



Douglas J. Steding, Ph.D. | dsteding@nwresource.com | 206.971.1567 (d)

August 29, 2023

Via Email: jfen461@ecy.wa.gov

Jay Fennell  
Washington State Department of Ecology  
Toxics Cleanup Program  
15700 Dayton Avenue N.  
Shoreline, WA 98133

**Re: Permit Compliance Inspection Report for WAG503029**

Dear Jay:

We represent Reserve Silica Corporation (“Reserve Silica”), the permittee for the above-referenced Sand and Gravel Permit. This letter responds to your correspondence, dated August 11, 2023, transmitting the permit compliance inspection report related to your inspection of Reserve Silica’s facility that occurred on July 21, 2023.

You requested an “explanation of whether Reserve Silica intends to keep the contaminated soil buried on site or take actions to uncover the soil for removal and proper disposal.” Reserve Silica is taking actions to remove the arsenic- and lead-contaminated soils from its property.

Reserve Silica learned of the potential of improper disposal of soils at its property through outreach by the United States Environmental Protection Agency (“EPA”). Reserve Silica understands that the program manager for the Commencement Bay, Near Shore/Tideflats (“CB/NT”) Superfund Site was made aware of excavation of soils from a property within the boundaries of the CB/NT Superfund Site in June 2023. Reserve Silica’s understanding is that Dima Construction LLC (“Dima Construction”) removed those soils from a property located at 5301 North Commercial Street in Ruston, which was located across the street from the former Asarco Tacoma smelter. Dima Construction removed 35 truckloads of soils from that property in May 2023, sending 33 of those truckloads to Reserve Silica’s property.

Reserve Silica operates an Inert Waste Landfill at its property, which can only accept “clean” fill materials. One way in which Reserve Silica ensures it receives “clean” materials is by requiring transporters of such materials to execute a “Clean Soil/Inert Waste Acceptance Agreement.” The trucking company that was hired by Dima Construction to transport the soils to Reserve Silica’s property, Prospect LLC (“Prospect”), had executed such an agreement with Reserve Silica. A copy of that agreement is attached to this letter as **Exhibit A**.

On August 16, 2023, Reserve Silica filed suit against both Dima Construction and Prospect in King County Superior Court. Neither defendant in that action has answered the complaint as of

Jay Fennell  
August 29, 2023  
Page 2 of 3

the date of this letter (both answers are due the week of September 4). A copy of that complaint is attached to this letter as **Exhibit B**.

Reserve Silica also retained Aspect Consulting LLC (“Aspect”) to develop a work plan to investigate the location and extent of the soils in question at its property. Reserve Silica believes that the soils may be covered with approximately 20 feet of clean fill materials. Aspect’s proposed work plan, attached to this letter as **Exhibit C**, involves the use of a drill rig and field screening of samples for arsenic and lead at an interval of six inches and down to a depth of 25 feet or to native soils. Aspect will be implementing this work the week of September 4. Accordingly, Reserve Silica is requesting that the Washington State Department of Ecology (“Ecology”) provide any comments on Aspect’s proposed work plan by close of business Friday, September 1.

This work is being expedited in response to requests by Ecology and other agencies to Reserve Silica to promptly address these soils. Reserve Silica is managing this action as an independent action under Washington’s Model Toxics Control Act, but welcomes Ecology’s comments and/or supervision of that action provided that such oversight and supervision allows Reserve Silica to continue to work to comply with the requests of other involved agencies, like the Emergency Authorization issued by the King County Department of Local Services on August 22, 2023 that requires the “immediate removal of any and all fill” that is contaminated with lead and arsenic.

We look forward to any comments from Ecology on Aspect’s proposal to investigate this issue. Likewise, Reserve Silica is willing to meet with representatives from Ecology, King County, and EPA to further discuss Reserve Silica’s plans to remediate its property. This meeting could be most productive after the data from Aspect’s investigation have been gathered and analyzed, which we anticipate will be later in September. Please let me know if Ecology would like to schedule that meeting.

Very truly yours,



Douglas J. Steding, Ph. D.

Enclosures (Exhibits A through C)

cc: Alan Noell, anoe461@ecy.wa.gov  
Carla Brock, cbrock@aspectconsulting.com  
Chris Martin, cmar461@ecy.wa.gov  
Dawn Maurer, dmaw461@ecy.wa.gov  
Diana Ison, diso461@ecy.wa.gov  
Donna Kirkman, dmus461@ecy.wa.gov  
Frank Melfi Jr., melfif@swcp.com  
Fred White, fwhite@seanet.com  
Jeri Breazeal, jeri.breazeal@kingcounty.gov  
Jeromeo Cruz, jercruz@kingcounty.gov  
Kristine Koch, Koch.kristine@epa.gov  
Marian Abbett, mabb461@ecy.wa.gov

Jay Fennell  
August 29, 2023  
Page 3 of 3

Marisa Floyd, mlfloyd@swcp.com  
Mark Rowe, mrowe@kingcounty.gov  
Monika Kannadaguli, mkan461@ecy.wa.gov  
Steven Williams, stwi461@ecy.wa.gov  
Teddy Taddese, teddy.taddese@kingcounty.gov  
Tim O'Connor, tioc461@ecy.wa.gov  
Tom Campbell, tcampbell@kingcounty.gov  
Ty Peterson, ty.peterson@kingcounty.gov  
Warren Clauss, wclauss@kingcounty.gov  
Yolanda Pon, yolanda.pon@kingcounty.gov

# Exhibit A

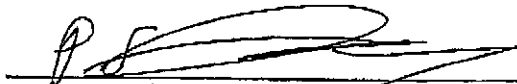
### CLEAN SOIL/INERT WASTE ACCEPTANCE AGREEMENT

This agreement must be executed before Reserve Silica Corporation can accept any material for disposal site. Also, this agreement must be executed by an owner or officer of your firm (the Company).

