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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

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

Plaintiff,

v.

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON,

Defendant.

No.
CONSENT JUDGMENT
("General Judgment")

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1 1. Purpose

2 This Consent Judgment (“**Consent Judgment**”) is filed simultaneously with and for
3 the purpose of resolving the underlying complaint by the State of Oregon. Plaintiff State of
4 Oregon ex rel the Director of the Oregon Department of Environmental Quality (“**DEQ**”)
5 and the Tri-county Metropolitan Transportation District of Oregon (“**TriMet**”) desire to
6 resolve this action without litigation and have agreed to entry of the Consent Judgment
7 without admission or adjudication of any issue of fact or law.

8 The mutual objective of DEQ and TriMet (individually a “**Party**” and collectively
9 “**the Parties**”) is to protect public health, safety and welfare and the environment by entry
10 into an agreement under ORS 465.327 to release TriMet from potential liability to the state to
11 facilitate cleanup and reuse of property in accordance with ORS 465.327 and to provide
12 TriMet protection from potential liability to or from third parties in accordance with
13 applicable law including ORS 465.325(6)(b) and 465.325(8)(e). ORS 465.327(3),
14 465.325(6)(b) and 465.325(8)(e) expressly provide that such agreements may be set forth in a
15 judicial consent judgment entered in accordance with ORS 465.325.

16 2. Stipulations

17 A. TriMet stipulates:

- 18 (1) To entry of this Consent Judgment;
- 19 (2) To perform and comply with all provisions of this Consent Judgment;
- 20 (3) In any proceeding brought by DEQ to enforce this Consent Judgment,
21 not to litigate this Court’s jurisdiction over this matter or the validity of the Consent
22 Judgment; and
- 23 (4) To waive any right TriMet might have under ORS 465.260(7) or
24 465.325(2) to seek reimbursement or financial assistance for the costs incurred under this
25 Consent Judgment or related to the Property as defined herein.

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1 B. DEQ and TriMet stipulate:

2 (1) TriMet is a mass transit district organized under the laws of the State
3 of Oregon.

4 (2) ZRZ Realty Company (“**ZRZ**”) is the owner of the real property
5 shown on **Attachment A** (the “**ZRZ Property**”). Oregon Health and Science University
6 (“**OHSU**”) is the owner of the real property shown on **Attachment B** (the “**OHSU**
7 **Property**”). The State of Oregon is the owner of the certain submerged and submersible
8 lands of the Willamette River, which lands are administered by the Oregon Department of
9 State Lands (“**DSL**”).

10 (3) TriMet is undertaking the construction of a public light rail line
11 connecting Portland and Milwaukie, Oregon (the “**Project**”). This Project will include a
12 bridge over the Willamette River for light rail, streetcar, pedestrian, and bicycle travel. For
13 the Project, TriMet will acquire a portion of the ZRZ Property and the OHSU Property for a
14 bridge ramp and transit station on the west side of the Willamette River. It will acquire
15 temporary construction easements from OHSU and ZRZ over a portion of the OHSU
16 Property and the ZRZ Property for use during the construction of the bridge and a permanent
17 aerial easement from ZRZ over a portion of the ZRZ Property along the bank of the
18 Willamette River where the bridge will be overhead. TriMet is negotiating with DSL to
19 acquire temporary construction easement(s) to build the bridge in and over the Willamette
20 River (the “**DSL Temporary Construction Easement(s)**”) and an easement to operate the
21 permanent bridge (the “**DSL Bridge Easement**”) (collectively, the “**DSL Easement**”).
22 Attachment D shows generally the location of the DSL Easement (the “**DSL Easement**
23 **Area**”); the final boundaries of the DSL Easement Area remain subject to negotiation with
24 DSL.

25 (4) The ZRZ Property historically has been used for ship construction and
26 dismantling. Hazardous substances have been detected in the soil and groundwater at the

1 ZRZ Property and in sediment in the Willamette River adjacent to the ZRZ Property as a
2 result of historic releases. The ZRZ Property is part of the site identified by DEQ as the
3 Zidell Waterfront Property, ECSI Site ID 689 (the “**ZRZ Site**”). DEQ’s Northwest Region
4 Administrator selected the remedial action for the ZRZ Site set forth in the Record of
5 Decision dated June 30, 2005 (the “**ZRZ ROD**”), which is incorporated herein by this
6 reference.

7 (5) The ZRZ ROD requires the following:

- 8 • Interim source control measures to prevent releases of hazardous substances to the
9 Willamette River from upland and bank soils through stormwater runoff;
- 10 • Excavation, screening, and off-site disposal of up to 8,000 cubic yards of
11 contaminated soil exceeding hot spot concentrations;
- 12 • Removal and off-site disposal of certain asbestos containing material encountered
13 during excavation and regrading;
- 14 • On-site consolidation of soil exceeding cleanup levels from greenway area or future
15 public right-of-ways to non-greenway area of the ZRZ Site prior to capping;
- 16 • Re-grading the greenway shoreline to facilitate placement of a soil cap (or equivalent)
17 above existing armor (approximate elevation 13 feet), and utilizing the existing
18 armoring of the riverbank from approximately 3 to 13 feet in elevation. Additional
19 armoring will be installed in the bank areas where existing armoring is discontinuous
20 or of questionable structural integrity;
- 21 • Engineering controls involving placement of a cap over residual soil contamination
22 exceeding risk-based concentrations;
- 23 • Institutional controls involving inspection and maintenance of the upland cap and
24 protocols for future sub-surface maintenance activities.
- 25 • Engineering controls to include placement of a clean sand/rock cap (or equivalent)
26 over up to 17 acres of contaminated sediment along the Site shoreline;
- Institutional controls involving inspection and maintenance of the sediment cap;
- Periodic reviews by DEQ;
- Selective sediment dredging/capping of the barge launchway to facilitate continued
Site operations; and

1 (6) ZRZ and other named defendants (collectively “**ZRZ Defendants**”)
2 and DEQ are parties to the General Judgment on Stipulation and Consent entered by this
3 Court on September 12, 2006 in Case No. 0609-09344 (the “**ZRZ Consent Judgment**”)
4 pursuant to which the ZRZ Defendants agreed to implement the ZRZ ROD subject to the
5 terms and conditions set forth in the ZRZ Consent Judgment.

6 (7) The OHSU Property historically has been used for ship construction
7 and dismantling and scrap metal recovery. Hazardous substances have been detected in the
8 soil and groundwater at the OHSU Property as a result of historic releases. The OHSU
9 Property is part of the site identified by DEQ as OHSU – Moody Ave. Units A, B, and C,
10 ECSI Site ID 875 (the “**OHSU Site**”). The OHSU Site is divided into three operable units:
11 Units A, B and C. DEQ’s Northwest Region Administrator determined that no further action
12 is necessary with respect to Unit B by letter dated February 22, 1991 (the “**Unit B NFA**
13 **Determination**”). On September 20, 1993, DEQ’s Northwest Region Administrator selected
14 the remedial action for Unit C of the OHSU Site set forth in the Record of Decision for
15 Schnitzer Investment Corporation Moody Avenue Site Unit C (the “**Unit C ROD**”), which is
16 incorporated herein by this reference. DEQ’s Northwest Region Administrator selected the
17 remedial action for Unit A of the OHSU Site set forth in the Record of Decision dated April
18 1995 (the “**Unit A ROD**”), which is incorporated herein by this reference. The Unit B NFA
19 Determination, the Unit C ROD and the Unit A ROD are referred to collectively as the
20 OHSU ROD.

21 (8) The Unit C ROD requires the following:

- 22 • Phase 1 remedial action consisting of excavation and offsite disposal of soil
23 containing hot spot concentrations of hazardous substances. This Phase 1 remedial
24 action has been completed.
- 24 • Phase 2 remedial action consisting of
 - 25 ○ Containment in place of residual contamination above background levels with
26 a cap consisting of either development features (such as buildings, roadways,
 sidewalks, or other concrete and asphalt features) or clean soil;

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- Institutional controls, including use restrictions, public education, worker safety protocols, and monitoring and maintenance of the cap; and
- Semiannual groundwater monitoring for five years, after which, if groundwater quality has not been degraded, additional monitoring will not be conducted. This groundwater monitoring has been completed and DEQ has determined that no further action is necessary with respect to groundwater at Unit C.

(9) The Unit A ROD requires the following:

- Phase 1 remedial action consisting of excavation and offsite disposal of soil and debris containing hot spot concentrations of hazardous substances. This Phase 1 remedial action has been completed.
- Phase 2 remedial action consisting of:
 - Monitoring and/or management of potential H₂S gas in the subsurface;
 - Capping of residual contamination above background levels;
 - Surface controls and grading for storm water runoff diversion and collection and site improvements;
 - Institutional controls, including use restrictions, public education, worker safety protocols, and monitoring and maintenance of the cap; and
 - Five years of quarterly groundwater monitoring, and evaluation of groundwater data to determine whether monitoring or other remedial measures are necessary after the five-year period. This groundwater monitoring has been completed and DEQ has determined that no further action is necessary with respect to groundwater at Unit A.

