

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: Sarah Miller

Grantor

Portland Botanical Gardens
108 NW 9th Ave. Suite 201
Portland, OR 97209
Attn: Matt Taylor

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. [insert]

Portland Botanical Gardens,

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 Portland Botanical Gardens, an Oregon nonprofit public benefit corporation (“Respondent”). This Consent Order contains the following provisions:

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Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Scope of Work

Exhibit D: Easement and Equitable Servitude (draft)

1. Purpose

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

from potential liabilities in accordance with applicable law.

2. Stipulations

A. Respondent consents and agrees:

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

B. DEQ and Respondent stipulate:

- (1) For the purposes of this Consent Order, the "Facility," as defined in ORS 465.200(6), 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 465B.005, 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. Portland Botanical Gardens is an Oregon nonprofit public benefit corporation.
- B. The property proposed for acquisition by Respondent, currently owned by McCormick & Baxter Creosoting Co., and Oregon Corporation (“McCormick & Baxter”), is an approximately 41-acre upland site located at 6900 N. Edgewater Street, Portland, Multnomah County, Oregon, in Section 07, Township 1 North, Range 1 East, of the Willamette Meridian (the “Upland Property”). McCormick & Baxter also historically used approximately 19 acres of submerged and submersible land offshore in the Willamette River (the “In-Water Property”). Collectively, the Upland Property and In-Water Property is referred to herein as 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 McCormick & Baxter Superfund Site is a former creosote wood treating facility located on the east bank of the Willamette River in Portland, Oregon. The Site encompasses approximately 41 acres of land and an additional 23 acres of contaminated river sediments. The McCormick & Baxter Creosoting Company was founded in 1944 and continued operations until October 1991. Site investigations confirmed releases of wood-treating chemical compounds to soils, groundwater, and sediments. Remedial investigations identified two non-aqueous phase liquid (“NAPL”) plumes migrating to the river and impacting surface water and sediments, and an additional NAPL plume migrating under the Burlington Northern Santa Fe railway right-of-way toward Willamette Cove.
- D. The U.S. Environmental Protection Agency (“EPA”) added the Site to the National Priority List and designated it a federal Superfund site in 1994. The Record of Decision for the Site, issued in March 1996, and as subsequently amended and refined through a ROD amendment in 1998 and an Explanation of Significant Difference in 2002, (“ROD”) specifies the remedy needed to protect human health and the environment. DEQ and EPA entered into a Superfund State Contract which designates DEQ as the lead agency and EPA as the support agency. The Superfund State Contract specifies other roles and

responsibilities of DEQ and EPA including but not limited to DEQ's obligation to provide for long-term Operation and Maintenance ("O&M") of the remedial action, to ensure long-term protectiveness of the remedy, to use its own authority to secure access to the Site and adjacent properties necessary for DEQ or its contractors to complete the remedial action, and to ensure that institutional controls will be monitored and retained as part of long-term O&M.

- E. Various wood-treating chemicals were used during operations, including petroleum hydrocarbons (creosote and coal tar), pentachlorophenol (PCP), tetrachlorophenol, trichlorophenol, chromium, copper, zinc, hexachlorobenzene, Cellon (i.e., PCP in diesel oil, liquid butane, and isopropyl ether), dioxins/furans, polycyclic aromatic compounds (PAHs), pesticides and arsenic. As a result of historical waste-handling and disposal practices, surface soils over most of the site became contaminated with wood-treating chemicals. Creosote and oils pooled on the groundwater table, and large areas of Willamette River sediments became contaminated by creosote seeps.
- F. Construction of the Site remedy was completed in September 2005. The remedy included demolition of the McCormick and Baxter plant; soil excavation; treatment, and disposal; upland soil capping; NAPL recovery; installation of a subsurface barrier wall; construction of a multi-layer sediment cap in the Willamette River; monitoring; and engineering and institutional controls. DEQ and EPA conduct formal reviews of the Site remedy every five years. The most recent Five-Year Review report was issued on September 28, 2021.
- G. The Site remedy includes multiple caps on different areas of the Property. These caps include: a sediment cap; a riparian earthen cap; an upland earthen cap; and an upland impermeable cap. The caps are engineering controls used to prevent contact with contaminated soil, sediment, and/or groundwater. The type and location of each cap on the Property is shown in Exhibit C.
- H. DEQ and its contractors, in coordination with EPA, have prepared an O&M Plan and O&M Manual for the remedy. The O&M Plan defines the administrative, financial, and technical details and requirements for inspecting, monitoring, operating, and maintaining the remedial actions at the Site. The O&M Plan also includes information on maintaining engineering controls established at the Site pursuant to the ROD and information regarding additional restrictions to ensure that the Site is protective for the long term. The O&M

Manual contains up-to-date, site-wide record drawings of the remedial features present at the Site. The O&M Manual specifies the sampling and monitoring procedures, quality assurance and quality control, technical information, and data necessary for implementing the O&M activities. The O&M Manual is a living document that will be periodically modified by DEQ to reflect necessary monitoring and maintenance needs at the Site. The O&M Plan also may be modified over time due to changed Site conditions, new guidance, and development of further details concerning O&M at the Site.

- I. 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 Upland Property with actual or constructive knowledge of the releases. On May 29, 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 the City of Portland.
- J. Respondent intends to develop community-serving botanical gardens that will incorporate and display a large collection of native plants, and facilitate vocational and research programs for ecological resilience, biological habitats, and responsible horticulture. Respondent will also develop and manage an adjacent Greenspace (encompassing a portion of the Willamette River Greenway trail, native plant collections, and open gathering space) and river access for the public. Respondent intends to work with tribal authorities, public agencies, and leading conservation groups to design and steward the native riparian landscape and shallows, and collaborate with educational institutions to develop and share horticultural knowledge throughout the region. Respondent intends to develop the botanical gardens in phases. Phase I (planned for 2026 – 2028) is anticipated to include ongoing conservation of plant habitat and public access to portions of the Upland Property. Phase II (planned for 2029 – 2031) is anticipated to include construction / extension of the Willamette River Greenway, development of Greenspace, vertical

construction of site buildings, and associated amenities. Phase III (planned for 2032 – 2035) is anticipated to include completing the botanical gardens and associated infrastructure, including a visitor and learning center and various plant conservatories.

- K. DEQ held an informational meeting in February 2025 with representatives of community organizations that have expressed interest in reuse of the site. DEQ also held an informational meeting with Tribal partners in February 2025. On May 8, 2025, DEQ (together with Respondent) held a community meeting about Respondent’s proposed site reuse. On [Date], DEQ published notice of this proposed Consent Order and provided opportunity for formal 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(13).
- B. The contaminants described in Subsection 3.E. are “hazardous substances” within the meaning of ORS 465.200(9).
- C. The presence of hazardous substances at the Property constitutes a “release” or “threat of release” into the environment within the meaning of ORS 465.200(14).
- D. The Property described in Subsection 3.B. is a “facility” within the meaning of ORS 465.200(6).
- 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. Compensation/Consideration

- (1) Respondent will make a cash payment to DEQ upon taking ownership of the Property in the amount of \$1,195,000.00.
- (2) Upon receipt of payment under Paragraph 5.A(1), DEQ will take all necessary actions to release any lien and/or encumbrance placed by DEQ on the Property.

