

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

City of Anacortes

AGREED ORDER

No. DE 22379

TO: Andrew Rheume, Director of Public Works  
City of Anacortes Public Works  
P.O. Box 547  
Anacortes, WA 98221

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Anacortes (City) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City to complete a remedial investigation (RI), and, if determined necessary after completion of the RI, to prepare a feasibility study (FS) and draft cleanup action plan (DCAP). 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, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The City agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City's responsibility under this Order. The City 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 referred to as A Avenue Landfill. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the vicinity of A Avenue and 37<sup>th</sup> Street as shown in the Site Plan (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and the City.

C. Potentially Liable Persons (PLP(s)): Refers to the City of Anacortes, a municipal corporation located in the State of Washington.

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 City:

A. The A Avenue Landfill is located within the Anacortes Community Forest Lands, west of A Avenue in Anacortes, Washington (see Exhibit A). The landfill is owned by the City and is managed by the City Parks and Recreation Department in coordination with the Skagit County Public Health Department (SCPHD).

B. The A Avenue Landfill is a former municipal solid waste landfill that was constructed in the mid-1940s and operated by the City from approximately the 1960s to the early 1970s, when receipt of municipal solid waste was terminated and a soil cap was constructed per WAC 173-301. From mid-1940's to the early 1960s, licensed garbage collectors utilized the A Avenue Landfill. The collectors were responsible for the collection and dumping of waste, and proper maintenance of the A Avenue Landfill.

C. The landfill is approximately 6-acres, rises 25 to 30 feet above surrounding grade and is covered by a soil barrier that is vegetated. Immediately west of the A Avenue Landfill is a small debris field (see Exhibit A).

D. From the 1970s to 2006, the City used the A Avenue Landfill for the storage of wood waste, concrete and asphalt, vector waste, street sweepings, and composting of yard waste. Concrete drying beds located east of the A Avenue Landfill and were used to dry out sewage sludge during the 1980s.

E. In the early 1990s, the City temporarily used a portion of the A Avenue Landfill for bioremediation/landfarming of petroleum-contaminated soils from local underground storage tank

(UST) removal sites, consistent with UST regulations at that time. The City placed an impermeable layer of plastic under the petroleum-contaminated soils to prevent migration of contamination. Confirmation samples of the remediated soils and surface water runoff were below the applicable cleanup standards for total petroleum hydrocarbons (TPH).

F. All operations ceased in 2006 when the City formally closed the A Avenue Landfill under SCPHD oversight. The City of Anacortes completed the following actions which were recommended in the 10 Year Closure Plan: installation of chain-link fencing, vegetation and signage to limit and discourage public access on the property; placement of a clean soil cap and regrading of the soil surface to limit direct contact with landfill materials and reduce ponding and infiltration of surface water; installation of appropriate surface water drainage channels; removal of accessible/visible municipal debris from the landfill perimeter (as practicable without disturbing soils in the adjoining wetlands); hydroseeding and maintenance of a grass cover on the landfill cap; and monitoring of groundwater seeps from the landfill perimeter at 5 and 10 years following approval of the 10-Year Closure Plan.

G. Prior to closure, SCPHD conducted an Initial Investigation of the A Avenue Landfill on behalf of Ecology in 2003. SCPHD collected 5 shallow soil samples and 2 seep samples for analysis of metals, TPH (diesel and heavy oil range) and semi-volatile organic compounds. All results were either non-detect or below the applicable MTCA cleanup levels with one exception. Heavy oil range hydrocarbons were detected above the MTCA Method A cleanup level in one soil sample. City of Anacortes staff reported to SCPHD that the sample location looked like a motor vehicle (likely a motorcycle) had released a small quantity of oil on the ground. Of the two seep samples collected near the base of the landfill, no results exceeded the applicable MTCA Method A or B cleanup levels for groundwater and surface water, with the exception of manganese in one sample.

H. After reviewing the results from the 2003 sampling, Ecology placed the Site on the Confirmed and Suspected Contaminated Sites list for confirmed soil contamination with petroleum

products and suspected soil and sediment contamination with petroleum and polycyclic aromatic hydrocarbons.

I. Following a Site Hazard Assessment in 2009 by SCPHD, which documented the surface improvements and associated landfill closure activities by the City of Anacortes, Ecology issued a “No Further Action” determination for the Site.

J. In accordance with the 10-Year Closure Plan, which was finalized in 2009, groundwater seep monitoring has been performed every five years by SCPHD since closure. Due to low water levels, SCPHD could not collect groundwater seep samples during the Year 5 monitoring event. Data collected by SCPHD in the most recent round of monitoring in February and March 2020 indicate that contaminants in groundwater seep samples are below MTCA cleanup standards. Since closure, the City of Anacortes and SCPHD have also performed routine inspection and maintenance of the cap and associated institutional controls required by the 10-Year Closure Plan.

