

Space above this line for Recorder's use.

*After recording, return to:*

**Grantee**

Oregon DEQ  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
Attention: Sara Krepps

**Grantor**

Black Business Hub LLC  
6607 NE MLK Jr. Blvd.  
Portland, OR 97211

**STATE OF OREGON  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. [insert]

Black Business Hub LLC

ORDER ON CONSENT

Respondent.

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 (“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. [Section Intentionally Left Blank]            |    |
| 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 issues other than Respondent's compliance with this Consent Order and the appropriate assessment of penalties; 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; 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 is an Oregon nonprofit corporation.
- B. The property proposed for acquisition by Respondent, currently owned by Legacy Health System, is an approximately 2.24-acre site located at the intersection of N Williams Avenue and NE Russell Street, Multnomah County, Oregon, in Section 27, Township 1 North, Range 1 East, 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 was previously referred to as the Hill Block, which is the historic name of the building that once occupied the site and served as the center of the African American commercial district from the early 1900s to the 1960s. The City of Portland condemned the Property in the early 1970s under urban renewal for an expansion of a hospital campus. Emanuel Hospital (now Legacy Health) purchased the Property from the Portland Development Commission (now Prosper Portland). The Property is now the site of a community-driven process for purchase and redevelopment of the Property to honor Portland’s African American community, and support the community’s housing and economic needs.
- D. Respondent completed a Phase II Environmental Site Assessment (ESA) investigation, including: 1) a geophysical survey to identify underground storage tanks (USTs), of which no evidence was found; and 2) soil/fill material and soil vapor sampling and laboratory analysis.

The laboratory analysis concluded:

- (1) Fill material was encountered in surface soils (i.e., upper 3.5 feet) across the entire property, and deeper fill material extended to depths of approximately 8 feet and 12 feet below the eastern portion of the property. The fill material consisted of silts with small pieces of brick, glass, and burnt wood fragments. Laboratory testing indicate the majority of the fill material exceeds DEQ Clean Fill Criteria and/or applicable DEQ Soil Ingestion, Dermal Contact, and

## Inhalation Exposure Pathway Risk-Based Concentrations (RBCs).

(2) Contamination was not identified in soil vapor samples.

The U.S. Geological Survey estimates the depth to groundwater below the property to be more than 100 feet. Therefore, the soil leaching to groundwater pathway is incomplete.

The Phase II ESA identified the following contaminants:

(1) The majority of soils / fill in the upper 3.5 feet of the property are characterized as non-hazardous, and they contain:

- Metals, oil-range petroleum hydrocarbons, volatile organic compounds (VOCs) (naphthalene only), and/or Semivolatile Organic Compounds (SVOCs) are above DEQ Clean Fill Criteria that require disposal at a regulated landfill.
- Arsenic, lead, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene are above DEQ RBCs for Soil Ingestion, Dermal Contact, and Inhalation for urban residential, occupational, construction worker and/or excavation worker.

(2) Fill material extending up to 12 feet below ground surface was also located on the property. This fill material contains lead above DEQ Clean Fill Criteria. The laboratory reporting limits for selenium and naphthalene exceed DEQ Clean Fill Criteria, and it should be assumed that these exceed DEQ Clean Fill Criteria. DEQ RBCs were not exceeded.

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 April 17, 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 considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with City of Portland website.

- 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 soil/fill material 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. Three separate Scopes of Work will be developed for each of three separate parcels of the Property, and each Scope of Work may be completed independently of the others.

#### 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

- (1) The extent of site restrictions will vary by individual parcel and Scope of Work. If applicable, within 30 days of executing an Easement and Equitable Servitude,

Respondent will record, with the County Clerk, Multnomah County, the Easement and Equitable Servitude substantially in the same form as attached to this Consent Order as Exhibit D. Respondent will provide DEQ a file-stamped copy of the Easement and Equitable Servitude within five working days of recording.

- (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:

Sara Krepps  
Department of Environmental Quality  
Northwest Region  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
503-956-9363  
sara.krepps@deq.oregon.gov

Respondent Project Manager

Black Business HUB LLC  
Attn: Joe Swank  
6607 NE Martin Luther King Jr Blvd  
Portland, OR 97211  
503-975-8183  
joe@adre.dev

- (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. DEQ approves Colas Construction as a qualified contractor for Respondent for purposes of this Consent Order.
- (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 192.410 through 192.505. 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 April 17, 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. [Section 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. 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 in its sole discretion may waive the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.N.(1)(a).
- (4) Respondent will, 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 June 30, 2025.
- (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).

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 Multnomah 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; 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, prior to issuance of a certificate of completion, 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 a 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, Black Business Hub LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_

Azalea Renfield, MPA, MPP  
Executive Director

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Azalea Renfield of Black Business Hub LLC, on its behalf.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

STIPULATED, AGREED, and SO ORDERED:

State of Oregon, Department of Environmental Quality

By: \_\_\_\_\_ Date: \_\_\_\_\_

[Name]  
Administrator, Land Quality Division

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

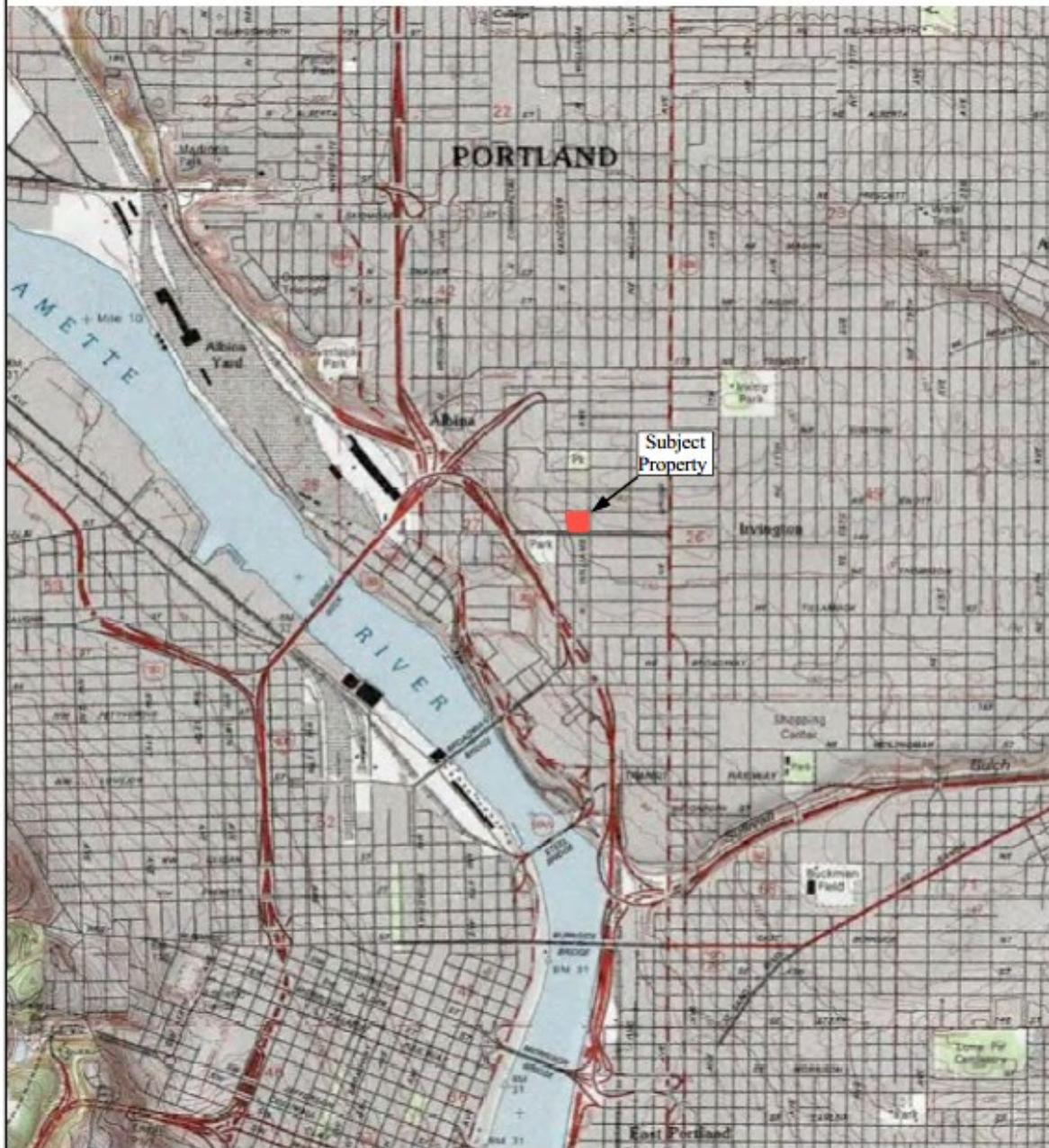
The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ [Name] of the Oregon Department of Environmental Quality, on its behalf.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

## EXHIBIT A

Note: Earth Point Topographical Map from Google Earth Pro.



