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Hon. William L. Dwyer

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OCT 5 1999 MR

BY _____
WESTERN DISTRICT OF WASHINGTON DEPUTY

CC: TO JUDGE MR. G
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OCT 13 1999

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE.

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

UNITED STATES OF AMERICA,)
et al.,)
)
Plaintiffs,)
)
v.)
)
THE CITY OF SEATTLE, and)
MUNICIPALITY OF METROPOLITAN)
SEATTLE,)
)
Defendants.)

NO. C90-395WD
AMENDED
CONSENT DECREE

CONSENT DECREE

This Consent Decree is made and entered into by and between the United States of America, the State of Washington, the Suquamish Indian Tribe, the Muckleshoot Indian Tribe, the City of Seattle ("City") and the Municipality of Metropolitan Seattle ("Metro").

INTRODUCTION

The parties to this Consent Decree agree that settlement of the claims in this case against defendants the City and Metro is

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City of Seattle

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1 fair, adequate, reasonable, equitable and in the public interest
2 and is made in good faith and after arms-length negotiations, and
3 that entry of this Consent Decree is the most appropriate means
4 to resolve the matters covered herein.

5 RECITALS

6 A. The Department of Commerce acting through the National
7 Oceanic and Atmospheric Administration ("NOAA"), the United
8 States Department of the Interior ("Interior"), the Washington
9 Department of Ecology ("Ecology"), the Muckleshoot Indian Tribe,
10 and the Suquamish Indian Tribe have been designated pursuant to
11 Section 107(f) of the Comprehensive Environmental Response,
12 Compensation, and Liability Act of 1980, as amended ("CERCLA"),
13 42 U.S.C. Section 9607(f), and 40 C.F.R. Part 300, subpart G, to
14 act on behalf of the public as trustees for natural resources for
15 the assessment and recovery of damages for injury to, destruction
16 of, or loss of natural resources under their trusteeships.

17 B. Metro, pursuant to statutory authority, is responsible
18 for the construction, operation, and maintenance of trunk sewer
19 lines, pumping facilities, and treatment plants serving over one
20 million people including many industries and commercial
21 enterprises in the greater Seattle area. Metro treats
22 approximately 180 million gallons of wastewater per day at its
23 five wastewater treatment plants, and discharges the treated
24 effluent from a system of outfall pipes extending into Puget
25 Sound. As a part of that system, combined sewer overflows

1 ("CSOs") are located on and discharge to Elliott Bay and the
2 Duwamish River to handle extraordinary flows of storm water into
3 the system. Effective January 1, 1994, by the operation of law
4 the Municipality of Metropolitan Seattle (Metro) was consolidated
5 into King County, a home rule charter county of the State of
6 Washington. For a two-year transition period the functions
7 formerly performed by the Municipality of Metropolitan Seattle
8 were performed by King County through the Department of
9 Metropolitan Services. As of January 1, 1996, the metropolitan
10 water pollution control function formerly performed by Metro is
11 now performed by King County through its Department of Natural
12 Resources. Provisions herein regarding the rights and
13 obligations of Metro should be read to refer to King County.

14 C. The City, pursuant to statutory authority, owns and
15 maintains a basic collector sewer system which feeds into the
16 Metro trunk sewer lines, and also owns and maintains a storm
17 water system. The City pays Metro for sewage transmission,
18 treatment, and disposal services. As part of the sewer and storm
19 water systems, the City owns and maintains certain CSOs and storm
20 water outfalls that discharge to Elliott Bay and the Duwamish
21 River.

22 D. The United States on behalf of NOAA filed a complaint
23 in this action on March 19, 1990, under Section 107 of CERCLA, 42
24 U.S.C. § 9607(a), seeking, inter alia, recovery from Metro and
25 the City for damages for injury to, destruction of, and loss of

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1 natural resources resulting from releases of hazardous
2 substances, in particular chromium, cadmium, copper, lead, zinc,
3 pentachlorophenols (PCPs), polychlorinated biphenyls (PCBs),
4 polycyclic aromatic hydrocarbons (PAHs), and halogenated
5 hydrocarbons, into the environment in and around the Duwamish
6 River and Elliott Bay, for the costs of restoring, replacing or
7 acquiring the equivalent of the affected natural resources, and
8 for the costs of assessing the damage to the affected natural
9 resources.

10 E. The United States has alleged in its complaint in this
11 matter, prior to conducting a natural resource damage assessment
12 pursuant to 43 C.F.R. Part 11, that Metro and the City have
13 released hazardous substances into the environment, with
14 attendant injury to the United States' trust resources, and that
15 mitigation and remediation of substances Metro and the City are
16 alleged to have released would facilitate the recovery of such
17 resources.

18 F. Metro and the City maintain that effluent discharged
19 from their CSOs and storm water outfalls has presented little if
20 any potential for injury to the natural resources in Elliott Bay
21 and the Duwamish River; that their wastewater collection,
22 treatment and disposal programs have contributed substantially to
23 decreasing and/or minimizing injury and damage to natural
24 resources; that their water quality programs have made
25 improvements in the water quality of Elliott Bay and the Duwamish

1 River; that their pretreatment programs, along with on-site
2 monitoring, keep the contribution of industrial sources within
3 permitted discharge limits; and that the limited natural resource
4 damage from the CSOs and the storm water outfalls appears to have
5 originated equally from industrial, commercial, and residential
6 customers that discharge into the City and Metro systems.

7 G. Without admission or adjudication of any fact or issue
8 of law in this matter, except as between the United States, Metro
9 and the City as to the running of the statutes of limitation and
10 to certain interpretations of Section 13 of the Rivers and
11 Harbors Act, 33 U.S.C. § 407, in settlement of this action Metro
12 and the City have agreed to participate in a cooperative program
13 of restoration and replacement of natural resources in Elliott
14 Bay and the Duwamish River. In addition to the provision of
15 expertise through the contribution of in-kind services, Metro and
16 the City have agreed to provide funding for the operation of the
17 Panel (as defined below), the evaluation of natural resource
18 damages, the selection, design, and implementation of sediment
19 remediation and habitat development projects, and the
20 modification of planned source control programs.

21 H. This Decree contains terms embodying a cooperative
22 partnership among the United States, Metro, the City, the State
23 of Washington, the Muckleshoot Indian Tribe, and the Suquamish
24 Indian Tribe that will make improvements in Elliott Bay and the
25 Duwamish River and will allow these parties to make progress in

1 restoring and replacing damaged natural resources in the covered
2 area, as defined below.

3 I. Scientific research conducted on natural resources in
4 Elliott Bay and the Duwamish River indicates that the effects of
5 many urban and industrial activities, including CSOs and storm
6 water discharges, have contributed to the injury identified in
7 these studies. Based on this research, the parties have agreed
8 that, as to Metro and the City, no further natural resource
9 damage assessment is required to effectuate the purposes of this
10 Decree.