By signing this agreement, the signor/Company certifies that all material delivered to Reserve Silica is free of any contaminates, which does not contain radioactive wastes, dangerous or extremely hazardous wastes (as defined by WAC 173-303), hazardous substances (as defined by WAC 173-340), petroleum or its by-products, soil removed as part of any cleanup action, and any other solid waste, included but not limited to rubbish, ashes, or material not meeting the definition of and criteria for inert waste (WAC 173-350-100; WAC 173-350-990),

Reserve Silica reserves the right to inspect, sample and/or require the Company to sample any and all material before accepting the material. This right does not relieve the Company of its responsibility to tender only material as defined in the preceding paragraph. Any material that is not clean soil or inert waste will be rejected. Removal and disposal of rejected material is the sole responsibility of the Company. If, after acceptance, the material is discovered not to be clean soil or inert waste Reserve Silica will notify the Company. If requested, the Company must remove the material within 24 hours of notification.

The Company agrees to defend, indemnify, and hold Reserve Silica harmless from and against any and all claims, demands, causes of action, damages, liabilities, losses, expenses, penalties and all costs of defense relative thereto, including legal fees, caused by or resulting from the Company's breach of this agreement, specifically including any breach of the Company's obligation to deliver only material as defined above.

Signature: 

Print Name: PAVEL DIMOV

Title: OWNER

Company: PROSPECT LLC

Address: 250 Bellevue WAY NE #431

Date: Bellevue, WA 98004 / 07/18/2016

Reserve Silica Corp.: \_\_\_\_\_  
(Representative)

\*\*\*\*\*Please fax a resale-cert back with the application. Thank you, Renee

# Exhibit B

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RESERVE SILICA CORPORATION, a  
Washington corporation,

Plaintiff,

v.

PROSPECT LLC, a Washington limited  
liability company; and DIMA  
CONSTRUCTION LLC, a Washington  
limited liability company,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT

Reserve Silica Corporation hereby alleges as follows:

**I. INTRODUCTION**

1. This is a complaint under Washington’s Model Toxics Control Act (“MTCA”), RCW ch. 70A.305 *et seq.*, and a complaint for breach of contract related to the illegal disposal of arsenic- and lead-contaminated soils taken from Dima Construction LLC’s (“Dima”) properties that are located at the former Asarco Smelter Site in Ruston, Washington, and disposed of at Reserve Silica Corporation’s (“Reserve”) Inert Waste Landfill located in Ravensdale, Washington. Dima purchased these properties in 2020 with the intent to build two single-family homes. At the time of purchase, multiple notices and easements related to the Superfund cleanup of the Asarco Smelter Site were recorded on title of those properties. Without the permits to do so, Dima excavated 35 truckloads of contaminated soil from those properties in early 2023. Dima

1 hired Prospect LLC (“Prospect”), a Maple Valley-based trucking company, to dispose of those  
2 soils. Despite Prospect having entered into an agreement with Reserve to only bring non-  
3 contaminated soils to Reserve’s property—which only accepts clean materials—Prospect  
4 dumped 33 truckloads of arsenic- and lead-contaminated soils at Reserve’s property in May  
5 2023. Reserve has incurred and will incur significant costs removing these soils from its property  
6 and seeks to recover those costs and its attorneys’ fees from Dima and Prospect.

## 7 **II. PARTIES**

8 2. Plaintiff Reserve Silica Corporation is a Washington Corporation that operates an  
9 Inert Waste Landfill located at 28131 Black Diamond-Ravensdale Road, Ravensdale,  
10 Washington (commonly known as the “Reserve Silica” site).

11 3. Defendant Dima Construction LLC is a Washington Limited Liability Company  
12 with its principal place of business in Federal Way, Washington.

13 4. Defendant Prospect LLC is a Washington Limited Liability Company with its  
14 principal place of business in Maple Valley, Washington.

## 15 **III. JURISDICTION AND VENUE**

16 5. This Court has jurisdiction over this matter pursuant to RCW 70A.305.080 and  
17 Washington’s Uniform Declaratory Judgment Act, RCW ch. 7.24 *et. seq.*

18 6. Venue is proper in King County under RCW 4.12.020 because the cause of action  
19 arose due to damage to Reserve’s property located in King County, both Dima and Prospect  
20 transact business in King County, and both Dima’s and Prospect’s registered agents for service  
21 of process are located in King County.

## 22 **IV. FACTS**

### 23 **A. Reserve’s Inert Waste Landfill.**

24 7. Reserve operates an Inert Waste Landfill in Ravensdale, Washington. That  
25 property—the Reserve Silica site—is a former sand and gravel quarry that is being reclaimed  
26 pursuant to an Inert Waste Landfill Permit issued by King County. Under the terms of that



1 permit, Reserve is to only accept clean materials, such as clean topsoil. Relevant to this matter,  
2 Reserve’s permit allows the acceptance of materials that contain up to 20 milligrams per  
3 kilogram (“mg/kg”) of arsenic and up to 50 mg/kg of lead.

4 8. One of the ways in which Reserve ensures that it complies with its Inert Waste  
5 Landfill Permit is requiring any party transporting materials to its property for disposal to  
6 execute a “Clean Soil/Inert Waste Acceptance Agreement.” That Agreement requires parties  
7 wishing to dispose of inert waste at the Reserve Silica site to certify to Reserve that all materials  
8 delivered to its property are free of contaminants and hazardous substances and, in relevant part,  
9 not removed from a site subject to a cleanup action. That agreement also requires parties to  
10 indemnify and hold Reserve harmless from all claims, demands, causes of action, damages,  
11 liabilities, losses, expenses, or penalties, including legal fees, caused by the breach of the  
12 agreement.

13 9. On July 18, 2016, Pavel Dimov, the owner of Prospect, executed a Clean  
14 Soil/Inert Waste Acceptance Agreement in exchange for disposing inert materials to the Reserve  
15 Silica site.