**COLES+BETTS**  
environmental consulting

Approx. Scale: 1" = 27,700'

|              |               |
|--------------|---------------|
| Approved By: | Date/Revision |
|              | 7/26/23       |
|              | Rev: 0        |

**Figure 1.** Vicinity map showing the location of the Subject Property.

Map created in collaboration with Reynolds Engineering, LLC.



## EXHIBIT B

All of Lots 9, 10, 11 12, and the East 50 feet of Lots 13 & 14, Block 3, RAILROAD SHOPS ADDITION, in the City of Portland, Multnomah County, Oregon; TOGETHER WITH a strip of land adjacent on the East of said Lots 9 thru 14, lying between the East line of said lots and the West line of North Williams Avenue, and between the Easterly extensions of the North line of Lot 14 and the South line of Lot 9; and TOGETHER WITH that portion of the South half of vacated North Graham Street, and TOGETHER WITH that portion of the North half of vacated North Knott Street, which inured to said property by reason of Vacation Ordinance No. 148677, recorded September 24, 1980 as [Book 1471, Page 1277](#); EXCEPTING THEREFROM the West 10 feet of said Lots 1 thru 6 taken for the widening of North Vancouver Avenue.

AND ALSO:

All of Block 4, RAILROAD SHOPS ADDITION, in the City of Portland, Multnomah County, Oregon, TOGETHER WITH a strip of land adjacent on the East of Lots 9 thru 14 in said Block 4, lying between the East line of said Lots and the West line of North Williams Avenue, and between the Easterly extensions of the North line of said Lot 14 and the South line of said Lot 9; EXCEPTING THEREFROM the West 10 feet of Lots 3, 4, 5 and 6 taken for the widening of North Vancouver Avenue; ALSO EXCEPT those portions of Lots 5 and 6 conveyed to the City of Portland for street purposes by deed from Ole Elle and wife, recorded May 6, 1928 in Book 1135 page 196, Deed Records; and ALSO EXCEPT those portions of said property conveyed to the City of Portland for street purposes by deed recorded May 21, 1973 in Book 927 page 1322, Deed Records; TOGETHER WITH, however, that portion of the South half of vacated North Knott Street which inured to said property by reason of Vacation Ordinance No. 148677, recorded September 24, 1980 as [Book 1471, Page 1277](#).

Map No.: 1N1E27AC-01800 & 1N1E27AC-04100

Tax Account No.: R251394 & R251395

EXHIBIT C

## **EXHIBIT C.1**

### **SCOPE OF WORK**

This Scope of Work (SOW) describes the measures to be taken by the Respondent in Perspective Purchaser Agreement No. XXXX-XX-XX-XX\_\_\_\_ (“Respondent”) to ensure timely implementation and long-term protectiveness of the work.

#### **I. DESCRIPTION OF REMEDIAL ACTION**

The property for the overall project is a vacant, grass-covered City block (Tax Lot 1N1E27AC 4100 and a portion of Tax Lot 1N1E27AC 1800) bound by N Knott Street to the north, N Williams Avenue to the east, N Russell Street to the south and N Vancouver Avenue to the west.

After purchase, the property will be divided into three parcels and developed by three separate owners as follows:

- A townhome development that will provide affordable home ownership on the northern portion of the block (“Homeownership Parcel”),
- A four-story office building with retail spaces and plaza on the eastern portion of the block (“Black Business Hub Parcel”), and
- A six-story affordable apartment building on the southwest corner of the block (“Affordable Apartments Parcel”).

A site plan showing the Homeownership Parcel, the Black Business Hub Parcel, and Affordable Apartments Parcel is attached (Figure 1).

Respondent completed a Phase II Environmental Site Assessment (ESA) investigation, including: 1) a geophysical survey to identify underground storage tanks (USTs), of which no evidence was found; and 2) soil/fill material and soil vapor sampling and laboratory analysis. The Phase II ESA concluded:

- Fill material was encountered in surface soils (i.e., upper 3.5 feet) across the entire property, and deeper fill material extended to depths of approximately 8 feet and 12 feet below the eastern portion of the property. The fill material consisted of silts with small pieces of brick, glass, and burnt wood fragments. Laboratory testing indicate the majority of the fill material exceeds DEQ Clean Fill Criteria and/or applicable DEQ Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway Risk-Based Concentrations (RBCs).
- Contamination was not identified in soil vapor samples.

The U.S. Geological Survey estimates the depth to groundwater below the property to be more than 100 feet. Therefore, the soil leaching to groundwater pathway is incomplete.

This SOW is specific to the Affordable Apartments Parcel. The remedial action for the Affordable Apartments Parcel involves the removal of fill materials and soils that exceed the applicable cleanup levels and backfilling with clean fill to establish the necessary grades. Remediation of each property will occur during grading of the entire City block (all three properties) at once. Cleanup levels for the Affordable Apartments Parcel are DEQ’s Residential and Construction Worker Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway RBCs. The lead cleanup level is based on EPA’s revised residential regional screening level of 100 milligrams per kilogram (mg/kg) as required by DEQ. Contaminants above cleanup levels are summarized in Table 1 and the locations of contaminants above cleanup levels in surface and subsurface soils are shown in Figure 2.

## **II. SCHEDULE**

Within 45 days of issuance of the Prospective Purchaser Agreement (PPA), Respondent shall submit for DEQ review and comment a draft schedule for implementing the Scope of Work (SOW) herein. Respondent shall maintain the schedule for submittals and implementation of the SOW activities. The schedule may be revised by DEQ, or Respondent with DEQ's approval.

## **III. DELIVERABLES**

### **A. WORK PLAN**

The Work Plan shall be developed in conformance with this SOW; and as appropriate, any additional guidance documents as published or accepted by DEQ.

The Work Plan shall be prepared for all activities to be conducted and shall include the following items:

1. Description of proposed tasks and activities to be performed.
2. Identification and description of duties, responsibilities, authorities, and qualifications of the personnel involved in the work.
3. Project organization and identification of reporting relationships, lines of communication, and authorities.
4. Summary of the goals, objectives, and cleanup levels of the work.
5. General description of work to be performed.
6. Identification and listing of federal, state, or local laws, regulations, or guidance applicable to or associated with the work and an explanation of how they will be incorporated into the work.
7. Assessment of permitting requirements.
8. Identification of any imported fill material sources and documentation that on-site or imported fill meets the requirements of clean fill.
9. Identification of any off-site disposal facilities and requirements for disposal, if any.
10. Identification and description of any site access agreements required to implement the work.
11. Identification and description of additional sampling, evaluations, or engineering studies required to supplement available technical information.
12. Identification and description of any property, utility, right-of-way, topographic, or other site surveys required.

13. Description of any special design/implementation problems anticipated and how they will be addressed. Include any special technical problems, anticipated community relations problems, access, easements, rights-of-way, transportation, utilities, and logistics problems.
14. Identification and description of institutional controls to be imposed during and/or after construction activities.
15. Description of construction methods and equipment to be used.
16. Procedures for documentation/validation of the work.

## **B. SAMPLING AND ANALYSIS PLAN (SAP)**

A draft Sampling and Analysis Plan (SAP) shall be prepared and submitted for DEQ review and comment. A final SAP shall be submitted for DEQ approval addressing DEQ's comments on the draft SAP.

The SAP shall be prepared for all proposed sampling and monitoring activities to be conducted during the work. The SAP shall also address confirmation sampling to be conducted following excavation, treatment or other remedial activity, to verify that the work requirements and specified cleanup levels have been attained.

The SAP shall include, at a minimum:

1. Proposed sampling locations, frequency, parameters, and rationale.
2. A description of sample collection techniques, sampling equipment, sample handling, and decontamination procedures.
3. A description of proposed analytical or test methods.
4. A description of quality assurance and quality control (QA/QC) procedures for both field and laboratory activities, including a data quality objectives plan. For each target compound, compare the method reporting limit and the cleanup level.
5. A description of documentation and data reporting, including a proposed schedule for data report submittals.
6. A description of data analysis and interpretation methods, including statistical methods, sensitivity methods, or mathematical models for:
  - i. Evaluating attainment of remedial action cleanup levels.
  - ii. Evaluating bench or pilot scale tests for full-scale application of the technology.
7. A description of residuals management procedures.

### **C. SITE HEALTH AND SAFETY PLAN**

A site-specific Health and Safety Plan (HASP) shall be prepared to address all field activities to be conducted during the work and shall include construction hazards, chemical exposure hazards, on-site worker safety, and measurement of potential off-site impacts.

The HASP shall be developed in accordance with "Standard Operating Safety Guides," EPA Office of Emergency and Remedial Response, 1988; and applicable standards promulgated by the U.S. Occupational Safety and Health Administration including Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120; General Industry Standards, 29 CFR 1910; and the Construction Industry Standards, 29 CFR 1926.

