. Project Managers

7 (1) To the extent possible, all reports, notices, and other communications required
8 under or relating to this Consent Judgment must be directed to:

9 DEQ Project Manager

10 Sarah Miller
11 Department of Environmental Quality
12 NW Region Cleanup Program
13 700 NE Multnomah St. Suite 600
14 Portland, OR 97232
15 Ph: 503-229-5040
16 Email: sarah.miller@deq.oregon.gov

9 Defendant Project Manager - City

10 Andrew Davidson
11 Bureau of Environmental Services
12 1120 SW 5th Ave, Room 1000
13 Portland, OR 97201-1912
14 Ph: 503-823-7580
15 Email: andrew.davidson@portlandoregon.gov

16 (2) The Project Managers or their respective designees must be available and
17 have the authority to make day-to-day decisions necessary to complete the SOW.

18 B. Supervising Contractor

19 (1) All aspects of the work to be performed by Defendant pursuant to this
20 Consent Judgment must be performed under the direction and supervision of a qualified
21 employee or contractor having experience in hazardous substance remediation and knowledge of
22 applicable state and federal laws, regulations, and guidance.

23 (2) If, during the course of work required under this Consent Judgment,
24 Defendant proposes to change its supervising contractor, Defendant will notify DEQ in advance
25 of the proposed change.
26

1 C. DEQ Approvals

2 (1) Where DEQ review and approval is required for any plan or activity under
3 this Consent Judgment, Defendant may not proceed to implement the plan or activity until DEQ
4 approval is received. Any delay by DEQ in granting or denying approval correspondingly
5 extends the time for completion by Defendant. Prior approval is not required in emergencies;
6 provided, Defendant notifies DEQ immediately after the emergency and evaluates the impact of
7 its actions.

8 (2) After review of any plan, report, or other item required to be submitted for
9 DEQ approval under this Consent Judgment, DEQ will: (a) approve the submission in whole or
10 in part; or (b) disapprove the submission in whole or in part and notify Defendant of its
11 deficiencies and/or request modifications to cure the deficiencies.

12 (3) DEQ approvals, rejections, or identification of deficiencies will be given in
13 writing within the time specified in the SOW, work plan, or as soon as practicable and will state
14 DEQ's reasons with reasonable specificity.

15 (4) In the event of DEQ disapproval or request for modification of a submission,
16 Defendant will, within 30 days of receipt of the DEQ notice or such longer time as may be
17 specified in the notice, correct the deficiencies, and resubmit the revised report or other item for
18 approval.

19 (5) In the event of two deficient submittals of the same deliverable that are
20 deficient for the same reasons due to Defendant's failure in good faith to cure the original
21 deficiency, DEQ may modify the submission to cure the deficiency.

22 (6) In the event of approval or modification of a submission by DEQ, Defendant
23 will implement the action(s) required by the plan, report, or other item, as so approved or
24 modified, or invoke dispute resolution under Subsection 7.H.

25 D. Access to Property

26 (1) Defendant will allow DEQ to enter all portions of property owned by or under

1 the control of Defendant at all reasonable times for the purpose of overseeing Defendant's
2 performance under this Consent Judgment, including but not limited to inspecting records
3 relating to work under this Consent Judgment, conducting such tests and taking such samples as
4 DEQ deems necessary, verifying data submitted to DEQ by Defendant, conducting periodic
5 review, and using camera, sound recording, or other recording equipment. DEQ will make
6 available to Defendant, upon Defendant's request, any photographs or recorded or videotaped
7 material taken.

8 (2) DEQ will comply with applicable federal, state, and local laws at all times
9 while on property owned or controlled by Defendant, including access permits to enter the public
10 conveyance system. Defendant will cooperate with DEQ as necessary to obtain any necessary
11 City authorizations.

12 (3) Defendant will seek to obtain access to property not owned or controlled by
13 Defendant as necessary to perform the work required in this Consent Judgment, including access
14 by DEQ for purposes described in paragraph 7.D.(1). DEQ may use its statutory authority to
15 obtain access to property on behalf of Defendant if DEQ determines that access is necessary, and
16 that Defendant has exhausted all good-faith efforts to obtain access.

17 E. Records

18 (1) In addition to those reports and documents specifically required under this
19 Consent Judgment, Defendant will provide to DEQ, within 10 days of DEQ's written request,
20 copies of QA/QC memoranda and audits, raw data, final plans, task memoranda, field notes (not
21 made by or at the direction of Defendant's attorney), and laboratory analytical reports relating to
22 activities under this Consent Judgment.

23 (2) Defendant will preserve all records and documents in possession or control of
24 Defendant or its employees, agents, or contractors that relate to activities under this Consent
25 Judgment for at least five years after DEQ's issuance of a final certification of completion under
26 Section 14. Upon DEQ's request, Defendant will provide to DEQ, or make available for copying

1 by DEQ, copies of non-privileged records. For a period of 10 years after receipt of the final
2 certification of completion, Defendant will provide notice to DEQ 60 days before destruction or
3 other disposal of such records or documents. Ten years after certification of completion,
4 Defendant has no further obligation to preserve documents or records.

