

After Recording Return
Original Signed Covenant to:

Jerome Cruz
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA 98008-5452

Environmental Covenant

Grantor: City of Seattle

Grantee: State of Washington, Department of Ecology (hereafter “Ecology”)

Brief Legal Description: Rights of Way adjacent to South Park Landfill

Tax Parcel Nos.: 7328400005 and 3224049110 (adjacent ROWs)

Cross Reference: NONE

RECITALS

- a.** This document is an environmental (restrictive) covenant (hereafter “Covenant”) executed pursuant to the Model Toxics Control Act (“MTCA”), chapter 70.105D RCW, and Uniform Environmental Covenants Act (“UECA”), chapter 64.70 RCW to impose restriction and condition on property owned in fee by the City and that is designated for use as Rights of Ways (“ROWs”).
- b.** The Right of Way Properties (“Property” or “Properties”) owned and controlled by the City of Seattle that is the subject of this Covenant is adjacent to a site commonly known as South Park Landfill (Facility Site ID # 2180). The Properties are legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached. If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c.** The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present ^[1]
Waste within the closed landfill	Aged municipal solid waste with soil. Arsenic and lead have been detected in soil.
Soil	Various common urban hazardous substances, such as PAHs and metals, are present at concentrations above unrestricted land use cleanup levels (Methods A and B) but below industrial land use cleanup levels (Methods A and C).
Soil vapor	Landfill gas (Methane)
Groundwater	Vinyl Chloride, Iron, Manganese, Arsenic

^[1] For a full description of the contaminants of concern at the South Park Landfill Site, see Exhibit A to the Consent Decree (King County Cause No XXXXX), Draft Cleanup Action Plan, in Table 4.2.

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes but is not limited to the following documents (hereafter the “Site Documents”), which are incorporated herein:

- Cleanup Action Plan, including the Operations, Maintenance, and Monitoring Plan (OMMP) for South Park Landfill, which includes the following:
 - Attachment A.1: Landfill Cap Inspection and Maintenance Plan
 - Attachment A.2: Landfill Gas Monitoring and Contingency Plan
 - Attachment A.3: Groundwater Monitoring and Contingency Plan
 - Attachment A.4: Annual Report Checklist
- Consent Decree
- RI/FS

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

COVENANT

City of Seattle (“City”), as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the City has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. Interference with Remedial Action. The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.

b. Protection of Human Health and the Environment. The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology except for those activities consistent with the provisions of Section 2 of this Covenant. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.

c. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. Leases. Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. Preservation of Reference Monuments. Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Land use. The remedial action for the Property is based on a cleanup designed for industrial property. As such, the Property shall be used in perpetuity only for ROW and industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.

b. Containment of soil/solid wastes. The remedial action for the Property is based on containing contaminated soil and landfill waste under a cap consisting of asphalt, concrete and soil layers. The primary purpose of this cap is to prevent direct contact with the solid wastes and is an inherent element of the stormwater and landfill gas controls that are part of landfill closure. The following restrictions shall apply within the ROW area:

- i. Any activity on the Property that will compromise the integrity of the cap, which includes the substrate, including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology, EXCEPT that the City is authorized to conduct routine operation and maintenance activities on the ROW and utilities located within the ROW provided that any impact to the cap, if any, resulting from such routine operation and maintenance is repaired promptly. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of or causation of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.
- ii. The Grantor shall not alter or remove the existing structures on the Property in any manner that would expose contaminated soil and landfill waste, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology, EXCEPT that the City is authorized to conduct routine operation and maintenance activities on the ROW and utilities located within the ROW provided that any impact to the cap, if any, resulting from such routine operation and maintenance is repaired promptly.
- iii. The Grantor covenants and agrees that it shall annually, or at other time as approved in writing by Ecology, inspect the cap and building floor or foundation and report within

thirty (30) days of the inspection the condition of the cap and building floor or foundation and any changes to the cap and building floor and foundation that would impair its performance.

c. Stormwater facilities. To minimize the potential for mobilization of contaminants remaining in soil, waste materials, and groundwater on the Property, no stormwater infiltration facilities or unlined ponds shall be constructed on the portion of the Property that overlies refuse as detailed in Exhibit D. All stormwater catch basins, conveyance systems, and other appurtenances installed on the Property shall be of water-tight construction.

d. Groundwater use. The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

e. Groundwater Monitoring. Groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within 14 calendar days of the discovery of any damage to any monitoring device located on the Property. Unless Ecology approves of an alternative plan in writing, the Grantor shall arrange for the prompt repair of the damage and submission of a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology, its authorized representatives, and the Site Coordinator, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest in any part of the property, including but not limited to title, easement, leases, and security or other interests, must:

i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.

ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE KING COUNTY

**RECORDER'S OFFICE UNDER RECORDING NUMBER [RECORDING NUMBER].
USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT
COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS
DOCUMENT.**

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

City of Seattle Seattle Public Utilities Attn: Jeff Neuner P.O. Box 34018 Seattle, WA 98124-4018 206-684-7693 Jeff.Neuner@seattle.gov	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

- a.** Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:
- i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
 - ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b.** If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

Section 6. Enforcement and Construction.

- a.** This Covenant is being freely and voluntarily granted by the Grantor.
- b.** Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c.** Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d.** The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e.** This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f.** The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g.** A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.
- h.** This Covenant shall not be considered or interpreted to diminish the governmental or police powers of the State of Washington or the City of Seattle.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this _____ day of _____, 20__.

