

AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF THE ARMY
AND
THE COLUMBIA DEVELOPMENT AUTHORITY
FOR
THE ECONOMIC DEVELOPMENT CONVEYANCE
OF
A PORTION OF THE FORMER UMATILLA CHEMICAL DEPOT
HERMISTON, OREGON

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LIST OF EXHIBITS

- Exhibit A Legal Descriptions of Parcel 1 and Parcel 2
- Exhibit A-1 Map of Parcel 1 and 2
- Exhibit B Form of Deed for Parcel 1 and Parcel 2
- Exhibit C Description of Existing Easements
- Exhibit D Description of Army Reserved Easements
- Exhibit E Memorandum of Agreement between Oregon Military Department and Columbia Development Authority (Water Rights)
- Exhibit F Amended Historic Preservation Programmatic Agreement
- Exhibit G List of Permits
- Exhibit H Annual Financial Statements Format
- Exhibit I Army-CDA Interim Lease
- Exhibit J Easement and Equitable Servitude
- Exhibit K Memorandum of Agreement between Columbia Development Authority and Confederated Tribes of the Umatilla Indian Reservation (Wildlife Habitat)

- Exhibit L Payment Security

THIS AGREEMENT (“Agreement”) is made and entered into by and between the **Department of the Army (“Army”), acting by and through the Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships), and the Columbia Development Authority**, organized and existing as provided by the terms and provisions of an intergovernmental agreement dated May 15, 1995, as amended and restated, between the County of Morrow and the County of Umatilla, both political subdivisions of the State of Oregon, the Port of Morrow and the Port of Umatilla, both port districts and municipal corporations of the State of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized Indian Tribe, whose mailing address is P.O. Box 200, Boardman, Oregon 97818, in its capacity as the designated Local Redevelopment Authority (hereinafter referred to as the “CDA”) (individually each a “Party” and collectively the “Parties”) as of the date of the last signature of a Party affixed hereto (“Effective Date”).

RECITALS:

WHEREAS, the United States of America is the owner of certain real property, improvements, and related personal property, located in Umatilla County and Morrow County, Oregon and commonly referred to as the former Umatilla Chemical Depot or UMCD (“Installation”); and

WHEREAS, at the time it enacted section 2846 of Public Law 108-375 (National Defense Authorization Act for Fiscal Year 2005), Congress determined that parcels of real property within the boundaries of the Installation that were previously withdrawn from the public domain were no longer suitable for return to the public domain and should remain under the administrative jurisdiction of the Secretary of the Army; and

WHEREAS, by enactment of section 2846 of Public Law 108-375 (National Defense Authorization Act for Fiscal Year 2005), Congress further required that the Secretary combine the real property within the boundaries of the Installation with other real property comprising the Umatilla Chemical Depot for purposes of their management and disposal pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 100–526; 10 U.S.C. 2687 note) and other applicable law; and

WHEREAS, the Installation was closed on July 17, 2012 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. No. 101-510; 10 U.S.C. § 2687 note), as amended, and section 2703 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81)

(collectively, “Act”); and

WHEREAS, the Umatilla Army Depot Reuse Authority (UMADRA) was initially organized as a planning LRA in the late 1980’s by appointment of the Oregon Governor in anticipation of base closure, was later legally established as an Oregon Section 190 intergovernmental entity in 1995 under Oregon Law ORS 190.003 to ORS 190.085 and ORS 190.110, which was re-named the Columbia Development Authority through a restated and amended intergovernmental agreement in 2014; and

WHEREAS, the final Redevelopment Plan developed by the UMADRA dated August 6, 2010, with supplemental information dated August 16, 2010, was approved by the Department of Housing and Urban Development (HUD) on October 27, 2010 and is in compliance with the requirements of the Act and implementing regulations at 24 C.F.R. Part 586; and

WHEREAS, the Director of the Office of Economic Adjustment, on behalf of the Secretary of Defense, issued a letter dated September 17, 2014 recognizing the newly reorganized Columbia Development Authority (CDA) as the implementation local redevelopment authority for the purpose of executing the Redevelopment Plan for a 9,539.44 acre portion of the installation in accordance with the Act and implementing regulations at 32 C.F.R. § 174.9; and

WHEREAS, the CDA Board of Directors submitted its final EDC application dated February 20, 2015 for the economic development conveyance (“EDC”) of the Property as herein defined, including related personal property, and;

WHEREAS, the CDA and Confederated Tribes of the Umatilla Indian Reservation (CTUIR) executed an Agreement on July 31, 2019 (**Exhibit K**) to transfer and manage certain respective portions of the area designated in the Redevelopment Plan as the “Wildlife Refuge” for the purpose of preservation and restoration of the natural shrub-steppe habitat and wildlife habitat resources, in accordance with applicable laws and regulations, including the Umatilla Depot Wildlife Refuge as zoned by Umatilla and Morrow counties; and

WHEREAS, the Army approved CDA’s EDC application for 9,539.44 acres of the installation, together with certain Related Personal Property, by letter to the CDA dated February 18, 2022.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the sufficiency of which is

hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, unless the context otherwise requires or unless otherwise expressly provided, the following terms shall have the following meanings:

“Act” shall mean the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. No. 101-510; 10 U.S.C. § 2687 note), as amended, together with section 2703 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81).