16 **B. Dima Construction’s Properties in the Commencement Bay Near Shore/Tideflats  
17 Superfund Site.**

18 10. The Asarco Tacoma smelter, with its towering smelter stack, was a landmark on  
19 the Ruston, Washington waterfront for decades. It also was one of the earliest properties to be  
20 addressed by the United States Environmental Protection Agency (“EPA”) under the federal  
21 Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or the  
22 “Superfund” law) when it was listed on the National Priorities List by EPA in 1982.

23 11. The Asarco Tacoma smelter site became a part of the “Commencement Bay, Near  
24 Shore/Tideflats” (“CB/NT”) Superfund Site after being listed by EPA on the National Priorities  
25 List. Numerous stages of cleanup occurred between 1982 and the present, and the site is still  
26 subject to monitoring and activities overseen by EPA to this day.

1           12.     Properties within the CB/NT received various levels of remediation. Many  
2 properties were not fully excavated and instead were “capped” by placing clean soils over  
3 material that contained high levels of arsenic, lead, and other heavy metals. This means that the  
4 surface soils may be safe for human contact, but if you dig down into the parcels you will  
5 encounter unhealthy levels of contamination.

6           13.     In 2020, Dima purchased one of these properties, located at 5301 North  
7 Commercial Street in Ruston, Washington. Dima obtained this parcel through the granting of a  
8 warranty deed that contained numerous exceptions related to the Asarco Tacoma smelter cleanup  
9 and the CB/NT Superfund Site.

10          14.     Dima then divided this parcel into two lots to facilitate the construction of single-  
11 family homes.

12          15.     In 2022, Dima applied to the City of Ruston for permits to construct one single-  
13 family residence on each of its two parcels.

14          16.     Sometime prior to May 2023, Dima performed excavation at these properties,  
15 digging a hole that was reportedly up to seven feet deep. Based on the 33 truckloads received by  
16 Reserve, the volume of excavation exceeded the exemption to the State Environmental Policy  
17 Act requirements at WAC 197-11-800 for fill or excavation of single-family residences,  
18 requiring Dima to have engaged with the City of Ruston in environmental review of the  
19 construction activities. City of Ruston records indicate that environmental review did not occur.

20          17.     Dima then contracted with Prospect to haul the 35 truckloads of dirt away from its  
21 properties. During May 2023, Prospect hauled two loads of materials to Dickson Dirt, and then  
22 the 33 truckloads of materials to Reserve, earning \$14,875.00 in fees from Dima.

23          18.     In July 2023, Reserve was contacted by EPA representatives. Reserve understands  
24 that contractors for EPA observed the excavation at Dima’s properties and brought that  
25 excavation to EPA’s attention. Reserve promptly cooperated with representatives from EPA, the  
26 Washington State Department of Ecology (“Ecology”), and King County Public Health by

1 hosting them for a site visit and providing requested information regarding the 33 truckloads of  
2 improperly disposed soils at its property.

3 19. During the time between disposal and being contacted by EPA, approximately 20  
4 feet of clean soils were placed over the areas where the 33 truckloads of contaminated soils were  
5 dumped. After being contacted by EPA, Reserve ceased reclaiming that area.

6 20. Although the materials disposed of by Dima and Prospect have yet to be sampled,  
7 sample results from Dima's property obtained from EPA show that lead concentrations range  
8 from 54 parts per million to 742 parts per million, exceeding the levels of lead in materials that  
9 are suitable for disposal at Reserve's Inert Waste Landfill.

10 21. Likewise, sample results for Dima's properties for arsenic ranged from 113 parts  
11 per million to 742 parts per million, greatly exceeding the acceptable levels in materials that are  
12 suitable for disposal at Reserve's Inert Waste Landfill.

13 22. Reserve has contracted with Aspect Consulting LLC ("Aspect") to perform an  
14 investigation to fully characterize the 33 truckloads of materials that have been improperly  
15 disposed of at its property. Aspect estimates that the initial investigation will cost at least  
16 \$60,000, although the final costs are heavily dependent on Ecology approval and oversight. The  
17 removal and proper disposal of these materials will cost many times that amount.

18 23. Ecology has informed Reserve that it will be required to remove the 33 truckloads  
19 of materials from its property in compliance with Washington's MTCA.

## 20 **V. CAUSES OF ACTION**

### 21 **FIRST CAUSE OF ACTION: LIABILITY UNDER WASHINGTON'S MODEL TOXICS**

#### 22 **CONTROL ACT**

23 24. Reserve realleges paragraphs 1 through 23.

24 25. Arsenic and lead and other metals are "hazardous substance[s]" as that term is  
25 defined by RCW 70A.305.020(13).  
26

1           26.     The Dima properties are a “facility” as that term is defined by RCW  
2 70A.305.020(8).

3           27.     Dima is an “owner or operator,” as that term is defined by RCW 70A.305.020(22)  
4 and owned and operated the facilities at the time of disposal of the 33 truckloads of soil.

5           28.     Dima, through ownership of its properties, “owned or possessed” hazardous  
6 substances (arsenic, lead, and other metals) and arranged for the disposal of those hazardous  
7 substances through contracting with Prospect.

8           29.     Prospect accepted such hazardous substances for transport to Reserve’s property  
9 for disposal.

10          30.     Dima is liable under RCW 70A.305.040 for the costs to remediate Reserve’s  
11 property as (a) an owner/operator of a facility from which there has been a release of hazardous  
12 substances; (b) as an operator of a facility at the time of disposal hazardous substances; and  
13 (c) as an arranger for disposal of those hazardous substances.

14          31.     Prospect, as a “transporter” of hazardous substances, is liable under  
15 RCW 70A.305.040 to Reserve for the costs to remediate Reserve’s property.

16          32.     Reserve is entitled under RCW 70A.305.080 to recover all remedial action costs  
17 already incurred or that may be incurred in order to remediate the contamination resulting from  
18 the actions of Dima and Prospect.

19          33.     Reserve is entitled, under RCW 70A.305.080, to a declaration from this Court that  
20 Dima and Prospect are liable for all future remedial action costs incurred by Reserve in response  
21 to the contamination resulting from the actions of Dima and Prospect.

