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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF SNOHOMISH**

9 STATE OF WASHINGTON, DEPARTMENT
10 OF ECOLOGY,

11 Plaintiff,

12 v.

13 CITY OF EVERETT and
14 OM EVERETT, INC.,

15 Defendants.

NO. 01-2-03640-6

AMENDMENT NO. 1 TO CONSENT
DECREE

16 **I. INTRODUCTION AND STATEMENT OF CURRENT CONDITIONS**

17 A. In April 2001 the Snohomish County Superior Court approved the Consent
18 Decree in this matter entered into by the Plaintiff, Washington State Department of Ecology
19 (“Ecology”), and Defendant, City of Everett (the “City” or “City of Everett”).

20 B. The Consent Decree was a negotiated settlement between Ecology and the City
21 under the Model Toxics Control Act (“MTCA”), Chapter 70.105D RCW, which provided for
22 remedial action at the Everett Landfill/Tire Fire Site (“Site”), a closed municipal landfill, where
23 there has been a release of hazardous substances.

24 C. The Consent Decree, including the Cleanup Action Plan (“CAP”) attached
25 thereto, required the City to conduct certain cleanup actions to prevent environmental exposure
26 to contaminants under then-existing conditions at the Site. Some of those activities are ongoing,
including the City’s continued operation and maintenance of a leachate collection system,

1 continued monitoring of landfill gas and groundwater at the Site, and inspection and maintenance
2 of the landfill cover.

3 D. The Consent Decree contemplated that the Property (depicted on Exhibit A and
4 legally described in Exhibit B) would be developed in the future and established criteria that
5 future development would need to meet under MTCA as well as a process for review of future
6 development plans to ensure consistency with the Consent Decree. The Consent Decree also
7 contemplated that the entity conducting the development could become a party to the Consent
8 Decree.

9 E. On February 21, 2007, the City and OM Everett, Inc.'s predecessor in interest
10 entered into a Property Disposition Agreement, which has been amended from time-to-time
11 ("PDA") that provides for the acquisition and development of the Property as well as adjacent
12 properties.

13 F. OM Everett, Inc. ("OME") and the City have agreed on a division of the
14 remaining remedial actions to be performed under the Consent Decree.

15 G. The purpose of this Amendment is to add OME as a party to the Consent Decree
16 for the limited purpose of conducting the portion of the Work to Be Performed agreed to by
17 OME, as set forth in this Consent Decree Amendment. OME will incur potential liability under
18 RCW 70.105D.040(1) at the time it acquires an interest in the Property. This Decree settles
19 OME's liability as described herein.

20 H. By signing this Amendment, OME agrees to its entry and agrees to be bound by
21 the terms of the Consent Decree, as herein amended.

22 I. This Consent Decree Amendment shall not be construed as proof of liability or
23 responsibility for any releases of hazardous substances or cost for remedial action nor an
24 admission of any facts; provided, however, that OME shall not challenge the jurisdiction of
25 Ecology in any proceeding to enforce the Decree.
26

1 **II. AMENDMENTS TO CONSENT DECREE**

2 Based on the foregoing, the parties stipulate and agree that the Consent Decree shall be
3 amended as follows.

4 **1. Section III. PARTIES BOUND** shall be amended in its entirety to read as
5 follows:

6 This Decree shall apply to and be binding upon the signatories to this Decree ("Parties"),
7 their successors and assigns. The undersigned representative of each Party hereby certifies that
8 he or she is fully authorized to enter into this Decree and to execute and legally bind such Party
9 to comply with the Decree. The City of Everett and OME agree to undertake all actions required
10 of each of them by the terms and conditions of this Decree, as further specified in Section VI,
11 WORK TO BE PERFORMED of this Amendment, and not to contest state jurisdiction regarding
12 this Decree. The terms and conditions of the Decree shall apply to OME only as related to, and
13 to the extent of, OME's obligations to perform work under Section VI, WORK TO BE
14 PERFORMED, as set forth in this Consent Decree Amendment. Notwithstanding the limitation
15 set forth above as to OME and subject to the provisions under paragraph 3 - Section VI. WORK
16 TO BE PERFORMED - of this amendment, the City of Everett shall continue to be liable for
17 the performance of its obligations under the Consent Decree as provided under
18 RCW 70.105D.040(2). The City of Everett and OME shall provide a summary of this Decree to
19 all agents, contractors and subcontractors retained to perform work required by this Decree and
20 shall ensure that all work undertaken by such contractors and subcontractors will be in
21 compliance with this Decree. Except as provided in paragraph 10 of this amendment, no change
22 in ownership or corporate status shall alter the responsibility of OME or the City of Everett under
23 this Decree.

24 **2. Section IV. DEFINITIONS:**

25 (a) Exhibit B to the Consent Decree, which is the legal description of
26 "Property" in Section IV.B is corrected and amended as attached.

1 (b) "Parties" in Section IV.C shall be amended to read: "Parties: Refers to
2 the Washington State Department of Ecology, the City of Everett, and OM Everett, Inc.
3 ("OME")."

4 (c) "Consent Decree or Decree" in Section IV.D shall be amended to read:
5 "Consent Decree or Decree: Refers to this Consent Decree and any Amendment to the Decree
6 and to each of the exhibits to the Decree and to any Amendments. All exhibits are integral and
7 enforceable parts of this Consent Decree and any Amendment. The terms "Consent Decree" or
8 "Decree" shall include all exhibits to the Consent Decree or Amendment."

9 (d) New subsections E through K shall be added to read as follows:

10 E. City Amenities/ Buildings: Refers to City-owned and operated buildings (e.g.
11 pump stations) and/or open space amenities (e.g. parks) and any component of the leachate or
12 groundwater monitoring systems operated by the City on land owned by OME for which OME
13 has leased, granted an easement or otherwise authorized use by the City.

14 F. City-Controlled Areas: Refers to areas of the Property in which the City has an
15 ownership interest or otherwise controls access to or use of the area; for example, areas dedicated
16 to the City.

17 G. City Improvements: Refers to City utilities, roads, structures, monitoring wells,
18 leachate collection system, and any other facility of any kind constructed by the City on the
19 Property, including City Amenities/Buildings; however, the term "City Improvements" shall not
20 include the landfill gas management system.

21 H. Low Permeability Barriers: Refers to barriers that are designed to prevent gas
22 migration to atmospheric air, prevent atmospheric air from intrusion into gas collection system,
23 prevent gas intrusion into buildings and confined spaces, and prevent water infiltration into the
24 landfill.

25 I. OME Development: Refers to the development activities conducted by OME on
26 the Property.

1 J. Undeveloped Areas: Refers to areas of the Property that do not contain
2 City Improvements or OME Development.

3 K. The terms "Project Coordinator," "Site Manager," and "Project Manager,"
4 as used in this Decree and the various exhibits hereto, refer to a Party's lead contact for the
5 Party's coordination and implementation of this Decree and CAP and are synonymous unless the
6 context clearly specifies otherwise. The term "City Engineer" shall be deemed to refer to the
7 City Project Coordinator designated under this Decree.

8 3. **Section VI. WORK TO BE PERFORMED** is amended in its entirety to read
9 as follows:

10 The Decree contains a program designed to protect public health, welfare and the
11 environment from the known release, or threatened release, of hazardous substances or
12 contaminants at, on, or from the Site. The requirements of this program are set forth in detail in
13 the Cleanup Action Plan for the Everett Landfill attached as Exhibit C to the original Decree, and
14 the Scope of Work attached as Exhibit D to the original Decree. Those exhibits, as well as any
15 other exhibit to the original decree, continue to be incorporated by reference in this Decree as
16 amended.

17 The CAP requires construction activities on the Property to follow certain construction
18 requirements in order to protect human health and the environment, which are specified in
19 Exhibits C and D of the Decree and summarized on Table 6-1 of the CAP (Exhibit C of the
20 Decree) and Article III of this Amendment. In addition, the City of Everett has certain
21 responsibilities under the CAP, including the responsibility under this Decree to operate and
22 maintain the Landfill Gas Management System ("System") and to ensure that the design and
23 installation of the System comply with the requirements of this Decree and the CAP; for
24 installing, operating and maintaining the leachate collection system and groundwater monitoring
25 system; and for reviewing, approving and inspecting any development on the Property in order to
26 ensure compliance with the CAP, as described in the CAP (as modified by paragraph 32 of this

1 Amendment). Subsections A and B below describe the respective work to be performed by the
2 City of Everett and by OME. Subsection C addresses Ecology oversight, including the
3 obligations of the City of Everett to perform remedial actions under this Decree if OME has not
4 performed the work as required.

5 A. City of Everett. The City of Everett shall comply with and perform the following
6 remedial actions selected in the original CAP and Scope of Work and Schedule, as amended by
7 this Consent Decree Amendment and its attachments, including any additional remedial actions
8 identified as actions to be performed by the City in the Work to Be Performed Checklist (CAP
9 Exhibit C, Table 6-4), attached as Exhibit C, and all other monitoring, reporting and other
10 obligations under the Consent Decree and CAP ("CAP/CD" as herein amended), not otherwise
11 assigned to OME in the following subsection (B), including responsibilities in Table 6-2. The
12 City shall perform any construction work it undertakes on the Property in accordance with
13 applicable provisions in Table 6-1, as amended by this Consent Decree Amendment, or as
14 otherwise agreed to by Ecology, pursuant to paragraph 30 of this Consent Decree Amendment. .

15 1. Low Permeability Barriers. The City shall install Low Permeability
16 Barriers in areas of the Property where City Amenities/Buildings and the 41st Street overpass are
17 located, in accordance with the requirements of the CAP/CD, including any erosion control
18 measures needed.

19 2. Leachate Collection System. The City shall continue to provide a
20 Leachate Collection System for the Landfill Site. The City will respond to any leachate seeps, if
21 needed, other than each Party's responsibility to manage any seeps that might occur during and as
22 part of its respective construction activities on the Property.

23 3. Groundwater and Surface Water. The City will design, construct, and
24 maintain deep aquifer groundwater monitoring wells as necessary or required to be in
25 compliance with the CAP/CD. The City shall be responsible for any surface water monitoring
26 and reporting requirements in the CAP/CD that are not part of stormwater management for

1 OME's development. The City will bear the risk of changes in the groundwater regime caused by
2 construction that is in conformance with the CAP/CD.

3 4. Drainage, Erosion Control, Pilings, Leak-tight Connections and
4 Stormwater. The City shall construct City Improvements in a way that installs and maintains
5 sealed connections to prevent leaks, positive drainage, and erosion controls per CAP/CD
6 requirements.

7 a. The City shall make quarterly inspections of City-Controlled
8 Areas in order to verify positive drainage and the integrity of the landfill cover in accordance
9 with the CAP/CD. The City may reduce the frequency of inspections after full build-out of the
10 OME Development and a reasonable period of quarterly inspections (not less than one year)
11 showing no change in conditions on the City-Controlled Areas, with the concurrence of OME
12 and Ecology.

13 b. For any City Improvements, the City will be responsible for
14 meeting the CAP/CD requirements that infiltration of stormwater will not be allowed in
15 developed areas of the Property, except as allowed during construction; provided that the City
16 will also be responsible for facilities constructed by OME that are ultimately owned or controlled
17 by the City (e.g. roads).

18 c. The City shall be responsible for implementation, monitoring, and
19 reporting under its stormwater permit(s) and any Stormwater Pollution Prevention Plan (SWPPP)
20 required for City Improvements; provided that the City will assume responsibility for facilities
21 initially constructed by OME at such time as such facilities are dedicated to or controlled by the
22 City (e.g., Main Road).

23 d. If piling is used, the City shall follow the recommendations of the
24 shallow aquifer study regarding piling installation. If additional compliance monitoring is
25 required by Ecology prior to the City or OME installing piles, the City will conduct the
26 monitoring.

1 5. Landfill Gas Management System. The City shall remain responsible
2 under this Decree to operate and maintain the System and to ensure that the design and
3 installation of the System comply with the requirements in the CAP/CD.

4 6. Access Controls, Use and Related Restrictions. In City-Controlled Areas
5 that are Undeveloped Areas, the City shall be responsible for establishing and maintaining access
6 controls. The City shall also be responsible in City-Controlled Areas for ensuring enforcement
7 of restrictions related to the maintenance of the integrity of the landfill cap, including limitations
8 on penetration of the cap and any use restrictions required by the CAP/CD and Restrictive
9 Covenant.

