

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF [Name of County]

STATE OF OREGON, ex rel.
DICK PEDERSEN, DIRECTOR
DEPARTMENT OF ENVIRONMENTAL
QUALITY

Plaintiff,

v.

[Insert legal name of Defendant],

Defendant.

Case No. [insert]

CONSENT JUDGMENT
General Judgment

<u>Contents</u>	<u>Page</u>
1. <u>Purpose</u>	3
2. <u>Stipulations and Findings</u>	3
3. <u>Work to be Performed</u>	6
A. <u>Remedial Design and Remedial Action</u> [If applicable; in the alternative, incorporate plan for restoration or other productive reuse of the property] ..	6
B. <u>Modification of SOW or Related Work Plans</u>	6
C. <u>Additional Measures</u>	7
D. <u>Site Restrictions and Periodic Reviews</u> [if applicable]	7
4. <u>General Provisions</u>	8
A. <u>Project Managers</u>	8
B. <u>Supervising Contractor</u>	8
C. <u>DEQ Approvals</u>	9
D. <u>Access to Property</u>	10
E. <u>Records</u>	10

F.	<u>Notice and Samples</u>	12
G.	<u>Quality Assurance</u>	12
H.	<u>Progress Reports</u>	13
I.	<u>Other Applicable Laws</u>	13
J.	<u>Reimbursement of DEQ Costs</u>	14
K.	<u>Financial Assurance</u> [if applicable, for a remedial action]	15
L.	<u>Force Majeure</u>	16
M.	<u>Dispute Resolution</u>	16
N.	<u>Effect of Consent Judgment</u>	17
O.	<u>Indemnification and Insurance</u>	18
P.	<u>Parties Bound</u>	19
Q.	<u>Modification</u>	20
R.	<u>Recording</u>	20
S.	<u>Service</u>	20
5.	<u>Releases from Liability and Covenant Not to Sue</u>	20
6.	<u>Third-Party Actions</u>	22
7.	<u>Defendant Waivers</u>	22
8.	<u>Benefits and Burdens Run with the Land</u>	23
9.	<u>Certification of Completion</u>	23
10.	<u>Continuing Jurisdiction</u>	24

Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Scope of Work

Exhibit D: Easement and Equitable Servitude **[If applicable:]**

Exhibit E: Service List

1. Purpose

This Consent Judgment is filed simultaneously with and for the purpose of resolving the underlying complaint by the State of Oregon. Plaintiff State of Oregon *ex rel.* the Director of the Department of Environmental Quality (“DEQ”) and Defendant [Name] (“Defendant”) (collectively, the “Parties”) desire to resolve this action without litigation and have agreed to entry of the Consent Judgment without admission or adjudication of any issue of fact or law. The mutual objectives of the Parties are: (a) to protect public health, safety, and welfare and the environment in accordance with ORS 465.200 through 465.410, and regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Defendant with protection from potential liabilities in accordance with applicable law.

2. Stipulations and Findings

A. Defendant stipulates:

- (1) To entry of this Consent Judgment;
- (2) To perform and comply with all provisions of this Consent Judgment; and
- (3) To not litigate, in any proceeding brought by DEQ to enforce this Consent Judgment or to assess penalties for noncompliance with this Consent Judgment, any issue other than Defendant’s compliance with this Consent Judgment.

B. DEQ and Defendant stipulate:

- (1) For the purposes of this Consent Judgment, 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 Judgment, “Matters Addressed” means all investigation, removal, and remedial actions taken or to be taken and all remedial action costs incurred or to be incurred at or in connection with a release of hazardous substances at the Facility.

(3) For the purposes of this Consent Judgment, “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 Defendant’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 Defendant’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 Defendant’s acquisition of ownership or operation of the Property.

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

(1) [Identify Defendant; describe corporate or individual status].

(2) The property proposed for acquisition by Defendant, currently owned by [Insert Present Owner], is an approximately [##]-acre site located at [Property Address], [County Name] County, Oregon, in [Section ##, Township ## North/South, Range ## East/West], of the Willamette Meridian (the “Property”). The location of the Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Judgment. The legal description of the Property is set forth in Exhibit B to this Consent Judgment. All attachments are incorporated into this Consent Judgment by this reference.

(3) [Summarize site history]

(4) [Summarize information regarding the release of hazardous substances at the site. Describe the contaminants of concern for each affected media]. These contaminants are “hazardous substances” within the meaning of ORS 465.200(16). The presence of hazardous substances at the Property constitutes a “release” of hazardous substances within the meaning of ORS 465.200(22), and makes the Property a “facility” within the meaning of ORS 465.200(13).