22          34.     Reserve is entitled, under RCW 70A.305.080, to recover its reasonable attorneys’  
23 fees and costs from Dima and Prospect in pursuing this action.

24           **SECOND CAUSE OF ACTION [AS TO PROSPECT ONLY]: BREACH OF CONTRACT**  
25                                   **AND REQUEST FOR INDEMNIFICATION**

26          35.     Reserve realleges paragraphs 1 through 34.

1           36.     As stated above, on July 18, 2016, Prospect executed a “Clean Soil/Inert Waste  
2 Acceptance Agreement” (“Clean Soil Agreement”) with Reserve.

3           37.     The Clean Soil Agreement was Prospect’s certification to Reserve that all  
4 materials it was delivering to Reserve’s Inert Waste Landfill were free of any contaminants, did  
5 not contain any hazardous substances as that term is defined under Ecology’s regulations  
6 implementing MTCA, and were materials that met the definition of and criteria for inert waste as  
7 set forth in WAC 173-350-100 and WAC 173-350-990.

8           38.     The delivery of the 33 truckloads of contaminated soils constitutes a breach of  
9 Prospect’s certification to Reserve under the Clean Soil Agreement.

10          39.     By executing the Clean Soil Agreement, Prospect agreed to “defend, indemnify,  
11 and hold Reserve harmless from and against any and all claims, demands, causes of action,  
12 damages, liabilities, losses, expenses, penalties and all costs of defense relative thereto, including  
13 legal fees, caused by or resulting from” Prospect’s breach of the Clean Soils Agreement. The  
14 Clean Soils Agreement is even more specific, explicitly acknowledging that Prospect must  
15 indemnify Reserve for any breach of its “obligation to deliver only” clean soils as defined by the  
16 Clean Soils Agreement.

17          40.     Prospect’s breach of the Clean Soils Agreement triggers its duty to indemnify  
18 Reserve under the terms of that agreement.

19          41.     Prospect is liable to Reserve for all damages and costs of defense that arise from  
20 Prospect’s breach of the Clean Soils Agreement, including consequential damages such as lost  
21 value of Reserve’s property, lost revenue, and all costs associated with penalties and fees  
22 incurred as a result of the improper disposal of the 33 truckloads of materials to Reserve’s Inert  
23 Waste Landfill.

24                   **THIRD CAUSE OF ACTION: DECLARATORY JUDGMENT UNDER**  
25                   **WASHINGTON’S MODEL TOXICS CONTROL ACT**

26          42.     Reserve realleges paragraphs 1 through 41.

1           43.     RCW 70A.305.080 authorizes this Court to issue a declaratory judgment with  
2 respect to responsibility for future remedial action costs to address the cleanup of hazardous  
3 substances.

4           44.     Both Dima and Prospect are liable under MTCA for the remedial action costs that  
5 will be incurred by Reserve to address the improper disposal of the 33 truckloads of  
6 contaminated soils.

7           45.     Reserve requests that this Court enter a judgment finding Dima and Prospect  
8 jointly and severally liable for all of Reserve's future remedial action costs to be incurred under  
9 MTCA.

10                   **FOURTH CAUSE OF ACTION [AS TO PROSPECT ONLY]: DECLARATORY**  
11                                   **JUDGMENT UNDER RCW 7.24**

12           46.     Reserve realleges paragraphs 1 through 45.

13           47.     RCW 7.24.020 authorizes this Court to declare the rights and responsibilities of  
14 Prospect and Reserve under the terms of the Clean Soils Agreement.

15           48.     Reserve is entitled to declaratory judgment from this Court that Prospect is liable  
16 for all damages incurred by Reserve in response to the improper disposal of the 33 truckloads of  
17 contaminated soils, including but not limited to consequential damages and attorneys' fees.

18                                   **VI.       PRAYER FOR RELIEF**

19           Reserve respectfully prays for the following relief:

20           1.     For payment by Dima and Prospect of all past remedial action costs, as that term  
21 is defined under MTCA, that Reserve has incurred for the remediation of the improper disposal  
22 of the 33 truckloads of contaminated soils at Reserve's property;

23           2.     For payment by Prospect of all other costs and damages incurred by Reserve in  
24 response to the improper disposal of the 33 truckloads of contaminated soils at Reserve's  
25 property;

1 3. For a declaratory judgment under MTCA that Dima and Prospect are jointly and  
2 severally liable for all of Reserve's future remedial action costs under MTCA in response to the  
3 improper disposal of the 33 truckloads of contaminated soils at Reserve's property;

4 4. For a declaratory judgment that Prospect is liable to Reserve for all other damages  
5 incurred by Reserve in response to the improper disposal of the 33 truckloads of contaminated  
6 soils at Reserve's property;

7 5. For an award of attorneys' fees and expenses from Dima and Prospect to Reserve  
8 pursuant to RCW 70A.305.080;

9 6. For an award of attorneys' fees and expenses from Prospect to Reserve under the  
10 terms of the Clean Soils Agreement; and

11 7. For any other damages and expenses that equity demands.

12  
13 DATED this 15th day of August, 2023.

14 NORTHWEST RESOURCE LAW PLLC

15  
16 *s/ Douglas J. Steding*  
17 Douglas J. Steding, WSBA #37020  
dsteding@nwresource.com  
206.971.1567  
18 Greg A. Hibbard, WSBA #60526  
ghibbard@nwresource.com  
206.971.1568  
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20 *Attorneys for Plaintiff Reserve Silica Corporation*  
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# Exhibit C



August 22, 2023

Reserve Silica Corporation  
c/o Doug Steding  
Northwest Resource Law PLLC  
71 Columbia Street, Suite 325  
Seattle, WA 98104

**Re: Former Asarco Soil Nature & Extent Investigation**  
**Reserve Silica Inert Waste Landfill, Ravensdale, Washington**  
Project No. 230360

Dear Doug:

Aspect Consulting, LLC (Aspect) has prepared this proposal to present the scope of work and cost to investigate the nature and extent of arsenic- and lead-contaminated soil placed at the Reserve Silica Inert Waste Landfill in May 2023. The work will be performed to support development of an emergency response action associated with the disposal of non-compliant soil at the landfill, located at 28131 SE Ravensdale Way, in Ravensdale, Washington. This proposal provides a summary of the project background and the proposed scope of work to evaluate the location, nature, and extent of arsenic and lead in soil above the Washington State Department of Ecology (Ecology) Model Toxics Control Act cleanup regulation (MTCA) Method A soil cleanup levels in that portion of the landfill where the soil from the former Asarco facility was dumped (herein referred to as the Subject Area; Figure 1).

