

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Bellingham and the  
City of Bellingham

AGREED ORDER

No. DE \_\_\_\_\_  
[insert no. in header as well]

TO: The Port of Bellingham  
P.O. Box 1677  
Bellingham, WA 98227-1677

City of Bellingham  
210 Lottie Street  
Bellingham, Washington 98225

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- Exhibit A: Site Diagram
- Exhibit B: Scope of Work and Schedule
- Exhibit C: Interagency Agreement No. C0400269 re: Public Participation

## **A. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology), the Port of Bellingham (the Port), and the City of Bellingham (the 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 Port and the City to conduct a Remedial Investigation and Feasibility Study (“RI/FS”) at the Central Waterfront Site. Ecology believes the actions required by this Order are in the public interest.

## **B. JURISDICTION**

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## **C. 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 the Order. The Port and the City agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port’s or the City’s responsibility under this Order. The Port and 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.

## **D. DEFINITIONS**

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as the Central Waterfront Site and generally spans four properties, identified in the Findings of Fact section below, that are within Bellingham’s Central Waterfront area. The Site is bordered to the south by the Whatcom Creek Waterway, to the north by the I&J Waterway, to the west by the Georgia Pacific (G-P) aerated stabilization basin and to the east by Roeder Avenue. The Site is defined by the extent of contamination

caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to Ecology, the Port, and the City.
3. PLPs: Refers to the parties currently notified of PLP status including the Port, the City, ChevronTexaco Corp. (f/n/a Chevron Products Company) (hereafter “Chevron”), Colony Wharf, Inc. (f/n/a BC Investment Corporation) (hereafter “Colony Wharf”), , and Georgia Pacific Corporation and Georgia Pacific West, Inc. (collectively “G-P”). Ecology may identify additional parties, not currently identified in this Order, as PLPs in the future based upon credible evidence.
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.

#### **E. FINDINGS OF FACT**

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

1. Beginning in the early 1900s until the 1970s, the Site and surrounding filled tideland areas were filled to create the industrial “central waterfront” area of Bellingham.
2. The Site, known as the Central Waterfront Site, is a consolidation of the following four individual sites, each of which were previously listed independently on the Washington State Department of Ecology’s Hazardous Site List:
  - a. The former Colony Wharf Site, which included the property located at 1001 “C” Street that is now owned by the City;
  - b. The former Chevron Bellingham Port Site, which included the property located at 1020 “C” Street that is now owned by the Port;
  - c. The former Olivine Corp. Hilton Site, which included the property located at Hilton Avenue & Roeder Avenue that is now owned by the Port; and

d. The former Roeder Avenue Landfill Site, which included the property located near Roeder Avenue and F Street that is also now owned, in part, by the Port.

These properties have had various ownerships and uses over the past century resulting in releases of hazardous substances as further described below.

3. Colony Wharf formerly owned and operated the property located at 1001 “C” Street in Bellingham (Colony Wharf property). Colony Wharf used the property for various industrial activities, including the manufacture of concrete products and for boat repair/storage and wood fabrication. Various other industrial activities have occurred at this property since 1908. Between 1990 and 1992 several environmental assessments were conducted on the Colony Wharf property that confirmed the presence of hazardous substances in soil and groundwater above MTCA cleanup standards — including total petroleum hydrocarbons (TPH), benzene, ethylbenzene, toluene, and xylene (BETX) in the abandoned UST area, as well as metals (arsenic, cadmium lead, nickel, and copper) in the former foundry area.

4. In 1998, Ecology conducted a Site Hazard Assessment and placed the Colony Wharf Site on the Hazardous Sites List. The former Colony Wharf Site was ranked number 4, where 1 represents the highest relative risk and 5 the lowest.

5. The City of Bellingham purchased the Colony Wharf property on January 31, 2006.

6. Chevron owned and operated the property located at 1020 “C” Street (Chevron property) as a bulk fuel storage and distribution facility from 1904 through 1987. At least one documented release, of approximately 4,800 gallons of diesel fuel in 1986, has occurred at the property.