11 J. The programs and projects conducted pursuant to this
12 Decree standing alone are not intended, nor could they be
13 expected, to remedy all of the losses of or injuries to natural
14 resources in Elliott Bay and the Duwamish River. The parties
15 recognize the importance of dealing with the programs under this
16 Decree in a comprehensive manner and of coordinating the
17 activities undertaken pursuant to this Decree with actions by
18 these and other parties in the Elliott Bay and Duwamish River
19 area to maximize the benefits to the natural resources, as well
20 as the residents, of the area. This includes coordinating
21 ongoing Metro and City programs with efforts to maintain habitat
22 development projects established pursuant to this Decree.

23 K. The parties understand that the source control,
24 sediment remediation and habitat development efforts undertaken
25 pursuant to this Decree are not intended to substitute for any
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1 other efforts or obligations of these parties.

2 L. The parties recognize that the United States and the
3 State of Washington retain and reserve their authority that does
4 not relate to recovery of natural resource damages, including the
5 authority to issue orders requiring remedial action and to
6 recover costs associated with such orders pursuant to CERCLA and
7 the Model Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48
8 RCW, and the authority to administer and enforce the State
9 Sediment Management Standards, Chapter 173-204 WAC.

10 M. The Trustees have determined that the actions and
11 expenditures of Metro and the City under this Decree are an
12 appropriate contribution to efforts to redress the natural
13 resource damages that are the subject of this proceeding. This
14 determination is based in major part upon the following
15 considerations:

16 1. Metro has made a substantial public investment in
17 water quality. For example, Metro spent \$2,244,000 over the
18 period 1977 through 1989 on its program of regulating
19 commercial and industrial discharges into those portions of
20 its sewerage system related to Elliott Bay and the Duwamish
21 River area. Metro has spent an additional \$38,000,000 since
22 1961 on other programs specifically designed to enhance
23 Elliott Bay and the Duwamish River area. In addition to
24 funds made available pursuant to this Decree, Metro will
25 spend \$54,500,000 (in 1988 dollars) for CSO control projects

1 through the year 2006.

2 2. The City has been actively engaged in programs to
3 increase protection of waters receiving urban runoff.
4 During the period 1970 through 1989, the City has expended
5 more than \$150,000,000 in capital projects and other
6 programs to enhance water quality in the Elliott
7 Bay/Duwamish River area. (This figure does not include fees
8 and charges paid to Metro, although the City has
9 historically contributed over one-half of Metro's operating
10 revenue.) The City's capital projects and other programs
11 have included controlling CSOs, identifying and reducing
12 sources of contaminants in storm drains, educating
13 commercial and industrial dischargers on storage and
14 handling practices of hazardous substances, and cleaning
15 streets, catch basins, and storm drain lines.

16 3. On April 17, 1991, the State of Washington adopted
17 Sediment Management Standards, Chapter 173-204 WAC, an
18 innovative program of sediment quality standards, source
19 control, and cleanup, applicable to sediments in Elliott Bay
20 and the Duwamish River.

21 In particular, the CSO control efforts undertaken by Metro and
22 the City, combined with the expected sediment quality benefits
23 from adherence with the Sediment Management Standards program,
24 provide a substantial foundation for the efforts contemplated
25 under this Decree.

1 NOW, THEREFORE, before the taking of any testimony, before
2 the adjudication of the merits of this case, and without
3 admission of any issue of law, fact, liability, or responsibility
4 by the City or Metro, IT IS HEREBY ORDERED, ADJUDGED, AND
5 DECREED:

6 JURISDICTION AND VENUE

7 1. The Court has jurisdiction over the subject matter of
8 this action and the parties to this Consent Decree pursuant to 28
9 U.S.C. §§ 1331 and 1345, and Section 113(b) of CERCLA, 42 U.S.C.
10 § 9613. This Court also has personal jurisdiction over the City
11 and Metro which, solely for the purposes of this Consent Decree,
12 waive all objections and defenses that they may have to
13 jurisdiction of the Court or to venue in this District and to
14 service of process.

15 APPLICABILITY OF CONSENT DECREE

16 2. The provisions of this Consent Decree shall apply to
17 and be binding on the parties to this Consent Decree, their
18 agents, successors and assigns. Changes in the organizational
19 form or status of a party shall have no effect on its obligations
20 under this Consent Decree.

21 DEFINITIONS

22 3. This Consent Decree incorporates the definitions
23 set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In
24 addition, whenever the following terms are used in this Consent
25 Decree, they shall have the following meanings:

1 a. "Covered area" means the embayment on Puget Sound
2 located between Alki Point and West Point and includes the
3 shoreline ten (10) meters upland from the mean high water line
4 ("Elliott Bay") and the Duwamish River from the point at which it
5 discharges into Elliott Bay to the head of navigation
6 (approximately river mile 10), including Harbor Island and the
7 East and West Waterways around Harbor Island ("Duwamish River").

8 b. "Covered matters" means any civil or
9 administrative liability to the United States, the State of
10 Washington, the Suquamish Indian Tribe and the Muckleshoot Indian
11 Tribe, for any claim under 42 U.S.C. § 9607(a), 33 U.S.C. § 407,
12 Chapter 70.105D RCW, Chapter 90.48 RCW, or any other federal,
13 state, or common law, except claims relating to treaties between
14 the United States and the Suquamish and Muckleshoot Indian
15 Tribes, for (1) natural resource damages within the covered area,
16 including the costs of assessing natural resource damages; and
17 (2) reimbursement of response costs incurred or to be incurred by
18 any Trustee (as defined below) with respect to its claims for
19 natural resource damages in the covered area, that could have
20 been adjudicated had United States v. City of Seattle and
21 Municipality of Metropolitan Seattle, Cause No. C90-395WD,
22 W.D. Wash. (Mar. 19, 1990), been prosecuted to final judgment;
23 "covered matters" shall also include any civil or administrative
24 liability to the United States, the Suquamish Indian Tribe, the
25 Muckleshoot Indian Tribe and the State of Washington for any

1 claims under 33 U.S.C. § 407 for injunctive and other equitable
2 relief that could have been adjudicated had said case been
3 prosecuted to final judgment. For the purpose of determining if
4 claims could have been adjudicated, reference shall be made to
5 the facts and allegations disclosed in the documents filed with
6 the Court in said case by the date of entry of this Decree.

7 "Covered matters" shall not be construed to include any authority
8 of the United States or the State of Washington that does not
9 relate to injunctive or equitable relief under 33 U.S.C. § 407 or
10 to recovery of natural resource damages, including the authority
11 to issue orders requiring remedial action and to recover costs
12 associated with such orders pursuant to CERCLA and the Model
13 Toxics Control Act, Chapter 70.105D RCW, Chapter 90.48 RCW, and
14 the authority to administer and enforce the State Sediment
15 Management Standards, Chapter 173-204 WAC.

