

STATE OF OREGON
DEPARTMENT OF STATE LANDS
ACCESS AUTHORIZATION FOR REMEDIATION/RESTORATION

62866-RAAA
B1 Navigation Channel Project Area

This Access Authorization (Authorization) is entered into this 8th day of September, 20 20 by the State of Oregon, by and through its Department of State Lands (State) and **NW Natural** (Grantee; collectively “the Parties”).

1. GRANT OF ACCESS

For and in consideration of \$0, based on the compensation calculations required in OAR 141-145-0060 and payable in advance in a lump sum, State grants **NW Natural**, its agents, employees, consultants, and contractors, and authorized representatives of **EPA** access to the area described in attached Exhibit A (Property) (incorporated herein by reference), to conduct work required of Grantee under the **Administrative Settlement Agreement and Order on Consent for Removal Action / Amendment No. 2 for Remedial Design at B1 Navigation Channel Project Area and U.S. Moorings Project Area 10-2009-0255**(Order) and further described in the **Navigation Channel Pre-Design Investigation Work Plan** (collectively hereinafter Work). Grantee will be permitted access to the Property as of the effective date of this Authorization.

The description for the Property in Exhibit A is drawn from an assessor’s map and/or other data, but State makes no representation regarding its accuracy or reliability. State will not provide a survey or pay any costs of a survey to determine boundaries. If Grantee elects not to have a survey performed and a discrepancy or boundary overlap later becomes evident, State, at its discretion, may provide corrected description of the Property and amend this Authorization as necessary.

Lessee understands and acknowledges that the Property is located within the Portland Harbor Superfund Site (the “Superfund Site”). The authorized use of the Property as allowed under this Section does not include any activities or operations that unreasonably interfere with the performance of Remedial Work on the Superfund Site, including the area of the Superfund Site within the Property, pursuant to an order issued by the United States Environmental Protection Agency (EPA) or the Oregon Department of Environmental Quality (“DEQ”), whether issued to Lessee or another party. As used in this Section, “Remedial Work” includes work related to investigation, removal and remedial action for the Superfund Site.

2. SCOPE OF AUTHORIZED WORK

All Work shall be performed in accordance with the **Order** and any work plans, designs, schedules, and other deliverables approved by **EPA** thereunder.

The purpose of this Authorization is to provide Grantee access to the Property for purposes of accomplishing the Work required under the **Order**. Nothing in this Authorization shall be construed to require Grantee to take action that is contrary to or in conflict with the **Order** work plans, designs or other deliverables approved by **EPA**, or other **EPA** directives consistent with the **Order**. Except as described in Paragraph 11 below, nothing in this Authorization shall be construed to require Grantee to take action in addition to action required by the **Order**, work plans, designs, or other deliverables approved by **EPA**, or other **EPA** directive consistent with the **Order**.

3. TERM

This Authorization will continue for a period of 4 months commencing on September 1, 2020, and expiring on December 31, 2020, unless terminated earlier as provided under Sections 16 or 17 below.

4. RENEWAL

Grantee may apply to renew this Authorization for a successive term by submitting a completed remedial access authorization renewal application form with the non-refundable \$375 application fee to State not less than 90 days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:

- 4.1 State determines, in its sole discretion, that Grantee has not complied with the terms of this Authorization, any other agreements with the State, the applicable statutes or Oregon Administrative Rules; or
- 4.2 State determines that the renewal of this Authorization for all or any portion of the Property would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-145-0010.

5. NOTICE AND SAMPLE RESULTS

Grantee shall notify State not less than five (5) working days before initiating Work on the Property. Grantee shall provide State with copies of the Design Report and Action Memorandum, any validated analytical data generated by the Work, Monitoring reports and all final reports summarizing analytical data and any maintenance and monitoring activities as soon as practicable following their completion and/or issuance.

6. COMPLIANCE WITH LAWS

Grantee shall comply with all federal, state and local laws and rules applicable to the Work. This Authorization is solely for access to the Property. It does not give Grantee an interest in the Property or any structures located on or in the Property, or affect an existing interest, if any, in the Property or any structures located on the Property. It neither gives Grantee

permission to use the Property in a manner not in conformance with land use requirements, if any, applicable to the Work, nor constitutes regulatory approval of the Work or any related activities. It is Grantee's sole responsibility to determine and comply with any applicable requirements and to secure any necessary authorizations and approvals for the Work.

