

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
Silver Bay Logging, Inc., and RJ & BA LLC	No. DE 21418

TO: Betty Buhler	Betty Buhler
Silver Bay Logging, Inc.,	RJ & BA LLC
PO Box 270	PO Box 270
Kelso, WA 98626	Kelso, WA 98626

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Silver Bay Logging, Inc. and RJ & BA, LLC (collectively the potentially liable persons (PLPs)) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLPs to conduct a Remedial Investigation (RI) and Feasibility Study (FS) per WAC 173-340-350 and to develop a draft Cleanup Action Plan (DCAP) per WAC 173-340-350 through 173-340-380 addressing contamination at the Site located in the area of 816 and 836 S. Kenyon St, 803 and 811 S. Chicago St, and 7760 and 7808 8th Ave S., Seattle, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site is commonly referred to as Independent Metals Plant 2 (a.k.a. Silver Bay Logging). The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by

where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the area of 816 and 836 S. Kenyon Street, 803 and 811 S. Chicago St., 7760 and 7808 8th Ave. S, Seattle, Washington and impacted Lower Duwamish Waterway sediments, as shown in part in the Site Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and Silver Bay Logging, Inc. and RJ & BA, LLC.

C. Potentially Liable Persons (PLP(s)): Refers to Silver Bay Logging, Inc. and RJ & BA, LLC.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located in the area of 816 and 836 S. Kenyon Street, 803 and 811 S. Chicago St., 7760 and 7808 8th Ave. S, Seattle, Washington (Property), and extends to impacted Lower Duwamish Waterway (LDW) sediments as shown in the Site Location Diagram (Exhibit A) and in related LDW Remedial Investigation data and Reports. The Ecology Facility Site ID is 16139 and the Cleanup Site ID is 12300. The real property owned by the PLPs (Property) consists of six King County parcels, King County Tax Parcel numbers 7327902480; 7327902490; 7327902500; 7327902510; 7327902520; and 7327903645, which covers approximately 3.06 acres (the Property). In addition, the PLPs also lease a portion of the Site from the City of Seattle. The leased portion, approximately 0.23 acres, corresponds to the right-of-way for that portion, of South Chicago Street that formerly extended east of 8th Avenue South. The Site is an approximately 3.29 acres property located along the vicinity of the Lower Duwamish Waterway. The southern portion of the Property, including a

warehouse building and office, is currently leased to a gypsum recycling business and the northern portion of the Property includes a marine dock located on the left bank of the Duwamish River.

B. The Property has been used for residential, commercial, and industrial purposes and is zoned Manufacturing/Industrial by the City of Seattle to provide for industrial uses.

C. Over the last several decades, businesses operating at the Property may have released hazardous substances at the Property.

D. Historical facilities and operations included:

1. A former gasoline station/ auto repair shop with battery shop on the northern portion of the Site from 1929 to approximately 1937.
2. Metaldehyde slug bait packaging (within one of the on-site buildings) from 1960 to 1999.
3. A work boat manufacturer, Workboats Northwest, on the site between 1976 and 1995.
4. A scrap and recycled metal sorting and handling facility, Independent Metals, on the site between 2006 and 2014.
5. A transfer site for processed logs, Silver Bay Logging, on the site between 1996 and 2015.
6. Gypsum recycling by American Gypsum Recycling-2 LLC, began operations in 2019 and is currently operating at the Property.

E. Contamination at the Property is related to these past operations. Previous investigations identified the presence of diesel- and oil-range total petroleum hydrocarbons (TPH), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), tetrachloroethene (PCE), trichloroethene (TCE), polychlorinated biphenyls (PCBs), arsenic, cadmium, and lead in soil at concentrations exceeding the applicable soil screening levels on the Property. Previous investigations identified the presence of diesel- and oil-range TPH, PCE, and vinyl chloride (VC), selenium, arsenic, and lead in groundwater at concentrations exceeding groundwater screening levels on the Property.