“Army” shall mean the Department of the Army acting by and through the Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

“Closing” shall mean, with respect to a Parcel, the settlement and conveyance of such Parcel in accordance with the terms and provisions of this Agreement.

“Closing Date” shall mean, with respect to a Parcel, the date on which the Closing occurs for such Parcel.

“Columbia Development Authority” or “CDA” shall mean that entity which in its capacity as the designated local redevelopment authority is authorized to accept the Property from Army under state laws and the Act.

“Economic Development Conveyance” or “EDC” shall mean a conveyance of real and personal property for purposes of job generation as authorized by section 2905(b)(4) of the Act and the implementing regulations at 32 C.F.R. § 174.9.

“Finding of Suitability to Transfer” or “FOST” shall mean the document, including any amendments thereto, required by Army Regulation 200-1 evidencing the Army’s determination that real property is environmentally suitable for transfer by deed under CERCLA §120(h). A FOST must demonstrate that either the property is uncontaminated or that all necessary remediation has been completed or is in place and operating properly and successfully.

“Installation” shall mean the former Umatilla Chemical Depot located in Umatilla County

and Morrow County, OR.

Irrevocable Letter of Credit (ILOC) is an official correspondence from a bank that guarantees payment for the Army by CDA, referred to as the applicant, that requests the letter of credit from an issuing bank. An ILOC cannot be canceled, nor in any way modified, except with the explicit agreement of all parties involved: the buyer, the seller, and the issuing bank.

“Parcel” shall mean either Parcel 1 or Parcel 2, individually, as the context may require.

“Parcel 1” shall mean the real property located at the Installation totaling 9,511.37 acres, together with all improvements, structures, appurtenances, utilities, and infrastructure located thereon, including Related Personal Property (as defined below) located thereon, more particularly described in **Exhibit A and Exhibit A-1** attached hereto and made a part hereof.

“Parcel 2” shall mean the real property located at the Installation totaling 28.07 acres, together with all improvements, structures, appurtenances, utilities, and infrastructure located thereon, including Related Personal Property (as defined below) located thereon, more particularly described in **Exhibit A and Exhibit A-1** attached hereto and made a part hereof.

“Property” shall mean collectively, Parcel 1 and Parcel 2.

“Reinvestment Period” shall mean the period beginning on the Closing Date for Parcel 1 and continuing for a period of seven (7) years after the Closing Date for Parcel 2.

“Related Personal Property” shall mean the personal property of the United States of America located on a Parcel to be conveyed to the CDA that is an integral part of, related to, designed for, or specially adapted to the functional use of the Property, the removal of which would significantly diminish the economic value of the Property, or as determined by the Army to be related to the Property.

ARTICLE 2. AGREEMENT TO ACQUIRE AND CONVEY

2.1. The Army agrees to convey the Property to the CDA, and the CDA agrees to accept the said conveyance, pursuant to the terms and conditions of this Agreement.

2.2. The Army shall convey each Parcel to the CDA by one or more deeds without warranty (each, a **“Deed”** and, collectively, the **“Deeds”**) substantially similar in form

to that described in “**Exhibit B**”, attached hereto and made a part hereof, in each case following execution of a Finding of Suitability of Transfer (FOST). The Closing for each Parcel, which each may include more than one lawful unit of land, shall occur on a date, place and time that is mutually agreeable to the Parties, but not more than sixty (60) calendar days following a) Army’s delivery of a Deed or Deeds for such Parcel to the CDA, for signature, in acceptable form and substance to CDA; b) confirmation by the CDA that the Army’s conveyance of each Parcel will be of a lawful unit(s) of land. At Closing the Army shall deliver the applicable Deed or Deeds in final form for execution by the CDA along with any other documents which the Army has agreed to provide to CDA for the title company to record such Deed(s) and issue a standard coverage owner’s policy of title insurance with respect to the applicable Parcel (collectively, the “**Closing Documents**”).

