

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 SIXTH AVENUE, SUITE 900  
SEATTLE, WASHINGTON

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HEARINGS CLERK  
EPA -- REGION 10

IN THE MATTER OF:

Portland Harbor Superfund Site  
Triangle Park Removal Action Area  
& McCormick & Baxter Site  
Portland, Multnomah County, Oregon

) FIRST AMENDMENT TO BONA  
) FIDE PROSPECTIVE PURCHASER  
) AGREEMENT AND ORDER ON  
) CONSENT FOR REMOVAL  
) ACTION

PURSUANT TO THE COMPREHENSIVE  
ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY  
42 U.S.C. §§ 9604, 9606, 9607, 9622

) Docket No. CERCLA-10-2007-0027

) < The University of Portland

1. This First Amendment modifies the Bona Fide Prospective Purchaser Agreement and Order on Consent for Removal Action ("BFPP Agreement") for the Portland Harbor Superfund Site, Triangle Park Removal Action Area & McCormick & Baxter Site, Portland, Multnomah County, Oregon, Docket No. CERCLA -10-2007-0027, pursuant to Section XXIV of the BFPP Agreement (Modification).

2. In order to reflect changes because of the time that has passed since the BFPP Agreement was entered into, especially in light of the delay of two years before the real property transferred from Triangle Park LLC to the University of Portland; because of the Settlement Agreement with Triangle Park LLC and the U.S. Environmental Protection Agency ("EPA") which resulted in an additional \$1.2 million deposited in the Trust Fund; and in order to clarify the handling of any money that might remain in the Trust Fund once the Removal Action is completed; the following changes are hereby made to the Consent Order:

First Amendment to BFPP Agreement and Order on Consent for Removal Action  
Portland Harbor Superfund Site/Triangle Park Removal Action Area & McCormick & Baxter Site,  
EPA Docket No. CERCLA-10-2007-0027

## **IX. WORK TO BE PERFORMED**

Paragraph 29 is amended to read as follows:

29. Post-Removal Action Site Control. Upon completion of the Removal Action, notwithstanding any other provision of this Agreement, in accordance with the schedule in the SOW or as otherwise directed by EPA, Purchaser shall submit a proposal for post-Removal Action site control consistent with section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Purchaser shall implement such controls, including operation and maintenance, and shall provide EPA with documentation of all post-Removal Action site control arrangements. In the event that the Trust Fund is not depleted at the time that EPA determines that the Removal Action required under this Agreement is complete, then: (i) Purchaser may use the remaining money in the Trust Fund at least up to the amount of its original investment of \$3 million to conduct such controls, if any; and (ii) if ground water monitoring is required, once Purchaser's \$3 million is expended, then Purchaser may use up to \$200,000 of the \$1.2 million paid into the Trust Fund under the settlement between Triangle Park and EPA for such ground water monitoring.

## **XVI. FINANCIAL RESPONSIBILITY**

Paragraphs 59 and 60 are amended to read as follows:

59. Purchaser shall establish Financial Responsibility for the benefit of EPA in the form of a trust fund to be initially funded by the \$3,000,000 cash consideration required herein which may be paid in installments as further described below. The terms of the trust fund must be satisfactory in form and substance to EPA (the "Trust Fund"), including but not limited to meeting the following requirements: (i) a restriction on the withdrawal of funds to ensure that they are expended on the Removal Action required under this Agreement and used to conduct or fund response actions within the Portland Harbor Superfund Site as set forth more fully in Paragraph 64; (ii) a provision that attorney's fees and redevelopment costs are not eligible for trust payments; (iii) all disbursements from the Trust Fund are subject to review and approval by EPA as set forth more fully in Paragraph 65; (iv) EPA may deposit additional funds into the Trust Fund as set forth more fully in Paragraph 63.

60. [deleted]

## **XVIII. CONSIDERATION FROM PURCHASER**

Paragraphs 63 and 64 are amended to read as follows:

63. In consideration of, and in exchange for, the mutual promises and agreements set forth in this Agreement, Purchaser will pay into the Trust Fund the sum of Three Million Dollars (\$3,000,000). The Trust Fund has received an initial contribution of \$1,200,000 (Initial Contribution)<sup>1</sup>. Purchaser shall pay into the Trust Fund in installments with \$1,000,000 due twelve (12) months after Initial Contribution (unless the Initial Contribution is sooner depleted, then Purchaser's initial payment is due at the time of depletion); an additional \$1,000,000 due in twelve (12) months thereafter (unless the Trust Fund is sooner depleted, then at the time of depletion), and the final third installment of \$1,000,000 due twelve (12) months thereafter (or if the Trust Fund is sooner depleted, then at the time of depletion). In addition, EPA agrees that it may from time to time deposit in the Trust Fund or a special account the proceeds of any payment made by any PRPs or other third parties to the United States pursuant to any settlement or other resolution of such parties' CERCLA liability arising out of or associated with the Triangle Park Property. Except as otherwise specified in Paragraphs 29 and 31, in no event shall Purchaser be obligated to pay more than \$3,000,000 to conduct the Removal Action. In the event that Removal Action activities remain to be done after the funds in the Trust have been expended, EPA and the University shall meet to discuss what additional Removal Action activities remain and what available funding sources can be sought so as to complete the Removal Action in a good-faith expeditious manner. EPA's Oversight Costs shall be paid by Purchaser from its own account separate from the Trust and without regard to the \$3,000,000 cap.