Grantee shall use the Property only in a manner, and for such purposes, as assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

7. PROPER DISPOSAL

Grantee shall comply with all federal, state and local laws and rules applicable to the generation, storage or disposal of any waste generated by the Work. No waste generated by the Work shall be stored, discharged, or otherwise disposed of on property owned by the State of Oregon.

8. PREVENTION OF DAMAGE AND INJURY

Grantee shall carry out all activities on the Property with due regard for public safety, the prevention of waste, and the restoration and conservation of said Property for future use, consistent with the **Order**; shall make all reasonable efforts to prevent and avoid interference with existing navigational and recreational activities and scenic values; shall maintain the areas of the Property affected by the Work in a safe condition recognizing the continuing public access to the Property during the term of this Authorization; shall take all reasonable steps to avoid damage to fish and fish habitat, wildlife and wildlife habitat, and water quality; shall take all reasonable steps to minimize erosion; and shall substantially restore the Property to its original condition except to the extent of changes to the original condition that are described in and required by the **Order**.

The Property shall remain open to the public for recreation and other non-proprietary uses except when restricted or closed to public entry under the circumstances described as follows:

- a. Grantee may post signage and erect fencing approved in advance by State on and around the Property as necessary to protect the Work from interference or damage arising from public entry and to protect persons and property from harm arising from or in connection with the Work. Grantee shall be responsible for installing and maintaining, at Grantee's expense, all signage and fencing required.
- b. State and Grantee shall cooperate with each other and with other responsible agencies to facilitate any additional closure as deemed necessary by State.
- c. State and Grantee (subject to State approval) reserve the right to reevaluate, at any time during this Authorization, the extent and duration of closure or restriction on public use of all or any portion of the Property, including without limitation,

whenever State receives written notice from Grantee that Grantee has determined that Property conditions or activities pose or may pose a threat to public health or the environment. State may impose more limiting restrictions on public entry and use, but may not impose less restrictive uses than required under this initial Authorization unless required by law or agreed to in writing by Grantee.

9. STRUCTURES AND EQUIPMENT

Except as described below, any structures tools, equipment, or other property taken or placed upon the Property in conjunction with the Work shall be removed by Grantee at its expense when Grantee ceases Work on the Property or this Authorization is terminated, whichever is earlier.

This Authorization does not authorize any work, including without limitation, placement of permanent structures on state-owned land, beyond that described in the **Order** (which requires **collecting sediment samples from DSL-owned submerged and submersible lands within the Willamette River to satisfy EPA environmental cleanup characterization requirements pursuant to an Order**) and whatever actions may reasonably be necessary to **perform sampling and analysis of surface sediment grab samples and subsurface sediment cores from the Navigation Channel Project Area within the Portland Harbor Superfund Site**. Access for any longer-term requirements of the Work, including implementation of institutional controls and ongoing cap maintenance and monitoring obligations require separate authorization under a lease or easement, as determined by State.

10. RESERVATIONS/EXISTING RIGHTS

The interest of Grantee under this Authorization shall at all times be subject to existing nonproprietary rights of the public to use the Property, **existing DSL leases, licenses or easements**. Grantee is responsible for ensuring that its activities under this Authorization are allowed by and do not interfere with any existing right, including without limitation any lease, right-of-way, easement or other use authorization covering the same area.

11. ACCESS TO PROPERTY AND RECORDS

State shall have access to the Property at all reasonable times for the purpose of ensuring compliance with the terms and conditions of this Authorization.

Grantee shall, to the extent practicable and consistent with the **Order**, ensure that public access to the navigable waters is not impaired because of the Work or Grantee's use of the Property. State reserves the right to reevaluate the extent of public access and any restrictions on public use at any time during this Authorization. State further reserves the right to require Grantee to post or use markings or floats to delineate work areas as necessary or appropriate to protect public safety or navigation during the Work.