F. Regular monitoring for total petroleum hydrocarbons (TPH) for oil and grease, zinc, copper, lead, pH and turbidity in stormwater was conducted at the Property under an existing National Pollutant Discharge Elimination System (NPDES) permit. In June 2009, Seattle Public Utilities (SPU) collected a storm drain solids sample from a catch basin (CB206) located at the Property and reported the results to Ecology. Analytical results identified concentrations of polychlorinated biphenyls (PCBs), copper, lead, mercury, zinc, polycyclic aromatic hydrocarbons (PAHs), phthalates, diesel and heavy oil range hydrocarbons, 4-methylphenol, and benzoic acid exceeding storm drain screening values. Additional samples confirmed that PCBs and metals were present at the Site.

G. In a 2009 Site Hazard Assessment, Ecology concluded that PCBs were released at Silver Bay Logging (Independent Metals Plant 2), 816 S. Kenyon Street. Ecology placed Independent Metals Plant 2 on its Confirmed and Suspected Contaminated Sites (CSCSL) list with Cleanup Site ID number 12300. Ecology required that PCBs and metals be added to the NPDES monitoring requirements for the Site.

H. In March and April 2011, SPU collected storm drain solids samples from catch basin RCB229, located in the right-of-way adjacent to the facility, and from onsite catch basin CB206. Results indicated that concentrations of PCBs, copper, mercury, zinc, PAHs, phthalates, phenol, benzyl alcohol, n-nitrosodiphenylamine, and diesel-range hydrocarbons and heavy oil-range hydrocarbons were above storm drain screening values used in the Lower Duwamish Waterway (LDW) source control investigation. Ecology conducted a follow-up inspection in August 2011, and identified that deficiencies in implementing Best Management Practices (BMPs) of Site Storm Water Pollution Prevention Plan (SWPPP) were causing the release of contaminants of mercury and PCB in stormwater and surface soils on the property

I. In April 2013, Ecology conducted a facility inspection and collected treated effluent samples and storm drain solids from a catch basin. Sample results demonstrated that concentrations of cadmium, copper, lead, mercury, zinc, PAHs, phthalates, phenols and PCBs in sediment

exceeded Sediment Management Standard (SMS) criteria, and similarly, concentrations of copper, lead, mercury, nickel, zinc and PCBs exceeded surface water quality standards.

J. In October 2015, Ecology conducted a Site Hazard Assessment (SHA) for the Property, using a ranking system from 1 to 5, with 1 being most hazardous and 5 being the least, and Ecology assigned the Property the rank of 4. Ecology also documented that the Property had discharges of PCBs at concentrations exceeding surface water quality guidelines into the LDW. Additionally, metals, phthalates, diesel, oil, phenols, n-nitrosodiphenylamine and benzyl alcohol had also been identified in catch basin solids within the Property.

K. In April 2017, five underground storage tanks (UST) were decommissioned and removed at the Property.

- The removed USTs included two 5,000-gallon capacity, single-walled USTs, and two 10,000-gallon capacity, single-walled USTs, all four located south of the warehouse near the southern Property line. All four USTs were in good to fair condition and no evidence of a release was observed. The fifth UST was a 300-gallon capacity, single-walled steel UST in the “East Yard”, the most southeastern edge of the Property.
- An August 8, 2017 Underground Storage Tank Closure & Site Assessment Report, prepared by The Riley Group Inc., indicated that there was a release in the East Yard from the 300-gallon UST. This heating oil UST (UST5) was heavily corroded and visible holes were observed. Analytical data obtained from soil samples collected from within this UST’s excavation, north and beneath UST5, indicated that diesel-range TPH is present in soil at concentrations exceeding MTCA Method A Soil Cleanup Levels for Unrestricted Land Uses. Soil analytical data obtained during the 2016 Additional Subsurface Investigation from test probes P18 and P19, which were in close proximity to UST5, appear to indicate that the extent of soil impacts in this location is limited. Ecology received a report for releases related to the 2017 UST removal at Silver Bay Logging in August 2017. Ecology assigned UST ID 620356 to that release.