7. Between 1986 and 2002, a number of investigations on the Chevron property confirmed the presence of hazardous substances in soil and groundwater above state standards — including total petroleum hydrocarbons (TPH), benzene, ethylbenzene, toluene, xylene (BETX), and lead. Chevron has performed multiple soil and groundwater investigations, and has implemented independent interim remedial measures including excavation and treatment of contaminated soils, excavation and disposal of contaminated soils, and product recovery.

8. In 1998, Ecology conducted a Site Hazard Assessment and placed the Chevron Bellingham Port Site on the Hazardous Sites List. The former Chevron Bellingham Port Site was ranked number 2, where 1 represents the highest relative risk and 5 the lowest.

9. The Port purchased the Chevron property from Chevron on March 28, 2006.

10. The Port currently owns the property located at Hilton Avenue & Roeder Avenue.

11. From 1963 until 1993, the Port leased the property located at Hilton Avenue & Roeder Avenue to Olivine. Olivine operated an olivine processing plant onsite, producing foundry sand and refractory materials for incinerators. In addition, Olivine operated an experimental incinerator on the property between 1981 and 1982.

12. Since 1990, various investigations have been conducted at the property located at Hilton Avenue & Roeder Avenue. Total petroleum hydrocarbons (TPH), and polycyclic aromatic hydrocarbons (PAHs) were detected at elevated levels in the soil. Total chromium was detected above MTCA Method A levels in the groundwater at the property.

13. In 1998, Ecology conducted a Site Hazard Assessment and placed the Olivine Corp. Hilton Site on the Hazardous Sites List. The former Olivine Corp. Hilton Site was ranked number 3, where 1 represents the highest relative risk and 5 the lowest.

14. Various properties located near Roeder Avenue and F Street, which are or were owned or operated at various times by the City, the Port, G-P, Puget Sound Energy, and others, were used by the City as a sanitary landfill from 1965-1974. Multiple environmental investigations have been performed at the landfill site, including studies by Ecology and work performed under cooperative agreements involving the Port, the City and G-P. Between 1996 and 1998, studies of integrated cleanup and redevelopment of the landfill site were performed by the Port, the City and G-P under the EPA Brownfields program. In 1999, after coordinating with Ecology under the Voluntary Cleanup Program, G-P constructed a 250,000 square foot warehouse over a portion of the landfill. That project included grading and capping of the landfill site, and installation of a methane control system.

15. An investigation and evaluation of cleanup alternatives for the landfill site was conducted by the Port and the City, with Ecology review under the Voluntary Cleanup Program.

Testing performed as part of that study indicated that diesel-range petroleum and metals including chromium, arsenic, lead, mercury, copper, nickel, and cyanide are present in the groundwater at levels exceeding MTCA cleanup levels. Methane gas has also been detected in soil in areas on and adjacent to the landfill refuse.

16. In 1998, Ecology conducted a Site Hazard Assessment and placed the Roeder Avenue Landfill Site on the Hazardous Sites List. The former Roeder Avenue Landfill Site was ranked number 5, where 1 represents the highest relative risk and 5 the lowest.

17. The Port purchased various property from G-P on January 20, 2005, and a portion of the property purchased comprises a portion of the former Roeder Avenue Landfill Site. Presently, G-P leases the warehouse located on a portion of the former Roeder Avenue Landfill Site (identified in paragraph E.14. above) from the Port pursuant to a January 20, 2005 lease agreement.

18. The Port, Chevron, and Colony Wharf were previously pursuing independent cleanup of the former Roeder Avenue Landfill Site, the former Chevron Bellingham Port Site and the former Colony Wharf Site under separate site designations. However, to improve coordination of remedial actions at these sites, and to address commingled groundwater contamination, Ecology proposed to designate the Central Waterfront Site as a single formal site that would encompass these three former sites plus the former Olivine Corp. Hilton Site. In September of 2003, Ecology separately notified the Port, the City, G-P, Chevron and Colony Wharf of its intent to establish the Central Waterfront Site (Site) designation, and confirmed their PLP status.