### ***Background***

In May 2023, a contractor imported 33 truckloads of arsenic- and lead- contaminated soil for disposal at the landfill. The soil, estimated at approximately 700 cubic yards in total volume, was generated during property redevelopment activities at the former Asarco Tacoma Smelter Facility portion of the Commencement Bay Nearshore/Tideflats Superfund site. The soil was excavated from a property located at 5301 N Commercial Street in Ruston, Washington. The landfill is permitted by Public Health – Seattle & King County (PHSKC) as the Reserve Silica Corporation Inert Waste Active Landfill PR0082027 to accept soil that does not contain contaminants at concentrations greater than the Ecology MTCA Method A cleanup levels and inert materials that include cured concrete, asphaltic materials, ceramic materials, glass, etc. The landfill is also operated under the Ecology Sand & Gravel General Permit (SGGP). The soil from the former Asarco Tacoma Smelter Facility contains arsenic and lead at concentrations exceeding the MTCA Method A cleanup levels. In July 2023, the Environmental Protection Agency (EPA) became aware of the soil excavation work completed in conjunction with property redevelopment and notified Ecology and Reserve Silica of the non-compliant soil disposal. Subsequent to the soil disposal, we understand between 10 and 20 feet of clean soil from other sources was placed on top of the soil from the former Asarco facility.

### ***Scope of Work***

The scope of work for the soil investigation is described in the following tasks.

### **Task 1 – Soil Investigation**

The Subject Area consists of an approximate area of 4.1 acres that was undergoing active filling in May 2023, at the time when the soil was imported to the landfill, and is shown on Figure 1. We have developed the scope of work for this task based on anticipated project requirements, which may change with ongoing regulatory oversight, guidance, or enforcement. Any changes to the scope of work will be covered under contract change orders, if necessary. The work proposed under this task will include three days of soil exploration and sampling to meet the investigation objective and collect data and information to support the future evaluation of emergency response actions.

Up to 18 soil borings will be advanced over the course of three working days by a licensed driller using direct-push drilling methods and a track-mounted rig. We assume direct-push drilling can be successful at soil recovery but will stop work and identify alternative exploration methods if it becomes obvious that soil conditions are not amenable to direct-push drilling methods. Direct-push drilling methods are likely the most cost effective to meet the investigation objectives and alternative methods of exploration are likely to result in increased costs, which we will discuss with you before proceeding.

The preliminary boring locations are depicted on Figure 1, but will be modified in the field at the time of sampling in order to meet the investigation objectives. The work will commence near the center of the Subject Area and extend outward in all directions to identify the location and evaluate the lateral and vertical limits of elevated concentrations of arsenic and lead in soil. Each soil boring will be advanced to total depths of 15 to 25 feet below ground surface (bgs), determined in the field at the time of sampling based on the location and thickness of the fill layer containing elevated concentrations of arsenic and lead, as measured using x-ray fluorescence (XRF) technology. Each boring will be advanced to a depth of 2-feet below the deepest location where concentrations of arsenic and/or lead are measured above the MTCA Method A cleanup level or a maximum depth of 25 feet bgs if elevated concentrations of arsenic and lead are not measured.

Soil samples will be collected from each boring in 6-inch intervals beginning at a depth of 10 feet bgs and field screened for arsenic and lead using XRF technology with detection limits that are below the MTCA Method A soil cleanup levels. Measured arsenic and lead concentrations will be recorded on a field log to the total depth of each boring. Where elevated concentrations of arsenic and lead are measured in the field, two soil samples will be collected for potential laboratory analysis consisting of one soil sample from the interval with the highest measured concentrations of arsenic and lead and one soil sample from beneath the location where elevated arsenic and lead are measured, as a ‘clean’ bottom sample to evaluate the total depth of the fill layer. The cost estimate assumes up to 24 samples will be submitted for laboratory analysis of total arsenic and total lead, and up to 6 samples will be submitted for laboratory analysis of Toxicity Characteristic Leaching Procedure (TCLP) of arsenic and lead. Laboratory analyses will be conducted on the standard turnaround time of 10 days.

Each exploration location will be temporarily marked in the field with flagging and a unique identification, consisting of a prefix of “AB” followed by a subsequent numerical identifier (AB-1, AB-2, etc.). Boring logs, soil screening, and soil sampling will be completed by an Aspect field representative under the supervision of a licensed geologist. Soil descriptions, field screening results, and other relevant details will be recorded on boring logs. The exploration locations will be surveyed by a professional land surveyor.

Soil cuttings will be temporarily stored on plastic until the soil investigation field work is complete. At the completion of the drilling work, the stockpile will be visually segregated into three areas of approximate equal volume. One composite sample, composed of six discrete samples collected from variable depths and locations within each of the three sections of the stockpile, will be tested in the field for arsenic and lead using the XRF. Soil that does not contain arsenic or lead above the MTCA Method A cleanup levels will be redistributed over the ground surface. Soil that contains arsenic or lead above the MTCA Method A cleanup levels will be placed in a 55-gallon steel drum for transport off the site for disposal at a landfill facility that is permitted to accept metals-contaminated soil. The cost estimate does not include transport and disposal costs, which can be estimated in the future based on the volume of soil requiring off-site disposal.

### **Task 2 – Soil Investigation Report**

Task 2 will consist of the preparation of a Soil Investigation Report. The report will include a narrative summary of the field investigation, a scaled site map, boring logs, and a summary table of field- and laboratory-measured arsenic and lead data compared to the MTCA Method A soil cleanup levels. The report will provide one map and one cross section showing the lateral and vertical extent, respectively, of soil containing concentrations of arsenic and/or lead above the MTCA Method A cleanup level.