10 7. Animal Shelter and Public Works Yard. If the Animal Shelter and the
11 Public Works Yard (known as “the Transfer Station”) remain on the Property after OME takes
12 title to this portion of the Property, the City will remain responsible for all obligations under the
13 CAP/CD concerning operation, maintenance, monitoring, reporting, and corrective actions for
14 the System at those structures and any other areas included within the Shelter Lease or Public
15 Works Yard Lease entered into between the City and OME, for so long as the leases exist. Any
16 ongoing or additional remedial actions required in the CAP/CD for off-site buildings or areas
17 will remain the responsibility of the City.

18 8. Long-term O & M. The City shall be responsible for the operation,
19 monitoring, maintenance, reporting and any contingency measures required by the CAP/CD for
20 all of the City’s responsibilities under the CAP/CD.

21 B. OME. OME shall be required to comply with and perform only the following
22 remedial actions set forth in this paragraph 3.B.1 through 5 and any additional remedial actions
23 identified as actions to be performed by OME in the Work to Be Performed Checklist (CAP
24 Exhibit C, Table 6-4), attached as Exhibit C. Exhibit C, which updates and replaces the Work to
25 Be Performed Checklist from the Cleanup Action Plan, depicts the allocation of remedial actions
26 under the Cleanup Action Plan contractually agreed to by the Parties. Although OME is

1 identified in Exhibit C as having contractual obligations to the City concerning the System, the
2 City shall retain all obligations under this Decree for the System, except as noted in this
3 paragraph. OME shall have no responsibility, obligation or liability under this Decree for
4 remedial actions required for the System, with the exception of actions necessary to correct a
5 problem with the System to the extent caused by OME's negligent acts or omissions or by
6 OME's construction work that is not in conformance with this Decree. OME shall perform any
7 construction work it undertakes on the Property in accordance with applicable provisions in
8 Table 6-1, as amended by this Consent Decree Amendment, or as otherwise agreed to by the City
9 and Ecology, pursuant to paragraph 30 of this Consent Decree Amendment.

10 1. Low Permeability Barriers, Fill, and Grading. For facilities OME
11 constructs, OME shall install Low Permeability Barriers on the entire Property, except in areas
12 where City Amenities/Buildings and the 41st Street overpass are located, and will perform any
13 final grading for OME Development on top of the System without causing damage to such
14 system or adversely affecting positive drainage, in accordance with the requirements of the CAP,
15 including any erosion control measures needed.

16 2. Drainage, Erosion Control, Pilings, Leak-tight Connections, and
17 Stormwater. Any Development constructed by OME shall be constructed in a way that installs
18 and maintains sealed connections to prevent leaks, positive drainage, and erosion controls per the
19 requirements of the CAP.

20 a. OME shall inspect the property on which it controls access in order
21 to verify positive drainage and the integrity of the landfill cover in accordance with the CAP.

22 b. For any facilities OME constructs, it will be responsible for meeting
23 the CAP requirements that infiltration of stormwater will not be allowed in developed areas of the
24 Property, except as allowed during construction; provided that the City will be responsible for
25 facilities constructed by OME that are ultimately owned or controlled by the City (e.g. roads).

1 c. OME shall be responsible for implementation, monitoring, and
2 reporting under its stormwater permit(s) and any Stormwater Pollution Prevention Plan (SWPPP)
3 required for the OME Development; provided that the City will assume responsibility for
4 facilities initially constructed by OME at such time as such facilities are dedicated to or
5 controlled by the City (e.g., Main Road).

6 d. If piling is used, OME will follow the recommendations of the
7 shallow aquifer study regarding piling installation or any alternatives accepted by Ecology.

8 e. If any of OME's pipes or other facilities connect to the City's
9 pipes for the Leachate Collection System or other facilities, OME shall be responsible for
10 making such connections fused or cemented per the requirements of the CAP.

11 f. OME will make quarterly inspections of the property on which it
12 controls access on the Property to verify positive drainage and the integrity of the landfill cover.
13 OME may reduce the frequency of inspections after full build-out of the OME Development and
14 a reasonable period of quarterly inspections (not less than one year) showing no change in
15 conditions on the property with the concurrence of the City Project Coordinator and Ecology.

16 3. Access Controls, Use and Related Restrictions. OME shall be responsible
17 for establishment and maintenance of access controls in any Undeveloped Areas owned by
18 OME. In areas of the Property other than City-Controlled Areas, OME shall be responsible for
19 ensuring that sale or lease agreements include provisions disclosing and requiring compliance
20 with restrictions relating to the maintenance of the integrity of the landfill cap including
21 limitations on penetration of the cap, notices of transfers in interest, and any use restrictions as
22 may be required by the CAP and Restrictive Covenant.

23 4. Long-term O & M. OME shall be responsible for the operation,
24 monitoring, maintenance, reporting and any contingency measures required by the CAP solely
25 for the remedial actions set forth in this Section VI.B.
26

1 5. Compliance. Under this Consent Decree, if the City and Ecology review
2 and approve OME's development plans and construction work, as may be required by the
3 CAP, and OME constructs and maintains its development in accordance with those plans,
4 OME's construction work will be deemed to be in conformance with this Decree, including the
5 CAP and all exhibits to the Decree.

6 C. Ecology Oversight of Work to Be Performed.

7 1. Notice. During the course of construction and implementation of the
8 remedial actions required by this Decree, Ecology will contact the City of Everett or OME, as
9 appropriate based on the Party obligated to perform the work set forth in the description of the
10 Work to Be Performed, if Ecology believes there are deficiencies in that Party's work. In the
11 event that the work is not corrected to Ecology's satisfaction consistent with the Decree,
12 Ecology will notify both parties in writing of Ecology's determination of a deficiency before
13 taking formal action. In no event will OME be responsible under this Decree to conduct
14 actions to correct deficiencies in the City's Work to Be Performed.

15 2. Notice of Deficiency to OME. In the event OME is available to perform
16 the work (i.e. is not in bankruptcy or has otherwise abandoned the site), and is notified by
17 Ecology that Ecology believes there is a deficiency in its work, OME shall have the right to
18 invoke the dispute resolution process under Section XIV of the Decree. If OME has invoked
19 dispute resolution, Ecology and OME shall finalize the dispute resolution process prior to
20 Ecology requiring the City to implement any remedial action. If OME is available, the City shall
21 implement remedial action to correct the deficiency if OME fails to follow the results of the
22 dispute resolution process. In such event, the City shall implement one of the actions described
23 in paragraph 3.C.3 below. OME's obligations for performing remedial actions under the Decree
24 while in the dispute resolution process are governed by Section XIV.E of the Decree.

25 If OME fails to follow the results of dispute resolution, or if OME is not available (i.e. is
26 in bankruptcy or has otherwise abandoned the site) to perform the action requested by Ecology to

1 bring its work into conformance with the CAP, the City shall, upon written notice from Ecology,
2 implement one of the actions described in paragraph 3.C.3 below.

3 3. Performance by City. The City shall select and perform one of the
4 following measures to meet its obligations under paragraph 3.C.2 above:

5 a. perform the remedial action for which a notice of deficiency was
6 issued, subject to any modifications under the dispute resolution process with OME (if the City
7 has lawful access and the right to modify the development); or

8 b. perform the remedial action to enable the problem area to meet
9 CAP requirements for "Future Developed Conditions" at the Property (if the City has lawful
10 access and the right to modify the development); or

11 c. perform the remedial action to enable the problem area to meet the
12 protective requirements for "Existing Conditions" approved in the CAP, including but not limited to
13 applicable provisions of CAP Section 3 (cleanup standards) and Section 4 (cleanup actions for
14 existing conditions), Exhibit D (scope of work for existing conditions), monitoring and contingency
15 plan triggers in the CMCP (Attachment CAP-2), and limiting access if appropriate; or

16 d. perform such other remedial action approved by Ecology that will
17 meet the cleanup standards in the CAP.

18 Unless the specific remedy has already been approved by Ecology, the City of Everett
19 will provide a workplan for the remedial action to Ecology for Ecology's approval, subject to the
20 dispute resolution process. In the event the remedial action to be performed by the City is
21 deemed a substantial change from those remedial actions expressly covered by the Decree (also
22 see subparagraph D of this section), such action must meet the requirements of the MTCA rules,
23 including the public participation if applicable.

24 If the City does not have access to implement the remedy, the City will make its best
25 effort to obtain access. If the City is unable to obtain access after a reasonable period
26 (reasonableness to be determined based on the degree of danger associated with the problem

1 area), the City will notify Ecology and request Ecology's assistance in obtaining access. The
2 City obligation to perform the remedy shall be stayed pending obtaining access.

3 D. Restriction on Work. The City of Everett and OME agree not to perform any
4 remedial actions outside the scope of this Decree that are substantial unless approved in writing by
5 Ecology or the parties agree to amend the Scope of Work to cover these actions. Nonsubstantial
6 actions may occur if approved in writing by Ecology. All work conducted under this Decree shall
7 be done in accordance with WAC Chapter 173-340 unless otherwise provided herein.

8 4. **Section VII. DESIGNATED PROJECT COORDINATOR** shall have the
9 following added:

10 The project coordinator for OME is:

11 Charlie Hickcox
12 OM Everett, Inc.
13 733 8th Avenue
14 San Diego, CA 92101
15 Telephone: (619) 321-1111

16 5. **Section VIII. PERFORMANCE** shall be amended to add "and OME" after
17 reference to the City of Everett.

18 6. **Section IX. ACCESS** shall be amended to add "and OME" after all references to
19 the City of Everett.

20 7. **Section X. SAMPLING, DATA REPORTING, AND AVAILABILITY** shall
21 be amended to add "and OME" after all references to the City of Everett.

22 8. **Section XI. MONITORING REPORTS** shall be replaced in its entirety with
23 the following language:

24 OME shall submit any required monitoring reports to Ecology summarizing the results of
25 any required monitoring for the remedial actions required of OME as specified in paragraph 3
26 above and describing any issues that have arisen regarding implementation and maintenance of
the Cleanup Action Plan pursuant to the CMCP. Except for the Landfill Gas Management
System, the City of Everett shall submit any required monitoring reports to Ecology for all other

1 remedial actions required in the Cleanup Action Plan summarizing the results of required
2 monitoring and describing any issues that have arisen regarding implementation and
3 maintenance of the Cleanup Action Plan pursuant to the CMCP. With respect to monitoring of
4 the Landfill Gas Management System, the City of Everett and OME will jointly submit the
5 monitoring reports required by the CMCP or do so through a contractor.

6 **9. Section XII. RETENTION OF RECORDS** shall be amended to add “and
7 OME” after all references to the City of Everett.

8 **10. Section XIII. TRANSFER OF INTEREST IN PROPERTY:**

9 (a) Section XIII.A shall be amended to add “and OME” after all references to
10 the City of Everett and shall substitute “Property” for “Site.”

11 (b) Section XIII.B shall be amended to add the following sentence: “During
12 the effective period of this Decree, as described in Section XXV, OME shall notify Ecology of
13 its intent to convey any fee interest in the Property.

14 (c) A new subsection D shall be added to read as follows:

15 D. Upon receipt of a joint letter from the City and OME notifying Ecology of the
16 effective date of the City’s release to OME under their agreement, OME shall be released from
17 further liability under this Decree related to such portion of the Property conveyed under Section
18 XIII.B upon substituting the new fee owner as a Party to this Decree (“Transferee”). Any release
19 shall pertain exclusively to the period of time after the transfer and release and shall not apply to
20 the performance of obligations prior to the date of release. The Transferee may be an
21 incorporated owners association. As a condition of such release, the Transferee shall assume
22 responsibility for and accept liability for performing all of OME’s continuing obligations for the
23 land acquired, such as operations, maintenance, monitoring and reporting, of any remedial action
24 systems associated with the land acquired. Except for a transfer from OME to an Affiliated
25 Entity (as defined in the PDA), or to an incorporated owners entity, any such substitution and
26 release must be approved by Ecology, which approval shall not be unreasonably withheld.

1 **11. Section XIV. RESOLUTION OF DISPUTES** shall be amended to add “and/or
2 OME” after all references to the City of Everett.

3 **12. Section XV. AMENDMENT OF CONSENT DECREE** shall be amended to
4 add “and OME” after all references to the City of Everett.

5 **13. Sections XVI. EXTENSION OF SCHEDULE** shall be amended to add “or
6 OME” after all references to the City of Everett.

7 **14. Section XVII. ENDANGERMENT** shall be amended to add “OME” after all
8 references to the City of Everett.

9 **15. Section XVIII. INDEMNIFICATION** shall be amended to add the following
10 paragraph:

11 OME agrees to indemnify and save and hold the State of Washington, its employees, and
12 agents harmless from any and all claims or causes of action for death or injuries to persons, or
13 loss or damage to property arising from or on account of acts or omissions of OME, its officers,
14 employees, agents, or contractors in entering into and implementing this Decree. However,
15 OME shall not indemnify the State of Washington nor save nor hold its employees and agents
16 harmless from any claims or causes of action arising out of the negligent acts or omissions of the
17 State of Washington, or the employees or agents of the State, in implementing the activities
18 pursuant to this Decree.

