

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
7901 2nd Ave S LLC
Agreed Order
No. DE 24039

To: John Hill and Gretchen Hill
7901 2nd Ave S LLC
13228 NE 20th St. Suite 300
Bellevue, WA 98005

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Exhibit A Remedial Action Location Diagram

Exhibit B Cleanup Action Plan

1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC to implement the Cleanup Action Plan (CAP) (Exhibit B). Ecology believes the actions required by this Order are in the public interest.

2. Jurisdiction

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

3. Parties Bound

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. 7901 2nd Ave S LLC agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter 7901 2nd Ave S LLC's responsibility under this Order. 7901 2nd Ave S LLC shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

4. Definitions

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

4.1 Site

The Site is referred to as South Park Landfill. The Site constitutes a facility under RCW 70.105D.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 on factors currently known to Ecology, the Site is generally located at 8100 and 8200 2nd Avenue South, Seattle, Washington. Based upon factors currently known to Ecology, the Remedial Action Location Diagram (Exhibit A)

shows where the remedial action in the attached Cleanup Action Plan (Exhibit B) will be implemented.

4.2 Parties

Refers to the State of Washington, Department of Ecology and 7901 2nd Ave S LLC.

4.3 Potentially Liable Persons (PLPs)

Refers to entities who are PLPs for the Site: Schnitzer Properties LLC (formerly Harsch Investment Properties LLC), City of Seattle, King County, South Park Property Development LLC, 7901 2nd Ave S LLC, and CenterPoint South Park LLC. Only 7901 2nd Ave S LLC is subject to the terms of this Order.

4.4 Agreed Order or Order

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

5. Findings of Fact

Ecology makes the following findings of fact, without any express or implied admissions of such facts by 7901 2nd Ave S LLC:

5.1

Based upon factors currently known to Ecology, the Site is located at 8100 and 8200 2nd Avenue South, Seattle, Washington. The Site consists of multiple parcels of land owned by various entities. 7901 2nd Ave S LLC owns a parcel of land within the Site boundary. Work under this Order will address a portion of the Site as detailed in the Remedial Action Location Diagram (Exhibit A) and the Cleanup Action Plan (Exhibit B).

5.2

Within the Site is a historic landfill (referred to as the “Landfill Property”). From the 1930s to 1966, the Landfill Property was used for landfilling activities that included disposal and incineration of municipal, commercial, and industrial waste. Solid waste was disposed of in the 7901 parcel from the 1930s through the late-1940s or early 1950s; much of the waste was burned to reduce the volume. The landfill was closed in 1966. By 1970, the South Recycling and Disposal Station, Kenyon Industrial Park and other facilities had been built on top of the Landfill Property portion of the Site and were operating.

5.3

The property at 7901 2nd Avenue South (Parcel No. 322404-9077) (“7901 Property”) historically was owned by King County and was part of a much larger Tax Lot 7 located in

the northwesternmost portion of the Landfill Property of the Site.¹ The earliest available aerial photograph (1936) indicates there was active solid waste disposal in this northwest corner of the Site. Historical waste disposal initially consisted of residential waste from south Seattle and north King County, but later included commercial and industrial waste. In 1951, the City of Seattle purchased Tax Lot 7, along with other parcels. A 1951 aerial photograph indicates an auto-wrecking yard or used vehicle sales lot was located to the south of South Kenyon Street in this northwest disposal area (to the west of the 7901 Property). In 1955, the northwest corner of Tax Lot 7 (which was once an undivided parcel that included what is now the 7901 Property) was purchased by John Farrell. By 1963, the Landfill capacity began to diminish. In 1965, a building was constructed on the 7901 Property. The building covers the majority of the 7901 Property, and the remainder of the parcel is paved. In March 1975, Janice Farrell acquired ownership of the 7901 Property. In December 1987, the northwest corner of Tax Lot 7 was subdivided into two parcels (the KIP parcel and the 7901 Property). In May 2005, the 7901 Property was sold by Janice Farrell to John Hill. In October 2005, John Hill formed 7901 2nd Ave South, LLC and transferred title of the 7901 Property to that newly formed limited liability company. This parcel is currently occupied by a 17,000 square foot warehouse.