CITY OF SEATTLE

by: _____

Title: _____

Exhibit A

LEGAL DESCRIPTIONS

Segment 1, First legal description: *5th Ave S from S Kenyon south to (almost) S Sullivan. (the westerly 20 feet, from S. Sullivan St., to 667.7 feet north)*

Portion of Government Lots 2 and 3 of the northwest quarter of Section 32, Township 24 North, Range 4 East, W.M., described as follows:

A strip of land 20 feet in width, the east line being 30 feet west of, as measured at right angles to and parallel with, the following described line: Beginning at the northwest corner of the A. Hograve Donation Claim No. 37; thence south along the west line of said Donation Claim to an intersection with the westerly production of the centerline of South Sullivan Street; EXCEPT the north 30 feet thereof heretofore accepted for General Corporate purposes under City of Seattle Ordinance No. 94258; ALSO,

Portion of the south one-half of the northwest quarter and of Government Lot 3 in Section 32, Township 24 North, Range 4 East, W.M., described as follows:

Beginning at the intersection of the westerly production of the centerline of South Sullivan Street, as shown on the Plat of South Park, as recorded in Volume 4 of Plats at Page 87, Records of King County, Washington, with the west line of the A. Hograve Donation Claim; thence north 89° 46' 10" west, along said westerly production, a distance of 50.00 feet to the true point of beginning; thence continuing north 89° 46' 10" west a distance of 657.35 feet to a point on the northeasterly line of Occidental Avenue South; thence northwesterly along said northeasterly line, the same being the arc of a curve to the right having a radius of 841.54 feet and an initial radial bearing of south 29° 22' 05" west, an arc distance of 404.62 feet; thence southeasterly along the arc of a curve to the left having a radius of 450.00 feet and an initial radial bearing of south 56° 54' 59" west, an arc distance of 445.21 feet to a point of tangency; thence south 89° 46' 10" east along said tangent line a distance of 575.27 feet; thence south 0° 36' 58" west, parallel with the west line of said A. Hograve Donation Claim a distance of 70.00 feet to the true point of beginning.

Segment 1/Second Legal Description: *Portion of 5th Ave S. - the easterly 30 feet, from S. of S. Sullivan St. northerly to 667 feet, is platted right of way;*

A strip of land, 30.00 feet in width, lying between lines and lines extended, the west line being 30.00 feet west of, as measured at right angles to and parallel with the following described east line: Beginning at the northwest corner of the A. Hograve Donation Claim No. 37; thence south

along the west line of said Donation Claim to an intersection with the westerly production of the centerline of South Sullivan Street; containing an area of 23,013 square feet, more or less.

Segment 2: S Sullivan starting at 5th Ave S west to Occidental

The east 50 feet of portion of Government Lot 3, in the northwest one-quarter of Section 32, Township 24 North, Range 4 East, W.M., lying between the production west of the center line of South Sullivan Street as shown on the plat of South Park as recorded in Volume 4 of Plats, page 87, Records of King County, Washington, and a line 30 feet north of and parallel with the north line of South Cloverdale Street; except portion thereof deeded for Secondary State Highway No. 1-K, recorded under King County Auditor's File No. 5489079; Also, portion of said Government Lot 3 lying between the north line of South Cloverdale Street and a line 30 feet north of and parallel therewith and between the east line of said Government Lot 3 and a line drawn north at right angles to said parallel line, opposite Highway Engineer's Station U-22 + 40 on the "U" line of said highway; for street purposes; together with the right to make all necessary slopes for cuts or fills upon the abutting property in the reasonable original grading of the street to be established over and across the lands described above;

Segment 3: Occidental Ave S north to northerly boundary of Rainier NW

Those portions of the northeast quarter of the southeast quarter and of the East half of the northeast quarter of Section 31, Township 24 North, Range 4 East, W.M., and these portions of the northeast quarter of the southeast quarter, the West half of the northwest quarter and the southeast quarter of the northwest quarter of Section 32, said Township and Range, lying within the R-Line right of way of State Highway Route No. 509, within the P^t Ave. S. widening right of way of said Highway, within the Olson Place Widening right of way of said Highway, within the V-Line right of way of said Highway within the U-Line right of way of said Highway and within the X-Line right of way of said Highway, all as shown hatched on Exhibit "A",

Segment 4: 2nd Ave S within the landfill

The East 60 feet of that portion of Government Lot 4, Section 32, Township 24 North, Range 4 East, W.M., described as follows: Beginning on the North line of said Section 264 feet East from the Northwest corner thereof; thence South 16° 31' 06" East 547.61 feet; thence Easterly to intersect a point on a line drawn South 2° 03' 26" West from a point on the North line of said Section, 73.81 feet West of the West line of Geo. Holt Donation Claim No. 51 (said point being 516.36 feet South of said North line); thence continuing Easterly on said line to the West line of said Donation Claim; thence North along said West line of the Donation Claim to the North line of the Section; thence Westerly of the North line of the Section to the point of Beginning. (Por. T.L. 5 and 6)

Segment 5: Kenyon St from 5th Ave west to 5R509

That portion of Section Twenty-nine (29), Township Twenty-four (24) North, Range Four (4) East, W.M., described as follows:

Beginning at the intersection of the Southeast margin of County road as established by dedication dated May 27, 1892, Volume 7 of Road Books, Page 578, County Auditor's records, and the south line of said section (said point of intersection being distant 263.12 feet east of the southwest corner of said section); thence northeasterly along said southeasterly margin a distance of one and five one-hundredths (1.05) feet; thence south eighty-nine degrees, sixteen minutes, and thirty-one seconds east (S. 89° 16' 31" E.) a distance of thirty and seventeen one-hundredths (30.17) feet to center line of slough extending over and across said section; thence south sixteen degrees, fifty-three minutes and twenty-five seconds east (S. 16° 53' 25" E.) along said center line a distance of seventy-three one-hundredths (0.73) feet to a point on the south line of said section; thence west along said south line to point of beginning.

Exhibit B

Roads Within South Park Landfill