19. Ecology, the Port and the City then entered into negotiations for an Agreed Order to conduct an RI/FS for the Site under the formal MTCA process, pursuant to WAC 173-340-350 and WAC 173-204-560.

## **F. ECOLOGY DETERMINATIONS**

1. The Port and the City are current "owners or operators" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4), and are also former "owners

or operators” under RCW 70.105D.040(1)(b) of a “facility” as defined in RCW 70.105D.020(4). The facility is known as the Central Waterfront Site (Site).

2. G-P is a current “owner or operator” as defined in RCW 70.105D.020(12) of a “facility” as defined in RCW 70.105D.020(4), and a former “owner or operator” under RCW 70.105D.040(1)(b) of a “facility” as defined in RCW 70.105D.020(4). G-P is also a “generator” of hazardous wastes disposed of at the facility under RCW 70.105D.040(1)(c).

3. Chevron and Colony Wharf are former “owners or operators” under RCW 70.105D.040(1)(b), of a “facility” as defined in RCW 70.105.D.020(4), and are also “generators” of hazardous wastes disposed of at the facility under RCW 70.105D.040(1)(c).

4. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substances” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site .

5. Based upon credible evidence, Ecology issued potentially liable person status letters to Chevron, Colony Wharf, the Port, and the City dated September 8, 2003, pursuant to RCW 70.105D.040, -.020(16) 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 Port, the City, Colony Wharf, and Chevron are potentially liable persons (PLPs) under RCW 70.105D.040 and notified the Port, the City, Colony Wharf, and Chevron of this determination by letter dated January 30, 2004.

6. Based upon credible evidence, Ecology may identify additional PLPs for this Site that are not currently identified in this Order.

7. Pursuant to RCW 70.105D.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 action required by this Order is in the public interest.

### **G. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port and the City take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. The Port and the City will conduct an RI/FS at the Site in accordance with WAC 173-340-350 and Chapter 173-204 WAC, and with the attached Scope of Work and Schedule (Exhibit B).
2. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

### **H. TERMS AND CONDITIONS OF ORDER**

#### **1. Public Notices**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

#### **2. Remedial Action Costs**

The Port and 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 Chapter 70.105D RCW, 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 the Order. The Port and the City shall pay the required amount within ninety (90) 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 description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to Paragraph H.10. (Dispute Resolution), the

City and the Port may dispute any itemized billing statements. Failure to pay Ecology's uncontested costs and costs for which a final decision has been issued under the Dispute Resolution process within 90 days of receipt of the itemized statement of costs or the date of the Dispute Resolution final decision will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

**3. Implementation of Remedial Action**

Except where necessary to abate an emergency situation, the Port and the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

**4. Designated Project Coordinators**

a. The project coordinator for Ecology is:

Name: Sunny L. Becker, P.E., Environmental Engineer  
Address: Department of Ecology  
Northwest Regional Office  
5190 160<sup>th</sup> Avenue S.E.  
Bellevue, Washington 98004-5452  
Phone: 425-649-7187

The project coordinator for the Port is:

Name: Mike Stoner, Director of Environment  
Address: Port of Bellingham  
P.O. Box 1677  
Bellingham, Washington 98227-1677  
Phone: 360-676-2500

The project coordinator for the City is:

Name: Dick McKinley, Public Works Director  
Address: City of Bellingham  
210 Lottie Street  
Bellingham, Washington 98225  
Phone: 360-676-6961

b. The project coordinators shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology, the Port, 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.

c. Ecology, the Port, and the City may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other parties.

**5. Performance**

a. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. The Port and the City shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

b. Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

**6. Access**

a. Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the Port or 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 Port's and 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 Port and the City. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port or the City unless an emergency prevents such notice.

b. The Port and the City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port and the City where remedial activities or investigations will be performed pursuant to this Order. For any such property for which the Port and the City secures access rights, Ecology or any Ecology authorized representative shall give reasonable notice before entering such property, unless an emergency prevents such notice.

c. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of Site property access.