B. Measures to be Undertaken

- (1) Respondent will develop the Upland Property botanical gardens and other associated uses in accordance with the terms set forth in the Scope of Work ("SOW"), attached to this Consent Order as Exhibit C.

C. Modification of SOW or Related Work Plans

- (1) If DEQ determines that modification to the work specified in the SOW, and/or in work or design 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 or design plans; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is necessary to preserve the remedy selected in the ROD.
- (2) Subject to dispute resolution under Subsection 7.M., Respondent will modify the SOW and/or work or design 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.

D. 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.

E. Site Restrictions and Periodic Reviews

- (1) If the draft Easement and Equitable Servitude attached to this Consent Order as Exhibit D has not been recorded with the County Clerk, Multnomah County at the time of acquisition, Respondent will, within 30 days of the acquisition of the Property, record with the County Clerk, Multnomah County, the Easement and Equitable Servitude. 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.
- (5) The restrictions noted above and contained in the Easement and Equitable Servitude are not intended to waive or diminish any other rights or privileges Respondent may have as an owner of property abutting state-owned submerged and submersible lands.

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

Sarah Miller
Department of Environmental Quality
Northwest Region
700 NE Multnomah St. Ste 600
Portland, OR 97232
Phone: 503-863-0561
Email: Sarah.Miller@deq.oregon.gov

Respondent Project Manager

Matt Taylor
Executive Director
Portland Botanical Gardens
108 NW 9th Ave. Suite 201
Portland, OR 97209
Phone: (503) 272-1199
Email: mtaylor@portlandbg.org

- (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 measures to be undertaken by Respondent pursuant to this Consent Order that may disturb Existing Hazardous Substance Releases or affect the engineering or institutional controls on the Property 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 Landau Associates, Inc. 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 and for purposes of performing

investigations, removal actions, and/or remedial actions. DEQ's right of access hereunder includes but is 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 agrees to allow DEQ and its officers, agents, authorized representatives, employees, and contractors to enter the Property for the purpose of performing remedial actions. Such remedial actions at the Property may include but are not limited to:
 - (a) Sampling and inspecting air, water, and/or soil at the Property;
 - (b) Constructing or excavating soil borings, test pits, and/or excavations at the Property;
 - (c) Removing contaminated soils or materials from the Property;
 - (d) Temporarily storing equipment, vehicles, tools, and other materials at the Property;
 - (e) Temporarily storing wastewaters and related materials and wastes;
 - (f) Restoring the surface condition of areas disturbed by remedial actions and repairing any structures or improvements damaged by remedial actions; and
 - (g) Photographing portions of the Property and structures, objects, and materials located thereon as necessary to facilitate remedial measures.
- (3) All tools, equipment, and other materials brought upon the Property by or at the direction of DEQ remain property of DEQ. DEQ intends to remove any tools, equipment or other materials, and any wastes or wastewaters it generates, upon completion of remedial actions at the Property, to the extent permitted by law.
- (4) No later than completion of remedial actions at the Property, DEQ intends to restore the surface condition of areas disturbed by remedial actions, to the maximum extent reasonably practicable, and to the extent permitted by law, to a condition equivalent to the condition existing before remedial actions.
- (5) DEQ will coordinate its activities with Respondent and any tenant to minimize, to the

maximum extent reasonably practicable, any impairment of access by Respondent or its business invitees on the Property and any inconvenience to or disruption of operations on the Property due to activities of DEQ.

- (6) Respondent, or its authorized representative, may observe DEQ while DEQ is undertaking remedial actions at the property; provided, any observer entering the defined work zone must have health and safety training consistent with the requirements of the applicable health and safety plan.
- (7) Respondent will not interfere with or otherwise limit any activity conducted at the Property pursuant to and consistent with this Consent Order, attached Scope of Work or Easement and Equitable Servitude by DEQ or its officers, employees, agents, contractors, or authorized representatives. This obligation also applies to and is binding upon any and all tenants of the Respondent at the Property.
- (8) 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. [Reserved]

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 archaeological 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 July 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. Financial Ability

Prior to Respondent's acquisition, Respondent shall submit to DEQ for their review and approval information demonstrating that not less than \$3 million is available for the development of the site and the botanical gardens. Such "Financial Ability" funding may be in the form of demonstrated corporate funds, third-party guarantor/s, loans, or a combination of such or similar funding sources.

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 approvals or permits, 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 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.).

N. [Reserved]

O. Effect of Consent Order

- (1) 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 within one year of the effective date of this Consent Order. Respondent may request an extension in writing to be granted at DEQ's discretion.
- (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 or construction on the Property under this Consent Order, Respondent will ensure any contractors or consultants obtain and

maintain for the duration of time such contractors or consultants are working on the Upland Property pollution liability, comprehensive general liability, and automobile insurance, combined single limit per occurrence, each with limits of \$1 million. Such insurance will name DEQ as an additional insured, at a minimum, 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 Respondent's acquisition, 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 receipt from the County Clerk.

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, 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 Measures to Be Undertaken (as set forth in Subsection 5.A. of this Consent Order) and requirements of the SOW, Respondent will submit a final closeout report to DEQ signed by both an Oregon- registered professional engineer and Respondent's Project Manager certifying that the remedial action for the Property has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary supporting documentation.
- B. DEQ will preliminarily determine whether the remedial action has been performed for the

Property and all oversight costs and penalties have been paid in accordance with this Consent Order. Upon a preliminary determination that the remedial action for the Property has been satisfactorily performed and all costs and penalties paid, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after receiving Respondent's closeout report, DEQ's Northwest Region Administrator will issue a final certification decision.

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

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent, Portland Botanical Gardens

By: _____ Date: _____
Matt Taylor
Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this _____ day of _____, 2026, by Matt Taylor, Executive Director of Portland Botanical Gardens, on its behalf.

