

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
The City of Seattle
Agreed Order
No. DE 21443

To: Christopher Williams
Interim Superintendent of Parks and Recreation
The City of Seattle
100 Dexter Ave N
Seattle, WA 98109

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Exhibit A Location Diagram

Exhibit B Scope of Work and Schedule of Deliverables

1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Seattle under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City of Seattle to conduct a Remedial Investigation (RI) and Feasibility Study (FS) per WAC 173-340-350 and to develop a draft Cleanup Action Plan (DCAP) per WAC 173-340-350 through 173-340-380 addressing contamination at the Site. Ecology believes the actions required by this Order are in the public interest.

2. Jurisdiction

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

3. Parties Bound

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. The City of Seattle agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City of Seattle's responsibility under this Order. The City of Seattle shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

4. Definitions

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

4.1 Site

The Site is referred to as Duwamish Waterway Park. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the vicinity of 7900 10th Ave S, Seattle, Washington as shown in the Location Diagram (Exhibit A).

4.2 Parties

Refers to the State of Washington, Department of Ecology and the City of Seattle.

4.3 Potentially Liable Persons (PLP(s))

Refers to the City of Seattle.

4.4 Agreed Order or Order

Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

4.5 Park

The area currently operated by the City of Seattle as Duwamish Waterway Park.

4.6 Park Addition

The area purchased by the City of Seattle and planned for park expansion.

5. Findings of Fact

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the City of Seattle:

5.1

Based upon factors currently known to Ecology, the Site is generally located in the vicinity of 7900 10th Ave S, Seattle, Washington as shown in the Location Diagram (Exhibit A). The Ecology Facility Site ID is 49919 and the Cleanup Site ID is 15139. The real property owned by the PLPs can be divided into two main units, based on current property use: the Park and the Park Addition.

The Park unit consists of two City of Seattle parcels, King County Tax Parcel numbers 7327901195 and 7327902355. The total area of the park is approximately 1.75 acres.

The Park Addition includes property adjacent to the Park to the southeast, King County Tax Parcel numbers 7327901215 and 3224049002. The area of the addition is approximately 1 acre. The Park Addition is currently leased to a commercial sanitation business. The City of Seattle indicates that it is planned for future expansion of the park.

5.2

The City of Seattle Department of Parks and Recreation has operated a park in this location since 1975. Prior to 1975, the Park area was primarily residential with some possible agricultural use. The Park can be generally divided into three areas: the Central Meadow, the Northeast Meadow, and the Beach. In 1989, the Northeast Meadow area was added to the Park. It was previously a single-family residence. There is also a play

area with playground equipment located adjacent to the Central Meadow area in the southeast corner of the Park. Park amenities include a walking trail, playground, picnic tables, and access to the Lower Duwamish Waterway. In 2019, the City of Seattle purchased the Park property from King County.

Historically, and currently, the Park Addition has been occupied by commercial businesses. Prior to 1970, the area was primarily residential with some possible agricultural use. From 1970 to 2002, Long Painting operated a commercial painting company on the site. From 2003 to 2021, Tytanic LLC and Elm Grove LLC used the site for various commercial and industrial activities. The Park Addition was purchased by the City of Seattle in 2021 from Elm Grove LLC, with the intent of expanding the park into this area in the future. The current occupant of the property is United Site Services, Inc., a portable sanitation supply business, who uses the property for office space, equipment and vehicle storage, and some equipment maintenance. United Services has occupied the property prior to the City's ownership.

5.3

Ecology received reports of contamination in the Park and Park Addition in 2020 and 2021, respectively. Based on the initial reports, Ecology identified this as two separate cleanup sites, but these were later combined into one site under CSID 15139. The Park site entered the Voluntary Cleanup Program (VCP) in July 2020 under VCP Project Number NW3279. Ecology issued an opinion letter in October 2021. In September 2022, Ecology terminated the VCP project and began moving the site into the formal cleanup process. In October 2022, Ecology completed a Site Hazard Assessment (SHA) for the Park and Park Addition combined. The site was assigned an overall rank of 2 in the SHA.

5.4

Shallow soil samples were collected from the Park in 2014, 2019, and 2020. The results of the sampling indicated areas of elevated soil concentrations of arsenic, lead, and cPAHs.

Leidos, on behalf of Ecology, sampled the area in the northeast portion of the Park along the bank of the Lower Duwamish Waterway in 2021. Soil samples from this area were analyzed for PCBs, metals, petroleum, cPAHs, semivolatile organic compounds, and total organic carbon. Chemicals that exceeded various screening levels for protection of sediments and human health included arsenic, copper, lead, selenium, zinc, and cPAHs.

The City of Seattle sampled the Beach area of the Park in October 2021. cPAHs, bis (2-ethylhexyl) phthalate, hexachlorobenzene, arsenic, copper, and lead were present in these samples above the applicable screening levels.