### ***Cost Estimate***

The above Services will be billed on a time and materials basis in accordance with the attached Schedule of Charges. The estimated total cost for the work described herein is \$63,720. A cost estimate breakdown is provided in Table 1.

We will notify you and obtain your authorization if additional effort above and beyond the estimated scope of this work is required. We will use a Contract Change Form to request your authorization for any changes to the above description of Services. This cost proposal is valid for 90 days unless extended in writing by Aspect.

Aspect's Services will be provided in accordance with the attached Terms and Conditions. This proposal together with the attached Terms and Conditions and Schedule of Charges, constitute the Agreement between Aspect Consulting, LLC and Reserve Silica (Client). Your signature below represents acceptance of this Agreement, and provides written authorization to proceed. Please return one signed copy of this Agreement to Aspect, and retain a signed copy for your records.

Reserve Silica Corp.  
August 22, 2023

Project No. 230360

Sincerely,

**Aspect consulting, LLC**



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**Carla Brock, LHG**  
Principal Geologist  
cbrock@aspectconsulting.com



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**Hannah Cohen, LG**  
Project Geologist  
hcohen@aspectconsulting.com

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Client Representative (Reserve)      Date

Attachments: Table 1 – Cost Estimate for Former Asarco Soil Investigation  
Figure 1 – Site Exploration Map, Preliminary Exploration Locations  
Terms and Conditions  
Schedule of Charges

V:\230360 Reserve Asarco Soil Litigation Spprt\Contracts\Proposal Material\230360-A\_Proposal\_20230822\_AsarcoSoilInvestigation.docx

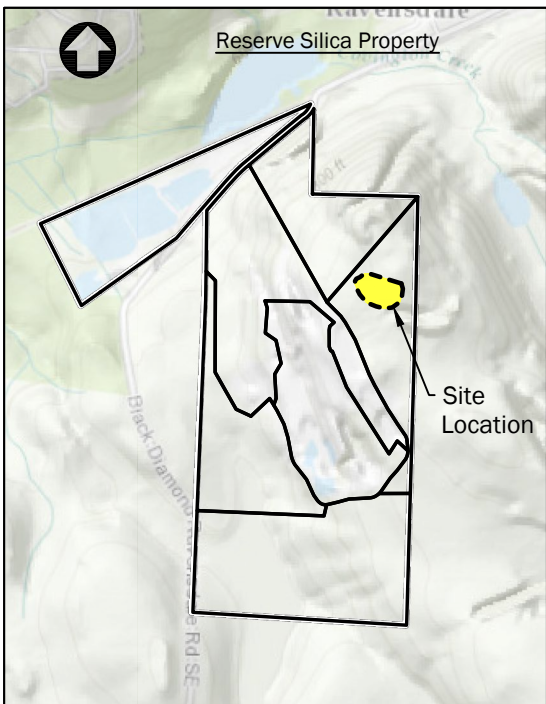
**Table 1 - Cost Estimate for Former Asarco Soil Investigation**

Work Element	Estimated Hours						Estimated Costs			
	Principal 1 Geologist	Project 1 Geologist/Engineer	Staff 3 Geologist	Project 1 GIS Analyst/Data Scientist	Sr. Editor	Coordinator	Labor	Other Direct Charges (ODC)	Subs	Total Cost
<b>Task 1 - Soil Investigation</b>										
Project Planning & Coordination	12	18	6	4	2	2	\$ 8,826			\$ 8,826
Field Investigation	8	10	40				\$10,512	\$ 660		\$ 11,172
Drilling Subcontractor (Holt)						2	\$ 240		\$12,045	\$ 12,285
Laboratory Analytical (F&B)									\$ 5,815	\$ 5,815
Survey (McCaskey)									\$ 5,200	\$ 5,200
Field Documents	2	5	20				\$ 4,678			\$ 4,678
<b>Task Subtotal</b>	<b>22</b>	<b>33</b>	<b>66</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>\$24,256</b>	<b>\$ 660</b>	<b>\$23,060</b>	<b>\$ 47,976</b>
<b>Task 2 - Soil Investigation Report</b>										
Summary Data Tables	2	4		4			\$ 1,986			\$ 1,986
Project Figures	6	8		12			\$ 5,254			\$ 5,254
Narrative Summary	8	32			4		\$ 8,504			\$ 8,504
<b>Task Subtotal</b>	<b>16</b>	<b>44</b>		<b>16</b>	<b>4</b>		<b>\$15,744</b>			<b>\$ 15,744</b>
<b>Total Hours</b>	<b>38</b>	<b>77</b>	<b>66</b>	<b>20</b>	<b>6</b>	<b>4</b>				
<b>Hourly Rate</b>	\$ 289.00	\$ 176.00	\$ 161.00	\$ 176.00	\$ 140.00	\$ 120.00				
<b>Total</b>	<b>\$10,982.00</b>	<b>\$13,552.00</b>	<b>\$10,626.00</b>	<b>\$ 3,520.00</b>	<b>\$840.00</b>	<b>\$480.00</b>	<b>\$40,000</b>	<b>\$ 660</b>	<b>\$23,060</b>	<b>\$ 63,720</b>



**Notes and Assumptions:**

Laboratory analyses will be conducted on a standard turnaround time of 10 days.

See the Proposal for Former Asarco Soil Investigation, Reserve Silica Inert Waste Landfill, Ravensdale, Washington for full details on the scope of work and assumptions.



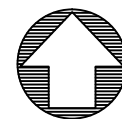
**Legend**

-  Proposed Boring Location
-  Subject Area

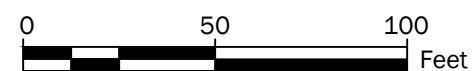
**Note:**

The Subject Area encompasses the fill area where soil from the Former Asarco Facility was disposed of and is estimated for preliminary planning purposes. The fill area location will be further refined in the field at the time of investigation.