L. In 2018, two independent remedial actions to address contamination were completed at the Property.

1. One of the independent remedial actions took place at the Property's East Yard, in the southeastern portion of the Property, where two areas were excavated. The first excavation was conducted to address contamination extending to 1.5 feet below ground surface (bgs). The second excavation was completed around UST5's former location. The original footprint of this second excavation was extended and was eventually merged with excavation to address impacts in the southeast area to a depth of about 5 feet bgs. Results of analysis of sampling from these excavations were less than MTCA Method A CULs for unrestricted land use.
2. The second independent remedial action occurred at the Property's Main Yard, in the central portion of the Property. 13 areas were excavated in the Main Yard.
 - i. Excavation within the northern portion of the Main Yard corresponded to the approximate location of the former gas station. During excavation of this area, an abandoned UST system, consisting of a 300-gallon UST and 1,000-gallon UST, was discovered. This UST system was decommissioned, removed, and disposed of offsite and represent the 6th and 7th UST removed from the Property.
 - ii. Three samples taken from the northern portion of the Main Yard contained levels of cadmium and lead, exceeding MTCA Method A CULs for unrestricted land use. One of the three samples also exceeded the arsenic CUL.
 - iii. Excavation of another area, located east of the storage building in the southern portion of the Main Yard, revealed oil staining at the surface associated with releases from large hydraulic machinery; the remaining excavation sites corresponded to exposed soil areas after removal of shredder residue.
 - iv. A sample collected from blue green stained fill soil, which was observed along the bank and beneath the wheelhouse at the Property, contained cadmium and

lead exceeding MTCA Method A CULs for unrestricted land use and copper exceeding Method B CUL for unrestricted land use.

- v. Another area in the Main Yard was excavated to address hydraulic oil contamination in the soils. Four samples collected from the final excavation limits of this area contained total diesel range organics and oil range organics exceeding the soil MTCA Method A CUL of 2,000 mg/kg.

M. Previous investigations conducted between 2004 and 2019 identified the presence of soil and groundwater contamination at the Property. The previously identified contaminants of concern at the Property known to exceed MTCA Method A CULs for unrestricted land use include: diesel- and oil-range TPH, PCE and TCE, and arsenic and lead in soil and groundwater; gasoline-range TPH, cPAHs, PCBs and cadmium in soil; and vinyl chloride (VC) in groundwater. TPH, metals, PCBs and cPAHs at the Property were attributed to Property operations. Sources of PCE, TCE and VC contamination in groundwater at the Property were not identified.

VI. ECOLOGY DETERMINATIONS

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

A. The PLPs are “owners or operators” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).

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

C. Based upon credible evidence, Ecology issued a PLP status letter to Silver Bay Logging, Inc. and RJ & BA, LLC dated April 14, 2022, pursuant to RCW 70A.305.020(26), 70A.305.040, and WAC 173-340-500. Ecology provided notice and opportunity for comment. The PLPs provided written notice accepting their status as a PLP for the Site on May 2, 2022. Ecology concluded that credible evidence supported a finding of potential liability. Ecology issued a

determination that Silver Bay Logging, Inc. and RJ & BA, LLC are PLPs under RCW 70A.305.040 and notified Silver Bay Logging, Inc. and RJ & BA, LLC of this determination by letter dated May 11, 2022.

D. Pursuant to RCW 70A.305.030(1) and 70A.305.050(1), Ecology may require the PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.D (Work to Be Performed). If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204 unless otherwise specifically provided for herein. The PLPs shall collect samples to fully characterize the site, including samples that current exist in the LDW sediments along the upland portion within the RI. After reviewing analytic results, Ecology will determine if additional sediment investigation is necessary to adequately characterize the sediment. Cleanup of the in-water portions of the impacted LDW, below mean higher high

water (MHHW), is governed by the U.S. Environmental Protection Agency under CERCLA as part of the Lower Duwamish Waterway Superfund Site.

A. The PLPs shall prepare and implement a Work Plan to conduct a Remedial Investigation (RI), Feasibility Study (FS), and a preliminary draft Cleanup Action Plan (DCAP) for the Site in accordance with the Scope of Work (Exhibits B) and Schedule of Deliverables (Exhibit C), and all other requirements of this Order. The following naming conventions shall be used for applicable documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and/or after Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the PLPs' version of the DCAP). Ecology is responsible for preparation of the Cleanup Action Plan (CAP); however, with Ecology concurrence, the PLPs may prepare a draft CAP (DCAP) for final approval by Ecology in accordance with WAC 173-304-350 through 173-340-390 and WAC 173-204. If the PLPs elect to prepare the DCAP, Ecology may complete it pursuant to Section VII.G of this Order. A scope of work (SOW) for the RI, FS, and DCAP is more particularly described in Exhibit B, "Scope of Work" and is incorporated by reference as an enforceable part of this Order.