The HASP shall include at a minimum:

1. Scope and applicability of plan.
2. Identification and responsibilities of key health and safety personnel.
3. Task/operation safety and health risk analysis for each site task and operation, including a description of known hazards and risks and procedures for assessing risks.
4. Personnel training requirements.
5. Personal protective equipment to be used.
6. Medical surveillance requirements.
7. Air monitoring requirements, including types and frequency, and a description of air monitoring methods to be used.
8. Site control measures, including communication, site security, and work zone delineation.
9. Decontamination plan for personnel, equipment, and facilities.
10. Emergency response/contingency plan.
11. Confined space entry procedures, if applicable.
12. Spill containment program.
13. Identification of potential construction hazards and precautionary measures to minimize hazards.

### **D. CONTAMINATED MATERIAL MANAGEMENT PLAN (CMMP)**

Any CMMP developed for construction of particular parcels will include a discussion of the purpose of the CMMP, a site description, a summary of findings from previous investigations,

contaminated media management for anticipated and unanticipated contaminated media, construction and excavation workers safety, and record keeping.

#### **E. EASEMENT OF EQUITABLE SERVITUDE (EES)**

Any EES will be recorded for particular parcels with the County after it is approved by DEQ, as necessary. The anticipated or potential land use restrictions are notifications of locations of soils above cleanup levels and maintaining caps over these soils with a hardscape and/or building and/or in landscaped areas with clean fill underlain by a geotextile barrier.

Removal of fill materials and soils exceeding cleanup levels will be completed within the Affordable Apartments Parcel. DEQ will be consulted if contaminated, inaccessible soils will be left in-place that warrant an EES.

#### **F. PROJECT COMPLETION REPORT**

At the completion of the remedial action construction phases, Respondent shall conduct a final inspection and prepare a draft Project Completion Report for DEQ review and comment. A final Project Completion Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report. The Project Completion Report shall include, at a minimum:

1. A detailed description of all work conducted in accordance with the approved Work Plan, and certification that the work was performed in accordance with all approved Work Plans.
2. Copy of final permits, as applicable.
3. Results of verification sampling, including data validation, and certification that the required criteria have been attained.

#### **IV. REPORT DISTRIBUTION**

All deliverables shall be submitted to DEQ electronically. Electronic copies of deliverables shall be submitted in printable document format (pdf) and/or Microsoft Office compatible formats.

Table 1. Summary of Soil Analytical Data Above DEQ Reference Levels

|   |       | OR DEQ Clean Fill Criteria <sup>1</sup> and<br>OR Background Metals for the<br>Portland Basin <sup>2</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Residential) <sup>3</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Occupational) <sup>3</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Const Worker) <sup>3</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Exc Worker) <sup>3</sup> | EPA Remediation Level for<br>Lead <sup>4</sup> | RCRA Hazardous Waste<br>Characteristic Screening Level<br>(mg/L) <sup>5</sup> | 12/7/20 | 12/8/20 | 12/8/20 | 12/7/20 | 12/7/20 |      |      |      |
|---|-------|--|--|---|---|---|--|---|---------|---------|---------|---------|---------|------|------|------|
|   | Unit  |  |  |   |   |   |  |   | B10 1-2 | C001    | C002    | C004    | C006    |      |      |      |
| Total Metals EPA 6020                             |       |  |  |   |   |   |  |   |         |         |         |         |         |      |      |      |
| Arsenic   | mg/kg | 8.8  | 0.43   | 1.9   | 15  | 420   | -  | -   | 4.63    | 13.8    | 25.7    | 6.05    | 7.30    |      |      |      |
| Lead  | mg/kg | 28   | 400**  | 800**   | 800**   | 800**   | 100  | -   | 212     | 1,720   | 98.8    | 355     | 116     |      |      |      |
| Total Petroleum Hydrocarbons by TPH-Gx and TPH-Dx |       |  |  |   |   |   |  |   |         |         |         |         |         |      |      |      |
| Oil-Range   | mg/kg | 2,800  | 2,800  | 36,000  | 11,000  | -   | -  | -   | -       | -       | 50      | U       | 4,680   | F-03 | 87.0 | F-03 |
| Semivolatile Organic Compounds by EPA 8270E       |       |  |  |   |   |   |  |   |         |         |         |         |         |      |      |      |
| Benzo(a)anthracene                                | mg/kg | 0.73   | 1.1  | 21  | 170   | 4,800   | -  | -   | -       | -       | -       | -       | 36.8    | -    | -    | -    |
| Benzo(a)pyrene                                    | mg/kg | 0.11   | 0.11   | 2.1   | 17  | 490   | -  | -   | -       | 0.664   | -       | -       | 46.8    | -    | -    | -    |
| Benzo(b)fluoranthene                              | mg/kg | 1.1  | 1.1  | 21  | 170   | 4,900   | -  | -   | -       | -       | -       | -       | 43.6    | -    | -    | -    |
| Benzo(k)fluoranthene                              | mg/kg | 11   | 11   | 210   | 1,700   | 49,000  | -  | -   | -       | -       | -       | -       | 17.5    | M-05 | -    | -    |
| Dibenz(a,h)anthracene                             | mg/kg | 0.11   | 0.11   | 2.1   | 17  | 490   | -  | -   | -       | -       | 0.311   | U       | 4.88    | -    | -    | -    |
| Indeno(1,2,3-cd)pyrene                            | mg/kg | 1.1  | 1.1  | 21  | 170   | 4,900   | -  | -   | -       | -       | -       | -       | 26.3    | -    | -    | -    |

**NOTES:**

mg/kg = milligrams per kilogram

mg/L = milligrams per liter

U = not detected above method detection limit shown

ND = not detected

**Bold** denotes concentration above laboratory method reporting limit.**Color** denotes detected concentration exceeds DEQ RBC screening criteria.

Gray Shading denotes detected concentration exceeds DEQ Clean Fill Criteria.

Italics and underlining denotes detected concentration exceeds EPA Lead Screening Criteria

\*\* denotes the DEQ RBC for Lead will not be used as the remediation goal. The EPA remediation goal of 100 mg/kg will be used instead.

1 = Oregon Department of Environmental Quality, Clean Fill Determinations, Dated February 21, 2019.

2 = Oregon Department of Environmental Quality, Table 1: Regional Default Background Concentrations for Metals in Soil, revised March 20, 2013.

3 = Oregon Department of Environmental Quality, Environmental Cleanup and Tanks Program, Risk-Based concentration for Individual Chemicals, revised May 2018.

4 = EPA Updated Soil Lead Guidance for Cercla Sites and RCRA Corrective Action Facilities, January 2024. Screening Level of 100 mg/kg selected due to the property's remedial action for residential use.

5 = EPA Maximum Concentration of Contaminants for the Toxicity Characteristic (Table 1).

The leaching to groundwater exposure pathway was removed based on the depth to groundwater at the property (greater than 65 feet).

The volatilization to outdoor air and vapor intrusion into buildings exposure pathways were removed from this table since there were no exceedances.

The remediation level for arsenic is the DEQ Clean Fill Criteria value of 8.8 mg/kg.

Samples analyzed by Apex Laboratories of Tigard, Oregon.

F-03 = The result for this hydrocarbon range is elevated due to the presence of individual analyte peaks in the quantitation range that are not representative of the fuel pattern reported.

M-05 = Estimated results. Peak separation for structural isomers is insufficient for accurate quantification.