64. Purchaser's costs for the Removal Action hereunder shall be paid from the Trust Fund. Funds shall be dispersed from the Trust Fund to pay for the Removal Action required under this Agreement in accordance with the payment provisions in the trust agreement. Only Removal Action costs will be paid from the Trust Fund; Attorneys' fees and redevelopment costs are not eligible for trust payments. If there is any money remaining in the Trust Fund at the time that EPA determines that the Removal Action required under this Agreement is complete, the remaining money shall be used to conduct or finance response actions within the Portland Harbor Superfund Site. Any such remaining money may be maintained in the Trust Fund, or transferred into a site-specific special account within the Hazardous Substances Superfund at the sole discretion of EPA. If such remaining money is transferred into a site-specific special account, EPA will retain and use these funds to conduct or finance response actions at or in connection with the Portland Harbor Superfund Site. If any funds remain in this site-specific special account after all work at the

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<sup>1</sup> The source of the Initial Contribution is the consideration provided by Triangle Park LLC through the Settlement Agreement with EPA CERCLA Docket No. 10-2008-0160.

Portland Harbor Superfund Site is complete, EPA may then transfer any remainder to the Hazardous Substances Superfund. EPA's decisions regarding the establishment or use of funds in the site-specific special account are not subject to Section XIII (Dispute Resolution) of this Agreement.

#### **XXVIII. EFFECTIVE DATE**

87. The effective date of this Agreement shall be the date of the last signature on this First Amendment.

#### **XXXI. NOTICES AND SUBMISSIONS**

Paragraph 90 is amended to read as follows:

90. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

James J. Kuffner  
Assistant Vice President  
University of Portland  
5000 N. Willamette Blvd.  
Portland, OR 97203

With copies to:

Mr. Gary Dupuy  
AMEC Geomatrix, Inc.  
One Union Square  
600 University Street  
Suite 1020  
Seattle, WA 98101-4107

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And

Mr. David L. Blount  
Landye Bennett Blumstein LLP  
1300 SW Fifth Avenue, Suite 3500  
Portland, OR 97201

Submissions to U.S. EPA shall be addressed to:

Mark Ader, EPA Project Coordinator  
U.S. Environmental Protection Agency, Region 10, ECL-115  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

With copies to:

Jennifer G. MacDonald, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10, ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

3. This First Amendment to the BFPP Agreement is effective on the date signed by EPA, Region 10's Director of the Office of Environmental Cleanup.

First Amendment to BFPP Agreement and Order on Consent for Removal Action  
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The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Agreement and to bind the party it represents to this document.

IT IS SO AGREED:

PURCHASER, UNIVERSITY OF PORTLAND

BY:

Signature: E. William Beauchamp, Date: 3/20/09

Print Name: Rev. E. William Beauchamp, CSC

Title: President

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Portland Harbor Superfund Site/Triangle Park Removal Action Area & McCormick & Baxter Site,  
EPA Docket No. CERCLA-10-2007-0027

IT IS SO AGREED:

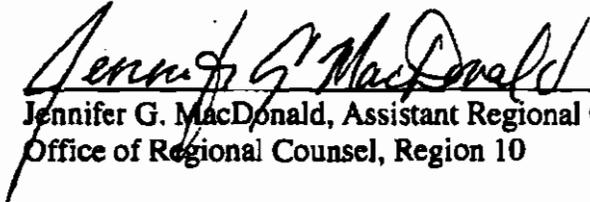
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BY:



Daniel D. Opalski, Director  
Office of Environmental Cleanup, Region 10

3/16/09

Date



Jennifer G. MacDonald, Assistant Regional Counsel  
Office of Regional Counsel, Region 10

3/10/09

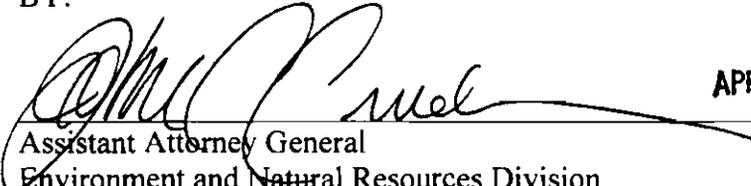
Date

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EPA Docket No. CERCLA-10-2007-0027

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

*Acting*  \_\_\_\_\_ Date **APR 13 2009**

Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

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