16 c. "Habitat development" includes acquiring living
17 natural resources for the purpose of habitat restoration and
18 replacement and any program, technique, method, or other means of
19 creating or enhancing aquatic or benthic habitat in the Duwamish
20 River or Elliott Bay.

21 d. "Natural resource damages" means damages for
22 injury to, destruction of, or loss of any and all natural
23 resources caused in whole or in part by releases of hazardous
24 substances into the environment.

25 e. "Sediment remediation" includes, but is not

1 limited to, any program, technique, method, or other means of
2 dredging, removing, cleansing, isolating, immobilizing,
3 bioremediating, capping, or containing sediments beneath the
4 waters of the Duwamish River and Elliott Bay that contain
5 hazardous substances.

6 f. "Source control" means any program, technique,
7 method, or other means of restricting or eliminating the
8 discharge or other release of hazardous substances into Metro's
9 and the City's CSO and/or storm water outfall systems.

10 g. "Trustees" means NOAA, Interior, Ecology, the
11 Suquamish Indian Tribe and the Muckleshoot Indian Tribe.

12 DISTRICT COURT REGISTRY ACCOUNT

13 4. a. Metro and the City shall, pursuant to the
14 schedules and terms set forth herein, pay all financial
15 contributions under this Consent Decree by certified or bank
16 check. Each such check shall include on its face a statement
17 that it is a payment for natural resource damages in Civil Action
18 No. C90-395WD (W.D. Wash.), and, with the exception of those
19 funds identified in paragraph 32 below, shall be sent to:

20 Office of the United States Attorney
21 3600 SeaFirst Fifth Avenue Plaza
22 800 Fifth Avenue
23 Seattle, Washington 98104

24 The U.S. Attorney shall immediately deposit such funds with the
25 Registry of the Court. The party making payment shall cause
26 copies of each check and of any transmittal letter accompanying

1 the check to be sent to: Chief, Environmental Enforcement
2 Section, Department of Justice, P.O. Box 7611, Ben Franklin
3 Station, Washington, D.C. 20044; NOAA Damage Assessment Center,
4 WSC1 Room 212, 6001 Executive Boulevard, Rockville, Maryland
5 20852, Attention: Kathleen Anderson.

6 b. The Registry of the Court shall administer all
7 amounts paid for natural resource damages under this Decree in an
8 interest-bearing account ("Registry Account" or "Account") as
9 provided in the Order Directing the Deposit of Natural Resource
10 Damages Into the Registry of the Court ("Deposit Order") issued
11 by this Court pursuant to Rule 67 of the Federal Rules of Civil
12 Procedure, 28 U.S.C. § 2041, and Rule GR 6 of the Rules of the
13 United States District Court for the Western District of
14 Washington. The Deposit Order shall be attached to this Decree.

15 c. All funds and all interest accrued thereon in the
16 Registry Account shall be held in the name of the "Clerk, United
17 States District Court," for the benefit of the Trustees. Monies
18 in the Registry Account may be used to fund the planning,
19 implementing, and overseeing of actions to restore, replace, or
20 acquire the equivalent of natural resources that have been
21 injured, destroyed, or lost as a result of the release of
22 hazardous substances into the environment in the covered area, in
23 accordance with 42 U.S.C. § 9607(f)(1). The Panel shall use all
24 interest earned on funds paid into the Account for sediment
25 remediation only for expenses of project implementation for

1 sediment remediation and all interest earned on funds paid into
2 the Account for habitat development only for expenses of project
3 implementation for habitat development. All disbursements from
4 the Registry Account shall be made by order of the Court in
5 accordance with the provisions of 28 U.S.C. § 2042. Applications
6 for disbursement orders may be made only by the United States on
7 behalf of, and with the approval of, the Panel.

8 d. Notwithstanding the third sentence of paragraph
9 4(c), the Parties agree that \$800,000 of interest accrued on
10 funds paid into the Account for sediment remediation and/or
11 habitat development may be spent on expenses of planning and
12 design support as defined in paragraph 10(b). The parties
13 further agree that additional accrued interest may be used for
14 such planning and design support by unanimous written agreement
15 of the parties, without the necessity for further Consent Decree
16 amendments.

17 PROJECT AND ACCOUNT MANAGEMENT

18 5. A panel of managers ("Panel" or "Managers") shall be
19 formed to direct the source control, sediment remediation and
20 habitat development project activities contemplated herein to be
21 performed utilizing funds deposited in the Registry Account. The
22 Panel shall consist of the following groups: (a) NOAA and
23 Interior, for the United States; (b) Ecology, for the State of
24 Washington; (c) the Suquamish Indian Tribe; (d) the Muckleshoot
25 Indian Tribe; (e) Metro; and (f) the City. The Panel shall have

1 no independent legal status and shall have only that authority
2 conferred upon it by this Decree.

3 6. Each member group of the Panel, as identified in the
4 preceding paragraph, may as necessary select in what ever manner
5 it deems appropriate one or more representatives from its
6 respective agencies or subgroups to serve collectively as its
7 Manager. Irrespective of the number of representatives from any
8 group, each of the groups identified in the preceding paragraph
9 shall have only a single vote on the Panel.

10 7. The terms in this paragraph shall apply only if the
11 Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the
12 State of Washington all choose to continue their consent to this
13 Decree and to participation in this settlement. The Parties to
14 this Decree expect and intend that most issues for decision by
15 the Panel will be based upon objective criteria, and that most
16 decisions will be based on consensus. Where no consensus is
17 achieved, except as provided in paragraph 30 of this Decree, the
18 Panel will decide the issue by vote, with each member having one
19 vote, and the majority prevailing. The position of the majority
20 of the Trustees will prevail in the event of a tie vote. The
21 position of the United States will prevail in the event of a tie
22 vote in which the Trustees are evenly split. Any party may,
23 within thirty (30) days of notification of the results of voting,
24 petition the Court for review of any decision. The petitioner
25 shall bear the burden of proving that the decision is

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1 inconsistent with the terms of this Decree. The Panel may adopt
2 in the form of bylaws any additional decision making procedures
3 it deems necessary.