(5) Pursuant to ORS 465.255(1)(b), Defendant 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 [Date], Defendant applied to DEQ for a “prospective purchaser” agreement under ORS 465.327

and agreed to reimburse DEQ's costs of technical review and preparation. This Consent Judgment is intended to protect Defendant from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for Defendant undertaking certain obligations, as described in this Consent Judgment. In determining to propose this Consent Judgment, DEQ considered reasonably anticipated future land uses at the Property and surrounding properties and consulted with [insert name(s) of land use planning jurisdictions].. This Consent Judgment is entered into pursuant to ORS 465.325 and ORS 465.327.

(6) [If applicable:] Pursuant to ORS 465.320, on [Date], DEQ published notice of a proposed remedial action and provided opportunity for public comment. Comments received on the proposed remedial action were considered by DEQ, as shown in the administrative record. [If applicable:] DEQ's [Eastern/Northwest/Western] Region Administrator selected the remedial action set forth in a Record of Decision dated [ROD Date] ("ROD"). The remedial action selected in the ROD requires the following:

- [Summarize the key points of the selected remedy in a bullet list. Provide a separate bullet list for each affected environmental medium, if appropriate.]

(7) On [Date], DEQ published notice of this proposed Consent Judgment and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.325(4)(d). [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.

- (8) Consistent with ORS 465.327(1):
- (a) Defendant is a "person" within the meaning of ORS 465.200(21);
 - (b) Defendant is not currently liable under ORS 465.255, 466.640, or 468B.310 for the Existing Hazardous Substance Releases;
 - (c) Removal or remedial action is necessary at the Property to protect human health or the environment;

(d) Defendant'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; and

(e) A substantial public benefit will result from this Consent Judgment.

(9) Based on the administrative record, the Director of DEQ determines that: (a) the release from liability set forth in Subsection 5.B satisfies the criteria set forth in ORS 465.327(1); (b) the covenant not to sue set forth in Subsection 5.D satisfies the criteria set forth in ORS 465.325(7)(a) and (d); and (c) this Consent Judgment and Defendant's commitments under this Consent Judgment will expedite removal or remedial action, minimize litigation, be consistent with rules adopted under ORS 465.400, and be in the public interest.

3. Work to be Performed

A. Remedial Design and Remedial Action *[If applicable; in the alternative, incorporate plan for restoration or other productive reuse of the property]*

Defendant will perform the remedial design and remedial action for the Site in accordance with the terms and schedules set forth in the Scope of Work ("SOW") attached to and incorporated by reference into this Consent Judgment as Exhibit C, and the terms and schedules set forth in a DEQ-approved work plan.

B. Modification of SOW or Related Work Plans

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

(2) Subject to dispute resolution under Subsection 7.M., Defendant 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., Defendant 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

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

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

(1) Within 30 days of entry of this Consent Judgment, Defendant will record with the County Clerk, **[County Name]** County, the Easement and Equitable Servitude attached to this Consent Judgment as Exhibit D. Defendant will provide DEQ a file-stamped copy of the Easement and Equitable Servitude within five working days of recording. **[Note: Where EES cannot be completed on same timeline as CJ, Defendant may commit to record within specified time period an EES substantially in the same form as exhibit, provided final EES is subject to DEQ approval and is consistent with ROD. Consult with DOJ regarding appropriate wording in a given case.]**

(2) Property subject to the Easement and Equitable Servitude may be freely alienated at any time after recording, provided the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitude.

(3) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Consent Judgment. Defendant, 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 Defendant's obligations under this Consent Judgment.

(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.

4. General Provisions

A. Project Managers

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

DEQ Project Manager

[Project Manager's Name]
Department of Environmental Quality
[Eastern/Northwest/Western] Region
[Address]
[City, State, ZIP]
[Phone: ###-###-###, ext. ##]
[Email:]

Defendant Project Manager

[Name]
[Department]
[Company]
[Address]
[City, State, ZIP]
[Phone: ###-###-###, ext. ##]
[Email:]

(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 described under Section 3.

B. Supervising Contractor

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

(2) Before initiation of remedial design work for the Property, Defendant 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 Defendant in writing of the reasons for its disapproval within 14 days of receipt of the initial notice from Defendant. Defendant, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternate supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above. **[If appropriate, continue with the following:]** DEQ approves **[Contractor Name]** as a qualified contractor for Defendant for purposes of this Consent Judgment.