2.3. The Army shall convey the Property to the CDA subject to the division of water rights as described in the Memorandum of Agreement between the Oregon Military Department (OMD) and Columbia Development Authority (CDA) executed 25-26 Jul 2016, “**Exhibit E – Memorandum of Agreement Between OMD and CDA.**” The Army will convey the water rights for Wells 4 and 5 together with the Property, subject to reserved Army rights for temporary access and use as specified in paragraph 2.4.ii, below. Water rights allocated to CDA in **Exhibit E** which are associated with wells that are not located on the Property (i.e. wells other than Wells 4 and 5) are subject to approval by Oregon Water Resources Department (OWRD) of a CDA request for a change in point of appropriation for new or additional wells and/or for a change in place of use to be located on the Property.

2.4. The Conveyance of the Property to the CDA shall be subject to the following:

- i. All valid and existing easements and rights-of-ways including, but not limited to rights-of-ways for railroads, highways, pipelines, and public utilities, if any, whether of public record or not, including but not limited to, easements for utility purposes as described in “**Exhibit C – Description of Existing Easements.**”
- ii. Perpetual and assignable non-exclusive easements and temporary and assignable rights-of-ways to be retained by the Army for a period of up to seven (7) years for continued access to existing roads, rail, potable water, waste water, storm water infrastructure, and other utilities as more particularly described in “**Exhibit D – Description of Army Reserved Easements.**” These easements will in part support Army National Guard activities on adjacent land.

- iii. Mineral interests retained by the U.S. Department of the Interior, Bureau of Land Management, as further defined within the legal descriptions set forth at **Exhibit A**.

2.5. The Army agrees to cooperate with the CDA in its efforts to obtain governmental permits and approvals related to, and necessary for, the Army's conveyance of the Property as described in "**Exhibit G – List of Permits**", but shall not be required to expend any funds to effect such transfers. All costs and expenses associated with obtaining such permits and approvals shall be the sole responsibility of the CDA.

ARTICLE 3. CONSIDERATION AND PAYMENT TERMS

3.1. For and in consideration of the economic development conveyance of the Property to the CDA, the CDA agrees to pay the Army **one million (\$1,000,000.00)** (the "Consideration"), in total, for the Property in accordance with the terms and provisions of Section 4.2.

3.2. Security Provision: On or before the date of Closing for Parcel 1, the CDA shall execute a promissory note evidencing its obligation to pay the balance of the Consideration not paid in cash at Closing, that balance being \$960,000. The promissory note shall be made payable to the Army and its terms shall conform to the schedule set forth in Section 4.2. The executed promissory note shall be backed by an irrevocable letter of credit (ILC) issued by a federally insured financial institution to the Army as security for such obligation. A copy of the ILOC shall be provided to the Army and included as "**Exhibit L – Payment Security.**"

3.3. As part of the consideration for the Property, the CDA shall prepare, or cause to be prepared, at its sole expense, such surveys, boundary markers, partitions, boundary line adjustments, and legal descriptions of the Property as may be required for the Army to convey the Property and meet all requirements for deed recordation in the county land records and conveyance of a "lawfully established unit of land" as defined by ORS 92.101(3)(a).

3.4. Payment made to the Army shall be made by wire or electronic funds transfer or cashier's check in accordance with instructions to be provided by the Army, provided that such instructions shall comply with all requirements of the Escrow Agent (defined below).

3.5. The CDA shall be responsible for any costs associated with legally binding

agreements for homeless assistance purposes or other costs related to redevelopment of the Property. These costs do not affect payments due to the Army as described in Section 3.1, above.

ARTICLE 4. SETTLEMENT, CLOSING COSTS, AND RECORDATION

4.1. The Parties shall agree upon a date, time and place for each Closing, which in each case shall be no more than sixty (60) calendar days following (a) Army's delivery of a Deed(s) for the applicable Parcel to CDA for signature, which Deed(s) shall be in a form and substance acceptable to CDA, and (b) CDA's determination that the Army's conveyance will be of a lawful unit(s) of land. At CDA's election and at CDA's sole cost and expense, the Closing shall occur via an escrow established with CDA's title company (the "Escrow"; such title company is referred to herein as the "Escrow Agent"). The Army shall have the right to approve the escrow instructions, provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed.