4 8. The terms in this paragraph shall apply only if one or
5 more Trustees exercise their right to withdraw pursuant to
6 paragraph 53 of this Decree. Following entry of this Decree, the
7 Panel shall establish procedures for making decisions. Such
8 procedures shall conform to the following requirements:

9 (a) decisions shall if possible be based on consensus; (b) the
10 structure for deciding any issue by vote shall allow each group
11 to have a true voice in the process; (c) deference shall be given
12 to decisions by a majority of the trustee groups, even if they
13 are not in the numerical majority of the Panel on a given issue;
14 (d) any arrangement that would allow a group or groups to
15 deadlock voting shall be avoided; and (e) any aggrieved party
16 shall have the right to petition the Court for review of any
17 decision by the Panel. The Panel may adopt in the form of bylaws
18 any additional decision making procedures it deems necessary. If
19 the Panel fails to establish decision making procedures, which
20 conform to the requirements herein, within ninety (90) days of
21 entry of the Decree, any party to this Decree may immediately
22 petition the Court to establish such procedures.

23 9. For the purposes of this Decree, the Panel has the
24 authority to:

25 a. Establish such procedures and practices as are

1 necessary to the operation and deliberations of the Panel,
2 including, but not limited to, provisions for collecting and
3 disseminating information, convening and conducting meetings, and
4 resolving disputes;

5 b. Gather data in Elliott Bay and the Duwamish River
6 regarding damages to natural resources occasioned by releases of
7 hazardous substances into the environment that have resulted in
8 injury to, destruction of, or loss of natural resources;

9 c. Plan projects for sediment remediation and habitat
10 development in the covered area;

11 d. Establish source control goals to protect natural
12 resources and prevent recontamination of sites selected for
13 sediment remediation or habitat development in the covered area;

14 e. Review and comment upon actions proposed by Metro
15 and the City to achieve the Panel's source control goals,
16 determine if such actions are likely to achieve the Panel's
17 goals, and direct Metro and the City to take such actions
18 approved by the Panel;

19 f. Coordinate and provide for the dissemination of
20 information to the public on the selection and design of sediment
21 remediation and habitat development projects;

22 g. Ensure the collection from, and dissemination to,
23 each group that is a member of the Panel all information
24 necessary to an informed discussion and resolution of all issues
25 related to sediment remediation, habitat development and source

1 control;

2 h. Decide all issues related to selecting study
3 activities and other data gathering efforts, and to selecting,
4 planning, and managing sediment remediation and habitat
5 development projects, including establishing performance
6 standards and contingency plans for habitat development projects;

7 i. Develop guidelines for establishing the reasonable
8 and necessary reimbursable costs of salary and travel incurred by
9 the Trustees for their participation in the activities of the
10 Panel and of the technical working groups, formed pursuant to
11 paragraph 15 of this Decree; and

12 j. Perform any other activity specifically provided
13 for elsewhere in this Decree or as directed or approved by the
14 Court.

15 No action of the Panel may be inconsistent with the Trustees'
16 duties and responsibilities under 42 U.S.C. § 9607.

17 10. a. The parties to this Decree agree that the funds
18 paid by Metro and the City into the Registry Account shall be
19 used only for sediment remediation and habitat development, as
20 defined herein, and for expenses of Panel functions support and
21 planning and design support as specified below. No more than two
22 million dollars (\$2,000,000) shall be spent on expenses of Panel
23 functions support. The Panel shall apportion such expenses
24 between the sediment remediation and habitat development
25 programs. Expenses of Panel functions support include, but are

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1 not limited to, salary and overhead for an administrative
2 director; costs associated with administering the Registry
3 Account; costs of public review and participation; costs of
4 disseminating information; and costs of contracting for any
5 services necessary to the accomplishment of any of said tasks.
6 Expenses of Panel functions support also include the reasonable
7 and necessary costs, as determined on the basis of guidelines
8 established by the Panel, associated with participation by
9 personnel of the Trustees in Panel meetings and deliberations and
10 technical working groups, including salary and travel, provided
11 that such costs are not otherwise chargeable to Metro or the City
12 in connection with the review of any required permit, application
13 or other approval.

14 h. No more than three million dollars
15 (\$3,000,000) shall be spent on expenses of planning and design
16 support except as described in paragraph 4(d), and except that
17 unspent funds from the two million dollars (\$2,000,000)
18 authorized for Panel functions support under paragraph 10(a) may,
19 through the Panel's budget process, be reallocated to planning
20 and design support. The Panel shall apportion such expenses
21 between the sediment remediation and habitat development
22 programs. Expenses of planning and design support include, but
23 are not limited to, costs of studies needed to set goals and
24 establish priorities for sediment remediation, habitat
25 development, and source control projects; costs of analysis as

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1 required for comparison of candidate sites and site selection;
2 costs of site characterization as required to support detailed
3 technical/-engineering studies; costs of project design,
4 specifications, selection of equipment, materials, and
5 procedures; costs associated with NEPA/SEPA review, analysis, and
6 reporting; costs associated with permitting; costs of selection
7 of monitoring parameters and design of monitoring programs; costs
8 of technical support for the Suquamish and Muckleshoot Indian
9 Tribes; final report preparation; and costs of contracting for
10 any services necessary to the accomplishment of any of said
11 tasks.

12 c. The remaining funds paid by Metro and the City
13 into the Registry Account, plus any sums not expended pursuant to
14 the preceding two subparagraphs, shall be spent on expenses of
15 project implementation. Expenses of project implementation
16 include, but are not limited to, costs of all on-the-ground
17 operations, including acquiring, dredging, capping, filling,
18 contouring, placing, removing, transporting, treating, or
19 disposing of materials, other construction requirements, and
20 planting of vegetation; construction management and inspection;
21 costs of monitoring for the purpose of making project adjustments
22 and determining whether project success has been achieved;
23 acquiring sites for sediment remediation; and contracting for any
24 services necessary to the accomplishment of any of said tasks.

25 11. The Panel shall provide to Metro and the City within
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1 one hundred twenty (120) days of entry of this Decree an annual
2 budget for the calendar year 1992. By March 31 of each year
3 prior to a year in which Panel activities are contemplated, the
4 Panel shall provide to Metro and the City an annual budget for
5 the following calendar year (e.g., by March 31, 1992, for
6 calendar year 1993, etc.). The Panel must consider in each
7 year's budget any unspent funds from previous years and any
8 unspent interest earned on funds in the Account. The Panel may
9 include in each such budget a figure for contingency funds in an
10 amount of up to ten percent (10%) of the total amount budgeted,
11 so long as the sum of the total amount budgeted and the requested
12 contingency fund does not exceed the annual maximums set forth in
13 paragraphs 20 and 28 of this Decree.

14 11.5 The Panel has adopted a document titled "Elliott
15 Bay/Duwamish Restoration Program Final Scope, Schedule and
16 Budget" (copy attached hereto and incorporated by reference)
17 which addresses actions and expenditures for the remainder of
18 Panel activities. This document shall provide the basis for
19 Panel activities, with further refinements or alterations to be
20 made through the annual budget process as provided in paragraph
21 11.

22 12. The Panel shall implement an accounting mechanism to
23 track expenditures from the Registry Account. The Panel shall
24 cause an accounting report of such expenditures to be made at
25 least on an annual basis, which report shall be made available to

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1 all members of the Panel.