5 (3) Subject to paragraph 7.E.(4), Defendant may assert a claim of confidentiality
6 under the Oregon Public Records Law regarding any documents or records submitted to or
7 copied by DEQ pursuant to this Consent Judgment. DEQ will treat documents and records for
8 which a claim of confidentiality has been made in accordance with ORS 192.311 through
9 192.431. If Defendant does not make a claim of confidentiality at the time the documents or
10 records are submitted to or copied by DEQ, the documents or records may be made available to
11 the public without notice to Defendant.

12 (4) Defendant will identify to DEQ (by addressor-addressee, date, general subject
13 matter, and distribution) any document, record, or item withheld from DEQ on the basis of
14 attorney-client or attorney work product privilege, except to the extent that such identifying
15 information is itself subject to a privilege. Attorney-client or work product privilege may not be
16 asserted with respect to any records required to be submitted under paragraph 7.E.(1). DEQ
17 reserves its rights under law to obtain documents DEQ asserts are improperly withheld by
18 Defendant.

19 F. Other Applicable Laws

20 (1) Subject to ORS 465.315(3), all activities under this Consent Judgment must
21 be performed in accordance with all applicable federal, state, and local laws.

22 (2) All activities under this Consent Judgment must be performed in accordance
23 with any applicable federal, state, and local laws related to archeological objects and sites and
24 their protection. If archeological objects or human remains are discovered during any
25 investigation, removal, or remedial activity Defendant is responsible for performing under this
26 Consent Judgment, Defendant will, at a minimum: (a) stop work immediately in the vicinity of

1 the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the
2 DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that
3 Defendant and its employees, contractors, counsel, and consultants keep the discovery
4 confidential, including but not limited to refraining from contacting the media or any third party
5 or otherwise sharing information regarding the discovery with any member of the public. Any
6 project delay caused by the discovery of archeological object or human remains is a Force
7 Majeure under Subsection 7.G.

8 G. Reimbursement of DEQ Costs

9 (1) DEQ will submit to Defendant a monthly invoice of costs incurred by DEQ,
10 which have not been previously billed under the former Intergovernmental Agreement
11 referenced in Section 8.F., (a) after May 1, 2023, in connection with development and approval
12 of this Consent Judgment and, thereafter, and (b) solely for those activities related to the
13 oversight and periodic review of Defendant’s implementation of this Consent Judgment. Each
14 invoice must include a summary of costs billed to date.

15 (2) DEQ oversight costs payable by Defendant include direct and indirect costs.
16 Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually
17 and reasonably incurred by DEQ under ORS 465.200 *et seq.* DEQ’s direct cost summary must
18 include a Land Quality Division (LQD) direct labor summary showing the persons charging
19 time, the number of hours, and the nature of work performed. Indirect costs include those
20 general management and support costs of DEQ and of the LQD allocable to DEQ oversight
21 under this Consent Judgment and not charged as direct, site-specific costs. Indirect charges are
22 based on actual costs and applied as a percentage of direct personal services costs. DEQ will
23 maintain work logs, payroll records, receipts, and other documents to document work performed
24 and expenses incurred under this Consent Judgment and, upon request, will provide copies of
25 such records to Defendant. DEQ oversight costs do not include and must be separately
26 maintained and documented from DEQ expenditures of Source Control Personnel funds

1 described in Section 6.

2 (3) Within 30 days of receipt of DEQ's invoice, Defendant will pay the amount of
3 costs billed or invoke dispute resolution under Subsection 7.H. After 30 days, any unpaid
4 amounts that are not the subject of pending dispute resolution, or that have been determined
5 owing after dispute resolution, become a liquidated debt collectible under ORS 293.250 or other
6 applicable law.

7 (4) Defendant will pay simple interest of 9% per annum on the unpaid balance of
8 any DEQ oversight costs, which interest will begin to accrue at the end of the 30-day payment
9 period, unless dispute resolution has been invoked. Interest on any amount disputed under
10 Subsection 7.H. will begin to accrue 30 days from final resolution of any such dispute.

11 H. Force Majeure

12 (1) If any event occurs that is beyond Defendant's reasonable control and that
13 causes or might cause a delay or deviation in performance of the requirements of this Consent
14 Judgment despite Defendant's reasonable efforts (Force Majeure), Defendant will promptly,
15 upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or
16 deviation, its anticipated duration, the measures that have been or will be taken to prevent or
17 minimize the delay or deviation, and the timetable by which Defendant proposes to carry out
18 such measures. Defendant will confirm in writing this information within ten working days of
19 the verbal notification. Failure to comply with these notice requirements precludes Defendant
20 from asserting Force Majeure for the event and for any additional delay caused by the event.

21 (2) If Defendant demonstrates to DEQ's satisfaction that the delay or deviation
22 has been or will be caused by Force Majeure, DEQ will extend times for performance of related
23 activities under this Consent Judgment as appropriate. Circumstances or events constituting
24 Force Majeure might include but not be limited to acts of God, unforeseen strikes or work
25 stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in
26 receiving a governmental approval or permit. Normal inclement weather, increased cost of

1 performance or changed business or economic circumstances may not be considered Force
2 Majeure.