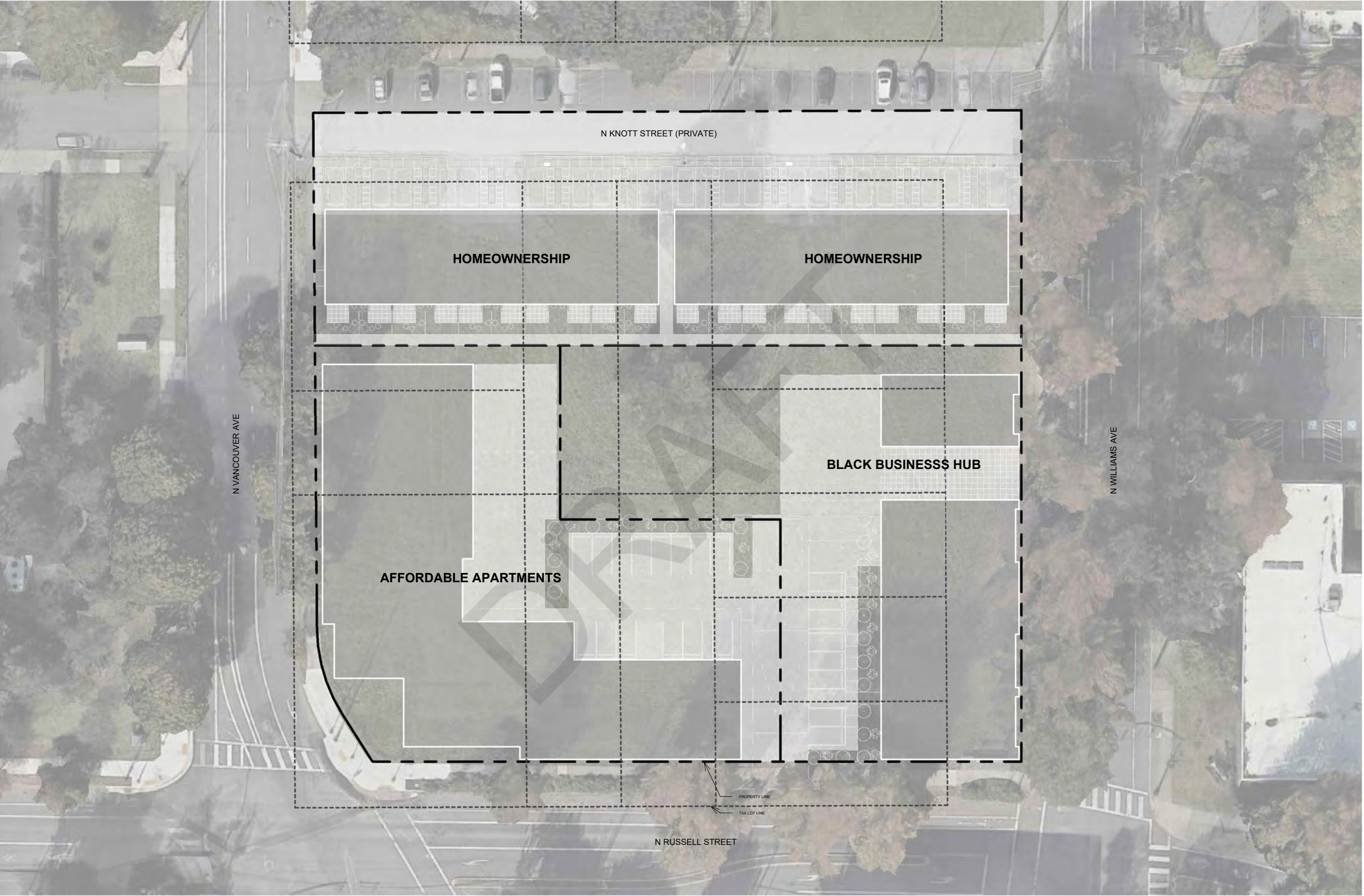


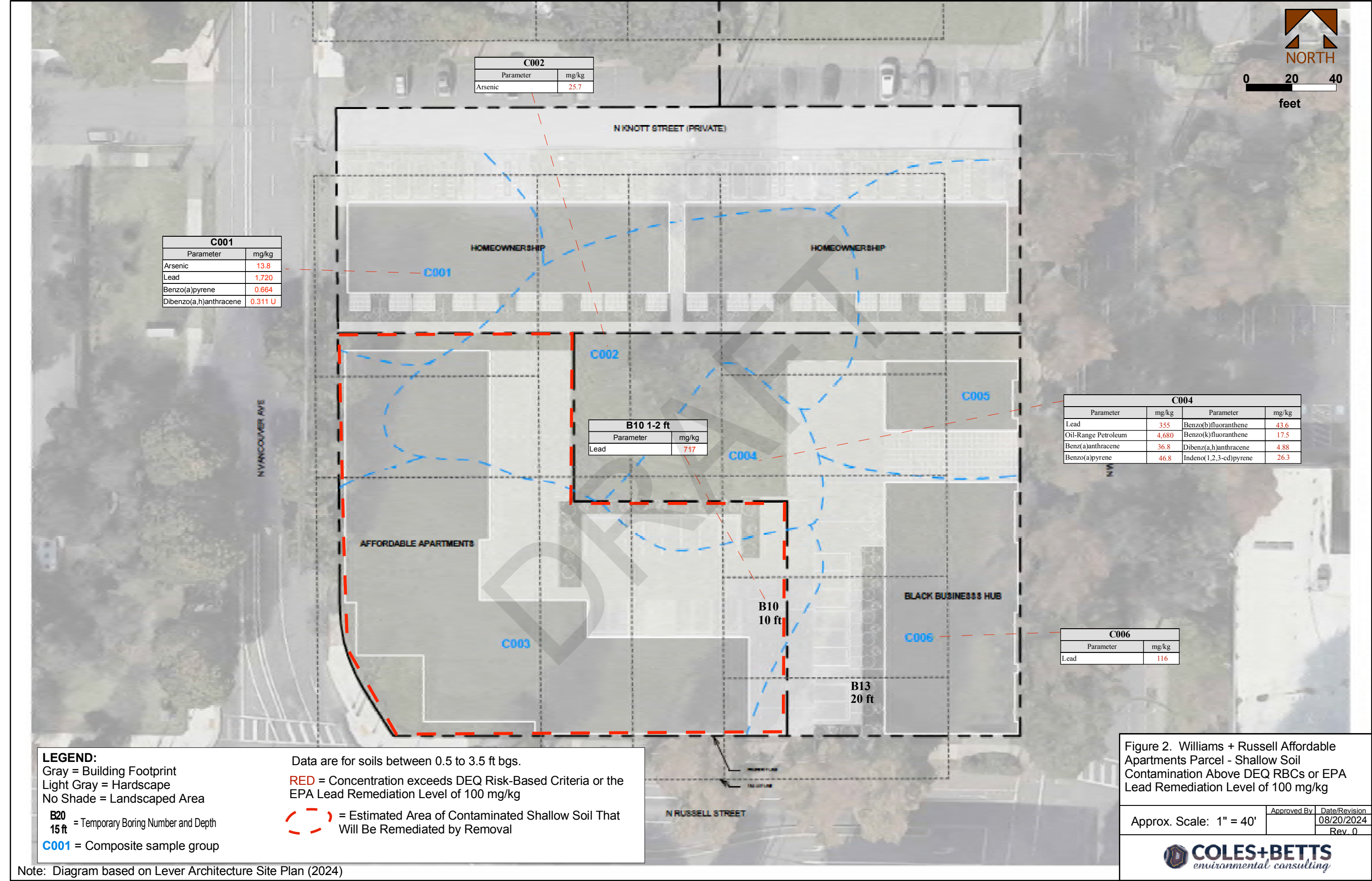
FIGURE 1. SITE PLAN  
WILLIAMS + RUSSELL HOMEOWNERSHIP



SCALE: 1:40







## **EXHIBIT C.2 SCOPE OF WORK**

This Scope of Work (SOW) describes the measures to be taken by the Respondent in Perspective Purchaser Agreement No. XXXX-XX-XX-XX\_\_\_\_ (“Respondent”) to ensure timely implementation and long-term protectiveness of the work.

### **I. DESCRIPTION OF REMEDIAL ACTION**

The property for the overall project is a vacant, grass-covered City block (Tax Lot 1N1E27AC 4100 and a portion of Tax Lot 1N1E27AC 1800) bound by N Knott Street to the north, N Williams Avenue to the east, N Russell Street to the south and N Vancouver Avenue to the west.

After purchase, the property will be divided into three parcels and developed by three separate owners as follows:

- A townhome development that will provide affordable home ownership on the northern portion of the block (“Homeownership Parcel”),
- A four-story office building with retail spaces and plaza on the eastern portion of the block (“Black Business Hub Parcel”), and
- A six-story affordable apartment building on the southwest corner of the block (“Affordable Apartments Parcel”).

A site plan showing the Homeownership Parcel, the Black Business Hub Parcel, and Affordable Apartments Parcel is attached (Figure 1).

Respondent completed a Phase II Environmental Site Assessment (ESA) investigation, including: 1) a geophysical survey to identify underground storage tanks (USTs), of which no evidence was found; and 2) soil/fill material and soil vapor sampling and laboratory analysis. The laboratory analysis concluded:

- Fill material was encountered in surface soils (i.e., upper 3.5 feet) across the entire property, and deeper fill material extended to depths of approximately 8 feet and 12 feet below the eastern portion of the property. The fill material consisted of silts with small pieces of brick, glass, and burnt wood fragments. Laboratory testing indicate the majority of the fill material exceeds DEQ Clean Fill Criteria and/or applicable DEQ Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway Risk-Based Concentrations (RBCs).
- Contamination was not identified in soil vapor samples.

The U.S. Geological Survey estimates the depth to groundwater below the property to be more than 100 feet. Therefore, the soil leaching to groundwater pathway is incomplete.

