

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ 700 NE Multnomah St.,
Suite 600 Portland, OR 97232
Attention: Jeff Schatz

Grantor

City of Cornelius
1355 N Barlow St.
Cornelius, Oregon 97113

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. [insert]

City of Cornelius, and Oregon
municipal corporation

Respondent.

ORDER ON CONSENT

Pursuant to ORS 465.260(4) and 465.327, the Director, Oregon Department of Environmental Quality ("DEQ"), issues this Order on Consent ("Consent Order") to the City of Cornelius ("Respondent"). This Consent Order contains the following provisions:

<u>Contents</u>	<u>Page</u>
1. Purpose.....	2
2. Stipulations.....	3
3. Findings of Fact.....	4
4. Conclusions of Law and Determinations	5
5. Work to be Performed	6
A. Remedial Design/Remedial Action.....	6
B. Modification of SOW or Related Work Plans.....	6

C. Additional Measures	6
D. Site Restrictions and Periodic Reviews	6
6. Public Participation	7
7. General Provisions	7
A. Project Managers.....	7
B. Supervising Contractor.....	8
C. DEQ Approvals.....	8
D. Access to Property.....	9
E. Records.....	10
F. Notice and Samples.....	11
G. Quality Assurance	11
H. Progress Reports.....	12
I. Other Applicable Laws	12
J. Reimbursement of DEQ Costs.....	13
K. Financial Assurance [intentionally left blank].....	14
L. Force Majeure	15
M. Dispute Resolution	15
N. Stipulated Penalties	16
O. Effect of Consent Order	18
P. Indemnification and Insurance	19
Q. Parties Bound	19
R. Modification	20
S. Effective Date.....	20
T. Recording	20
8. Release from Liability.....	20
9. Third-Party Actions.....	21
10. Respondent Waivers.....	21
11. Benefits and Burdens Run with the Land	21
12. Certification of Completion	22
13. Signatures.....	23

Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Scope of Work

Exhibit D: Easement and Equitable Servitude

1. Purpose

The mutual objectives of DEQ and Respondent (collectively “Parties”) are: (a) to protect public health, safety, and welfare and the in accordance with applicable provisions of ORS 465.200 through 465.420, regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Respondent with protection from potential liabilities in

accordance with applicable law.

2. Stipulations

A. Respondent consents and agrees:

- (1) To issuance of this Consent Order;
- (2) To perform and comply with all provisions of this Consent Order;
- (3) In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- (4) To waive any right Respondent might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;
- (5) To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent's compliance with this Consent Order; and
- (6) To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Respondent discharges Respondent's duty to fully perform all remaining provisions of this Consent Order.

B. DEQ and Respondent stipulate:

- (1) For the purposes of this Consent Order, the "Facility," as defined in ORS 465.200(13), means: (a) the Property (as hereinafter defined); and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the Property, or that has migrated, might have migrated, or hereafter migrates to anywhere from the Property.
- (2) For the purposes of this Consent Order, "Existing Hazardous Substance Releases" means: (a) any release of hazardous substances, as defined in ORS 465.200, at the Facility existing as of the date of Respondent's acquisition of ownership or operation of the Property; (b) any spill or release of oil or hazardous material, as defined in ORS 466.605, at the Facility existing as of the date of Respondent's acquisition of ownership or operation of the Property; and (c) the entry of oil into the waters of the state, as defined in ORS 468B.300, from the Facility before the date of Respondent's acquisition of ownership or operation of the Property.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Respondent:

- A. Respondent, City of Cornelius is an Oregon municipal corporation.
- B. The property proposed for acquisition by Respondent, currently owned by Islam El Masry, is an approximately .5271 acre site located at 1021 Baseline Street, Cornelius, Washington County, Oregon, in Northeast one-quarter of Section 4, Township 1 South Range 3 West, of the Willamette Meridian (the "Property"). The location of the Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Order. The legal description of the Property is set forth in Exhibit B to this Consent Order. All exhibits attached to this Consent Order are incorporated by reference.
- C. The Property is currently owned by Islam Al Masry who purchased the Property on or around October 2015, prior to that the Property was acquired by M&G Collections LLC in 2009. Currently the Respondent is under contract to purchase the Property from EL Masry.
- D. On or around 2006 DEQ received a report that petroleum products had been released from an Underground Storage Tank (UST) located on the Property and as a result the UST was placed on DEQ's Leaking UST Facility List.
 - (1) The LUST remained on site and was not decommissioned
 - (2) In August 2009 DEQ detected gasoline contaminants in a sample taken from groundwater wells on the Property which showed that the gasoline had migrated beyond the base of the tank resulting in DEQ notices to the then Property owner, M & G Collections LLC, to investigate the potential contamination.
 - (3) No investigation or decommissioning was performed by M & G Collections LLC ultimately resulting in DEQ Notice of Civil Penalty Assessment and Order to Comply LQ/LUST-NWR-11-104 with penalties in the amount of \$28,961.00.
 - (4) In response to the DEQ Notice of Civil Penalty Assessment and Order to Comply referenced in (D)(3) above, additional groundwater sampling was performed at the Property in December 2012, February 2016, August 2016, December 2016, and December 2018.
 - (5) In February 2016 DEQ issues a General Permit Registration Temporary Closure Certificate (2016 Certificate) because the five USTs on the Property were not being operated.
 - (6) In February 2017, the 2016 Certificate expired and as of that date none of the required actions: extension of the 2016 Certificate, return to operation or decommissioning had occurred with respect to the USTs.
 - (7) Further, the 5 USTs on the Property were internally lined in 1995 and had not been inspected as required 10 years after installation and every five years thereafter.
 - (8) As a result of the issues listed in (D)(6) and (7) above DEQ issued a Civil Penalty Assessment and Order in the amount of \$15,677.
 - (9) In 2019 DEQ filed a Notice of Claim of Lien against the Property in an amount of \$1429.
 - (10) Between February and July 2019, additional assessment related to the 2006 UST release was performed, consisting of borings advanced offsite to delineate groundwater contamination and collection of wet- and dry-season soil gas samples. Gasoline-range hydrocarbons were detected in one soil gas sample at a concentration exceeding residential and occupational worker risk-based concentrations for the vapor intrusion

into building pathway.