Reference data: The existing site, topographic, utility data, and the proposed grades and elevations are based on the following electronic drawings: Aerial topographic survey by George Bennett Consulting, PLLC, dated 4/11/2022. Imagery provided by: Map data, ©2023 Google.



**DRAFT**



**Site Exploration Map**

Preliminary Exploration Locations  
Reserve Silica Inert Waste Landfill  
Ravensdale, Washington



Aug-2023  
PROJECT NO.  
230630

BY:  
CEB/CMV  
REVISED BY:  
-

FIGURE NO.  
**1**

# Aspect Consulting, LLC

## Terms and Conditions

### 1. RIGHT OF ENTRY AND PROPERTY RESPONSIBILITY

The Client will obtain right of entry to the property where the Services are to be performed ("Property"). The right of entry shall allow Aspect and its subcontractors to enter the Property to perform the Services, which may require repeated visits to the Property for on-site monitoring if included in the description of Services. Aspect is responsible for its own activities, but has no responsibility for the Property, for third party safety precautions, or for the safety or control of third parties.

### 2. SUBSURFACE RISKS AND SITE DAMAGES

Client recognizes special risks exist whenever professional consulting services are employed to determine the composition of a site's subsurface or to determine the existence or non-existence of any man-made or natural subsurface features, including, but not limited to, hazardous substances. Client shall disclose to Aspect all known conditions, substances, or features in writing or in maps, plans or drawings. Even with adequate disclosure by Client, Client acknowledges that the use of exploration and testing equipment may unavoidably damage or alter the Property surface or subsurface and Client accepts this risk. Client assumes responsibility for claims and/or damages arising from changed or differing site conditions or to subsurface structures, including buried utility lines, pipes, tanks, tunnels, or other conditions and agrees to hold harmless, defend and indemnify Aspect and its subcontractors from any such claims and/or damages, including attorney fees, except to the extent directly caused by the negligence of Aspect or its subcontractors.

### 3. HAZARDOUS SUBSTANCES

Client shall provide Aspect with all information available to Client concerning past and present use of the Property and the nature and extent of any known or suspected hazardous substances or conditions, prior to Aspect performing the Services. Unless expressly stated otherwise in the Agreement, Client acknowledges that Aspect has no liability as a generator, operator, transporter, disposer, or arranger of the transportation and/or disposal of hazardous substances from the Property. Client agrees to hold harmless, defend and indemnify Aspect and its subcontractors from any claims and/or damages, including attorney fees, arising out of the presence, release, or threatened release of hazardous substances on or from the Property, except to the extent directly caused by the negligence of Aspect or its subcontractors.

### 4. SLOPE STABILITY

Client recognizes risks are inherent with any site involving slopes. Client accepts full responsibility for these risks. Client acknowledges that the information obtained or recommendations made by Aspect may help to reduce Client's risk but no amount of engineering or geologic analysis can assure slope stability. Therefore, Client agrees to hold harmless, defend and indemnify Aspect and its subcontractors from any claims and/or damages, including attorney fees, arising out of or related to slope movement, except to the extent directly caused by the negligence of Aspect or its subcontractors.

### 5. SAMPLE DISPOSAL / WELL DECOMMISSIONING

5.1 Aspect may dispose of any samples obtained from the Property 30 calendar days after the issuance of any document that includes the data obtained from the sample, unless other arrangements are mutually agreed upon in writing.

Unless expressly stated otherwise in the description of Services, the disposal cost for samples is not included in any cost estimate for the Services. Client acknowledges the difficulty in determining disposal costs in advance and authorizes Aspect to bill Client for expenses incurred in disposing of samples obtained from the Property.

5.2 Any wells installed as part of Aspect's work may later need to be properly decommissioned and recorded in accordance with applicable law. Unless expressly stated otherwise in the description of Services, well decommissioning and recording are not included in the Services to be performed by Aspect.

### 6. OWNERSHIP OF DOCUMENTS / WORK PRODUCT

6.1 Data, reports or information provided by Aspect under this Agreement shall only become the property of Client upon full payment for the Services. After full payment, Aspect shall retain joint ownership of all such information. Aspect shall retain copies of the original electronic files and/or hardcopy versions of information provided by Aspect or by Client. Aspect's originals shall govern in the event of any dispute regarding the content of electronic media furnished to others.

6.2 All reports prepared by Aspect under this Agreement are intended solely for the Client and apply only to the Services. Any use or reuse by Client for purposes outside of this Agreement is at the sole risk of Client and without liability to Aspect. Aspect shall not be liable for any third parties' use of the deliverables provided by Aspect.

6.3 Aspect is entitled to rely upon the completeness and accuracy of reports, documents, drawings, plans and other information furnished by Client concerning the Property or the project that is the subject of this Agreement.

6.4 In the event Aspect is required to respond to legal process related to the Services for Client, Client agrees to reimburse Aspect its current hourly charges for personnel involved in the response and attorney fees reasonably incurred in obtaining advice concerning the response, preparation to testify, and appearances related to the legal process, travel and all reasonable expenses associated with the litigation.

6.5 Unless a different time period is stated in the Agreement, Aspect shall retain records in accordance with Aspect's records retention policy.

### 7. PAYMENT TERMS

Invoices shall be submitted to Client upon completion of the Services, or if Services extend beyond 30 days, on a monthly basis for the preceding months work. Billing corrections must be requested within 30 days of invoice date. Payment terms are net 30

days from the date of invoice. All overdue payments are subject to an additional interest and service charge of one and one-half percent (1.5%) (or the maximum rate permissible by law, whichever is lesser) per month or portion thereof from the due date until the date of payment. All fees will be charged or billed directly to Client. Aspect will not bill a third party without a statement, signed by the third party, accepting payment responsibility. In the event a third party fails to pay, Client shall remain liable for all unpaid invoices for the Services. Aspect may suspend work and/or withhold delivery of data for Services in the event Client fails to pay its invoices. Client shall be responsible for all costs and expenses of collection including reasonable attorney's fees.