2 13. Except as provided in paragraph 34 regarding source
3 control efforts, the Panel may allow Metro and the City, if
4 either of them so chooses, to fulfill their respective financial
5 obligations by providing in-kind services. By September 30 of
6 each year beginning in 1992 and ending in 1996, Metro or the City
7 or both of them shall submit to the Panel a proposal describing
8 those tasks or portions of tasks, identified in the budgets
9 prepared pursuant to paragraph 11 of this Decree, that Metro or
10 the City or both of them propose to perform utilizing in-kind
11 services. The proposal shall identify by grade, title, salary
12 and level of benefits the employees who are to perform the
13 specified services, and shall provide an employee-specific
14 analysis of the work to be performed and the value of that work,
15 including allied costs. The Panel may accept any such proposal
16 in its entirety or, to the extent practicable, may accept a
17 portion of a proposal and not accept other portions. As a
18 condition of acceptance of such a proposal, the Panel shall
19 specify such conditions as are necessary to insure adequate
20 oversight by the Panel of the services to be provided and
21 appropriate coordination with the efforts of contractors and
22 others. The Panel shall notify Metro and the City in writing of
23 its decision and shall specifically identify the tasks,
24 identified in the budget the Panel has approved, to be performed
25 through in-kind services and those to be performed through cash

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1 payments, with a specific cost allocation to each. Within ninety
2 (90) days after the close of each calendar year in which such
3 in-kind services have been provided, Metro and the City shall
4 cause an accounting of such services to be prepared and made
5 available to all members of the Panel.

6 14. The Panel may elect to delegate the day-to-day
7 administrative affairs of the Panel to an administrative
8 director. Such an administrative director ("Director") shall be
9 qualified to perform all the tasks delegated to him/her by the
10 Panel and shall have only that authority specifically delegated
11 to the Director by the Panel. The Panel shall not delegate to
12 the Director the authority to disburse, expend, obligate, or
13 otherwise use funds from the Registry Account or perform any task
14 of the Panel as set forth in paragraph 9 of this Decree. The
15 Panel may direct that an account be established into which the
16 Panel may have funds placed for the day-to-day affairs of the
17 Panel. The Director may at his/her discretion disburse, expend,
18 obligate or otherwise use any funds placed into such an account
19 for the reasonable and necessary expenses incurred in performing
20 the administrative tasks assigned to the Director by the Panel.
21 The Director shall provide to the Panel in writing on a quarterly
22 basis a report of his/her activities and an accounting of all of
23 his/her expenses for that quarter. The Director shall serve at
24 the will and discretion of the Panel, and shall not, solely as a
25 consequence of his/her service as Director, be considered an

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28 CONSENT DECREE - 23

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1 employee or agent of any party to this Decree. Nothing in the
2 preceding sentence shall preclude a current employee of any party
3 to this Decree from serving as Director, to the extent consistent
4 with applicable laws and regulations.

5 15. The Panel may establish one or more technical working
6 groups to assist the Panel in planning and designing sediment
7 remediation and habitat development projects and in establishing
8 goals regarding Metro's and the City's source control programs.

9 The Panel shall give each of the following entities the
10 opportunity to participate in any such working group: NOAA,
11 Interior, EPA, the U.S. Army Corps of Engineers, the Muckleshoot
12 Indian Tribe, the Suquamish Indian Tribe, the Washington
13 Department of Ecology, the Washington Department of Fisheries,
14 the Washington Department of Wildlife, the Washington Department
15 of Natural Resources, the Washington Department of Health, the
16 Port of Seattle, Metro, the City, and the Seattle-King County
17 Department of Health. The Panel may also allow in any such
18 working group other qualified individuals. All participants in
19 any such working group shall be capable of contributing
20 particular expertise applicable to that working group's tasks.

21 The Panel shall decide the manner in which any such working group
22 will perform its tasks and shall provide sufficient oversight to
23 ensure that the terms of this Decree are achieved. The Panel may
24 for any such working group disburse, expend, obligate, or
25 otherwise use funds from the Registry Account, but such funds

1 shall be used only for the reasonable and necessary
2 administrative and clerical expenses of any such working group.
3 Except as provided in paragraph 10(a) regarding the participation
4 of the Trustees, no member of a working group shall in any way
5 receive directly or indirectly from the Registry Account any
6 salary or travel expenses for his/her participation in such a
7 working group.

8 16. The Panel shall provide to the Suquamish Indian Tribe
9 and to the Muckleshoot Indian Tribe sufficient funds to support
10 for each tribe one full-time equivalent (1.0 FTE) of technical
11 support annually for 1992 through 1997. The Tribes shall use
12 such funds only for technical support related to the source
13 control, sediment remediation and habitat development programs
14 conducted pursuant to this Decree.

15 17. The Panel shall cause to be erected or placed in a
16 prominent location a placard or sign to commemorate each sediment
17 remediation or habitat development project performed under this
18 Decree. Any such placard or sign shall indicate the financial
19 contributions of Metro and the City and the participation of
20 these Trustees.

21 18. The Panel shall provide for public participation in the
22 process by which the Panel selects and designs sediment
23 remediation and habitat development projects. Public
24 participation includes, but is not limited to, public review
25 pursuant to any required environmental review, and public review

1 of any application for a permit, license, or other approval.

2 REMEDICATION OF SEDIMENTS

3 19. Metro and the City each agree to pay into the Registry
4 Account established under paragraph 4 of this Decree:

5 a. The sum of six million dollars (\$6,000,000); or

6 b. As permitted by the Panel pursuant to

7 paragraph 13, a sum of funds that in combination with in-kind
8 services has a total value of six million dollars (\$6,000,000),
9 to be applied to the costs of sediment remediation. The Panel
10 shall use these funds and services only for sediment remediation,
11 which shall include administering, planning, designing,
12 implementing, and monitoring the results of sediment remediation
13 projects, in Elliott Bay and the Duwamish River, except as
14 specifically provided in paragraph 22 of this Decree. The sums
15 provided for herein shall be paid in accordance with paragraphs
16 20 and 21 of this Decree.

17 20. This Decree obligates Metro and the City each to pay
18 only up to the following amounts in each of the identified
19 calendar years for the costs of sediment remediation, except as
20 otherwise provided for in this paragraph:

21 1992 - \$ 500,000 - Five Hundred Thousand Dollars;
22 1993 - \$1,000,000 - One Million Dollars;
23 1994 - \$1,500,000 - One Million Five Hundred Thousand Dollars;
24 1995 - \$1,500,000 - One Million Five Hundred Thousand Dollars;
25 1996 - \$1,500,000 - One Million Five Hundred Thousand Dollars
26 ; and
27 1997 - Balance of Six Million Dollar contribution.