19 **16. Section XX. COMPLIANCE WITH APPLICABLE LAWS** shall be amended
20 to add “or OME” after all references to the City of Everett.

21 **17. Section XXI. REMEDIAL AND INVESTIGATIVE COSTS** shall be replaced
22 in its entirety as follows:

23 A. The City of Everett and OME agree to pay costs incurred by Ecology pursuant to
24 this Decree as follows. The City and OME shall share the costs provided in this paragraph
25 equally (50-50), and the City of Everett shall upon request by Ecology pay any of these costs not
26 timely paid by OME (in no event shall OME be responsible to pay costs that the City is required

1 to, and does not timely, pay); provided, however, that costs associated with a notice of deficiency
2 under Section VI, paragraph 3.C or enforcement action under this Decree, if any, shall be
3 invoiced to and paid by the Party to which the notice or enforcement action was issued. To the
4 extent the City of Everett or OME believe the costs should be allocated differently than invoiced,
5 it shall be their responsibility to pay the invoice, subject to any dispute resolution with Ecology
6 under this Decree, and resolve any differences regarding allocation under their separate
7 agreements.

8 B. Ecology shall invoice each Party its share of the costs, and each Party shall pay
9 Ecology directly for its invoice. These costs shall include work performed by Ecology or its
10 contractors for, or on, the Site under Ch. 70.105D RCW subsequent to the issuance of this
11 Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight and
12 administration. Ecology costs shall include costs of direct activities and support costs of direct
13 activities as defined in WAC 173-340-550(2). The required amount will be paid within ninety
14 (90) days of receiving from Ecology an itemized statement of costs that includes a summary of
15 costs incurred, an identification of involved staff, and the amount of time spent by involved staff
16 members on the project. Ecology shall provide to the City and OME a detailed statement of
17 Ecology staff time spent administering performance under this decree in the form of a site log.
18 Ecology will also provide to the City and OME a general statement of work performed upon
19 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within
20 ninety (90) days of receipt of the itemized statement will result in interest charges.

21 **18. Section XXII. IMPLEMENTATION OF REMEDIAL ACTION** shall be
22 replaced in its entirety with the following language:

23 If Ecology determines that the City of Everett or OME have failed without good cause to
24 implement the remedial actions that the City or OME, as the case may be, are required to conduct
25 under this Decree, Ecology may, after notice to the alleged nonperforming Party, perform any or
26 all portions of the remedial action that remain incomplete except for any remedial actions that are

1 also development activities. If Ecology performs all or portions of the remedial action because
2 of the City of Everett's or OME's failure to comply with its obligations under this Decree, the
3 alleged nonperforming Party shall reimburse Ecology for the costs of doing such work in
4 accordance with Section XXI, provided that neither the City nor OME are obligated under this
5 Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope
6 of this Decree.

7 **19. Section XXIII. FIVE YEAR REVIEW** shall be replaced with the following
8 language:

9 As remedial action, including groundwater monitoring, continues at the Site, the parties
10 agree to review the progress of remedial action at the Site, and to review the data accumulated as
11 a result of site monitoring as often as is necessary and appropriate under the circumstances. At
12 least every five years, the parties shall meet to discuss the status of the Site and the need, if any,
13 of further remedial action at the Site. Ecology reserves the right to require further remedial
14 action at the Site under appropriate circumstances; however, OME shall not be responsible for or
15 required to conduct any such further remedial action except as may be required of OME under
16 Paragraph 24 of this Amendment No. 1 to Consent Decree, and except for actions needed to
17 complete the Work to Be Performed by OME in Paragraph 3.B of this Amendment No. 1 to
18 Consent Decree. This provision shall remain in effect for the duration of the Decree.

19 **20. Section XXIV. PUBLIC PARTICIPATION** shall be amended to add "and
20 OME" after all references to the City of Everett, except for the reference in Section XXIV.D.

21 **21. Section XXV. DURATION OF DECREE** shall be replaced with the following
22 language:

23 This Decree shall remain in effect and the remedial program described in the Decree shall
24 be maintained and continued until the City of Everett and OME have both received written
25 notification from Ecology that the requirements of this Decree have been satisfactorily
26 completed. Ecology shall provide such written notification or notice of any deficiencies in the

1 completion of the requirements of this Decree within sixty (60) days of receiving a joint notice
2 from the City of Everett and OME that the requirements of this Decree have been satisfied.
3 Within sixty (60) days of the City of Everett and OME's joint written notice that any noted
4 deficiencies have been corrected, Ecology shall provide written notification that the requirements
5 of the Decree have been satisfied or notice of any deficiencies that still remain. The provision set
6 forth in Section XXVII (Contribution Protection); Section XXVIII (Covenant Not to Sue),
7 Section XVIII (Indemnification) and such other continuing rights of the City of Everett, OME, or
8 Ecology under this Decree shall survive termination of this Decree pursuant to this paragraph.
9 This Decree shall in no way limit the authority of Ecology to obtain all legal or equitable
10 remedies available against persons not Party to this Decree and against all persons, parties or
11 non-parties, for releases of hazardous substances at the Site not addressed by this Decree.

12 Certifications by Ecology. The Property may be redeveloped in phases. The City of
13 Everett and OME may from time to time jointly provide notice and demonstrate to Ecology that
14 cleanup levels have been attained for certain media in certain parts of the Property. In order to
15 facilitate the timely redevelopment of the Property, Ecology shall, within a reasonable time of
16 receiving such notice and adequate documentation (including, but not limited to, design reports
17 and monitoring results), certify in writing that cleanup levels have been met in portions of the
18 Property specifically requested. In addition to these certifications, Ecology shall within a
19 reasonable time of receiving notice from the City of Everett and OME that they have
20 satisfactorily completed work, certify in writing that the City of Everett and OME have
21 completed all cleanup activities that are required pursuant to the CAP, with the exception of any
22 required institutional controls and monitoring as described in the CAP as amended by this
23 Amendment.

24 **22. Section XXVI. CLAIMS AGAINST THE STATE** shall be amended to add
25 "and OME" after all references to the City of Everett.
26

1 **23. Section XXVII. CONTRIBUTION PROTECTION** shall be replaced in its
2 entirety with the following language:

3 With regard to claims for contribution against the City of Everett or OME for matters
4 addressed in this Decree, the City of Everett and OME are entitled to protection from
5 contribution actions or claims as is provided by MTCA, RCW 70.105D.040, or as otherwise
6 provided by law. Nothing in the Decree prevents either OME or the City from bringing a
7 contribution action under MTCA against the other for remedial costs incurred if the Party is
8 required by Ecology to perform the other party's Work to Be Performed under this Decree.

9 **24. Section XXVIII. COVENANT NOT TO SUE** shall be replaced in its entirety
10 with the following language:

11 A. In consideration of the City of Everett's and OME's compliance with the
12 terms and conditions of this Decree, Ecology agrees that compliance with this Decree shall stand
13 in lieu of any and all administrative, legal, and equitable remedies and enforcement actions
14 available to Ecology against the City of Everett and OME for the release or threatened release of
15 known hazardous substances addressed pursuant to this Consent Decree and the CAP. For
16 purposes of this paragraph, "known hazardous substances" shall include the hazardous
17 substances identified in the Brownfield Feasibility Study conducted at this Site (RI/FS), which
18 are described in the CAP and Paragraph V.5 of the Decree.

19 1. **REOPENER FOR THE CITY:** Ecology specifically reserves the right to
20 institute legal or administrative action against the City of Everett following twenty (20) days
21 written notice to the City requiring the City to perform additional remedial action at the facility,
22 and to pursue appropriate cost recovery in accordance with provisions set out in RCW
23 70.105D.050, under the following requirements:

24 (a) In the event that the City of Everett fails to comply with its
25 obligations under this Decree, including all exhibits.
26

1 (b) In the event new information becomes available regarding factors
2 not known at the time of entry of this Decree which present a previously unknown threat to
3 human health or the environment, and Ecology determines, in light of this information, that
4 further remedial action is necessary at the facility to protect human health or the environment,
5 and the City of Everett, after notice from Ecology, fails to take necessary action within a
6 reasonable time.

7 (c) In the event conditions at the facility cause an endangerment to
8 human health or the environment under Section XVII of the Decree, and the City of Everett, after
9 notice from Ecology, fails to eliminate the endangerment within a reasonable time.

10 (d) To the extent the City of Everett or OME exacerbates the known,
11 documented contamination described in this Decree and the CAP.

12 (e) In the event the City of Everett or OME interferes with any
13 remediation of the facility conducted or required by Ecology.

14 2. REOPENER FOR OME: Ecology specifically reserves the right to
15 institute legal or administrative action against OME following twenty (20) days written notice to
16 OME requiring OME to perform additional remedial action at the facility, and to pursue
17 appropriate cost recovery in accordance with provisions set out in RCW 70.105D.050, under the
18 following requirements:

19 (a) In the event that OME fails to comply with its obligations under
20 this Decree, including all exhibits.

21 (b) In the event conditions at the facility cause an endangerment to
22 human health or the environment under Section XVII of the Decree, to the extent the conditions
23 causing the endangerment result from negligent acts or omissions or willful misconduct of OME;
24 provided that construction and development activities on the Site conducted in conformance with
25 the requirements of the CAP/CD shall not in any way be considered to be actions that can be
26

1 prohibited under the Decree or reopener as an endangerment, or to be negligent acts or omissions
2 or willful misconduct.

3 (c) In the event that OME interferes with any remediation of the
4 facility conducted or required by Ecology such that the interference causes an endangerment to
5 human health or the environment under Section XVII of this Decree, to the extent conditions
6 causing the endangerment result from negligent acts or omissions or willful misconduct of OME;
7 provided that modification of the Leachate Collection System (which all Parties anticipate will
8 be modified on the east side of the Property) or modification of the Landfill Gas Management
9 System, including header pipes, shall not in any way be considered to be an action that can be
10 prohibited under the Decree or interpreted under this reopener as interference with remediation
11 of the facility.

12 3. APPLICABILITY: The Covenant Not to Sue set forth above shall have
13 no applicability whatsoever to:

14 (a) Criminal Liability;

15 (b) Liability for damages to natural resources; or

16 (c) Any Ecology action against potentially liable parties not a Party to
17 this Decree, including cost recovery.

18 **25. Section XXIX. LAND USE RESTRICTIONS** shall be replaced in its entirety
19 with the following language:

20 For the Property, upon OME taking title to any portion of the Property, OME and the
21 City shall each record with the office of the Snohomish County Assessor an amendment to the
22 existing Restrictive Covenant for the Property substantially in the form of Exhibits D and E to
23 this Amendment for those portions of the Property owned by OME and by the City, respectively.
24 OME and the City shall provide each other and Ecology with a copy of the recorded amended
25 Restrictive Covenant within thirty (30) days of the recording date.
26

1 **26. Section XXX. EFFECTIVE DATE** shall be amended by adding the following
2 language:

3 This Amendment Number 1 to the Consent Decree is effective only upon the date
4 (Effective Date) that title to any portion of the Property vests in OME following entry of this
5 Amendment by the Court. If OME does not purchase any portion of the Property or if OME
6 reconveys that property back to the City this Amendment shall be null and void, and OME shall
7 be under no obligation to perform the work required by this Decree. In such event, the Parties
8 will jointly move the Court to declare Amendment Number 1 to the Consent Decree null and
9 void.

10 **27. Section XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**
11 shall be amended by adding the following language:

12 If the Court withholds or withdraws its consent to Amendment Number 1 to the Consent
13 Decree, it shall be null and void and the accompanying Motion for Amendment shall be
14 dismissed without costs and without prejudice. In such event, no Party shall be bound by the
15 requirements of this Amendment.

16 **28.** A new paragraph shall be added to the Consent Decree as follows:

17 **XXXII. RELATIONSHIP TO OTHER AGREEMENTS**

18 Nothing in this Consent Decree, including but not limited to Sections VI Work to Be
19 Performed, XXVII Contribution Protection, and XXVIII Covenant Not to Sue and Reopeners,
20 modifies or shall be deemed to modify the indemnification obligations or any other contractual
21 rights and obligations of OME or the City of Everett in the Landfill and Environmental
22 Indemnification Agreement or the Property Disposition Agreement entered into between OME
23 and the City of Everett in connection with OME's acquisition of property owned by the City of
24 Everett at the Landfill Site.