NOTARY PUBLIC FOR OREGON

STIPULATED, AGREED, and SO ORDERED:

State of Oregon, Department of Environmental Quality

By: _____ Date: _____
Jennifer Parrott
Administrator, Land Quality Division

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 2026, by _____ Jennifer Parrott of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON

Exhibit A: Vicinity Map

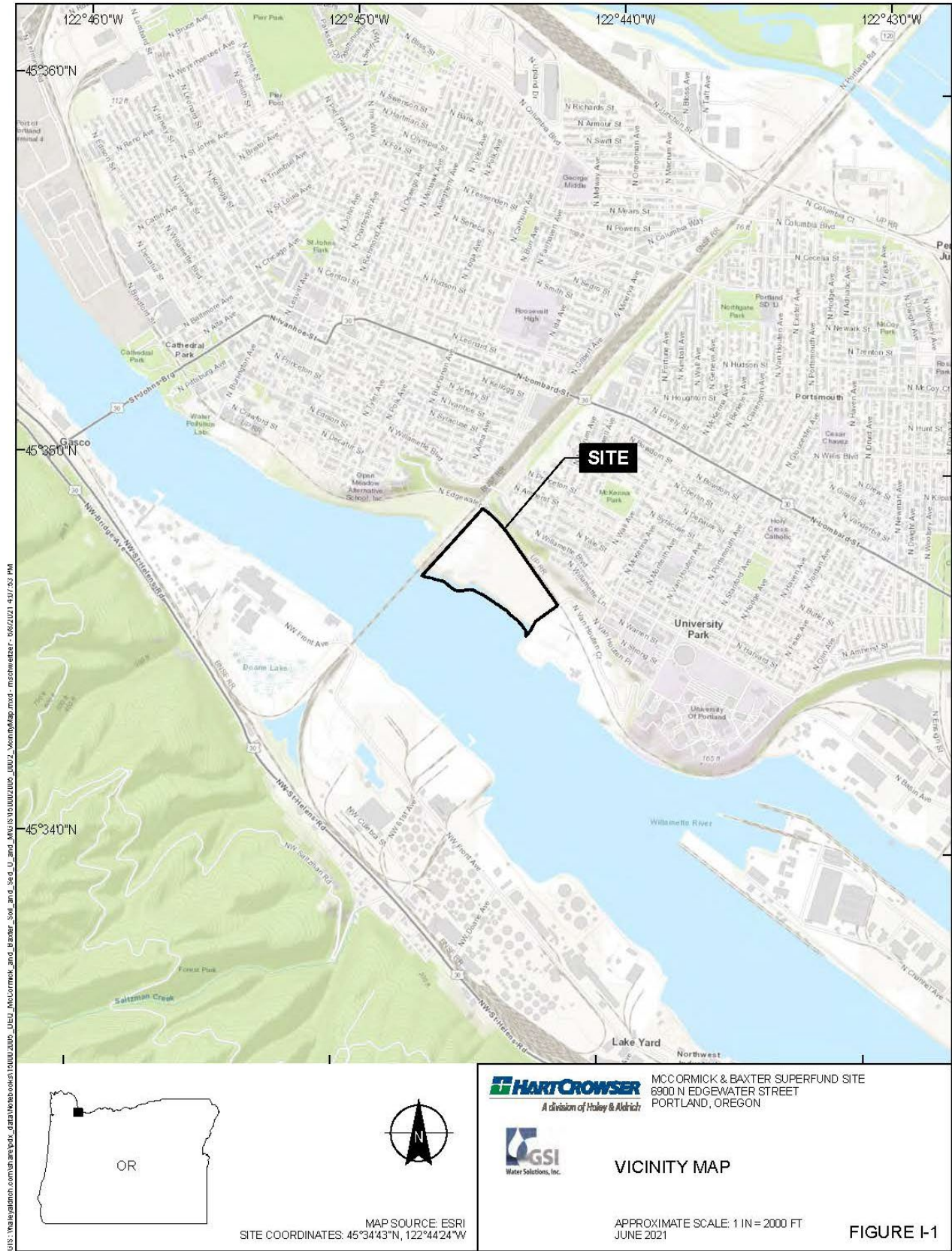


Exhibit B: Property Legal Description

Tract in Sections 7 and 18, Township 1 North, Range 1 East of Willamette Meridian and Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon South of O.W.R.R. & N. Co's right-of-way, East of S.P. & S right-of-way, North of Harbor line, West of dedicated street; commencing at the intersection of the Westerly line of North McKenna Avenue as dedicated in the plat of Portsmouth with the Southerly line of N. Willamette Boulevard in Section 7, Township 1 North, Range 1 East of Willamette Meridian; thence North 62°22'30" West 1637.69 feet; thence South 27°37'30" West 55.31 feet to a point in the Southwesterly line of O.W.R.R. & N. Co's right-of-way for the point of beginning of tract to be described; running thence Northwesterly along said right-of-way line 954.16 feet to the Southeasterly line of the S.P. & S. Co's right-of-way; thence South 40°26'40" West on said Southeasterly line of S.P. & S. Co's right-of-way, 1516.02 feet to the Harbor line on the Willamette River; thence South 52°28'30" East along said Harbor line 1923.95 feet to a point which is South 37°58' West from the Southwest end of the center line of a dedicated street as recorded in P.S. Deed [Book 426, page 537](#); thence North 37°58' East 111.89 feet to the Southwest end of said dedicated street; thence North 52°02' West on the said Southwest end of dedicated street 20 feet to the Northwest line of said dedicated street; thence North 37°58' East on the Northwest line of said dedicated street, 376.20 feet to an angle point; thence North 26°00' East on the Northwest line of said dedicated street, 167.41 feet to an angle point; thence North 52°30' East along the Northwest line of said dedicated street, 433.07 feet to the said Southwesterly line of O.W.R.R. & N. Co's right-of-way; thence Northwest along said right-of-way line, 1015.75 feet to the place of beginning.

SUBJECT TO rights of the State of Oregon and of the United States of America in and to any portion lying below ordinary high water line of the Willamette River, together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

EXHIBIT C

SCOPE OF WORK

1. Compensation / Consideration

- a. DEQ may, at its sole discretion, utilize the proceeds from the cash payment provided by Section 5.A of the Consent Order in support of remedial actions, which may include but is not limited to: evaluation, design and construction of habitat improvements within riparian earthen cap area (as shown on Figure 1) and the active channel margin of the site (between ordinary high water and ordinary low water elevations).
- b. Respondent will provide DEQ with a dedicated indoor equipment storage space measuring a minimum of 20 feet by 20 feet on the Property. Respondent will provide DEQ with a dedicated outdoor equipment storage space measuring a minimum of 100 feet by 50 feet on the Upland Property. The location of these two areas will be mutually agreed to by both DEQ and Respondent.