Groundwater sampling has not been included in any of the Site investigations to date.

Under an independent remedial action, the City excavated and removed contaminated soil from the Site beginning in October 2020 in conjunction with Park upgrades. Upgrades included installation of additional picnic tables and benches including the hard surfaces below them, installation of a playground, importing clean fill to prepare lawn areas in the Central and Northeast Meadow areas for seeding grass, installation of new water service and irrigation lines, and installation of a stormwater drainpipe and infiltration trench. The excavation area was mostly in the Northwest Meadow area of the Park. Confirmation samples were collected from all areas where excavation had occurred prior to filling the excavation areas with clean imported fill soil. Soil samples were also collected from within the utility trench and water line excavation areas that were part of the Park upgrades. Arsenic and lead were each present above screening levels in confirmation samples collected.

5.5

Eco Compliance Corporation completed a Phase II Environmental Site Assessment in 2021 for the Park Addition. This report included limited sampling, focused on soil characterization in areas where dredged material from the Lower Duwamish Waterway may have been placed. Samples were analyzed for a variety of contaminants, including metals, carcinogenic PAHs (cPAHs), polychlorinated biphenyls (PCBs), and petroleum. Arsenic and cPAHs were present above the screening levels.

6. Ecology Determinations

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the City of Seattle.

6.1

The City of Seattle is an “owner or operator” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).

6.2

Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

6.3

Based upon credible evidence, Ecology issued a PLP status letter to the City of Seattle dated September 1, 2022, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City of Seattle is a PLP under RCW

70A.305.040 and notified the City of Seattle of this determination by letter dated October 19, 2022.

6.4

Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City of Seattle take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

7.1

The City of Seattle shall prepare and implement a Work Plan to conduct a Remedial Investigation (RI) and Feasibility Study (FS), and then prepare a preliminary draft Cleanup Action Plan (DCAP) for the Site in accordance with the Scope of Work and Schedule of Deliverables (Exhibit B), and all other requirements of this Order. The following naming conventions shall be used for applicable documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and/or after Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the PLPs' version of the DCAP).

7.2

If the City of Seattle learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, the City of Seattle, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

7.3

The City of Seattle shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by

Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent electronically, by email, to Ecology's project coordinator. The Progress Reports shall include the following:

7.3.1

A list of on-site activities that have taken place during the previous month.

7.3.2

Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

7.3.3

Description of all deviations from the Scope of Work and Schedule (Exhibit B) during the current month and any planned deviations in the upcoming month.

7.3.4

For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

7.3.5

All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

7.3.6

A list of deliverables for the upcoming month.

7.4

All plans or other deliverables submitted by the City of Seattle for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order. The City of Seattle shall take any action required by such deliverable.

7.5

Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the

Parties are in agreement concerning the interim action, the City of Seattle shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The City of Seattle shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the City of Seattle is required to conduct the interim action in accordance with the approved Interim Action Work Plan. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

7.6

If Ecology determines that the City of Seattle has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the City of Seattle, perform any or all portions of the remedial action or at Ecology's discretion allow the City of Seattle opportunity to correct. In an emergency, Ecology is not required to provide notice to the City of Seattle, or an opportunity for dispute resolution. The City of Seattle shall reimburse Ecology for the costs of doing such work in accordance with Section 8.1 (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.7

Except where necessary to abate an emergency situation or where required by law, the City of Seattle shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the City of Seattle must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

The City of Seattle shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order.

Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173 340 550(2). Ecology has accumulated \$57,732.42 in remedial action costs related to this Site as of 12/31/2022. For all Ecology costs incurred, the City of Seattle shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

David Butler
PO Box 330316
Shoreline, WA 98133-9716
206-518-3513
david.butler@ecy.wa.gov

The project coordinator for the City of Seattle is:

Scott Stevens
300 Elliott Avenue West, Suite 100
Seattle, WA 98119
206-615-0865
scott.stevens@seattle.gov

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the City of Seattle, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any Party may change its respective project coordinator. Written notification shall be given to the other Party at least ten (10) calendar days prior to the change.