28 If Metro's or the City's annual payment in any given year is less

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1 than that year's annual maximum, its annual maximum in the
2 successive year may be increased by the difference between the
3 annual maximum and the annual payment from the preceding year.
4 Metro and the City may at their discretion waive any one or all
5 of their respective annual maximums by increasing the amount
6 paid. Any such payments in excess of the amounts shown above
7 shall in no way increase the sum total of amounts to be paid by
8 either Metro or the City beyond its respective six million dollar
9 (\$6,000,000) obligation.

10 21. Metro and the City agree to each pay a minimum sum of
11 one hundred fifty thousand dollars (\$150,000) into the Account on
12 January 15 and on July 15 in each of the years 1992, 1993, 1994,
13 1995 and 1996 for funding costs of sediment remediation. Such
14 payments shall constitute partial payment of the maximum amounts
15 as set forth in paragraph 19 of this Decree. Metro and the City
16 shall pay any additional amount for sediment remediation, over
17 and above the minimum sum referenced herein, only as the Panel
18 budgets for such expenses. Metro and the City shall pay any such
19 additional amount into the Account on January 15 of the calendar
20 year for which the Panel plans to incur such an expense.

21 22. The Panel may use funds paid into the Account for
22 sediment remediation for expenses of habitat development,
23 including costs of monitoring, if such habitat development is
24 incidental to sediment remediation projects, or is specifically
25 required as conditions of permits for sediment remediation

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1 projects. Such habitat development could include that resulting
2 from using sediment remediation projects as pilot projects for
3 techniques or other methodologies of habitat development.

4 23. The Panel shall, to the greatest extent practicable,
5 select sites for sediment remediation projects that are
6 geographically and physically associated with Metro or City CSOs
7 or storm drain outfalls.

8 24. The Panel shall use, if available, Ecology's list of
9 sites requiring sediment cleanup as a basis for selecting sites
10 for sediment remediation projects under this Decree, but shall
11 not be bound by any priorities developed by Ecology for
12 addressing the list of sites. Metro and the City shall provide
13 to Ecology all information in their possession useful and
14 relevant to Ecology's hazard assessment of station clusters of
15 potential concern.

16 25. For each sediment remediation project, the Panel shall
17 conduct a site cleanup study, determine the site-specific cleanup
18 standard, and select a site cleanup action. In no event shall
19 the Panel set a site specific cleanup standard for a project that
20 is less stringent than the minimum cleanup level as set forth in
21 the State of Washington's Sediment Management Standards,
22 Chapter 173-204 WAC, as that standard exists at the time the
23 Panel selects a project. In establishing site-specific cleanup
24 standards, the Panel shall, consistent with the purposes of this
25 Decree, set a cleanup objective of no adverse effects pursuant to

1 WAC 173-204-570(2). If the State of Washington's Sediment
2 Management Standards, Chapter 173-204 WAC, cease to exist or
3 otherwise become unenforceable, the Panel may use other
4 appropriate sediment standards or develop such standards for
5 sediment remediation as are necessary to carry out the terms of
6 this Decree.

7 26. The Panel may grant Metro and the City credit against
8 their respective financial obligations under paragraph 19 for the
9 Pier 53 sediment remediation project, so long as the site would
10 otherwise have been on Ecology's list of sites requiring sediment
11 cleanup, the site would otherwise have been selected as a site
12 for sediment remediation by the Panel, and the level of
13 remediation meets the cleanup standard selected by the Panel for
14 that site. If the Panel decides to grant credit, and after
15 review of detailed operational and financial information
16 regarding this project, the Panel shall determine the amount of
17 credit to be applied.

18 HABITAT DEVELOPMENT AND REAL ESTATE ACQUISITION

19 27. Metro and the City each agree to pay into the Registry
20 Account, established under paragraph 4 of this Decree:

21 a. The sum of two million five hundred thousand
22 dollars (\$2,500,000); or

23 b. As permitted by the Panel pursuant to
24 paragraph 13, a sum of funds that in combination with in-kind
25 services has a total value of two million five hundred thousand

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1 dollars (\$2,500,000), to be applied to the costs of habitat
2 development. The Panel shall use these funds and services only
3 for habitat development, which includes acquiring living natural
4 resources for the purpose of habitat restoration and replacement
5 and administering, planning, designing, constructing, and
6 monitoring the results of habitat development projects, in
7 Elliott Bay and the Duwamish River. Solely for the purposes of
8 habitat development, the Panel may consider the Duwamish River to
9 include tributaries to the Duwamish River. The sums provided for
10 herein shall be paid in accordance with paragraphs 28 and 29 of
11 this Decree.

12 28. This Decree obligates Metro and the City each to pay
13 only up to the following amounts in each of the identified
14 calendar years:

15 1992 - \$200,000 - Two Hundred Thousand Dollars;
16 1993 - \$200,000 - Two Hundred Thousand Dollars;
17 1994 - \$500,000 - Five Hundred Thousand Dollars;
18 1995 - \$800,000 - Eight Hundred Thousand Dollars;
19 1996 - \$800,000 - Eight Hundred Thousand Dollars; and
20 1997 - Balance of Two Million Five Hundred Thousand Dollar
21 contribution.

22 If Metro's or the City's annual payment in any given year is less
23 than that year's annual maximum, its annual maximum in the
24 successive year may be increased by the difference between the
25 annual maximum and the annual payment from the preceding year.
26 Metro and the City may at their discretion waive any one or all
27 of their respective annual maximums by increasing the amount
28 paid. Any such payments in excess of the amounts shown above

1 shall in no way increase the sum total of amounts to be paid by
2 either Metro or the City beyond its respective two million five
3 hundred thousand dollar (\$2,500,000) obligation.

4 29. Metro and the City agree to each pay a minimum sum of
5 sixty-two thousand five hundred dollars (\$62,500) into the
6 Account on January 15 and on July 15 in each of the years 1992,
7 1993, 1994, 1995 and 1996 for funding costs of habitat
8 development. Such payments shall constitute partial payment of
9 the maximum amounts as set forth in paragraph 27 of this Decree.
10 Metro and the City shall pay any additional amount for habitat
11 development, over and above the minimum sum referenced herein,
12 only as the Panel budgets for such expenses. Metro and the City
13 shall pay any such additional amount into the Account on
14 January 15 of the calendar year for which the Panel plans to
15 incur such an expense.