3 I. Dispute Resolution

4 (1) Except as provided in Subsection 7.C, if Defendant disagrees with DEQ
5 regarding any matter relating to this Consent Judgment, Defendant will promptly notify DEQ in
6 writing of its objection. DEQ and Defendant then will make a good-faith effort to resolve the
7 disagreement within 14 days of Defendant's written objection. At the end of the 14-day period,
8 DEQ will provide Defendant with a written statement of its position from DEQ's Northwest
9 Region Cleanup Manager. If Defendant still disagrees with DEQ's position, then Defendant,
10 within 14 days of receipt of DEQ's position from the Region Cleanup Manager, will provide
11 Defendant's position and rationale in writing to DEQ's Northwest Region Administrator. The
12 Region Administrator may discuss the disputed matter with Defendant and, in any event, will
13 provide Defendant with DEQ's final position in writing as soon as practicable after receipt of
14 Defendant's written position.

15 (2) If Defendant refuses or fails to follow DEQ's final position pursuant to
16 paragraph 7.H(1), and DEQ seeks to enforce its final position, the Parties, subject to Subsection
17 2.A., are entitled to such rights, remedies, and defenses as are provided by applicable law.

18 (3) During the pendency of any dispute resolution under this subsection, the time
19 for completion of work or obligations affected by such dispute is extended for a period of time
20 not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not
21 affected by the dispute must be completed in accordance with the applicable schedule. Dispute
22 resolution under this subsection does not apply to DEQ approval or modification of the work
23 plans required under the SOW (which approval or modification is nonetheless subject to
24 Subsection 7.C.)

25 **8. Effect of Settlement**

26 A. Subject to Subsection 2.A. and 2.B., Defendant does not admit any liability,

1 violation of law, or factual or legal findings, conclusions, or determinations asserted in this
2 Consent Judgment.

3 B. Nothing in this Consent Judgment is intended to create any cause of action in favor
4 of any person not a Party to this Consent Judgment, and the fact of the participation of any Party
5 under this Consent Judgment shall not be admissible in any judicial or administrative proceeding
6 to establish an admission of liability against such a Party.

7 C. Subject to Subsection 2.A.4, nothing in this Consent Judgment precludes DEQ, the
8 State of Oregon, or Defendant from asserting any claims, causes of action, or demands for
9 indemnification, contribution, or cost recovery, or any rights each might have against any person
10 who is not a Party to this Consent Judgment.

11 D. If for any reason this Court declines to approve this Consent Judgment in the form
12 presented, this settlement is voidable at the sole discretion of any Party and the terms of the
13 settlement may not be used in evidence in any litigation between or against the Parties.

14 E. DEQ and Defendant intend for this Consent Judgment to be construed as a
15 judicially-approved settlement, by which Defendant has resolved all of its liability to the State of
16 Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental
17 Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9613(f)(2), regarding
18 the Matters Addressed, and for Defendant not to be liable for claims for contribution regarding
19 Matters Addressed to the extent provided by Section 113(f)(2) of CERCLA,
20 42 U.S.C. Section 9613(f)(2).

21 F. This Consent Judgment satisfies and supersedes the City's and DEQ's obligations
22 in the 2021 Intergovernmental Agreement, Oversight of Columbia Slough Sediment Remedial
23 Action (COP#3007574, DEQ Agreement #R004-21) between the City and DEQ effective
24 January 1, 2021, all previous Intergovernmental Agreements for Oversight of the Columbia
25 Slough, and Amendments to Intergovernmental Agreements for Oversight of the Columbia
26 Slough, including plans prepared pursuant to these agreements and amendments such as the

1 watershed action, data management, and long-term monitoring plans.

2 G. Unless specified otherwise, the use of the term “days” in this Consent Judgment
3 means calendar days.

4 H. DEQ may seek civil penalties for violations of this Consent Judgment under
5 ORS 465.900 or other applicable law. In addition to civil penalties under ORS 465.900, DEQ
6 may seek enforcement of this Consent Judgment by this Court. If DEQ seeks enforcement of
7 this Consent Judgment by this Court, DEQ may seek monetary sanctions, such as civil penalties,
8 only if DEQ has not assessed and collected penalties under this Consent Judgment regarding the
9 same violation.

10 **9. Parties Bound**

11 This Consent Judgment is binding on the Parties and their respective successors, agents,
12 and assigns. No change in ownership, corporate, or partnership status in any way alters
13 Defendant's obligations under this Consent Judgment, unless otherwise approved in writing by
14 DEQ, which approval shall not be unreasonably withheld.

15 **10. Contribution Actions**

16 A. Pursuant to ORS 465.325(6)(b), Defendant is not liable for claims for contribution
17 regarding Matters Addressed.

18 B. Subject to Paragraph 2.A.(4), nothing in this Consent Judgment prevents Defendant
19 from exercising any rights of contribution or indemnification Defendant might have against any
20 person regarding activities under this Consent Judgment.

21 **11. Covenant Not to Sue by State of Oregon**

22 A. Subject to Subsection 11.B., the State of Oregon covenants not to sue, or assert any
23 claim or take any other judicial or administrative action in any forum against Defendant
24 concerning any liability to the State of Oregon under ORS 465.200 to 465.455 and 465.900
25 regarding Matters Addressed. This covenant not to sue is effective upon satisfaction of the initial
26 payments required under Sections 4, 5, and 6, and thereafter shall be subject to: 1) Defendant’s

1 compliance with the schedule for the remaining payments required under Sections 4 and 6; and
2 2) satisfactory performance of the remedial activities in the SOW, as directed by DEQ, through
3 issuance of the final certification of completion under Section 14.