This SOW is specific to the Black Business Hub Parcel. The Black Business Hub Parcel may include a mix of occupational use and publicly accessible open space. The remedial action for the Black Business Hub Parcel involves the removal of fill materials and soils that exceed the applicable cleanup levels, to the extent practicable, and backfilling with clean fill to establish the necessary grades. Remediation of each property will occur during grading of the entire City block (all three properties) at once. Cleanup levels for the Black Business Hub Parcel are DEQ’s Occupational and Construction Worker Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway RBCs in areas with occupational use, and DEQ’s Residential and Construction Worker Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway RBCs in publicly accessible open space. A site-specific occupational and construction worker lead cleanup level of 800 milligrams per kilogram (mg/kg) is required by DEQ in occupational use areas. The lead cleanup level in publicly accessible open space is based on EPA’s revised residential regional screening level of 100 mg/kg as required by DEQ.

Contaminants above cleanup levels are summarized in Table 1 and the locations of contaminants above cleanup levels in surface and subsurface soils are shown in Figures 2 and 3.

## **II. SCHEDULE**

Within 45 days of issuance of the Prospective Purchaser Agreement (PPA), Respondent shall submit for DEQ review and comment a draft schedule for implementing the Scope of Work (SOW) herein. Respondent shall maintain the schedule for submittals and implementation of the SOW activities. The schedule may be revised by DEQ, or Respondent with DEQ's approval.

## **III. DELIVERABLES**

### **A. WORK PLAN**

The Work Plan shall be developed in conformance with this SOW; and as appropriate, any additional guidance documents as published or accepted by DEQ.

The Work Plan shall be prepared for all activities to be conducted and shall include the following items:

1. Description of proposed tasks and activities to be performed.
2. Identification and description of duties, responsibilities, authorities, and qualifications of the personnel involved in the work.
3. Project organization and identification of reporting relationships, lines of communication, and authorities.
4. Summary of the goals, objectives, and cleanup levels of the work.
5. General description of work to be performed.
6. Identification and listing of federal, state, or local laws, regulations, or guidance applicable to or associated with the work and an explanation of how they will be incorporated into the work.
7. Assessment of permitting requirements.
8. Identification of any imported fill material sources and documentation that on-site or imported fill meets the requirements of clean fill.
9. Identification of any off-site disposal facilities and requirements for disposal, if any.
10. Identification and description of any site access agreements required to implement the work.
11. Identification and description of additional sampling, evaluations, or engineering studies required to supplement available technical information.

12. Identification and description of any property, utility, right-of-way, topographic, or other site surveys required.
13. Description of any special design/implementation problems anticipated and how they will be addressed. Include any special technical problems, anticipated community relations problems, access, easements, rights-of-way, transportation, utilities, and logistics problems.
14. Identification and description of institutional controls to be imposed during and/or after construction activities.
15. Description of construction methods and equipment to be used.
16. Procedures for documentation/validation of the work.

**B. SAMPLING AND ANALYSIS PLAN (SAP)**

A draft Sampling and Analysis Plan (SAP) shall be prepared and submitted for DEQ review and comment. A final SAP shall be submitted for DEQ approval addressing DEQ's comments on the draft SAP.

The SAP shall be prepared for all proposed sampling and monitoring activities to be conducted during the work. The SAP shall also address confirmation sampling to be conducted following excavation, treatment or other remedial activity, to verify that the work requirements and specified cleanup levels have been attained.

The SAP shall include, at a minimum:

1. Proposed sampling locations, frequency, parameters, and rationale.
2. A description of sample collection techniques, sampling equipment, sample handling, and decontamination procedures.
3. A description of proposed analytical or test methods.
4. A description of quality assurance and quality control (QA/QC) procedures for both field and laboratory activities, including a data quality objectives plan. For each target compound, compare the method reporting limit and the cleanup level.
5. A description of documentation and data reporting, including a proposed schedule for data report submittals.
6. A description of data analysis and interpretation methods, including statistical methods, sensitivity methods, or mathematical models for:
  - i. Evaluating attainment of remedial action cleanup levels.
  - ii. Evaluating bench or pilot scale tests for full-scale application of the technology.
7. A description of residuals management procedures.

### **C. SITE HEALTH AND SAFETY PLAN**

A site-specific Health and Safety Plan (HASP) shall be prepared to address all field activities to be conducted during the work and shall include construction hazards, chemical exposure hazards, on-site worker safety, and measurement of potential off-site impacts.

The HASP shall be developed in accordance with "Standard Operating Safety Guides," EPA Office of Emergency and Remedial Response, 1988; and applicable standards promulgated by the U.S. Occupational Safety and Health Administration including Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120; General Industry Standards, 29 CFR 1910; and the Construction Industry Standards, 29 CFR 1926.

The HASP shall include at a minimum:

1. Scope and applicability of plan.
2. Identification and responsibilities of key health and safety personnel.
3. Task/operation safety and health risk analysis for each site task and operation, including a description of known hazards and risks and procedures for assessing risks.
4. Personnel training requirements.
5. Personal protective equipment to be used.
6. Medical surveillance requirements.
7. Air monitoring requirements, including types and frequency, and a description of air monitoring methods to be used.
8. Site control measures, including communication, site security, and work zone delineation.
9. Decontamination plan for personnel, equipment, and facilities.
10. Emergency response/contingency plan.
11. Confined space entry procedures, if applicable.
12. Spill containment program.
13. Identification of potential construction hazards and precautionary measures to minimize hazards.

#### **D. CONTAMINATED MATERIAL MANAGEMENT PLAN (CMMP)**

Any CMMP developed for construction of particular parcels will include a discussion of the purpose of the CMMP, a site description, a summary of findings from previous investigations, contaminated media management for anticipated and unanticipated contaminated media, construction and excavation workers safety, and record keeping.

#### **E. EASEMENT OF EQUITABLE SERVITUDE (EES)**

Any EES will be recorded for particular parcels with the County after it is approved by DEQ, as necessary. The anticipated or potential land use restrictions are notifications of locations of soils above cleanup levels and maintaining caps over these soils with a hardscape and/or building and/or in landscaped areas with clean fill underlain by a geotextile barrier.

Removal of fill materials and soils exceeding cleanup levels will be completed to the extent possible within excavation areas for the Black Business Hub Parcel. DEQ will be consulted if contaminated, inaccessible soils will be left in-place that warrant an EES.

#### **F. PROJECT COMPLETION REPORT**

At the completion of the remedial action construction phases, Respondent shall conduct a final inspection and prepare a draft Project Completion Report for DEQ review and comment. A final Project Completion Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report. The Project Completion Report shall include, at a minimum:

1. A detailed description of all work conducted in accordance with the approved Work Plan, and certification that the work was performed in accordance with all approved Work Plans.
2. Copy of final permits, as applicable.
3. Results of verification sampling, including data validation, and certification that the required criteria have been attained.

#### **IV. REPORT DISTRIBUTION**

All deliverables shall be submitted to DEQ electronically. Electronic copies of deliverables shall be submitted in printable document format (pdf) and/or Microsoft Office compatible formats.

Table 1. Summary of Soil Analytical Data Above DEQ Reference Levels for the Black Business Hub Parcel

|  | Unit  | OR DEQ Clean Fill Criteria <sup>1</sup> and<br>OR Background Metals for the<br>Portland Basin <sup>2</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Residential) <sup>3</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Occupational) <sup>3</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Const Worker) <sup>3</sup> | OR DEQ RBC Soil Ingestion,<br>Dermal Contact, and<br>Inhalation (Exc Worker) <sup>3</sup> | EPA Remediation Level for<br>Lead <sup>4</sup> | RCRA Hazardous Waste<br>Characteristic Screening Level<br>(mg/L) <sup>5</sup> | 12/7/20   | 12/8/20     | 12/8/20 | 12/7/20 | 12/7/20   |
|--|-------|--|--|---|---|---|--|---|-----------|-------------|---------|---------|-----------|
|  |       |  |  |   |   |   |  |   | B12 1-1.5 | B17 5.5-7.5 | C002    | C004    | C006      |
| <b>Total Metals EPA 6020</b>                             |       |  |  |   |   |   |  |   |           |             |         |         |           |
| Arsenic  | mg/kg | 8.8  | 0.43   | 1.9   | 15  | 420   | -  | -   | 3.97      | 7.56        | 25.7    | 6.05    | 7.30      |
| Lead   | mg/kg | 28   | 400**  | 800   | 800   | 800   | 100  | -   | 227       | 308         | 98.8    | 355     | 116       |
| <b>Total Petroleum Hydrocarbons by TPH-Gx and TPH-Dx</b> |       |  |  |   |   |   |  |   |           |             |         |         |           |
| Oil-Range  | mg/kg | 2,800  | 2,800  | 36,000  | 11,000  | -   | -  | -   | 4,240     | F-03 50     | U 50    | 4,680   | F-03 87.0 |
| <b>Semivolatile Organic Compounds by EPA 8270E</b>       |       |  |  |   |   |   |  |   |           |             |         |         |           |
| Benzo(a)anthracene                                       | mg/kg | 0.73   | 1.1  | 21  | 170   | 4,800   | -  | -   |           |             |         | 36.8    |           |
| Benzo(a)pyrene   | mg/kg | 0.11   | 0.11   | 2.1   | 17  | 490   | -  | -   |           |             |         | 46.8    |           |
| Benzo(b)fluoranthene                                     | mg/kg | 1.1  | 1.1  | 21  | 170   | 4,900   | -  | -   |           |             |         | 43.6    |           |
| Benzo(k)fluoranthene                                     | mg/kg | 11   | 11   | 210   | 1,700   | 49,000  | -  | -   |           |             |         | 17.5    | M-05      |
| Dibenz(a,h)anthracene                                    | mg/kg | 0.11   | 0.11   | 2.1   | 17  | 490   | -  | -   |           |             |         | 4.88    |           |
| Indeno(1,2,3-cd)pyrene                                   | mg/kg | 1.1  | 1.1  | 21  | 170   | 4,900   | -  | -   |           |             |         | 26.3    |           |