4.2. The Consideration specified in paragraph 3.1 shall be paid by CDA in cash payments totaling \$1,000,000 to the Army within 12 months (365 days) following the Closing of Parcel 1. CDA's failure to make timely payment of said Consideration in full may result in Army making written demand for such payment, plus any interest, penalties and administrative costs that have accrued as outlined in Article 6, below, upon the financial institution issuing the ILC. On the applicable Closing Date, following execution of the applicable Deed by the CDA, CDA's deposit of the \$40,000 cash into Escrow for disbursement to the Army upon Closing for Parcel 1, and execution of the \$960,000 promissory note by the CDA and issuance of the ILC, the Army shall execute, acknowledge, and deliver to Escrow Agent the executed and acknowledged Deed for the EDC of the applicable Parcel and any other Closing Documents. The CDA shall accept delivery of said Deed and other Closing Documents and shall thereafter direct the Escrow Agent to disburse the portion of the Consideration to be paid in cash at Closing and to deliver the executed promissory note and ILC to the Army for Parcel 1 Closing.

4.3. The CDA shall instruct the Escrow Agent to record (or cause to be recorded) each Deed and any related affidavits required by Oregon law in the county or counties in which the property therein is located, at its sole expense within fourteen (14) calendar days of the applicable Closing Date. The CDA shall provide a copy of the recorded Deeds and affidavits to the Army at no cost to the Army. The Parties intend that the obligations of this paragraph shall survive Closing.

4.4. The CDA shall be responsible for procuring any title insurance it may require for

the Property at its sole expense. The Army shall cooperate with the CDA or its authorized agent in the effort CDA may undertake to determine the status of title to the Property and Army shall permit the examination of any documents in the Army's possession relating to title to the Property, and shall execute any customary affidavits, assurances, or other documents required by the Escrow Agent in order to issue an owner's policy of title insurance to CDA at Closing, in each case in a form acceptable to the Army.

4.5. The CDA shall be solely responsible for real estate transfer taxes, recording fees, and escrow fees, if any, associated with the conveyance of the Property or portions thereof to the CDA. Any costs incurred by the Army for work performed (whether directly by the Army or by contract with a third party on the Army's behalf) in conjunction with the conveyance of the Property shall be borne by the Army.

4.6. The delivery at Closing by the Army of the executed and acknowledged Deeds and Closing Documents conveying the Property to the CDA, shall be deemed full performance by the Army of its obligations hereunder with respect to the Property conveyed thereby, except for any continuing obligations of the Army provided for in the said Deeds, under section 120(h) of CERCLA, as amended, or any other applicable statutory obligations of the Army.

ARTICLE 5. REINVESTMENT REQUIREMENTS

5.1. In accordance with the Act, the CDA agrees that all proceeds from the sale, lease, or equivalent use of the Property, or any portion thereof, received by CDA during the Reinvestment Period, except proceeds that are used to pay consideration to the Army under Article 3, shall be reinvested to support the economic redevelopment of, or related to, the Property conveyed to the CDA under the EDC. The use of such proceeds to pay for or offset the costs of public investment on, or related to, the Property for the following purposes shall be considered a use to support the economic redevelopment of, or related to, the Property:

- a. Road construction;
- b. Transportation management facilities;
- c. Storm and sanitary sewer construction;
- d. Police and fire protection facilities and other public facilities;

- e. Utility construction;
- f. Building rehabilitation;
- g. Historic property preservation;
- h. Pollution prevention equipment or facilities;
- i. Demolition;
- j. Disposal of hazardous materials and hazardous waste generated by demolition;
- k. Landscaping, grading, and other site or public improvements;
- l. Planning for or the marketing of the redevelopment and reuse of the Installation;

5.2. Other expenditures that are directly related to those listed in Section 5.01, above, may also be considered allowable uses of the proceeds. In order for such an expenditure to be considered an allowable use of the proceeds, it must be directly related to one or more of those listed in Section 5.01, above, and directly benefit the CDA's economic redevelopment and long-term job generation efforts for the Property. In any dispute on this issue, the CDA shall bear the burden of proof. At any time, the CDA may request the opinion of the Army as to whether a proposed expenditure would constitute an allowable use of the proceeds and the Army shall provide such written opinion within ninety (90) days of receipt of any such written request from the CDA.

5.3. Within one-hundred and twenty (120) calendar days of the end of the CDA's fiscal year in which the Closing for Parcel 1 occurs, and for each calendar year thereafter through the calendar year in which the Reinvestment Period ends, the CDA shall submit annual financial statements to the Army, certified by an independent certified public accountant ("CPA"), that account for all proceeds received by the CDA from the sale, lease, or equivalent use of the Property and the reinvestment of such proceeds during that calendar year of the Reinvestment Period. The CPA's audit report shall express an opinion on the financial position of the CDA, the results of its operations, and whether the financial statements are presented fairly in all material respects, in conformity with generally accepted accounting principles.