4 B. The State of Oregon reserves all rights against Defendant under ORS chapter 465
5 and any other state and federal law with respect to matters not expressly included in the covenant
6 not to sue set forth in Subsection 11.A., including but not limited to:

7 (1) Claims based on failure by Defendant to meet any applicable requirement of
8 this Consent Judgment;

9 (2) Information, unknown to DEQ at the time of issuance of the final certification
10 of completion, showing that the remedial activities required by Section 3 are not protective of
11 public health, safety, and welfare or the environment;

12 (3) Liability arising from disposal of hazardous substances removed from the Site
13 by Defendant;

14 (4) Claims based on criminal liability;

15 (5) Any act or omission of Defendant causing, contributing to, or exacerbating a
16 release of hazardous substances at the Facility after the date of entry of this Consent Judgment,
17 unless the act or omission was in material compliance with applicable laws, standards,
18 regulations, licenses, permits, or the Order or any future agreements or Orders with DEQ related
19 to remedial activities identified in Section 3.

20 C. DEQ and Defendant intend for this Consent Judgment to be construed as a
21 judicially-approved settlement, by which Defendant has resolved all of its liability to the State of
22 Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental
23 Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9613(f)(2), regarding
24 the Matters Addressed, and for Defendant not to be liable for claims for contribution regarding
25 Matters Addressed to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. Section
26 9613(f)(2).

1 D. The Director of DEQ has determined that the above covenant not to sue will
2 expedite the remedial action and is in the public interest, based on consideration of the factors set
3 forth in ORS 465.325(7)(a) and (d).

4 **12. Liability Release by DEQ**

5 A. Subject to Subsection 12.B., DEQ releases Defendant from liability to DEQ under
6 any federal or state statute, regulation, or common law, including but not limited to CERCLA, 42
7 U.S.C. § 9601 *et seq.*, regarding the release or threatened release of hazardous substances at the
8 Facility. This release from liability is effective upon satisfaction of the initial payments required
9 under Sections 4, 5, and 6 and thereafter shall be subject to Defendant's compliance with the
10 schedule for the remaining payments as required under Sections 4 and 6 and satisfactory
11 performance of the remedial activities in the SOW, as directed by DEQ, through issuance of the
12 final certification of completion under Section 14.

13 B. DEQ reserves all rights against any Defendant with respect to any matter not
14 expressly included within the liability release set forth in Subsection 12.A. above, including but
15 not limited to:

16 (1) Claims based on failure by Defendant to meet any applicable requirement of
17 this Consent Judgment;

18 (2) Information unknown to DEQ, exclusive of future public policy or statutory
19 modifications, at the time of certification of completion showing that the remedial activities
20 identified in Section 3.A. are not protective of public health, safety, and welfare or the
21 environment.

22 (3) Liability arising from disposal of hazardous substances removed from the Site
23 by Defendant, (which shall not be interpreted to include offsite disposal through stormwater
24 discharge);

25 (4) Claims based on criminal liability;

26 (5) Any act or omission by a Defendant causing, contributing to, or exacerbating

1 a release of hazardous substances at the Facility after the date of entry of this Consent Judgment
2 unless the act or omission was in material compliance with applicable laws, standards,
3 regulations, licenses, permits, or the Order or any future agreements or Orders with DEQ related
4 to remedial action at the Facility.

5 (6) Claims based on failure by a Defendant to reasonably meet any applicable
6 requirement of any existing or future DEQ agreement, order, NFA or consent judgment related to
7 remedial action at the Facility, including without limitation compliance with ongoing
8 obligations, indemnification, and implementation of institutional controls.

9 **13. Covenant Not to Sue by Defendant**

10 Defendant covenants not to sue or assert any claim or cause of action, in any judicial
11 administrative, or other forum, against the State of Oregon, with respect to the Matters
12 Addressed or this Consent Judgment, including, without limitation, claims or causes of action
13 pursuant to ORS 465.255, 465.260(7), 465.257, or 465.325(6)(c)(B). Defendant further releases
14 the State of Oregon from liability to Defendant under any state statute, regulation, or common
15 law in connection with a release of hazardous substances at the Facility at the time of or before
16 execution of this Agreement. Notwithstanding the previous two sentences, Defendant reserves
17 all rights concerning the obligations of DEQ and the State of Oregon under this Consent
18 Judgment, including without limitation any gross negligence or intentional misconduct in DEQ's
19 performance or observation of remedial activities in the Slough, or any other part of the Facility.

20 **14. Certification of Completion**

21 A. Upon Defendant's completion of payment under Sections 4, 5, and 6 of this Consent
22 Judgment and completion of all work required in the SOW, Defendant will submit a final
23 closeout report to DEQ requesting a final certification decision. The final closeout report will
24 summarize the work performed and include all necessary supporting documentation. DEQ will
25 provide public notice and opportunity to comment on the proposed final certification decision in
26 accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, the

1 Director of DEQ will issue a final certificate of completion. The final certification decision will
2 subsequently be submitted by DEQ to this Court within 30 days of issuance.

3 B. Upon request by the City and appropriate documentation of completed activities,
4 DEQ will also issue certificates of completion for individual remedial activity tasks identified in
5 Section 3.A. (1), (2) and (5). DEQ will provide public notice and opportunity to comment on the
6 proposed certification decision for the task in accordance with ORS 465.320 and 465.325(10)(b).
7 After consideration of public comment, the Director of DEQ will issue a certificate of
8 completion for that Task.

