

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 00-2992  
EXECUTIVE OFFICER TO EXECUTE )  
A VOLUNTARY AGREEMENT FOR REMEDIAL )  
INVESTIGATION AND SOURCE CONTROL )  
MEASURES AND SCOPE OF WORK BETWEEN )  
DEQ, METRO, AND THE PORT OF PORTLAND ) Introduced by Mike Burton  
FOR THE WILLAMETTE COVE PROPERTY ) Executive Officer

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams bond measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, on January 18, 1996, via Resolution 96-2266, the Metro Council authorized the purchase of the 27-acre Willamette Cove property on the east bank of the Willamette River ("the Property") which had been under option to The Trust for Public Land and identified in the bond measure Fact Sheet 4 as one of the "option" sites; and

WHEREAS, on February 28, 1996, Metro purchased the Property using Open Spaces, Parks and Streams bond funds; and

WHEREAS, the Oregon Department of Environmental Quality ("DEQ") identified Metro and the Port of Portland ("the Port") as responsible parties on the Pite; and

WHEREAS, the United States Environmental Protection Agency ("EPA") indicated in early April 2000 that it will list the Portland Harbor stretch of the Willamette River as a federal Superfund site; and

WHEREAS, DEQ notified Metro and the Port that DEQ was requesting that Metro and the Port execute a Voluntary Agreement for Remedial Investigation and Source Control Measures for the Willamette Cove Property, and that enforcement action would follow if such agreement with DEQ is not entered into; and

WHEREAS, Metro and the Port share common interests in conducting site work at the Property, including performing environmental investigations, conducting site work, risk assessments, source control measures, feasibility studies, and remedial actions; exchanging historical site information, and cooperating on an effective and efficient strategy for working with DEQ and EPA; and

WHEREAS, in June 2000 pursuant to Metro Council Resolution No. 00-2949, Metro and the Port executed an Allocation, Joint Cooperation and Defense Agreement (Metro-Port Agreement"), in which Metro and the Port agreed to coordinate common defense activities regarding the Property, such as the exchange of historical site information, retention of an environmental consultant, negotiation of the scope of site work with DEQ or EPA, performance of the site work and other activities, and to allocate the cost of performing those activities, and in which it was contemplated that Metro and the Port would jointly negotiate with DEQ and/or EPA regarding remediation investigations and site work on the Willamette Cove Property; and

WHEREAS, Metro and the Port's legal counsel have negotiated a Voluntary Agreement for Remedial Investigation and Source Control Measures and Scope of Work with DEQ ("DEQ-Metro-Port Agreement") for the uplands portion of the Property, attached hereto as Exhibit A, which requires Metro and the Port to perform a remedial investigation of the site; and develop and implement source control measures for any unpermitted discharge or migration of contaminants to the Willamette River or sediments identified in the remedial investigation, as set forth in the DEQ-Metro-Port-Agreement; and

WHEREAS, it is anticipated that a separate Portland Harbor Sediment Remedial Investigation and Feasibility Study will be required of Metro and the Port by the EPA regarding the sediment portion of the Willamette Cove Property, once the EPA begins its harbor-wide sediment investigation process, and such study is not at issue here; and

WHEREAS, the cost allocation between Metro and the Port for implementing the DEQ-Metro-Port Agreement and future agreement regarding environmental issues on the Willamette Cove Property will be as set forth in the Metro-Port Agreement; and

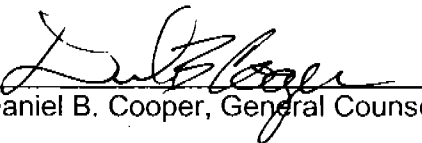
WHEREAS, Metro wishes to fulfill its objectives related to protection of the ecological integrity of this important regional natural area and providing safe, future public access to the site as a public open space; now therefore

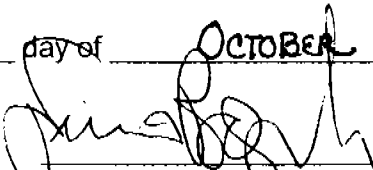
BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to execute the Voluntary Agreement for Remedial Investigation and Source Control Measures and Scope of Work between Metro, the Port of Portland, and the Oregon Department of Environmental Quality regarding the Willamette Cove Property, as attached hereto as Exhibit A.

ADOPTED by the Metro Council this 19<sup>th</sup> day of OCTOBER, 2000.

Approved as to Form:

  
Daniel B. Cooper, General Counsel

  
David Bragdon, Presiding Officer

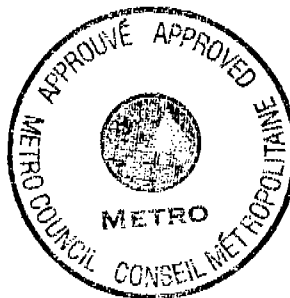


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2000-118

VOLUNTARY AGREEMENT FOR  
REMEDIAL INVESTIGATION AND SOURCE CONTROL MEASURES

DEQ NO. ECVC-NWR-00-26

BETWEEN: METRO and Port of Portland (RESPONDENTS)

AND: Oregon Department of Environmental Quality (DEQ)

EFFECTIVE DATE: \_\_\_\_\_, 2000

Pursuant to ORS 465.260(2) and (4), the Director, Oregon Department of Environmental Quality (DEQ), enters this Agreement with METRO and the Port of Portland (RESPONDENTS). This Agreement contains the following provisions:

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I. RECITALS

- A. Respondents are each a "person" under ORS 465.200(20).
- B. The WILLAMETTE COVE property is located at the foot of North Edgewater Street in Portland, Oregon, includes both the upland portion of the Cove and historical overwater structures, and, for purposes of this Agreement, is referred to as the "facility" or "Property". The facility occupies approximately 27 acres of land along the Willamette River. The uplands portion of the property is bordered to the east by a Burlington Northern Railroad line, to the west by North Richmond Avenue, to the north by a Union Pacific Railroad line, and to the south by the Willamette River. A vicinity map and a site map are included in Attachment A to this Agreement.
- C. The WILLAMETTE COVE facility is located within or near what is known as the Portland Harbor, a six-mile reach of the Willamette River between Sauvie Island and Swan Island. A 1997 study by DEQ and the U.S. Environmental Protection Agency identified elevated levels of hazardous substances in shallow, near-shore sediments throughout the Portland Harbor, including WILLAMETTE COVE.
- D. The WILLAMETTE COVE property was used for various industrial purposes during the 1900s.
- E. The Port of Portland purchased a portion of the site in 1903, and sold its interest in the site in 1953. METRO bought the property in February 1996 pursuant to Metro's Open Spaces, Parks, and Streams Bond Measure 26-26. Since the time of Metro's acquisition, Metro has held the property for purposes of establishing a greenspace or park in the future.
- F. Contaminants have been detected in soil and groundwater samples collected from the upland portion of WILLAMETTE COVE property. Twenty-two (22) chemicals were detected in soil including arsenic, lead, mercury, pentachlorophenol (PCP), and polynuclear aromatic hydrocarbons (PAHs). Sixteen (16) chemicals and petroleum hydrocarbons were detected in groundwater including trichloroethene (TCE), tetrachloroethene (PCE), and PAHs. Twenty-four (24) chemicals were detected in sediment samples collected adjacent to the WILLAMETTE COVE property at concentrations exceeding baseline concentrations established by DEQ for the Portland Harbor Study Area. Chemicals exceeding baseline concentrations include arsenic, barium, copper, nickel, mercury, silver, zinc, methylnaphthalene, butyins, chlorinated phenols, and PAHs.
- G. The WILLAMETTE COVE property is located immediately downstream from the McCormick and Baxter (M&B) former wood-treating site. The M&B site was added to the U.S. Environmental Protection Agency's

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National Priority List (NPL) in 1994. Limited investigations to date have demonstrated that contaminated groundwater and sediments have migrated from M&B onto at least the upstream edge of WILLAMETTE COVE.

- H. The substances described in Subsection I.F. are "hazardous substances" under ORS 465.200(15). The WILLAMETTE COVE property is a "facility" under ORS 465.200(12). DEQ contends that the presence of hazardous substances on-site and in sediments at or near the property constitutes a "release" or "threat of release" into the environment under ORS 465.200(21).