B. The PLPs shall obtain Ecology approval for any tasks specified in Exhibit B to effectuate the work to be performed under this Order in the most efficient manner.

C. To effectuate the work to be performed under this Order in the most efficient manner, one of the PLPs has elected to take the lead in performing various aspects of the work required under this Order. Language in this Order, and the exhibits attached hereto, may reflect this agreement among the Subject PLPs. However, the Subject PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Order. In the event the party identified as a lead should fail to timely and properly complete performance of all or any portion of its work, all Subject PLPs must perform that remaining work, if any.

D. The PLPs shall complete the RI in accordance with the requirements of WAC 173-340-350. The PLPs shall conduct the FS according to the requirements of WAC 173-340-350(8);

the FS shall include at least one permanent cleanup action alternative and other cleanup option alternatives for the cleanup action at the Site. The PLPs shall provide Ecology with an Agency Review Draft RI Report and an Agency Review Draft FS Report. These Reports may be submitted together as an Agency Review Draft RI/FS Report. The PLPs shall incorporate and resolve Ecology's responses and comments to revise all draft Reports until the reports are accepted by Ecology. Unless otherwise specified by this Order or requested by Ecology, any documents submitted pursuant to this Order shall be sent electronically to Ecology's project coordinator.

E. If the PLPs learn of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediments, the PLPs, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

F. The PLPs shall submit to Ecology written Quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted according to the Schedule (Exhibit C) after the effective date of this Order. Unless otherwise specified or requested by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent electronically to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the quarter.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work (Exhibit B) and Schedule of Deliverables (Exhibit C) during the current quarter, and any planned deviations in the upcoming quarter.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

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

6. A list of deliverables for the upcoming quarter if different from the schedule.

G. All plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Scope of Work (Exhibit B) and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

H. If the parties agree on an interim action under Section VI.E, the PLPs shall prepare and submit to Ecology an Agency Review Draft Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Public Review Draft Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLPs shall not conduct the interim action until Ecology approves the Final Interim Action Work Plan. Upon approval by Ecology, the Final Interim Action Work Plan becomes an integral and enforceable part of this Order, and the PLPs are required to conduct the interim action in accordance with the approved Final Interim Action Work Plan.

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

J. Except where necessary to abate an emergency situation or where required by law, the PLPs shall not perform any activities that will potentially displace any contaminants on Site and any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J (Amendment of Order). In the event of an

emergency, or where actions are taken as required by law, the PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

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

The project coordinator for Silver Bay Logging Inc. and RJ & BA LLC is:

Laura Maffei
1455 SW Broadway, Suite 1500
Portland, OR 97201-3412
971-276-7306
lmaffei@cablehuston.com

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

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

C. Performance

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

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

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

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

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

D. Access

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

E. Sampling, Data Submittal, and Availability

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

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

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

F. Public Participation

Ecology shall maintain the responsibility for public participation required in connection with this Order. However, the PLPs shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets related to this Order, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets related to remedial action work to be conducted at the Site, and before meetings related to remedial action work to be conducted at the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts

by the PLPs related to remedial action work to be conducted at the Site that do not receive prior Ecology approval, the PLPs shall clearly indicate to their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Online: <https://apps.ecology.wa.gov/cleanupsearch/site/12300>
- b. South Park Library
8604 8th Avenue S, Seattle, WA 98108
- c. Ecology's Northwest Regional Office
15700 Dayton Ave N, Shoreline, WA 98133

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Shoreline, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLPs withholds any requested records based on an assertion of

privilege, the PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that the PLPs elect to invoke dispute resolution PLPs must utilize the procedure set forth below.

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

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

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

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

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

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

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

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

I. Extension of Schedule

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

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

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

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not

limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs.

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

c. Endangerment as described in Section VIII.K (Endangerment).