2. Development Requirements

- a. By 2031, Respondent will develop, and thereafter maintain, an approximately 10-acre Greenspace on the Upland Property which will be available to the public free-of-charge, and which will include a portion of the Willamette River Greenway trail (consistent with federal, state, and local jurisdictions' greenway trail requirements), native plant collections, open gathering space, and river access for the public. Respondent retains the right to charge for use of all or a portion of the Greenspace for private events. Respondent will submit a proposal identifying the portion of the Property to be used for the Greenspace in preconstruction plans submitted to DEQ for its review and approval.
- b. Respondent will submit to DEQ for review and approval, a draft Remedy Monitoring and Maintenance Plan ("RMMP") within 90 days of taking ownership of the Property and prior to any redevelopment construction activities. The RMMP will detail the actions Respondent will perform to monitor and maintain the surface soil cap features of the cleanup remedy, including but not limited to the following.
 - i. Performing quarterly inspections of the upland caps noting the general site conditions, areas of erosion or subsidence, condition of the stormwater conveyance system, condition of vegetation, any wildlife, and other observations.
 - ii. Identifying and implementing corrective actions required to maintain integrity of the soil surface on the upland caps including maintaining above-ground stormwater flow. DEQ retains responsibility for subsurface maintenance and repairs to groundwater monitoring wells and to the underground stormwater system associated with the upland impermeable cap.

- iii. Respondent's obligations for planting and other horticultural activities at or below any demarcation layer.
- iv. Preparing annual inspection reports detailing inspections and corrective actions performed and submitting to DEQ.

DEQ will review the draft RMMP and make reasonable efforts to provide comments to Respondent within 30 days. Respondent will incorporate DEQ comments and submit a final RMMP within 30 days of receipt of DEQ comments. Respondent will implement the RMMP. Either DEQ or Respondent may request the RMMP be updated as needed and site conditions warrant.

- c. Respondent will submit to DEQ for review and approval, a draft Contaminated Media Management Plan ("CMMP") no later than 90 days before commencing any redevelopment construction activities or other use-related activities that will disturb soil below the existing upland caps. The CMMP will establish procedures for identifying, handling, characterizing, and disposing of potentially contaminated soil or groundwater, if encountered, at the Property during future construction and maintenance activities. The CMMP will identify chemical constituents of interest, relevant risk-based comparison standards, analytical methods for waste profiling, procedures for decontamination, site control, stockpiling, transport and disposal, and reporting. The CMMP will include the location and types of soil caps.
 - i. DEQ will review the draft CMMP and provide comments to Respondent within 30 days. Respondent will incorporate DEQ comments and submit a final CMMP within 30 days of receipt of DEQ comments. Respondent will implement the CMMP.
 - ii. Either DEQ or Respondent may request the CMMP be updated as needed and as site conditions warrant.
- d. Respondent will take all reasonable measures to protect the upland impermeable cap (including gas vents, monitoring wells, cleanouts, manholes, subsurface fabrics and liners, subsurface piping, and 12" PVC outfall) during any redevelopment construction and site use. In the event construction actions or site use damages or impacts the effectiveness of the upland impermeable cap, Respondent will be responsible for DEQ's costs to inspect and repair the upland impermeable cap. Respondent may request DEQ allow Respondent to repair any damage or adverse impact to the upland impermeable cap caused by Respondent's redevelopment construction and site use, subject to DEQ's review and approval of any plans for such repairs, along with any other reasonable associated requests by DEQ. Other than as set forth in this Scope of Work, DEQ will be responsible for maintenance and repair of the impermeable cap features.
- e. Respondent will take all reasonable measures to avoid damage to the subsurface barrier wall (including monitoring wells) from redevelopment construction or site use. In the event construction actions or site use impact the subsurface barrier wall, Respondent will be responsible for DEQ's costs to inspect and repair the subsurface

barrier wall. Respondent may request DEQ allow Respondent to repair any damage or adverse impact to the subsurface barrier wall caused by Respondent's redevelopment construction and site use, subject to DEQ's review and approval of any plans for such repairs, along with any other reasonable associated requests by DEQ. Other than as set forth in this Section 2.e, DEQ will be responsible for maintenance and repair of the subsurface barrier wall.

- f. Respondent will take all reasonable measures to protect the sediment cap during any redevelopment construction and site use. In the event construction actions or site use impact the sediment cap, Respondent will be responsible for DEQ's costs to inspect and repair the sediment cap. Respondent may request DEQ allow Respondent to repair any damage or adverse impact to the sediment cap caused by Respondent's redevelopment construction and site use, subject to DEQ's review and approval of any plans for such repairs, along with any other reasonable associated requests by DEQ. Other than as set forth in this Section 2.f., Respondent will not be responsible for maintenance and repair of the sediment cap.
- g. Within 90 days of taking ownership of the Property, Respondent will submit to DEQ for review and approval a draft Tribal Engagement Plan ("TEP"). Respondent will implement the final TEP incorporating any reasonable suggested changes by DEQ. Either DEQ or Respondent may request the TEP be updated as needed and site conditions warrant.
- h. Respondent will submit to DEQ for review and approval an updated Community Engagement Plan ("CEP") based on the existing CEP developed by Respondent and provided to DEQ in February 2025. Respondent will submit the CEP update within 90 days of taking ownership of the Property for DEQ's review and approval. Respondent will implement the final CEP incorporating any reasonable suggested changes by DEQ. Either DEQ or Respondent may request the CEP be updated as needed and site conditions warrant

3. Development Restrictions

- a. Respondent will not construct trails, walkways or building intrusions within the riparian earthen cap area for purposes beyond habitat maintenance and improvement, unless approved by the National Oceanic and Atmospheric Administration ("NOAA") Fisheries and DEQ. The riparian area is defined as ordinary high water to the riverward edge of the current gravel access road (future Willamette River Greenway trail) generally located 50 feet landward from top of bank. Respondent may use and maintain the riparian habitat maintenance access shown on Figure 1.
- b. Other than routine landscaping, maintenance, or garden-related activities within the top two feet of the upland earthen cap, Respondent will not perform any ground disturbing activities without DEQ approval which may be included in the RMMP and CMMP. As appropriate, the RMMP and the CMMP will include provisions governing Respondent's obligations in the event that plants or plantings (including their roots) extend below any demarcation layer. .

- c. Respondent will submit to DEQ for review, design and construction plans for activities that will be performed during Property redevelopment. Respondent will identify in such plans any potential disturbance, impact, or proposed changes to the upland earthen and/or impermeable caps, stormwater conveyance system, monitoring wells, or other protective features. If Respondent proposes changes to an existing protective feature (e.g. earthen cap), the proposed change will be required to maintain the same functionality and protectiveness as existing features, as determined and approved by DEQ.
 - i. Design plans will be submitted to DEQ for review at the 30 percent, 60 percent, and draft final and final design stage. DEQ will review and provide comments within 30 days of receipt. Respondent will incorporate DEQ's comments into the plans.
 - ii. Construction plans will be submitted to DEQ for review. DEQ will review and provide comments within 30 days of receipt. Respondent will incorporate DEQ's comments into the plans.
 - iii. Respondent will submit to DEQ as-builts within 90 days of the completion of each phase of development.
- d. Respondent will not conduct or authorize others to conduct any activities on or over the In-Water Property, such as dock operations or vessel movements, without written approval from DEQ. Respondent will coordinate with DEQ prior to conducting or constructing any overwater operations to ensure the activities do not adversely impact the remedy. This includes the following.
 - i. Respondent will submit to DEQ for review, design and construction plans detailing activities that will be performed. Respondent will identify proposed modifications to the remedy (e.g. sediment cap) required to accommodate future overwater uses. If Respondent proposes modifications to an existing protective feature, the proposed modification is required to maintain the same functionality and protectiveness as existing features, as determined and approved by DEQ.
 - ii. Respondent will be responsible for all costs, including DEQ oversight, associated with any required modifications of the existing remedy, as determined by DEQ, to facilitate overwater uses.
 - iii. Design plans will be submitted to DEQ for review at the 30 percent, 60 percent, and draft final and final design stage. DEQ will review and provide comments within 30 days of receipt. Respondent will incorporate DEQ's comments into the plans.
 - iv. Respondent will submit to DEQ as-builts within 90 days of the completion of construction.