- E. Pursuant to ORS 465.255(1)(b), Respondent could become liable to DEQ and other persons for releases of hazardous substances at or from the Property by becoming the owner or operator of the Property with actual or constructive knowledge of the releases. On August 20, 2024, Respondent applied to DEQ for a “prospective purchaser agreement” under ORS 465.327 and agreed to reimburse DEQ’s costs of technical review and agreement preparation. This Consent Order is intended to protect Respondent from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for Respondent undertaking certain obligations, as described in this Consent Order. In determining to propose this Consent Order, DEQ reviewed current zoning information available on-line from Washington County considered reasonably anticipated future land uses at the Property and surrounding properties.
- F. On [Date], DEQ published notice of this proposed Consent Order and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.327(3). [Insert public meeting date and oral comments received, if applicable] The comment period ended [Date]. Comments were received and considered by DEQ, as documented in the administrative record.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

- A. Respondent is a “person” within the meaning of ORS 465.200(21).
- B. The contaminants described in Subsection 3.E. are “hazardous substances” within the meaning of ORS 465.200(16).
- C. The presence of hazardous substances in in the USTs constitutes a “release” or “threat of release” into the environment within the meaning of ORS 465.200(22).
- D. The Property described in Subsection 3.B. is a “facility” within the meaning of ORS 465.200(13).
- E. Respondent is not currently liable under ORS 465.255, 466.640, or 468B.310 for the Existing Hazardous Substance Releases.
- F. Removal or remedial action is necessary at the Property to protect human health or the environment;
- G. Respondent’s ownership and operation of the Property will not cause, contribute to, or

exacerbate existing contamination, increase health risks, or interfere with remedial measures at the Property;

H. A substantial public benefit will result from this Consent Order; and

I. The release from liability set forth in Subsection 8.A satisfies the criteria set forth in ORS 465.327(1).

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed

A. Remedial Design/Remedial Action

Respondent will perform the remedial design and remedial action for the Property in accordance with the terms and schedule set forth in the Scope of Work (“SOW”), attached to this Consent Order as Exhibit C, and the terms and schedules set forth in a DEQ-approved work plan.

B. Modification of SOW or Related Work Plans

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

(2) Subject to dispute resolution under Subsection 7.M., Respondent will modify the SOW and/or work plans as required by DEQ and implement any work required by the modifications. Before invoking dispute resolution under Subsection 7.M., Respondent and DEQ will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by informal discussions for no more than 30 days following notice from DEQ of a requested modification.

C. Additional Measures

Respondent may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the SOW, necessary to address the release or threatened release of hazardous substances at the Property. Such additional measures are subject to prior approval by DEQ. DEQ’s approval will be

granted if DEQ determines that the additional measures are consistent with the remedial action objectives in the ROD and will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews **[if applicable]**

- (1) If required by DEQ, Respondent will, within 30 days of notification of such requirement, record with the County Clerk, Washington County, the Easement and Equitable Servitude attached to this Consent Order as Exhibit D, or in a form substantially similar to that provided in Exhibit D. Respondent will provide DEQ a file-stamped copy of the Easement and Equitable Servitude within five working days of recording. ***[Note: Where EES cannot be completed on same timeline as CO, Respondent may commit to record within specified time period an EES substantially in the same form as exhibit, provided final EES is subject to DEQ approval and is consistent with ROD. Consult with DOJ regarding appropriate wording in a given case.]***
- (2) Property subject to the Easement and Equitable Servitude may be freely alienated at any time after recording, provided the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitude.
- (3) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Consent Order. Respondent, in any such deed or conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as might be necessary to carry out Respondent's obligations under this Consent Order.
- (4) At least once every five years, DEQ will review the remedy to ensure that the Property remains protective of public health, safety, and welfare and the environment. Periodic reviews will include evaluation of monitoring data, progress reports, inspection and maintenance reports, land and water uses, compliance with institutional controls, and any other relevant information.

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of the Consent Order through issuance of a press release, at a minimum to a local newspaper of general circulation, describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before

publication.

7. General Provisions

A. Project Managers

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

DEQ Project Manager:

Jeff K. Schatz
Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite #600
Portland, OR 97232
Phone: 503-863-0810
Email: jeff.schatz@deq.oregon.gov

Respondent Project Manager

Peter Brandom
City Manager's
Office
City of Cornelius
1355 N Barlow St
Cornelius, Oregon 97113
503-357-9112
Peter.brandon@corneliusor.gov

- (2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to complete the work required under this Consent Order.

B. Supervising Contractor

- (1) All aspects of remedial work to be performed by Respondent pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor experienced in hazardous substance remediation and knowledgeable in applicable state and federal laws, regulations, and guidance.
- (2) Within 30 days of the effective date of this Consent Order, Respondent will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ will notify Respondent in writing of the reasons for its disapproval within 14 days of receipt of the initial notice from Respondent. Respondent, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternative supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above.
- (3) If, during the course of work required under this Consent Order, Respondent proposes to change its supervising contractor, Respondent will notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor,

under the terms and schedule specified in the preceding paragraph.

C. DEQ Approvals

(1) Where DEQ review and approval is required for any plan or activity under this

- Consent Order, Respondent may not proceed to implement the plan or activity prior to DEQ approval. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Respondent. Prior approval is not required in emergencies, provided Respondent notifies DEQ immediately after the emergency and evaluates the impact of its actions.
- (2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Order, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Respondent of its deficiencies and/or request modifications to cure the deficiencies.
 - (3) DEQ approvals, rejections, or identification of deficiencies will be given in writing within the time specified in the SOW or as soon as practicable, and will state DEQ's reasons with reasonable specificity.
 - (4) In the event of DEQ disapproval or request for modification of a submission, Respondent will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, either correct the deficiencies and resubmit the revised report or other item for approval, or invoke dispute resolution under Subsection 7.M.
 - (5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Respondent's failure to cure the original deficiency, DEQ may modify the submission to cure the deficiency.
 - (6) In the event of approval or modification of a submission by DEQ, Respondent will implement the actions required by the plan, report, or other item, as so approved or modified.

D. Access to Property

- (1) Respondent will allow DEQ to enter all portions of the Property owned by or under the control of Respondent at all reasonable times for the purpose of overseeing Respondent's performance under this Consent Order, including but not limited to inspecting records relating to work under this Consent Order, conducting such tests and taking such samples as DEQ deems necessary, verifying data submitted to DEQ by Respondent, conducting periodic review, and using camera, sound recording, or other recording equipment. DEQ will make available to Respondent, upon Respondent's request, any photographs or recorded or videotaped material taken.

- (2) Respondent will seek to obtain access to property not owned or controlled by Respondent as necessary to perform work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary and that Respondent has exhausted all good faith efforts to obtain access.

E. Records

- (1) In addition to those reports and documents specifically required under this Consent Order, Respondent will provide to DEQ, within 10 days of DEQ's written request, copies of Quality Assurance/Quality Control (QA/QC) memoranda and audits, raw data, final plans, task memoranda, field notes (not made by or at the direction of Respondent's attorney), and laboratory analytical reports relating to activities under this Consent Order.
- (2) Respondent will preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order, for at least five years after certification of completion under Section 12. Upon DEQ's request, Respondent will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after certification of completion, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Respondent has no further obligation to preserve documents or records.
- (3) Subject to Paragraph 7.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any document or record submitted to or copied by DEQ pursuant to this Consent Order. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.311 through 192.431. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.
- (4) Respondent will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the

basis of attorney-client or attorney work product privilege, except to the extent that such identifying information is itself subject to a privilege. Respondent may not assert attorney-client or work product privilege with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

- (1) Respondent will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Respondent while performing work under this Consent Order. DEQ will provide Respondent with copies of all analytical data from such samples as soon as practicable.
- (2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Respondent of any excavation, drilling, sampling, or other fieldwork at least 72 hours before such activity. Upon Respondent's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ, and will provide Respondent with copies of all analytical data for such samples. Respondent will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

- (1) Respondent will conduct all sampling, sample transport, and sample analysis in accordance with QA/QC provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be consistent with DEQ's *Environmental Cleanup Quality Assurance Policy* (DEQ10-LQ-0063-QAG). Respondent will make every reasonable effort to ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.