K. In an Early Notice Letter dated January 22, 2020 (revised February 7, 2020), Ecology notified the City of Anacortes that the 2009 “No Further Action” determination had been rescinded and the Site had been placed on Ecology’s Confirmed and Suspected Contaminated Sites List for further evaluation.

## **VI. ECOLOGY DETERMINATIONS**

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

A. The City is an “owner or operator” 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 the City of Anacortes dated November 10, 2020, pursuant to RCW 70A.305.040, .020(26), and WAC 173-

340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City is a PLP under RCW 70A.305.040 and notified the City of this determination by letter dated January 11, 2021.

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

## **VII. WORK TO BE PERFORMED**

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

A. The City will complete a Remedial Investigation, and if determined necessary after completion of the RI, prepare a Feasibility Study, a draft Cleanup Action Plan, and the Scope of Work and Schedule, Exhibit B, in accordance with the schedule and terms of the Scope Work and Schedule and all other requirements of this Order.

B. If the City learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, the City, 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.

C. The City 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 by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and

any other documents submitted pursuant to this Order shall be sent by email 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 and Schedule (Exhibit B) 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.

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

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. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the City shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by the City and Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-

600(16). The City shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the City is required to conduct the interim action in accordance with the approved Interim Action Work Plan. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order, or to take other remedial action or enforcement action as permitted under RCW 70A.305.

F. If Ecology determines that the City has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all portions of the remedial action or at Ecology's discretion allow the City opportunity to correct. In an emergency, Ecology is not required to provide notice to the City, or an opportunity for dispute resolution. The City 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).

G. Except where necessary to abate an emergency or where required by law, the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.K. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the City 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 City shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of



direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$3,969.44 in remedial action costs related to this Site as of April 30, 2023. For all Ecology costs incurred, the City 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:

Ryan Gardiner  
Ecology Site Manager  
Washington State Department of Ecology  
PO Box 330316  
Shoreline, WA 98133  
425-681-5543  
ryan.gardiner@ecy.wa.gov

The project coordinator for the City is:

Jonn Lunsford  
Parks and Recreation Director  
P.O. Box 547  
Anacortes, WA 98221  
360-299-1953  
jonn1@cityofanacortes.org

Copies of any communications or documents sent to the project coordinator for the City must also be sent to:

Darcy Swetnam  
City Attorney  
City of Anacortes  
P.O. Box 547  
Anacortes, WA 98221  
360-299-1950  
darcys@cityofanacortes.org

Ken Lederman  
McCullough Hill Leary, PS  
701 5th Avenue, Suite 6600  
Seattle, Washington 98104  
206-812-3388  
ken@mhseattle.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 City, 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 and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

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

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

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

The City 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 move about all property at the Site that the City either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City.

The Ecology authorized representatives identified in Exhibit C shall give at least 72 hours' notice (*i.e.* 3 business days) before entering any portions of the Site within the areas of the Site owned or controlled by the City. The Director of Public Works and Parks and Recreation Director identified by name in Exhibit C each have the authority to waive the notice requirement for the Ecology authorized representatives identified in Exhibit C. If any of the individuals identified in Exhibit C are no longer working in their current roles with respect to the Site, the party employing or represented by such individual(s) shall notify the other party within 10 days of the change, and the parties shall amend the list of individuals in Exhibit C to reflect the change.

Any and all other Ecology-authorized representatives not identified in Exhibit C shall give at least 72 hours' notice before entering any portions of the Site within the areas of the Site owned or controlled by the City, including providing a written list to the City of the names, job titles, office addresses, public emails, and public telephone numbers of all Ecology authorized representatives who will enter the Site during such visit, unless an emergency prevents such notice.

All persons who access the Site pursuant to this section shall comply with any applicable health and safety plans, including any requirements for a City escort to be present during such access. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

The City shall make best efforts to secure access rights for those properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of the City would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 180 days after the effective date of this Order, the City is unable to accomplish what is required through "best efforts," they shall notify Ecology and include a description of the steps taken to comply with the requirements. If the City requests support or assistance from Ecology and if Ecology deems it appropriate, then Ecology may support or assist the City, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek reimbursement from the City for all reasonable costs, including cost of attorneys' time, incurred by Ecology in obtaining such access or agreements.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the City 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 City shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify the City 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 at the Site. However, the City 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, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the City prior to the issuance of all press releases and fact sheets

related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City that do not receive prior Ecology approval, the City shall clearly indicate to its 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 maintain repositories to be located at the following locations:

- a. City of Anacortes City Hall  
904 6th Street  
PO Box 547  
Anacortes, WA 98221
- b. Ecology's Northwest Regional Office  
15700 Dayton Ave. N.  
Shoreline, WA 98133
- c. Washington State Department of Ecology  
Bellingham Field Office  
913 Squalicum Way, Ste 101  
Bellingham, WA 98225-2078

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. Access to Information**

The City shall provide to Ecology (upon written request) copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within the City's possession or control

or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. The City shall (upon written request) also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

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

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

#### **H. 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 City shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert

a similar record retention requirement into all contracts with project contractors and subcontractors.