4. Future Maintenance and Monitoring

- a. Respondent will maintain site security including but not limited to: monitoring, prohibiting, and taking reasonable measures to prevent the unauthorized use of the Upland Property that may adversely impact the remedy. This includes but is not limited to trespass, camping, and trash disposal. Respondent will notify DEQ of any damage to the Property and implement repairs within 30 days of identification.
- b. Respondent will monitor and maintain the soil layer on top of the upland impermeable cap, upland earthen cap, and the riparian earthen cap in accordance with the RMMP. The caps are shown on Figure 1.
- c. Respondent may relocate or replace fencing existing at the time of acquisition on the Upland Property only if (i) Respondent provides no less than 14 days' notice to DEQ, and (ii) Respondent installs replacement fencing providing substantially the functional equivalent of the existing fencing prior to the removal of the existing fencing. Respondent will maintain the functionality of any fencing to meet the objectives of, and subject to, 4.a, above.

Figure 1 – Cap Locations

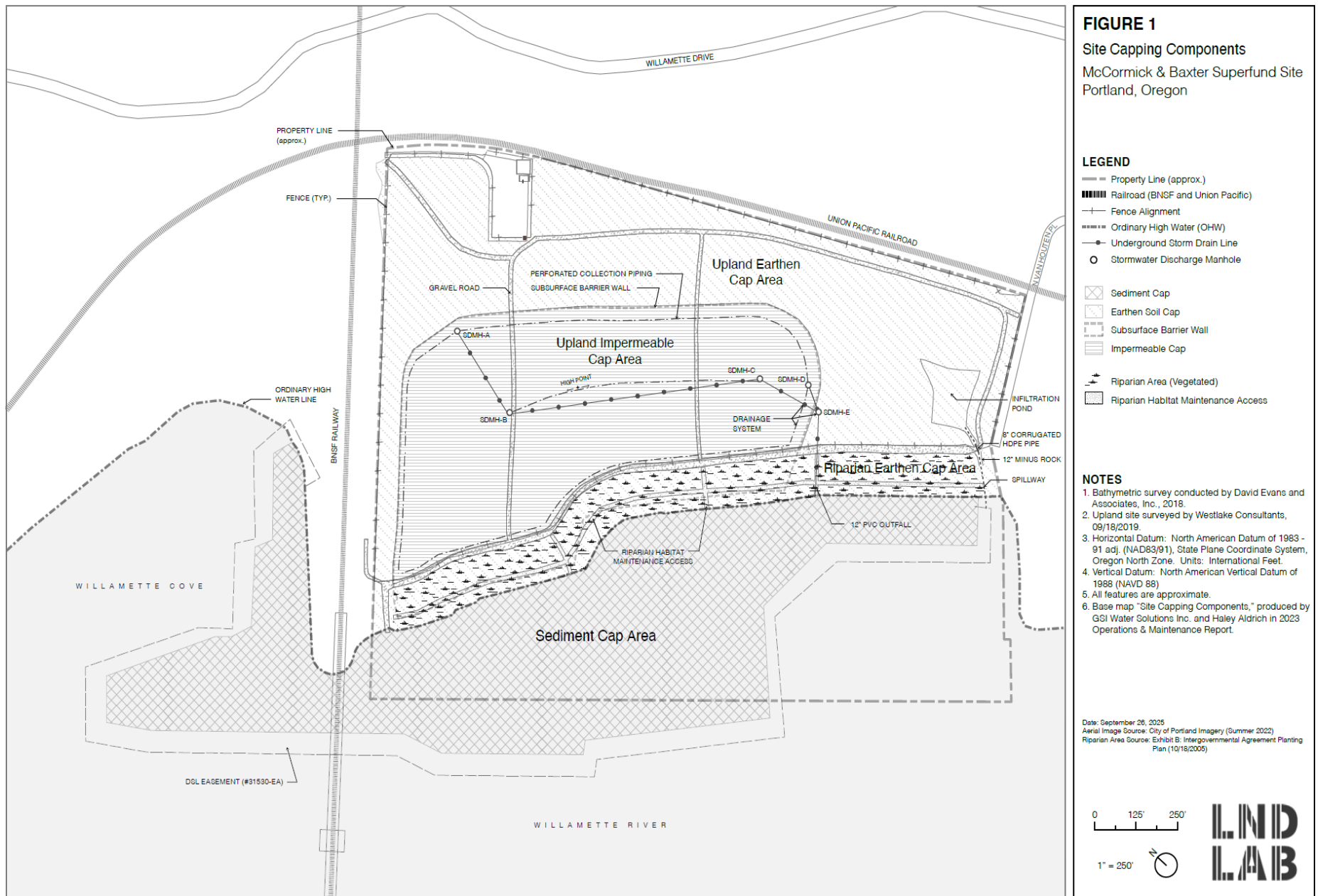


EXHIBIT D
EASEMENT AND EQUITABLE SERVITUDES

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
700 NE Multnomah St. Suite 600
Portland, Oregon 97232
Attention: Sarah Miller

Grantor

McCormick & Baxter Creosoting Co.
P.O. Box 3048
Portland, Oregon 97208
Attention: Charlie McCormick

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on _____, 2025 between McCormick & Baxter Creosoting, Co., an Oregon corporation ("Grantor" or "Owner") 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 6900 North Edgewater Ave. in Portland, Multnomah County, Oregon County Tax Map 1N1E07, Tax Lot 100 (the "Property") the location of which is more particularly described in Exhibit A attached to this EES and incorporated herein by this reference. The Property is referenced under the name McCormick & Baxter Superfund Site (DEQ ECSI No. 74; EPA CERCLIS No: 009020603) (the "Site").