II. AGREEMENT

The parties agree as follows:

A. Work

1. Remedial Investigation

RESPONDENTS shall perform a remedial investigation satisfying OAR 340-122-0080, applicable elements of the Scope of Work contained in Attachment B to this Agreement, and the terms and schedule of a DEQ-approved work plan developed by RESPONDENTS. RESPONDENTS may specify, in the proposed work plan, elements of the Scope of Work that RESPONDENTS consider inapplicable or unnecessary to the remedial investigation for the facility. RESPONDENTS may propose to perform the work in phases or operable units. In case of conflicts between the language of the Agreement and the language of the Scope of Work, the language in the Agreement shall control.

2. Source Control Measures

For any unpermitted discharge or migration of contaminants to the Willamette River or sediments identified in the remedial investigation, RESPONDENTS shall evaluate such discharge or migration, and then, for any discharge or migration that has its source on or within the Property, develop and implement source control measures in accordance with OAR 340-122-0070 and the Scope of Work.

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3. DEQ-Review

DEQ shall provide review, approvals/disapprovals, and oversight in accordance with the schedule set forth in the Scope of Work, or as soon as thereafter practicable in the event staff resources or workload prevent compliance with the schedule. Any DEQ delay shall correspondingly extend RESPONDENTS' schedule for a related deliverable or activity.

4. Additional Measures

RESPONDENTS may elect at any time during the term of this Agreement to undertake remedial measures other than those required under this Agreement necessary to address a release or threatened release of hazardous substances at the facility. Such other measures shall be subject to prior approval by DEQ. Prior approval shall not be required in emergencies where RESPONDENTS reasonably believe a delay in undertaking a particular action will threaten human health, safety, or the environment; provided that RESPONDENTS notify DEQ of the emergency and action as soon as is practicable.

5. Dredging Activities

RESPONDENTS shall notify the DEQ project manager at least sixty (60) days before undertaking any dredging or other activity that might disturb sediments at or near the facility. In its notice of dredging or other activity, RESPONDENTS shall: (a) evaluate the concentration of hazardous substances present in and below the affected sediments based on sampling and analyses performed in advance of the notice; (b) document the steps to be taken to ensure that both the activity and the subsequent management and disposal of dredged spoils will be conducted in a manner protective of human health and the environment; and (c) evaluate the effect of the activity on the Portland Harbor Remedial Investigation and Feasibility Study. Dredging may proceed under existing permits subject to the above notice and implementation of any additional dredging or management practices required by DEQ. DEQ shall also be notified of and copied on any permit application to the Oregon Division of State Lands or United States Army Corps of Engineers for dredging or other activity disturbing sediments adjacent to the WILLAMETTE COVE site. Notwithstanding the foregoing, RESPONDENTS may conduct dredging or other activities that might disturb sediments at or near the facility without giving DEQ 60 days' notice, if such activities are conducted in accordance with an effective Dredging Agreement between RESPONDENTS and DEQ that describes the notification and sampling requirements, dredging, management, and disposal practices, and any other measures that RESPONDENTS will take

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to ensure that all activities within the scope of the Dredging Agreement are conducted in a manner that is protective of human health and the environment and consistent with Harborwide cleanup work.

6. Offsite Sources

RESPONDENTS shall have no obligation under this Agreement and Scope of Work to characterize hazardous substance contamination known to have originated solely from an offsite source, including but not limited to soils, groundwater, or sediments contamination originating solely from the McCormick & Baxter site. However, RESPONDENTS shall identify sources and pathways of any unpermitted discharge or migration of contaminants from the WILLAMETTE COVE property to the Willamette River or sediments, regardless of whether the source is onsite or offsite. In any event, RESPONDENTS shall have no obligation under this Agreement and Scope of Work to develop or implement source control measures for the discharge or migration of contaminants originating solely from an offsite source.

**B. Public Participation**

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

**C. DEQ Access and Oversight**

1. RESPONDENTS shall allow DEQ to enter all portions of the facility at all reasonable times for the purposes of, among other things, inspecting records relating to work under this Agreement; observing RESPONDENTS' progress in implementing this Agreement; conducting such tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by RESPONDENTS; and, using camera, sound recording, or other recording equipment for purposes relating to work under this Agreement. Upon RESPONDENTS' oral request, DEQ shall make available to RESPONDENTS a split or duplicate of any sample or recording taken by DEQ pursuant to this Agreement. DEQ shall use its best efforts, but not be obligated, to provide reasonable advance notice before entering the facility. DEQ shall adhere to all health and safety requirements of the facility, as identified in the applicable Health and Safety

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Plan, including, but not limited to, requirements in portions of the property where outside visitors must be accompanied by RESPONDENTS' personnel.

2. RESPONDENTS shall permit DEQ to inspect and copy all records, files, photographs, documents, and data in connection with work under this Agreement, except that RESPONDENTS shall not be required to permit DEQ inspection or copying of items subject to attorney-client or attorney work product privilege. DEQ shall use its best efforts, but not be obligated, to provide reasonable notice before records inspection and copying requests.
3. Attorney-client and work product privileges may not be asserted with respect to any records required under Paragraphs II.G.1 and II.G.2 of this Agreement. RESPONDENTS shall identify to DEQ--by addresser-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. DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by RESPONDENTS.

**D. Project Managers**

1. To the extent possible, all reports, notices, and other communications required under or relating to this Agreement shall be directed to:

DEQ Project Manager:

Rodney Struck  
Voluntary Cleanup Program  
Oregon DEQ  
2020 SW Fourth Avenue, Suite 400  
Portland, Oregon 97201-4987  
(503) 229-5562  
*rodney.struck@deq.state.or.us*

Respondents' Project Managers:

Joe Mollusky  
Environmental Project Manager  
Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208  
(503) 944-7533  
*molluj@portptld.com*

Jim Desmond  
Open Spaces Division Manager  
METRO  
600 N.E. Grand Avenue  
Portland, Oregon 97232  
(503) 797-1914  
*desmondj@metro.dst.or.us*

2. RESPONDENTS' and DEQ's Project Managers shall be available and have the authority to make day-to-day decisions necessary to complete the Scope of Work under this Agreement.



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3. In the event that any Party to this Agreement changes its Project Manager, such Party shall notify all other Parties in writing of such change.

**E. Notice and Samples**

RESPONDENTS shall make every reasonable attempt to notify DEQ of any excavation, drilling, or sampling to be conducted under this Agreement at least five (5) working days before such activity but in no event less than twenty-four (24) hours before such activity. Upon DEQ's oral request, RESPONDENTS shall make available to DEQ a split or duplicate of any sample taken pursuant to this Agreement. DEQ shall make every effort to complete analysis of any split or duplicate sample on a schedule consistent with RESPONDENTS' schedule for related activities. DEQ shall provide RESPONDENTS with copies of all analytical data from such samples as soon as practicable.

**F. Quality Assurance**

RESPONDENTS shall conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/ Quality Control (QA/QC) provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Agreement shall be consistent with DEQ's "Quality Assurance Policy No. 760.00". RESPONDENTS shall ensure that each laboratory used by RESPONDENTS for analysis performs such analyses in accordance with such provisions.

**G. Records**

1. In addition to those technical reports and documents specifically required under this Agreement, RESPONDENTS shall provide to DEQ within thirty (30) days of DEQ's written request copies of documents generated in connection with the work required under this Agreement, including QA/QC memoranda and QA/QC audits, draft deliverable and final deliverable plans, final reports, task memoranda, field notes, and laboratory analytical data that have undergone data quality validation.
2. If DEQ determines that review of raw data or preliminary laboratory reports is necessary in order to ensure protection of public health, safety, and welfare and the environment, that information will be provided by RESPONDENTS within ten (10) days of DEQ's written request.
3. RESPONDENTS and DEQ shall preserve all records and documents in possession or control of RESPONDENTS and DEQ, respectively, or their employees, agents, or contractors that relate in any way to activities under this Agreement for at

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least five (5) years after termination under Subsection II.R. of this Agreement; provided that after such 5-year period, RESPONDENTS and DEQ shall provide the other sixty (60) days notice before destruction or other disposal of such records and make them available for inspection and copying.

4. RESPONDENTS may assert a claim of confidentiality regarding any documents or records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If RESPONDENTS do 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 RESPONDENTS.

**H. Progress Reports**

During each quarter of this Agreement, RESPONDENTS shall deliver to DEQ on or before the fifteenth (15<sup>th</sup>) day following the end of the calendar quarter two (2) copies of a progress report containing the following items. DEQ anticipates that the progress report will not exceed 2 pages in length.