**NOTES:**

mg/kg = milligrams per kilogram

mg/L = milligrams per liter

U = not detected above method detection limit shown

ND = not detected

**Bold** denotes concentration above laboratory method reporting limit.**Color** denotes detected concentration exceeds DEQ RBC screening criteria.**Gray Shading** denotes detected concentration exceeds DEQ Clean Fill Criteria.***Italics and underlining*** denotes detected concentration exceeds EPA Lead Screening Criteria.**\*\*** denotes the DEQ Residential RBC for Lead will not be used as the remediation goal in publicly accessible open space. The EPA remediation goal of 100 mg/kg will be used instead.**1** = Oregon Department of Environmental Quality, Clean Fill Determinations, Dated February 21, 2019.**2** = Oregon Department of Environmental Quality, Table 1: Regional Default Background Concentrations for Metals in Soil, revised March 20, 2013.**3** = Oregon Department of Environmental Quality, Environmental Cleanup and Tanks Program, Risk-Based concentration for Individual Chemicals, revised May 2018.**4** = EPA Updated Soil Lead Guidance for Cercla Sites and RCRA Corrective Action Facilities, January 2024. Screening Level of 100 mg/kg selected due to the property's remedial action for residential use.**5** = EPA Maximum Concentration of Contaminants for the Toxicity Characteristic (Table 1).

The leaching to groundwater exposure pathway was removed based on the depth to groundwater at the property (greater than 65 feet).

The volatilization to outdoor air and vapor intrusion into buildings exposure pathways were removed from this table since there were no exceedances.

The remediation level for arsenic is the DEQ Clean Fill Criteria value of 8.8 mg/kg.

Samples analyzed by Apex Laboratories of Tigard, Oregon.

F-03 = The result for this hydrocarbon range is elevated due to the presence of individual analyte peaks in the quantitation range that are not representative of the fuel pattern reported.

M-05 = Estimated results. Peak separation for structural isomers is insufficient for accurate quantification.



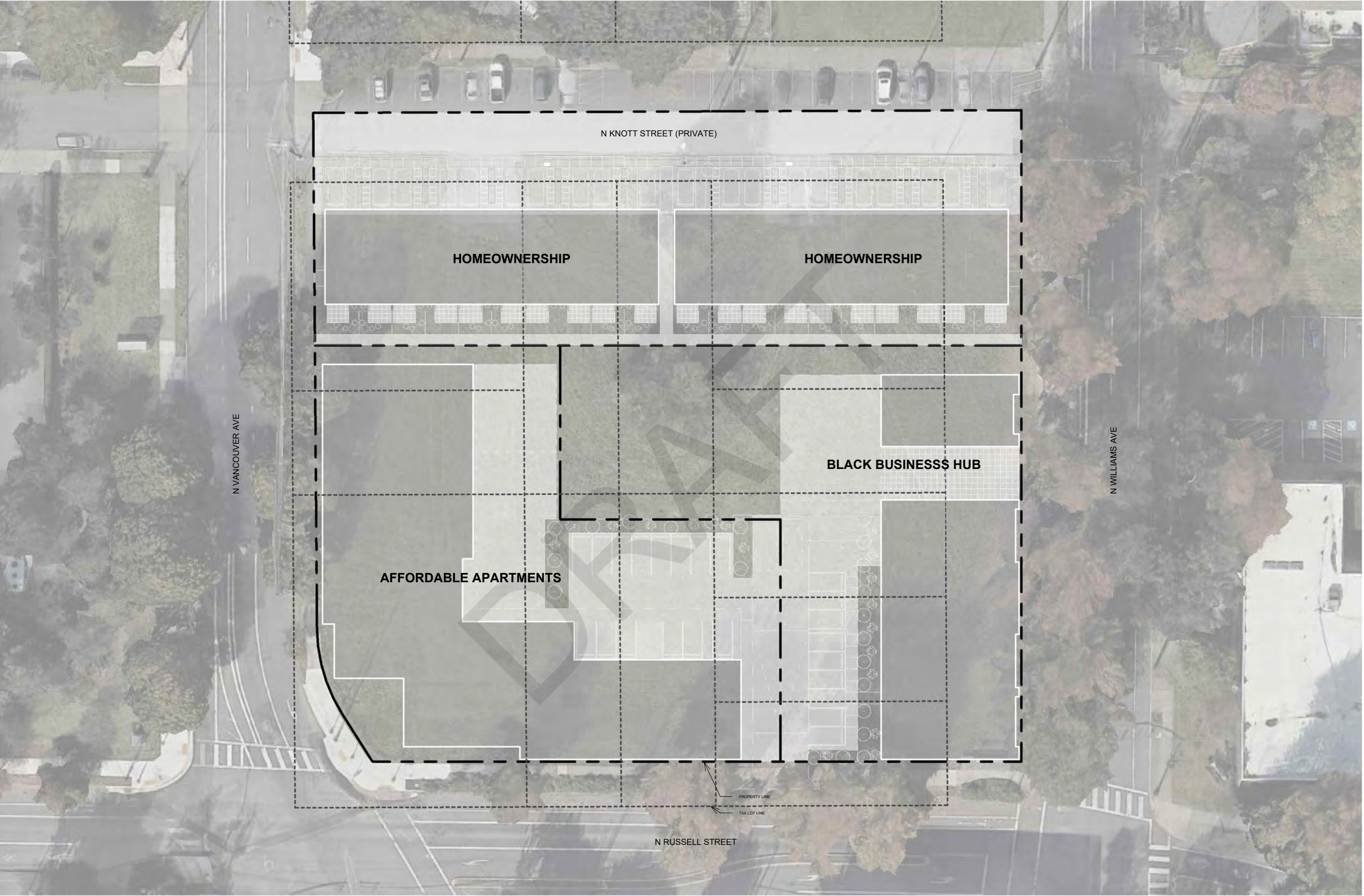


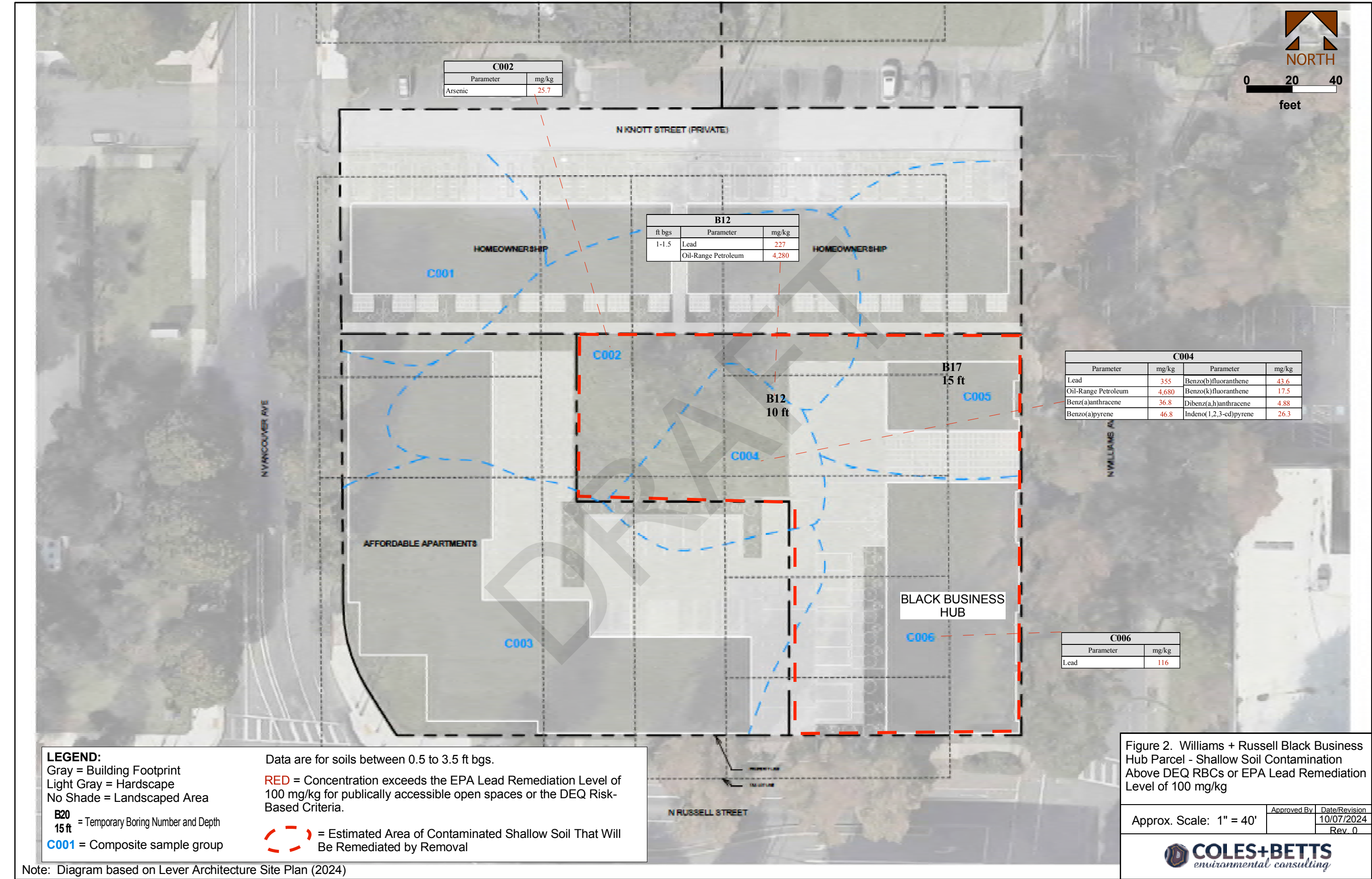
FIGURE 1. SITE PLAN  
WILLIAMS + RUSSELL HOMEOWNERSHIP