5.4

Releases of hazardous substances occurred at the Site, including the placement of solid waste and burned solid waste containing various hazardous substances consistent with those normally found in solid waste. Hazardous substances documented at the Site are: methane, arsenic, lead, iron, manganese, petroleum hydrocarbons, trichloroethene and its degradation products cis-1,2-dichloroethene and vinyl chloride, phthalates and polycyclic aromatic hydrocarbons. These hazardous substances have been, and may continue to be, released from the Site into the environment including soil, groundwater and air.

5.5

As detailed further the Cleanup Action Plan, Exhibit B, vinyl chloride, iron, and manganese are groundwater contaminants of concern that have exceeded cleanup levels at the conditional point of compliance (CPOC) (i.e., monitoring wells MW-10 and MW-25) located downgradient of the 7901 parcel.

5.6

¹ The 7901 Property was once part of an undivided parcel with the Harsch Investments properties (known as Kenyon Industrial Park, or KIP) (King County Parcel No. 322404-9007) adjoining it to the west. That parcel was formally subdivided into two parcels in December 1987. For purposes of clarity, the term "7901 Property" is used to indicate King County Parcel No. 322404-9077, which bears the street address of 7901 2nd Avenue South and is referred to as "Parcel A" of Seattle Short Subdivision No. 8606850.

In May 2009, Agreed Order No. DE 6706 was entered into by Ecology, City of Seattle, and South Park Property Development, LLC (SPPD). Under the terms of the Agreed Order, the City and SPPD agreed to complete a Remedial Investigation/Feasibility Study (RI/FS), and a preliminary draft Cleanup Action Plan (DCAP). The Agreed Order was amended in 2013 to require an interim action take place on a portion of the Site. SPPD was responsible for implementing the interim action, however both SPPD and the City (as PLP signatories to the Agreed Order) are strictly, jointly, and severally liable for remediation of the Site. The interim action included: construction of a landfill cap, installing landfill gas and surface water control systems, establishing groundwater and landfill gas monitoring and implementation of institutional controls. The Agreed Order was amended a second time in February 2016 to require an interim action take place on a different portion of the Site. The City was responsible for implementing the interim action, however both SPPD and the City (as PLP signatories to the Agreed Order) are strictly, jointly, and severally liable for remediation of the Site. The interim action included: constructing a landfill cap, installing landfill gas and surface water control systems, establishing groundwater and landfill gas monitoring and implementation of institutional controls. In August 2023, the Agreed Order was amended a third time to revise the 2016 interim action work plan for the City's parcel.

5.7

In March 2019, Consent Decree No. 19-2-07304-7 was entered into by Ecology, City of Seattle, and SPPD. Under the terms of the Consent Decree, the City and SPPD agreed to implement the Cleanup Action Plan for a portion of the Site (this did not include the KIP Area). Among other remedial actions, this required them to maintain a landfill cap/cover, install and operate landfill gas controls, install and maintain stormwater controls, conduct long-term monitoring of groundwater, conduct long-term monitoring of the cap/cover, the landfill gas controls, and groundwater, and file environmental covenants on property within this portion of the Site.

6. Ecology Determinations

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by 7901 2nd Ave S LLC.

6.1

7901 2nd Ave S LLC is an "owner or operator" as defined in RCW 70A.305.020(22) of a "facility" as defined in RCW 70A.305.020(8). Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

6.2

Based upon credible evidence, Ecology issued a PLP status letter to 7901 2nd Ave S LLC dated July 12, 2016, 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 7901 2nd Ave S LLC is a PLP under RCW 70A.305.040 and notified 7901 2nd Ave S LLC of this determination by letter dated October 30, 2017.

6.3

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

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that 7901 2nd Ave S LLC take the following remedial actions at the Site. The area within the Site addressed by this Order is described in the Remedial Action Location Diagram (Exhibit A). These remedial actions must be conducted in accordance with WAC 173-340:

7.1

7901 2nd Ave S LLC will implement the work required in the Cleanup Action Plan (Exhibit B) in accordance with the Schedule included in the Plan.

7.2

If 7901 2nd Ave S LLC 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, 7901 2nd Ave S LLC, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

7.3

7901 2nd Ave S LLC shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. 7901 2nd Ave S LLC must submit all Progress Reports by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted

pursuant to this Order shall be sent by certified mail, return receipt requested, 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 Cleanup Action Plan (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.