- (2) If DEQ conducts sampling or analysis in connection with this Consent Order, DEQ will conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide Respondent with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Progress Reports

During each calendar quarter following the effective date of this Consent Order, Respondent will deliver to DEQ, on or before the tenth working day of each quarter, a progress report containing:

- (1) Actions taken by Respondent under this Consent Order during the previous three months;
- (2) Actions scheduled to be taken by Respondent in the next three months;
- (3) A summary of sampling, test results, and any other data generated or received by Respondent during the previous three months; and
- (4) A description of any problems experienced by Respondent during the previous three months and actions taken to resolve them.

DEQ may approve less frequent reporting by Respondent, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies must be provided to DEQ.

I. Other Applicable Laws

- (1) Subject to ORS 465.315(3), all activities under this Consent Order must be performed in accordance with all applicable federal, state, and local laws.
- (2) All activities under this Consent Order must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection. If archeological objects or human remains are discovered during any investigation, removal, or remedial activity at the Property, Respondent will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that

Respondent and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 7.L.

J. Reimbursement of DEQ Costs

- (1) DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ on or after August 20, 2024 in connection with any activity related to oversight and periodic review of Respondent's implementation of this Consent Order. Each invoice must include a summary of costs billed to date.
- (2) DEQ oversight costs payable by Respondent include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 et seq. DEQ's direct cost summary must include a Land Quality Division ("LQD") direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the LQD allocable to DEQ oversight under this Consent Order and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Order and, upon request, will provide copies of such records to Respondent.
- (3) Within 30 days of receipt of DEQ's invoice, Respondent will pay the amount of costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or invoke dispute resolution under Subsection 7.M. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, becomes a liquidated debt collectible under ORS 293.250 or other applicable law.
- (4) Respondent will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount

disputed under Subsection 7.M begins to accrue 30 days from final resolution of any such dispute.

K. Financial Assurance [INTENTIONALLY LEFT BLANK]

L. Force Majeure

- (1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Order despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay caused by the event.
- (2) If Respondent demonstrates to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but are not limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, delays in receiving governmental approval or permit, unanticipated site conditions, fire, explosion, riot, sabotage, or acts of war. Normal inclement weather, increased cost of performance, or changed business or economic circumstances may not be considered Force Majeure.

M. Dispute Resolution

- (1) Except as provided in Paragraph 7.M.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will invoke dispute resolution by promptly notifying DEQ in writing of its objection. DEQ and Respondent then will make a good-faith effort to resolve the disagreement within 14 days of Respondent's written objection. At the end of the 14-day period, DEQ will provide Respondent with a written statement of its position from DEQ's Northwest Region Cleanup Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the

- Region Cleanup Manager, will provide Respondent's position and rationale in writing to DEQ's Northwest Region Administrator. The Region Administrator may discuss the disputed matter with Respondent and, in any event, will provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's written position.
- (2) If Respondent refuses or fails to follow DEQ's final position pursuant to Paragraph 7.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Sections 2 and 10, are entitled to such rights, remedies, and defenses as are provided by applicable law.
 - (3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.
 - (4) Dispute resolution under this subsection does not apply to: (a) DEQ approval or modification of the remedial design/remedial action work plan required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C.); or (b) DEQ assessment of stipulated penalties under Subsection 7.N. (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

N. Stipulated Penalties

- (1) Subject to Subsections 7.C., 7.L., and 7.M., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent will pay the stipulated penalties set forth in the following schedule:
 - (a) \$5,000 for the first week of violation or delay and \$2,500 per day of violation or delay thereafter, for failure to allow DEQ access to the Property as required under Subsection 7.D. or to provide records as required under Subsection 7.E.
 - (b) \$2,500 for the first week of violation or delay and \$1,000 per day of violation or delay thereafter, for:
 - (i) Failure to submit a final work plan in accordance with the SOW's schedule and terms;

- (ii) Failure to complete work in accordance with an approved work plan's schedule and terms;
 - (iii) Failure to submit a final report, in accordance with an approved work plan's schedule and terms; or
 - (iv) Failure to record or comply with site restrictions.
- (c) \$500 for the first week of violation or delay and \$500 per day of violation or delay thereafter, for:
 - (i) Failure to submit a draft work plan in accordance with the SOW's schedule and terms;
 - (ii) Failure to submit draft reports or progress reports in accordance with the SOW's schedule and terms; or
 - (iii) Any other violation of the Consent Order, SOW, or an approved work plan.
- (2) Violations arising out of the same facts or circumstances or based on the same deadline are treated as one violation per day.
- (3) Stipulated penalties do not begin to accrue under this subsection until Respondent receives a notice of violation from DEQ describing the violation and what is necessary to correct it and. If the violation was not intentional, is capable of cure, and Respondent corrects the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ shall waive the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.N.(1)(a).
- (4) Respondent will, if violation is not cured within 30 days of receipt of DEQ's written notice or such longer cure period specified in the notice, pay the amount of such stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.N.(3) by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or request a contested case hearing in accordance with Paragraph 7.N.(5). Respondent will pay simple interest of 9% per annum on the unpaid balance of any stipulated penalties, which interest begins to accrue when payment is due. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.
- (5) Respondent may request a contested case hearing regarding the penalty assessment in

accordance with OAR Chapter 340, Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence or non-occurrence of the alleged violation, and not review the amount of penalty assessed. Further penalties regarding the alleged violation subject to the penalty assessment do not accrue from the date DEQ receives a request for a contested case, through disposition of that case.

- (6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Respondent to comply with this Consent Order, DEQ may not seek civil penalties for the same violation under ORS 465.900 or any other applicable law.

O. Effect of Consent Order

- (1) In lieu of stipulated penalties under Subsection 7.N., DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties do not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.
- (2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations asserted in this Consent Order.
- (3) Subject to Subsection 2.G. and Section 10, nothing in this Consent Order prevents DEQ, the State of Oregon, or Respondent from exercising any rights each might have against any person not a party to this Consent Order.
- (4) This Consent Order is void and of no effect if Respondent does not complete acquisition of the Property by December 19, 2024.
- (5) DEQ and Respondent intend for this Consent Order to be construed as an administrative settlement by which Respondent has resolved its liability to the State of Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f)(2), regarding Existing Hazardous Substance Releases, and for Respondent not to be liable for claims for contribution regarding Existing Hazardous Substance

Releases to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

- (6) Upon recordation of this Consent Order as set forth in 7.T below, DEQ agrees to remove the following liens on the Property recorded in Washington County, Oregon and agrees to dismiss all associated orders, fines, penalties or assessments for:
 - (a) LQ/LUST-NWR-11-104 recorded at 2012-003261
 - (b) LQ/UST-WR-2017-059 recorded at 2018-051854
 - (c) LQ/ST-WR-2018-113 recorded at 2019-002276
 - (d) UST Field Citation 2024-FC-8956
- (7) DEQ further agrees that it will dismiss and not attempt to enforce the Orders listed in O.6 or collect on the amounts assessed under the Orders listed in O.6 as against the Respondent or the Property.