B. The McCormick & Baxter Superfund Site is a former creosote wood treating facility located on the east bank of the Willamette River in Portland, Oregon. The Site encompasses approximately 41 acres of land and an additional 23 acres of contaminated river sediments. The McCormick & Baxter Creosoting Company was founded in 1944 and continued operations at the Site until October 1991. Site investigations confirmed releases of wood-treating chemical compounds to soils, groundwater, and sediments. Remedial investigations identified two non-aqueous phase liquid ("NAPL") plumes migrating to the river and impacting surface water and sediments, and an additional NAPL plume migrating under the Burlington Northern Santa Fe railway right-of-way toward Willamette Cove.

C. The EPA added the Site to the National Priority List in 1994. The Record of Decision for the Site, issued in March 1996, and as subsequently amended and refined through an amendment in 1998 and an Explanation of Significant Difference in 2002 (collectively, the “ROD”) specifies the remedy needed to protect human health and the environment. DEQ and EPA entered into a Superfund State Contract which designates DEQ as the lead agency and EPA as the support agency. The Superfund State Contract specifies other roles and responsibilities of DEQ and EPA including but not limited to DEQ’s obligation to provide for long-term Operation and Maintenance (“O&M”) of the remedial action, to ensure long-term protectiveness of the remedy, to use its own authority to secure access to the Site and adjacent properties necessary for DEQ or its contractors to complete the remedial action, and to ensure that institutional controls will be monitored and retained as part of long-term O&M.

D. Construction of the Site remedy was completed in September 2005. The remedy included demolition of the McCormick & Baxter plant; soil excavation; treatment, and disposal; upland soil capping; NAPL recovery; installation of a subsurface barrier wall; construction of a multi-layer sediment cap in the Willamette River; monitoring; and engineering and institutional controls. DEQ and EPA conduct formal reviews of the Site remedy every five years. The most recent Five-Year Review report was issued on September 28, 2021.

E. The Site remedy includes multiple caps on different areas of the Property. These caps include: a sediment cap; a riparian earthen cap; an upland earthen cap; and an upland impermeable cap. The caps are engineering controls used to prevent contact with contaminated soil, sediment, and/or groundwater, prevent infiltration of stormwater in the upland impermeable cap area, and filter groundwater prior to discharge into the river in the sediment cap area. The type and location of each cap on the Property is shown in Exhibit B.

F. DEQ and its contractors, in coordination with EPA, have prepared a written O&M Plan and a written O&M Manual for the remedy. The O&M Plan defines the administrative, financial, and technical details and requirements for inspecting, monitoring, operating, and maintaining the remedial actions at the Site. The O&M Plan also includes information on maintaining institutional controls established at the Site pursuant to the ROD and information regarding additional restrictions to ensure that the Site is protective for the long term. The O&M Manual contains up-to-date, site-wide record drawings of the remedial features present at the Site. The O&M Manual specifies the sampling and monitoring procedures, quality assurance and quality control, technical information, and data necessary for implementing the O&M activities. The O&M Manual is a living document that will be periodically modified by DEQ to reflect necessary monitoring and maintenance needs at the Site. The O&M Plan also may be modified over time due to changed Site conditions, new guidance, and development of further details concerning O&M at the Site. Modifications to the O&M Plan may be made by mutual agreement between EPA and DEQ.

G. The provisions of this EES are intended to protect human health and the environment and to meet the substantive institutional control requirements set forth in the ROD.

H. Nothing in this EES constitutes an admission by Grantor of any liability for the contamination described in the EES.

1. DEFINITIONS

- 1.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.2 "Engineering control" has the meaning set forth in Oregon Administrative Rule ("OAR") 340-122-0115(23) in effect as of the Effective Date.
- 1.3 "EPA" means the United States Environmental Protection Agency, and its employees, agents, and authorized representatives. "EPA" also means any successor or assign of EPA under the laws of the United States, including but not limited to any entity or instrumentality of the United States authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by EPA.
- 1.4 "Hazardous substance" has the meaning set forth in Oregon Revised Statute (ORS) 465.200(9) in effect as of the Effective Date.
- 1.5 "Institutional control" has the meaning set forth in OAR 340-122-0115.
- 1.6 "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.
- 1.7 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115 and Section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(24), each in effect as of the Effective Date.

2. GENERAL DECLARATION

2.1 Grantor hereby 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, collectively run with the land for all purposes, are binding upon all current and future owners of the Property as set forth in this EES, and inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

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

3.1. Groundwater Use Restriction: Owner may not extract through wells or by other means or use groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities either conducted by DEQ or their authorized representatives, or approved by DEQ, or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that the Owner or their authorized representatives and contractors extracts during such monitoring, treatment, or dewatering activities and handle, store and manage wastewater according to applicable laws.

3.2 Use Restriction - Land: The following operations and uses are prohibited on the Property: (1) residential use of any type; and (2) commercial food-crop agricultural use of any type.

3.3 Use Restriction – Sediment Cap Area: Except upon prior written approval from DEQ or other delegated entity, Owner may not conduct or authorize others to conduct any activity in the Sediment Cap Area within the Property (see Exhibit B attached hereto and incorporated herein by this reference) that might penetrate or jeopardize the sediment cap's protective function as an engineering control, including without limitation: 1) anchoring, spudding, dredging, laying cable, dragging, conducting salvage operations, operating commercial vessels of any size, operating recreational vessels greater than 30 feet in length, operating other vessels in excess of "no wake" speed or the minimum speed needed to maintain steerage; 2) operation of automobiles or other land-based vehicles on the sediment cap; 3) removal from the sediment cap of concrete or rock armoring, sediment, sand, gravel or other material that is part of the sediment cap; 4) excavating, dredging, drilling, and scraping the sediment cap; 5) placement of structures, rock or overburden on top of the sediment cap; and 6) construction of pier or dock structures where breaching the sediment cap is necessary.

3.4 Use Restriction – Riparian Earthen Cap Area: Except upon prior written approval from DEQ or other delegated entity, Owner or its successor may not conduct or authorize others to conduct any activity in the Riparian Earthen Cap Area (see Exhibit B) that might penetrate or jeopardize the earthen cap's protective function as an engineering control, including without limitation: 1) any development or construction activity of any kind; 2) any use that will, or likely will, damage or remove the native trees, shrubs, other vegetation planted, or drift logs; and 3) removal of any material that is part of the soil cap from the Riparian Earthen Cap Area.

3.5 Use Restriction – Upland Impermeable Cap Area: Except upon prior written approval from DEQ or other delegated entity, Owner or its successor may not conduct or authorize others to conduct any activity in the Upland Impermeable Cap Area (see Exhibit B) that might penetrate or jeopardize the impermeable cap's protective function as an engineering control, including without limitation: 1) any use that will, or likely will, jeopardize the functional integrity of the impermeable cap, drainage system, venting system, subsurface barrier wall, and groundwater monitoring network (see Exhibit C attached hereto and incorporated herein by this

reference); and 2) loading, excavating trenching, drilling, scraping, or constructing any structures.