5.4. The annual financial statements required in Section 5.04, above, shall include therein or as supplemental statements a breakdown of gross and net revenues and expenditures of all proceeds from the sale, lease, or equivalent use of the Property. Expenditures shall be divided into the twelve (12) categories of investment specified in

Section 5.01, above. In addition, the CDA shall include in the notes to the financial statements, or through supplemental schedules, explanations of the sources of revenues and expenditures, and the terms of any financing, including bonds or other debt instruments, used to finance the purchase of the Property and/or its future plans for redeveloping the Property.

5.5. The annual financial statements required by this Article shall be provided to the Army in the format specified in “**Exhibit H – Annual Financial Statement Format**”, attached hereto and made a part hereof. At any time during the Army’s review of the financial statements, the CDA shall provide the Army with any additional information related to receipts and expenditures which may be reasonably required by the Army to assist it in its review. Any such request by Army shall be made to the CDA in writing. The CDA shall have no more than ninety (90) calendar days from the date of receipt of any such request to respond. The Army shall have the right to perform annual audits of the records and accounts of the CDA in order to ensure compliance with this Article.

5.6. Within one-hundred and eighty (180) calendar days following the Army’s receipt of the CDA’s financial statements, the Army shall notify the CDA of any objections it may have to the CDA’s use of any portion of the proceeds, specifying the amount at issue and detailing the Army’s objection to its use. The CDA will have ninety (90) calendar days from receipt of any such objections to provide additional information and/or responses to Army in writing. The Army shall then have ninety (90) calendar days from receipt of such additional information and/or responses to issue the Army’s determination on the issue, which shall be provided to the CDA in writing and shall be subject to the dispute resolution process provided in Article 13 hereof.

5.7. Pursuant to the Act, the CDA understands and agrees that any proceeds held or controlled by the CDA at the end of the CDA’s fiscal year within which the Reinvestment Period expires, which have not been expended or obligated for one of the twelve (12) categories of allowable investment specified in Section 5.01, above, or as otherwise determined allowable by the Army in accordance with Section 5.02, above, shall be remitted to the Army within 60 calendar days following the end of the CDA’s fiscal year.

ARTICLE 6. INTEREST, PENALTIES AND ADMINISTRATIVE COSTS

6.1. All amounts owed to the Army under this Agreement must be paid by the date due in order to avoid the imposition of interest, penalties, and administrative charges under the Debt Collection Act of 1982 (31 U.S.C. § 3717) and implementing regulations at 31 C.F.R. § 901.9.

6.2. The Army shall impose an interest charge at the “Current Value of Funds Rate”

published by the U.S. Department of the Treasury on any amount owed to the Army hereunder that is delinquent. Interest shall accrue from the date of delinquency until the amount is paid in full. The Army shall waive interest charges on any portion of the delinquent amount if paid within thirty (30) days of the date of delinquency. The Army shall not charge interest on penalties or administrative costs.

6.3. The Army shall impose an administrative charge to cover the costs of collecting any amount due hereunder that is delinquent. The Army shall calculate administrative charges as the actual costs incurred for the delinquent amount. The Army shall waive the collection of administrative costs on any portion of the delinquent amount if paid within thirty (30) days of the date of delinquency.

6.4. The Army shall impose a penalty charge of six percent (6%) per annum of any amount due hereunder (principal plus interest and administrative charges) that is more than ninety (90) days delinquent. The said penalty shall accrue from the date of delinquency and shall continue to accrue until the amount is paid in full.

6.5. All partial payments received by the Army shall be applied first to any contingency fees added to the debt, second to outstanding penalties, third to administrative charges other than contingency fees, fourth to interest, and last to principal. For purposes of this paragraph, "contingency fees" are administrative costs resulting from fees paid by the Army to other Federal agencies or to private collection contractors for collection services rendered when the fees are paid from the amounts collected from the CDA.

ARTICLE 7. MAINTENANCE AND UTILITY SYSTEMS

7.1. The Army shall maintain and repair the Property in accordance with the provisions of 32 C.F.R. § 174.14 at its sole expense, subject to the availability of funds, until such time as the Property is conveyed to CDA, subject to CDA responsibility for protection and maintenance of portions of the Property currently leased to CDA by Department of the Army, Lease No. DACA67-1-20-40 (see "**Exhibit I – Army-CDA Interim Lease**").

7.2. The Army shall convey all right, title and interest of the United States of America in and to all utility systems located on the Property to the CDA with the land, including electrical, optical fiber, natural gas, potable water, industrial and sanitary sewers, treatment plants, and storm water systems, on the Closing Date as described in "**Exhibit B**". The CDA shall be solely responsible for the cost of all utility services on the Property as of the date of Closing except that Army shall remain responsible for utility costs associated with its continued operation and maintenance of the Pump & Treat system as described and identified in the *U.S. Army Base Realignment and*

Closure 2005, Environmental Condition of Property Report Update, Umatilla Chemical Depot dated December 02, 2021, subject to the availability of appropriated funds for such purposes.