P. Indemnification and Insurance

- (1) Respondent will indemnify and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.
- (2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Respondent and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts or omissions constituting approval or disapproval of any activity of Respondent under this Consent Order). Respondent may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Order.
- (3) Before commencing any on-site work under this Consent Order, Respondent will obtain and maintain for the duration of this Consent Order comprehensive general liability and automobile insurance with limits of \$1 million, combined single limit per

occurrence, naming as an additional insured the State of Oregon. Upon DEQ request, Respondent will provide DEQ a copy or other evidence of the insurance. If Respondent demonstrates by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, Respondent may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

Q. Parties Bound

This Consent Order is binding on the Parties and their respective successors, agents, and assigns. The undersigned representative of each Party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. Respondent will notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the Property during the term of this Consent Order.

R. Modification

DEQ and Respondent may modify this Consent Order by written agreement.

S. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's Land Quality Division Administrator.

T. Recording

Within 14 days of the effective date of this Consent Order, Respondent will submit a copy or original of this Consent Order (whichever is required by the county) to be recorded in the real property records of Washington County, Oregon. Respondent will provide DEQ with written evidence of such recording within seven days of recording.

8. Release from Liability

A. Pursuant to ORS 465.327, and subject to Subsection 8.B. and the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases. Respondent bears the burden of proving by a preponderance of the evidence that a hazardous substance release (for all hazardous substances, hazardous materials, and oil described in Paragraph 2.B.(2)) existed as of the date of Respondent's acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 8.A. does not affect liability of Respondent

for claims arising from:

- (1) A release of hazardous substances, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property on or after the date of Respondent's acquisition of ownership or operation of the Property;
- (2) Contribution to or exacerbation, on or after the date of Respondent's acquisition of ownership or operation of the Property, of a release of hazardous substance, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property;
- (3) Interference or failure to cooperate, on or after the date of Respondent's acquisition of ownership or operation of the Property, with DEQ or other persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions, on or after the date of Respondent's acquisition of ownership or operation of the Property, with respect to any hazardous substance at the Property;
- (5) Disposal or management of hazardous substances or solid waste removed from the Property by or on behalf of Respondent;
- (6) Criminal liability;
- (7) Violation of federal, state, or local law on or after the date of Respondent's acquisition of ownership or operation of the Property;
- (8) Any matters as to which the State of Oregon is owed indemnification under Paragraph 7.P.(1); and
- (9) Claims based on any failure by Respondent to meet any requirements of this Consent Order.

9. Third-Party Actions

Subject to the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to any person under ORS 465.200 to 465.545, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

10. Respondent Waivers

A. Respondent waives any claim or cause of action it might have against the State of Oregon regarding Existing Hazardous Substance Releases on the Property; provided, Respondent reserves all rights concerning the obligations of DEQ under this Consent Order.

- B. Respondent waives any rights it might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Consent Order or related to the Property.

11. Benefits and Burdens Run with the Land

- A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Order run with the land, provided the release from liability set forth in Section 8 limits or otherwise affects the liability only of persons who: (1) are not potentially liable under ORS 465.255, 466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Order applicable to the Property as of the date of their acquisition of ownership or operation.
- B. Upon transfer of ownership of the Property, or any portion of the Property, from Respondent to another person or entity, Respondent and the new owner will provide written notice to the DEQ Project Manager within 10 days after the transfer. No change in ownership of the Property or the corporate or partnership status of Respondent in any way alters Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ.

12. Certification of Completion

- A. Upon Respondent's completion of remedial work in accordance with the SOW, Respondent will submit a final closeout report to DEQ signed by both an Oregon-registered professional engineer and Respondent's Project Manager certifying that the remedial action for the Property has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary supporting documentation.
- B. DEQ will preliminarily determine whether the remedial action has been performed for the Property and all oversight costs and penalties have been paid in accordance with this Consent Order. Upon a preliminary determination that the remedial action for the Property has been satisfactorily performed and all costs and penalties paid, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after receiving Respondent's closeout report, DEQ's Northwest Region Administrator will issue a final certification decision.

- C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the remedial action and payment by Respondent of any and all outstanding costs and penalties, except that issuance of a certification of completion of the remedial action does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the remedial action or other productive reuse of the Property.

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent, City of Cornelius, an Oregon municipal corporation

By: _____ Date: _____

Peter Brandom
City Manager

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by Peter Brandom City Manager of the City of Cornelius, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

STIPULATED, AGREED, and SO ORDERED:

State of Oregon, Department of Environmental Quality

By: _____ Date: _____

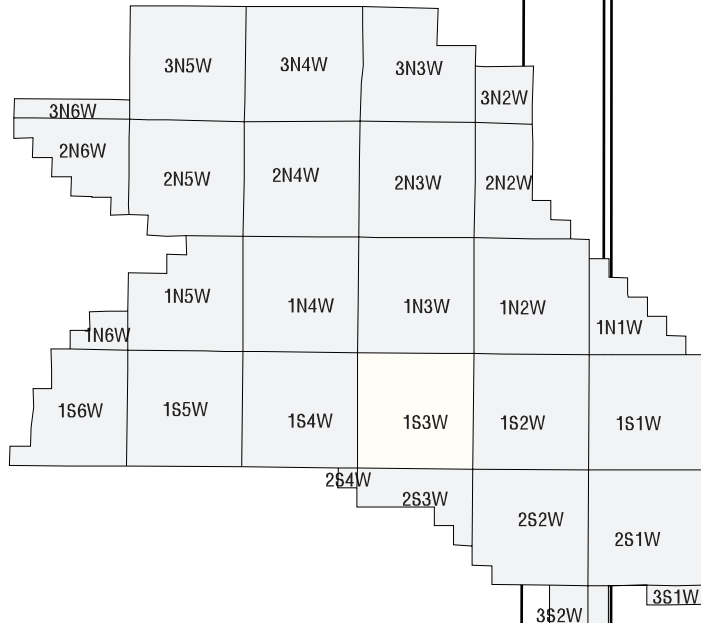
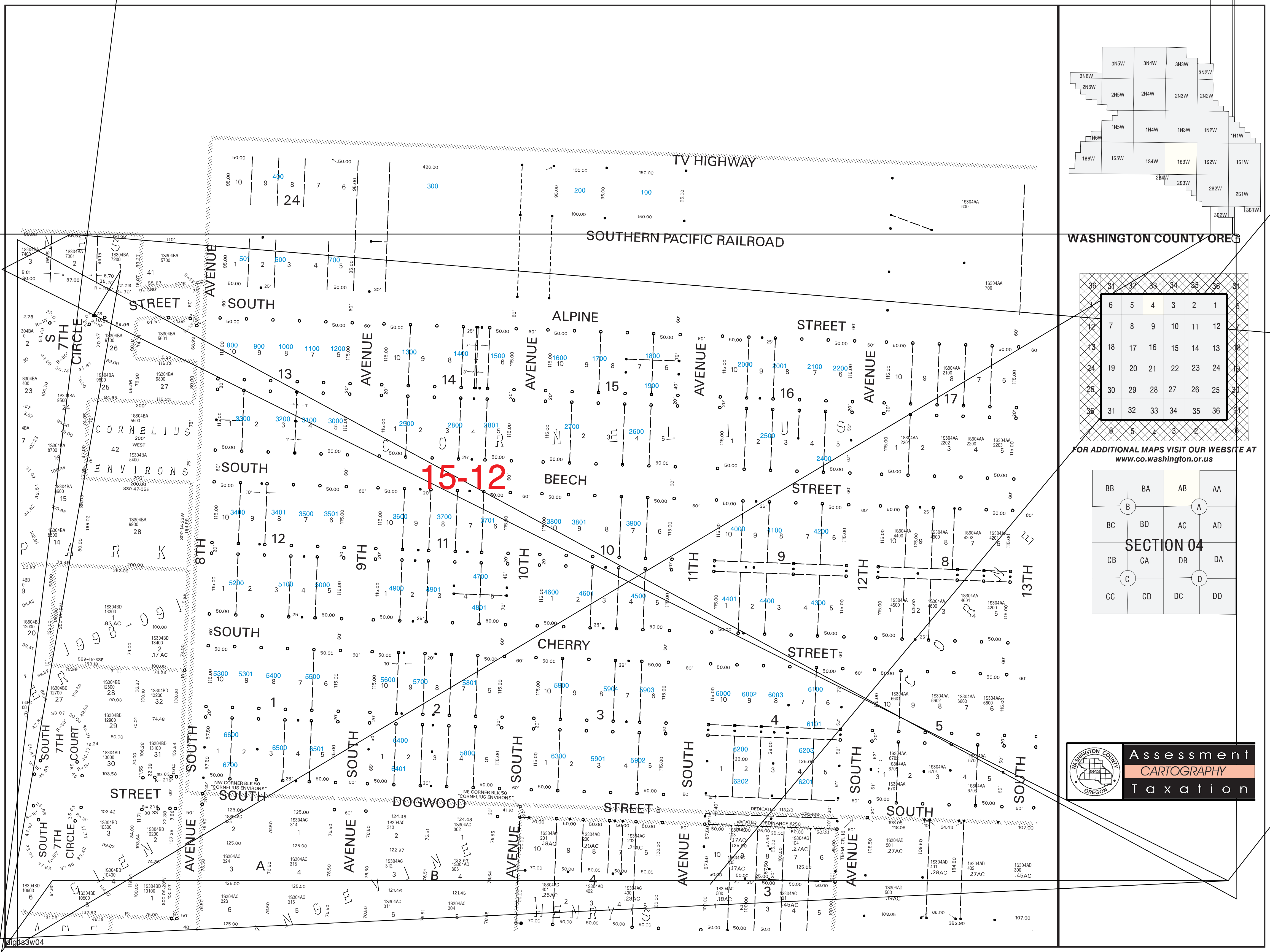
Michael Kucinski
Administrator, Land Quality Division

STATE OF OREGON)
) ss.
County of _____)

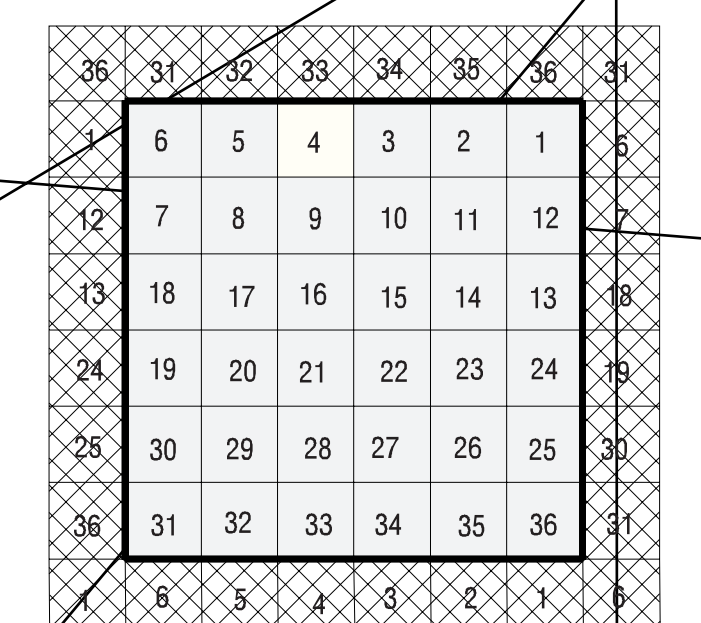
The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by Michael Kucinski of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

Exhibit A – Property Tax Map



WASHINGTON COUNTY OREG



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us

BB	BA	AB	AA
BC	BD	AC	AD
CB	CA	DB	DA
CC	CD	DC	DD

SECTION 04

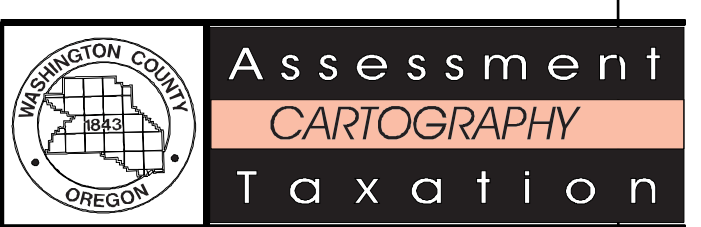


Exhibit B – Property Legal Description

Real Property in the County of Washington, State of Oregon, described as follows:

PARCEL 1:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE TUALATIN VALLEY HIGHWAY ALSO KNOWN AS BASELINE STREET, WITH THE EASTLINE OF SW FIRST AVENUE, IN THE CITY OF CORNELIUS, WASHINGTON COUNTY, OREGON; THENCE EAST ALONG THE SOUTH LINE OF SAID TUALATIN VALLEY HIGHWAY, 100 FEET, THENCE SOUTH, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST FIRST AVENUE, 95 FEET TO A POINT WHICH IS DISTANT, 30 FEET, NORTHEASTERLY MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF THE SOUTHERN PACIFIC COMPANY'S MAIN TRACK; THENCE WEST ON A LINE PARALLEL WITH AND 95 FEET SOUTHERLY MEASURED AT RIGHT ANGLES FROM THE SOUTH LINE OF SAID TUALATIN VALLEY HIGHWAY, SAID LINE ALSO BEING PARALLEL WITH AND 30 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF SAID MAIN TRACK, 100 FEET TO THE EAST LINE OF SAID SW FIRST AVENUE, THENCE NORTH ALONG THE EAST LINE OF SAID SW FIRST AVENUE, 95 FEET TO THE PLACE OF THE BEGINNING.