12. INDEMNIFICATION

Grantee shall defend, indemnify, and hold harmless the State of Oregon and its commissions, Agencies, officers, employees, consultants, contractors, agents, lessees and grantees from any and all claims, demands, actions, suits, damages, costs, penalties, fines or expenses (including reasonable, consultant and attorney fees, in any administrative proceeding, at trial and on appeal) (collectively "Claims") of any person arising from or related to the Work, including without limitation claims arising from any act or omission of Grantee, its officers, employees, consultants, contractors, agents, or any other person acting on behalf of Grantee. This indemnity shall not apply to the liability, if any, of the State with respect to Claims regarding any condition existing on the Property as of the effective date of this Authorization, except to the extent the Work exacerbates such conditions on the Property or causes or contributes to damage or the release of hazardous substances off the Property.

13. INSURANCE

Grantee shall keep in effect during the term of this Authorization the required insurance coverage described in Exhibit B hereto. Any policy(ies) providing the insurance coverage required by this paragraph, except any workers compensation and professional liability policies, shall each name the State of Oregon, the Oregon State Land Board, the Department of State Lands and their officers and employees as additional insureds with respect to the Work. Insurance coverages required by this Authorization shall be obtained from insurers in good standing with the Oregon Insurance Commission. As evidence of the required insurance coverage, Grantee shall furnish certificate(s) of insurance to the State before execution of this Authorization. Grantee may satisfy all or part of the insurance requirements herein by a showing that the required insurance is held by its agents, consultants or contractors conducting the Work.

Any policy(ies) of insurance that is(are) available, applicable or obtained to satisfy the requirements of this paragraph shall apply to any claim, suit and/or demand arising from the Work pursuant to the terms, conditions, definitions, exclusions and endorsements contained in any such policy. Grantee shall not take any steps to reduce or eliminate coverage required by this paragraph.

In any event, Grantee agrees that the insurance requirements in this paragraph are binding upon Grantee regardless of whether Grantee has provided to the State an insurance policy, or proof thereof, with the required coverages.

14. MODIFICATION

This Authorization may not be changed, amended, or its term extended without the mutual written consent of each Party. This Authorization affords access for work required by the **Order** only. Other work required by subsequent agreements, orders, or by amendments to the Order will require a new or amended access agreement, authorization or transfer of property interest.

15. DEFAULT, NOTICE AND CURE BY GRANTEE

Grantee shall be in default if any of the following occurs and is not remedied within thirty (30) days (or such longer period agreed to in writing by State) after the State has given notice specifying the breach:

a) Failure of Grantee to comply with any term or condition of this Authorization, including without limitation, failure of Grantee to use the Property solely for the purposes authorized by this Authorization as described in sections 1 and 2, above.

b) Maintenance by Grantee of a nuisance or dangerous condition on the Property. Notwithstanding the foregoing, Work performed in full compliance with the **Order** shall not constitute a “nuisance or dangerous condition” under this subsection.

c) Failure of Grantee to remove any lien placed upon the Property in conjunction with the Work.

16. TERMINATION UPON DEFAULT BY GRANTEE

In the event of a default by Grantee and Grantee’s failure to cure within the time provided in paragraph 15, this Authorization may be terminated at the option of State by thirty (30) days’ advance notice in writing to Grantee. Grantee shall have fifteen (15) days after date of termination to remove all equipment and other property from the Property.

17. TERMINATION UPON MUTUAL CONSENT

This Authorization may also be terminated by mutual written consent of Grantee and State.

18. NOTICE

Any notice required to be sent under this Authorization to Grantee by State shall be sent by certified mail and shall be deemed to be delivered after the certified letter is deposited in the United States mails addressed to:

Bob Wyatt
Director, Legacy Environmental
250 SW Taylor St.
Portland, OR 97204
503-860-3451
rjw@nwnatural.com

Or other address provided to State by **NW Natural** in a subsequent written notice of change of address.

Correspondence to the State shall be addressed to:

Richard Fitzgerald
Proprietary Coordinator, Portland Harbor Superfund Specialist
Oregon Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97310-1279
Tel: (503) 986-5200
Fax: (503) 378-4844
richard.w.fitzgerald@dsl.state.or.us

Or other address provided to **NW Natural** by State in subsequent written notice of change of address.