1 **III. AMENDMENTS TO CLEANUP ACTION PLAN AND**
2 **OTHER CONSENT DECREE EXHIBITS**

3 Section 6.0 **FUTURE CONDITIONS: PROPOSED CLEANUP ACTIONS** of the
4 Cleanup Action Plan (Exhibit C to the Consent Decree) is clarified or amended as follows in
5 paragraphs 29-33 below:

6 **29.** Restrictions on use of augercast piling pursuant to the results of the study
7 conducted by the City shall not apply if Ecology agrees other types of piling may be used. OME
8 shall be entitled to present information and data to Ecology to support a request to use a type of
9 piling other than augercast.

10 **30.** OME may be allowed to use methods other than those specified in Table 6-1 in the
11 CAP that achieve the same objectives, if agreed to by Ecology and the City as part of the
12 development permit process. Similarly, the City of Everett may also be allowed to use other methods
13 if agreed to by Ecology. Substantial changes will require an amendment to the decree and additional
14 public participation. Ecology’s decisions under this section shall be subject to review under the
15 dispute resolution provision of this Decree, which includes the arbitrary and capricious standard.

16 **31.** OME may develop residential units at the Property with ground floor uses restricted
17 solely to garage, storage, and laundry. The homeowners will not be allowed to make any living area
18 improvements within the ground floor area. Individual homeowners shall be prohibited from
19 penetrating the garage floor or membrane, and from improving, modifying, or removing the
20 landscaping located exterior to their residential units, but an owners’ association may engage in such
21 activities so long as the activity continues to comport with the requirements of this Decree and its
22 exhibits. For activities that would penetrate the garage floor or membrane, the owners’ association
23 shall give Ecology prior notice of the activity, except in the case of emergency in which case notice
24 shall be given as soon as practicable but no later than two work days thereafter. Methane monitoring
25 alarms shall be installed in each ground floor area and shall have a low level response that will trigger
26 exhaust fans in the garage area and notify maintenance personnel. In addition, a high level alarm is

1 required that will trigger evacuation notification. Methane monitoring controls for the residential
2 units shall be located externally and available for 24 hour operation and inspection. Homeowners
3 shall be required to provide access for routine monitoring as well as for emergencies. OME shall
4 include the above use restrictions and a description of the methane monitoring process in all
5 appropriate documents for each homeowner (e.g. CC&Rs and purchase documents).

6 **32.** The City of Everett's "oversight" responsibilities under the Consent Decree and
7 CAP are modified. The City of Everett, as the local development approval authority, will review
8 OME's development proposals as part of the City's regulatory permitting process, and ensure
9 that permits issued by the City for construction of the development are consistent with the
10 requirements of this CAP. Except as may be required under Section VI.C of this Decree, once
11 development is constructed and a certificate of occupancy is issued, the City shall have no
12 obligation under this Decree to inspect or monitor the OME Development, and each Party shall
13 be responsible directly to Ecology as provided in the Decree and in this amendment with
14 respect to their individual operation, maintenance, inspection, monitoring, and reporting
15 obligations. Without limiting the foregoing, sections 6.3.1 and 6.3.1.1 of the CAP are
16 amended as follows:

17 (a) Section 6.3.1 is revised to read: "The City of Everett, as the local
18 development approval authority, and to the extent otherwise required in the Consent Decree, as
19 amended, is responsible to ensure development is consistent with the requirements of the CAP.
20 Nothing herein is intended to modify or waive Ecology's oversight function."

21 (b) "Project Coordinators." One point of contact will be defined within the
22 City to track and coordinate environmental compliance, permitting, development, construction
23 and property management activities for the City. OME's project coordinator shall be the point of
24 contact for Ecology concerning OME's activities at the Site. Each Party's project coordinator
25 shall be responsible to ensure that Party's compliance with environmental requirements. The
26 Parties will coordinate their communications with Ecology relative to Site status and activities."

1 (c) "Compliance Monitoring Reporting. Each Party will provide timely,
2 periodic reporting of results to Ecology for the remedial actions for which it conducts
3 compliance monitoring under the CMCP."

4 (d) "Development Status and Inspection Reports. During construction of
5 development, City will provide timely, periodic reporting to Ecology detailing development
6 activities, development status, and permitting status, and inspection of the ongoing construction.
7 Reporting will accompany compliance monitoring reports to Ecology.

8 33. The Work to Be Performed Checklist in Section 6.4 is amended as attached in
9 Exhibit C.

10 34. Section 5.2 of the Compliance Monitoring and Contingency Plan (CMCP), which
11 is Attachment CAP-1 to the Cleanup Action Plan, is amended as follows:

12 (a) The inspection checklist referenced in section 5.2.1 and attached as Figure
13 5-1 shall be used by each Party as appropriate for purposes of each Party's inspection obligations
14 under the Decree. Section 3 of the checklist, concerning immediate notification of the City of
15 Everett Project Coordinator, shall be modified to require a Party to notify Ecology's Project
16 Coordinator and the other Party if they identify penetration of developed area covers in areas for
17 which that Party is responsible for inspection and reporting.

18 (b) Quarterly inspection results described in Section 5.2.3 will be submitted by
19 each Party to Ecology, and the immediate notification requirements require notification of Ecology.

20 35. Section 5.4 of the CMCP is amended as follows:

21 (a) The following second paragraph is added to Section 5.4:

22 The Party responsible in the Work to Be Performed for contingency actions for the
23 problem areas described below will implement the contingency measure. In the event OME is
24 unavailable to perform if required to do so (i.e. is in bankruptcy or has otherwise abandoned the site),
25 as specified in Section VI.C of the Decree, and City implements any of these measures on OME's
26 property, the City is not required to modify, repair, or maintain the development. In this situation, as

1 provided in the Consent Decree, the City shall select and perform one of the following measures to
2 meet its obligations: (a) perform the remedial action for which a deficiency was issued, subject to any
3 modifications under the dispute resolution process with OME (if the City has lawful access and the
4 right to modify the development); or (b) perform the remedial action to enable the problem area to
5 meet CAP requirements for "Future Developed Conditions" at the Property (if the City has lawful
6 access and the right to modify the development); or (c) perform the remedial action to enable the
7 problem area to meet the protective requirements for "Existing Conditions" approved in the CAP,
8 including but not limited to applicable provisions of CAP Section 3 (cleanup standards) and Section 4
9 (cleanup actions for existing conditions), Exhibit D (scope of work for existing conditions),
10 monitoring and contingency plan triggers in the CMCP (Attachment CAP-2), and limiting access if
11 appropriate; or (d) perform such other remedial action approved by Ecology that will meet the
12 cleanup standards in the CAP.

13 (b) A plan to correct problems with stormwater management systems that are
14 not operating or maintained as required will be developed and implemented by the Party
15 responsible for the stormwater management system.

16 (c) Areas of differential settlement identified during inspections that may
17 compromise remedial actions for other exposure pathways (such as for gas or surface water)
18 require identification and notification of Ecology's Project Manager.

19 **36.** All other provisions in the CAP and its attachments (Exhibit C to the Consent Decree),
20 and the Scope of Work and Schedule (Exhibit D to the Consent Decree), including any tables,
21 figures, and checklists, are hereby amended to conform to all provisions in this Consent Decree
22 Amendment.

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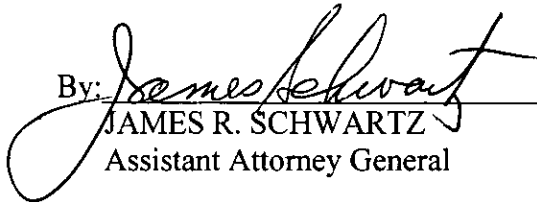
IV. EFFECT OF AMENDMENT TO CONSENT DECREE

The terms and conditions of this Amendment shall supersede any prior inconsistent provisions of the Decree, including all Exhibits and Attachments to the Decree. Unless otherwise modified herein, the original terms of the Decree shall remain in full force and effect.


STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By:  4/22/08
Date
JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program


ROBERT M. MCKENNA
Attorney General

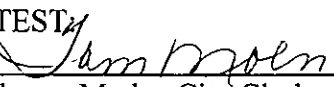
By:  4-21-08
Date
JAMES R. SCHWARTZ
Assistant Attorney General

OM EVERETT, INC., a Washington corporation

By:  4-18-08
Date
Its Richard Paul Buss, President

CITY OF EVERETT, a Washington municipal corporation

By:  4-16-08
Date
RAY STEPHANSON
Mayor

ATTEST
By:  4-16-08
Date
Sharon Marks, City Clerk - Deputy

APPROVED AS TO FORM:

By: *Kenneth S. Weiner* 4/16/08
Kenneth S. Weiner, Special City Attorney Date

K&L GATES
Attorneys for Defendant City of Everett

Kenneth S. Weiner 4/16/08
Kenneth S. Weiner WSBA #11594 Date

EXHIBITS:

- Exhibit A Landfill Property Map
- Exhibit B Legal Description of the Property
- Exhibit C Work to Be Performed Checklist (CAP Exhibit C, Table 6-4)
- Exhibit D Environmental Covenant by OM Everett, Inc.
- Exhibit E Environmental Covenant by the City of Everett

AMENDMENT ORDER

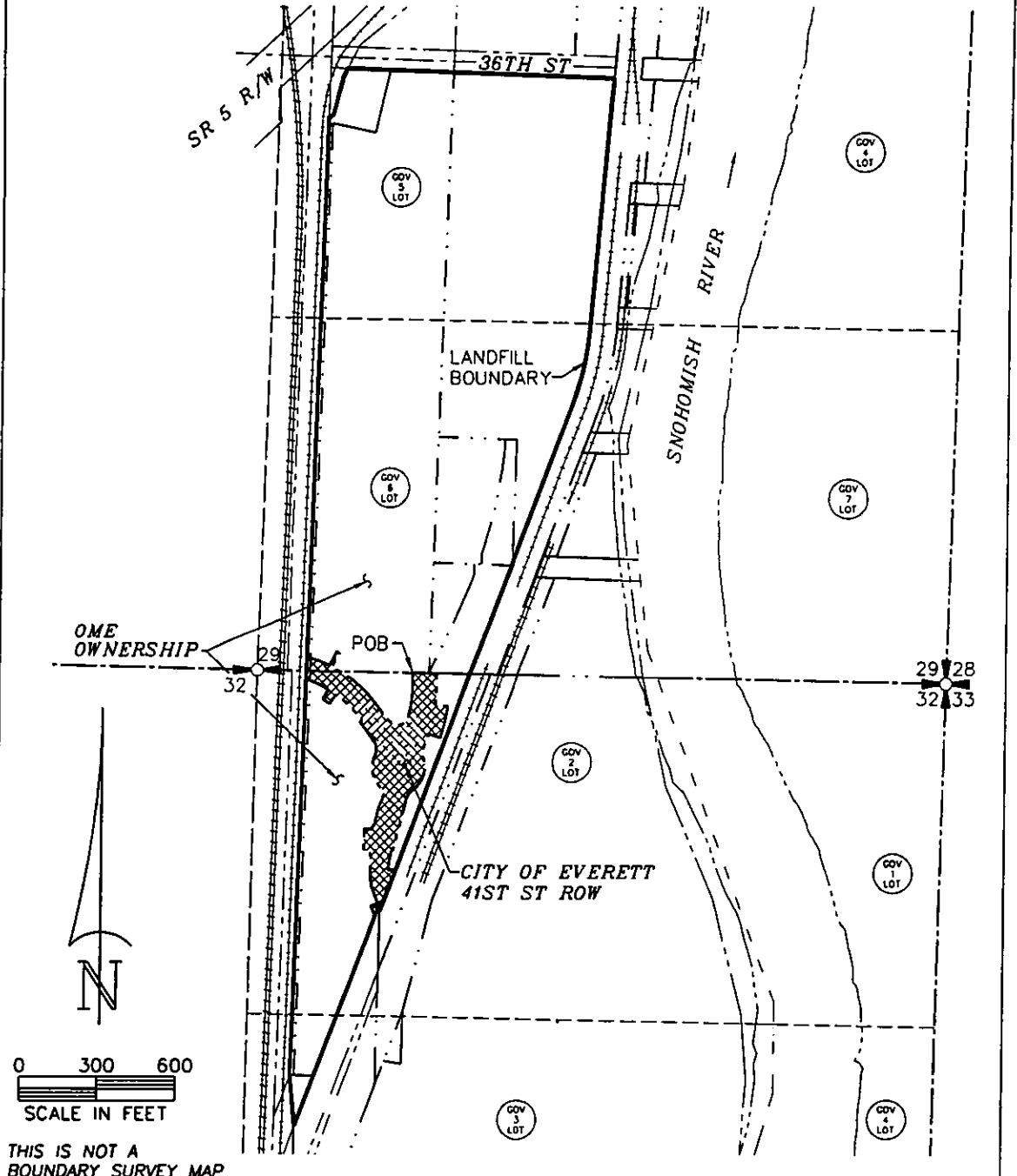
The Court hereby orders that the Decree is amended as set forth above.