1. Actions taken under this Agreement during the previous quarter;
2. Actions scheduled to be taken in the next quarter;
3. Sampling, test results, and any other data generated by RESPONDENTS during the previous quarter; and
4. A description of any problems experienced during the previous quarter and the actions taken to resolve them.

**I. Other Applicable Laws**

Subject to ORS 465.315(3), all actions under this Agreement shall be performed in accordance with all applicable federal, state, and local laws and regulations.

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**J. Reimbursement of DEQ Oversight Costs**

1. Prior to entry of this Agreement, DEQ shall submit to RESPONDENTS an estimate of costs incurred by DEQ to date for site assessment activities and preparation and negotiation of this Agreement, with sufficient detail provided to permit RESPONDENTS to review for reasonableness. Upon entry of this Agreement, DEQ shall submit to RESPONDENTS a statement for costs actually and reasonably incurred by DEQ prior to entry of this Agreement for site assessment activities and preparation and negotiation of this Agreement and an estimate of future DEQ oversight costs associated with RESPONDENTS' implementation of this Agreement.
2. DEQ shall submit to RESPONDENTS a monthly statement of costs incurred after issuance of this Agreement by DEQ in connection with oversight of RESPONDENTS' implementation of this Agreement. Each invoice will include a summary of costs billed to date. DEQ's invoice for direct costs will include a direct labor summary showing the persons charging time, the amount of time, and the nature of the work performed. DEQ shall maintain work logs, payroll records, receipts, and other documentation for work performed and expenses incurred under this Agreement and, upon request, shall provide copies of such records to RESPONDENTS during the term of this Agreement and for at least five years thereafter.
3. DEQ or State of Oregon oversight costs payable by RESPONDENTS shall include both direct and indirect costs. Direct costs shall include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs shall include those general management and support costs of the DEQ and of the Environmental Cleanup Division, Northwest Region that are allocable to DEQ oversight of this Agreement and not charged as direct, site-specific costs. Indirect costs shall be based on a percentage of direct personal services costs. DEQ oversight costs also shall include the surcharge required by ORS 465.333.
4. Within thirty (30) days of receipt of a DEQ statement, RESPONDENTS shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund". RESPONDENTS shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest shall begin to accrue at the end of the 30-day payment period.

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**K. Force Majeure**

1. If any event occurs that is beyond RESPONDENTS' reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Agreement, RESPONDENTS shall promptly notify DEQ's Project Manager orally of the cause of the delay or deviation and 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 RESPONDENTS propose to carry out such measures. RESPONDENTS shall confirm in writing this information within five (5) working days of the oral notification.
2. If RESPONDENTS demonstrate to DEQ's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the reasonable control and despite the due diligence of RESPONDENTS, DEQ shall extend times for performance of related activities under this Agreement as appropriate. Circumstances or events beyond RESPONDENTS' control might include, but are not limited to, acts of God, unforeseen strikes or work stoppages, fire, explosion, riot, sabotage, or war. Increased cost of performance or changed business or economic circumstances shall be presumed not to be circumstances beyond RESPONDENTS' reasonable control.

**L. Prior Approval**

Where DEQ review and approval is required for any plan or activity under this Agreement, RESPONDENTS shall not proceed to implement the plan or activity until DEQ approval is received. Any DEQ delay in granting or denying approval shall correspondingly extend the time for completion by RESPONDENTS. Prior approval shall not be required in emergencies where RESPONDENTS reasonably believe a delay in undertaking a particular action will threaten human health, safety, or the environment; provided that RESPONDENTS notify DEQ of the emergency and action as soon as is practicable.

**M. Dispute Resolution**

In the event of disagreement between RESPONDENTS and DEQ regarding implementation of this Agreement, RESPONDENTS and DEQ shall, in the following order: 1) make a good faith effort to resolve the dispute between Project Managers; 2) if necessary, refer the dispute for resolution by the immediate supervisors of the Project Managers; 3) if necessary, provide each other their respective positions in writing and refer the dispute for resolution by DEQ's Northwest Region Administrator and METRO's Chief Operating Officer and the Port's Director of Policy and Planning; 4) if necessary, refer the dispute for resolution by

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DEQ's Director and the Executive Director of the Port of Portland and the Executive Officer of METRO. DEQ's final decision after such dialogue shall be enforceable under this Agreement, subject to the reservation of rights set forth in Subsection II.N. below. The time required for dispute resolution shall correspondingly extend RESPONDENTS' schedule for all pending, affected deliverables or activities.

**N. Enforcement of Agreement and Reservation of Rights**

1. In the event of RESPONDENTS' failure to comply with this Agreement (including any failure to reimburse oversight costs), DEQ may enforce this Agreement as an order under ORS 465.260(5) or may terminate this Agreement after thirty (30) days written notice to RESPONDENTS.
2. In the event of DEQ's failure to provide oversight in accordance with this Agreement, RESPONDENTS may terminate this Agreement after thirty (30) days written notice to DEQ. Costs incurred or obligated by DEQ before the effective date of any termination of this Agreement shall be owed under the Agreement notwithstanding such termination.
3. RESPONDENTS do not admit any facts (including those recited herein), legal issues, liability, or violation of law by virtue of entering into this Agreement.
4. Except as provided in Paragraph II.N.5., nothing in this Agreement shall prevent RESPONDENTS from exercising any rights of contribution or indemnification RESPONDENTS might have against any person, including the State of Oregon, regarding the releases of hazardous substances that are the subject of this Agreement.
5. RESPONDENTS waive any right they jointly or individually might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund for costs incurred under this Agreement, except for any additional costs RESPONDENTS demonstrate are attributable to the development and implementation of source control measures for contaminants originating from the McCormick & Baxter site.
6. RESPONDENTS agree not to litigate, in any proceeding brought by DEQ to enforce this Agreement, any issue other than RESPONDENTS' or DEQ's compliance with this Agreement.
7. In the event that the WILLAMETTE COVE facility becomes part of a federal National Priority List (NPL) site, DEQ agrees to cooperate with RESPONDENTS to encourage EPA to accept satisfactory and complete performance under this Agreement as fulfillment of RESPONDENTS' obligation to perform the same

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work under a subsequently-issued EPA order or consent decree. If EPA does not agree that such performance under this Agreement fulfills the EPA-imposed obligations, the Agreement may be modified pursuant to Subsection II.Q. or terminated at the election of DEQ or RESPONDENTS. Notwithstanding the foregoing, if the Portland Harbor area becomes part of a federal NPL site, but (1) the WILLAMETTE COVE facility is not itself included in the area expressly covered by the NPL listing (e.g. the Harbor is listed but upland sites are not) or (2) DEQ remains the lead agency with respect to the WILLAMETTE COVE facility, this Agreement shall remain in full force and effect; however, if EPA orders any conflicting or overlapping activities, this Agreement shall be modified, as necessary, to prevent conflicting or duplicative obligations. Any other additional EPA-imposed obligations may be addressed by modification of this Agreement under Subsection II.Q. or by separate agreement or order.

8. Notwithstanding any other provision of this Agreement, DEQ reserves all rights and remedies as to any person regarding any release or threatened release of hazardous substances at or from the WILLAMETTE COVE property, including but not limited to releases originating from an offsite source, and RESPONDENTS reserve all defenses they might have.

**O. Hold Harmless**

1. Subject to the reservation of rights in Subsection II.N. above, and to the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, RESPONDENTS shall save and hold harmless the State of Oregon and its officers, employees, contractors, and agents, and indemnify the foregoing, from and against any and all claims brought by third parties arising from acts or omissions related to work performed pursuant to this Agreement by RESPONDENTS or their officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by RESPONDENTS or their agents in carrying out activities under this Agreement.
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 shall save and hold harmless RESPONDENTS and their officers, employees, contractors, and agents, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts approving or omissions constituting approval of any activity of RESPONDENTS under this Agreement). RESPONDENTS shall not be

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considered a party to any contract made by DEQ or its agents in carrying out activities under this Agreement.

**P. Parties Bound**

This Agreement shall be 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 Agreement. No change in ownership or corporate or partnership status relating to the facility shall in any way alter RESPONDENTS' obligations under this Agreement, unless otherwise approved in writing by DEQ.

**Q. Modification**

DEQ and RESPONDENTS may modify this Agreement by mutual written agreement.