7.3. The Army shall reserve to the United States certain assignable easements for the purpose of allowing Army, or its assignee, continued access to and use of portions of the Property conveyed to CDA, as set forth in “**Exhibit D – Description of Army Reserved Easements.**”

ARTICLE 8. RISK OF LOSS

8.1. The Army shall take reasonable measures to ensure that the Property is protected in accordance with applicable Federal regulations prior to conveyance to the CDA.

8.2. The Army shall have no obligation to repair, replace, demolish, or remove any portion of the Property damaged or destroyed prior to conveyance to the CDA hereunder.

8.3. The Parties hereby agree that any damage or destruction of a portion of the Property shall not otherwise affect the Parties’ rights and responsibilities with regard to the remaining portions of the Property under this Agreement.

ARTICLE 9. ENVIRONMENTAL PROVISIONS

9.1. The Army assessed, determined, and documented the environmental condition of the Property in the *U.S. Army Base Realignment and Closure 2005, Environmental Condition of Property Report Update, Umatilla Chemical Depot*, dated June 2010, *ECP Update dated December 01, 2021*. The CDA hereby acknowledges that it has received and reviewed said report and the said updates thereto.

9.2. The CDA hereby acknowledges that it has received and reviewed the *Final Environmental Assessment (EA) for Closure, Disposal and Reuse of the Umatilla Chemical Depot, and Finding of No Significant Impact (FONSI)*, dated August 2016 and November 2021 respectively, and represents to the Army that the CDA’s intended use of the Property is consistent with the uses analyzed in the said EA.

9.3. The Army will execute a Finding of Suitability to Transfer (FOST) prior to Closing on the respective Parcel for the Property. At Closing, the CDA will acknowledge that it has received and reviewed the FOST for the respective Parcel.

9.4 The Deeds shall contain such notices, covenants, restrictions, warranties and reservations of access, pursuant to CERCLA and other applicable laws, regulations and policies as the Army determines are required for the protection of human health and the environment, in addition to those described in Article 2. The other closing documents will include but may not be limited to an **Easement and Equitable Servitude** substantially in the form of **Exhibit J**, to be executed by the Army and the Oregon DEQ.

ARTICLE 10. DEFAULT AND TERMINATION

10.1. Subject to Section 10.02, the Army may, in its sole discretion, terminate this Agreement if:

- a. The CDA fails to maintain its status as the local redevelopment authority approved by the Department of Defense, Office of Local Defense Community Cooperation; or
- b. The CDA breaches its closing obligations set forth in Article 2, 3 and 4 above.

10.2. In the event a Party hereto fails to observe or perform any of its obligations under this Agreement, other than the obligation of the CDA to make timely payment to the Army as set forth in Section 3.1 and 4.2, above, after having been provided written notice of such failure and failing to cure the default within ninety (90) calendar days of the date of receipt of such notice, the other Party shall be entitled to terminate this Agreement and, notwithstanding such termination, exercise any and all of the remedies for breach which are provided for herein as well as any other remedies to which the Party is entitled at law or in equity; provided, however, that if such a default occurs which cannot be remedied within ninety (90) calendar days, the other Party shall afford such additional time as may reasonably be required to cure such default if the defaulting Party proceeds with reasonable diligence to cure same.

10.3. Any termination of this Agreement shall have no effect on the continuing obligations of the Parties as provided for in Article 5 of this Agreement or contained in any deed or other document that may have been executed by the Parties pursuant to this Agreement. In the event of a termination of this Agreement, the Army shall not be required to return any monies already paid to it by the CDA under this Agreement.

ARTICLE 11. NOTICES

11.1. Any notice, request, demand, instruction or other document required or permitted to be given or served under this Agreement shall be in writing and shall be

deemed sufficiently served when delivered by hand if a receipt is obtained therefrom, or when actually received if delivered by mail or facsimile, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed as follows:

If to the CDA: Attn: Gregory Smith, Executive Director
Columbia Development Authority
Two Marine Drive
P.O. Box 200 Boardman,
OR 97818

with a copy to: Attn: Jim Doherty
Chairman, Columbia Development Authority
P.O. Box 788 Heppner,
OR 97836

with a copy to: Attn: Kim Puzey
Vice Chairman, Columbia Development Authority
P.O. Box 879
Umatilla OR 97882

with a copy to: Attn: Elizabeth Howard
Schwabe, Williamson & Wyatt, P.C.
Attorneys at Law
1211 SW Fifth Ave., Suite 1900
Portland, OR 97204-3795

