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

REMEDICATION OF SEDIMENTS

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

a. The sum of six million dollars ($6,000,000); or
b. As permitted by the Panel pursuant to paragraph 13, a sum of funds that in combination with in-kind services has a total value of six million dollars ($6,000,000), to be applied to the costs of sediment remediation. The Panel shall use these funds and services only for sediment remediation, which shall include administering, planning, designing, implementing, and monitoring the results of sediment remediation projects, in Elliott Bay and the Duwamish River, except as specifically provided in paragraph 21 of this Decree. The sums provided for herein shall be paid in accordance with paragraphs 20 and 21 of this Decree.

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

1992 - $500,000 - Five Hundred Thousand Dollars;
1993 - $1,000,000 - One Million Dollars;
1994 - $1,500,000 - One Million Five Hundred Thousand Dollars;
1995 - $1,500,000 - One Million Five Hundred Thousand Dollars;
1996 - $1,500,000 - One Million Five Hundred Thousand Dollars; and
1997 - Balance of Six Million Dollar contribution.

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

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

22. The Panel may use funds paid into the Account for
sediment remediation for expenses of habitat development,
including costs of monitoring, if such habitat development is
incidental to sediment remediation projects, or is specifically
required as conditions of permits for sediment remediation
projects. Such habitat development could include that resulting
from using sediment remediation projects as pilot projects for
techniques or other methodologies of habitat development.

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

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

25. For each sediment remediation project, the Panel shall
conduct a site cleanup study, determine the site-specific cleanup
standard, and select a site cleanup action. In no event shall
the Panel set a site specific cleanup standard for a project that
is less stringent than the minimum cleanup level as set forth in
the State of Washington's Sediment Management Standards,
Chapter 173-204 WAC, as that standard exists at the time the
Panel selects a project. In establishing site-specific cleanup
standards, the Panel shall, consistent with the purposes of this
Decree, set a cleanup objective of no adverse effects pursuant to
WAC 173-204-570(2). If the State of Washington's Sediment
Management Standards. Chapter 173-204 WAC. cease to exist or
otherwise become unenforceable, the Panel may use other
appropriate sediment standards or develop such standards for
sediment remediation as are necessary to carry out the terms of
this Decree.

26. The Panel may grant Metro and the City credit against
their respective financial obligations under paragraph 19 for the
Pier 59 sediment remediation project, so long as the site would
otherwise have been on Ecology's list of sites requiring sediment
cleanup, the site would otherwise have been selected as a site
for sediment remediation by the Panel, and the level of
remediation meets the cleanup standard selected by the Panel for
that site. If the Panel decides to grant credit, and after
review of detailed operational and financial information
regarding this project, the Panel shall determine the amount of
credit to be applied.

HABITAT DEVELOPMENT AND REAL ESTATE ACQUISITION

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

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

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

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

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

1992 - $200,000 - Two Hundred Thousand Dollars;
1993 - $200,000 - Two Hundred Thousand Dollars;
1994 - $500,000 - Five Hundred Thousand Dollars;
1995 - $800,000 - Eight Hundred Thousand Dollars;
1996 - $800,000 - Eight Hundred Thousand Dollars; and
1997 - Balance of Two Million Five Hundred Thousand Dollar contribution.

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

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

29. Metro and the City agree to each pay a minimum sum of
sixty-two thousand five hundred dollars ($62,500) into the
Account on January 15 and on July 15 in each of the years 1992,
1993, 1994, 1995 and 1996 for funding costs of habitat
development. Such payments shall constitute partial payment of
the maximum amounts as set forth in paragraph 27 of this Decree.

Metro and the City shall pay any additional amount for habitat
development, over and above the minimum sum referenced herein,
only as the Panel budgets for such expenses. Metro and the City
shall pay any such additional amount into the Account on
January 15 of the calendar year for which the Panel plans to
incur such an expense.

30. In addition to the contribution specified in
paragraph 27 of this Decree, Metro and the City each shall make
permanently available real property with a value of up to two
million five hundred thousand dollars ($2,500,000) for use as
sites for habitat development projects selected by the Panel.

Metro and the City each shall receive credit toward its
respective maximum obligation under this paragraph for any
donation by Metro or the City of any right of access, lease,
easement, fee title, or any other real property interest,
sufficient to permanently secure a site for any habitat
development project under this Decree. The Panel shall attempt
to determine by consensus the value of any property interest made
available pursuant to this paragraph. If the Panel cannot so
determine the value of any such property, then the value of the
property shall be determined by the following procedure. The
Trustees and donor of the property shall each retain or select a
qualified real estate appraiser to determine the value of the
property. Within sixty (60) days thereafter, the two appraisers
shall attempt in good faith to reach agreement on the value of
the donated property. If these appraisers cannot agree, then
they shall within thirty (30) days select a third appraiser.
This third appraiser shall determine within thirty (30) days
which of the two appraisals most closely approximates the value
of the selected property and he or she shall select that
appraisal value as the value of the donated property. All
appraisers retained or selected shall be competent, impartial and
members of the American Institute of Real Property Appraisers (or
successor association or body of comparable standing). The
parties agree that the value established by this procedure shall
be final, and there shall be no further review or appeal. Full
public access to such areas shall be preserved to the maximum
extent practicable, except as restrictions are necessitated by
construction activities.