## **I. Resolution of Disputes**

1. In the event that the City elects to invoke dispute resolution the City 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 City has 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 City's 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 City may then request regional management review of the dispute. The City 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.



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.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

**J. Extension of Schedule**

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

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

- b. A shelter in place or work stoppage mandated by state or local government due to public health and safety emergencies.
- c. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- d. Endangerment as described in Section VIII.L (Endangerment).

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

3. Ecology shall act upon any the City written request for extension in a timely fashion. Ecology shall give the City 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.K (Amendment of Order) when a schedule extension is granted.

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

- 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.L (Endangerment).

**K. 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.M (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the City. Ecology will provide its

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

When requesting a change to the Order, the City 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.I (Resolution of Disputes).

**L. Endangerment**

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

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

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

**M. Reservation of Rights**

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

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

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

**N. Transfer of Interest in Property**

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

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

days prior to any transfer, the City shall notify Ecology of said transfer. Upon transfer of any interest, the City 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.

**O. Compliance with Applicable Laws**

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

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

3. Pursuant to RCW 70A.305.090(1), the City may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the City 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 City has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the City determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

**P. Periodic Review**

So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties

shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, the City shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

**Q. Indemnification**

The City agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City 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 City's receipt of written notification from Ecology that the City has completed the remedial activity required by this Order, as amended by any modifications, and that the City 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 its 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.305.070.



Effective date of this Order: \_\_\_\_\_

CITY OF ANACORTES

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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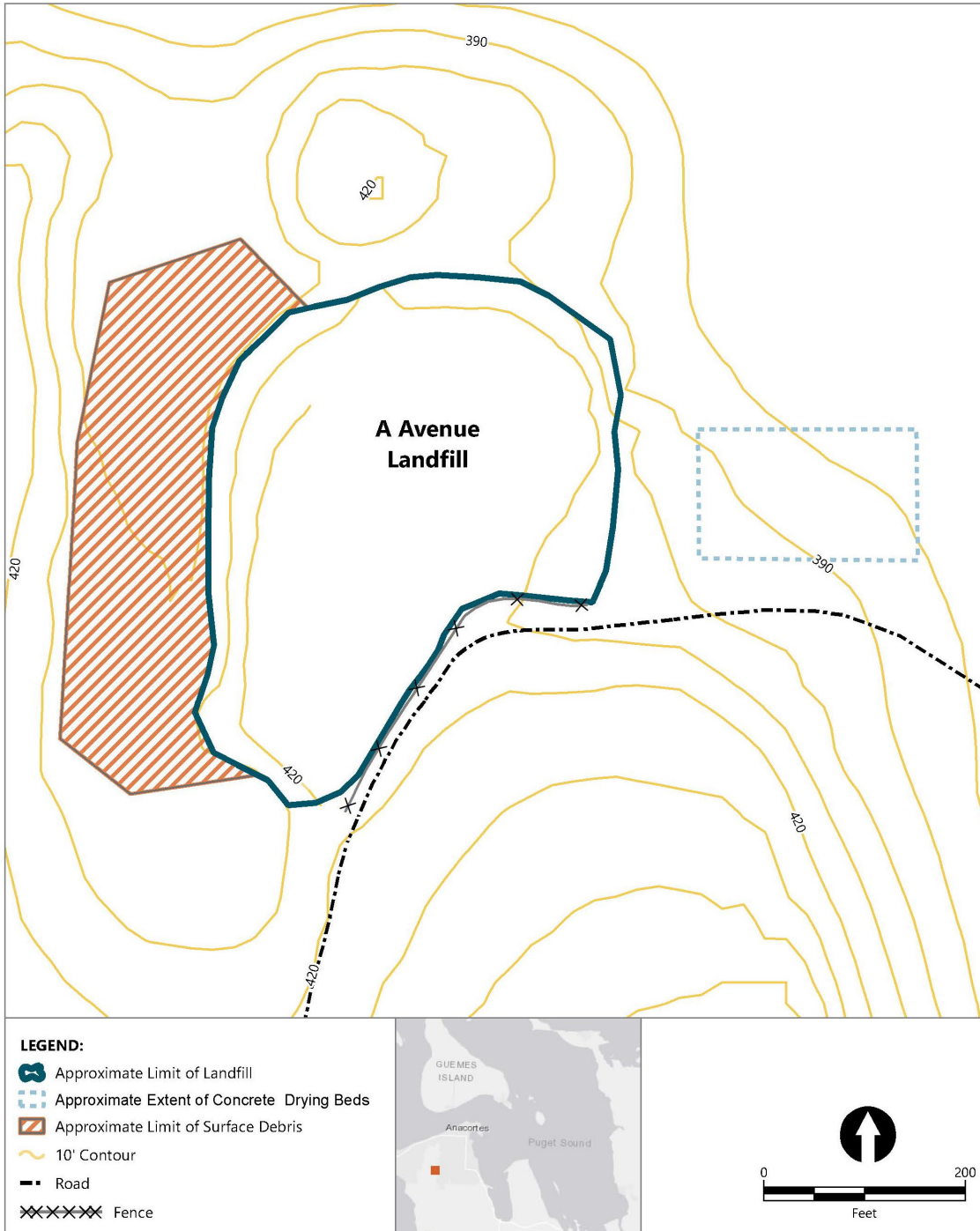
Matt Miller  
Mayor of the City of Anacortes  
904 6<sup>th</sup> Street  
Anacortes, WA 98221  
(360) 293-1918