PARCEL 2:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF BASELINE STREET WITH THE WEST LINE OF SOUTH MAIN AVENUE IN THE CITY OF CORNELIUS, COUNTY OF WASHINGTON AND STATE OF OREGON; AND RUNNING THENCE SOUTH ALONG SAID WEST LINE 95.0 FEET TO A POINT WHICH IS 30.0 FEET DISTANCE NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE SOUTHERN PACIFIC COMPANY'S MAIN TRACT; THENCE WEST ON A LINE PARALLEL WITH AND 95.0 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID SOUTH LINE OF BASELINE; SAID LINE BEING ALSO PARALLEL WITH AND 30.0 FEET NORTHERLY MEASURED AT RIGHT ANGLES, FROM SAID CENTER LINE OF SAID MAIN TRACT, A DISTANCE OF 150.00 FEET TO A POINT 100.00 FEET EAST OF THE EAST LINE OF SW FIRST AVENUE; THENCE NORTH PARALLEL WITH SAID EAST LINE 95.0 FEET TO THE SOUTH LINE OF BASELINE STREET; AND THENCE EAST 150.0 FEET TO THE POINT OF BEGINNING.

NOTE: This legal description was created prior to January 1, 2008.

Exhibit C
Prospective Purchaser Agreement Scope of Work
Former Cornelius Estby II
Cleanup Program ID No. 34-06-1375

1) Applicant shall permanently decommission the following regulated underground storage tanks (USTs) at the site, currently in long-term temporary closure status, in accordance with Chapter 340 Division 150 requirements:

- 10,000-gallon gasoline UST
- 8,000-gallon gasoline UST
- 5,000-gallon gasoline UST
- 4,000-gallon gasoline UST
- 3,000-gallon diesel UST

Applicant shall contract the services of a DEQ-licensed UST Service Provider to perform the UST decommissioning work. The UST Service Provider on behalf of the Applicant shall provide UST Compliance with the required 30-day written and 72-hour verbal notification prior to the start of work and prepare all required decommissioning checklists and reports.

Unless UST Compliance and the Leaking Underground Storage Tank (LUST) Program jointly approve decommissioning in place, the USTs shall be permanently decommissioned by removal. Prior to decommissioning the USTs, Applicant shall submit a Sampling and Analysis Plan (SAP) or equivalent plan or approval detailing the proposed actions to access the UST, remove residual product and sludge from the UST, clean and triple rinse the UST, collect compliance samples, and remove the USTs from the site or fill with an inert substance.

Applicant shall collect required soil and (if required based on observation of site conditions) pit water samples to evaluate for the presence of a release in the vicinity of the USTs. Features to be sampled include native soils beneath the USTs in the tank pits, beneath the piping runs, and beneath the former dispensers in accordance with OAR 340-122-0205 through 0360 and OAR 340-150-0180(5). Product lines from the dispenser to the tanks must be removed or abandoned in place. Samples shall be placed in labeled laboratory-provided containers, stored in a cooler on ice to maintain temperature in the range of 4° to 6° C, and submitted to an ORLAP-accredited laboratory under chain-of-custody protocol.

Soil samples shall be analyzed for gasoline- diesel- and heavy oil-range petroleum hydrocarbons using Methods NWTPH-Gx and NWTPH-Dx. Based on consultation with DEQ, the highest detected concentrations in soil shall be further analyzed for appropriate risk-based decision making (RBDM) constituents including RBDM volatile organic compounds (VOCs), benzene, toluene, ethylbenzene, and total xylenes (BTEX), and polynuclear aromatic hydrocarbons (PAHs).

In the event that water is observed in the UST excavations, the procedures outlined in OAR 340-122-0340(4)(a) and (b) shall be used to determine if pit water in the UST excavations should be tested. If water is evacuated from the UST pit(s) and returns within 24 hours, samples of pit water shall be collected and analyzed using methods NWTPH-Gx, NWTPH-Dx, and BTEX using Method EPA SW-846 8260B.

On July 31, 2006, a release from the UST system at the site was reported and LUST ID No. 34-06-1375 was established. Because the LUST release is currently unresolved, it is necessary to determine if releases have occurred subsequent to 2006 while the USTs have been in temporary closure status. Within 24 hours of receiving laboratory analytical data reports for the compliance samples, Applicant or the UST Service Provider on behalf of the Applicant shall consult with DEQ to determine if a reportable release from the USTs has occurred. Criteria indicating a reportable release from the UST system shall include the observation of fresh petroleum product in native soils and/or groundwater in the excavations for the former USTs or detected concentrations of gasoline- or diesel-range petroleum hydrocarbons exceeding baseline conditions in site media. Analytical data for soil as documented in K&S Environmental, Inc. (K&S) reports dated August 10, 2006, October 11, 2007, April 2, 2008, and August 8, 2008, shall be considered baseline conditions. For groundwater, analytical data collected from monitoring wells MW-1, MW-2, MW-3 and MW-4 between February 2016 and December 2018 shall be considered baseline conditions.

If required by DEQ, Applicant shall report a release using the “LUST-Report Release from Regulated, Unregulated, or HOT UST Systems” tool in DEQ’s Your DEQ Online system (<https://www.oregon.gov/deq/permits/Pages/Account-Registration.aspx>).

Applicant shall complete all checklists and reports required under Chapter 340 Division 150 for regulated USTs. In addition, Applicant shall complete a narrative report documenting UST decommissioning and initial site characterization work (“45-Day Report”) within 45 days of the completion of field work, or within a longer timeframe approved by DEQ, as described in OAR 340-122-0230.

- 2) Applicant shall prepare a contaminated media management plan (CMMP) to inform decisions regarding the identification, management, characterization and disposal of contaminated media encountered as the result of excavation, construction or installation/repair of subsurface utilities. Applicant shall maintain the DEQ-approved CMMP at the Property and convey it to future owners.
- 3) Prior to demolition of existing structures, Applicant shall complete a Hazardous Building Material Survey.
- 4) If soil samples collected from beneath the USTs contain gasoline- or diesel-range hydrocarbons, VOCs and/or PAHs above RBCs for the soil ingestion, dermal contact and inhalation pathway under residential (within 3 feet of the surface) and/or construction worker (within 15 feet of the surface) exposure scenarios, Applicant may take one or more of the following actions:
 - a. Applicant may voluntarily remove such soils and collect confirmation samples to confirm removal. If soil removal in conjunction with UST decommissioning is planned, Applicant shall confer with DEQ prior to proceeding regarding field procedures, the frequency and number of confirmation samples to demonstrate successful removal, and appropriate analytical testing methods.
 - b. If such soils are not removed or only partially removed, Applicant shall cap with an engineered surface, building and/or minimum of 3 feet of clean soil or gravel above a demarcation barrier.