3.6 Use Restriction – Upland Earthen Cap Area: Except upon prior written approval from DEQ or other delegated entity, Owner may not conduct or authorize others to conduct any activity in the Upland Earthen Cap Area (see Exhibit B) that might penetrate or jeopardize the earthen cap's protective function as an engineering control, including without limitation: 1) any use that will, or likely will, jeopardize the functional integrity of the earthen cap, subsurface barrier wall, drainage system, groundwater monitoring network, drainage swale, and infiltration pond (see Exhibit C); and 2) loading, excavating trenching, drilling, scraping, or constructing any structures.

3.7 Access Restriction: The Owner will control access to and across the Property as necessary to protect the remedial action features located at the Property, consistent with Section 4 of this EES.

3.8 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)

4.1. Owner agrees to provide DEQ and EPA entry upon and inspection of any portion of the Property during reasonable hours and in accordance with Subsections 4.2 and 4.3, for the following:

- (1) To determine whether the requirements of this EES have been or are being complied with;
- (2) To determine whether the provisions of the ROD have been or are being complied with;
- (3) To conduct all investigation, removal, and remedial measures, operation and maintenance and inspections described in the ROD; and
- (4) To conduct all other investigation, removal, and remedial measures, operation and maintenance and inspections that DEQ or EPA may require in the future at the Property.

Except when necessary to address emergencies, system failures, or time-critical repairs, or an imminent threat to human health or the environment, DEQ or EPA will use best efforts to notify the Owner at least 48 hours before entry upon the Property. DEQ or EPA may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner a violation of any condition or restriction contained in this EES, provided written notice of the violation is given to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice, which shall be reasonable under the circumstances. Any such entry by DEQ or EPA to evaluate compliance or to abate, mitigate, or cure a violation may

not be deemed a trespass, and neither DEQ nor EPA shall be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation. DEQ and EPA shall be solely responsible for their employees' and agents' safety and welfare while on the Property.

4.2. Access

A. Owner agrees to allow DEQ, EPA, and their officers, agents, authorized representatives, employees, and contractors to enter the Property for the purpose of performing remedial actions. Such remedial actions at the Property may include but are not limited to:

- (1) Sampling and inspecting air, water, and/or soil at the Property;
- (2) Constructing or excavating soil borings, test pits, and/or excavations at the Property;
- (3) Removing contaminated soils or materials from the Property;
- (4) Temporarily storing equipment, vehicles, tools, and other materials at the Property;
- (5) Temporarily storing wastewaters and related materials and wastes;
- (6) Restoring the surface condition of areas disturbed by remedial actions and repairing any structures or improvements damaged by remedial actions; and
- (7) Photographing portions of the Property and structures, objects, and materials located thereon as necessary to facilitate remedial measures.

B. All tools, equipment, and other materials brought upon the Property by or at the direction of DEQ or EPA remain property of DEQ or EPA, respectively. DEQ or EPA intend to remove any tools, equipment or other materials, and any wastes or wastewaters they generate, upon completion of remedial actions at the Property, to the extent permitted by law.

C. No later than completion of remedial actions at the Property, DEQ or EPA intend to restore the surface condition of areas disturbed by remedial actions, to the maximum extent reasonably practicable, and to the extent permitted by law, to a condition equivalent to the condition existing before remedial actions.

D. DEQ or EPA will coordinate their activities with the Owner and any tenant to minimize, to the maximum extent reasonably practicable, any impairment of access by Owner or its business invitees on the Property and any inconvenience to or disruption of operations on the Property due to activities of DEQ or EPA.

E. Owner, or its authorized representative, may observe DEQ or EPA while DEQ or EPA are undertaking remedial actions at the Property; provided, any observer entering the defined work zone must have health and safety training consistent with the requirements of the applicable health and safety plan.

F. Owner will not interfere with or otherwise limit any activity conducted at the Property pursuant to and consistent with this EES by DEQ, EPA, or their officers, employees, agents, contractors, or authorized representatives. This obligation also applies to and is binding upon any and all tenants of the Owner at the Property.

4.3. Nothing in this Section 4 is intended to convey a property interest to EPA. Conditions agreed upon by Owner in this Section 4 pertaining to EPA are pursuant to EPA's access and response authority in Section 104 of CERCLA, 42 U.S.C. § 9604.

5. THIRD PARTY BENEFICIARY RIGHTS OF EPA

5.1. EPA shall have the right, but shall not be obligated, to monitor and to enforce, by all means available in law or equity, the terms of this EES as a third-party beneficiary of this EES.

5.2. EPA's rights provided in this Section 5 are in addition to, and not in derogation of, all rights of DEQ to enforce the terms of this EES. Nothing in this Section 5 shall be construed to create, either expressly or by implication, the relationship of agency between EPA and DEQ and neither EPA nor DEQ is authorized by this Section 5 to represent or act on behalf of the other in the enforcement of rights granted under this EES.

5.3. Grantor represents that it has notified EPA of EPA's status as a third-party beneficiary under Section 5 of this EES.

6. RELEASE OF RESTRICTIONS

6.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to 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 discretion of DEQ and EPA, and will require their joint approval in writing unless DEQ and EPA agree otherwise in writing.

6.2. Upon a determination pursuant to Subsection 6.1, DEQ and EPA will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

7. GENERAL PROVISIONS

7.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ and EPA within 10 days prior to 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 and EPA a minimum of 30 days before the effective date of any change in use of the Property that might expose human 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 and EPA as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 6.1, unless DEQ and EPA agree otherwise in writing. This subsection does not apply to the grant or conveyance of a security interest in the Property.

7.2. **Zoning Changes.** Owner must notify DEQ and EPA no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Multnomah County zoning code or any successor code. As of the date of this EES, the base zone of the Property is General Employment 2.

7.3. **Partition.** Owner must notify DEQ and EPA not less than 30 days before Owner's petitioning for or filing of any document initiating a partition of the Property, or relating to a possible partition of the Property. The restrictions in this EES shall run with any partitions of the Property.

7.4. **Payment of Costs or Expenses.** Unless necessary to a removal or remedial action performed by DEQ or EPA in accordance with the ROD, Owner shall pay all costs or expenses it incurs related to future construction, excavation, use, or occupation of the Property, including but not limited to (a) design, engineering, permitting, construction, grading, excavation, and modifications, including architectural, structural, fixtures, utilities, or engineering modifications; (b) landscaping modifications; or (c) construction worker health or safety measures. This includes but is not limited to costs for the removal, management and disposal of disturbed soils or material required to accommodate future construction, excavation, use, or occupation of the Property, and the subsequent repair or protection of all caps described in Subsection 3 above.

7.5. **Inspection and Reporting.** Owner will immediately notify DEQ and EPA of any condition or occurrence at the Property that does not conform with provisions of this EES. Notification provided to DEQ and EPA must include sufficient detail to allow DEQ and EPA to determine compliance with EES requirements and include a photographic log.