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

a. With respect to the implementation of this Order, the Port and the City shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their 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 G (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.

b. If requested by Ecology, the Port and the City shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the Port and the City pursuant to implementation of this Order. The Port and the City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. The seven (7) day notification requirement shall be satisfied where the Port and the City have identified the work planned for the next reporting period in a quarterly progress report, including a schedule identifying any sample collection or work activity to take place at the Site.

c. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by the Port and the City, or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Paragraph H.6. (Access) of this Order,

Ecology shall notify the Port and the City prior to any sample collection activity by Ecology or Ecology's representative unless an emergency prevents such notice.

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

#### **8. Public Participation**

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a public participation plan alone or in conjunction with the Port and the City.

Ecology shall maintain the responsibility for public participation at the Site. However, the Port and the City shall cooperate with Ecology, and shall:

a. If agreed to by Ecology, develop appropriate mailing list, 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;

b. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the Port and the City prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port and the City that do not receive prior Ecology approval, the Port and the City shall clearly indicate to their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

c. 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;

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

- (1) Department of Ecology  
Bellingham Field Office  
1204 Railroad Avenue, Ste 200  
Bellingham, WA 98225
- (2) Bellingham Public Library  
210 Central Avenue  
Bellingham, WA 98227
- (3) Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Ave SE  
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

Ecology shall maintain the responsibility for public participation at the Site. The City and the Port shall help coordinate and implement public participation for the Site consistent with Interagency Agreement No. C0400269 entered into between the Port and Ecology on May 6, 2004, as amended on June 13, 2005, and attached to this Order as Exhibit C, and which identifies a representative for performing public involvement activities for Bellingham Bay cleanup sites.

**9. 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 Port and the City shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Port and the City shall make all records available to Ecology and allow access for review within a reasonable time.

**10. Resolution of Disputes**

a. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing

statement under Paragraph H.2. (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, the Port or the City has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

(2) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(3) The Port and the City may then request Ecology management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(4) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of the Port's or the City's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

b. 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.

c. 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.

#### 11. **Extension of Schedule**

a. 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 the reason(s) the extension is needed. The request shall specify:

- (1) The deadline that is sought to be extended;
- (2) The length of the extension sought;
- (3) The reason(s) for the extension; and
- (4) Any related deadline or schedule that would be affected if the extension were granted.

b. The burden shall be on the Port or the City 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 includes, but is not limited to:

- (1) Circumstances beyond the reasonable control and despite the due diligence of the Port and 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 Port and the City; or
- (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (3) Endangerment as described in Paragraph H.13. (Endangerment) of this Order.

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 Port and the City.

c. Ecology shall act upon any written request for extension in a timely fashion. The grant of an extension shall not be unreasonably withheld by Ecology. Ecology shall give the Port and the City written notification in a timely fashion of any extensions granted pursuant to the 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 H.12. (Amendment of Order) when a schedule extension is granted.

d. 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:

(1) Delays in the issuance of a necessary permit which was applied for in a timely manner;

(2) Other circumstances deemed exceptional or extraordinary by Ecology; or

(3) Endangerment as described in Paragraph H.13. (Endangerment) of this Order.

## 12. **Amendment of Order**

a. 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.

b. Except as provided in Paragraph H.14. (Reservation of Rights) of this Order, 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 Ecology, the Port, and the City. The Port and the City shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Paragraph H.10. (Resolution of Disputes) of this Order.

## 13. **Endangerment**

a. In the event Ecology determines that any activity being performed at the Site 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 Port and the City to cease such activities for such

period of time as it deems necessary to abate the danger. The Port and the City shall immediately comply with such direction.

b. If, for any reason, the Port and the City determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the Port and the City may cease such activities. The Port and 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 Port and the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's and the City's cessation of activities, it may direct the Port and the City to resume such activities.

c. If Ecology concurs with or orders a work stoppage pursuant to this paragraph, the Port's and 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 for such period of time as Ecology determines is reasonable under the circumstances.

d. 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.