16 30. In addition to the contribution specified in
17 paragraph 27 of this Decree, Metro and the City each shall make
18 permanently available real property with a value of up to two
19 million five hundred thousand dollars (\$2,500,000) for use as
20 sites for habitat development projects selected by the Panel.
21 Metro and the City each shall receive credit toward its
22 respective maximum obligation under this paragraph for any
23 donation by Metro or the City of any right of access, lease,
24 easement, fee title, or any other real property interest,
25 sufficient to permanently secure a site for any habitat

1 development project under this Decree. The Panel shall attempt
2 to determine by consensus the value of any property interest made
3 available pursuant to this paragraph. If the Panel cannot so
4 determine the value of any such property, then the value of the
5 property shall be determined by the following procedure. The
6 Trustees and donor of the property shall each retain or select a
7 qualified real estate appraiser to determine the value of the
8 property. Within sixty (60) days thereafter, the two appraisers
9 shall attempt in good faith to reach agreement on the value of
10 the donated property. If these appraisers cannot agree, then
11 they shall within thirty (30) days select a third appraiser.
12 This third appraiser shall determine within thirty (30) days
13 which of the two appraisals most closely approximates the value
14 of the selected property and he or she shall select that
15 appraisal value as the value of the donated property. All
16 appraisers retained or selected shall be competent, impartial and
17 members of the American Institute of Real Property Appraisers (or
18 successor association or body of comparable standing). The
19 parties agree that the value established by this procedure shall
20 be final, and there shall be no further review or appeal. Full
21 public access to such areas shall be preserved to the maximum
22 extent practicable, except as restrictions are necessitated by
23 construction activities.

24 31. The Panel shall, to the greatest extent practicable
25 consistent with the goal of creating or enhancing aquatic or
26

1 benthic habitat for natural resources, select sites for habitat
2 development projects that are geographically and physically
3 associated with existing public facilities, such as parks and
4 fishing piers, in Elliott Bay and the Duwamish River.

5 32. Metro and the City each agree to pay NOAA the sum of
6 one hundred twenty-five thousand dollars (\$125,000) within sixty
7 (60) days of entry of this Consent Decree to reimburse NOAA for
8 the costs of natural resource damage assessment and habitat
9 restoration planning for Elliott Bay and the Duwamish River
10 incurred prior to the entry of this Decree. NOAA will provide
11 Metro and the City with documentation describing the manner in
12 which the funds are applied.

13 SOURCE CONTROL

14 33. The Panel shall establish source control goals to
15 protect natural resources and prevent recontamination of sites
16 selected for sediment remediation or habitat development in the
17 covered area. Metro and the City shall determine for their
18 respective source control programs what actions or changes, if
19 any, are needed in addition to, or from, their ongoing source
20 control programs to achieve such goals. Metro and the City shall
21 propose such additional actions or changes to the Panel for its
22 review, comment and approval. Metro and the City shall then take
23 such actions approved by the Panel. The Panel shall not require
24 Metro and the City to use or undertake any type or manner of
25 source control that is beyond Metro's and the City's authority,

1 or otherwise inconsistent with law.

2 34. Metro and the City each shall make available in-kind
3 services with a value of up to one million dollars
4 (\$1,000,000) to cover the costs of the additional actions or
5 changes needed to achieve the Panel's goals and to monitor the
6 effectiveness of such source control efforts. Metro and the City
7 each may fulfill its entire and respective obligation under this
8 paragraph by providing in-kind services. Within ninety (90) days
9 after the close of each calendar year in which such in-kind
10 services have been provided, Metro and the City shall cause an
11 accounting of such services to be prepared and made available to
12 all members of the Panel.

13 INDEPENDENT CONTRACTOR

14 35. It is understood and agreed that Metro, the City, and
15 the agents, officers, employees, and contractors of either of
16 them, in the performance of the work and services provided under
17 this Decree as in-kind contributions shall act as independent
18 contractors and not as agents or employees of any other party to
19 this Decree.

20 COVENANTS NOT TO SUE

21 36. Except as specifically provided in paragraphs 39 and
22 40, the United States, the State of Washington, the Suquamish
23 Indian Tribe and the Muckleshoot Indian Tribe covenant not to sue
24 or to take any other civil or administrative action against the
25 City or Metro for covered matters.

1 conditions resulting from a release of hazardous substances from
2 the CSO and/or storm water outfall systems after the effective
3 date of this Consent Decree and that are actionable under treaty,
4 federal, state or tribal law; (b) claims based on a failure by
5 Metro or the City to satisfy requirements of this Consent Decree;
6 and (c) claims for criminal liability.

7 40. Notwithstanding any other provision of this Consent
8 Decree, the State of Washington reserves its right to institute
9 proceedings against Metro and the City for claims pursuant to the
10 Model Toxics Control Act, Chapter 70.105D RCW, based, in whole or
11 in part, on factors not known at the time of entry of this
12 Consent Decree that indicate a previously unknown threat to human
13 health or the environment.

14 41. Notwithstanding any other provision of this Consent
15 Decree, Metro and the City reserve the right to institute
16 proceedings against the United States, the State of Washington,
17 the Suquamish Indian Tribe and the Muckleshoot Indian Tribe for
18 the following claims: (a) claims based on a failure by the
19 United States, the State of Washington, the Suquamish Indian
20 Tribe and the Muckleshoot Indian Tribe to fulfill their
21 obligations under this Decree; and (b) claims based on a
22 challenge to any decision by the Panel. Metro's and the City's
23 reservations of rights pursuant to this paragraph do not include
24 claims against the Trustees for monetary relief. Nothing in this
25 paragraph is intended to constitute a waiver of any sovereign

1 immunity defense that may be available to any of the Trustees.

2 42. The United States' consent to this Decree and
3 participation in this settlement is solely on its own behalf and
4 not as a trustee for any Indian Tribe.

5 CONTRIBUTION PROTECTION

6 43. The United States, the State of Washington, the
7 Suquamish Indian Tribe and the Muckleshoot Indian Tribe
8 acknowledge and agree that the payments to be made and commitment
9 of work by Metro and the City pursuant to this Decree represent a
10 good faith settlement and compromise of disputed claims and that
11 the settlement represents a fair, reasonable and equitable
12 discharge of liability for covered matters. Metro and the City
13 shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. §
14 9613(f), and any other applicable statute or other law limiting
15 or extinguishing their liability to persons not a party to this
16 Decree or affording them rights of contribution or other rights
17 to recover from such persons costs or damages.

18 44. The United States, the State of Washington, the
19 Suquamish Indian Tribe and the Muckleshoot Indian Tribe certify
20 that the payments to be made and the work to be undertaken by
21 Metro and the City pursuant to this Decree will be appropriate
22 actions necessary to protect and restore the natural resources
23 allegedly damaged by the release by Metro and the City of
24 hazardous substances in the covered area and that the payments
25 and work satisfy the requirements of Section 122(j)(2) of CERCLA,

1 42 U.S.C. § 9622(j)(2).

2 GENERAL

3 45. If for any reason the Court should decline to approve
4 this Consent Decree in the form presented, any statements made in
5 negotiation and the terms herein may not be used as evidence in
6 any litigation or administrative proceeding.