(10) Schnitzer Investment Corp. (“SIC”) is a former owner of the OHSU Site. DEQ and SIC are the original parties to the Stipulation and Consent Decree entered by this Court on August 8, 1995 in Case No. 9508-05494 (the “SIC Consent Decree”) pursuant to which the SIC agreed to implement the Unit C ROD subject to the terms and conditions set forth in the SIC Consent Decree. On June 30, 2004, SIC transferred its interests in the OHSU Site to Oregon Health and Science Foundation, which in turn transferred the same on June 30, 2004 to OHSU, and OHSU has assumed SIC’s obligations under the SIC Consent Decree with DEQ’s approval by and consistent with, a letter dated June 28, 2004 from DEQ to OHSU and SIC.

1 (11) The subject property (the “**Property**”) consists of: (a) the portion of
2 ZRZ Property shown on **Attachment C** for which TriMet will acquire fee title (the “**ZRZ**
3 **Fee Parcel**”); (b) a temporary construction easement to the portion of ZRZ Property shown
4 on **Attachment C** (the “**ZRZ Temporary Construction Easement**”); (c) a permanent aerial
5 easement to the portion the ZRZ Property shown on **Attachment C** (the “**ZRZ Aerial**
6 **Easement**”), which is also included in the ZRZ Temporary Construction Easement area; (d)
7 the portion of OHSU Property shown on **Attachment C** for which TriMet will acquire fee
8 title (the “**OHSU Fee Parcel**”); (e) a temporary construction easement to the portion of the
9 OHSU Property shown on **Attachment C** (the “**OHSU Temporary Construction**
10 **Easement**”); (f) the DSL Easement Area. The subject facility (the “**Facility**”) consists of the
11 Property, the ZRZ Site and the OHSU Site.

12 (12) TriMet will construct a transit station and bridge ramp on the ZRZ Fee
13 Parcel and the OHSU Fee Parcel. Construction activities will include: excavation for
14 foundations; excavation or drilling for soil stabilization; grading; construction of retaining
15 walls, the western bridge abutment and a bridge tower; filling of the bridge ramp area to
16 reach finished grade; compaction; paving; construction of a transit station; landscaping; and
17 other construction activities. The final improvements will be constructed to satisfy the
18 capping requirements under both the Unit C ROD and the ZRZ ROD. A portion of the soil
19 to be excavated from the ZRZ Site will be used as fill and contained within the lower portion
20 of the bridge ramp (referred to as the “**Bridge Containment Cell**”).

21 (13) TriMet will use the ZRZ Temporary Construction Easement and the
22 OHSU Temporary Construction Easement for: storing construction materials and equipment;
23 fabrication of bridge components; temporary construction offices and parking; and other
24 construction related activities. TriMet will install and maintain a temporary surface cap
25 consisting of clean fill, gravel and/or pavement to satisfy the capping requirements of the
26 Unit C ROD and ZRZ ROD during the period of construction.

1 (14) The portion of the ZRZ Property subject to the ZRZ Aerial Easement
2 is also part of the ZRZ Temporary Construction Easement area. Upon completion of
3 construction and termination of the ZRZ Temporary Construction Easement, TriMet will use
4 the ZRZ Aerial Easement for access to the completed bridge for maintenance and repairs.
5 The ZRZ Aerial Easement will give TriMet the right to occupy the air space above the
6 affected portion of the ZRZ Property. TriMet does not expect to engage in any ground
7 disturbing activities in the ZRZ Aerial Easement area once the Project is constructed.

8 (15) TriMet will construct permanent bridge towers in the Area. TriMet
9 also will construct and use temporary work bridges in constructing the permanent bridge
10 towers. Construction will be conducted in compliance with a Clean Water Act § 404 permit
11 issued by the U.S. Army Corps of Engineers and a Fill-Removal permit issued by DSL. The
12 § 404 permit will require a § 401 water quality certification issued by DEQ, which will
13 establish permit conditions for the protection of water quality during construction and with
14 respect to the permanent in-water structures.

15 (16) Pursuant to ORS 465.255(1)(b), TriMet potentially could become
16 liable to DEQ and other persons for releases of hazardous substances at or from the Facility
17 simply by becoming the owner of a portion of the OHSU Site or the ZRZ Site, or by
18 obtaining easements to portions of those sites or operating within those easement areas, with
19 actual or constructive knowledge of the releases. This Consent Judgment is entered for the
20 purpose of protecting TriMet from potential liability for releases of hazardous substances at
21 or from the Facility existing as of TriMet's acquisition of ownership or operation of the
22 Property as set forth in this Consent Judgment in return for TriMet undertaking certain
23 obligations, all as described herein. This Consent Judgment is entered into pursuant to the
24 authority set forth in ORS 465.325 and ORS 465.327.

25 (17) By application dated January 19, 2010, TriMet applied to DEQ for a
26 prospective purchaser agreement. On October 19, 2009, TriMet and DEQ entered into an

1 Intergovernmental Agreement (the “**IGA**”) pursuant to which TriMet agreed to reimburse
2 DEQ for certain costs, including the costs of technical review and agreement preparation in
3 connection with this PPA.

4 (18) In consideration of the resolution of TriMet’s potential liability herein,
5 pursuant to the Parties’ agreement, as set forth in this Consent Judgment, TriMet will comply
6 with engineering and institutional controls applicable to the Property that are required under
7 the OHSU ROD or the ZRZ ROD, and operate the Property consistent with these
8 requirements.

9 (19) Pursuant to ORS 465.327(1):

10 (a) TriMet is a “**person**” within the meaning of ORS 465.200(21);

11 (b) TriMet is not currently liable under ORS 465.255 for the
12 existing releases of hazardous substances at the Facility;

13 (c) Removal or remedial action is necessary at the OHSU Site and
14 the ZRZ Site to protect human health or the environment as described in the OHSU ROD and
15 ZRZ ROD respectively;

16 (d) Subject to the requirements set forth in this Consent Judgment,
17 TriMet’s construction, ownership and operation of the Project will not cause, contribute to or
18 exacerbate existing contamination, increase health risks or interfere with remedial measures
19 at the OHSU Site or ZRZ Site; and

20 (e) A substantial public benefit will result from TriMet’s
21 construction, ownership and operation of the Project, by which TriMet will provide public
22 mass transportation and help facilitate the productive reuse of a contaminated industrial
23 facility.

24 (20) TriMet contends that it will acquire all or a portion of the Property by
25 exercise of its eminent domain authority as described in ORS 465.255(3)(a)(B) and 42 USC
26 § 9601(35)(A)(ii).

1 (21) In determining to enter into this Consent Judgment, DEQ consulted
2 with the City of Portland and Multnomah County, and considered reasonably-anticipated
3 future land use at the Property and surrounding properties.

4 (22) On _____, 2010, DEQ published notice of this proposed Consent
5 Judgment and provided opportunity for public comment in accordance with
6 ORS 465.325(4)(d). This comment period ended _____, 2010 and *[summary statement*
7 *regarding response to public comments]*.

8 (23) DEQ and the ZRZ Defendants have executed an Amendment to
9 General Judgment on Stipulation and Consent to be filed with this Court in Case No. 0609-
10 09344 pursuant to which the ZRZ Fee Parcel will be removed from the property subject to
11 the ZRZ Consent Judgment. DEQ and OHSU have executed an Amendment to Stipulation
12 and Consent Decree to be filed with this Court in Case No. 9508-05494 pursuant to which
13 the OHSU Fee Parcel will be removed from the property subject to the SIC Consent Decree.

14 (24) The following transactions will be consummated in a single closing
15 following entry by this Court of this Consent Judgment: the grant of the ZRZ Fee Parcel,
16 ZRZ Temporary Construction Easement and ZRZ Aerial Easement by ZRZ to TriMet; and
17 the grant of the OHSU Fee Parcel and OHSU Temporary Construction Easement by OHSU
18 to TriMet.

19 (25) TriMet anticipates that it will enter the DSL Easement with DSL at a
20 later date.

21 Based on the above Stipulations, DEQ and TriMet agree to entry of the following
22 Consent Judgment:

23 CONSENT JUDGMENT

24 3. Effective Date

25 This Consent Judgment shall become effective on the date the transactions described
26 in Paragraph 1.B(24) are closed (the "**Effective Date**").

1 4. Obligations of TriMet

2 A. Agreement to Comply With Applicable Provisions of OHSU ROD and ZRZ
3 ROD.

4 In its construction and operation of the Project, TriMet agrees to comply with the
5 following applicable provisions of the OHSU ROD and ZRZ ROD:

6 (1) OHSU Fee Parcel and ZRZ Fee Parcel

7 (a) TriMet will construct the engineered cap over the entirety of
8 the OHSU Fee Parcel and ZRZ Fee Parcel consistent with the capping requirements of the
9 Unit C ROD and ZRZ ROD, as applicable. TriMet will construct the cap in accordance with
10 plans and specifications approved by DEQ. TriMet will not construct the cap over the ZRZ
11 Fee Parcel until after ZRZ completes removal of soil from that area as required by the ZRZ
12 Consent Judgment and DEQ has issued its final approval of the soil removal. TriMet shall
13 construct the Bridge Containment Cell on the OHSU and ZRZ Fee Parcels for containment of
14 certain soils to be excavated from the ZRZ Site according to plans and specifications
15 approved by DEQ.

16 (b) TriMet will monitor and maintain the engineered cap
17 (including the Bridge Containment Cell) within the OHSU Fee Parcel and the ZRZ Fee
18 Parcel in accordance with a cap monitoring and maintenance plan consistent with the Unit C
19 ROD and ZRZ ROD and approved by DEQ.