- c. If contaminated soils are placed under a cap, Applicant shall prepare a Soil Cap Management Plan providing a detailed description of the cap including materials and construction. In addition, the Soil Cap Management Plan must describe procedures for inspection, maintenance and repair to maintain the protective functionality of the cap if inadvertently or intentionally breached. Applicant shall maintain the Soil Cap Management Plan at the property and convey to future owners.
 - d. If the Applicant performs a partial or complete soil removal, information regarding the removal action, confirmation sampling, and backfilling work may be included in the 45-Day Report or submitted as a Technical Memorandum under separate cover.
- 5) Applicant shall submit a work plan for an investigation to determine the potential for vapor intrusion in the footprint of the future building at the property ("VI Assessment Work Plan"). The scope of work described in the VI Assessment Work Plan shall be performed in general accordance with DEQ's revised vapor intrusion guidance document, which is expected to be issued final in 2024 (<https://www.oregon.gov/deq/Hazards-and-Cleanup/Documents/VI-Guidance.pdf>) and may include the collection of soil gas samples, sub-slab samples, fixed gas measurements, indoor air samples and/or ambient outdoor air samples. The investigation shall evaluate conditions during late winter and late summer to capture seasonal variability and shall inform necessary follow-up work.
- 6) Applicant shall prepare a Technical Memorandum documenting the results of the VI Assessment ("VI Assessment Report"). The VI Assessment Report shall include figures, summary tables of analytical data, field observations and conditions documented in field data forms, laboratory analytical reports and chain-of-custody documentation, representative photographs, screening of analytical data against DEQ's VISL-based RBCs and recommendations for additional assessment or mitigation work as appropriate.
- 7) If investigation work performed in accordance with the approved VI Assessment Work Plan indicate the potential for unacceptable risk to building occupants under the most conservative (i.e., residential) exposure scenario and DEQ requires implementation of a vapor mitigation engineering control, Applicant will perform the following:
 - a. Prior to building occupation, Applicant shall prepare a Remedial Action Plan (RAP) proposing a vapor mitigation engineering control and associated performance monitoring. If Applicant proposes an active vapor mitigation engineering control and/or an active measure is required by DEQ, the RAP must include a proposal for pilot testing to determine the appropriate radius of influence and inform the system design including blower sizing. If appropriate to facilitate planning and efficient sequencing of work, the pilot test proposal can be submitted as a separate work plan prior to the RAP. The RAP and associated plans must be stamped by an Oregon-licensed Professional Engineer (P.E.)
 - b. Applicant may initially design a passive vapor mitigation engineering control system and/or opt to incorporate elements of a passive vapor mitigation engineering control into the design of future buildings at the Property. However, incorporation of such elements should not preclude construction of an active engineering control (if

determined to be necessary by DEQ) to ensure the protection of human health. If operation in the passive mode is not sufficient to protect human health, Applicant shall convert to an active mode of operation upon the request of DEQ.

- c. To reduce the timeframe over which mitigation is required (i.e., likely decades), Applicant may voluntarily design the mitigation system to achieve contaminant mass removal over a shorter timeframe.
 - d. Applicant shall prepare an Operation and Maintenance (O&M) Plan describing the vapor mitigation engineering control components, periodic inspection requirements, and procedures for maintenance/repair. Applicant shall maintain the O&M Plan at the property and convey to future owners.
 - e. Applicant shall execute an Easement and Equitable Servitudes (E&ES) requiring operation and maintenance of the vapor mitigation engineering control until such time DEQ determines it is no longer necessary to mitigate unacceptable human health risks.
- 8) Applicant shall prepare a Construction Completion Report describing the work performed under the PPA in satisfaction of the SOW requirements.

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
700 NE Multnomah St., Suite 600
Portland, OR 97232
Attention: Jeff Schatz

Grantor

City of Cornelius
1355 N. Barlow Street
Cornelius, OR 97113-8912
Attention: Peter Brandom

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on _____, 2024 between the City of Cornelius ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "**Grantee**").

RECITALS

A. Grantor is the owner of certain real property located at 1021 and 1037 E. Baseline Street (the **Property**) in Cornelius, Oregon, which consists of Washington County Tax Map 1S304AB, Tax Lots 100 and 200. The legal description of the Property is set out in Exhibit A to this EES. The Property is referenced under the file name Cornelius Estby II in Your DEQ Online (Former Leaking Underground Storage Tank) Cleanup ID No. 34-06-1375 in the files of DEQ's Cleanup Program at DEQ's Northwest Region office located at 700 Northeast Multnomah Street, Suite 600, Portland, Oregon, and telephone (503) 229-5696. Interested parties may contact the Northwest Region Portland office to review a detailed description of the risks from contamination remaining at the Property and as summarized in reports in the regulatory file.

B. The Property operated as a retail fueling station under various owners/operators from approximately 1953 to 2006. In July 2006, site assessment work revealed evidence for a release from the underground storage tank (UST) system that impacted site soil and groundwater and DEQ established Cleanup ID No. 34-06-1375. Further investigation of the release occurred between July 2006 and August 2009; subsequently, all work was ceased by the then-current owner, M&G Collections, Inc. The Leaking Underground Storage Tank Program referred the violations to the Office of Compliance and Enforcement, who issued a Notice of Civil Penalty Assessment and Order to Comply (Order) to M&G Collections, Inc. in January 2012. In response to the Order, additional groundwater monitoring was performed at the site in December 2012, February 2016, August 2016, December 2016, and December 2018.

C. In 2019, additional assessment related to the UST release was performed at the Property. Borings were advanced south, southwest and west of the Property to evaluate offsite groundwater contamination. In addition, wet-and dry-season soil gas samples were collected from the Property to evaluate potential vapor intrusion risks. Gasoline-range hydrocarbons were detected in one soil gas sample at a concentration exceeding both residential and occupational worker risk-based concentrations for the vapor intrusion into building pathway.

D. The former owner of the Property was cited for UST violations including failure to inspect internal linings at 10 years following installation or every 5 years thereafter (2016 and 2017), failure to submit application to extend temporary closure (2017), and failure to establish or maintain a financial responsibility mechanism (2024). Due to age and construction, DEQ has determined the USTs cannot remain in temporary closure and must be permanently decommissioned.

E. On September 16, 2024, Grantor agreed to implement the Scope of Work attached as Exhibit C to the _____ 2024 Prospective Purchaser Agreement Consent Order between Grantor and DEQ ("Scope of Work"). The Scope of Work obligates Grantor to conduct selected remedial actions, including, in part, permanent decommissioning of five underground storage tanks that are out of compliance with Oregon Administrative Rules Chapter 340 Division 150 requirements and completion of all associated notifications and reporting, completion of an investigation to evaluate potential risks from vapor intrusion to occupants of a future building in accordance with a DEQ-approved work plan, preparation of a Technical Memorandum documenting the investigation, and (if directed by DEQ) implementation of vapor mitigation engineering controls or other measures at the Property. In addition, Grantor agreed to execute an EES memorializing Property use restrictions supporting these remedial measures, including DEQ review of potential vapor intrusion risks associated with future development plans at the Property, maintenance of a soil or engineered cap at the Property in accordance with a DEQ-approved Soil Cap Management Plan (if necessary), maintenance of vapor mitigation engineering controls (if necessary) at the Property, and a restriction on groundwater use for the Property. Grantor and Grantee recognize that the required remedial actions, if determined to be necessary by DEQ, will be completed through implementation of the actions and restrictions on use as required by this EES.

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

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

1. DEFINITIONS

- 1.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.2 "Engineering control" has the meaning set forth in OAR 340-122-0115

- 1.3 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.4 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.5 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and, until released pursuant to Section 5, must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, run with the land for all purposes, is binding upon all current and future owners of the Property, as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES, until such time the conditions and restrictions are released pursuant to Section 5.