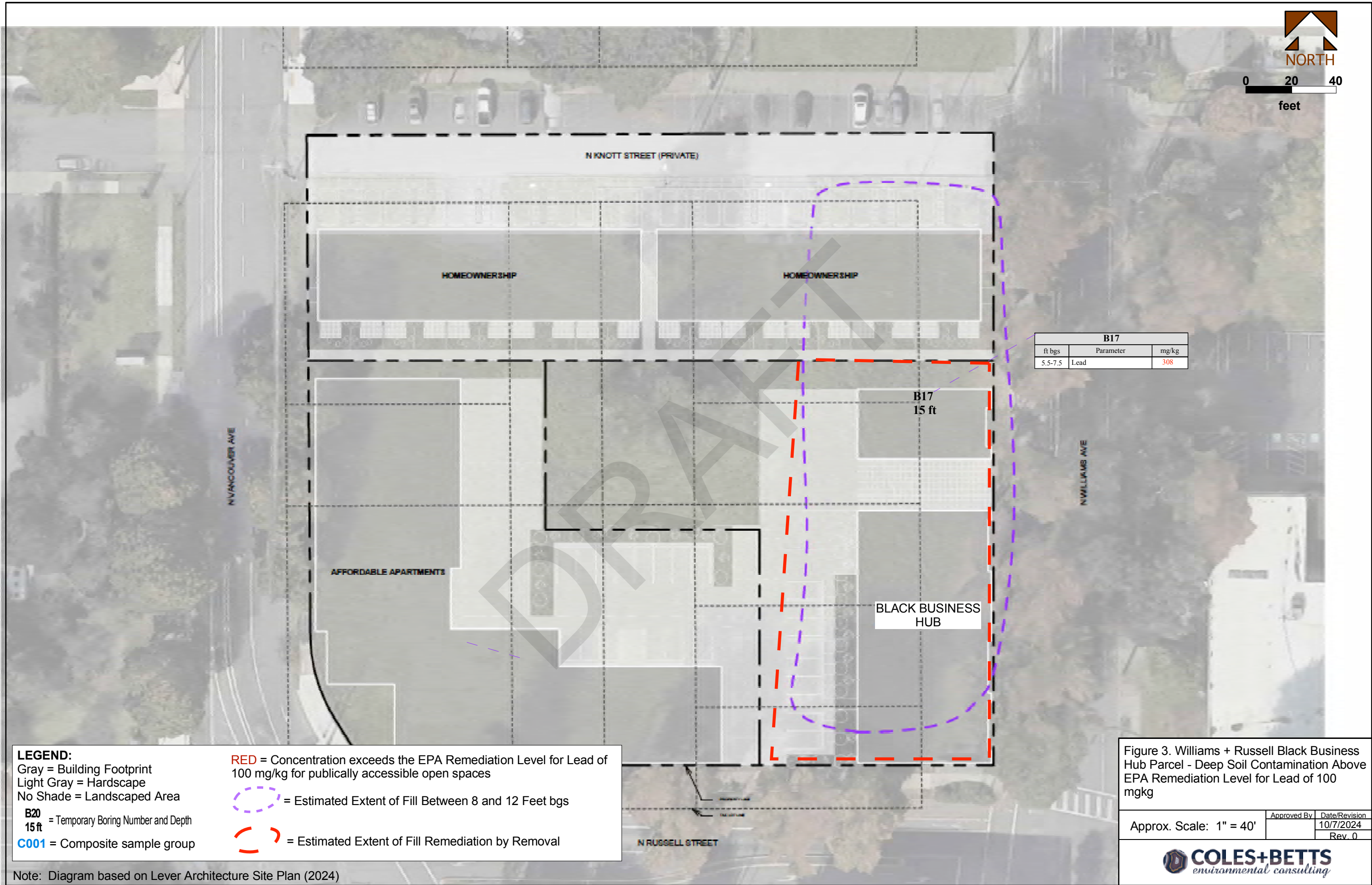
SCALE: 1:40







Note: Diagram based on Lever Architecture Site Plan (2024)



## **EXHIBIT C.3**

### **SCOPE OF WORK**

This Scope of Work (SOW) describes the measures to be taken by the Respondent in Perspective Purchaser Agreement No. XXXX-XX-XX-XX\_\_\_\_ (“Respondent”) to ensure timely implementation and long-term protectiveness of the work.

#### **I. DESCRIPTION OF REMEDIAL ACTION**

The property for the overall project is a vacant, grass-covered City block (Tax Lot 1N1E27AC 4100 and a portion of Tax Lot 1N1E27AC 1800) bound by N Knott Street to the north, N Williams Avenue to the east, N Russell Street to the south and N Vancouver Avenue to the west.

After purchase, the property will be divided into three parcels and developed by three separate owners as follows:

- A townhome development that will provide affordable home ownership on the northern portion of the block (“Homeownership Parcel”),
- A four-story office building with retail spaces and plaza on the eastern portion of the block (“Black Business Hub Parcel”), and
- A six-story affordable apartment building on the southwest corner of the block (“Affordable Apartments Parcel”).

A site plan showing the Homeownership Parcel, the Black Business Hub Parcel, and Affordable Apartments Parcel is attached (Figure 1).

Respondent completed a Phase II Environmental Site Assessment (ESA) investigation, including: 1) a geophysical survey to identify underground storage tanks (USTs), of which no evidence was found; and 2) soil/fill material and soil vapor sampling and laboratory analysis. The Phase II ESA concluded:

- Fill material was encountered in surface soils (i.e., upper 3.5 feet) across the entire property, and deeper fill material extended to depths of approximately 8 feet and 12 feet below the eastern portion of the property. The fill material consisted of silts with small pieces of brick, glass, and burnt wood fragments. Laboratory testing indicate the majority of the fill material exceeds DEQ Clean Fill Criteria and/or applicable DEQ Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway Risk-Based Concentrations (RBCs).
- Contamination was not identified in soil vapor samples.

The U.S. Geological Survey estimates the depth to groundwater below the property to be more than 100 feet. Therefore, the soil leaching to groundwater pathway is incomplete.

This SOW is specific to the Homeownership Parcel. The remedial action for the Homeownership Parcel involves the complete removal of fill materials and soils that exceed the applicable cleanup levels to the extent practicable and backfilling with clean fill to establish the necessary grades. If the removal of fill materials and soils results in the complete removal of fill materials and soils that exceed the applicable cleanup levels, then no additional site controls will be needed following remediation. Remediation of each property will occur during grading of the entire City block (all three properties) at once. Cleanup levels for the Homeownership Parcel are DEQ’s Residential and Construction Worker Soil Ingestion, Dermal Contact, and Inhalation Exposure Pathway RBCs. The lead cleanup level is based on EPA’s revised residential regional screening level of 100 milligrams per kilogram (mg/kg) as required by DEQ. Contaminants above cleanup levels are summarized in Table 1 and the locations of contaminants above cleanup levels in surface and subsurface soils are shown in Figures 2 and 3.