8.3 Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The City of Seattle shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the City of Seattle either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City of Seattle's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City of Seattle. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City of Seattle unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

The City of Seattle shall make best efforts to secure access rights for those properties within the Site not owned or controlled by the City of Seattle where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of the City of Seattle would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 60 days after the effective date of this Order, the City of Seattle is unable to accomplish what is required through “best efforts,” they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist the City of Seattle, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from the City of Seattle for all costs, including cost of attorneys’ time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the City of Seattle shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section 7 (Work to be Performed), Ecology’s Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City of Seattle shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City of Seattle pursuant to implementation of this Order. The City of Seattle shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City of Seattle and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology’s sampling. Without limitation on Ecology’s rights under Section 8.4 (Access), Ecology shall notify the City of Seattle prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

8.6 Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the City of Seattle shall cooperate with Ecology, and shall:

8.6.1

If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

8.6.2

Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the City of Seattle prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City of Seattle that do not receive prior Ecology approval, the City of Seattle shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

8.6.3

When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

8.6.4

When requested by Ecology, arrange and maintain a repository to be located at:

- Online: <https://apps.ecology.wa.gov/cleanupsearch/site/15139>
- South Park Library
8604 8th Avenue S, Seattle, WA 98108
- Ecology's Northwest Regional Office
15700 Dayton Ave N, Shoreline, WA 98133

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of

all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Shoreline, Washington.

8.7 Access to Information

The City of Seattle shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within the City of Seattle's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. The City of Seattle shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right the City of Seattle may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If the City of Seattle withholds any requested Records based on an assertion of privilege, the City of Seattle shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

8.8 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the City of Seattle shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors.

8.9 Resolution of Disputes

8.9.1

In the event that the City of Seattle elects to invoke dispute resolution the City of Seattle must utilize the procedure set forth below.

8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the City of Seattle has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.9.1.2 The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the [Subject PLP(s)'s] position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.9.1.3 The City of Seattle may then request regional management review of the dispute. The City of Seattle must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the City of Seattle's position with respect to the dispute; and the information relied upon to support its position.

8.9.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

8.9.1.5 The timelines in this section may be extended by agreement of the Parties.

8.9.2

The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

8.9.3

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

8.9.4

In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section 7 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.10 Extension of Schedule

8.10.1

The City of Seattle's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

8.10.1.1 The deadline that is sought to be extended.

8.10.1.2 The length of the extension sought.

8.10.1.3 The reason(s) for the extension.

8.10.1.4 Any related deadline or schedule that would be affected if the extension were granted.

8.10.2

The burden shall be on the City of Seattle to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of the City of Seattle including delays caused by unrelated

third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the City of Seattle.

8.10.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.

8.10.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

8.10.2.4 Endangerment as described in Section 8.12 (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the City of Seattle.

8.10.3

Ecology shall act upon the City of Seattle's written request for extension in a timely fashion. Ecology shall give the City of Seattle written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4

At the City of Seattle's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

8.10.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.

8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.

8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).

8.11 Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section 8.13 (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the City of Seattle. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the City of Seattle shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 8.9 (Resolution of Disputes).

8.12 Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the City of Seattle to cease such activities for such period of time as it deems necessary to abate the danger. The City of Seattle shall immediately comply with such direction.

In the event the City of Seattle determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the City of Seattle may cease such activities. The City of Seattle shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the City of Seattle shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City of Seattle's cessation of activities, it may direct the City of Seattle to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the City of Seattle's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 8.10 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

8.13 Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the City of Seattle to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City of Seattle regarding remedial actions required by this Order, provided the City of Seattle complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the City of Seattle does not admit to any liability for the Site. Although the City of Seattle is committing to conducting the work required by this Order under the terms of this Order, the City of Seattle expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

8.14 Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City of Seattle without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the City of Seattle's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City of Seattle shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City of Seattle shall notify Ecology of said transfer. Upon transfer of any interest, the City of Seattle shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

8.15 Compliance with Applicable Laws

8.15.1 Applicable Laws

All actions carried out by the City of Seattle pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The City of Seattle has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the City of Seattle, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the City of Seattle must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

All actions carried out by the City of Seattle pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the City of Seattle, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the City of Seattle must implement those requirements.

8.15.3

Pursuant to RCW 70A.305.090(1), the City of Seattle may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the City of Seattle shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

8.15.4

The City of Seattle has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the City of Seattle determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under

this Order, it shall promptly notify the other Party of its determination. Ecology shall determine whether Ecology or the City of Seattle shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City of Seattle shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the City of Seattle and on how the City of Seattle must meet those requirements. Ecology shall inform the City of Seattle in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City of Seattle shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the City of Seattle shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

8.16 Indemnification

The City of Seattle agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the City of Seattle, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City of Seattle shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

The provisions of this Order shall be deemed satisfied upon the City of Seattle's receipt of written notification from Ecology that the City of Seattle has completed the remedial activity required by this Order, as amended by any modifications, and that the City of Seattle has complied with all other provisions of this Agreed Order.

10. Enforcement

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

10.1

The Attorney General may bring an action to enforce this Order in a state or federal court.

10.2

The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

10.3

A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

10.3.1

Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

10.3.2

Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

10.4

This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.070.

Effective date of this Order: _____

The City of Seattle

State of Washington
Department of Ecology

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Interim Superintendent of Parks and
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