DATED this 15th day of APR 23 2008, 2008.

Jacques D. Paulvik
Superior Court Judge Commissioner
Snohomish County Superior Court

EXHIBIT A

A PORTION OF
 SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



THIS IS NOT A
 BOUNDARY SURVEY MAP

CITY OF EVERETT

PARCEL EXHIBIT MAP

EXHIBIT "A"
 LANDFILL PROPERTY MAP

DATE: MAR 31, 2008

SHEET 1 OF 1

EXHIBIT B



Perteet Inc.

Project No. S 3157.000

April 14, 2008

MG Yeoman, PLS

EXHIBIT B

Legal Description of the Landfill Property

Lots 16 and 20 through 29, as described and shown on City of Everett Boundary Line Adjustment 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, Washington. Also described as follows:

A parcel of land located in Government Lots 5 and 6, Section 29 and Government Lots 2 and 3 Section 32, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, described as follows:

COMMENCING at the Northwest corner of said Government Lot 5 as shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 04' 42" East, a distance of 193.01 feet along the North Line of said Government Lot 5 to the east line of New Lot 8 of said BLA; thence South 01° 47' 27" West along said east line projected, 567.98 feet to the southwest corner of New Lot 7 of said BLA and the POINT OF BEGINNING:

Thence South 88° 12' 33" East, a distance of 15.00 feet to the East line of New Lot 7 of said BLA; thence along the east line of said New Lot 7; North 14° 37' 19" East, a distance of 153.16 feet; North 23° 11' 03" East, a distance of 36.84 feet to the South margin of 36th Street; thence along said south margin South 88° 04' 55" East, a distance of 1028.65 feet to the westerly boundary of Lot 17 of said BLA; thence South 04° 52' 07" West along said westerly boundary, a distance of 955.09 feet to the beginning of a 1096.28 foot radius tangent curve to the right; thence along the arc of said curve in a southwesterly direction through a central angle of 15° 51' 21" an arc distance of 303.38 feet; thence South 20° 43' 28" West, a distance of 2036.96 feet; thence North 01° 04' 37" East, a distance of 34.41 feet; thence South 20° 53' 11" West, a distance of 904.06 feet to the southerly corner of New Lot 5 of said BLA; thence along the west line of New Lot 5 of said BLA, North 05° 37' 09" West, a distance of 193.52 feet; thence continuing along said west line North 01° 47' 27" East, a distance of 3623.97 feet to the POINT OF BEGINNING.

Containing an Area of 62.039 Acres, more or less.

EXHIBIT C

**TABLE 6-4
WORK TO BE PERFORMED CHECKLIST**

This table is from the Landfill Cleanup Action Plan / Consent Decree (CAP/CD) and identifies the actions needed during and after site development. Section 6.3.1.1 of the CAP contemplates that the City and the future owner/developer will agree on a split of the remaining remedial activities. The City of Everett (City) and OM Everett, Inc. (OME) have contractually agreed on this split in their Landfill and Environmental Indemnification Agreement (LEIA). In the course of development, OME and the City may modify the LEIA provided the requirements of the CAP are not changed, and this table will be considered to be updated accordingly. This table is Exhibit E to the LEIA and has been annotated to reflect the agreement of the City and OME. All text in italics below is verbatim from Table 6-4 of the CAP/CD.

Additional general background useful to understanding this Table: All responsibilities and activities listed in this Table refer to activities pertaining to the Property only and not to any other area of City Property being acquired by OME. The definitions in the LEIA apply to any terms in this Table that are defined in the LEIA. Under the Property Disposition Agreement, OME will own the entire Property, except for the 41st Street overpass and any portions dedicated to the City for right-of-way or other City facilities if any, and any City-owned areas. Consequently, this Table notes City responsibilities relating to City-Controlled Areas on the Property, however, these are expected to be a very small area of the Property, nearly all of which will be developed by OME. The City will retain the responsibility for various systems related to Property management, including the leachate collection system, groundwater monitoring, and those responsibilities for the landfill gas management system described below.

***NOTE:** With respect to the design, construction, operation and maintenance of the Landfill Gas Management System (System), the parties have contractually agreed to allocate certain remedial activities in accordance with Section 2 of the LEIA. However, the City retains the System responsibilities for purposes of the Consent Decree. A contractor(s) will operate and maintain the System for the parties. For simplicity, the table below uses the notation “*City” with respect to this System, but nothing in this table is intended to modify the agreement of the Parties in the LEIA, to be reflected as appropriate in the CD Amendment.

4/10/08

Items listed in this checklist are activities required for future conditions at the Landfill/Tire Fire Site. These items are required in addition to the items listed in Section 4.4 of the CAP – work to be performed under existing conditions. Compliance monitoring and contingency plan requirements are defined in detail in the associated CMCP for the Site.

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
Gas Exposure Pathway	
*CITY	<p><i>Design, design review, construction, operation and maintenance of phased active landfill gas control systems for buildings, pavement and open space as development occurs.</i></p> <p>Under an agreement between OME and the City, as explained in the introductory note, OME will retain a contractor to design and construct the System, providing for review of plans and construction by Ecology and the City as set forth in the LEIA. After the System is constructed to the satisfaction of Ecology as provided in the CAP/CD, OME or the City will retain a contractor(s) to operate and maintain the System, including monitoring.</p> <p><i>This includes pavement permeability testing in accordance with an approved construction quality assurance plan.</i></p> <p>OME and City will each test any pavement at its facilities that is being used as the Low Permeability Barrier:</p> <ul style="list-style-type: none"> • OME for its development on the Landfill Property, • The City for any pavement in its right-of-way (ROW) including the 41st Street overpass and at City Amenities/Buildings on the Landfill Property if any.
*CITY	<p><i>Installation of continuous monitors and controllers in all ground floor rooms of any new building. Calibration and maintenance in accordance with manufacturer's recommendations.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>
*CITY	<p><i>Confirmational monitoring of landfill gas discharge locations.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
*CITY	<p><i>Hand-held monitoring of buildings, pavement, open space areas, and enclosed spaces in accordance with the compliance monitoring plan.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>
CITY	<p><i>Permit and comply with permit requirements for regulated landfill gas discharges.</i></p>
EACH	<p><i>Institutional control prohibiting overnight camping.</i></p> <p>City: The City will prohibit overnight camping in the appropriate land use approval(s) to OME or permit approvals to any successor in interest and will prohibit overnight camping in City-Controlled Areas.</p> <p>OME: OME will prohibit overnight camping in the CCRs (Covenants, Conditions and Restrictions) for the development and leases where appropriate on property it owns that is not a City-Controlled Area.</p>
Groundwater Exposure Pathway	
CITY	<p><i>Continued operation and maintenance of the leachate collection system.</i></p> <p>The City will operate and maintain the leachate collection system, including replacement, upgrade, or other modifications, as long as it is required by Ecology. This system may be combined with other wastewater/stormwater systems operated and maintained by the City on or from the landfill site.</p>
CITY	<p><i>Compliance monitoring includes deep aquifer groundwater quality monitoring as well as monitoring of water levels in leachate collection system and shallow aquifer east of leachate collection trench.</i></p> <p>Per the City, the evaluation monitoring requirements were completed in 2004. The City will be responsible for compliance monitoring per the Ecology-approved CMCP and Sampling and Analysis Plan, as long as it is required by Ecology. The City will bear the risk of changes in the groundwater regime caused by construction or other activities that are in conformance with the requirements of the CAP/CD.</p>
EACH	<p><i>Maintenance and grading of surface topography in undeveloped areas to maintain positive drainage.</i></p> <p>City: The City will do this for Undeveloped Areas that are within City-Controlled Areas if any.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>OME: OME will do this for all other Undeveloped Areas.</p>
EACH	<p><i>Maintenance of landfill developed area covers (hydraulic barrier beneath landscaping, pavements, building slabs).</i></p> <p>City: The City will do this for the 41st Street overpass and in areas where City Amenities/Buildings are located if any, including pavement or building slabs that are used as the barrier in any City-Controlled Areas.</p> <p>OME: OME will construct and maintain the required hydraulic barrier on the entire Landfill Property, except for the areas noted above where the City will maintain the barrier.</p>
EACH	<p><i>Institutional controls to prevent groundwater withdrawal other than for leachate collection or monitoring.</i></p> <p>City: In the appropriate land use approval, the City will prohibit groundwater withdrawal other than for leachate collection or monitoring as long as this requirement is in the Restrictive Covenant.</p> <p>OME: OME will prohibit groundwater withdrawal other than for leachate collection or monitoring, as long as this requirement is in the Restrictive Covenant, in the CCRs (Covenants, Conditions and Restrictions) for the development and leases where appropriate.</p>
EACH	<p><i>Restrictions against infiltration of collected stormwater, including requiring leak-tight joint for conveyance piping.</i></p> <p>City: The City will do this for City Improvements and for maintenance of facilities constructed by OME that become owned or controlled by the City (e.g., Main Road). This will be a requirement of appropriate public works permits issued for the construction of City Improvements.</p> <p>OME: OME will do this for facilities OME constructs, except for facilities ultimately owned or controlled by the City. This will be a requirement of the appropriate City permits issued for this work.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
CITY	<p><i>Initiation of compliance monitoring prior to pile installation.</i></p> <p>Per the City this monitoring has already been performed. As noted below, the City and Ecology will be reviewing OME's piling and other construction plans to protect the groundwater regime on the site.</p>
EACH	<p><i>Shallow aquifer quality characterization sampling round and associated evaluation to establish zones for pile-type restrictions, if necessary.</i></p> <p>City: Per the City, this work has been completed, and Ecology has accepted the study. Any piling for City facilities will follow the recommendations in the study. The City will conduct any additional compliance monitoring required prior to pile installation.</p> <p>OME: Any piling for OME facilities will follow the recommendations in the study, or any alternatives accepted by Ecology.</p>
OME	<p><i>Incorporate any pile-type restrictions into deed restrictions if necessary.</i></p> <p>OME will include if necessary in the CCRs (Covenants, Conditions and Restrictions) or sale agreements for the development.</p>
Direct Contact Exposure Pathway	
EACH	<p><i>Erosion control measures.</i></p> <p>City: The City will construct City Improvements to meet erosion control requirements and will inspect City-Controlled Areas, including areas where City Amenities/Buildings are located, to verify positive drainage.</p> <p>OME: OME will construct OME Development to meet erosion control requirements and will inspect property on which it controls access to verify positive drainage.</p>
EACH	<p><i>Maintenance of landfill developed area covers (hydraulic barrier beneath landscaping, pavements, building slabs) and undeveloped area soil cap.</i></p> <p>City: The City will do this for the 41st Street overpass and in areas where City Amenities/Buildings are located if any, including pavement or building slabs that are used as the barrier in any City-Controlled Areas.</p> <p>OME:</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	OME will construct and maintain the required hydraulic barrier on the entire Landfill Property, except for the areas noted above where the City will maintain the barrier.
EACH	<p><i>Clean backfill in utility corridors with geotextile separation.</i></p> <p>City: The City will do this for the utility corridors it constructs.</p> <p>OME: OME will do this for the utility corridors it constructs.</p>
OME	<p><i>Maintenance of access controls (fencing, locked gates, signage) to undeveloped areas of the Site.</i></p> <p>City: The City will do this in Undeveloped Areas that are City-Controlled Areas.</p> <p>OME: OME will do this in Undeveloped Areas owned by OME.</p>
EACH	<p><i>Construction inspections to ensure requirements for construction are met.</i></p> <p>City: The City construction inspectors will inspect the City’s public works/utilities work on the site, as well as OME’s compliance with OME’s building and construction permits.</p> <p>OME: OME will have construction oversight and supervision of its contractors’ work.</p>
EACH	<p><i>Compliance monitoring in the form of site inspections and reporting.</i></p> <p>City: The City will inspect and report on City-Controlled Areas, including City Amenities/Buildings.</p> <p>OME: OME will inspect and report on property on which OME controls access, including OME Buildings.</p>
EACH	<p><i>Institutional controls governing health and safety requirements for developed area cover penetration.</i></p> <p>City: The City will incorporate these into its existing public works/utilities standard operating</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>procedures for utility work on contaminated properties.</p> <p>OME: OME will include in the CCRs (Covenants, Conditions and Restrictions) for the development and in leases if appropriate.</p>
OME	<p><i>Institutional controls prohibiting ground-level private residential living space on landfill property.</i></p> <p>OME will include in the CCRs (Covenants, Conditions and Restrictions) for the development and require lessees and property owners to comply with the CAP/CD and Restrictive Covenant, as may be clarified or amended by the Consent Decree.</p>
Surface Water Exposure Pathway	
CITY	<p><i>Compliance monitoring includes semi-annual sampling of surface water within the Site boundary to determine compliance with cleanup standards at the point of compliance.</i></p> <p>City: The City will continue to conduct compliance monitoring for surface water as long as it is required by Ecology and is not part of stormwater management for OME's development.</p>
EACH	<p><i>Prepare and implement a SWPPP for future conditions.</i></p> <p>City: The City will be responsible for a SWPPP if required for construction of City Improvements (see erosion control above).</p> <p>OME: OME will be responsible for the SWPPP for OME Development.</p> <p>Note: the City will assume responsibility for facilities initially constructed by OME at such time as such facilities are dedicated to or controlled by the City (e.g., Main Road), and any SWPPP that might be required for those facilities.</p>
EACH	<p><i>Site inspections for and appropriate responses to leachate seeps, on-site ponding and existing stormwater disruptions due to differential settlement.</i></p> <p>City: The City will inspect for and take action as required for leachate seeps that do not occur during and as part of OME's construction work on the entire Landfill Site. The City will inspect for and take action as required for any on-site ponding and existing stormwater disruptions for City Improvements and City-Controlled Areas.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>OME: OME will inspect for and take action as required for on-site ponding and existing stormwater disruptions for OME Development (areas where OME controls access or owns facilities).</p> <p>Note: The City has not observed any leachate seeps in several years. If leachate seeps were to occur, it is possible they may be covered by the preceding item on SWPPP.</p>
Other Requirements	
CITY	<p><i>Designation of City Site Manager who will ensure compliance of environmental requirements and coordinate communications with Ecology.</i></p> <p>City: The City expects to continue to designate a public works department official as its project manager under the CAP/CD.</p> <p>OME: OME expects to designate a company official as its project manager under the Consent Decree.</p>
EACH	<p><i>Report compliance monitoring results to Ecology as determined in the CMCP.</i></p> <p>As noted above on compliance monitoring, the City and OME will each report their respective compliance monitoring (e.g., inspection) results to Ecology and to each other. With regard to the landfill gas monitoring system, the professional contractor will conduct the monitoring and prepare reports for oversight and review by the City and OME, who will then transmit or direct the contractor to transmit the reports to Ecology.</p>
CITY	<p><i>City review and approval of development construction plans; provide opportunities for Ecology's review and approval.</i></p> <p>City: The City will provide Ecology with the opportunity to review development construction plans through the local project review process (SEPA/permits/public and agency review), as provided by the existing CAP/CD.</p>
CITY	<p><i>Report development activities (status, permitting, construction, inspection) to Ecology as determined in the Consent Decree.</i></p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>City: The City will provide Ecology with the opportunity to review development status in the local project review process (SEPA/permits/public and agency review), as provided by the existing CAP/CD. The City Project Manager will convene an annual meeting with Ecology, including OME’s Project Manager, to review status of development and monitoring as long as the CAP/CD require monitoring.</p>
EACH	<p><i>Ecology notification of intent to convey an interest in the Site.</i></p> <p>City: The City has notified Ecology of its intent to convey to OME and provided Ecology with a copy of the Property Disposition Agreement.</p> <p>OME: If OME becomes the future property owner, OME will provide notifications to Ecology of any transfer of its fee ownership interest.</p>
OME	<p><i>Sale or lease agreements include requirements for implementation of all CD and CAP requirements, permitted uses, and responsibilities between owner and lessees.</i></p> <p>OME will include the applicable requirements in any lease or sale agreements for areas of the Landfill Property owned by OME.</p> <p>Note: The City does not expect to have sale or lease agreements on the Landfill Property. If it does, it will do likewise.</p>
EACH	<p><i>Lease restrictions to uses and activities consistent with the Restrictive Covenant and notification to all lessees.</i></p> <p>OME: OME will require its lessees to comply with uses and activities consistent with the Restrictive Covenant, as may be amended or clarified by the Consent Decree. As noted above, applicable restrictions will be included in the CCRs (Covenants, Conditions and Restrictions) for the development.</p> <p>City: In the unlikely event that the City enters into any leases for areas of the Landfill Site owned by the City (e.g., City ROW), the City will ensure that lessees are notified of the Restrictive Covenant (if potentially applicable to their tenancies) and that uses and activities in leases are consistent with the Restrictive Covenant.</p>