20 (c) With respect to any future excavation or other soil disturbing
21 activity within the OHSU Fee Parcel and the ZRZ Fee Parcel after completion of
22 construction of the engineered cap pursuant to Paragraph 4.A.1 above, TriMet will comply
23 with a soil management plan approved by DEQ.

24 (2) OHSU Temporary Construction Easement

25 (a) Within the OHSU Temporary Construction Easement area and
26 for the entire term of the OHSU Temporary Construction Easement, TriMet will maintain the

1 existing cap in accordance with a cap monitoring and maintenance plan consistent with the
2 OHSU ROD and approved by DEQ.

3 (b) Within the OHSU Temporary Construction Easement area and
4 for the entire term of the OHSU Temporary Construction Easement, any soil disturbing
5 activities (such as grading, excavation and drilling) conducted by TriMet will comply with a
6 soil management plan consistent with the OHSU ROD and approved by DEQ.

7 (3) ZRZ Temporary Construction Easement

8 (a) Within the ZRZ Temporary Construction Easement area
9 TriMet will construct an engineered cap consistent with the capping requirements of the ZRZ
10 ROD and according to plans and specifications approved by DEQ. For the entire term of the
11 ZRZ Temporary Construction Easement, TriMet will maintain the cap in accordance with a
12 cap monitoring and maintenance plan consistent with the ZRZ ROD and approved by DEQ.

13 (b) Within the ZRZ Temporary Construction Easement area and
14 for the entire term of the ZRZ Temporary Construction Easement, any soil disturbing
15 activities (such as grading, excavation and drilling) conducted by TriMet will comply with a
16 soil management plan consistent with the ZRZ ROD and approved by DEQ.

17 (4) DSL Easement

18 Within the DSL Easement Area, TriMet will construct, operate and
19 maintain its bridge and temporary construction bridges in accordance with the § 401
20 certification issued by DEQ, and any amendments thereto.

21 B. Limit of Obligations

22 Except as set forth in this Consent Judgment, TriMet will not be responsible for
23 implementing any other portions of the OHSU ROD or ZRZ ROD, including any
24 requirement of the OHSU ROD pertaining to excavation and offsite disposal of contaminated
25 soil or groundwater monitoring, or any requirement of the ZRZ ROD pertaining to
26 excavation and offsite disposal of contaminated soil or asbestos containing material, on-site

1 consolidation of soil exceeding cleanup levels from the greenway area or future public rights
2 of way, installation of armoring in bank areas or regarding of shoreline to facilitate
3 placement of a soil cap, capping the shoreline, placement of a cap over contaminated
4 sediment, inspection and maintenance of a sediment cap, groundwater monitoring, or any
5 other remedial action set forth in the ZRZ ROD with respect the shoreline, bed, bank or water
6 of the Willamette River or groundwater.

7 C. Site Restrictions.

8 (1) Within 30 days of entry of this Consent Judgment, TriMet will execute
9 and record with the county clerk of Multnomah County, an Easement and Equitable
10 Servitudes in the form attached to this Consent Judgment as **Attachment E**. TriMet will
11 return to DEQ the file-stamped original Easement and Equitable Servitudes within ten
12 working days of receipt from the county clerk.

13 (2) TriMet will comply with all terms and conditions of the Easement and
14 Equitable Servitudes.

15 (3) Property subject to the Easement and Equitable Servitudes may be
16 freely alienated at any time after recording; provided, the deed or other instrument of
17 conveyance from TriMet will refer to or incorporate by reference the Easement and Equitable
18 Servitudes. Any deed, title or other instrument of conveyance regarding the ZRZ Fee Parcel
19 or OHSU Fee Parcel will contain a notice that the property is the subject of this Consent
20 Judgment and the Easement and Equitable Servitudes. TriMet, in any such deed or
21 conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as
22 might be necessary to carry out TriMet's obligations under this Consent Judgment.

23 D. Ownership and Operation of the Project

24 (1) TriMet will operate the Project for the benefit of the public.

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1 (2) Any development, construction or other use of the Project will be
2 consistent with and will not interfere with investigative or remedial activities required by
3 DEQ at the OHSU Site and ZRZ Site.

4 5. General Provisions

5 A. DEQ Access

6 (1) TriMet grants an irrevocable right of entry to DEQ and its authorized
7 representatives to enter and move freely about the Property at all reasonable times for
8 purposes of overseeing implementation of this Consent Judgment, or conducting removal or
9 remedial measures DEQ deems necessary on the Property. If DEQ determines it is necessary
10 for DEQ to conduct such removal or remedial measures, DEQ will provide reasonable notice
11 to TriMet and, with respect to easement areas, the owner of the affected area, and will
12 coordinate any such actions with TriMet and the owner of the affected area, to cause the least
13 disturbance reasonably practicable to any activities taking place on the Property.

14 (2) TriMet shall allow DEQ to enter all portions of the Property under its
15 ownership or control at all reasonable times for the purposes, among others, of inspecting
16 records relating to TriMet's obligations under this Consent Judgment; observing TriMet's
17 progress in implementing the obligations required by this Consent Judgment; conducting
18 such tests and taking such samples as DEQ deems necessary; verifying data submitted to
19 DEQ by TriMet, if any; conducting periodic review; and, using camera, sound recording, or
20 other recording equipment. Upon TriMet's request, DEQ shall make available to TriMet a
21 split or duplicate of any sample taken in connection with this Consent Judgment and provide
22 TriMet with copies of all analytical data for such samples. DEQ shall also make available to
23 TriMet, upon TriMet's request, any photographs or recorded or videotaped material taken.
24 DEQ shall be responsible for the health and safety of its employees, contractors, and agents
25 entering or moving about the Property, and, to the extent required by Paragraph 5.M.(2) of
26 this Consent Judgment, shall indemnify and hold TriMet harmless from and against any and

1 all claims arising out of the acts or omissions of such employees, contractors and agents
2 when entering or moving about the Property.

3 (3) TriMet shall allow DEQ to inspect and copy all records, files,
4 photographs, documents and data relating to TriMet's obligations under this Consent
5 Judgment, except that TriMet shall not be required to permit DEQ inspection or copying of
6 items subject to the attorney-client privilege, attorney work product privilege, or any
7 applicable public records exemption.

8 (4) TriMet shall identify to DEQ (by addressor-addressee, date, general
9 subject matter and distribution) any document, record or item withheld from DEQ on the
10 basis of attorney-client privilege, attorney work product privilege, or public records
11 exemption, except to the extent that such identifying information is itself subject to a
12 privilege. DEQ reserves its rights under law to seek to obtain documents DEQ asserts are
13 improperly withheld by TriMet. Attorney-client privilege, attorney work product privilege,
14 and public records exemptions may not be asserted with respect to any records required
15 under Paragraph 5.E(1) of this Consent Judgment.

16 B. Project/Program Managers

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

19 DEQ Project Manager:
20 Scott Manzano
21 Oregon Department of Environmental
22 Quality
23 2020 SW Fourth Ave., Suite 400
24 Portland, OR 97201-4987
25 Email: Scott.MANZANO@state.or.us

TriMet Project Manager
Dave Tertadian
TriMet
710 NE Holladay St.
Portland, OR 97232
Ph: 503-962-8817
Email: TertadiD@trimet.org

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With a copy to:
Britney Colton
TriMet
710 NE Holladay St.
Portland, OR 97232
Ph: 503-962-2470
Email: ColtonB@trimet.org

1 (2) The Project/Program Managers, Environmental Specialists or their
2 respective designees shall be available and have the authority to make day-to-day decisions
3 necessary to comply with the obligations under this Consent Judgment.

4 C. Notice and Samples

5 (1) TriMet shall make every reasonable attempt to notify DEQ of any new
6 excavation, drilling or sampling for any removal or remedial action to be conducted by
7 TriMet under this Consent Judgment at least five working days before such activity but in no
8 event less than 24 hours before such activity, which notice may be in the form of a
9 construction schedule spanning an extended period. Upon DEQ's verbal request, TriMet
10 shall make available to DEQ a split or duplicate of any sample taken pursuant to this Consent
11 Judgment. DEQ shall provide TriMet with copies of all analytical data from such samples as
12 soon as practicable.

13 (2) In the event DEQ conducts any sampling or analysis in connection
14 with this Consent Judgment, DEQ shall make every reasonable attempt to notify TriMet of
15 any excavation, drilling or sampling at least five working days before such activity but in no
16 event less than 24 hours before such activity. Prior to conducting any sampling or analysis,
17 or conducting any other work, within 15 feet of the centerline of the light rail tracks, DEQ
18 shall request and obtain from TriMet's Maintenance of Way Department a MAX Right-of-
19 Way Access Permit, and attend a Track Access training class. DEQ personnel working
20 within 15 feet of the centerline of the tracks must carry a Track Access card, wear a red or
21 green fluorescent vest and otherwise comply with TriMet's safety procedures for track
22 access. Upon TriMet's verbal request, DEQ shall make available to TriMet a split or
23 duplicate of any sample taken in connection with this Consent Judgment and provide TriMet
24 with copies of all analytical data for such samples. TriMet shall provide DEQ with copies of
25 all analytical data from such samples as soon as practicable.