7.4

All plans or other deliverables submitted by 7901 2nd Ave S LLC for Ecology's review and approval under the Cleanup Action Plan (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order. 7901 2nd Ave S LLC shall take any action required by such deliverable

7.5

Pursuant to WAC 173-340-440(11), 7901 2nd Ave S LLC shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

1. Within sixty (60) days of the effective date of this Order, 7901 2nd Ave S LLC shall submit to Ecology for review and approval an estimate of the costs under this Order for operation and maintenance of the remedial actions at the Site, including institutional controls, compliance monitoring and corrective measures. Within sixty (60) days after Ecology approves the aforementioned cost estimate, 7901 2nd Ave S LLC shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.
2. 7901 2nd Ave S LLC shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

- a. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of 7901 2nd Ave S LLC's fiscal year if the financial test or corporate guarantee is used.
- b. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

7.6

As detailed in the Cleanup Action Plan, institutional controls are required in the Remedial Action Area. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

1. In consultation with 7901 2nd Ave S LLC, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and 7901 2nd Ave S LLC.
2. After approval by Ecology, 7901 2nd Ave S LLC shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the King County Auditor as detailed in the Cleanup Action Plan (Exhibit B). 7901 2nd Ave S LLC shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

7.7

If Ecology determines that 7901 2nd Ave S LLC has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to 7901 2nd Ave S LLC, perform any or all portions of the remedial action or at Ecology's discretion allow 7901 2nd Ave S LLC opportunity to correct. In an emergency, Ecology is not required to provide notice to 7901 2nd Ave S LLC, or an opportunity for dispute

resolution. 7901 2nd Ave S LLC shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.8

Except where necessary to abate an emergency situation or where required by law, the 7901 2nd Ave S LLC shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, 7901 2nd Ave S LLC must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

7901 2nd Ave S LLC shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173 340 550(2). For all Ecology costs incurred, 7901 2nd Ave S LLC shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Ryan K. Gardiner, PE
Aquatics Unit
Northwest Region Toxics Cleanup Program
Washington State Department of Ecology
Cell: (425) 681-5543

Within ten (10) days of the effective date of this Order, 7901 2nd Ave S LLC shall inform Ecology of the identity and contact information of its project coordinator.

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 7901 2nd Ave S LLC, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

8.3 Performance

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

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

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

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

7901 2nd Ave S LLC shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC'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 7901 2nd Ave S LLC. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by 7901 2nd Ave S LLC unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

7901 2nd Ave S LLC shall make best efforts to secure access rights for those properties within the Site not owned or controlled by 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 60 days after the effective date of this Order, 7901 2nd Ave S LLC is unable to accomplish what is required through "best efforts," they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist 7901 2nd Ave S LLC, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from 7901 2nd Ave S LLC for all costs, including cost of attorneys' time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, 7901 2nd Ave S LLC shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section 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, 7901 2nd Ave S LLC shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by 7901 2nd Ave S LLC pursuant to implementation of this Order. 7901 2nd Ave S LLC shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow 7901 2nd Ave S LLC and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section 8.4 (Access), Ecology shall notify 7901 2nd Ave S LLC prior to any sample collection activity unless an emergency prevents such notice.

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

8.6 Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, 7901 2nd Ave S LLC shall cooperate with Ecology, and shall:

8.6.1

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

8.6.2

Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC that do not receive prior Ecology approval, 7901 2nd Ave S LLC shall clearly indicate to its

audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

8.6.3

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

8.6.4

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

South Park Branch Library
8604 8th Ave S.
Seattle, WA 98108

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 Region Office in Shoreline, Washington.

8.7 Access to Information

7901 2nd Ave S LLC shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within 7901 2nd Ave S LLC'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. 7901 2nd Ave S LLC shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right 7901 2nd Ave S LLC may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If 7901 2nd Ave S LLC withholds any requested Records based on an assertion of privilege, 7901 2nd Ave S LLC shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or

engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

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

8.8 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, 7901 2nd Ave S LLC shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors.

8.9 Resolution of Disputes

8.9.1

In the event that 7901 2nd Ave S LLC elects to invoke dispute resolution 7901 2nd Ave S LLC must utilize the procedure set forth below.