7 46. This Consent Decree shall not be construed in any way
8 to relieve the parties to this Decree or any other person or
9 entity from the obligation to comply with any federal, state or
10 local law.

11 47. This Consent Decree does not relieve or otherwise
12 satisfy any obligation or liability of any person or entity not
13 party to this Decree.

14 48. The Consent Decree may be executed in any number of
15 counterparts and each executed counterpart shall have the same
16 force and effect as an original instrument.

17 49. Each undersigned representative of the parties to the
18 Consent Decree certifies that he or she is fully authorized to
19 enter into the terms and conditions of the Consent Decree and to
20 legally execute, and bind such party to, this Consent Decree.

21 MODIFICATION

22 50. The terms of this Consent Decree may be modified only
23 by a subsequent written agreement by all of the parties signatory
24 hereto, and approved by the Court as a modification to this
25 Consent Decree.

1 51. If a court of competent jurisdiction finds unlawful any
2 provision of this Consent Decree, including subparagraphs a-c of
3 paragraph 4, the parties shall return the Decree to the Court for
4 reformation consistent with the intent of the parties at the time
5 they lodged the Decree with the Court.

6 PUBLIC COMMENT

7 52. This Decree will be subject to a 30-day public comment
8 period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
9 § 9622(d)(2), and 28 C.F.R. 50.7. The United States reserves the
10 right to withdraw its consent to the Decree if comments received
11 disclose facts or considerations which show that the Decree is
12 inappropriate, improper or inadequate. Metro and the City
13 consent to the entry of this Consent Decree without further
14 notice.

15 53. The Suquamish Indian Tribe, the Muckleshoot Indian
16 Tribe and the State of Washington each reserve the right to
17 withdraw their consent from this Decree and from participation in
18 this settlement if comments received during the public comment
19 period disclose facts or considerations which show that the
20 Decree is inappropriate, improper or inadequate as to the
21 Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the
22 State of Washington, respectively. To exercise its right to
23 withdraw, each of these parties shall file with the Court a
24 written statement expressly indicating its intent to withdraw.
25 These parties must exercise their right to withdraw before the

1 United States Department of Justice files its motion to enter
2 this Decree with the Court. Withdrawal by any one or all of
3 these parties shall not in any way affect the rights and
4 obligations of any other party to this Decree. If any one or all
5 of these parties withdraws, any and all references to such a
6 party or parties in the Decree, except those in paragraphs L,
7 M(3), 15, 24, 25 and 26, shall by implication be stricken from
8 the Decree and shall have no meaning or bearing on the operation
9 of any term of this Decree. Withdrawal by any of these parties
10 shall not impose any obligation on any other party to also
11 withdraw nor shall any inference be made as to the propriety of
12 any other party's continued consent to this Decree and
13 participation in this settlement. If either or both the
14 Suquamish Indian Tribe or the Muckleshoot Indian Tribe withdraws,
15 the continued participation by the United States in this
16 settlement is not intended to nor shall it constitute a
17 settlement or waiver of any rights under statute, treaty or
18 common law of such Tribe or Tribes.

19 VOIDABILITY

20 54. If for any reason the Court should decline to approve
21 this Decree in the form presented, this Decree and the settlement
22 embodied herein shall be voidable at the sole discretion of any
23 party and the terms herein may not be used as evidence in any
24 litigation.

1 EFFECTIVE DATE

2 55. This Consent Decree shall be effective upon the date of
3 its entry by the Court.

4 DENIAL OF LIABILITY

5 56. Metro and the City both deny each of the allegations of
6 the complaint filed by the United States and further deny
7 responsibility for the natural resources damages and any other
8 costs or relief sought by the Trustees. The parties agree that
9 actions undertaken by the City and Metro in accordance with this
10 Consent Decree do not constitute an admission of any violation of
11 treaty, federal or state law or an admission of any liability by
12 the City or Metro to the United States, the State of Washington,
13 the Suquamish Indian Tribe and Muckleshoot Indian Tribe. Nor
14 shall this Consent Decree be used as evidence or as collateral
15 estoppel against any party to this Decree in any action or
16 proceeding other than an action or proceeding to enforce the
17 terms of this Consent Decree.

18 RETENTION OF JURISDICTION

19 57. The Court shall retain jurisdiction of this matter for
20 purposes of entering such further orders, direction, or relief as
21 may be appropriate for the construction, implementation, or
22 enforcement of this Decree.

23 58. By signature below, all parties consent to this
24 Decree.

For King County

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Pam Bissonette
Pam Bissonette
Director
King County Department of Natural Resources
400 Yesler Way, Room 700
Seattle, WA 98104

4/26/99
Date

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1 FOR THE CITY OF SEATTLE

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4 Mark H. Sidran
5 Mark H. Sidran
6 City Attorney
7 City of Seattle
8 Municipal Building, 10th Floor
9 600 Fourth Avenue
10 Seattle, Washington 98104

April 19, 1999
Date

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28 CONSENT DECREE - 43

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1 FOR THE SUQUAMISH INDIAN TRIBE

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Bennie J. Armstrong
Chairman
Suquamish Tribal Council
15838 Sandyhook Road
P.O. Box 498
Suquamish, Washington 98392

24 May 1999
Date

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28 CONSENT DECREE - 44

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1 FOR THE MUCKLESHOOT INDIAN TRIBE

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John Daniels, Jr.

4/23/79

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John Daniels, Jr.
Chairman
Muckleshoot Indian Tribe
39015 172nd Avenue S.E.
Auburn, Washington 98002

Date

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CONSENT DECREE - 45

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1 FOR THE STATE OF WASHINGTON

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4/23/99

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Jim Pendowski
Program Manager
Toxics Cleanup Program
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Date

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4/19/99

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Tanya Barnett
Assistant Attorney General
Attorney General of Washington
Ecology Division
629 Woodland Square Loop SE, Lacey
P.O. Box 40117
Olympia, Washington 98504-0117

Date

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1 FOR THE UNITED STATES OF AMERICA

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4 Lois J. Schiffer
Assistant Attorney General
5 Environment and Natural Resources Division
U.S. Department of Justice
6 Washington, D.C. 20530

9/16/99
Date

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9 James L. Nicoll
Senior Attorney
10 Environmental Enforcement Section
Environment and Natural Resources Division
11 U.S. Department of Justice
c/o NOAA GC/DOJ Damage Assessment Center
12 7600 Sand Point Way N.E.
Seattle, Washington 98115-0070

10/7/99
Date

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15 Brian C. Kipnis
Assistant United States Attorney
16 3600 SeaFirst Fifth Avenue Plaza
17 800 Fifth Avenue
Seattle, Washington 98104

10/7/99
Date

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So ordered.

Oct. 13, 1999.

William L. Royer
U.S. District Judge