26

1 D. Quality Assurance

2 (1) TriMet shall conduct all sampling, sample transport and sample
3 analysis in accordance with the Quality Assurance/Quality Control (“QA/QC”) provisions
4 approved by EPA and DEQ for the Property. Subject to such provisions, all plans prepared
5 and removal or remedial action conducted under this Consent Judgment shall be consistent
6 with DEQ’s “**Environmental Cleanup Division Quality Assurance Policy No. 760.000**”
7 and TriMet shall make every reasonable effort to ensure that the laboratory used by TriMet
8 for analysis performs such analyses in accordance with that policy. TriMet shall also make
9 every reasonable effort to ensure that such laboratory analyzes all samples submitted by DEQ
10 for QA/QC monitoring in accordance with such provisions.

11 (2) In the event that DEQ conducts sampling or analysis in connection
12 with this Consent Judgment, DEQ shall conduct sampling, sample transport and sample
13 analysis in accordance with the QA/QC provisions of the approved work plan. Upon written
14 request, DEQ shall provide TriMet with DEQ records regarding such sampling, transport and
15 analysis.

16 E. Records

17 (1) In addition to those reports and documents specifically required under
18 this Consent Judgment, TriMet shall provide to DEQ, within 10 days of DEQ’s written
19 request, copies of QA/QC memoranda and audits, raw data, final plans, task memoranda,
20 field notes (not made by or at the direction of TriMet’s attorney) and laboratory analytical
21 reports relating to any removal or remedial action conducted by TriMet at the Property.

22 (2) TriMet shall preserve all records and documents in possession or
23 control of TriMet or its employees, agents or contractors that relate to any removal or
24 remedial action pursuant to this Consent Judgment for at least 5 years after transfer under
25 Section 8 of this Consent Judgment. Upon DEQ’s request, TriMet shall provide or make
26 available for DEQ’s copying, copies of such records and documents to DEQ. For a period of

1 10 years after termination of this Consent Judgment, TriMet shall provide DEQ 60 days'
2 notice before destruction or other disposal of such records or documents. TriMet shall have
3 no further obligation to DEQ to preserve documents or records ten years after termination of
4 this Consent Judgment.

5 (3) Subject to Paragraphs 5.A.(3)-(4), TriMet may assert a claim of
6 confidentiality regarding any documents or records submitted to or copied by DEQ pursuant
7 to this Consent Judgment. DEQ shall treat documents and records confidential for which a
8 claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If
9 TriMet does not make a claim of confidentiality at the time the documents or records are first
10 submitted to or copied by DEQ, the documents or records may be made available to the
11 public without notice to TriMet.

12 F. Other Applicable Laws

13 (1) All activities under this Consent Judgment shall be performed in
14 accordance with all applicable federal, state, and local laws and regulations.

15 (2) TriMet shall comply with laws governing the protection of
16 archaeological resources.

17 (3) TriMet will notify site workers on the Property, and any construction,
18 remediation, and landscape contractors working on the Property of the presence of soil
19 contamination in accordance with applicable state and federal law.

20 G. Reimbursement of DEQ Costs

21 (1) Upon entry of this Consent Judgment, DEQ shall submit to TriMet a
22 statement of costs incurred by DEQ for technical review and preparation and negotiation of
23 this Consent Judgment prior to entry of this Consent Judgment, which shall be reimbursed
24 according to the IGA. For DEQ costs incurred on or after entry of this Consent Judgment, if
25 any, DEQ shall submit to TriMet a monthly statement of costs actually and reasonably
26 incurred by DEQ in connection with any activities related to the oversight of TriMet's

1 implementation of this Consent Judgment. Each invoice will include a summary of costs
2 billed to date.

3 (2) DEQ costs payable by TriMet will include direct and indirect costs.
4 Direct costs include site-specific expenses, DEQ contractor and DEQ legal costs. DEQ's
5 direct cost summary will include a direct labor summary showing the persons charging time,
6 the number of hours and the nature of work performed. Indirect costs will include those
7 general management and support costs of DEQ and of the Land Quality Division allocable to
8 DEQ oversight of this Consent Judgment that are not charged as direct, site-specific costs.
9 Indirect charges will be based on actual costs and applied as a percentage of direct personal
10 services costs. DEQ shall maintain work logs, payroll records, receipts and other documents
11 to document work performed and expenses incurred under this Consent Judgment and, upon
12 TriMet's request, shall make such records available to TriMet for its inspection during the
13 term of this Consent Judgment and for at least five years thereafter. From five years and up
14 to ten years after termination of this Consent Judgment, DEQ shall provide TriMet 60 days'
15 notice before destruction or other disposal of such records or documents. Upon TriMet's
16 request, DEQ shall provide TriMet with copies of such records or documents. DEQ shall
17 have no further obligation to preserve such records or documents ten years after termination
18 of this Consent Judgment.

19 (3) Within 30 days of receipt of a DEQ invoice, TriMet either shall pay
20 the amount of costs billed, by check payable to the "**State of Oregon, Hazardous Substance**
21 **Remedial Action Fund,**" or invoke dispute resolution under Subsection 5.J. of this Consent
22 Judgment.

23 (4) TriMet shall pay 9% simple interest on the unpaid balance of DEQ
24 oversight costs, which interest shall begin to accrue 30 days after the date of the invoice.
25 Interest on any amount disputed under Paragraph 5.J. shall begin to accrue 30 days after final
26

1 resolution of any such dispute. Any unpaid amounts are a liquidated debt collectible under
2 ORS 293.250 and other applicable law.

3 H. Force Majeure

4 (1) If any event occurs that is beyond TriMet's reasonable control and that
5 causes or might cause a delay or deviation in performance of the requirements of this
6 Consent Judgment despite TriMet's reasonable efforts ("**Force Majeure**"), TriMet shall
7 promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of
8 the delay or deviation, its anticipated duration, the measures that have been or will be taken
9 to prevent or minimize the delay or deviation, and the timetable by which TriMet proposes to
10 carry out such measures. TriMet shall confirm in writing this information within five
11 working days of the verbal notification or as soon as practicable thereafter.

12 (2) If TriMet demonstrates to DEQ's satisfaction that the delay or
13 deviation has been or will be caused by Force Majeure, DEQ shall extend times for
14 performance of related activities under this Consent Judgment as appropriate. Circumstances
15 or events constituting Force Majeure might include but not be limited to acts of God,
16 unforeseen strikes or work stoppages, fire, explosion, riot, sabotage, war and delays in
17 receiving a governmental approval or permit. Increased cost of performance or changed
18 business or economic circumstances shall not be considered Force Majeure.

19 I. DEQ Approvals

20 (1) Where DEQ review and approval is required for any plan or activity
21 under this Consent Judgment, TriMet shall not proceed to implement the plan or activity until
22 DEQ approval is received. DEQ will make good faith efforts to conduct plan and activity
23 review promptly so that any proposed development activities are not unduly delayed. Any
24 DEQ delay in granting or denying approval shall correspondingly extend the time for
25 completion by TriMet. Prior approval shall not be required in emergencies; provided
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1 however, TriMet shall notify DEQ immediately after the emergency and evaluate the impact
2 of its actions.

3 (2) After review of any plan, report or other item required to be submitted
4 for DEQ approval under this Consent Judgment, DEQ shall:

5 (a) Approve the submission in whole or in part; or

6 (b) Disapprove the submission in whole or in part and notify
7 TriMet of its deficiencies and/or request modifications to cure the deficiencies.

8 (3) In the event of two deficient submittals of the same deliverable that are
9 deficient for the same reasons due to TriMet's failure in good faith to cure the original
10 deficiency, DEQ may modify the submission to correct the deficiency.

11 (4) DEQ approvals, rejections or identification of deficiencies shall be
12 given as soon as practicable in writing, and state DEQ's reasons with reasonable specificity.

13 (5) In the event of approval or modification of the submission by DEQ,
14 TriMet shall implement the actions required by the plan, report or other item, as so approved
15 or modified.

16 (6) In the event of DEQ disapproval or request for modification of a
17 submission, TriMet shall, within 30 days of receipt of the DEQ notice or such longer time as
18 may be specified in the notice, either correct the deficiencies and resubmit the revised report
19 or other item for approval, or institute dispute resolution under Subsection 5.J. of this
20 Consent Judgment.

21 J. Dispute Resolution

22 (1) In the event TriMet disagrees with DEQ regarding review and
23 approval of any plan or activity, interpretation of data, DEQ modifications of a deliverable or
24 performance of an obligation under this Consent Judgment, TriMet shall promptly notify
25 DEQ in writing of its objection. DEQ and TriMet shall then make a good-faith effort to
26 resolve the disagreement within 14 days of TriMet's written objection. At the end of the 14-

1 day period, DEQ shall provide TriMet with a written statement of its position from DEQ's
2 Program Manager. If TriMet still disagrees with DEQ's position, TriMet, within 14 days of
3 receipt of DEQ's position from the Cleanup Manager, may provide TriMet's position and
4 rationale in writing to DEQ's Northwest Region or Land Quality Division Administrator.
5 The DEQ Administrator may discuss the disputed matter with TriMet and, in any event, will
6 provide TriMet with DEQ's final position in writing as soon as practicable after receipt of
7 TriMet's written position.

8 (2) If TriMet refuses or fails to follow DEQ's final decision pursuant to
9 Paragraph 5.J.(1) above, and DEQ seeks to (a) enforce its final decision, (b) assess civil
10 penalties, or (c) collect oversight costs or other costs related to any removal or remedial
11 action performed by DEQ, TriMet, subject to Subsections 2.A. and 5.L. of this Consent
12 Judgment, shall be entitled to such rights, remedies and defenses as are provided by
13 applicable law.