8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), 7901 2nd Ave S LLC has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.9.1.2 The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; 7901 2nd Ave S LLC's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.9.1.3 7901 2nd Ave S LLC may then request regional management review of the dispute. 7901 2nd Ave S LLC must submit this request (Formal Dispute Notice) in writing to the NWRO 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; 7901 2nd Ave S LLC's position with respect to the dispute; and the information relied upon to support its position.

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

8.9.2

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

8.9.3

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

8.9.4

In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.10 Extension of Schedule

8.10.1

7901 2nd Ave S LLC request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

8.10.1.1 The deadline that is sought to be extended.

8.10.1.2 The length of the extension sought.

8.10.1.3 The reason(s) for the extension.

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

8.10.2

The burden shall be on 7901 2nd Ave S LLC to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC.

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

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

8.10.2.4 Endangerment as described in Section 8.12 (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of 7901 2nd Ave S LLC.

8.10.3

Ecology shall act upon any of 7901 2nd Ave S LLC's written request for extension in a timely fashion. Ecology shall give 7901 2nd Ave S LLC written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4

At 7901 2nd Ave S LLC's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

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

8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.

8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).

8.11 Amendment of Order

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

Except as provided in Section 8.13 (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and 7901 2nd Ave S LLC. 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, 7901 2nd Ave S LLC shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 8.9 (Resolution of Disputes).

8.12 Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct 7901 2nd Ave S LLC to cease such activities for such period of time as it deems necessary to abate the danger. 7901 2nd Ave S LLC shall immediately comply with such direction.

In the event 7901 2nd Ave S LLC 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, 7901 2nd Ave S LLC may cease such activities. 7901 2nd Ave S LLC 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, 7901 2nd Ave S LLC shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with 7901 2nd Ave S LLC's cessation of activities, it may direct 7901 2nd Ave S LLC to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, 7901 2nd Ave S LLC's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 8.10 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

8.13 Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against 7901 2nd Ave S LLC to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against 7901 2nd Ave S LLC regarding remedial actions required by this Order, provided 7901 2nd Ave S LLC 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, 7901 2nd Ave S LLC does not admit to any liability for the Site. Although 7901 2nd Ave S LLC is committing to conducting the work required by this Order under the terms of this Order, 7901 2nd Ave S LLC expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

8.14 Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, 7901 2nd Ave S LLC 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, 7901 2nd Ave S LLC shall notify Ecology of said transfer. Upon transfer of any interest, 7901 2nd Ave S LLC shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

8.15 Compliance with Applicable Laws

8.15.1 Applicable Laws

All actions carried out by 7901 2nd Ave S LLC 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. The Cleanup Action Plan (Exhibit B) lists the federal, state, or local requirements have been identified as being applicable to the actions required by this Order. 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

All actions carried out by 7901 2nd Ave S LLC pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, the relevant and appropriate requirements that have been identified as being applicable to the actions required by this Order, are listed in the Cleanup Action Plan, Exhibit B. If additional relevant and appropriate requirements are identified by Ecology or 7901 2nd Ave S LLC, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and 7901 2nd Ave S LLC must implement those requirements.

8.15.3

Pursuant to RCW 70A.305.090(1), 7901 2nd Ave S LLC 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, 7901 2nd Ave S LLC 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, Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals

have been identified as being applicable but procedurally exempt under this section.

8.15.4

7901 2nd Ave S LLC 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 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC and on how 7901 2nd Ave S LLC must meet those requirements. Ecology shall inform 7901 2nd Ave S LLC in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. 7901 2nd Ave S LLC 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 7901 2nd Ave S LLC 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.

8.16 Indemnification

7901 2nd Ave S LLC 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 7901 2nd Ave S LLC, its officers, employees, agents, or contractors in entering into and implementing this Order. However, 7901 2nd Ave S LLC shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

The provisions of this Order shall be deemed satisfied upon 7901 2nd Ave S LLC's receipt of written notification from Ecology that 7901 2nd Ave S LLC has completed the remedial activity required by this Order, as amended by any modifications, and that 7901 2nd Ave S LLC has complied with all other provisions of this Agreed Order.

10. Enforcement

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

10.1

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

10.2

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

10.3

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

10.3.1

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

10.3.2

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

10.4

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

Effective date of this Order: _____

7901 2nd Ave S LLC

State of Washington
Department of Ecology

John Hill
[Address]

Kimberly Wooten
Section Manager
Toxics Cleanup Program
Northwest Region Office