**14. Reservation of Rights**

a. This Order is not a settlement under Chapter 70.105D RCW. 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 Port and 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 Port and the City regarding remedial actions required by this Order, provided the Port and the City comply with this Order.

b. Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and 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.

c. The Port and the City expressly reserve their rights with regard to any future agency action. Nothing in this Order shall affect the allocation of liability agreed upon between the Port and the City. Nothing herein shall be a waiver of the Port's and the City's rights to pursue any other responsible party for their costs associated herewith.

**15. Transfer of Interest in Property**

a. During the effective period of this Order, no voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Port or 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.

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

c. Upon transfer of any interest in all or any portion of the Site during the effective period of this Order, the Port and the City shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**16. Compliance with Applicable Laws**

a. All actions carried out by the Port and 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, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

b. Pursuant to RCW 70.105D.090(1), the Port and the City are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Port and the City shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this paragraph.

The Port and the City have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology, or the Port and the City, determines that additional permits or approvals addressed in RCW 70.105D.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 Port and the City, shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port and 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 Port and the City and on how they must meet those requirements. Ecology shall inform the Port and the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port and the City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

c. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and the Port and the City shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**17. Indemnification**

The Port and the City, to the extent permitted by law, and to the extent of their comparative fault, each severally 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 for death or injuries to persons or for loss or damage to property to the extent that such arise from or on account of acts or omissions of the Port or the City, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port and 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 that such arise 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 the activities pursuant to this Order.

**I. SATISFACTION OF ORDER**

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

**J. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event the Port and the City refuse, without sufficient cause, to comply with any term of this Order, the Port and the City will be liable for:
  - a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
  - b. Civil penalties of up to \$25,000 per day for each day they refuse to comply.

4. This Order is not appealable to the Washington State Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order (completed by Ecology): \_\_\_\_\_

PORT OF BELLINGHAM

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
Jim Darling  
Executive Director  
Port of Bellingham  
360-676-2500

\_\_\_\_\_  
Steven M. Alexander  
Section Manager  
Toxics Cleanup Program  
Northwest Regional Office  
425-649-7054

CITY OF BELLINGHAM

\_\_\_\_\_  
Mark Asmundson  
Mayor, City of Bellingham  
360-676-6979

APPROVED AS TO FORM: \_\_\_\_\_  
Office of the City Attorney

ATTEST: \_\_\_\_\_  
Finance Director

**EXHIBIT A**

**CENTRAL WATERFRONT  
REMEDIAL INVESTIGATION/FEASIBILITY STUDY  
SITE DIAGRAM**

**EXHIBIT B**

**CENTRAL WATERFRONT  
REMEDIAL INVESTIGATION/FEASIBILITY STUDY  
SCOPE OF WORK AND SCHEDULE**

**PURPOSE**

The purpose of this RI/FS Scope of Work and Schedule (SOW) for the Central Waterfront Site is to implement the Agreed Order (AO) entered into by the Department of Ecology (Ecology), the City of Bellingham (the City), and the Port of Bellingham (the Port), to which this SOW is an Exhibit.

The RI/FS is intended to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup action alternative.

The SOW is divided into six major tasks as follows:

- 1) Progress Reports
- 2) Work Plan
- 3) Other Project Plans
- 4) Remedial Investigation
- 5) Feasibility Study

**TASK 1      PROGRESS REPORTS**

The Port and the City shall submit progress reports quarterly unless a longer reporting period is approved by Ecology in writing. Progress reports shall be submitted to Ecology until satisfaction of the AO in accordance with Section IX of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 10th of every third month following the effective date of the AO. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, progress reports shall contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO and SOW during the previous reporting period;
  - An estimate of the percentage of RI/FS work completed to date;
  - Summaries of sampling and testing reports and other data reports received by the Port and the City;
  - Summaries of deviations from approved work plans;
  - Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state or tribal government;
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- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan;
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays;
- Changes in key personnel; and
- A description of work planned for the next reporting period.