## **II. SCHEDULE**

Within 45 days of issuance of the Prospective Purchaser Agreement (PPA), Respondent shall submit for DEQ review and comment a draft schedule for implementing the Scope of Work (SOW) herein. Respondent shall maintain the schedule for submittals and implementation of the SOW activities. The schedule may be revised by DEQ, or Respondent with DEQ's approval.

## **III. DELIVERABLES**

### **A. WORK PLAN**

The Work Plan shall be developed in conformance with this SOW; and as appropriate, any additional guidance documents as published or accepted by DEQ.

The Work Plan shall be prepared for all activities to be conducted and shall include the following items:

1. Description of proposed tasks and activities to be performed.
2. Identification and description of duties, responsibilities, authorities, and qualifications of the personnel involved in the work.
3. Project organization and identification of reporting relationships, lines of communication, and authorities.
4. Summary of the goals, objectives, and cleanup levels of the work.
5. General description of work to be performed.
6. Identification and listing of federal, state, or local laws, regulations, or guidance applicable to or associated with the work and an explanation of how they will be incorporated into the work.
7. Assessment of permitting requirements.
8. Identification of any imported fill material sources and documentation that on-site or imported fill meets the requirements of clean fill.
9. Identification of any off-site disposal facilities and requirements for disposal, if any.
10. Identification and description of any site access agreements required to implement the work.
11. Identification and description of additional sampling, evaluations, or engineering studies required to supplement available technical information.
12. Identification and description of any property, utility, right-of-way, topographic, or other site surveys required.



13. Description of any special design/implementation problems anticipated and how they will be addressed. Include any special technical problems, anticipated community relations problems, access, easements, rights-of-way, transportation, utilities, and logistics problems.
14. Identification and description of institutional controls to be imposed during and/or after construction activities.
15. Description of construction methods and equipment to be used.
16. Procedures for documentation/validation of the work.

## **B. SAMPLING AND ANALYSIS PLAN (SAP)**

A draft Sampling and Analysis Plan (SAP) shall be prepared and submitted for DEQ review and comment. A final SAP shall be submitted for DEQ approval addressing DEQ's comments on the draft SAP.

The SAP shall be prepared for all proposed sampling and monitoring activities to be conducted during the work. The SAP shall also address confirmation sampling to be conducted following excavation, treatment or other remedial activity, to verify that the work requirements and specified cleanup levels have been attained.

The SAP shall include, at a minimum:

1. Proposed sampling locations, frequency, parameters, and rationale.
2. A description of sample collection techniques, sampling equipment, sample handling, and decontamination procedures.
3. A description of proposed analytical or test methods.
4. A description of quality assurance and quality control (QA/QC) procedures for both field and laboratory activities, including a data quality objectives plan. For each target compound, compare the method reporting limit and the cleanup level.
5. A description of documentation and data reporting, including a proposed schedule for data report submittals.
6. A description of data analysis and interpretation methods, including statistical methods, sensitivity methods, or mathematical models for:
  - i. Evaluating attainment of remedial action cleanup levels.
  - ii. Evaluating bench or pilot scale tests for full-scale application of the technology.
7. A description of residuals management procedures.

### **C. SITE HEALTH AND SAFETY PLAN**

A site-specific Health and Safety Plan (HASP) shall be prepared to address all field activities to be conducted during the work and shall include construction hazards, chemical exposure hazards, on-site worker safety, and measurement of potential off-site impacts.

The HASP shall be developed in accordance with "Standard Operating Safety Guides," EPA Office of Emergency and Remedial Response, 1988; and applicable standards promulgated by the U.S. Occupational Safety and Health Administration including Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120; General Industry Standards, 29 CFR 1910; and the Construction Industry Standards, 29 CFR 1926.

The HASP shall include at a minimum:

1. Scope and applicability of plan.
2. Identification and responsibilities of key health and safety personnel.
3. Task/operation safety and health risk analysis for each site task and operation, including a description of known hazards and risks and procedures for assessing risks.
4. Personnel training requirements.
5. Personal protective equipment to be used.
6. Medical surveillance requirements.
7. Air monitoring requirements, including types and frequency, and a description of air monitoring methods to be used.
8. Site control measures, including communication, site security, and work zone delineation.
9. Decontamination plan for personnel, equipment, and facilities.
10. Emergency response/contingency plan.
11. Confined space entry procedures, if applicable.
12. Spill containment program.
13. Identification of potential construction hazards and precautionary measures to minimize hazards.

### **D. CONTAMINATED MATERIAL MANAGEMENT PLAN (CMMP)**

Any CMMP developed for construction of particular parcels will include a discussion of the purpose of the CMMP, a site description, a summary of findings from previous investigations,

contaminated media management for anticipated and unanticipated contaminated media, construction and excavation workers safety, and record keeping.

#### **E. EASEMENT OF EQUITABLE SERVITUDE (EES)**

Any EES will be recorded for particular parcels with the County after it is approved by DEQ, as necessary. The anticipated or potential land use restrictions are notifications of locations of soils above cleanup levels and maintaining caps over these soils with a hardscape and/or building and/or in landscaped areas with clean fill underlain by a geotextile barrier.

Removal of fill materials and soils exceeding cleanup levels will be completed to the extent practicable within the Homeownership Parcel. DEQ will be consulted if contaminated, inaccessible soils will be left in-place that warrant an EES.

#### **F. PROJECT COMPLETION REPORT**

At the completion of the remedial action construction phases, Respondent shall conduct a final inspection and prepare a draft Project Completion Report for DEQ review and comment. A final Project Completion Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report. The Project Completion Report shall include, at a minimum:

1. A detailed description of all work conducted in accordance with the approved Work Plan, and certification that the work was performed in accordance with all approved Work Plans.
2. Copy of final permits, as applicable.
3. Results of verification sampling, including data validation, and certification that the required criteria have been attained.

#### **IV. REPORT DISTRIBUTION**

All deliverables shall be submitted to DEQ electronically. Electronic copies of deliverables shall be submitted in printable document format (pdf) and/or Microsoft Office compatible formats.



## EXHIBIT D

---

*Space above this line for Recorder's use.*

***After recording, return to:***

**Grantee**

Oregon DEQ  
[Address]  
[City, OR ZIP]  
Attention: [Name]

**Grantor**

[Name]  
[Company]  
[Address]  
[City , State ZIP]

### ***EASEMENT AND EQUITABLE SERVITUDES***

This grant of Easement and acceptance of Equitable Servitudes (“EES”) is made on [Date], 20[Year] between [Name of Grantor] (“**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 [Address, City, Zip] in [Name of] County, Oregon in [Name of] County Tax Map [#], Tax Lot [#] (the “**Property**”) the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name [Project Name], [ECSI #[#] –OR– USTC File No. [#]] in the files of DEQ’s [Environmental Cleanup Program] at [Eastern/Northwest/Western] Region office located at [Office Address, City], Oregon, and telephone [Region Phone #]. Interested parties may contact the [Eastern/Northwest/Western] Region office to review a detailed description of the risks from contamination remaining at the Property and described in [Reference risk assessment report or other pertinent report with full title, author, and date].

B. On [Date], 20[Year], the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Record of Decision (ROD) for the Property [full title and date or substitute other decision document]. The remedial action selected requires, among other things: [specify ROD requirement(s) for institutional control(s)]

C. On [DATE = Date of CAP, CSM, PPA, etc. through which they agreed to having an EES], 20[YR], Grantor entered into a [Reference RD/RA Consent Order, Consent Judgment, or Agreement] ([“Order / Judgment / Agreement”]) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

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

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

## **1. DEFINITIONS**

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "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.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "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.
- 1.8 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

## **2. GENERAL DECLARATION**

2.1 Grantor, in consideration of Grantee's [issuance of a No Further Action letter with conditions / approval of the [Agreement/Order/Judgment] described above / other action by DEQ (specify)], grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

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

## **3. EQUITABLE SERVITUDES**

### **(REQUIRED ACTIONS AND RESTRICTIONS ON USE)**

3.1. **[First Restriction.** Insert site-specific restrictions in accordance with the staff report, ROD, or draft conditional NFA letter and where applicable, implementing consent order, judgment, PPA or other agreement.]

**3.X 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.

#### **4. EASEMENT**

##### **(RIGHT OF ENTRY)**

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

#### **5. RELEASE OF RESTRICTIONS**

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

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

#### **6. GENERAL PROVISIONS**

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

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

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. **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ approved [insert title and date of DEQ approved plan]. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

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, 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 as provided in the [Order/Judgment/Agreement] 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:** [Name of Grantor]

By:

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name, Title]

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, by [Name] of [Company], on its behalf.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

**GRANTEE:** State of Oregon, Department of Environmental Quality

By:

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name], [Tanks, Cleanup and Emergency Response] Manager,  
[Eastern/Northwest/Western] Region

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ [Name] of the Oregon  
Department of Environmental Quality, on its behalf.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

## **EXHIBIT A**

### **Legal Description of the Property**

[Insert legal description of the area that is restricted]