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

3.1. **Contaminated Media Management Plan (CMMP) for the Property.** The Owner of the Property shall prepare a CMMP for the Property to inform decisions relating to managing, characterizing and disposing of contaminated media encountered during future redevelopment, construction and/or excavation at the Property. The Owner of the Property shall maintain the DEQ-approved CMMP at the Property and convey the plan to future owners of the Property.

3.2. **Conditions on Future Construction at Property.** The construction of future buildings for human occupation, or additions to existing buildings for human occupation, at the Property require DEQ's review and written approval of vapor mitigation engineering controls or alternatives for additional assessment and/or remediation (as set forth in Section 3.3). This condition does not apply to the maintenance or upkeep of existing buildings. Owner may construct or place future structures not intended for human occupation at the Property with no prior written approval of DEQ. Future buildings constructed at the Property for human occupation must incorporate DEQ-approved, professionally installed vapor mitigation engineering control(s) into the building design. Alternatively, Owner will perform additional cleanup and/or site assessment in accordance with a DEQ-approved work plan adequate to demonstrate that residual contamination does not pose unacceptable vapor intrusion risks to future building occupants. Owner shall not construct future buildings or allow other parties to occupy and/or construct future buildings for human occupation in accordance with this

requirement unless it has been demonstrated to the satisfaction of DEQ that this prohibition on construction is no longer necessary to protect human health.

3.3. DEQ Review of Development Plans or Other Information. Prior to any future construction of buildings for human occupation at the Property, or additions to existing buildings for human occupation at the Property, the Owner must submit professionally prepared plans for the proposed development to DEQ for review by the Cleanup Program (or its successor). Any such plans submitted to DEQ must include plans for a) professionally-installed vapor mitigation engineering controls and associated performance monitoring that are signed and stamped by an Oregon-registered Professional Engineer and/or b) remediation of contaminated soil and groundwater to below applicable Risk-Based Concentrations and confirmation sampling appropriate to demonstrate the success of cleanup and/or c) site assessment adequate to rule out unacceptable vapor intrusion risks to future building occupants. Owner shall pay DEQ's costs associated with any reviews, requests or approvals required by this EES. Such review shall be carried out in a timely manner and minimize delays for such development.

3.4. Soil Cap Engineering Control. If DEQ determines that a cap is necessary to mitigate unacceptable human health risks from soil ingestion, dermal contact or inhalation, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate any soil or engineered cap at the Property or jeopardize the cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion, except to perform emergency maintenance or for routine maintenance that will not leave the cap open for more than seven days. If routine maintenance is to be performed, Owner shall provide DEQ three business days' notice detailing the work to be performed prior to commencing work. If emergency maintenance is performed, Owner shall notify DEQ within 5 days of the nature of the breach and any corrective action taken or anticipated to be taken. In the event it is necessary to breach the cap, pursuant to this Section 3.4, Owner will restore the cap to full functionality as soon as practicable. Owner will maintain the cap, if applicable, in accordance with a DEQ-approved Soil Cap Management Plan as specified in the Scope of Work attached as Exhibit C to the Prospective Purchaser Agreement Consent Order.

3.5. Vapor Mitigation Engineering Control Use Restrictions. If DEQ determines that vapor mitigation engineering controls are necessary to mitigate unacceptable human health risks from vapor intrusion, and except upon prior written approval from DEQ, Owner must not conduct operations on the Property or use the Property in any way that will or likely will compromise the effectiveness of the engineering control to prevent sub-slab vapor intruding the building at concentrations exceeding risk-based concentrations, including without limitation any excavation, drilling, scraping, or erosion. Owner will continue to operate and maintain the DEQ-approved vapor mitigation engineering controls until it is demonstrated to DEQ's satisfaction they are no longer needed to protect human health.

3.6. Groundwater Use Restrictions. Owner may not extract through wells or by other means or use the shallow groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must

conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage wastewater according to applicable laws. Extraction of groundwater from a deeper aquifer is also prohibited.

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

3. EASEMENT (RIGHT OF ENTRY)

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

4. RELEASE OF RESTRICTIONS

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

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

6. GENERAL PROVISIONS

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

6.2. **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Cornelius zoning code or any successor code. As of the date of this EES, the base zone of the Property is Central Mixed Use (CMU).

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

6.4. **Reporting.** Owner will notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES within three business days of becoming aware of such condition or occurrence.

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

6.6. **Effect of Recording.** Upon the recording of this EES and until such time as all of its conditions and restrictions are released pursuant to Section 5, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

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

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

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

GRANTOR: City of Cornelius

By: _____ Date: _____
Peter Brandom, City Manager

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of
_____, 2024, by Peter Brandom of the City of Cornelius, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

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

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of
_____, 2024, by Kevin Parrett of the Oregon Department of Environmental
Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

EXHIBIT A

Legal Description of the Property

Real Property in the County of Washington, State of Oregon, described as follows:

PARCEL 1:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF THE TUALATIN VALLEY HIGHWAY ALSO KNOWN AS BASELINE STREET, WITH THE EASTLINE OF SW FIRST AVENUE, IN THE CITY OF CORNELIUS, WASHINGTON COUNTY, OREGON; THENCE EAST ALONG THE SOUTH LINE OF SAID TUALATIN VALLEY HIGHWAY, 100 FEET, THENCE SOUTH, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST FIRST AVENUE, 95 FEET TO A POINT WHICH IS DISTANT, 30 FEET, NORTHEASTERLY MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF THE SOUTHERN PACIFIC COMPANY'S MAIN TRACK; THENCE WEST ON A LINE PARALLEL WITH AND 95 FEET SOUTHERLY MEASURED AT RIGHT ANGLES FROM THE SOUTH LINE OF SAID TUALATIN VALLEY HIGHWAY, SAID LINE ALSO BEING PARALLEL WITH AND 30 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF SAID MAIN TRACK, 100 FEET TO THE EAST LINE OF SAID SW FIRST AVENUE, THENCE NORTH ALONG THE EAST LINE OF SAID SW FIRST AVENUE, 95 FEET TO THE PLACE OF THE BEGINNING.

PARCEL 2:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF BASELINE STREET WITH THE WEST LINE OF SOUTH MAIN AVENUE IN THE CITY OF CORNELIUS, COUNTY OF WASHINGTON AND STATE OF OREGON; AND RUNNING THENCE SOUTH ALONG SAID WEST LINE 95.0 FEET TO A POINT WHICH IS 30.0 FEET DISTANCE NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE SOUTHERN PACIFIC COMPANY'S MAIN TRACT; THENCE WEST ON A LINE PARALLEL WITH AND 95.0 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID SOUTH LINE OF BASELINE; SAID LINE BEING ALSO PARALLEL WITH AND 30.0 FEET NORTHERLY MEASURED AT RIGHT ANGLES, FROM SAID CENTER LINE OF SAID MAIN TRACT, A DISTANCE OF 150.00 FEET TO A POINT 100.00 FEET EAST OF THE EAST LINE OF SW FIRST AVENUE; THENCE NORTH PARALLEL WITH SAID EAST LINE 95.0 FEET TO THE SOUTH LINE OF BASELINE STREET; AND THENCE EAST 150.0 FEET TO THE POINT OF BEGINNING.

NOTE: This legal description was created prior to January 1, 2008.