**R. Duration and Termination**

Upon completion of work under this Agreement, RESPONDENTS shall submit to DEQ a written notice of completion. This Agreement shall be deemed satisfied and terminated upon payment of all oversight costs owed and upon DEQ's issuance of a letter acknowledging satisfactory completion of activities in accordance with this Agreement. Such letter shall be issued within sixty (60) days of receipt of notice of completion evidencing satisfactory completion of activities in accordance with this Agreement and payment of outstanding DEQ oversight costs, or as soon thereafter as is reasonably practicable. In the event that DEQ is unable to issue such letter within sixty days of receipt of RESPONDENTS' written notice of completion, DEQ shall provide RESPONDENTS with a written schedule upon which DEQ anticipates review of RESPONDENTS' work and issuance of that letter.

**METRO**

By: \_\_\_\_\_  
(Name)

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

\_\_\_\_\_  
(Title)

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PORT OF PORTLAND

By: *Will Moore*  
(Name)  
Executive Director  
(Title)

Date: 9/5/00

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT  
By: *Marcia Newlands*  
Counsel for the Port of Portland  
Marcia Newlands

STATE OF OREGON  
DEPARTMENT OF ENVIRONMENTAL QUALITY

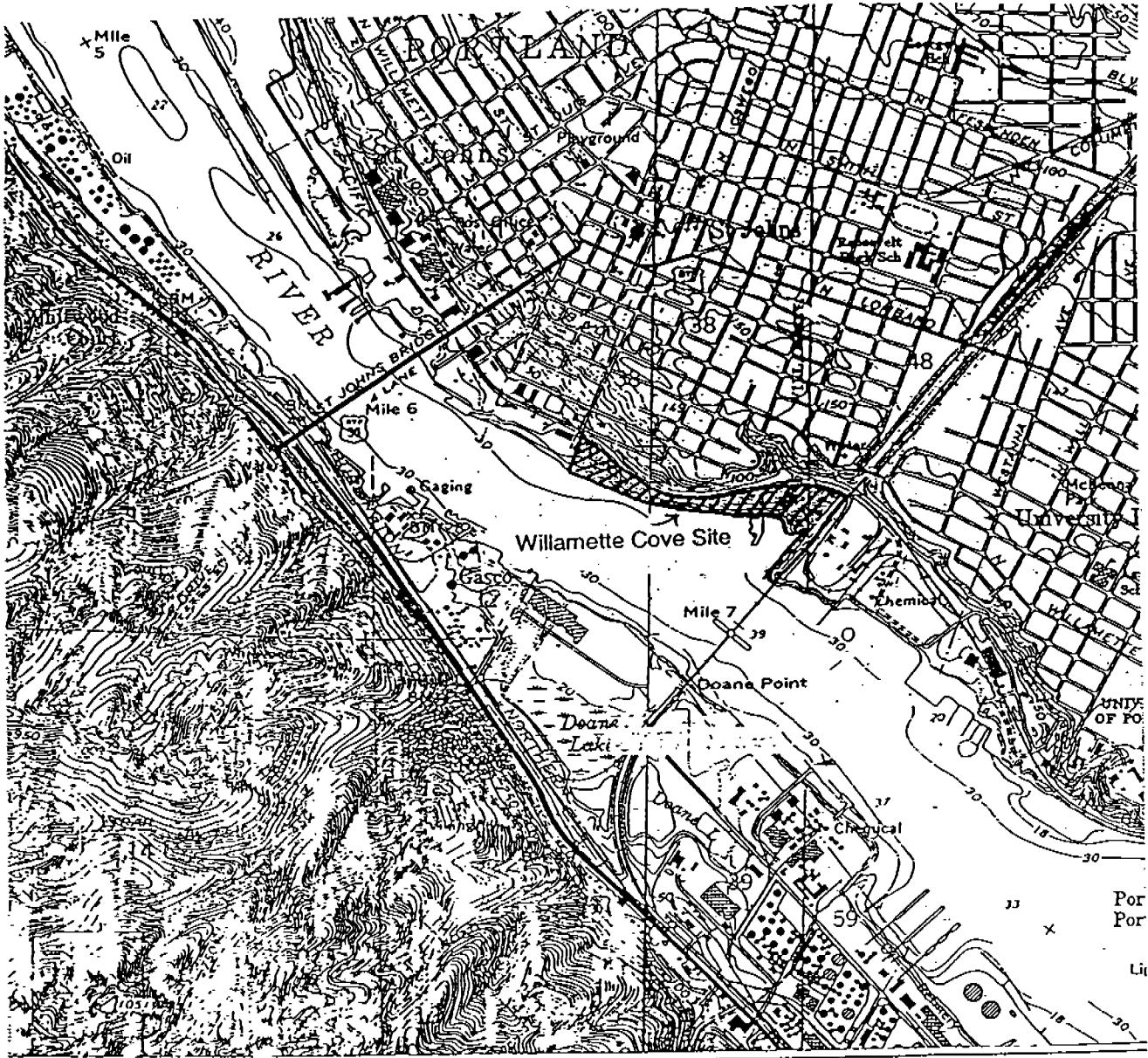
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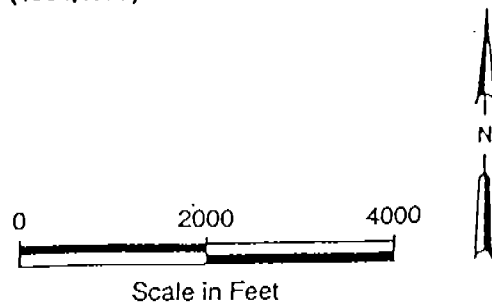
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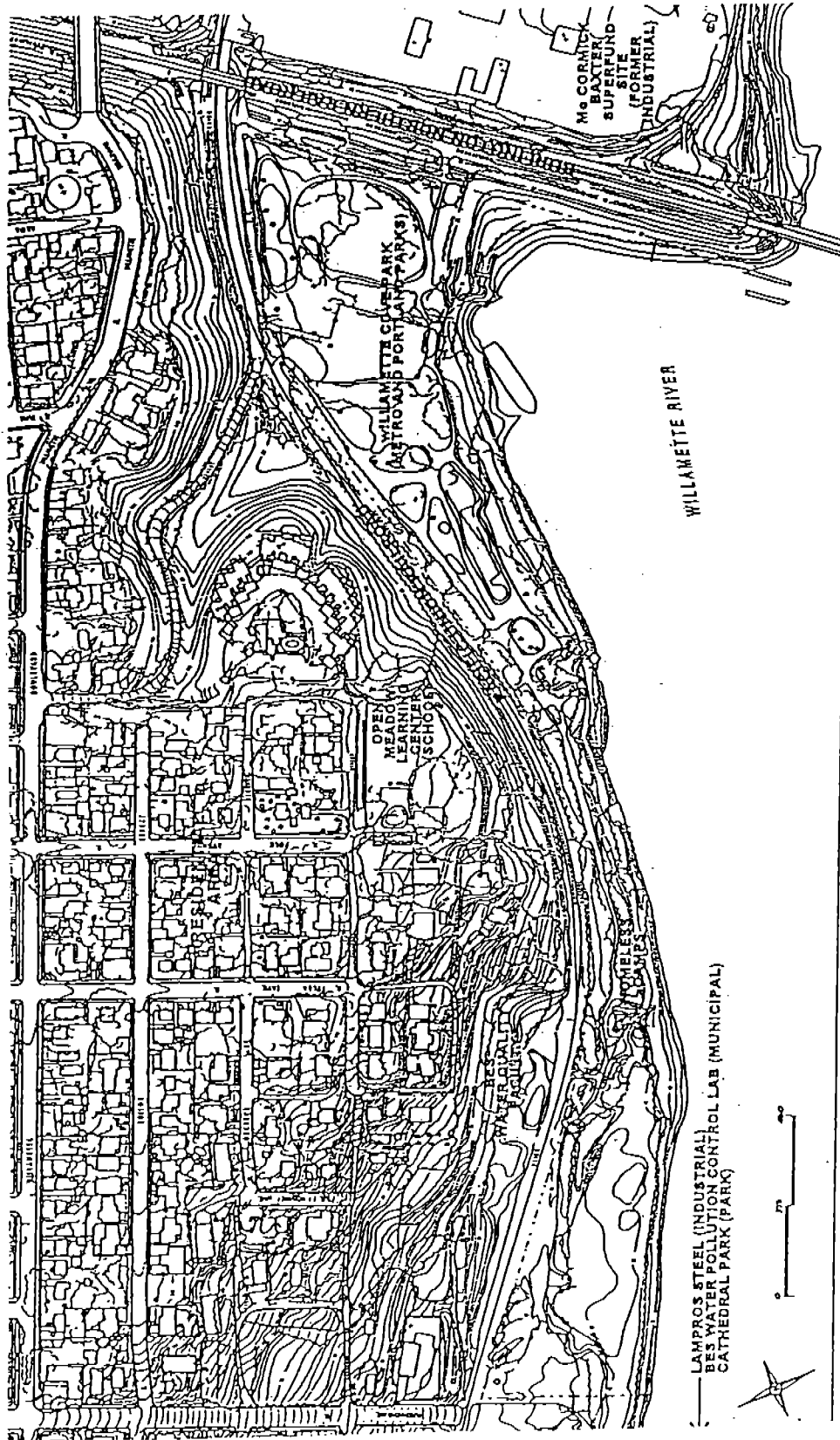
### Attachment A Site Location Map