7.6. **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 following the Effective Date. 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 and EPA, recorded in the deed records of Multnomah County, certifying that the condition or restriction is no longer required to protect human health or the environment.

7.7. **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.

7.8. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon and the United States, may enforce this EES through any available means, seeking any available legal or equitable remedies.

7.9. 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: McCormick & Baxter Creosoting Company

By: _____ Date: _____
Charles R. McCormick III, President

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this _____ day of _____, 2025, by Charles R. McCormick III of McCormick & Baxter Creosoting Company, on Oregon Corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON

GRANTEE: State of Oregon, Department of Environmental Quality

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

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this _____ day of _____, 2025, by Kevin Parrett of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON

EXHIBIT A

Legal Description of the Property

Tract in Sections 7 and 18, Township 1 North, Range 1 East of Willamette Meridian and Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon South of O.W.R.R. & N. Co's right-of-way, East of S.P. & S right-of-way, North of Harbor line, West of dedicated street; commencing at the intersection of the Westerly line of North McKenna Avenue as dedicated in the plat of Portsmouth with the Southerly line of N. Willamette Boulevard in Section 7, Township 1 North, Range 1 East of Willamette Meridian; thence North 62°22'30" West 1637.69 feet; thence South 27°37'30" West 55.31 feet to a point in the Southwesterly line of O.W.R.R. & N. Co's right-of-way for the point of beginning of tract to be described; running thence Northwesterly along said right-of-way line 954.16 feet to the Southeasterly line of the S.P. & S. Co's right-of-way; thence South 40°26'40" West on said Southeasterly line of S.P. & S. Co's right-of-way, 1516.02 feet to the Harbor line on the Willamette River; thence South 52°28'30" East along said Harbor line 1923.95 feet to a point which is South 37°58' West from the Southwest end of the center line of a dedicated street as recorded in P.S. Deed [Book 426, page 537](#); thence North 37°58' East 111.89 feet to the Southwest end of said dedicated street; thence North 52°02' West on the said Southwest end of dedicated street 20 feet to the Northwest line of said dedicated street; thence North 37°58' East on the Northwest line of said dedicated street, 376.20 feet to an angle point; thence North 26°00' East on the Northwest line of said dedicated street, 167.41 feet to an angle point; thence North 52°30' East along the Northwest line of said dedicated street, 433.07 feet to the said Southwesterly line of O.W.R.R. & N. Co's right-of-way; thence Northwest along said right-of-way line, 1015.75 feet to the place of beginning.

SUBJECT TO rights of the State of Oregon and of the United States of America in and to any portion lying below ordinary high water line of the Willamette River, together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

EXHIBIT B – SITE CAPPING COMPONENTS FIGURE

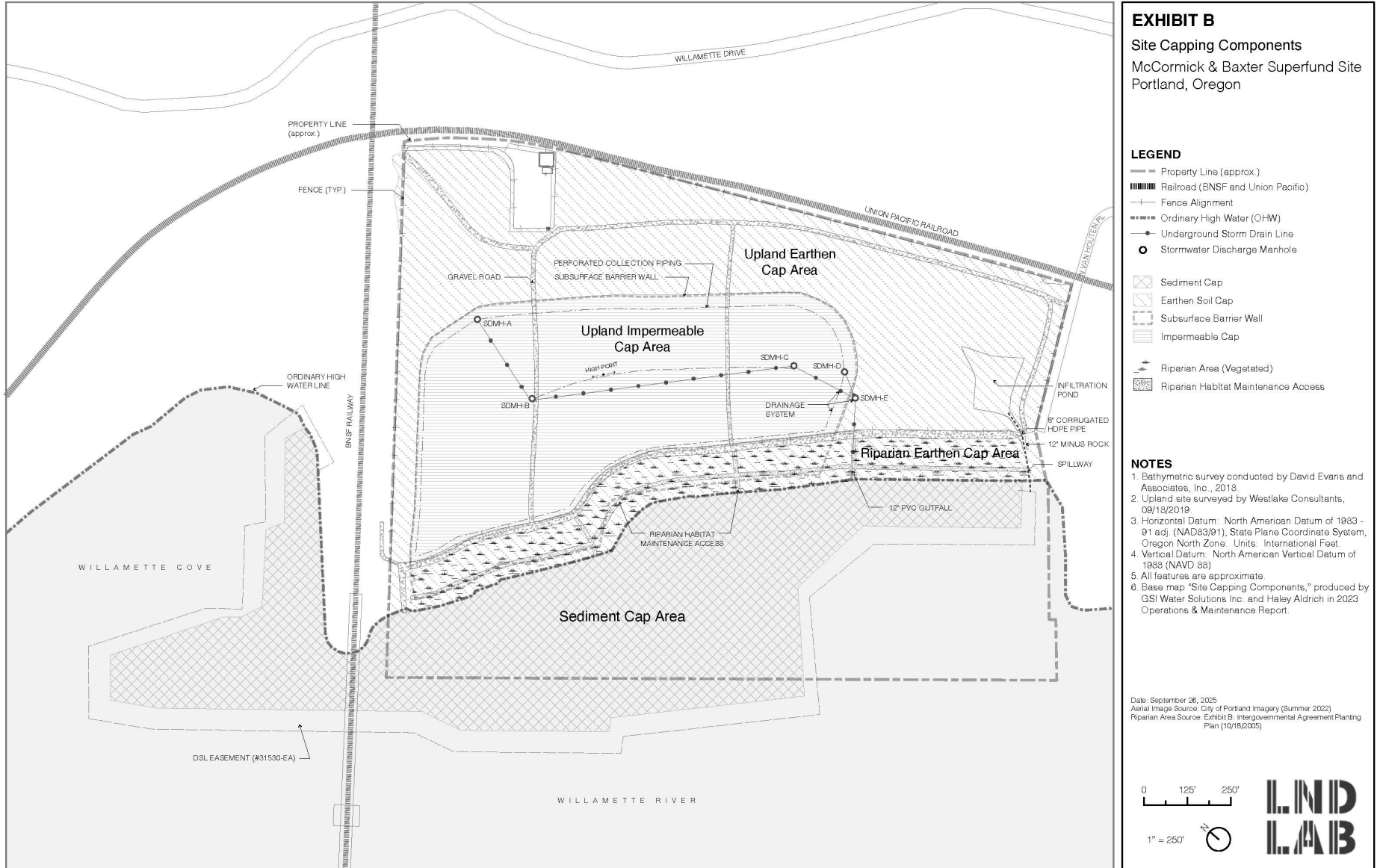


EXHIBIT C – GROUNDWATER MONITORING WELL NETWORK, SWALE, & INFILTRATION POND FIGURE