EXHIBIT D

**Amendment No. 1 to Consent Decree
Snohomish Superior Court Cause No. 01-2-03640-6**

EXHIBIT D

Amended Environmental Covenant

After recording Return To

OM Everett, Inc.
733 8th Avenue
San Diego, CA 92101

ENVIRONMENTAL COVENANT

Grantor: OM Everett, Inc.
Grantee: State of Washington, Department of Ecology
Legal: Lots 16, 21-29 of BLA 08-004, a portion of Section 29 and Section 32,
Township 29 North, Range 5 East of the Willamette Meridian, Snohomish County,
Washington.
Full Legal Description attached as Exhibit B hereto.
Tax Parcel Nos.: 29053200101200, 29052900400500, 00576001300000, 00576001400000,
00576001700000, 00576001800000, 00576002700000, 00576002800000,
0576003100001, 00576003100002, 00576004000001, 00576004000002,
00576004200000
Cross Reference: None.

OM EVERETT, INC. hereby gives notice that the Property, which is legally described below, is the subject of the following environmental covenant ("Environmental Covenant"). This Declaration of Environmental Covenants hereby supersedes the Declaration of Restrictive Covenants recorded in Snohomish County on February 11, 2002 (Snohomish County Assessor's Office Recording No. 200202110589).

The Property, which is the subject of this Environmental Covenant ("the Property"), is a portion of the former Everett Landfill, as shown and legally described in Exhibits A and B to this Covenant, respectively.

The Property that is the subject of this Environmental Covenant has been the subject of remedial actions under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW. This Environmental Covenant is required by WAC 173-340-440 to assure the continued implementation of this remedial action and the Uniform Environmental Covenants Act,

2007 Wash. Laws ch.104. The remedial actions required to clean up the Property (hereinafter the "Cleanup Action") are described in a Consent Decree and Amendment No. 1 to the Consent Decree, filed with and approved by the Superior Court of the State of Washington in and for Snohomish County, Cause No. 01-2-03640-6.

The Remedial Action conducted at the property and described in the Consent Decree, Amendment and supporting documentation are part of an administrative record on file with the Department of Ecology at the Northwest Regional Office located at 3190 - 160th Ave. SE, Bellevue, WA 98008-5452

The purpose of this Environmental Covenant is to provide Ecology the right to ensure that the Property will not be used in a manner inconsistent with the restrictions stated herein or in a manner that would pose a threat to human health or the environment. It is further the purpose of this Environmental Covenant to provide Ecology the right to determine whether and to what extent the deed restrictions set forth below may be removed from all or any portion of the Property, consistent with the Consent Decree and Amendment No. 1 to the Consent Decree.

Subject to exceptions and reservations of record, OM Everett, Inc. is the owner of the Property. OM Everett, Inc. makes the following declarations as to limitations, restrictions and uses to which the Property may be put. OM Everett, Inc. specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on the OM Everett, Inc. and its successors or assigns:

Section 1: Uses of the ground floor in residential units on the Property, if any, shall be restricted to garage, storage, and laundry. Overnight camping shall not be permitted. The owner must notify and obtain approval from Ecology, or from a successor agency, prior to any use of the Property that is inconsistent with this Section. Ecology or its successor agency may approve such a use only after public notice and comment.

Section 2: The owner shall not consummate any conveyance of title, easement, lease or other interest in the Property without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action undertaken pursuant to the Consent Decree and Amendment No. 1 to the Consent Decree. The owner shall restrict leases to uses and activities consistent with the Consent Decree and notify all lessees of the restrictions on the use of the Property.

Section 3: During the Effective Period of the Consent Decree, the owner shall notify Ecology of its intent to convey any fee ownership interest in the Property.

Section 4: Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about the Property at all reasonable times for the purposes of evaluating compliance with the terms of this Declaration of Restrictive Covenants.

Section 5: No groundwater may be withdrawn from the Property for any purpose except groundwater monitoring or leachate collection.

Section 6: Workers temporarily penetrating landfill cover materials on the Property must comply with OSHA and WSHA health and safety regulations. Uncontrolled penetration of landfill cover materials without notification of CAP requirements is prohibited.

Section 7: The owner of the Property reserves the right under WAC 173-330-440 to record an instrument which provides that this Environmental Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or a successor agency. Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment.

Section 8: OM Everett, Inc. reserves unto itself, its successors or assigns, all rights and privileges in and to the use of the Property that are not incompatible with the restrictions and rights granted herein.

Executed this 18th day of April, 2008.

OM EVERETT, INC.

By: Richard Paul Buss

Its: Richard Paul Buss, President

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

James J. Pendowski

James J. Pendowski
Program Manager, Toxics Cleanup Program

ACKNOWLEDGMENT

State of California
County of San Diego

On April 18, 2008 before me, Jason May
(insert name and title of the officer)

personally appeared Richard Buss
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

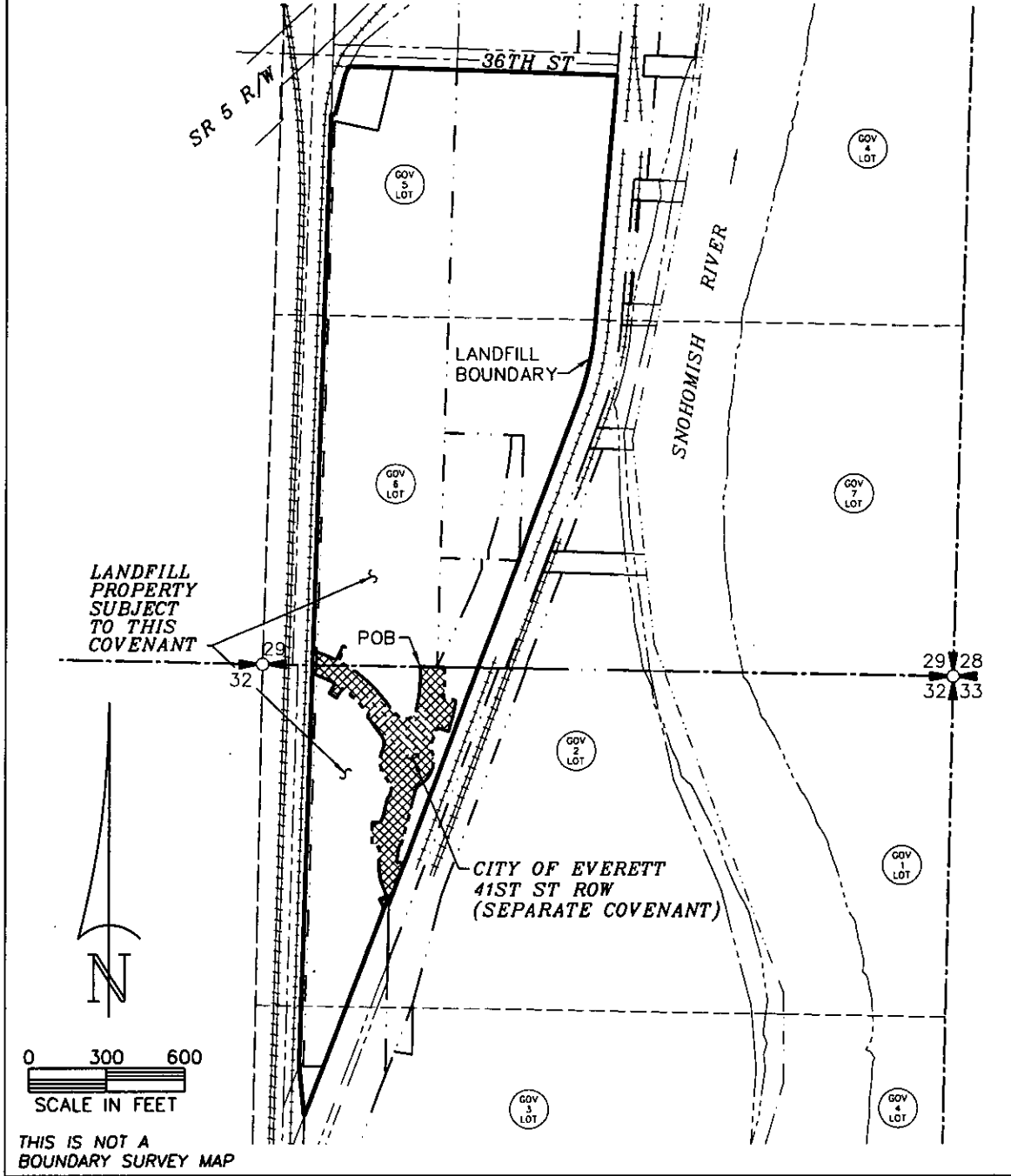
WITNESS my hand and official seal.