If to the Army: Attn: Thomas J. Seymour
CENWS-RE, U.S. Army Corps of Engineers 4735
E. Marginal Way South
Seattle, Washington 98124-3755

with a copy to: Attn: Richard C. Ramsdell
Chief, BRAC Branch
Army Environmental Division (DAIN-ISE)
Office of the Deputy Chief of Staff, G-9
Taylor Building/NC3, Suite 1400
2530 Crystal Drive
Arlington, VA 22202

with a copy to: Attn: COL Joshua Davis
Chief, Army Environmental Division (DAIN- ISE)

Office of the Deputy Chief of Staff, G-9 Department
of the Army
600 Army Pentagon (Suite 5C140)
Washington, DC 20310

11.2. Either Party may change the address to which any notice, request, demand, instruction or other document required or permitted to be given or served under this Agreement shall be delivered by providing notice of such change in accordance with this provision to the other Party at that Party's last identified address; provided, that such change of address shall not take effect until five (5) calendar days following the date of such notice.

11.3. Whenever under the terms of this Agreement the time for performance falls upon a Saturday, Sunday or holiday observed by the performing Party, such time for performance shall be extended to the next business day. Otherwise, all references herein to "days" shall mean "calendar days."

ARTICLE 12. NON-DISCRIMINATION COVENANT

12.1. The CDA covenants for itself, its successors, and assigns and every successor in interest to the Property, or any part thereof, that the CDA, and such successors and assigns shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of the Property or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property to be conveyed in accordance with this Agreement and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

12.2. Each Deed shall contain the non-discrimination clause as set forth at 41 C.F.R. § 102-75.360.

ARTICLE 13. DISPUTE RESOLUTION

13.1. Notwithstanding the terms and conditions of CDA's payment obligation as described in Article 3, as a condition precedent to a Party bringing any suit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation.

13.2. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to all Parties. Each of the Parties shall pay an equal

share of any costs for the services provided by such a third party as such costs are incurred.

13.3. The existence of a dispute shall not excuse the Parties from diligent performance of their obligations pursuant to this Agreement.

ARTICLE 14. SEVERABILITY

If any term, provision, covenant, or condition of this Agreement, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remainder of this Agreement, or the application of such term, provision, covenant, or condition to persons or circumstances other than those as to which it is held invalid, void, or unenforceable, shall not be affected thereby, and shall continue in full force and effect.

ARTICLE 15. ANTI-DEFICIENCY ACT

The Army's obligation to pay or reimburse any money under this Agreement is subject to the availability of appropriated funds and nothing in this Agreement shall be interpreted to require obligations or payments by the Army in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42, 1511-19.

ARTICLE 16. AUTHORITY REPRESENTATIONS

The Parties hereby represent to each other on and as of the Effective Date of this Agreement that they have the full capacity, right, power and authority to execute, deliver, and perform this Agreement and that all required action and approvals necessary therefore have been duly taken and obtained. The Parties further represent that the individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the Parties shall be duly authorized to sign the same on their behalf and to bind the Parties thereto.

The representations and warranties set forth by each Party in this Article 16 shall survive each Closing and shall not merge with the Deeds.

ARTICLE 17. PROTECTION OF HISTORIC and CULTURAL PROPERTY

The Army, the Oregon State Historic Preservation Office, and the Advisory Council on Historic Preservation entered into a programmatic agreement in December 2013,

pursuant to review and consultation under Section 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800, to govern the protection of historic and cultural properties at the Installation. Those parties subsequently determined that the programmatic agreement required an amendment pursuant to further consultation and surveys. See **Exhibit F – Amendment to the Programmatic Agreement**, which describes the stipulations and measures, the signatories thereto, including the Army, CDA and CTUIR who have, along with the SHPO and ACHP, collectively agreed on a comprehensive mitigation package to avoid, minimize or mitigate potential adverse effects. In addition, the Agreement between CDA and CTUIR to transfer and manage certain portions of the Property for conservation purposes will facilitate protection of the Property’s historic and cultural resources, subject to and in accordance with applicable local, state and federal laws (including, without limitation, Morrow or Umatilla County zoning codes, as applicable) and the Amendment to the Programmatic Agreement. See **Exhibit K**.

ARTICLE 18. “AS IS” CONDITION

18.1. The CDA acknowledges that it has inspected, or has had the opportunity to inspect, the Property and accepts the condition and state of repair of the Property. The CDA understands and agrees that the Property shall be conveyed “as is” without any representation, warranty, or guaranty by the Army as to quantity, quality, title, character, condition, size, or kind, or that the same is in a suitable condition or fit to be used for the purposes intended by the CDA, and no claim for allowance or deduction upon such grounds shall be considered.