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

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

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

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

b. Other circumstances deemed exceptional or extraordinary by Ecology.

c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

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

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLPs. Ecology will provide its

written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

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

K. Endangerment

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

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

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

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

L. Reservation of Rights

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

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

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

M. Transfer of Interest in Property

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

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest and, at least thirty (30)

days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

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

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

3. Pursuant to RCW 70A.305.090(1), the PLPs may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits

and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLPs determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

O. Indemnification

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action against the State of Washington, or its employees or agents (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions PLPs, their officers, employees,

agents, or contractors in implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

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

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

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

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

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

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70A.305.060.

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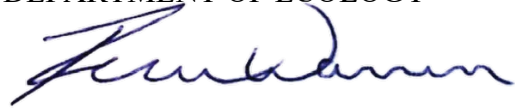
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Effective date of this Order: 12/28/2022

SILVER BAY LOGGING, INC.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Betty Buhler
Silver Bay Logging, Inc.
PO Box 271
Kelso, WA 98626

Robert Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
206-594-0093

RJ & BA, LLC


Betty Buhler
RJ & BA, LLC
PO Box 270
Kelso, WA 98626

Agreed Order No. DE 21418
Page 26 of 26

Effective date of this Order: _____

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Exhibit A



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

Legend

- Property Location (approximate)
- Stormwater Treatment System
- ⊗ Catch Basin
- ⊖ Permitted Outfall

Notes:

1. All locations are approximate and not to scale.



DEPARTMENT OF
ECOLOGY
State of Washington

Independent Metals Plant 2
816 S. Kenyon Street
Seattle, WA 98108

Location Diagram

CSID 12300

Exhibit B

Exhibit B – Scope of Work

PURPOSE

The work under this Agreed Order (AO) with Silver Bay Logging, Inc. and RJ & BA, LLC (PLPs) involves developing a Remedial Investigation (RI) Work Plan, conducting an RI, conducting a Feasibility Study (FS), and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI, FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the upland portions of the Site. The U.S. Environmental Protection Agency (EPA) is responsible for the cleanup of the in-water portions of the property (as defined in the AO), below mean higher high water (MHHW), under CERCLA as part of the Lower Duwamish Waterway (LDW) Superfund Site. Ecology is responsible for controlling sources of pollution to the Waterway. Therefore, the FS and DCAP will focus on the areas above the MHHW.

The PLPs shall coordinate with Ecology throughout the development of the Work Plan, RI, FS and preliminary DCAP and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop as required by the AO.

The work to be performed under this AO will focus on characterizing known and suspected hazardous substances at the Site. The RI/FS for the LDW Site focused on the nature and extent of hazardous substance contamination in sediments to evaluate remedial alternatives. The EPA may require additional investigations of the LDW sediments. The LDW Record of Decision addressed contamination caused by an EPA-defined list of contaminants of concern (COCs) in sediments in the LDW, which may differ from the COC list for the Site. Based on existing data and data gaps, an investigation of sediments adjacent to and near the upland portion of the Site may be required under the terms of this AO.

The Scope of Work (SOW) is divided into eight major tasks as follows:

- Task 1. Remedial Investigation Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Action(s) (if required)
- Task 4. Feasibility Study
- Task 5. State Environmental Policy Act (SEPA) Compliance
- Task 6. Public Participation
- Task 7. Draft Cleanup Action Plan (DCAP)
- Task 8. Quarterly Progress Reports

TASK 1. RI WORK PLAN

The PLPs shall prepare an RI Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project-management strategy for implementing and reporting on RI activities.

An RI Planning Meeting will be held prior to submittal of the Work Plan. The purpose of the RI Planning Meeting is to review requirements for the Work Plan and plan RI fieldwork, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions, including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments compared to screening levels; a preliminary conceptual site model showing contaminants, migration pathways in all environmental media, potential receptors, and screening levels based on the conceptual site model; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-550.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and sediments, including existing environmental data for the adjacent LDW sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary.

The Work Plan shall incorporate additional data collected by the Lower Duwamish Waterway Group (LDWG) in the adjacent LDW sediments, and additional analyses, if any, proposed to address key data gaps for the Site-wide RI.

The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. The Work Plan will also contain a Health and Safety Plan (HSP) to be followed during implementation of the RI/FS.

The SAP identifies the proposed number and location of all environmental samples and methods, such as soil borings; groundwater monitoring wells; soil, groundwater, stormwater, seep, catch basin, and sediment samples; approximate depths of soil boring, monitoring wells, and sediment samples; and includes a QAPP. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection, and handling; data and records management; and schedule.