## **TASK 2      WORK PLAN**

In order to plan and manage the RI/FS, the Port and the City shall document project tasks and management strategies in a RI/FS Work Plan (Work Plan), which they will develop and submit to Ecology for review and approval in accordance with this SOW, including the schedule contained below. This Work Plan shall include an overall description and schedule of all RI/FS activities, in accordance with the scope of work set out in Tasks 4 and 5 below. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the Port and the City will implement the Work Plan according to the schedule contained in this SOW, and/or any schedules as contained or revised in the Work Plan that is approved by Ecology.

The Work Plan shall specify and describe all tasks to be accomplished to complete an RI/FS that meets the requirements of WAC 173-340-350, in accordance with the AO and this SOW.

The Work Plan shall clearly describe the overall project management strategy for implementing and reporting on RI/FS activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI/FS will be outlined.

Elements of the Work Plan include, but are not limited to, the following:

- A project management strategy for achieving timely submittal of high quality deliverables;
  - A draft outline of the final RI and FS Reports including the types of data evaluation, figures, and tables that will be included;
  - A review of existing and available data to support the development of RI/FS tasks which may include, as appropriate, the following:
    - a) Identification of any data gaps
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- b) Soil and groundwater data, including contaminant concentrations and conventional parameters, depths and location of samples, and comparison to MTCA
  - c) Groundwater flow direction
  - d) Methane data
  - e) Sediment chemical and biological data, including contaminant concentrations and conventional parameters, depths and locations of samples, and comparison to MTCA, SMS and Water Quality standards.
  - f) Location and composition of current and historical discharges.
  - g) Current property ownership and zoning
  - h) Current or planned land uses and their location, which may affect investigation and cleanup activities
  - i) Recent and historical photographs
- A description of individual RI/FS subtasks;
  - A proposed schedule, including a timeline for completion of all RI/FS subtasks and for submittal to Ecology of interim and final deliverables, including but not limited to the deliverables enumerated in this SOW.

### **TASK 3      OTHER PROJECT PLANS**

Pursuant to WAC 173-340-350(7)(c)(iv), the Port and the City will prepare and submit for Ecology review and approval a Sampling and Analysis Plan (SAP) and a Quality Assurance Project Plan (QAPP). A Health and Safety Plan (HSP) shall also be submitted for Ecology review and comment. Details of these plans are provided below.

Sampling and Analysis Plan - The Port and the City shall prepare a Sampling and Analysis Plan (SAP) for RI sampling and analysis activities in accordance with WAC 173-340-820. The purpose of the SAP is to provide an overview of the RI sampling program that will obtain information needed to meet the data needs described in Task 4 of the SOW.

The SAP shall describe the sampling objectives and the rationale for the sampling approach. A detailed description of sampling tasks shall then be provided, including specifications for sample identifiers; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and collection methods to be used; description of sample documentation; sample containers, collection, preservation and handling.

Quality Assurance Project Plan - The Port and the City shall prepare a Quality Assurance Project Plan (QAPP) for RI sampling and analysis activities. The QAPP shall identify and describe

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measures that will be taken during the performance of all sampling and analysis tasks to ensure the fulfillment of data quality objectives. Data quality objectives will reflect the criteria or threshold values used for remedial decisions. The QAPP shall include the following elements:

- A brief project description, referencing the Work Plan and/or SAP for details
- Project personnel and QA responsibilities
- Quality assurance objectives
- Field QA measures, including sample acceptability criteria, field QA samples, and calibration of field instruments, referencing the SAP for a discussion of decontamination procedures and sample custody and handling

The Port and the City shall use an Ecology accredited laboratory accredited for the specific analyses to be performed under the Order. If an unaccredited lab is proposed to be used, the results of recent performance audits and systems audits will be provided to Ecology prior to use of the lab.