18.2. No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos, lead-based paint, mold, pesticides, or radon. The CDA shall be deemed to have relied solely on its own judgment in assessing the condition of the Property including, without limitation, any asbestos, lead-based paint, mold, pesticides, radon, or other conditions. Any failure of the CDA to inspect or exercise due diligence to be fully informed as to the condition of the Property, shall not constitute grounds for any claim or demand against the Army.

18.3. The description of the Property and any other information provided herein with respect to the Property is based on the best information available to the Army and is believed to be correct, but an error or omission including, but not limited to, an omission of any information available to the Army shall not constitute grounds or reason for nonperformance of this Agreement or any claim by the CDA against the Army including, without limitation, any claim for allowance, refund, or deduction from the consideration to be paid to the Army.

18.4. Nothing in this Article 18 shall be construed to modify or negate any obligation of the Army under sections 120(h)(3)(A)(ii) and (B) or section 120(h)(4)(D)(ii) of CERCLA or any other applicable statutory obligations of the Army.

ARTICLE 19. MERGER

This Agreement contains the entire agreement between the Parties regarding the conveyance of the Property by the Army to the CDA and any agreement or amendment hereafter made shall not operate to change, modify, or discharge this Agreement, in whole or in part, unless that agreement or amendment is in writing and signed by the Party sought to be charged with it. All prior negotiations and any letters of intent are merged in this Agreement. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between the Parties, other than as set forth in this Agreement.

ARTICLE 20. AMENDMENT

This Agreement may not be amended or otherwise modified, unless by mutual, written consent and executed by the Parties hereto.

ARTICLE 21. WAIVER

No delay or omission by any Party to this Agreement in any one or more instances to exercise any right or power occurring upon any noncompliance or default by any other Party with respect to any of the terms or conditions of this Agreement, shall impair any such right or power or be construed to be a waiver or relinquishment thereof.

ARTICLE 22. COVENANT AGAINST CONTINGENT FEES

The CDA warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies retained by the CDA for the purpose of securing business. For breach or violation of this warranty, the Army shall have the right to annul this Agreement without liability or, in its discretion, to require the CDA to pay the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 23. OFFICIALS NOT TO BENEFIT

No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise there from. Nothing herein contained, however, shall be construed to extend to any incorporated company, if this Agreement is for the general benefit of such corporation or company.

ARTICLE 24. NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement shall make or shall be construed to make the Parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between the Army and the CDA hereunder is that of seller and buyer or lessor and lessee. Nor shall anything in this Agreement render or be construed to render any Party hereto liable to any third party for debts or obligations of the other Party.

ARTICLE 25. HEADINGS

The brief headings or titles preceding each Article herein are merely for purposes of identification, convenience, and ease of reference and shall be completely disregarded in the construction of this Agreement.

ARTICLE 26. ASSIGNMENT

The CDA shall not transfer or assign its rights, interests, or obligations under this Agreement without the prior written consent of the Army, which shall not be unreasonably withheld, conditioned or delayed. The covenants, agreements, rights, and responsibilities contained in this Agreement inure to the benefit of and are binding upon the Parties hereto, their successors, and assigns. Nothing in this Agreement otherwise shall be construed as creating any rights of enforcement against any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

ARTICLE 27. COUNTERPARTS

The Agreement is executed in two (2) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

ARTICLE 28. GOVERNING LAW

Notwithstanding the place where this Agreement may be executed by either of the Parties, the Parties hereby agree that this Agreement and the relationship between the Parties shall be construed in accordance with and governed by Federal law; otherwise the law of the State of Oregon, shall govern.

ARTICLE 29. RESERVATION OF RIGHTS, JURISDICTION, AND VENUE

The Parties reserve unto themselves all rights and remedies to which each is entitled at law or in equity. This Agreement shall be enforceable in accordance with applicable laws and regulations in any Federal court of competent jurisdiction.

ARTICLE 30. SURVIVAL

Those provisions, obligations, and covenants of this Agreement which, by their express terms or by their operation, are intended to survive the Army's conveyance of the Property or termination of this Agreement, shall survive such conveyance of the Property or termination of this Agreement. Such provisions include, but are not limited to, Articles 3, 5 and 15.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

DEPARTMENT OF THE ARMY

Date: _____ By: _____

Carla K. Coulson
Deputy Assistant Secretary of the Army
(Installations, Housing and Partnerships)

THE COLUMBIA DEVELOPMENT AUTHORITY

Date: 12-22-2022 By:  _____

Gregory V. Smith, Executive Director