9 C. Upon request by the City, and appropriate documentation of completed activities,
10 DEQ will provide written confirmation within 90 days of receipt of receiving the final
11 documentation that subtasks for remedial activities identified in Section 3.A. (1), (2) and (5)
12 have been completed pursuant to the terms of the relevant workplan.

13 **15. Modification**

14 DEQ and Defendant may modify this Consent Judgment by written agreement, subject
15 to approval by this Court. DEQ and Defendant may mutually agree to modify the SOW or a
16 work plan without having to obtain court approval, provided the modification is consistent with
17 the ROD.

18 **16. Signatories and Service**

19 A. The undersigned representative of each Party certifies that he or she is fully
20 authorized to execute this Consent Judgment and bind such party to this Consent Judgment.

21 B. Each Party has identified, on its respective attached signature page, the name and
22 address of an agent authorized to accept service of process by mail with a copy by email on
23 behalf of that party with respect to any matter relating to this Consent Judgment. Each Party
24 agrees to accept service in such manner and waives any other service requirements set forth in
25 the Oregon Rules of Civil Procedure or local rules of this Court. The Parties agree that
26 Defendant need not file an answer to the complaint in this action unless or until the Court

1 expressly declines to approve this Consent Judgment.

2 **17. Retention of Jurisdiction**

3 This Court retains jurisdiction over the matter for the purpose of enforcing the terms of
4 this Consent Judgment.

5/2/2024 3:00:45 PM

6
7 

8 **Circuit Court Judge Judith H. Matarazzo**

1 STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

2 **Christine** Digitally signed by
3 **Svetkovich** Christine Svetkovich
Date: 2024.04.01
15:40:52 -07'00'
By: _____ Date: 4/1/2024
4 Christine Svetkovich
Administrator, NW Region

5 *Gary Vrooman*
6 By: _____ Date: 4/9/2024
7 Gary Vrooman, OSB No. 075832
Assistant Attorney General
8 Oregon Department of Justice
100 SW Market Street
9 Portland, OR 97201
Attorney for DEQ

11 CITY OF PORTLAND

13 **Dawn** Digitally signed by Dawn
14 **Uchiyama** Uchiyama
Date: 2024.03.29
08:13:44 -07'00'
By: _____ Date: 03/29/2024
15 Dawn Uchiyama
Director, City of Portland Bureau of
16 Environmental Services

17 **Samantha** Digitally signed by
18 **Gamboa** Samantha Gamboa
Date: 2024.03.29
10:09:48 -07'00'
By: _____ Date: 03/29/2024
19 Samantha Gamboa, OSB No. 053077
Deputy City Attorney
20 Portland City Attorney's Office
1221 SW Fourth Avenue, Room 430
21 Portland, OR 97204
22 Attorney for City of Portland

1
2 CERTIFICATE OF COMPLIANCE with UTCR 5.100
3

4 The Parties to this to this action have stipulated to and approved of the Consent Judgment
5 pursuant to ORS 465.325 and ORS 465.327.

6 This proposed order or judgment is ready for judicial signature because:

7 1. Each opposing party affected by this order or judgment has stipulated to the order
8 or judgment, as shown by each opposing party's signature on the document being submitted.

9 2. Each opposing party affected by this order or judgment has approved the order or
10 judgment, as shown by signature on the document being submitted or by written confirmation of
11 approval sent to me.

12 3. I have served a copy of this order or judgment on all parties entitled to service and:

13 a. No objection has been served on me.

14 b. I received objections that I could not resolve with the opposing party despite
15 reasonable efforts to do so. I have filed a copy of the objections I received and indicated which
16 objections remain unresolved.

17 c. After conferring about objections, [role and name of opposing party] agreed to
18 independently file any remaining objection.

19 4. The relief sought is against an opposing party who has been found in default.

20 5. An order of default is being requested with this proposed judgment.

21 6. Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or
22 otherwise.

23 ///

24 ///

25 ///

26 ///

1 7. [] This is a proposed judgment that includes an award of punitive damages and notice
2 has been served on the Director of the Crime Victims' Assistance Section as required by
3 subsection (4) of this rule.

4
5 DATED this 9th day of April, 2024.
6

7 Attorney General
8 ELLEN F. ROSENBLUM

9 *Gary Vrooman*




10

Gary Vrooman, OSB #075832
11 Assistant Attorney General
12 Of Attorneys for Plaintiff
13 Department of Justice
14 100 SW Market Street
15 Portland, OR 97201
16 Phone: 971-673-1878
17 Fax: 971-673-1884
18 gary.l.vrooman@doj.state.or.us
19
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21
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26

EXHIBIT A

Columbia Slough Overview

LEGEND

-  Columbia Slough Watershed
-  Slough Segment
-  Waterbody

NOTE

Due to the constraints of scaling this exhibit, it depicts the primary waterways of the Slough but not all secondary waterways.