The QAPP will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004, http://www.ecy.wa.gov/biblio/0403_03_0_.html), and Sediment Sampling and Analysis Plan Appendix (February 2008, <http://www.ecy.wa.gov/biblio/qapp.html>) if sediment sampling is needed. Laboratories must meet the accreditation standards established in WAC 173-50.

The SAP, including the QAPP and HSP, will be submitted to Ecology for review and approval. As with all environmental work at the Site, work may not begin without written approval from Ecology. The plan shall provide seven (7) business days' notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The PLPs or their contractors shall submit all new sampling data generated under this SAP and any other collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements). All validated data will be entered into the EIM database as described below.

RI tasks and subtasks may include, but are not limited to the following, as necessary to address data gaps identified in the Work Plan:

- Sampling and analysis of soil, groundwater, sediments, non-aqueous phase liquid, and seeps;
- Sampling and analysis of stormwater and catch basin solids;
- Developing a conceptual site model for the Site, including evaluation of all potential pathways and potential receptors that exist for contaminants of concern at the Site;
- Evaluating the potential to contaminate or re-contaminate sediments, including analysis of the following pathways:
 - Direct discharges
 - Stormwater discharges
 - Overland flow
 - Groundwater discharges and seeps
 - Soil erosion
 - Site operations
 - Spills, dumping, leaks, housekeeping, and management practices
- Defining the nature and extent of contamination based on screening levels protective of all receptors at and down gradient of the Site.

The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the PLPs will implement the Work Plan according to this Exhibit's schedule.

The PLPs shall coordinate with Ecology throughout the development of the RI/FS and DCAP (as appropriate) and shall keep Ecology informed of changes to the Work Plan and other project plans and of issues and problems as they develop.

The PLPs shall prepare the Agency Review Draft Work Plan including one electronic copy each in Word (.doc) and Adobe (.pdf) formats and one hard copy, to Ecology for review and comment. After resolving Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, the PLPs shall prepare the Final Work Plan and submit it electronically, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 2. REMEDIAL INVESTIGATION

The PLPs shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-550 according to the Final Work Plan (Task 1) as approved by Ecology. The RI will determine the nature and extent of contamination exceeding Model Toxics Control Act (MTCA) preliminary cleanup levels, Sediment Management Standards (SMS, to include but may not be limited to existing and newly collected data collected under EPA oversight) and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

Field sampling and analysis will be completed in accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented in the RI Report as required by Ecology.

The PLPs shall provide interim data analytical reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request. Validated analytical data shall be uploaded into EIM within thirty (30) days of the submittal of the RI and any other report containing new data.

Prior to submittal of the Agency Review Draft RI Report sections, an RI Pre-Report Check-In will be held. During the RI Pre-Report Check-In, Ecology and the PLPs will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report sections.

The PLPs shall compile the results of the Site investigation into Agency Review Draft RI Report sections, that will be included in the RI/FS Report. The PLPs shall prepare the Agency Review Draft RI Report sections and submit them electronically, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. Agency Review Draft RI Report sections will include data associated with initial rounds of groundwater monitoring. Data for all required rounds of groundwater monitoring will be included in the RI/FS Report.

After incorporating Ecology's comments on the Agency Review Draft RI Report sections and obtaining Ecology approval, the PLPs shall commence with development of the FS as

described below in Task 4. The RI will not be considered final until after a public review and comment period on the RI/FS Report.

If the data collected during this investigation is insufficient to define the full nature and extent of contamination, Ecology shall request the PLPs conduct an additional phase of investigation to define the extent of contamination.

TASK 3. INTERIM ACTIONS (if required)

The following remedial actions may be implemented prior to completion of the RI/FS, including those that:

- are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- are needed to provide for completion of the RI/FS or design of the cleanup action

These actions will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

If required by Ecology, or if proposed by the PLPs and approved by Ecology, the PLPs will implement an interim action. Based upon information in the Draft RI report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil or sediment removal
- Groundwater remediation
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes
- Removal of old drain fields or former surface impoundments
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

If an interim action is to be performed, the PLPs will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail

commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action, including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP;
- Permits required.