14 (3) During the pendency of dispute resolution as provided in this
15 paragraph, the time for completion of obligations to be performed under this Consent
16 Judgment affected by the dispute shall be extended for a period of time not to exceed the
17 actual time taken to resolve the dispute. Obligations not affected by the dispute shall be
18 completed in accordance with the applicable schedule approved pursuant to this Consent
19 Judgment.

20 K. Enforcement of Consent Judgment; Reservations

21 (1) In addition to assessment of administrative civil penalties under
22 ORS 465.900 by DEQ, either Party may seek enforcement of this Consent Judgment by this
23 Court. If DEQ seeks enforcement of this Consent Judgment by this Court, DEQ may seek
24 monetary sanctions, such as civil penalties, only if DEQ has not assessed and collected
25 administrative civil penalties under ORS 465.900 regarding the same violation.

26

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

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

6 (4) Neither this Consent Judgment nor any judgment enforcing this
7 Consent Judgment shall be admissible in any judicial or administrative proceeding, except
8 for proceedings by DEQ to enforce this Consent Judgment, resolution of disputes under this
9 Consent Judgment, imposition or mitigation of sanctions for violation of this Consent
10 Judgment, in response to a citizen suit, or when offered by TriMet for admission in any
11 proceeding.

12 (5) Subject to Paragraph 2.A.(4) of this Consent Judgment, nothing in this
13 Consent Judgment shall prevent TriMet from exercising any rights of cost recovery,
14 contribution or indemnification TriMet might have against any person regarding activities
15 under this Consent Judgment.

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

18 (7) Nothing in this Consent Judgment shall prevent DEQ or the State of
19 Oregon from exercising any rights either of them may have against any person not a party to
20 this Consent Judgment, and DEQ and the State of Oregon reserve their rights against any
21 person not a party to this Consent Judgment.

22 L. Waivers

23 (1) TriMet waives any claim or cause of action it might have against the
24 State of Oregon arising from contamination at the Facility existing as of the date of TriMet’s
25 acquisition of ownership or operation of the Property. Notwithstanding the previous
26 sentence, TriMet reserves all rights concerning the obligations of DEQ under this Consent

1 Judgment and the obligations of DSL under the DSL Temporary Construction Easement(s)
2 and DSL Bridge Easement.

3 (2) TriMet waives any rights it might have under ORS 465.260(7) and
4 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or
5 the Orphan Site Account for costs incurred under this Consent Judgment or related to the
6 Property.

7 M. Indemnification and Insurance

8 (1) To the extent permitted by the Oregon Constitution and by the Oregon
9 Tort Claims Act, TriMet shall indemnify and hold harmless the State of Oregon and its
10 commissions, agencies, officers, employees, contractors and agents from and against any and
11 all claims arising from acts or omissions related to this Consent Judgment of TriMet or its
12 officers, employees, contractors, agents, receivers, trustees or assigns. The State of Oregon
13 shall notify TriMet of any such claims or actions as soon as practicable after receiving notice
14 that such a claim or action is threatened or has been filed. TriMet shall have the right to
15 participate fully at its own expense in the defense or settlement of such claims, including the
16 right to promptly receive related correspondence with the claimant and the opportunity to
17 participate in related meetings and telephone conferences with the claimant. The State will
18 confer with TriMet regarding litigation and settlement strategy and, to the extent practicable,
19 will afford TriMet the opportunity to review and comment on all pleadings and settlement
20 documents before they are filed with the court or sent to the claimant. TriMet shall have no
21 obligations under this paragraph with respect to any claim settled or otherwise compromised
22 without TriMet having been provided the opportunity to participate in accordance with this
23 paragraph. DEQ shall not be considered a party to any contracts made by TriMet or its
24 agents in carrying out activities under this Consent Judgment.

25 (2) To the extent permitted by Article XI, Section 7, of the Oregon
26 Constitution and by the Oregon Tort Claims Act, the State of Oregon shall indemnify and

1 hold harmless TriMet and its commissioners, officers, employees, contractors and agents
2 from and against any and all claims arising from acts or omissions related to this Consent
3 Judgment of the State of Oregon or its commissions, agencies, officers, employees,
4 contractors, agents or assigns (excepting acts or omissions constituting DEQ approval of the
5 TriMet's activities under this Consent Judgment). TriMet shall notify the State of Oregon of
6 any such claims or actions as soon as practicable after receiving notice that such a claim or
7 action is threatened or has been filed. The State of Oregon shall have the right to participate
8 fully at its own expense in the defense or settlement of such claims, including the right to
9 promptly receive related correspondence with the claimant and the opportunity to participate
10 in related meetings and telephone conferences with the claimant. TriMet will confer with the
11 State of Oregon regarding litigation and settlement strategy and, to the extent practicable,
12 will afford the State of Oregon the opportunity to review and comment on all pleadings and
13 settlement documents before they are filed with the court or sent to the claimant. The State
14 of Oregon shall have no obligations under this paragraph with respect to any claim settled or
15 otherwise compromised without its having been provided the opportunity to participate in
16 accordance with this paragraph. TriMet shall not be considered a party to any contract made
17 by DEQ or its agents in carrying out activities under this Consent Judgment.

18 N. Parties Bound

19 (1) This Consent Judgment shall be binding on the Parties and their
20 respective successors, agents and assigns. The undersigned representative of each Party
21 certifies that he or she is fully authorized to execute and bind such party to this Consent
22 Judgment. No change in ownership relating to TriMet or the Property shall in any way alter
23 TriMet's obligations under this Consent Judgment, unless otherwise approved in writing by
24 DEQ.

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1 (2) Upon transfer of ownership of the Property, or any portion thereof,
2 from TriMet to another person or entity, TriMet and the new owner shall provide written
3 notice to the DEQ project manager not less than thirty (30) days before such transfer.

4 O. Modification

5 DEQ and TriMet may modify any other provision of this Consent Judgment
6 by mutual written agreement, subject to approval by this Court.

7 P. Service

8 TriMet agrees to accept service of process by return receipt requested mail, to
9 its Attorney, with respect to all matters arising under or relating to this Consent Judgment.
10 TriMet waives any other service requirements set forth in the Oregon Rules of Civil
11 Procedure or any local rules of this Court, including but not limited to service of a summons
12 and complaint. DEQ and TriMet agree that TriMet need not file an answer to the complaint
13 in this action unless or until the Court expressly declines to approve this Consent Judgment.

14 Q. Recording

15 Within fourteen (14) days of the Effective Date of this Consent Judgment,
16 TriMet shall submit a copy or original of this Consent Judgment (whichever is required by
17 the county) to be recorded in the real property records of Multnomah County, State of
18 Oregon. TriMet shall provide DEQ with written evidence of such recording within seven (7)
19 days of recording.

20 6. Release from Liability and Covenant Not to Sue

21 A. Subject to the satisfactory performance by TriMet of its obligations under this
22 Consent Judgment, TriMet shall not be liable to the State of Oregon under ORS 465.200 to
23 465.545 and 465.900, including any right of the State of Oregon under ORS 465.210 to
24 recover costs under a federal remedy, for any release of hazardous substances at or from the
25 Facility existing as of the date of TriMet's acquisition of ownership or operation of the
26 Property. TriMet shall bear the burden of proving that a hazardous substance release existed

1 before the date of TriMet's acquisition of ownership or operation of the Property, whichever
2 is earlier.

3 B. The release from liability under Subsection 6.A. shall not affect any person's
4 liability for claims arising after the date of acquisition of ownership or operation of the
5 Property regarding:

6 (1) A release of hazardous substances at or from the Facility to the extent
7 such release is caused by TriMet or TriMet's use of the Property after the date of TriMet's
8 acquisition of ownership or operation of the Property;

9 (2) Contribution to or exacerbation of a release of hazardous substances at
10 or from the Facility; provided that TriMet's actions in compliance with this Consent
11 Judgment and the various plans and approvals described in this Consent Judgment shall not
12 form the basis of a claim that TriMet has contributed to or exacerbated any release of
13 hazardous substances at or from the Facility existing as of the date of TriMet's acquisition of
14 ownership or operation of the Property;

15 (3) Interference or failure to cooperate with DEQ, or with persons
16 conducting remedial measures under DEQ's oversight, at the Facility;

17 (4) Failure to exercise due care or take reasonable precautions with respect
18 to any hazardous substance at the Property; provided that TriMet's compliance with this
19 Consent Judgment and the various plans and approvals described in this Consent Judgment
20 shall constitute due care and reasonable precautions with respect to any release of hazardous
21 substances at or from the Facility existing as of the date of TriMet's acquisition of ownership
22 or operation of the Property;

23 (5) Disposal or management of hazardous substances or solid waste
24 removed from the Property by or on behalf of TriMet;

25 (6) Criminal liability;

26 (7) Violation of federal, state, or local law;

1 (8) Any ownership, operation or release of hazardous substances at the
2 Property by TriMet before the Effective Date of this Consent Judgment.

3 (9) Any ownership, operation or other ground of liability of TriMet for a
4 release of hazardous substances at an off-site location affecting the Property;

5 (10) Any matters as to which the State of Oregon is owed indemnification
6 under Paragraph 5.M.(1). of this Agreement;

7 (11) Claims based on any failure by TriMet to meet any requirements of
8 this Consent Judgment, including without limitation payment of all DEQ costs owed under
9 Subsection 5.G;

10 C. The release from liability under Subsection 6.A. shall not affect any rights and
11 obligations of the State of Oregon, DSL or TriMet under any authorization or easement
12 issued to TriMet by DSL related to the bridge, including without limitation, the DSL
13 Temporary Construction Easement(s) and DSL Bridge Easement.