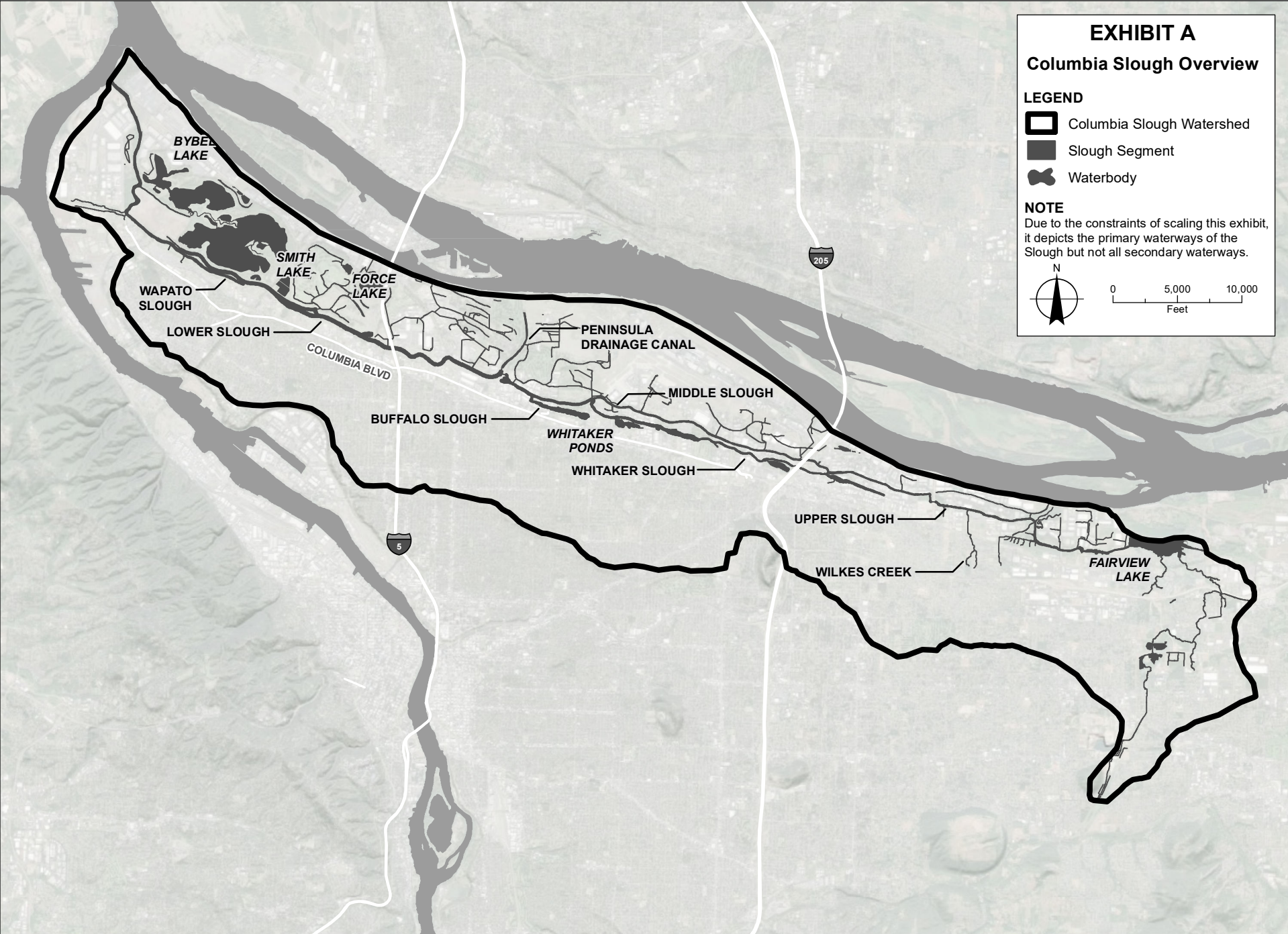
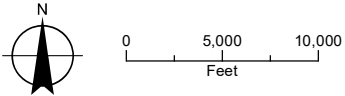


Exhibit B

Scope of Work

1. Purpose of the Statement of Work

1.1 This combined Scope of Work (SOW) sets forth the basic requirements and activities for implementing the City's Remedial Activity obligations pursuant to this Consent Judgment and the *Record of Decision Remedial Action*.

Approach for Columbia Slough Sediment, Portland Oregon, July 2005. The City will perform five Remedial Activity Tasks in accordance with the task-specific SOW below:

1. City Outfall Investigation and Regulatory Closure;
2. Construction of Stormwater Treatment Projects;
3. Slough-wide Sediment Sampling Event;
4. Slough-wide Fish Tissue Sampling Event; and
5. Additional Remedial Measures (also referred to as, Alternative Remedial Measures [ARMs]).

1.2. The City has been conducting much of the work listed above under the former Intergovernmental Agreements between the City and DEQ and thus, has existing work or sampling plans for Tasks 1 through 4. The City has submitted and DEQ has approved, interim work plans or interim amendments to existing plans (as indicated below) for all five of the Tasks. These interim work plans or amendments will become final upon DEQ final approval and entry of the Consent Judgment.

1.3. Specific deliverables and schedules for each Task will be presented in the relevant workplan or sampling and analysis plan.

1.4. The final work plans or final amendments may be modified in writing by mutual consent of the DEQ and City of Portland without approval of the Court.

1.5. Defendant will submit semi-annual progress reports on April 15 and October 15 of each year following entry of the Consent Judgment that summarize the status of work required under each Task until all Tasks have been completed.