Health and Safety Plan - The Port and the City shall prepare a Health and Safety Plan (HSP) for RI activities in accordance with WAC 173-340-810. The HSP must be consistent with the requirements of the Washington Industrial Safety and Health Act of 1973, Chapter 49.17 RCW, including any updates or amendments. The HSP shall identify specific monitoring and management responsibilities and activities to ensure the protection of human health activities associated with the RI.

#### **TASK 4      REMEDIAL INVESTIGATION (RI)**

The Port and the City will conduct a Remedial investigation (RI) that meets the requirements of WAC 173-340-350(7), according to the Work Plan as approved by Ecology and the schedule contained below. The RI will enable Ecology to select a final remedy for the Central Waterfront Site. Key components of the RI for this Site that must be captured in the Work Plan are as follows:

- Nature and extent contamination exceeding MTCA and SMS
- Extent of methane gas exceeding Lower Explosive Limit
- Potential for current discharges to adversely impact sediments

#### **TASK 5      FEASIBILITY STUDY (FS)**

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The Port and the City shall use the information obtained in the RI to conduct a feasibility study (FS) that meets the requirements of WAC 173-3540-350(8), according to the Work Plan as approved by Ecology and the schedule contained below. The Work Plan will in particular include the following elements for the FS work:

- Determination of cleanup standards and applicable laws
- Identification and screening of cleanup technologies
- Basis for assembly of cleanup action alternatives
- Description of cleanup alternatives
- Comparative evaluation of cleanup alternatives

## **DELIVERABLES**

The Port and the City shall prepare and submit all plans, reports and studies listed below as follows: A draft shall be submitted to Ecology for review and approval in accordance with this SOW, including the schedule outlined below, and the Work Plan; If Ecology returns a draft with comments, the Port and the City shall incorporate those comments into a draft that is resubmitted to Ecology for review and approval. Once Ecology approves a draft as the final version, it will be considered the final draft for public review purposes (the public review draft);

- a) RI/FS Work Plan and Other Project Plans – The Port and the City shall prepare and submit for Ecology review and approval a RI/FS Work Plan (Work Plan), SAP, and QAPP in accordance with the schedule below. The HSP shall also be submitted for Ecology’s review and comment in accordance with the schedule below. Revision of the Work Plan shall require approval of Ecology, and may require amendment of the Agreed Order to the extent the scope of work under the AO will substantially change.
- b) RI/FS Report – According to the Work Plan and the schedule below, the Port and the City shall conduct an RI and prepare an FS, and submit an RI/FS Report that summarizes and compiles the results of the RI and FS.
- c) Additional Studies – The Port and the City shall submit draft addenda to the Work Plan, SAP and QAPP, as well as any other planning documents, reports, and other deliverables associated with any additional studies necessary as identified by Ecology, or the Port and the City.

## **SCHEDULE**

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The schedule for all tasks described in this SOW is presented below. If, at any time during the RI/FS process, unanticipated conditions or changed circumstances are discovered which may result in a schedule delay, the Port and the City shall bring such information to the attention of Ecology. Ecology will determine whether a schedule extension is warranted under the AO.

For each and every deliverable, report, memorandum, plan, or other item required under this SOW, if Ecology disapproves or requires modification or revision of any deliverable, report, memorandum, plan, or other item, in whole or in part, the Port and the City shall submit a modified or revised version thereof to Ecology for review and approval.

Any deadline which falls on a holiday or weekend will be extended to next business day.

<u>RI/FS Actions</u>	<u>Completion Time</u>
Consultant Selection	60 calendar days from effective date of AO
Draft RI/FS Work Plan	60 calendar days from submittal of SAP, QAPP, and HSP consultant selection or effective date of AO, whichever is later
Completion of RI work	360 calendar days from Ecology approval of the RI/FS Work Plan
Draft RI/FS Report	120 calendar days from completion of RI work
Final RI/FS Report of	45 calendar days from Ecology's approval the public review draft as final, following public comment.

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**EXHIBIT C**

**INTERAGENCY AGREEMENT NO. C0400269**

**RE: PUBLIC PARTICIPATION**