14 D. Subject to satisfactory performance by TriMet of its obligations under this
15 Consent Judgment, the State of Oregon covenants not to sue TriMet concerning any liability
16 under ORS 465.200 to 465.545 and 465.900 and 42 USC § 9601, *et seq.* with regard to
17 releases of hazardous substances at or from the Facility, except that the State of Oregon
18 reserves all rights against TriMet with respect to claims and liabilities not released under
19 Subsection 6.A., as enumerated in Subsections 6.B and 6.C.

20 E. The Director of DEQ has determined that the above covenant not to sue will
21 expedite remedial action at the Property and is in the public interest, based on consideration
22 of the factors set forth in ORS 465.325(7)(a) and (d).

23 F. Neither the release of liability and covenant not to sue in this Section 6, nor
24 the contribution protection in Section 7, nor any other provision of this Consent Judgment
25 (except Paragraphs 5.A.(2) and 5.M.(2)) constitutes or shall be construed as an obligation by
26 the State of Oregon, or any commission, agency, officer, employee, or agent thereof to

1 indemnify, defend or hold harmless any person, including without limitation TriMet, for
2 costs or expenses arising from or related in any way to (1) the Facility; (2) an existing or
3 future release of hazardous substances at, to or from the Facility; or (3) this Consent
4 Judgment or any construction, limitation or invalidation of all or a portion hereof.

5 7. Contribution

6 A. As provided in and to the extent allowed by ORS 465.325(6)(b) and
7 465.325(8)(e), TriMet shall not be liable for claims by any person for contribution regarding
8 matters addressed in this Consent Judgment. The “**matters addressed**” in this Consent
9 Judgment means those matters for which TriMet has resolved its actual or potential liability
10 to the State of Oregon herein. The “**matters addressed**” in this Consent Judgment do not
11 include matters as to which DEQ has reserved its rights under this Consent Judgment,
12 including without limitation those reservations in Subsections 6.B and 6.C.

13 B. Subject to Paragraph 2.A.(4) and Subsection 5.L. of this Consent Judgment,
14 nothing in this Consent Judgment shall prevent TriMet from exercising any rights of cost
15 recovery, contribution or indemnification TriMet might have against any person regarding
16 activities under this Consent Judgment.

17 C. DEQ and TriMet have negotiated the terms of this Consent Judgment and
18 intend for this Consent Judgment to be construed as a judicially approved settlement, by
19 which TriMet has resolved its liability to the State of Oregon regarding matters addressed in
20 this Consent Judgment, within the meaning of Section 113(f)(2) of the Comprehensive
21 Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.
22 §9613(f)(2), and for TriMet to not be liable for claims for contribution regarding matters
23 addressed in this Consent Judgment to the extent provided by Section 113(f)(2) of CERCLA,
24 42 U.S.C. §9613(f)(2). The matters addressed in this Consent Judgment means those matters
25 for which TriMet has resolved its actual or potential liability to the State of Oregon herein.
26 The matters addressed in this Consent Judgment do not include matters as to which DEQ has

1 reserved its rights under this Consent Judgment, including without limitation those
2 reservations in Subsections 6.B and 6.C.

3 8. Benefits and Burdens Run with the Land

4 Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Judgment shall
5 run with the land; however, the release from liability and covenant not to sue set forth in
6 Section 6 shall limit or otherwise affect the liability only of persons who are not potentially
7 liable under ORS 465.255 for a release of hazardous substances at the Property as of the date
8 of that person's acquisition of ownership or operation of the Property and who assume and
9 are bound by the terms of this Consent Judgment applicable to the Property as of the date of
10 their acquisition of ownership or operation.

11 9. Certificate of Completion

12 A. The work required by this Consent Judgment shall be deemed complete when
13 the only tasks required by this Consent Judgment that remain to be completed are compliance
14 with the Easement and Equitable Servitude, including compliance with the soil management
15 plan and cap monitoring and maintenance plan for the Fee Parcel, and ongoing operation and
16 maintenance of the Project in compliance with DEQ's § 401 certification. Upon Defendant's
17 completion of the work, Defendant shall submit a final closeout report to DEQ signed both
18 by an Oregon-registered professional engineer and Defendant's Project Manager certifying
19 that TriMet's obligations to construct the remedial action for the Property has been
20 completed in accordance with this Consent Judgment. The report shall summarize the work
21 performed and include all necessary supporting documentation. DEQ will preliminarily
22 determine whether the remedial action has been fully and satisfactorily performed for the
23 Property in accordance with this Consent Judgment. Upon a preliminary determination that
24 the remedial action for the Property has been fully and satisfactorily performed, DEQ will
25 provide public notice and opportunity to comment on a proposed certification decision in
26 accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment,

1 and within 90 days after receiving Defendant's closeout report, the Director of DEQ will
2 issue a final certification decision. The certification decision shall subsequently be submitted
3 by DEQ to this Court.

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1 10. Continuing Jurisdiction

2 This Court retains jurisdiction over both the Parties to and the subject matter of this
3 Consent Judgment.

4 IT IS SO ORDERED AND ADJUDGED this ____ day of _____, 2010.

5

6

Circuit Court Judge
Multnomah County

7

8

STATE OF OREGON

9 DEPARTMENT OF ENVIRONMENTAL QUALITY

10

By: _____ Date: _____

11

Administrator
Land Quality Division

12

ATTORNEY GENERAL

13

STATE OF OREGON

14

15 By: _____ Date: _____

16

Larry Edelman, OSB No. 891581
Assistant Attorney General
Oregon Department of Justice
1515 SW Fifth Avenue, Suite 410
Portland, OR 97201

18

TRI-COUNTY METROPOLITAN

19

TRANSPORTATION DISTRICT OF OREGON

20

21 By: _____ Date: _____

22

[name and title] _____

23

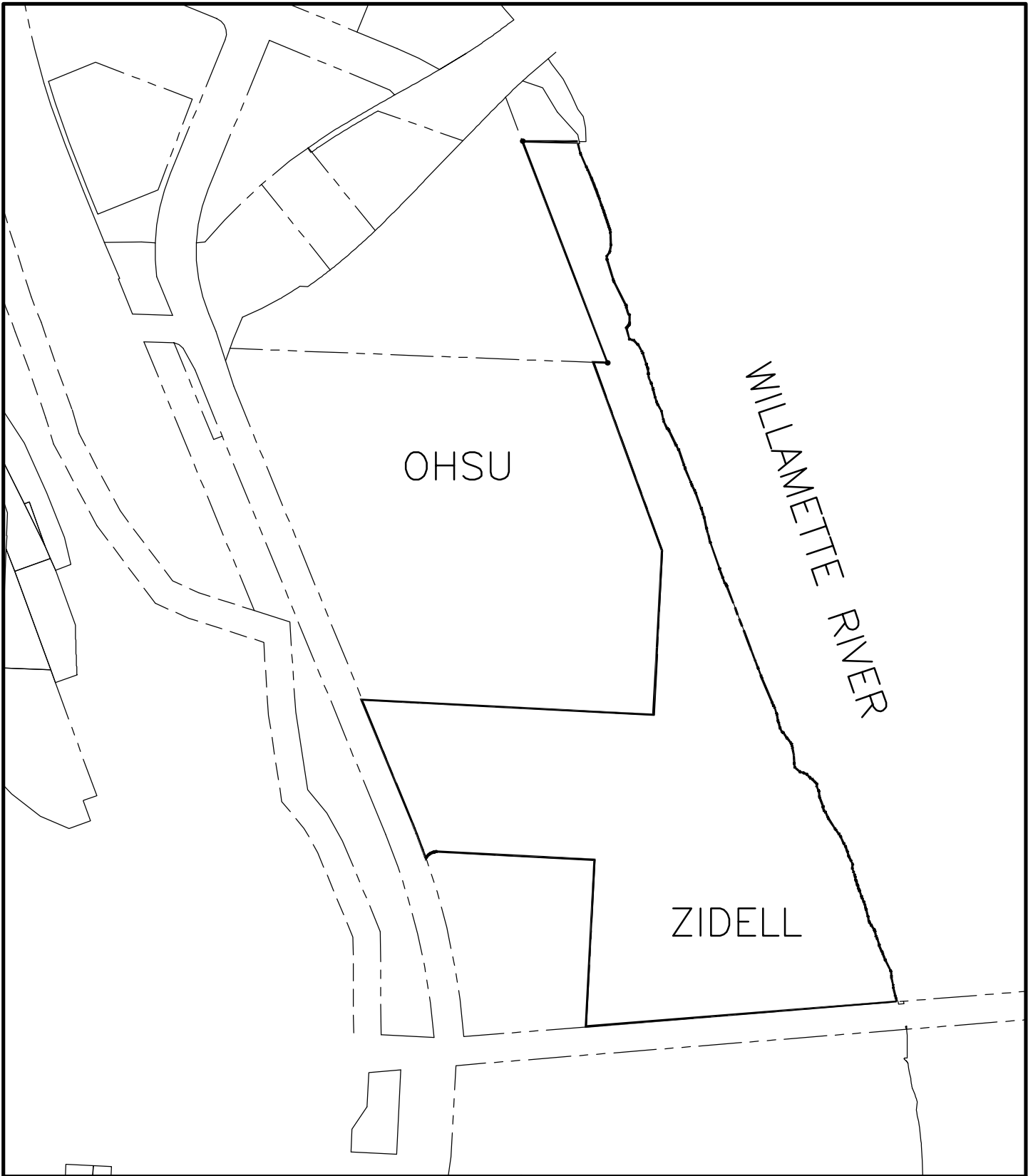
24 By: _____ Date: _____


25

J. Mark Morford OSB No. 832912
Stoel Rives, LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204

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 CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232			ATTACHMENT A to TRIMET CONSENT JUDGEMENT ZRZ PROPERTY DRAWING	
DRAWN JCL	DESIGN	CHECKED	APPROVED:	DATE: 6/22/10
SCALE: N.T.S.	FILE NAME:	CONTRACT NO:	SHEET NO: 1 OF 1	