(3) If, during the course of work required under this Consent Judgment, Defendant proposes to change its supervising contractor, Defendant 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 Judgment, Defendant 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 Defendant. Prior approval is not required in emergencies, provided Defendant 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 Judgment, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Defendant 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, Defendant 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 4.M.

(5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Defendant's failure in good faith 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, Defendant will implement the action(s) required by the plan, report, or other item, as so approved or modified.

D. Access to Property

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

(2) Defendant will seek to obtain access to property not owned or controlled by Defendant as necessary to perform the work required in this Consent Judgment, including access by DEQ for purposes described in Paragraph 4.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Defendant if DEQ determines that access is necessary and that Defendant has exhausted all good faith efforts to obtain access.

E. Records

(1) In addition to those reports and documents specifically required under this

Consent Judgment, Defendant 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 Defendant's attorney), and laboratory analytical reports relating to the work to be performed under this Consent Judgment.

(2) Defendant will preserve all records and documents in possession or control of Defendant or its employees, agents, or contractors that relate in any way to activities under this Consent Judgment for at least five years after certification of completion under Section 9. Upon DEQ's request, Defendant 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, Defendant will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Defendant has no further obligation to preserve documents or records.

(3) Subject to Paragraph 4.E.(4), Defendant may assert a claim of confidentiality under the Oregon Public Records Law regarding any documents or records submitted to or copied by DEQ pursuant to this Consent Judgment. 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 Defendant 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 Defendant.

(4) Defendant 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. Attorney-client or work product privilege may not be asserted with respect to any records required to be submitted under Paragraph 4.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Defendant.

F. Notice and Samples

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

G. Quality Assurance

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

(2) If DEQ conducts sampling or analysis in connection with this Consent Judgment, 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

Defendant with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Progress Reports

[Note: Amend this section as appropriate, if monthly rather than quarterly progress reports are desired]

During each calendar quarter following entry of this Consent Judgment, Defendant will deliver to DEQ, on or before the tenth working day of each quarter, a progress report containing:

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

DEQ may approve less frequent reporting by Defendant, 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 Judgment must be performed in accordance with all applicable federal, state, and local laws.
- (2) All activities under this Consent Judgment 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, Defendant 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 Defendant 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 4.L.

J. Reimbursement of DEQ Costs

(1) DEQ will submit to Defendant a monthly invoice of costs on or after [Date] in connection with development and approval of this Consent Judgment and any activities related to the oversight and periodic review of Defendant's implementation of this Consent Judgment. Each invoice must include a summary of costs billed to date.

(2) DEQ oversight costs payable by Defendant 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 Judgment 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 Judgment and, upon request, will provide copies of such records to Defendant.

(3) Within 30 days of receipt of DEQ's invoice, Defendant 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 4.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, become a liquidated debt collectible under ORS 293.250 or other applicable

law.

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

K. Financial Assurance **[if applicable, for a remedial action]**

(1) Defendant will demonstrate its ability to perform remedial work required under this Consent Judgment by obtaining and submitting to DEQ for approval one or a combination of the following: (a) a performance bond; (b) a letter of credit equaling the total estimated cost of the work; (c) evidence of an escrow account dedicated to payment of or reimbursement for remedial action costs; or (d) internal financial information (financial test or corporate guarantee) sufficient to satisfy DEQ that its net worth is sufficient to make additional financial assurances unnecessary. If internal financial information is relied upon, the standards used to determine the adequacy of Defendant's resources must be substantially equivalent to those set forth in 40 CFR Part 265, Subpart H. Financial assurance must be submitted within 30 days of DEQ approval of the final remedial design work plan in the amount of the estimated total capital cost of the remedial action.

(2) Within 30 days of receipt of the financial assurance or other information, DEQ will determine its adequacy and communicate that determination to Defendant. If DEQ determines that such assurance or information is inadequate, Defendant will submit one of the other forms of assurance to DEQ for approval. If internal corporate information is relied upon, Defendant will submit updated financial information annually on the anniversary date of issuance of this Consent Judgment.

(3) During implementation of the remedial action, DEQ may require Defendant to revise the cost estimates used to demonstrate Defendant's financial assurance, and Defendant at its own election may revise the cost estimate for the required work from time to time. If a revised

cost estimate is significantly higher or lower than the original cost estimate, DEQ may require Defendant to submit revised financial assurance under the terms and schedule set forth in the preceding paragraphs adequate to assure financial capability at the level of the revised cost estimate.