Base Map From: USGS 7.5' quads. LINNONTON and PORTLAND, OREG. (1984,1977)



Attachment A  
Site Map



WILLAMETTE COVE  
EXISTING LAND USE

LAMPROS STEEL (INDUSTRIAL)  
BES WATER POLLUTION CONTROL LAB (MUNICIPAL)  
CATHEDRAL PARK (PARK)

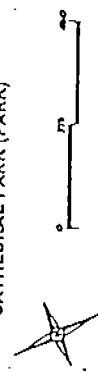


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ATTACHMENT B

SCOPE OF WORK FOR  
REMEDIAL INVESTIGATION AND SOURCE CONTROL MEASURES

I. SCHEDULE

RESPONDENTS shall submit for DEQ review and approval Remedial Investigation (RI), Risk Assessment (RA), and Source Control Measures (SCM) work plans and reports which address all elements of this Scope of Work (SOW). Elements of the SOW may be addressed by alternative means or by using existing data or information to the extent that the data are applicable, meet the objectives of the RI, and are of acceptable QA/QC.

All work completed under the Voluntary Agreement and this Scope of Work shall proceed in accordance with the schedule below:

RI Assessment Work Plan (if Respondents elect to perform a Pre-RI Assessment)	A Pre-RI Assessment Work Plan will be submitted to DEQ within 30 days of the issuance of this Agreement.
DEQ Review and Comment	To Respondents within 30 days of receipt of Pre-RI Assessment Work Plan.
Pre-RI Assessment Report	To be specified in Pre-RI Assessment Work Plan.
RI Proposal	An RI proposal will be submitted to DEQ within 90 days of issuance of this Agreement or, if a Pre-RI Assessment is performed and DEQ determines that an RI is necessary, based on the results of a Pre-RI Assessment, within 30 days of approval of the Pre-RI Assessment Report.
DEQ Review and Comment	To Respondents within 30 days of receipt of RI Proposal.
Draft RI Work Plan	To DEQ within 45 days of receipt of DEQ comments on RI Proposal.
DEQ Review and Comment	To Respondents within 30 days of receipt of draft RI Work Plan.
Final RI Work Plan	To DEQ within 30 days of receipt of DEQ comments on draft RI Work Plan.
Initiation of RI	To be specified in Project Management section of RI Work Plan.
Initiation of SCM	To be specified in Project Management section of RI Work Plan.

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The schedule for additional deliverables specified in this SOW (e.g., Risk Assessment work plan, Remedial Investigation report, Risk Assessment report, and Source Control Measure work plan) should be specified in the Project Management Plan section of the RI work plan.

All work plans may be amended by RESPONDENTS as necessary to reflect or incorporate newly discovered information and/or environmental conditions. Additional work plans and work plan amendments are subject to DEQ review and approval and shall be processed according to schedules negotiated between the parties at the time of each phase change or task addition. RESPONDENTS shall initiate and complete work according to the schedule specified in the applicable approved work plan or amendment. Future schedules or deadlines for all submittals, work plans or other requirements shall be adjusted accordingly for the time necessary for preparation, approval and implementation of additional work plans, investigations and/or reports not contemplated in the original schedule and shall be approved by DEQ in writing.

## II. OBJECTIVES

Work performed under this Agreement shall complement and incorporate existing facility information with the following specific objectives. For purposes of this Scope of Work, the "facility" shall exclude that portion of the facility that is below the mean high-water mark of the Willamette River. The facility is defined in the Voluntary Agreement for Remedial Investigation and Source Control Measures, between DEQ, METRO, and the Port. The parties acknowledge that a separate Portland Harbor Sediment RI/FS is proceeding with respect to the portion of the Willamette River below the mean high-water mark, and it is not the purpose of this Scope of Work to duplicate any of that work:

- A. Identify and characterize all hazardous substance source areas at the WILLAMETTE COVE facility. Source areas shall be characterized through a review of historical information and the collection of environmental samples for chemical, geotechnical, and other analyses. The evaluation of source areas shall focus on upland operations that may have resulted in a release of hazardous substances.
- B. Evaluate all contaminant migration pathways at the WILLAMETTE COVE facility. Key elements relevant to contaminant migration include, but are not limited to, the rate and direction of groundwater flow, subsurface contaminant migration to the Willamette River, overland contaminant migration to the Willamette River, storm water discharge to the Willamette River, direct and indirect release to the Willamette River, preferential migration pathways, volatilization, dust entrainment, and riverbank seepage.
- C. Determine the nature, extent, and distribution of hazardous substances in affected media at the WILLAMETTE COVE facility. This analysis should focus on the vertical and horizontal extent of source area contamination, groundwater contamination, and surface and subsurface soil contamination.

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- D. Identify all current and reasonably likely future human and ecological receptors at the WILLAMETTE COVE facility. Receptors shall include human and ecological receptors that may be exposed to hazardous substances at the facility. This analysis should consider all relevant contaminant migration pathways and the nature, extent and distribution of hazardous substances in affected media.
- E. Collect sufficient data and historical information to allow the identification of possible areas of sediment contamination adjacent to the WILLAMETTE COVE facility. Areas of potential sediment contamination shall be characterized through the Portland Harbor Sediment RI/FS. Data collection and evaluation shall consider the potential for contaminant migration to the Willamette River and over or in-water releases of hazardous substances resulting from operations at the WILLAMETTE COVE facility. RESPONDENTS may be required to perform limited sediment or benthic sampling adjacent to the facility as necessary to address an objective of this Scope of Work but will not be required to conduct sediment or benthic sampling that is duplicative of sampling under the Portland Harbor sediment RI/FS.
- F. Evaluate the risk to human health and the environment from releases of hazardous substances at or from the WILLAMETTE COVE facility through the performance of human health and ecological risk assessments.
- G. Identify hot spots of contamination, if any, at the WILLAMETTE COVE facility.
- H. Generate or use data of sufficient quality for site characterization and risk assessment at the WILLAMETTE COVE facility.
- I. Develop the information necessary to evaluate and design necessary source control measures to address contaminant releases from sources located on the WILLAMETTE COVE facility. Source control measures will not be evaluated or designed for any contaminants the source of which is not located on the WILLAMETTE COVE facility.
- J. Implement necessary source control measures to address contaminant releases from sources located on the WILLAMETTE COVE facility. Source control measures will not be implemented for any contaminants the source of which is not located on the WILLAMETTE COVE facility.

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**III. PRE-RI ASSESSMENT WORK PLAN AND REPORT**

RESPONDENTS may elect to perform a Pre-RI Assessment as the initial task under this Agreement. The primary purpose of the Pre-RI assessment is to determine which media and pathways (e.g., groundwater, surface water, air, and direct contact) are affected by site related hazardous substances. The Pre-RI Assessment will include a review of the facility history, review of current facility conditions, and may include focused sampling activities, to assess potential past and present sources of hazardous substances and determine if there has been a release from these sources to surface water or sediments, as appropriate.

If RESPONDENTS elect to perform a Pre-RI Assessment, RESPONDENTS shall submit a Pre-RI Assessment Work Plan for DEQ review and approval. The Pre-RI Assessment Work Plan shall describe the objectives, deliverables, schedule, and specific tasks that will be performed for the Pre-RI Assessment. If the Pre-RI Assessment includes sampling, the work plan shall describe the sampling locations and the methodologies that will be used for the sampling and analysis.