2. Task-Specific Scopes of Work

2.1. City Outfall Investigation and Regulatory Closure

2.1.1. The purpose of the Outfall Investigation and Regulatory Closure SOW is to complete source control evaluation and achieve regulatory closure for City outfall basins that discharge to the Columbia Slough.

2.1.2. The objectives for this Task-Specific SOW are:

- a. Identify potential ongoing significant sources of contaminants of potential concern (COPCs) to the City stormwater conveyance systems discharging to the Columbia Slough via stormwater outfalls.
- b. Evaluate the potential for upland sources to the City outfalls to be a significant future contaminant migration pathway to Slough sediment and contribute to Columbia Slough sediment recontamination.
- c. Refer identified third-party ongoing significant upland sources of contamination to the Slough located within a City basin to the appropriate regulatory program that will require source control evaluations or enforce source control measures where needed and minimize or prevent the potential for future sediment recontamination from those sources.
- d. Obtain source control decisions for City basins with a low likelihood of adversely impacting Columbia Slough sediments including where ongoing significant sources are not identified, where significant ongoing third-party sources are referred to the appropriate DEQ or City program, and where significant ongoing sources owned or operated by the City are controlled.

2.1.3. The City will complete source control evaluations consistent with this SOW and the Final Columbia Slough Outfall Investigation and Basin Closure Work Plan within 15 years of the entry of the Consent Judgment.

2.1.4. The determination of what constitutes a significantly elevated concentration will follow the methodology used in the City's 2017 to 2023 annual stormwater monitoring reports.

2.1.5. The City will not be required to implement source control measures or performance monitoring for ongoing third-party sources, but will refer ongoing significant sources to an appropriate regulatory enforcement program.

2.1.6. The City will submit closure evaluation reports to DEQ for its review and comment requesting Source Control Determinations for individual City basins or groups of basins documenting the weight of evidence evaluation that supports the request. DEQ will respond to each request in writing and either indicate deficiencies that need correction or issue the determination.

2.1.7. The City has submitted, and DEQ has approved, an Interim Columbia Slough Outfall Investigation and Basin Closure Work Plan. The City will implement this Task in

general conformance with the Consent Judgment, this Scope of Work and the Final DEQ approved Work Plan.

2.2. Construction of Stormwater Treatment Projects

2.2.1. The purpose of this Task is to implement stormwater treatment for runoff from selected City rights of way where it is feasible, implementable, and cost reasonable to reduce the discharge of pollutants to the Columbia Slough.

2.2.2. The City will implement stormwater treatment to reduce the discharge of pollutants to the Columbia Slough from selected high-traffic City rights-of-way in the following basins: 56C, 57, 58, 59, 60, 61, 61A (a.k.a., CS-253), 62, 62A, 63, 64, 65, 65A, 73A, and CS-614.

2.2.3. The required treatment facilities will be substantially constructed within 15 years of the entry of the Consent Judgment.

2.2.4. The City will design stormwater treatment to achieve 70% removal of total suspended solids from 90% of the average annual rainfall from specifically identified City-owned rights of way in the basins identified in Section 2.2.2 in accordance with the City's Stormwater Management Manual in effect at the time of 30% design.

2.2.5. The purpose of this Task does not include providing stormwater treatment to address uncontrolled third-party sources of contamination within City Basins.

2.2.6. Treatment in an identified basin will not be required if DEQ and the City mutually agree in writing that changes within the basin such as changes in land use, City ownership interests, site development, other implemented source controls, drainage configuration or other factors render treatment ineffective or no longer needed; with the possibility of treating an additional basin, in lieu of the initially proposed basin.

2.2.7. The City will document its progress in semi-annual reports to DEQ and final project reports for each completed treatment facility. Interim deliverables for a treatment facility may be required pursuant to the Stormwater Treatment Projects Work Plan.

2.2.8. The City has submitted, and DEQ has approved, an Interim Work Plan. The City will implement this Task in general conformance with the Consent Judgment, this Scope of Work and the Final Work Plan.

2.3. Slough-wide Sediment Sampling Event

2.3.1. The purpose of this Task is to conduct one Slough-wide sediment sampling event designed to meet the following objectives:

a. Assess whether the COPCs in sediment have remained consistent over time.

b. Assess whether sediment concentrations have remained consistent over time with the widespread low-level contamination across the Slough, documented in the Record of Decision and previous sediment sampling events performed by the City.

c. Assess sediment quality trends relative to data collected by the City in 1994, 2006 and 2017.

2.3.2. The City will conduct one Slough-wide sediment sampling event in 2026 designed to meet the objectives listed above.

2.3.3. The sampling will be conducted at two depth intervals and consist of up to a total of 95 samples that will generally duplicate the sample locations used in 2017. The samples will be analyzed for substantially the same analytes identified in the 2016 SAP with the addition of per- and polyfluoroalkyl substances (PFAS).

2.3.4. This Slough-wide sampling event is not for the purposes of remedial design, investigation or performance monitoring of individual in-water sediment remedial actions.

2.3.5. The City has submitted, and DEQ has approved, an Interim Columbia Slough 2023 Long-term Sediment Sampling and Analysis Plan Amendment for this sediment sampling event. The City will implement this Task in general conformance with the Consent Judgment, this Scope of Work, the Final Amended Sampling and Analysis Plan and any associated quality assurance/quality control (QA/QC) as approved by DEQ.