(4) Except as approved by DEQ, work required under this Consent Judgment may not be delayed pending submission and/or approval of financial assurance under this subsection.

L. Force Majeure

(1) If any event occurs that is beyond Defendant's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Judgment despite Defendant's reasonable efforts ("Force Majeure"), Defendant 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 Defendant proposes to carry out such measures. Defendant will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Defendant from asserting Force Majeure for the event and for any additional delay caused by the event.

(2) If Defendant 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 Judgment as appropriate. Circumstances or events constituting Force Majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in receiving a governmental approval or permit. 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 4.M.(4), if Defendant disagrees with DEQ

regarding any matter relating to this Consent Judgment, Defendant will promptly notify DEQ in writing of its objection. DEQ and Defendant then will make a good-faith effort to resolve the disagreement within 14 days of Defendant's written objection. At the end of the 14-day period, DEQ will provide Defendant with a written statement of its position from DEQ's [Eastern/Northwest/Western] Region Cleanup Manager. If Defendant still disagrees with DEQ's position, then Defendant, within 14 days of receipt of DEQ's position from the Region Cleanup Manager, will provide Defendant's position and rationale in writing to DEQ's [Eastern/Northwest/Western] Region Administrator. The Region Administrator may discuss the disputed matter with Defendant and, in any event, will provide Defendant with DEQ's final position in writing as soon as practicable after receipt of Defendant's written position.

(2) If Defendant refuses or fails to follow DEQ's final position pursuant to Paragraph 4.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Subsection 2.A. and Section 7, 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 4.C.

N. Effect of Consent Judgment

(1) If Defendant fails to comply with this Consent Judgment, DEQ may seek civil penalties under ORS 465.900 and enforcement of this Consent Judgment by this Court. If DEQ seeks enforcement of this Consent Judgment by this Court, DEQ may seek monetary sanctions, such as civil penalties, only if DEQ has not assessed and collected any civil penalties under ORS

465.900 regarding the same violation.

(2) Subject to Section 2, Defendant does not admit any liability, violation of law, factual or legal findings, conclusions, or determinations asserted in this Consent Judgment.

(3) Nothing in this Consent Judgment is intended to create any cause of action in favor of any person not a party to this Consent Judgment.

(4) Subject to Paragraph 2.A.(4) and Section 7, nothing in this Consent Judgment prevents DEQ, the State of Oregon, or Defendant from exercising any rights each might have against any person not a party to this Consent Judgment.

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

(6) DEQ and Defendant intend for this Consent Judgment to be construed as a judicially-approved settlement by which Defendant 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 Matters Addressed, and for Defendant not to be liable for claims for contribution regarding Matters Addressed to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

(7) Unless specified otherwise, the use of the term “days” in this Consent Judgment means calendar days.

(8) This Consent Judgment is void and of no effect if Defendant does not complete acquisition of the Property by [Date].

O. Indemnification and Insurance

(1) Defendant 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 Judgment of Defendant or its

officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contracts made by Defendant or its agents in carrying out activities under this Consent Judgment.

(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 Defendant and its respective officers, employees, contractors, and agents, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Consent Judgment 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 Defendant under this Consent Judgment). Defendant may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Judgment.

(3) Before commencing any on-site work under this Consent Judgment, Defendant will obtain and maintain for the duration of this Consent Judgment 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, Defendant will provide DEQ a copy or other evidence of the insurance. If Defendant 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, Defendant may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

P. Parties Bound

This Consent Judgment 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 Judgment. No change in ownership, corporate, or partnership status relating to the Property in any way alters Defendant's obligations under this Consent Judgment, unless otherwise approved in writing by DEQ.

Q. Modification

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

R. Recording

Within 14 days of entry of this Consent Judgment by the Court, Defendant will submit a copy or original of this Consent Judgment (whichever is required by the county) to be recorded in the real property records of [County Name] County, Oregon. Defendant will provide DEQ with written evidence of such recording within seven days of recording.

S. Service

Each Party designates in Exhibit E the name and address of an agent authorized to accept service of process by mail on behalf of the Party with respect to any matter relating to this Consent Judgment. Each Party agrees to accept service in such manner, and waives any other service requirements set forth in the Oregon Rules of Civil Procedure or local rules of this Court. The Parties agree that Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to approve this Consent Judgment.