The Pre-RI Assessment report will present the results of the Pre-RI Assessment including figures and tables presenting the results of any sampling and analysis. The report will present conclusions regarding the likelihood of past or present source(s) and pathway(s) for the release of hazardous substances to sediments adjacent to RESPONDENTS' facility and whether a re-evaluation of the priority of RESPONDENTS' facility is appropriate.

The results of the Pre-RI Assessment shall be used to determine whether further action is needed to assure protection of present and future public health, safety and welfare, or the environment. No further work shall be required under this Agreement and SOW if, based on historical information and the results of the Pre-RI Assessment or subsequent facility investigation, DEQ reasonably determines that there is no likely present source and pathway for the release of hazardous substances to surface water or sediments at or from RESPONDENTS' facility for which DEQ could require a removal action or remedial investigation under ORS 465.200 et seq. Further, should the pre-RI assessment or subsequent facility investigation provide enough information to re-evaluate the priority of the facility, RESPONDENTS may request that DEQ perform this evaluation. Should it be determined by DEQ that the facility no longer presents a high priority threat to present and future public health, safety, and welfare or the environment, no further RI work with respect to the uplands portions of the facility shall be required under this Agreement and SOW.

**IV. REMEDIAL INVESTIGATION PROPOSAL**

If DEQ determines that further RI work is required (or if RESPONDENTS elect not to perform a Pre-RI Assessment), RESPONDENTS shall prepare an RI proposal. The RI Proposal shall briefly discuss RESPONDENTS' proposed approach to the RI, addressing soil, groundwater, surface water, sediments, and air. The proposal will provide the framework for the RI Work Plan and will include at a minimum, a summary of data collected to date, a conceptual site model (including a conceptual site hydrogeologic model), a description

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of RI goals and objectives and an estimated schedule for completion of the RI. The RI proposal shall consider methodologies presented in the Portland Harbor Sediment Management Plan and the Draft Portland Harbor Sediment Remedial Investigation/Feasibility Study Work Plan, dated March 31, 2000, or any subsequent Sediment Investigation work plan that may be developed.

**V. REMEDIAL INVESTIGATION WORK PLAN AND IMPLEMENTATION**

The work plan shall be developed in accordance with applicable Oregon Administrative Rules (OAR 340-122-010 through -115), DEQ guidance, and the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01, 1988, as appropriate. Existing data may be used if it meets data quality objectives for the RI. The results of the RI shall be utilized to guide data collection efforts performed as part of the Portland Harbor RI/FS. The need for the RI Work Plan shall be evaluated based on the results of the pre-RI Assessment. No further work shall be required under this Agreement and SOW if, based on historical information and the results of facility investigation, DEQ reasonably determines that there is no likely present source and pathway for the release of hazardous substances to surface water or sediments at or from RESPONDENTS' facility for which DEQ could require a removal action or remedial investigation under ORS 465.200 et seq. Further, should the facility investigation provide enough information to re-evaluate the priority of the facility, RESPONDENTS may request that DEQ perform this evaluation. Should it be determined by DEQ that the facility no longer presents a high priority threat to present and future public health, safety, and welfare or the environment, no further RI work with respect to the uplands portions of the facility shall be required under this Agreement and SOW. The submitted work plan shall include, but not be limited to, the following items:

**A. PROJECT MANAGEMENT PLAN**

The RI Work Plan shall include a proposed schedule for submittals and implementation of all proposed activities and phases pertaining to this scope of work (this schedule will include target dates for the submittal of a Risk Assessment work plan, and submittal of draft and final Remedial Investigation, and Risk Assessment reports); a description of the personnel (including subcontractors, if known) involved in the project, and their respective roles in the project; and a discussion of how variations from the approved work plan will be managed.

**B. SITE DESCRIPTION**

The RI work plan shall include a discussion of the current understanding of the physical setting of the facility and surrounding area; the facility history; hazardous substance and waste management history; facility operations conducted on, in, over or adjacent to the Willamette River and current facility conditions.

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C. **SITE CHARACTERIZATION PLAN**

The Site Characterization plan shall be consistent with DEQ guidance and the requirements specified in OAR 340-122-080. The site characterization plan shall include, but not be limited to, characterization of the hazardous substances, characterization of the facility, identification of potential receptors and the collection and evaluation of information relevant to the identification of hot spots of contamination, and shall address the following:

1. **Soils**

**Objective:** To identify and characterize releases of hazardous substances from the facility to soils.

**Scope:** The plan shall supplement previous soil sampling at the facility. The plan shall address all areas of the facility which could potentially have received spills, leaks from tanks or piping, been used for waste treatment or disposal, or have been affected by contaminated surface water or storm water runoff, and all other areas of the facility where soil contamination is known or suspected.

**Procedures:** The plan shall be designed and conducted to determine the vertical and lateral extent of soil contamination, determine the extent to which soil contamination may contribute to Willamette River sediment contamination, characterize the facility geology, determine the physical and chemical soil characteristics relevant to the RI, evaluate the potential for contaminant migration and gather the information necessary to identify hot spots of contamination. The plan shall include the proposed methodology for characterizing soil.

2. **Groundwater**

**Objective:** To identify and characterize releases of hazardous substances from the facility to groundwater.

**Scope:** The plan shall supplement previous investigations at the facility and shall identify and characterize all past, current and potential releases of hazardous substances to groundwater from the facility.

**Procedures:** The plan shall be designed and conducted to determine the vertical and lateral extent of groundwater contamination, both on and, if applicable, off-site where sources of the offsite groundwater contamination are located onsite at the facility; estimate the rate of contaminant flux to the Willamette River; determine the extent to which free phase product is migrating to the Willamette River; characterize the facility hydrogeology, determine the physical and chemical water bearing zone characteristics relevant to the RI; evaluate the potential for



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contaminant migration through groundwater; and gather the information necessary to identify hot spots of contamination. The plan shall include the proposed methodology for characterizing groundwater. Alternative methods for characterizing groundwater should be considered to accelerate the RI. Monitoring wells and other holes must be drilled, constructed and decommissioned in accordance with OAR Chapter 690, Division 240 and DEQ "Ground Water Monitoring Well, Drilling, Construction and Decommissioning" guidelines (DEQ 1992).

3. Surface Water

Objective: To identify and characterize releases of hazardous substances from the facility to surface waters.

Scope: The plan shall supplement previous investigations at the facility and shall identify and characterize all past, current, and potential impacts to surface waters from the facility.

Procedures: The plan shall be designed to determine the extent to which surface water may have been impacted by releases of hazardous substances from sources located on the facility; determine the nature and extent of surface water contamination for surface water bodies located on the facility and not including the Willamette River; characterize the facility hydrology; determine the physical and chemical surface water characteristics relevant to the RI including flow characteristics; evaluate the potential for contaminant migration and gather the information necessary to identify hot spots of contamination. The plan shall include the proposed methodology for characterizing surface water.

4. Sediments

Objective: To identify and characterize releases of hazardous substances from the facility to sediments.

Scope: The plan shall supplement previous investigations at the facility, shall identify and characterize all past, current, and potential releases of hazardous substances to sediments from the facility in a manner consistent with the Portland Harbor Sediment RI/FS. Characterization of the nature and extent of sediment contamination shall not be subject to this Agreement, but is contemplated to be completed through the Portland Harbor Sediment RI/FS.

Procedures: The plan shall be designed to identify sources of sediment contamination from the facility, and characterize release mechanisms from the facility to sediments. The plan shall consider the proposed methodology for characterizing releases to sediments and, as applicable, shall consider but need not utilize methodologies presented in the Portland Harbor Sediment Management Plan and the draft Portland Harbor Sediment Remedial Investigation/Feasibility Study Work Plan, dated March 31, 2000,

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or any subsequent sediments investigation plan that may be developed.

5. Air

Objective: To identify and characterize any unpermitted release of hazardous substances to the air, from soil, surface water, or groundwater contamination at the facility.

Scope: The plan shall supplement previous investigations at the facility and shall identify and characterize all past, current and potential releases (e.g. contaminated soil or groundwater) of hazardous substances to air.

Procedures: The plan shall include the proposed methodology for evaluating air emissions using appropriate emission calculations and/or a field sampling program. The plan shall be designed to delineate the nature and extent of contamination, characterize the site climatology, determine the physical and chemical air characteristics relevant to the RI, evaluate the potential for contaminant migration to the Willamette River and surrounding areas and gather the information necessary to identify hot spots of contamination.

6. Identification of Current and Reasonably Likely Future Land and Water Use

Objective: To identify current and reasonably likely future land and water uses in the locality of the facility not including those of the Willamette River.