2.4. Slough-wide Fish Tissue Sampling Event

2.4.1 The purpose of this Task is to conduct one Slough-wide fish tissue sampling event designed to meet the following objectives:

a. Inform the Columbia Slough fish advisory administered by Oregon Health Authority;

b. Compare COPCs to DEQ's acceptable tissue levels for human health; and

c. Compare new fish tissue results for COPCs to historic fish tissue data.

2.4.2. The City will conduct one Slough-wide fish tissue sampling event in 2025 designed to meet the objectives listed above.

2.4.3. Fish tissue composite samples will be analyzed for PCB congeners, PCB Aroclors, per- and polyfluoroalkyl substances (PFAS), organochlorine pesticides, total metals (arsenic, lead and mercury), total solids, lipids, and fish age.

2.4.4. This fish tissue sampling event is not for the purposes of remedial design, investigation, or performance monitoring of individual in-water sediment remedial actions.

2.4.5. The City has submitted, and DEQ has approved, an Interim *Columbia Slough 2025 Long-Term Fish Tissue Sampling and Analysis Plan Amendment*. The City will implement this Task in general conformance with the Consent Judgment, this Scope of Work and the Final Sampling and Analysis Plan and any associated quality assurance/quality control (QA/QC) as approved by DEQ.

2.5. Additional Remedial Measures

2.5.1. For purposes of this SOW, ARMs are defined as an action or group of actions conducted within the Columbia Slough watershed to provide improvements to watershed health.

2.5.2 The purpose of City's implementation of ARMs is to improve the Columbia Slough's watershed health such as, restoration work, floodplain connection, or property acquisition to protect riparian and wetland areas. ARMs may also augment existing or planned in-water or upland remediation work (for example, cut and/or fill opportunities or beneficial research). The ARMs may also incorporate public benefits or improve equity-focused opportunities (such as, access, educational, community, work force development, or recreational opportunities) for overburdened communities.

2.5.3. The City will implement one or more projects as ARMs with a total Implementation Cost to the City of \$4,000,000. The City will substantially complete ARMs within 15 years from the date of entry of the Consent Judgment.

2.5.4. Implementation Costs means the following types of activities or purchases:

- Land acquisition for the purpose of ARM implementation;
- Construction work, including equipment, labor, permit fees, and materials;
- Research regarding Slough restoration or remediation (e.g., benthic invertebrate research, cut/fill evaluation, etc.) including sampling, analysis, and data management;
- Project design and planning not performed by City personnel;
- Pre-implementation characterization of project feasibility, including environmental investigations (sample collection and analysis), geotechnical investigations, data management and habitat evaluation; and

- Public activity/education events.

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2.5.5. Implementation Costs do not include:

- Routine, ongoing City maintenance activities;
- City staff and administrative costs, including preparation of performance and reporting submittals required by the SOW for this Task;
- Coordination between City project managers and DEQ regarding the ARMs;
- Community outreach conducted by the City; or
- DEQ oversight costs.

2.5.6. The City will prepare initial and revised budgets for DEQ evaluation and review for approval that presents the City's total estimated Implementation Costs for proposed projects.

2.5.7. DEQ and the City will collaboratively evaluate the proposed projects to determine the most effective use of the City's \$4,000,000 implementation budget. The DEQ and City will perform a balancing evaluation of proposed ARM projects that compares watershed health benefits, social benefits, and economic feasibility.

2.5.8. The City will draw from community consultations and public outreach to inform potential ARM projects. The balancing factor of social benefits will include family, cultural, and recreational opportunities; safe access to the Slough; opportunities for job or skill training; and other needs and priorities identified during community consultations and public outreach efforts.

2.5.9. Incurred Implementation Costs will be tracked and provided to DEQ in Semi-Annual Progress Reports. Satisfaction of the City's ARM performance obligation will be met based on the City's incurred Implementation Costs with the exception that if long-term operation and maintenance costs were included in the DEQ-approved proposed estimated budget for the project, then the projected long-term O&M costs for the first 10 years are included as an incurred Implementation Cost.

2.5.10. The City will submit semi-annual progress reports to demonstrate project status. The City will submit an ARMs Evaluation and Selection Report, and Final Implementation Summary Report for DEQ review and approval. Additional interim deliverables documenting planning or design may be appropriate depending on the type of project(s) selected.

2.5.11. The City has submitted, and DEQ has approved, an Interim Columbia Slough ARMs Work Plan. The City will implement this Task in conformance with the Consent Judgment, this Scope of Work, and the Final Work Plan.

1 CERTIFICATE OF SERVICE

2 I certify that on April 9, 2024, I served a true copy of the foregoing of CONSENT
3 JUDGMENT in CITY OF PORTLAND, upon the party hereto by the method indicated below,
4 and addressed to the following:

5
6 Samantha Gamboa
7 Deputy City Attorney
8 Portland City Attorney's Office
1221 SW Fourth Avenue, Room 430
Portland, OR 97204

Hand Delivery
 Mail Delivery
 Overnight Mail
 E-Mail

9
10
11 *Gary Vrooman*

12 _____
13 Gary Vrooman, OSB #075832
14 Assistant Attorney General
15 Of Attorneys for Plaintiff
16 Department of Justice
17 100 SW Market Street
18 Portland, OR 97201
19 Phone: 971-673-1878
20 Fax: 971-673-1886
21 gary.l.vrooman@doj.state.or.us