5. Releases from Liability and Covenant Not to Sue

A. Pursuant to ORS 465.327(3), this Consent Judgment is a “prospective purchaser agreement” entered as a judicial consent judgment in accordance with ORS 465.325. Thus, this Consent Judgment contains related but independent liability provisions pursuant to both ORS 465.327 and 465.325. The ORS 465.327 liability provisions are set forth below in Subsections 5.B. and 6.B. The ORS 465.325 liability provisions are set forth below in Subsections 5.D., 6.A., and 6.C. In addition to these state law provisions, this Consent Judgment may affect Defendant’s rights and liabilities under federal and other laws, as described in Paragraph 4.N.(6) and Subsection 5.E.

B. Pursuant to ORS 465.327, and subject to Subsection 5.C. and the satisfactory

performance by Defendant of its obligations under this Consent Judgment, Defendant 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. Defendant 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.(3)) existed as of the date of Defendant's acquisition of ownership or operation of the Property.

C. The release from liability under Subsection 5.B. does not affect liability of Defendant 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 Defendant's acquisition of ownership or operation of the Property;
- (2) Contribution to or exacerbation, on or after the date of Defendant'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 Defendant'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 Defendant'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 Defendant;
- (6) Criminal liability;
- (7) Violation of federal, state, or local law on or after the date of Defendant's acquisition of ownership or operation of the Property;
- (8) Any matters as to which the State of Oregon is owed indemnification under

Paragraph 4.O.(1); and

(9) Claims based on any failure by Defendant to meet any requirements of this Consent Judgment.

D. Pursuant to ORS 465.325, subject to satisfactory performance by Defendant of its obligations under this Consent Judgment, the State of Oregon covenants not to sue or take any other judicial or administrative action against Defendant under ORS 465.200 to 465.545 and 465.900 regarding Matters Addressed, except that the State of Oregon reserves all rights against Defendant with respect to claims and liabilities described in Subsection 5.C.

E. Subject to satisfactory performance by Defendant of its obligations under this Consent Judgment, DEQ releases Defendant from liability to DEQ under any federal or state statute, regulation, or common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, regarding the release or threatened release of hazardous substances addressed in this Consent Judgment, except that DEQ reserves all rights against Defendant with respect to claims and liabilities described in Subsection 5.C.

6. Third-Party Actions

A. This Consent Judgment is a judicially-approved settlement within the meaning of ORS 465.325(6)(b), pursuant to which Defendant has resolved its liability to the State of Oregon and is not liable for claims for contribution regarding Matters Addressed.

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

C. Subject to Section 7, Defendant may seek contribution in accordance with ORS 465.325(6)(c)(B).

7. Defendant Waivers

A. Defendant waives any claim or cause of action it might have against the State of

Oregon regarding Existing Hazardous Substance Releases, provided Defendant reserves all rights concerning the obligations of DEQ under this Consent Judgment.

B. Defendant 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 Judgment or related to the Property.

8. Benefits and Burdens Run with the Land

A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Judgment run with the land, provided the releases from liability and covenant not to sue set forth in Section 5 limit or otherwise affect 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 Judgment 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 Defendant to another person or entity, Defendant 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 Defendant in any way alters Defendant's obligations under this Consent Judgment, unless otherwise approved in writing by DEQ.

9. Certification of Completion

A. Upon Defendant's completion of work in accordance with the SOW, Defendant will submit a final closeout report to DEQ signed both by an Oregon-registered professional engineer and Defendant's Project Manager certifying that the remedial action for the Site has been completed in accordance with this Consent Judgment. 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 Judgment. 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 Defendant's closeout report, the Director of DEQ will issue a final certification decision. The certification decision will subsequently be submitted by DEQ to this Court. A certification of completion of the remedial action does not affect Defendant's remaining obligations under this Consent Judgment or for implementation of measures necessary to long-term effectiveness of the remedial action or productive reuse of the Property.

10. Continuing Jurisdiction

This Court retains jurisdiction over the Parties and the subject matter of this Consent Judgment.

IT IS SO ORDERED this ____ day of _____, [Year].

Circuit Court Judge, [County Name] County

STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____ Date: _____
[Name]
Administrator, Land Quality Division

By: _____ Date: _____
[Name], OSB No. [No]
Assistant Attorney General
Oregon Department of Justice
1515 SW Fifth Avenue, Suite 410
Portland, OR 97201
Attorney for DEQ

[DEFENDANT NAME]

By: _____ Date: _____
[Name]
[Title]

By: _____ Date: _____
[Name], OSB No. [No]
[Address]
Attorney for [Defendant]