LEGEND



DEQ UNIT A



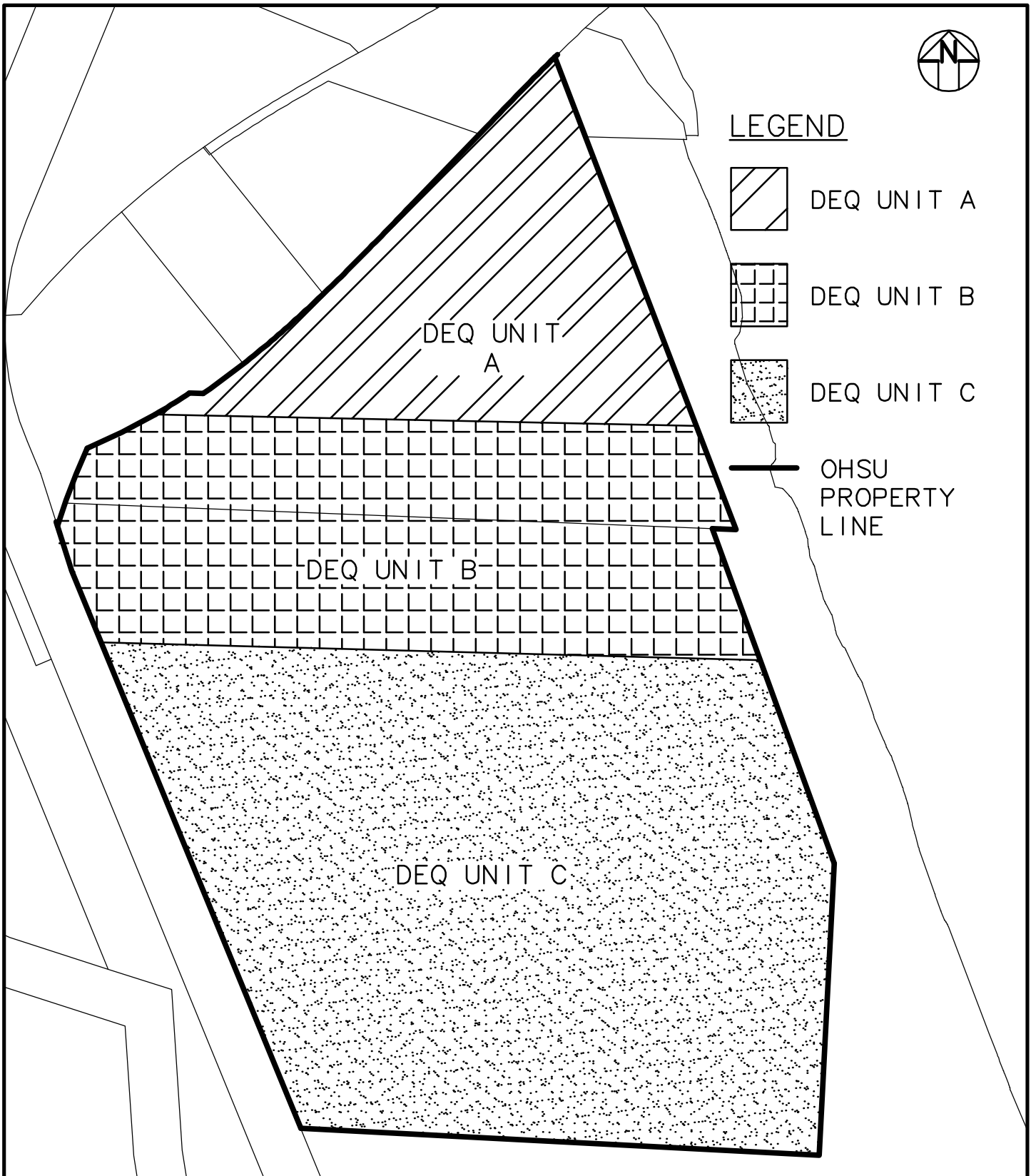
DEQ UNIT B




DEQ UNIT C



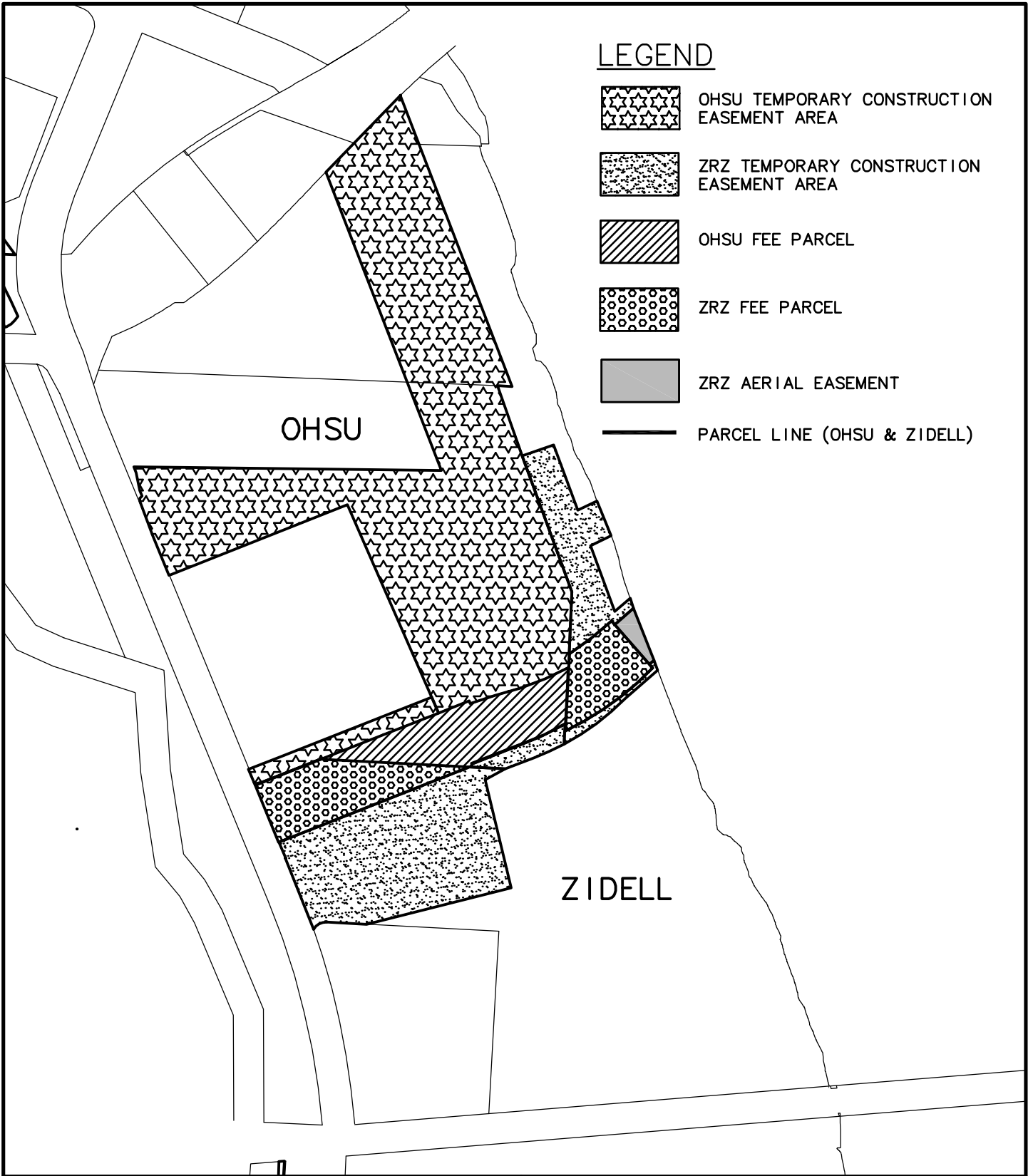
OHSU
PROPERTY
LINE



S: Work Lynch DCN-TCN AGREEMENT EXHIBITS for PP- June 2010 01-30 CURRENT.dwg, 6/22/2010 10:58:08 AM, Lynch

		CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232		ATTACHMENT B TRIMET CONSENT JUDGEMENT OHSU PROPERTY DRAWING	
DRAWN JCL	DESIGN	CHECKED	APPROVED:	DATE: 06/22/10	
SCALE: N.T.S.	FILE NAME:	CONTRACT NO:	SHEET NO: 1 OF 1		

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<p>TRIMET CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232</p>			<p>ATTACHMENT C TRIMET CONSENT JUDGEMENT MAP OF PROPERTY ELEMENTS</p>	
<p>DRAWN JCL</p>	<p>DESIGN</p>	<p>CHECKED</p>	<p>APPROVED:</p>	<p>DATE: 06/22/10</p>
<p>SCALE: N.T.S.</p>	<p>FILE NAME:</p>	<p>CONTRACT NO:</p>	<p>SHEET NO: 1 OF 1</p>	

After recording, return to:
Oregon DEQ, NW Region
2020 SW 4th Ave., Suite 400
Portland, OR 97201
Attn: [INSERT]

EASEMENT AND EQUITABLE SERVITUDES

This Easement and Equitable Servitudes (hereafter, this “**Easement and Equitable Servitudes**”) is made [DATE], 2010 between the Tri-County Metropolitan Transportation District of Oregon, an Oregon municipal corporation (“**Grantor**”), and the State of Oregon, acting by and through the Oregon Department of Environmental Quality (“**DEQ**” or “**Grantee**”).