The PLPs will also submit a copy of the Health and Safety Plan for the project. The PLPs will be responsible for complying with the State Environmental Policy Act (SEPA) Rules, including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

The PLPs shall prepare two (2) copies of the Agency Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. The PLPs shall incorporate Ecology's comments and then prepare two (2) copies of the Public Review Draft IAWP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered final. The PLPs shall prepare five (5) copies of the Final Interim Action Work Plan submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

Once Ecology approves the IAWP, the PLPs will implement the interim action according to the schedule contained in the IAWP.

Upon successful completion of the work, the PLPs will prepare an Agency Review Draft Interim Action Report as a separate deliverable. The PLPs shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval of a revised Report, the PLPs shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. Electronic GIS and AutoCAD files shall also be provided for all Final Reports.

TASK 4. FEASIBILITY STUDY

The PLPs shall use the information contained in the RI to prepare an Agency Review Draft FS focused on the upland portion of the Site that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule in this exhibit.

The FS shall include at least one permanent cleanup action alternative and a reasonable number and type of cleanup option alternatives for the cleanup action at the upland portion of the Site. The Agency Review Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment (including protection of the adjacent LDW) by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review Applicable or Relevant and Appropriate Requirements (ARARs), potential remedial alternatives and establish points of compliance.

The Agency Review Draft FS must include a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350 and 173-204-550. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360 and 173-204-570, including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with cleanup standards and applicable laws
- Protection of human health
- Protection of the environment
- Provision for a reasonable restoration time frame
- Use of permanent solutions to the maximum extent practicable
- The degree to which recycling, reuse, and waste minimization are employed
- Short-term effectiveness
- Long-term effectiveness
- Net environmental benefit
- Implementability
- Provision for compliance monitoring
- Cost-effectiveness
- Prospective community acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

The PLPs shall prepare two (2) copies of the Agency Review Draft FS sections and submit, including one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After incorporating Ecology's comments on the Agency Review Draft FS sections,

the PLPs shall prepare five (5) hard copies of the Public Review Draft RI/FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The RI/FS shall include data from all rounds of groundwater monitoring. The RI/FS submittal to Ecology shall include electronic survey data for monitoring locations, electronic lab data, and electronic GIS and AutoCAD files including maps of contaminant distribution. The RI/FS will not be considered Final until after a public review and comment period.

TASK 5. SEPA COMPLIANCE

The PLPs shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules, including preparing and submitting an environmental checklist. The property (as defined in the AO) will be undergoing redevelopment. As such, the redevelopment activities are subject to City of Seattle permitting, including complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. The SEPA checklist for the redevelopment may include the environmental components of the cleanup action, or a separate SEPA checklist may be developed for the cleanup action, with separate redevelopment SEPA to follow. The SEPA checklist will be provided to Ecology for review as a requirement of this AO.

If, after completion of the Preliminary DCAP, additional remedial actions are necessary that require permits and which trigger an additional SEPA review, and additional SEPA checklist will be completed as required by the permitting agency.

If the result of the threshold determination is a determination of significance (DS), the PLPs shall be responsible for the preparation of Draft and final environmental impact statements. The PLPs shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 6. PUBLIC PARTICIPATION

The PLPs shall assist Ecology to prepare a Draft and Final Public Participation Plan that complies with the provisions of WAC 173-340-600(9).

The PLPs shall support Ecology in presenting the Public Review RI/FS Report, Public Review Draft CAP, and SEPA evaluations at a public meeting if such a meeting takes place. The PLPs will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

Separate public comment periods will be held for 1) the RI/FS Report, and 2) the Draft CAP and SEPA evaluation. After each public comment period is completed, the PLPs shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments. The PLPs shall prepare two (2) copies of the Agency Review Draft

Responsiveness Summary and submit them to Ecology for review and approval, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

For each public comment period, after addressing Ecology's comments and after Ecology approval, the PLPs shall prepare five (5) hard copies of the Final Responsiveness Summary and final technical documents (RI/FS Report; DCAP and SEPA) after public comments are incorporated and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

TASK 7. PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft RI/FS Report, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review the approach for developing the Agency Review Draft Preliminary Draft Cleanup Action Plan (DCAP).