Scope: The plan shall be designed to identify current and reasonably likely future land and water uses for the purposes of identifying hot spots of contamination and conducting the baseline human health and ecological risk assessments based on OAR 340-122-080, DEQ Guidance, and the Portland Harbor Sediment Management Plan.

Procedures: The plan shall include the proposed methodology for identifying current and reasonably likely future land and water uses in the locality of the facility.

D. SAMPLING AND ANALYSIS PLAN (SAP)

Objective: To adequately document all sampling and analysis procedures.

Scope: In preparation of the SAP, the following guidance documents shall be utilized: Data Quality Objectives for Remedial Response Activities, EPA/540/G-87/004 (OSWER Directive 9355.0-7B), March, 1987; Test Methods for Evaluating Solid Waste, SW-846; and A Compendium of Superfund Field Operations Methods, EPA/540/P-87/001 (OSWER Directive 9355.0-14), December, 1987. The SAP shall

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address all topics listed in Environmental Cleanup Division Policy #760.000, Quality Assurance Policy.

Procedures: The work plan shall include a sampling and analysis plan (SAP). The SAP shall include quality assurance and quality control (QA/QC) procedures for both field and lab procedures. The SAP shall be sufficiently detailed to function as a manual for field staff.

**E. HEALTH AND SAFETY PLAN (HASP)**

Objective: To establish policies and procedures to protect workers and the public from the potential hazards posed by a hazardous materials site.

Scope: The HASP portion of the work plan shall comply with 29 CFR 1910.120 and OAR Chapter 437, Division 2.

Procedures: The HASP shall include a description of risks related to RI activities, protective clothing and equipment, training, monitoring procedures, decontamination procedures and emergency response actions.

**F. MAPS**

The work plan shall include a map or maps of the facility, which clearly shows facility topography, on-site structures, waste disposal areas and proposed sampling locations.

**VI. EVALUATION AND IMPLEMENTATION OF SOURCE CONTROL MEASURES**

Objective: To implement necessary source control measures to address contaminant migration to the Willamette River, from sources located on the facility, that warrants removal action under OAR 340-122-070.

Scope: The plan shall gather sufficient information to evaluate, design and implement necessary source control measures.

Procedures: The plan shall be designed and conducted to characterize all release mechanisms to the Willamette River from sources located on the facility. To the extent sources are solely located offsite of the facility, RESPONDENTS shall not be required to evaluate the source, or design, or implement any measures to control the release. Characterization data shall be adequate to evaluate, design and implement necessary source control measures. Source control measures shall address contaminant migration to the river through overland transport, storm water runoff, free phase product migration, direct release, and/or dissolved groundwater contaminant migration that warrant removal action under OAR 340-122-070, from sources located on the facility.

Termination: RESPONDENTS' obligations with respect to any source control measures implemented under this SOW shall terminate upon implementation of a remedy that effectively serves to control that source, or the entry of a

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consent decree, unilateral order, or other order that requires remedial action with respect to the facility and that effectively serves to control that source.

**VII. RISK ASSESSMENT WORK PLAN**

**A. UPLAND HUMAN HEALTH RISK ASSESSMENT PLAN**

Objective: To evaluate the collective demographic, geographic, physical, chemical, and biological factors at the facility, for the purposes of characterizing current or reasonably likely future risks to human health as a result of a threatened or actual release(s) of a hazardous substance at or from the facility; documenting the magnitude of the potential risk at the facility; supporting risk management decisions; and establishing remedial action goals if necessary.

Scope: The human health risk assessment shall evaluate risk in the context of current and reasonably likely future land and water uses and in the absence of any actions to control or mitigate these risks (i.e., under an assumption of no action). The human health risk assessment portion of the work plan shall be developed based on the requirements specified in OAR 340-122-084; Guidance for Use of Probabilistic Analysis in Human Health Risk Assessments, Oregon Department of Environmental Quality, January 1998; Guidance for Conduct of Deterministic Human Health Risk Assessments, Oregon Department of Environmental Quality, December 1998; the Risk Assessment Guidance for Superfund - Human Health Evaluation Manual Part A, United States Environmental Protection Agency (EPA) Interim Final, July 1989 (RAGS-HHEM); and other applicable guidance available at the time of the risk assessment. A suggested outline for the human health evaluation is given in Exhibit 9-1 of the RAGS-HHEM. The work plan should use this outline as a framework for discussing the methodologies and assumptions to be used in assessing the potential human health risks at the facility.

Procedure: The plan shall describe the different tasks involved in preparing the human health risk assessment. The human health risk assessment can be completed using either deterministic or probabilistic methodologies. If probabilistic methodologies are to be used, then RESPONDENTS shall discuss risk protocol with DEQ before the commencement of a probabilistic risk assessment.

The upland human health risk assessment shall be designed to achieve the following:

1. Develop appropriate exposure units considering the nature, extent, and distribution of contamination and the reasonably likely future land and water use in the locality of the facility;
2. Establish data quality objectives for each exposure unit identified;

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3. Collect data appropriate to satisfy the data quality objectives for each exposure unit;
4. Identify contaminants of interest for each media of concern;
5. Develop exposure scenarios based on current and reasonably likely land use, facility features and populations potentially exposed;
6. Identify appropriate exposure factors for all exposure pathways to be evaluated;
7. Identify the appropriate toxicity factors for all exposure pathways to be evaluated; and
8. Quantify the risks to human health at the facility.

**B. UPLAND ECOLOGICAL RISK ASSESSMENT PLAN**

Objective: To evaluate the collective demographic, geographic, physical, chemical, and biological factors at the facility, for the purposes of characterizing current or reasonably likely future risks to the environment as a result of a threatened or actual release(s) of a hazardous substance at or from the facility; quantifying the potential risk at a facility; supporting risk management decisions; and establishing remedial action goals if necessary.

Scope: The ecological risk assessment shall evaluate risk in the context of current and reasonably likely future land and water uses and in the absence of any actions to control or mitigate these risks (i.e., under an assumption of no action). The ecological risk assessment will use a tiered approach (with four levels) to produce a focused and cost-effective assessment of risk. The ecological risk assessment work plan shall be developed based on the requirements specified in rule under OAR 340-122-084; Guidance for Ecological Risk Assessment: Levels I, II, III, IV, Oregon Department of Environmental Quality, April 1998 (as amended through March 2000); and other applicable guidance available at the time of the risk assessment.

Procedure: The plan shall describe the different tasks involved in preparing the ecological risk assessment. Ecological risk assessments may include a level I scoping plan; a level II screening plan; a level III baseline plan; and a level IV field baseline plan. The level III and level IV baseline plans shall include an exposure analysis, an ecological response analysis, a risk characterization and an uncertainty analysis as required by OAR 340-122-084(3). The ecological risk assessment can be completed using either deterministic or probabilistic methodologies. If probabilistic methodologies are to be used, then RESPONDENTS shall discuss risk protocol with DEQ before the commencement of a probabilistic risk assessment. Terrestrial habitats and receptors shall be evaluated through the following approach:

1. Complete a Level I Scoping assessment per ODEQ guidance for the terrestrial portion of the facility.

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2. Make a preliminary determination of locality of the facility with respect to terrestrial receptors and current and potential future exposure to facility-related contaminants.
3. Determine potential for presence/absence of terrestrial threatened or endangered species.

**VIII. REPORTS**

**A. QUARTERLY REPORTS**

Two (2) copies of the Quarterly Reports shall be submitted to DEQ by the 15th day of the quarter following the reporting period. The quarterly reports shall summarize activities performed, data results collected or received and problems encountered or resolved during the previous quarter and activities planned for the upcoming quarter.

**B. REMEDIAL INVESTIGATION REPORT**

The Remedial Investigation report shall follow the outline in Table 3-13 (page 3-30 - 3-31) in the CERCLA RI/FS guidance, as applicable, and address the items listed below:

1. Executive Summary.
2. Introduction.
3. Facility Background.

A discussion and supporting maps of facility operations, facility description, facility setting, and current and reasonably likely future land and water uses.

4. Study Area Investigation.

A discussion of the investigative procedures and results for soil, groundwater, surface water, sediments and air.

5. Summary and Conclusions.

A discussion of the nature, extent, distribution and environmental fate and transport of contaminants in soil, groundwater, surface water, sediments and air.