Signature Jason May

(Seal)



A PORTION OF
 SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



CITY OF EVERETT

PARCEL EXHIBIT MAP

EXHIBIT "A"
 LANDFILL PROPERTY ACQUIRED BY
 OLIVER MCMILLAN EVERETT, INC.

DATE: MAR 31, 2008

SHEET 1 OF 1



Perteet Inc.

Project No. S 3157.000

April 11, 2008

MG Yeoman, PLS

EXHIBIT B

Legal Description for Landfill Property Minus 41st R/W

Lots 16 and 21 through 29, as described and shown on that certain City of Everett Boundary Line Adjustment 08-004 filed under Auditor's File Number 200804085006, Records of Snohomish County, WA. Also described as follows:

A parcel of land located in Government Lots 5 and 6, Section 29 and Government Lots 2 and 3 Section 32, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, described as follows:

Commencing at the Northwest corner of said Government Lot 5 as shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 04' 42" East, a distance of 193.01 feet along the North Line of said Government Lot 5 to the east line of New Lot 8 of said BLA; thence South 01° 47' 27" West along said east line projected, 567.98 feet to the POINT OF BEGINNING:

Thence South 88° 12' 33" East, a distance of 15.00 feet to the East line of New Lot 7 of said BLA; thence along the east line of said A lot 7; North 14° 37' 19" East, a distance of 153.16 feet; North 23° 11' 03" East, a distance of 36.84 feet to the South margin of 36th Street; thence along said south margin South 88° 04' 55" East, a distance of 1028.65 feet to the westerly boundary of Lot 17 of said BLA; thence South 04° 52' 07" West along said westerly boundary, a distance of 955.09 feet to the beginning of a 1096.28 foot radius tangent curve to the right; thence along the arc of said curve in a southwesterly direction through a central angle of 15° 51' 21" an arc distance of 303.38 feet; thence South 20° 43' 28" West, a distance of 2036.96 feet; thence North 01° 04' 37" East, a distance of 34.41 feet; thence South 20° 53' 11" West, a distance of 904.06 feet to the west line of said New Lot 5; thence along said west line, North 05° 37' 09" West a distance of 193.52 feet; thence continuing along said west line North 01° 47' 27" East, a distance of 3623.97 feet to the POINT OF BEGINNING.

EXCEPT:

New Lot 20 as described and shown on that certain City of Everett Boundary Line Adjustment No. 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, WA. Also described as follows:

A Parcel of Land situated in Government Lot 2, Section 32, and Government Lot 6, Section 29, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, Described as follows:



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COMMENCING at the Quarter corner common to said Sections 29 and 32 as described and shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 00' 21" East a distance of 600.79 feet along the north line of Said Government Lot 2 to the POINT OF BEGINNING:

Thence continuing along said north line, thence South 89° 00' 21" East a distance of 94.28 feet to a point of curve of an 622.28 foot radius non-tangent curve to the right, the radius point of which bears South 86° 55' 37" West ; thence along the arc of said curve, through a central angle of 10° 55' 44", an arc length of 118.70 feet; thence South 82° 08' 39" East a distance of 49.00 feet to a point of curve of a 671.29 foot radius non-tangent curve to the right, the radius point of which bears North 82° 08' 39" West; thence along the arc of said curve, through a central angle of 10° 23' 52", an arc length of 121.82 feet; thence North 71° 44' 47" West a distance of 47.00 feet to a point of curve of a 624.29 foot radius non-tangent curve to the right, the radius point of which bears North 71° 44' 47" West ; thence along the arc of said curve, through a central angle of 04° 47' 35", an arc length of 52.22 feet to a point of reverse curve of a 60.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 42° 41' 31", an arc length of 45.08 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of 77° 57' 32", an arc length of 138.79 feet to a point of reverse curve of a 50.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 45° 31' 31", an arc length of 40.13 feet; thence South 12° 47' 17" West a distance of 31.44 feet; thence South 14° 28' 02" West a distance of 170.63 feet; thence South 49° 06' 50" West a distance of 10.13 feet; thence South 12° 47' 17" West a distance of 10.92 feet to a point of curve of an 265.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 11° 59' 58", an arc length of 55.50 feet; thence South 89° 12' 41" East a distance of 27.47 feet; thence South 20° 43' 28" West a distance of 169.94 feet; thence North 01° 04' 37" East a distance of 34.41 feet; thence South 20° 53' 11" West a distance of 53.16 feet to a point of curve of a 359.00 foot radius non-tangent curve the radius point of which bears South 61° 33' 55" West; thence along the arc of said curve, through a central angle of 06° 19' 18", an arc length of 39.61 feet; thence North 67° 53' 08" East a distance of 29.00 feet to a point of curve of a 330.00 foot radius non-tangent curve to the right, the radius point of which bears North 67° 53' 08" East ; thence along the arc of said curve, through a central angle of 01° 31' 43", an arc length of 8.80 feet; thence North 20° 09' 45" West a distance of 60.15 feet to a point of curve of a 335.00 foot radius non-tangent curve to the right, the radius point of which bears North 79° 45' 29" East; thence along the arc of said curve, through a central angle of 17° 54' 33", an arc length of 104.71 feet; thence North 13° 43' 00" West a distance of 20.27 feet to a point of curve of an 15.00



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foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $74^{\circ} 29' 33''$, an arc length of 19.50 feet; thence North $88^{\circ} 12' 33''$ West a distance of 11.72 feet; thence North $01^{\circ} 47' 27''$ East a distance of 80.00 feet; thence South $88^{\circ} 12' 33''$ East a distance of 19.19 feet to a point of curve of a 15.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $61^{\circ} 41' 34''$, an arc length of 16.15 feet; thence North $30^{\circ} 05' 53''$ East a distance of 15.00 feet; thence North $12^{\circ} 47' 17''$ East a distance of 57.04 feet to a point of curve of a 105.00 foot radius tangent curve to the right; thence along the arc of said curve, through a central angle of $18^{\circ} 35' 07''$, an arc length of 34.06 feet to a point of reverse curve of a 44.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of $76^{\circ} 42' 36''$, an arc length of 59.58 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of $71^{\circ} 39' 50''$, an arc length of 127.58 feet to a point of reverse curve of an 50.00 foot radius curve to the left; thence along the arc of said curve, through a central angle of $62^{\circ} 40' 32''$, an arc length of 54.69 feet; thence North $36^{\circ} 20' 53''$ West a distance of 85.18 feet to a point of curve of an 450.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $01^{\circ} 03' 12''$, an arc length of 8.27 feet; thence North $52^{\circ} 35' 55''$ East a distance of 9.00 feet to a point of curve of a 459.00 foot radius non-tangent curve to the left the radius point of which bears South $52^{\circ} 35' 55''$ West; thence along the arc of said curve, through a central angle of $17^{\circ} 36' 19''$, an arc length of 141.04 feet; thence South $34^{\circ} 59' 36''$ West a distance of 42.00 feet to a point of curve of a 417.00 foot radius non-tangent curve to the left the radius point of which bears South $34^{\circ} 59' 36''$ West; thence along the arc of said curve, through a central angle of $04^{\circ} 23' 13''$, an arc length of 31.93 feet; thence North $30^{\circ} 36' 23''$ East a distance of 42.00 feet to a point of curve of a 459.00 foot radius non-tangent curve to the left, the radius point of which bears South $30^{\circ} 36' 23''$ West; thence along the arc of said curve, through a central angle of $11^{\circ} 53' 01''$, an arc length of 95.20 feet to the west line of New Lot 5 of said BLA; thence North $01^{\circ} 47' 27''$ East, along said west line, a distance of 85.12 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South $16^{\circ} 05' 47''$ West; thence along the arc of said curve, through a central angle of $09^{\circ} 56' 41''$, an arc length of 93.90 feet; thence North $26^{\circ} 02' 28''$ East a distance of 61.00 feet to a point of curve of a 602.00 foot radius non-tangent curve to the right, the radius point of which bears South $26^{\circ} 02' 28''$ West; thence along the arc of said curve, through a central angle of $01^{\circ} 13' 05''$, an arc length of 12.80 feet; thence South $27^{\circ} 15' 33''$ West a distance of 61.00 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South $27^{\circ} 15' 33''$ West; thence along the arc of said curve, through a central angle of $19^{\circ} 46' 19''$, an arc length of 186.69 feet; thence South $47^{\circ} 01' 52''$ West a distance of 1.00 feet to a point of curve of a 540.00 foot radius non-tangent



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curve to the right, the radius point of which bears South $47^{\circ} 01' 52''$ West; thence along the arc of said curve, through a central angle of $06^{\circ} 37' 15''$, an arc length of 62.40 feet; thence South $36^{\circ} 20' 53''$ East a distance of 40.83 feet; thence South $50^{\circ} 02' 45''$ East a distance of 25.66 feet to a point of curve of a 40.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $115^{\circ} 26' 04''$, an arc length of 80.59 feet to a point of compound curve of a 528.28 foot radius curve to the left; thence along the arc of said curve, through a central angle of $18^{\circ} 19' 06''$, an arc length of 168.90 feet to the POINT OF BEGINNING.

Containing an area of 58.190 acres, more or less

EXHIBIT E

**Amendment No. 1 to Consent Decree
Snohomish Superior Court Cause No. 01-2-03640-6**

EXHIBIT E

Amended Environmental Covenant

After recording Return To

City of Everett
Real Property Manager
Facilities/Property Management Dept.
3200 Cedar Street
Everett, WA 98201

ENVIRONMENTAL COVENANT

Grantor: City of Everett
Grantee: State of Washington, Department of Ecology
Legal: Lot 20 of BLA 08-004, a portion of Section 29 and Section 32, Township 29 North, Range 5 East of the Willamette Meridian, Snohomish County, Washington. Full Legal Description attached as Exhibit B hereto.
Tax Parcel No.: 29053200101200
Cross Reference: None.

THE CITY OF EVERETT hereby gives notice that the Property, which is legally described below, is the subject of the following environmental covenant ("Environmental Covenant"). This Declaration of Environmental Covenants hereby supersedes the Declaration of Restrictive Covenants recorded in Snohomish County on February 11, 2002 (Snohomish County Assessor's Office Recording No. 200202110589).

The Property, which is the subject of this Environmental Covenant ("the Property"), is a portion of the former Everett Landfill, as shown and legally described in Exhibits A and B to this Covenant, respectively.

The Property that is the subject of this Environmental Covenant has been the subject of remedial actions under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW. This Environmental Covenant is required by WAC 173-340-440 to assure the continued implementation of this remedial action and the Uniform Environmental Covenants Act,

2007 Wash. Laws ch.104. The remedial actions required to clean up the Property (hereinafter the "Cleanup Action") are described in a Consent Decree and Amendment No. 1 to the Consent Decree, filed with and approved by the Superior Court of the State of Washington in and for Snohomish County, Cause No. 01-2-03640-6.

The Remedial Action conducted at the property and described in the Consent Decree, Amendment and supporting documentation are part of an administrative record on file with the Department of Ecology at the Northwest Regional Office located at 3190 - 160th Ave. SE, Bellevue, WA 98008-5452

The purpose of this Environmental Covenant is to provide Ecology the right to ensure that the Property will not be used in a manner inconsistent with the restrictions stated herein or in a manner that would pose a threat to human health or the environment. It is further the purpose of this Environmental Covenant to provide Ecology the right to determine whether and to what extent the deed restrictions set forth below may be removed from all or any portion of the Property, consistent with the Consent Decree and Amendment No. 1 to the Consent Decree.

Subject to exceptions and reservations of record, The City of Everett is the owner of the Property. The City of Everett makes the following declarations as to limitations, restrictions and uses to which the Property may be put. The City of Everett specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on the City of Everett and its successors or assigns:

Section 1: Uses of the ground floor in residential units on the Property, if any, shall be restricted to garage, storage, and laundry. Overnight camping shall not be permitted. The owner must notify and obtain approval from Ecology, or from a successor agency, prior to any use of the Property that is inconsistent with this Section. Ecology or its successor agency may approve such a use only after public notice and comment.