The PLPs shall prepare an Agency Review Draft Preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the upland portion of the Site. The Preliminary DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLPs shall submit an Agency Review Draft Preliminary DCAP electronically, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. The Agency Review Draft Preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380.

After incorporating Ecology's comments on the Agency Review Draft Preliminary DCAP, if any, the PLPs shall revise the Preliminary DCAP and submit five (5) hard copies of the Public Review DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Electronic GIS and AutoCAD files shall also be provided.

TASK 8. QUARTERLY PROGRESS REPORTS

As required by the AO, the PLPs shall submit Progress Reports on a quarterly basis to Ecology electronically; this submittal frequency may be revised in accordance with Section VII (C) of the AO. Progress Reports will be submitted to the Ecology project coordinator every third month by the 15th of the month following the reporting period. If this day is a weekend or holiday, Progress Reports will be submitted to Ecology on the next business day. At a minimum, Progress Reports will contain the following information regarding the preceding reporting period:

- A list of on-site activities that have taken place during the quarter.
- Summaries of sampling and testing reports and other data reports received by

the PLPs.

- Detailed descriptions of any deviation from required tasks not otherwise documented.
- Description of all deviations from the Scope of Work and Schedule during the quarter and any planned or necessary deviations in the upcoming quarter.
- For deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays.
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments
- Changes in key personnel
- A description of work planned for the next reporting period, including a list of deliverables for the upcoming quarter.

Exhibit C

Exhibit C – Schedule of Deliverables

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Nothing shall limit the PLP's ability to submit documents prior to the completion times listed below.

Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLPs received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

RI/FS Deliverables	Completion Times
Quarterly Progress Reports	Due the 15th of every third month, beginning after the first full month following the effective date of the Agreed Order
Agency Review Draft Remedial Investigation Work Plan (Work Plan)	45 calendar days following effective date of the Agreed Order
Final RI Work Plan	45 calendar days following receipt of Ecology comments on the Agency Review Draft RI Work Plan
Agency Review Draft RI Report Sections ¹	300 calendar days following Agency approval of the Final RI Work Plan
Agency Review Draft Revised RI Report Sections	90 calendar days following receipt of Ecology comments on Agency Review Draft RI Report Sections
Agency Review Draft FS Report Sections	90 calendar days following completion of Agency Review Draft Revised RI Report Sections
Agency Review Draft Revised FS Report Sections	45 calendar days following receipt of Ecology comments on Agency Review Draft FS Report Sections

¹ Includes data from initial rounds of groundwater monitoring only

Public Review Draft RI/FS Report ²	45 calendar days following receipt of Ecology comments on Agency Review Draft Revised FS Report Sections
Public Review for Draft RI/FS Report	Scheduled by Ecology following submittal of Public Review Draft RI/FS Report
Agency Review Draft Responsiveness Summary (RI/FS Report)	30 calendar days following close of public comment period
Final RI/FS Report and Final Responsiveness Summary (RI/FS Report)	45 calendar days following receipt of Ecology's comments on the Agency Review Draft Responsiveness Summary (RI/FS Report)
Agency Review Draft Preliminary DCAP	90 calendar days following receipt of Ecology's comments on the Agency Review Draft Revised FS Report Sections
Agency Review Draft Revised Preliminary DCAP	45 calendar days following completion of Final RI/FS Report or 30 days following Ecology's comments on the Agency Review Draft Preliminary DCAP, whichever is later.
Agency Review Draft SEPA	Concurrent with Agency Review Draft Revised Preliminary DCAP
Public Review Draft DCAP and SEPA	45 calendar days following receipt of Ecology's comments on the Agency Review Revised Preliminary DCAP and Agency Review Draft SEPA
Public Review for Draft DCAP and SEPA	Scheduled by Ecology following submittal of Public Review Draft DCAP and SEPA
Agency Review Draft Responsiveness Summary (DCAP and SEPA)	30 calendar days following close of public comment period
Final DCAP, SEPA and Responsiveness Summary (DCAP and SEPA)	45 calendar days following receipt of Ecology's comments on the Agency Review Draft Responsiveness Summary (DCAP and SEPA)

² Includes data from all required quarters of groundwater monitoring