19. ASSIGNMENT

This Authorization may not be assigned.

20. NON-PARTNERSHIP

As between State and Grantee, Grantee shall be solely responsible for the cost and expense of any activity conducted on the Property by or on behalf of Grantee under this Authorization. State is neither a partner nor a joint venturer with Grantee in connection with the Work nor shall it be considered a party to any contracts made by Grantee or Grantee's agents in carrying out Work and shall have no obligation with respect to Grantee's debts, liabilities, or obligations under such contracts.

21. NON-WAIVER

Waiver by either party of strict performance of any term of this Authorization on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision or any other provision in the future.

22. SURVIVAL OF COVENANTS

All remedies and continuing obligations of this Authorization, including without limitation Grantee's indemnification obligation and State's access to records, shall survive termination of this Authorization.

23. EFFECTIVE DATE

This Authorization shall be effective upon execution by State.

24. ENTIRE AUTHORIZATION


This Authorization together with its recitals, attachments and exhibits, all of which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof. No waiver, consent, modification, or change in terms of this Authorization shall bind either party unless in writing. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the subject matter of this Authorization. Nothing in this Authorization shall be construed to waive any claim any of the Parties may have that is not expressly addressed herein. This Authorization supersedes all prior or existing agreements between the parties with respect to the Property and Work described herein.

[remainder of page intentionally left blank]

The Parties, by the signatures below of their authorized representative, hereby acknowledge that they have read this document, understand it and agree to be bound by its terms and conditions.

STATE:
The State of Oregon, acting by and through
the Department of State Lands
775 Summer St NE, Ste 100

**Christopher
Castelli**

 Digitally signed by Christopher
Castelli
Date: 2020.09.08 16:21:44 -07'00'

Authorized Signature

Date

NW Natural:
By: **Robert J. Wyatt** Signer
Director, Legacy Environmental Program Title
250 SW Taylor Street Address
Portland, OR 97204 City, State Zip
(503) 860-3451 Phone