6. Appendices.

Detailed information supporting the results of the Remedial Investigation shall be submitted in the Appendices of the report.

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C. RISK ASSESSMENT REPORT

1. Human Health Risk Assessment Report

The results of the human health risk assessment should follow DEQ risk assessment guidance for human health and RAGS-HHEM Part A.

2. Ecological Risk Assessment Report

The main sections of the ecological risk assessment report should follow specific DEQ guidance for report formats at each level (I-III).

D. REPORT DISTRIBUTION.

1. Three (3) bound copies and one (1) unbound copy of all reports should be submitted to DEQ.
2. DEQ requests that all copies be duplex printed on recycled paper.

## Staff Report

# **CONSIDERATION OF RESOLUTION NO. 00-2992 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A VOLUNTARY AGREEMENT FOR REMEDIAL INVESTIGATION AND SOURCE CONTROL MEASURES AND SCOPE OF WORK BETWEEN DEQ, METRO, AND THE PORT OF PORTLAND FOR THE WILLAMETTE COVE PROPERTY**

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Date: September 21, 2000

Presented by: Jim Desmond  
Alison Kean Campbell

## **PROPOSED ACTION**

Resolution No. 00-2992 requests authorization for the Executive Officer to execute a Voluntary Agreement for Remedial Investigation and Source Control Measures and Scope of Work (the "DEQ-Metro-Port Agreement") regarding the Willamette Cove property ("the Property"), with the Oregon Department of Environmental Quality ("DEQ") and the Port of Portland (the "Port"). The Agreement requires Metro and the Port to perform a remedial investigation on mainly the uplands portion of the Willamette Cove property; and to develop and implement source control measures for any unpermitted discharge or migration of contaminants to the Willamette River or sediments identified in the remedial investigation.

## **EXISTING LAW**

Metro Code 2.04.026 (a) (1) and (2) requires that the Executive Officer obtain the authorization of the Metro Council prior to entering into certain agreements pursuant to ORS Chapter 190.

Metro Code 2.08.030(a) provides the Office of General Counsel with general control and supervision of all legal proceedings in which Metro may be interested. Pursuant to Metro Code 2.08.040 (a), the general counsel prepares documents concerning any matter in which Metro is interested, and reviews and approves all legally binding instruments. Metro Code 2.08.070 provides that the general counsel may employ outside legal counsel on behalf of Metro to handle such matters as the general counsel deems advisable.

In June, 2000, the Metro Council passed Resolution No. 00-2949 which authorized Metro's Executive Officer to execute an Allocation, Joint Cooperation and Defense Agreement with the Port ("Metro-Port Agreement"), in which Metro and the Port agreed to coordinate common defense activities for the Willamette Cove property such as the exchange of historical site information, retention of an environmental consultant, negotiation of the scope of site work on the Property with DEQ or EPA, performance of the site work and other activities, and to allocate the cost of performing those activities. It was contemplated in the Metro-Port Agreement that Metro and the Port would jointly negotiate with DEQ and/or EPA regarding remediation investigations and site work on the property.

## **BACKGROUND AND ANALYSIS**

On February 28, 1996, Metro purchased from The Trust for Public Land, a 27-acre property in the Willamette River Greenway Target Area known as the Willamette Cove property (the



"Property") with funds from the Open Spaces Parks and Streams bond measure. The Port of Portland ("the Port") is a former owner and operator of portions of the Property.

In 1997 the Oregon Department of Environmental Quality ("DEQ") and the U.S. Environmental Protection Agency ("EPA") conducted a study of a portion of the Willamette River known as the Portland Harbor, and discovered elevated levels of hazardous substances in sediments throughout the Portland Harbor. DEQ issued notices to property owners along the Portland Harbor, including Metro and the Port, requesting that Metro and the Port execute a Voluntary Agreement for Remedial Investigation and Source Control Measures for the Willamette Cove property. DEQ's notice stated that if Metro and the Port did not enter the voluntary program, that DEQ would begin preparation of a unilateral order.

In April 2000 the EPA indicated that it would list the Portland Harbor stretch of the Willamette River as a federal Superfund site. The division of responsibilities between DEQ and EPA, while not yet final as of today's date, is proposed as follows: DEQ shall be responsible for uplands site investigation and remediation, and EPA shall be responsible for sediment investigation and remediation (with possible DEQ involvement or "state lead").

Both Metro and the Port have engaged outside legal counsel to assist in issues related to the Willamette Cove property and to respond to DEQ. In June 2000, Metro and the Port entered into an Allocation, Joint Cooperation and Defense Agreement, pursuant to Metro Council Resolution No. 00-2949, regarding the entire Willamette Cove site. Since that time, Metro and the Port have been jointly negotiating with DEQ regarding the Site Work to be conducted on the uplands portion of the Willamette Cove property.

The proposed Voluntary Agreement for Remedial Investigation and Source Control Measures and Scope of Work ("DEQ-Metro-Port Agreement") requires Metro and the Port to perform:

1. a remedial investigation on the uplands portion of the Willamette Cove property as set forth therein, satisfying applicable laws and regulations;
2. the Scope of Work (Exhibit B to the DEQ-Metro-Port Agreement);
3. the terms and schedule of a DEQ-approved work plan which will be developed by Metro and the Port (and their environmental consultant), after final execution on the initial Metro-Port-DEQ Agreement.

In addition, the proposed DEQ-Metro-Port Agreement requires Metro and the Port to evaluate discharge and migration of any unpermitted discharge of contaminants identified in the remedial investigation, not including the characterization of contaminants known to have originated solely from an offsite source. Metro and the Port shall also identify sources and pathways of contaminants from the Willamette Cove property to the Willamette River or sediments. For any discharge or migration that has its source on or within the Willamette Cove property, Metro and the Port shall develop and implement source control measures in accordance with applicable laws and regulations and the Scope of Work. The DEQ-Metro-Port Agreement provides for a dispute resolution process as set forth therein, and provides that Metro and the Port retain their rights of contribution or indemnification against any person, including the State of Oregon (in that case for costs attributable to the McCormick & Baxter site). In addition, the agreement provides that DEQ reserves all other rights relating to the Willamette Cove property, and Metro and the Port reserve all defenses they might have.

The Scope of Work attached to the Voluntary Agreement for Remedial Investigation and Source Control Measures sets forth the timeframes for completion of documents, reports, and actions, such as the draft and final remedial investigation work plan, the initiation of the remedial investigation, the remedial investigation report, and the initiation of source control measures. The Scope of Work also further defines the project objectives; the site characterization plan in terms of soil, groundwater, surface water, and some sediment characterization; and the evaluation and implementation of source control measures. The work plan will be developed by Metro, the Port, and DEQ after execution of the DEQ-Metro-Port Agreement.

At this time DEQ is requesting an agreement only regarding the uplands investigation of the Property, and therefore the DEQ-Metro-Port Agreement presently before the Council pertains only to the uplands (with some minor related sediments characterization). It is anticipated that EPA will require a separate Portland Harbor Sediment Remedial Investigation and Feasibility Study regarding the sediments associated with the Willamette Cove property. The EPA has not yet begun the harbor-wide sediment investigation process with respect to landowners and other potentially responsible parties.

## **FINDINGS**

Authorizing the Executive Officer to execute the Voluntary Agreement for Remedial investigation and Source Control Measures and Scope of Work, between DEQ, Metro, and the Port, is recommended based on the following:

- The Property is an important regional natural area and the ability to provide safe, future public access to the site as a public open space is a Metro objective.
- As potentially responsible parties for the site, Metro and the Port have shared common interests and responsibilities in conducting the site work, and complying with directives from DEQ and EPA regarding the site.
- By entering into and fulfilling the DEQ-Metro-Port Agreement, DEQ will not bring an enforcement action regarding the site.
- The DEQ-Metro-Port Agreement will fulfill objectives related to the protection of the ecological integrity of the Property and the health and safety of the public.

## **BUDGET IMPACT**

Metro and the Port have allocated costs for conducting the activities set forth in the Voluntary Agreement for Remedial Investigation and Source Control Measures, including but not limited to environmental consultant's investigatory and other fees, lab fees, source control fees, reimbursement of DEQ oversight costs, etc., as negotiated in the Metro-Port Allocation, Joint Cooperation, and Defense Agreement. By the existing partnership with the Port regarding the Willamette Cove Property, the budget impact related to costs associated with carrying out the DEQ/EPA-required activities on the Property will be greatly reduced.

## **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 00-2992.