RECITALS

A. Grantor is the owner of certain real property located in Section 10, Township 1 South, Range 1 East of the Willamette Meridian within Multnomah County, Oregon (“**Property**”), the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes and shown generally in the drawing attached as Attachment B.

B. A portion of the Property was previously part of a larger tract owned by Oregon Health and Science University, a public corporation of the State of Oregon (“**OHSU**”), and was previously subject to that Declaration of Restrictive Covenants For the Moody Avenue Site Unit C, Multnomah County, Oregon made November 21, 1995, by Schnitzer Investment Corp., an Oregon corporation, and recorded in the Multnomah County real property records on December 7, 1995 as Document No. 95 152263 (“**1995 Restrictive Covenant**”). DEQ is the beneficiary of the 1995 Restrictive Covenant. The portion of the Property that was previously subject to the 1995 Restrictive Covenant was released and removed from the conditions and restrictions created through the 1995 Restrictive Covenant by that First Amendment to Declaration of Restrictive Covenants between OHSU and DEQ recorded on this same date in the Records of Multnomah County, Oregon prior to the recordation of this Easement and Equitable Servitudes (the “**First Amendment to 1995 Restrictive Covenant**”).

The remainder of the Property was previously part of a larger tract owned by ZRZ Realty Company and was previously subject to that Easement and Equitable Servitudes made October 12, 2006, between ZRZ Realty Company (“**ZRZ**”) and DEQ, and recorded in the Multnomah County real property records on October 24, 2006 at 2006-197624 (“**2006 E&ES**”). The remainder of the Property that was previously subject to the 2006 E&ES was released and removed from the conditions and restrictions created through the 2006 E&ES by that First Amendment to Easement and Equitable Servitudes between ZRZ and DEQ recorded on this same date in the Records of Multnomah County, Oregon prior to the recordation of this Easement and Equitable Servitudes (the “**First Amendment to 2006 E&ES**”).

C. Grantee agreed to enter into the First Amendment to 1995 Restrictive Covenant and the First Amendment to 2006 E&ES on the condition that Grantor enter into this Easement and Equitable Servitudes in connection with Grantor’s acquisition of the Property.

D. The portion of the Property previously subject to the 1995 Restrictive Covenant is part of the site referenced under the name OHSU - Moody Ave. Units A, B, C, ECSI #875 in the files of DEQ’s Environmental Cleanup Program at the NW Region office in Portland, Oregon (the “**OHSU Site**”). Residual risks for Unit C of the OHSU Site have been reduced by completion of the Phase I remedial action as documented in the Final Closeout Report, Moody Avenue Unit C Site, Phase I Remedial Action dated February 1995, also on file with the Northwest Region. The portion of the Property previously subject to the 2006 E&ES is part of the site referenced under the name Zidell Waterfront Property, ECSI #689 in the files of DEQ’s Environmental Cleanup Program at the NW Region office in Portland, Oregon (the “**Zidell Site**”). Interested parties may contact the NW Region to review a detailed description of the residual risks present at the affected portion of the OHSU Site and found in the Remedial Investigation and Endangerment Assessment Report, Unit C, Moody Avenue Site dated October 1, 1991, including the revised pages dated October 25, 1991. Interested parties may contact the NW Region to review a detailed description of the residual risks present at the Zidell Site and found in the Final Remedial Investigation and Risk Assessment Report dated July 11, 2003 and the Supplemental Remedial Investigation Report: Riverbank Characterization dated October 8, 2004.

E. On September 20, 1993, the Director of DEQ selected the remedial action for the affected portion of the OHSU Site set forth in the Record of Decision for Schnitzer Investment Corporation Moody Avenue Site Unit C. On June 31, 2005, the Director of DEQ or delegate selected the remedial action for the Zidell Site set forth in the Remedial Action Record of Decision: Zidell Waterfront Property.

F On [DATE], 2010, Grantor entered into a Consent Judgment, [INSERT CAPTION AND CASE NUMBER] (“**Judgment**”) with DEQ, under which Grantor agreed to grant and comply with this Easement and Equitable Servitudes. The Judgment includes additional obligations related to the implementation of the remedies for the OHSU Site and the ZRZ Site with respect to the Property not fully set forth in this Easement and Equitable Servitudes .

G. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the selected remedial actions for the Zidell Site and the OHSU Site and thereby protect human health and the environment.

1. DEFINITIONS

1.1 “**Acceptable risk level**” has the meaning set forth in Oregon Revised Statute (“**ORS**”) 465.315 and Oregon Administrative Rule (“**OAR**”) 340-122-0115.

1.2 “**Beneficial use**” has the meaning set forth in OAR 340-122-0115 for “beneficial uses of water.”

1.3 “**DEQ**” means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. “DEQ” also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

1.4 “**Ecological receptor**” has the meaning set forth in OAR 340-122-0115.

1.5 “**Engineering control**” has the meaning set forth in OAR 340-122-0115.

1.6 “**Hazardous substance**” has the meaning set forth in ORS 465.200.

1.7 “**Owner**” means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee’s interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee’s interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

1.8 “**Property**” means the real property described in Attachment A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee’s approval of the Judgment, grants to DEQ an easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in Paragraph 3 and easement granted in Paragraph 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and

Equitable Servitudes, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this Easement and Equitable Servitudes.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions.** Owner shall not extract groundwater through wells or by other means, or use the groundwater at the Property for consumption or other beneficial use, if the hazardous substance concentrations in the groundwater exceed the acceptable risk level for such use. This prohibition shall not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2 **Cap Engineering Control Use Restrictions.** In the Judgment, Owner has agreed to construct a surface cap over the entire area of the Property. Once the cap is constructed, Owner shall inspect and maintain the cap in accordance with a cap monitoring and maintenance plan approved in writing by DEQ.

3.3 **Soil Management Restrictions.** Owner shall not conduct or allow operations on the Property or use or maintain the Property in any way that will or likely will penetrate the cap or jeopardize the cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or erosion except in compliance with a soil management plan, approved in writing by DEQ.

3.4 **Notice of Transfer.** Owner shall notify DEQ on or before the effective date (generally the closing date) of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property, except for transfers to corporate affiliates controlling, controlled by or under common control with Owner. Owner may, but is not required to, provide such notice before the effective date of any conveyance, grant, gift, or other transfer. If Owner elects to do so, Owner may assert a claim of confidentiality under the Oregon Public Records Law with respect to documents submitted with its notice. Upon written request by Owner, DEQ will treat documents for which a claim of confidentiality had been made in accordance with ORS 192.410 through 192.505 until the effective date of the conveyance, grant, gift, or other transfer.

3.5 **Notice of Development Activities and Change in Use.** Owner shall notify DEQ no less than ten (10) days before the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not

commence any development inconsistent with the conditions or restriction in this Paragraph 3 without prior written approval from DEQ or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.6 **Notice of Zoning Changes.** Owner shall notify DEQ no less than thirty (30) days before Owner petitions for or files any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Portland's zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is Central Commercial (CX). The CX zone is intended to provide for commercial development within Portland's most urban and intensely developed areas.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this Easement and Equitable Servitudes, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to Owner for such entry and any action taken to abate, mitigate, or cure a violation.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the Deed Records of the County in which the Property is located, certifying that the condition or restriction is no longer required in order to protect human health or the environment. At any time Owner may request in writing that a condition or restriction be removed by written certification. If Owner demonstrates to DEQ's satisfaction that such condition or restriction is no longer required in order to protect human health or the environment, DEQ shall execute and deliver such certification to Owner, for recording in the Deed Records of the County in which the Property is located.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described in Paragraph 5 above, may enforce this Easement and Equitable Servitudes as provided in the Judgment, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitudes. The failure of DEQ to enforce any requirement, covenant, condition, restriction, or standard in this Easement and Equitable Servitudes shall in no event be deemed to be a waiver of the right to do so thereafter or in other cases nor of the right to enforce any other applicable requirement, covenant, condition, standard, or restriction.

5.4 The provisions of this Easement and Equitable Servitudes shall be deemed independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion of this Easement and Equitable Servitudes by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Easement and Equitable Servitudes.

5.5 Nothing contained in this Easement and Equitable Servitudes shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use, except as may be specifically set forth on a plat of any of the Property.

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

GRANTOR: Tri-County Metropolitan
Transportation District of Oregon

GRANTEE: State of Oregon, Department
of Environmental Quality

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