Section 2: The owner shall not consummate any conveyance of title, easement, lease or other interest in the Property without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action undertaken pursuant to the Consent Decree and Amendment No. 1 to the Consent Decree. The owner shall restrict leases to uses and activities consistent with the Consent Decree and notify all lessees of the restrictions on the use of the Property.

Section 3: During the Effective Period of the Consent Decree, the owner shall notify Ecology of its intent to convey any fee ownership interest in the Property.

Section 4: Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about the Property at all reasonable times for the purposes of evaluating compliance with the terms of this Declaration of Restrictive Covenants.

Section 5: No groundwater may be withdrawn from the Property for any purpose except groundwater monitoring or leachate collection.

Section 6: Workers temporarily penetrating landfill cover materials on the Property must comply with OSHA and WSHA health and safety regulations. Uncontrolled penetration of landfill cover materials without notification of CAP requirements is prohibited.

Section 7: The owner of the Property reserves the right under WAC 173-330-440 to record an instrument which provides that this Environmental Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or a successor agency. Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment.

Section 8: The City of Everett reserves unto itself, its successors or assigns, all rights and privileges in and to the use of the Property that are not incompatible with the restrictions and rights granted herein.

Executed this 16th day of April, 2008.

CITY OF EVERETT

By: Ray Stephanson
Ray Stephanson, Mayor

Attest: Marion Marks
City Clerk

Approved as to Form:

Kenneth S. Wever
Kenneth S. Wever, Special City Attorney

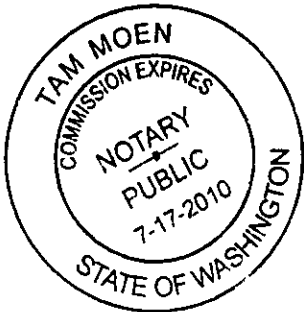
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

James J. Pendowski
James J. Pendowski
Program Manager, Toxics Cleanup Program

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Ray Stephanson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Everett to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

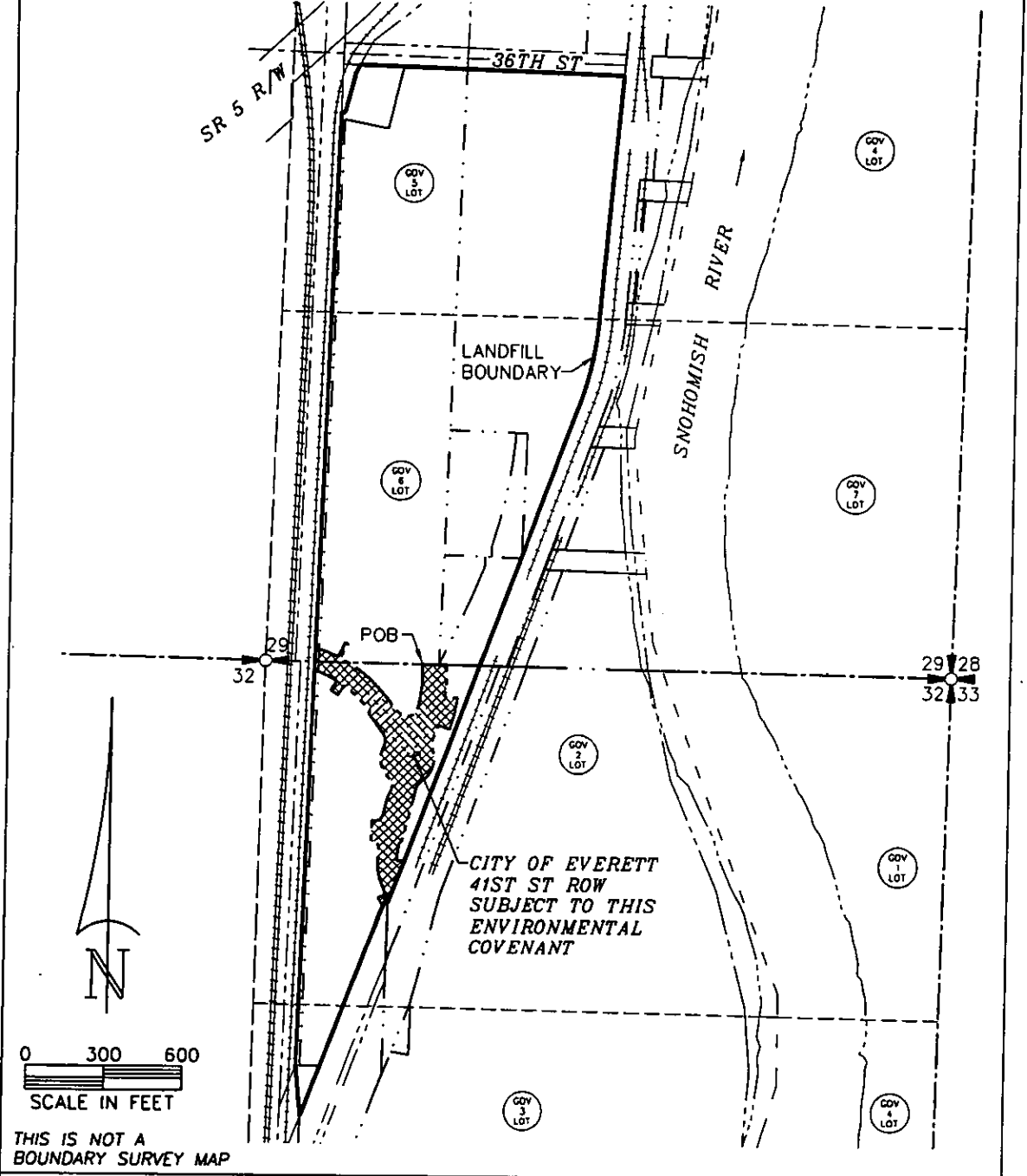
DATED: 4-16-08



Tam Moen
TAM Moen

Notary Public in and for the State of Washington,
residing at Everett
My Commission Expires: 7-17-2010

A PORTION OF
 SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



THIS IS NOT A
 BOUNDARY SURVEY MAP

CITY OF EVERETT

PARCEL EXHIBIT MAP
 EXHIBIT "A"
 CITY OF EVERETT-41ST ST. RIGHT-OF-WAY
 ON LANDFILL PROPERTY
 DATE: MAR 31, 2008 SHEET 1 OF 1



Pertee Inc.

Project No. S 3157.000

April 11, 2008

MG Yeoman, PLS

EXHIBIT B

City of Everett 41st Right-of-Way on Landfill Property Legal Description

Lot 20 as described and shown on that certain City of Everett Boundary Line Adjustment No. 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, WA. Also described as follows:

A Parcel of Land situated in Government Lot 2, Section 32, and Government Lot 6, Section 29, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, Described as follows:

COMMENCING at the Quarter corner common to said Sections 29 and 32 as described and shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 00' 21" East a distance of 600.79 feet along the north line of Said Government Lot 2 to the POINT OF BEGINNING:

Thence continuing along said north line, thence South 89° 00' 21" East a distance of 94.28 feet to a point of curve of an 622.28 foot radius non-tangent curve to the right, the radius point of which bears South 86° 55' 37" West ; thence along the arc of said curve, through a central angle of 10° 55' 44", an arc length of 118.70 feet; thence South 82° 08' 39" East a distance of 49.00 feet to a point of curve of a 671.29 foot radius non-tangent curve to the right, the radius point of which bears North 82° 08' 39" West; thence along the arc of said curve, through a central angle of 10° 23' 52", an arc length of 121.82 feet; thence North 71° 44' 47" West a distance of 47.00 feet to a point of curve of a 624.29 foot radius non-tangent curve to the right, the radius point of which bears North 71° 44' 47" West ; thence along the arc of said curve, through a central angle of 04° 47' 35", an arc length of 52.22 feet to a point of reverse curve of a 60.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 42° 41' 31", an arc length of 45.08 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of 77° 57' 32", an arc length of 138.79 feet to a point of reverse curve of a 50.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 45° 31' 31", an arc length of 40.13 feet; thence South 12° 47' 17" West a distance of 31.44 feet; thence South 14° 28' 02" West a distance of 170.63 feet; thence South 49° 06' 50" West a distance of 10.13 feet; thence South 12° 47' 17" West a distance of 10.92 feet to a point of curve of an 265.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 11° 59' 58", an arc length of 55.50 feet; thence South 89° 12' 41" East



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a distance of 27.47 feet; thence South 20° 43' 28" West a distance of 169.94 feet; thence North 01° 04' 37" East a distance of 34.41 feet; thence South 20° 53' 11" West a distance of 53.16 feet to a point of curve of a 359.00 foot radius non-tangent curve the radius point of which bears South 61° 33' 55" West; thence along the arc of said curve, through a central angle of 06° 19' 18", an arc length of 39.61 feet; thence North 67° 53' 08" East a distance of 29.00 feet to a point of curve of a 330.00 foot radius non-tangent curve to the right, the radius point of which bears North 67° 53' 08" East; thence along the arc of said curve, through a central angle of 01° 31' 43", an arc length of 8.80 feet; thence North 20° 09' 45" West a distance of 60.15 feet to a point of curve of a 335.00 foot radius non-tangent curve to the right, the radius point of which bears North 79° 45' 29" East; thence along the arc of said curve, through a central angle of 17° 54' 33", an arc length of 104.71 feet; thence North 13° 43' 00" West a distance of 20.27 feet to a point of curve of an 15.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 74° 29' 33", an arc length of 19.50 feet; thence North 88° 12' 33" West a distance of 11.72 feet; thence North 01° 47' 27" East a distance of 80.00 feet; thence South 88° 12' 33" East a distance of 19.19 feet to a point of curve of a 15.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 61° 41' 34", an arc length of 16.15 feet; thence North 30° 05' 53" East a distance of 15.00 feet; thence North 12° 47' 17" East a distance of 57.04 feet to a point of curve of a 105.00 foot radius tangent curve to the right; thence along the arc of said curve, through a central angle of 18° 35' 07", an arc length of 34.06 feet to a point of reverse curve of a 44.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 76° 42' 36", an arc length of 59.58 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of 71° 39' 50", an arc length of 127.58 feet to a point of reverse curve of an 50.00 foot radius curve to the left; thence along the arc of said curve, through a central angle of 62° 40' 32", an arc length of 54.69 feet; thence North 36° 20' 53" West a distance of 85.18 feet to a point of curve of an 450.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 01° 03' 12", an arc length of 8.27 feet; thence North 52° 35' 55" East a distance of 9.00 feet to a point of curve of a 459.00 foot radius non-tangent curve to the left the radius point of which bears South 52° 35' 55" West; thence along the arc of said curve, through a central angle of 17° 36' 19", an arc length of 141.04 feet; thence South 34° 59' 36" West a distance of 42.00 feet to a point of curve of a 417.00 foot radius non-tangent curve to the left the radius point of which bears South 34° 59' 36" West; thence along the arc of said curve, through a central angle of 04° 23' 13", an arc length of 31.93 feet; thence North 30° 36' 23" East a distance of 42.00 feet to a point of curve of a



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459.00 foot radius non-tangent curve to the left, the radius point of which bears South 30° 36' 23" West; thence along the arc of said curve, through a central angle of 11° 53' 01", an arc length of 95.20 feet to the west line of New Lot 5 of said BLA; thence North 01° 47' 27" East, along said west line, a distance of 85.12 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South 16° 05' 47" West; thence along the arc of said curve, through a central angle of 09° 56' 41", an arc length of 93.90 feet; thence North 26° 02' 28" East a distance of 61.00 feet to a point of curve of a 602.00 foot radius non-tangent curve to the right, the radius point of which bears South 26° 02' 28" West; thence along the arc of said curve, through a central angle of 01° 13' 05", an arc length of 12.80 feet; thence South 27° 15' 33" West a distance of 61.00 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South 27° 15' 33" West ; thence along the arc of said curve, through a central angle of 19° 46' 19", an arc length of 186.69 feet; thence South 47° 01' 52" West a distance of 1.00 feet to a point of curve of a 540.00 foot radius non-tangent curve to the right, the radius point of which bears South 47° 01' 52" West; thence along the arc of said curve, through a central angle of 06° 37' 15", an arc length of 62.40 feet; thence South 36° 20' 53" East a distance of 40.83 feet; thence South 50° 02' 45" East a distance of 25.66 feet to a point of curve of a 40.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 115° 26' 04", an arc length of 80.59 feet to a point of compound curve of a 528.28 foot radius curve to the left; thence along the arc of said curve, through a central angle of 18° 19' 06", an arc length of 168.90 feet to the POINT OF BEGINNING.

Containing an area of 3.31 acres, more or less.