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

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

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

SOURCE CONTROL

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

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or otherwise inconsistent with law.

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

INDEPENDENT CONTRACTOR

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

COVENANTS NOT TO SUE

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

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37. Except as specifically provided in paragraph 41, the City and Metro hereby covenant not to sue or to take any other civil or administrative action against the United States, the State of Washington, the Suquamish Indian Tribe and the Muckleshoot Indian Tribe for any claims relating to or arising from the filing of the United States' complaint referenced herein, the conduct of this litigation, including but not limited to any claims for contribution or indemnification, and the negotiation, terms, approval, and implementation of this Consent Decree.

38. These covenants not to sue and the following reservation of rights shall take effect upon entry of this Consent Decree by the Court, subject to the parties' rights to void the Consent Decree pursuant to paragraph 34 if the Court declines to approve the Consent Decree as presented. These covenants not to sue remain in effect so long as the City and Metro are fulfilling or have fulfilled their obligations under this Consent Decree.

RESERVATION OF RIGHTS

39. Notwithstanding any other provision of this Consent Decree, the United States, the State of Washington, the Suquamish Indian Tribe and Muckleshoot Indian Tribe reserve the right to institute proceedings against Metro and the City in this action or a new action for the following claims: (a) claims for recovery of natural resource damages in the covered area based on

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

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

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

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

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

CONTRIBUTION PROTECTION

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

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

GENERAL

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

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

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

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

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

MODIFICATION

50. The terms of this Consent Decree may be modified only by a subsequent written agreement by all of the parties signatory hereto, and approved by the Court as a modification to this Consent Decree.
51. If a court of competent jurisdiction finds unlawful any provision of this consent decree, including subparagraphs a-c of paragraph 4, the parties shall return the Decree to the Court for reformation consistent with the intent of the parties at the time they lodged the Decree with the Court.

PUBLICCOMMENT

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

53. The Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the State of Washington each reserve the right to withdraw their consent from this Decree and from participation in this settlement if comments received during the public comment period disclose facts or considerations which show that the Decree is inappropriate, improper or inadequate as to the Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the State of Washington, respectively. To exercise its right to withdraw, each of these parties shall file with the Court a written statement expressly indicating its intent to withdraw. These parties must exercise their right to withdraw before the
United States Department of Justice files its motion to enter this Decree with the Court. Withdrawal by any one or all of these parties shall not in any way affect the rights and obligations of any other party to this Decree. If any one or all of these parties withdraws, any and all references to such a party or parties in the Decree, except those in paragraphs L, M(3), 15, 24, 25 and 26, shall by implication be stricken from the Decree and shall have no meaning or bearing on the operation of any term of this Decree. Withdrawal by any of these parties shall not impose any obligation on any other party to also withdraw nor shall any inference be made as to the propriety of any other party's continued consent to this Decree and participation in this settlement. If either or both the Suquamish Indian Tribe or the Muckleshoot Indian Tribe withdraws, the continued participation by the United States in this settlement is not intended to nor shall it constitute a settlement or waiver of any rights under statute, treaty or common law of such Tribe or Tribes.

Voidability

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

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EFFECTIVE DATE

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

DENIAL OF LIABILITY

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

RETENTION OF JURISDICTION

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

58. By signature below, all parties consent to this Decree.
For King County

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

Date: 4/6/99

CONSENT DEGREE 42
FOR THE CITY OF SEATTLE

Mark H. Sidran
City Attorney
City of Seattle
Municipal Building, 10th Floor
600 Fourth Avenue
Seattle, Washington 98104

Date
April 19, 1999

CONSEN DECREE - 43
FOR THE SUQUAMISH INDIAN TRIBE

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

Date 24 May 1989
FOR THE MUCKLESHOOT INDIAN TRIBE

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

Date
1/23/99

CONSENT DEGREE - 45
FOR THE STATE OF WASHINGTON

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

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

CONSENT DEGREE - 46
FOR THE UNITED STATES OF AMERICA

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

Date
7/16/99

James L. Nicoll
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
c/o NOAA GC/DOJ Damage Assessment Center
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Seattle, Washington 98115-0070

Date
10/7/99

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

Date
10/7/99

So ordered.


U.S. District Judge

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