## **8. PERFORMANCE AND WARRANTY LIMITATION**

Aspect will perform all Services consistent with recognized standards of professionals in the same locality and involving similar conditions. **ASPECT MAKES NO OTHER WARRANTIES OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES.** No representative of Aspect is authorized to give or make any other representation or warranty in any way, in connection with the Services. Aspect shall not be liable for any failure or delay in performance by Aspect resulting, in whole or in part, from any cause beyond the reasonable control of Aspect.

## **9. INDEMNITY**

To the fullest extent permitted by law, the Parties shall indemnify and hold harmless each other (and each of their respective officers, directors, shareholders, partners, employees, and representatives) from and against all claims, demands, causes of actions, suits, based upon or arising from allegations of illness, injuries to persons, destruction of or damage to property, costs, expenses, legal or otherwise, to the extent arising out of the indemnifying Party's negligent acts or omissions. In addition, the Parties shall indemnify, defend, and hold harmless the other party against all loss, cost, expense, royalties, claims for damages or liability in law or in equity, including without limitation, attorney fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, or other proprietary right of any person or entity in consequence of the use by indemnifying Party of any documents or materials

## **10. INSURANCE / LIMITATION OF LIABILITY**

10.1 Aspect maintains primary General Liability Insurance for bodily injury and property damage with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate. Aspect maintains Professional Liability insurance to provide coverage for liability resulting from professional errors and omissions.

10.2 The liability of Aspect, its manager, members, professionals, employees, and subcontractors to the Client for damages, including attorney fees, resulting from an act, error or omission in providing or failing to provide professional services, whether based in tort or in contract, shall be limited to the greater of \$50,000 or the amount of compensation paid to Aspect under this Agreement. In no event shall either party be liable to the other party, for any consequential or incidental damages, including, without limitation, damages for loss of income, loss of profits and/or loss or restriction of use of the Property.

## **11. TERMINATION**

Suspension or termination of all or any part of the Services may be initiated by Client; however Client shall be responsible for all fees owed Aspect for Services performed by Aspect, including all direct costs and all expenses incurred or committed that cannot be cancelled without penalty as well as reasonable termination expenses, prior to Aspect's receipt of written notice from Client.

Either party may terminate this Agreement for cause in the event of the other party's substantial or material failure to perform in accordance with the terms hereof, through no fault of the terminating party. Except for termination arising out of delinquency in payment, a termination for cause shall not be effective unless: (i) not less than seven days' written notice of intent to terminate has been provided; (ii) the notice specifies all reasons for the termination; and (iii) the notified party is given an opportunity to consult with the terminating party to discuss the termination and to cure the substantial failure before the expiration of the period specified in the written notice.

## **12. MISCELLANEOUS PROVISIONS**

12.1 These Terms and Conditions, together with the Agreement, the Schedule of Charges, and any additions or revisions agreed upon in writing by the parties, form the entire Agreement and control over all previous communications, representations, or agreements, either verbal or written, between Client and Aspect. This Agreement supersedes and controls over any Client provided purchase orders and constitutes the complete and exclusive Agreement between Client and Aspect. **Any reference to a purchase order or similar documentation on any payment or other acceptance of this Agreement is solely for the Client's convenience in record keeping; no such reference or the provision of Services to Client shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such purchase order or other Client provided documentation and Aspect affirmatively rejects such terms and conditions. Any such reference to alternate terms and conditions shall be of no force and effect and shall not in any way be deemed to amend, modify, supersede, alter, or supplement this Agreement.**

12.2 Aspect may assign work included under the Agreement to subcontractors.

12.3 Client and Aspect agree to use their best efforts to resolve any disputes, claims or other matters in controversy arising under or related to this Agreement.

12.4 These Terms and Conditions shall be governed by the laws of the State of Washington. The sole venue for any legal action related to this Agreement shall be King County, Washington.

12.5 The unenforceability of any term or condition herein shall not affect the validity or enforceability of the remainder to these Terms and Conditions; the intent of the parties being the provisions be severable. The section headings of these Terms and Conditions are intended solely for convenience and do not define or affect these Terms and Conditions or their interpretation. No waiver by either party of any provision, term or condition hereof or of any obligation of the other party hereunder shall constitute a waiver of any subsequent breach or other obligation.





# SCHEDULE OF CHARGES

Effective January 2023

Unless otherwise stated in the proposal or services agreement, current rates are as follows:

<b>ENGINEERS, SCIENTISTS, AND ANALYSTS</b>	<b>Hourly Rate</b>
<b>Principals and Associates</b>	
Principal 2 .....	\$ 305
Principal 1 .....	289
Sr. Associate .....	267
Associate .....	253
<b>Senior, Project, and Staff Professionals</b>	
Senior 3 .....	253
Senior 2 .....	238
Senior 1 .....	222
Project 3 .....	204
Project 2 .....	189
Project 1 .....	176
Staff 3 .....	161
Staff 2 .....	148
Staff 1 .....	137

<b>TECHNICAL AND PROJECT SUPPORT</b>	<b>Hourly Rate</b>
<b>Field Operations</b>	
Technician 2 .....	\$ 122
Technician 1 .....	112
<b>Design, CAD, and Graphics</b>	
Engineering Designer .....	176
Sr. CAD .....	157
CAD .....	138
Sr. Graphic Designer .....	128
Graphic Designer .....	119
<b>Technology</b>	
Sr. Software Developer .....	250
Software Developer .....	219
<b>Technical Editing and Project Coordination</b>	
Sr. Technical Editor .....	140
Coordinator 3 / Technical Editor .....	128
Coordinator 2 .....	120
Coordinator 1 .....	111

## OTHER CHARGES

Mileage	Federal Gov't Rate Plus 15%
Subcontractors and Project Expenses	Cost Plus 15%

Client acknowledges that Aspect will adjust the Schedule of Charges annually, and that the Agreement will remain valid for any and all annually adjusted Schedule of Charges.