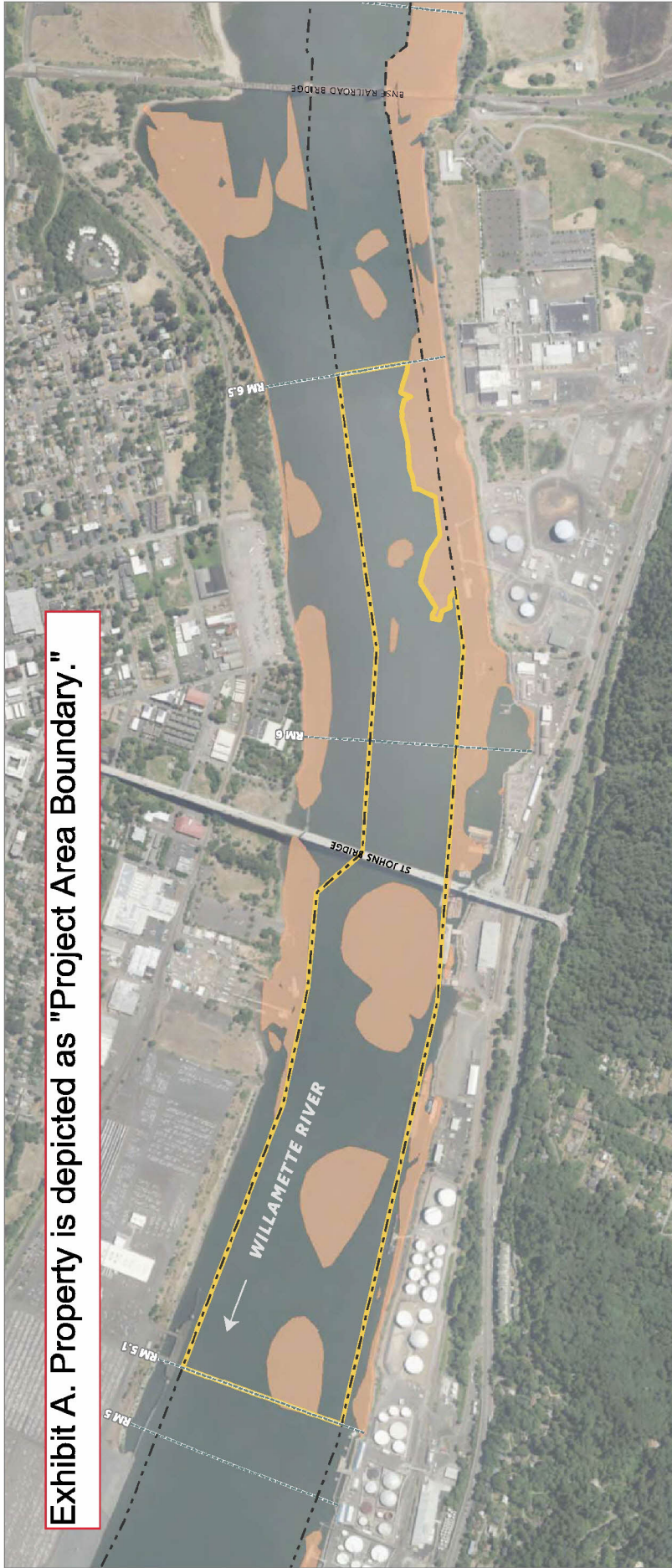
Signature/Title

September 8, 2020

Date

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Exhibit A. Property is depicted as "Project Area Boundary."

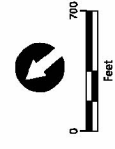


LEGEND:

- Project Area Boundary
- ROD-Identified Sediment Management Areas
- Navigation Channel
- River Miles

NOTES:

1. Arrow indicates direction of flow of river.
2. Horizontal datum is NAD83 (HARN 91) Oregon State Plane North, International Feet.
3. Vertical datum is City of Portland (COP), Feet.
4. Aerial imagery from City of Portland 2018.



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Figure 1-2
 ROD-Identified Sediment Management Areas in Project Area
 Revised Final Pre-Design Investigation Work Plan
 Navigation Channel Project Area

Exhibit B
INSURANCE REQUIREMENTS

During the term of the Permit, Permittee shall maintain in force at its own expense, each insurance item noted below: **(State must check boxes for #2, #3, and #4 to indicate whether insurance is required or not.)**

1. **Required by State of Permittee with one or more workers, as defined by ORS 656.027. Workers' Compensation.** All employers, including Permittee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Permittee shall require and ensure that each of its subpermittees (if allowed) complies with these requirements.

2. **Required by State** **Not required by State.**
(Commercial/General) Liability coverage, insuring against claims for bodily injury, death and property damage. Coverage must include contractual liability coverage for the indemnity provided under this Permit. **The commercial/general liability insurance coverages required under this Permit must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 7 below.**

Permittee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

Bodily Injury/Death:

\$1,000,000/\$2,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

\$2,000,000/\$4,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

\$ _____

3. **Required by State** **Not required by State.**
Marine Protection and Indemnity Coverage. Permittee shall obtain, at Permittee's expense, and keep in effect during the term of the Permit marine protection and indemnity coverage. Shall not be less than \$ _____.
4. **Required by State** **Not required by State.**
Pollution Liability: Permittee shall obtain at Permittee's expense, and shall keep in effect during the term of the Permit, pollution liability insurance covering Permittee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Permittee, all arising out of Permittee's lease of the Permithold. Shall not be less than \$ _____
5. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Permittee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Permit, for a minimum of 24 months following the termination or expiration of the Permit.
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Permit, the Permittee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Permit. The certificate must specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Permittee shall pay for all deductibles, self-insured retention and self-insurance
7. **Additional Insured.** The commercial general liability and automobile liability insurance coverages required under this Permit must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds but only with respect to Permittee's activities to be performed under this Permit. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
8. **Change in coverage or cancellation.** Permittee shall notify State when a change in coverage or cancellation occurs. Permittee shall provide State copies of new coverage upon effect of change. As stated in section 2, Permittee shall ensure required insurance coverage is maintained over the term of the Permit.