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Kimberly Wooten  
Section Manager  
Toxics Cleanup Program  
Northwest Regional Office  
(425) 324-1658

## EXHIBIT A

### Site Diagram



Publish Date: 2022/02/14, 10:37 AM | User: hromer  
Filepath: \\vorcas\GIS\Jobs\City\_of\_Anacortes\_0528\A\_Ave\_Landfill\Maps\2021\_07\AQ\_Figure01\_Site\_Plan.mxd

**EXHIBIT B**

## Scope of Work and Schedule

<b>Deliverable/Action</b>	<b>Schedule For Completion</b>
Submission of a Draft Remedial Investigation (RI) Work Plan	90 days from effective date of this Order
Submission of a Final RI Work Plan and supporting Project Plans, if necessary	60 days from receipt of Ecology's comments on the Draft RI Work Plan
Completion of RI Sampling Activities	120 days after Ecology approval of RI Work Plan and supporting Project Plans
Submission of an Agency Review Draft RI Report	60 days following receipt of final, validated RI data
Submission of a Public Review Draft RI Report	45 days from receipt of Ecology's comments on the Agency Review Draft RI Report
Submission of a Final RI Report	60 days from receipt of Ecology's comments on the Public Review Draft RI Report, subsequent to public comment
Submission of an Agency Review Draft Feasibility Study (FS) Report, if necessary after completion of the RI*	90 days from Ecology's approval of the Final RI Report
*Depending on the results of the RI, the FS may not be necessary if no MTCA cleanup is needed, and/or may be combined with the Draft Cleanup Action Plan (DCAP).	
Submission of a Public Review Draft FS Report, if necessary	45 days from receipt of Ecology's comments on the Agency Review Draft FS Report
Submission of a Final FS Report, if necessary	60 days from receipt of Ecology's comments on the Public Review Draft FS Report, subsequent to public comment
Submission of a preliminary DCAP, if necessary after completion of the RI	90 days from Ecology's approval of the FS Report
Submission of a revised DCAP, if necessary	60 days from receipt of final comments from Ecology on the Agency Review Draft CAP
Submission of Site Progress Reports	Every quarter during implementation of the Scope of Work and Schedule

### Exhibit C

#### Ecology Authorized Representatives Approved For Site Access with 72 Hours' Notice

The following Ecology authorized representatives may access the Site with 72 hours' notice (*i.e.* 3 business days) as set forth in Section VIII.D of the Agreed Order:

Ryan Gardiner  
Ecology Site Manager  
Washington State Department of Ecology  
PO Box 330316  
Shoreline, WA 98133  
425-681-5543  
[ryan.gardiner@ecy.wa.gov](mailto:ryan.gardiner@ecy.wa.gov)

Ian Fawley  
Senior Outreach Planner  
Washington State Department of Ecology  
913 Squalicum Way, #101  
Bellingham, WA 98225  
360-255-4382  
[ian.fawley@ecy.wa.gov](mailto:ian.fawley@ecy.wa.gov)

The following representatives of the City of Anacortes have the authority to waive the notice requirement as set forth in Section VIII.D of the Agreed Order:

Jonn Lunsford  
Parks and Recreation Director  
City of Anacortes  
P.O. Box 547  
Anacortes, WA 98221306-428-1598  
360-299-195  
[jonnl@cityofanacortes.org](mailto:jonnl@cityofanacortes.org)

Darcy Swetnam  
City Attorney  
City of Anacortes  
P.O. Box 547  
Anacortes, WA 98221  
360-299-1950  
[darcys@cityofanacortes.org](mailto:darcys@cityofanacortes.org)