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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

NO. _____

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and the General Electric Company (GE or Defendant) under this Decree is to
4 provide for remedial action at a facility where there has been a release or threatened release of
5 hazardous substances. As more fully described in the Cleanup Action Plan (Exhibit B), this
6 Decree requires GE to perform actions that include, but are not limited to, the following
7 activities: install, optimize as required, operate, and monitor the effectiveness of a
8 multiphased in-situ treatment, hydraulic control system and vapor intrusion mitigation system,
9 in order to meet soil, groundwater, and indoor air cleanup levels; provide for protection,
10 performance, and confirmation monitoring of the cleanup action taken at the Site; implement
11 institutional controls as necessary; and provide for financial assurance sufficient to complete
12 the cleanup actions.

13 Ecology has determined that these actions are necessary to protect human health and
14 the environment.

15 B. The Complaint in this action is being filed simultaneously with this Decree.
16 An Answer has not been filed, and there has not been a trial on any issue of fact or law in this
17 case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In
18 addition, the Parties agree that settlement of these matters without litigation is reasonable and
19 in the public interest, and that entry of this Decree is the most appropriate means of resolving
20 these matters. The requirements of this Decree will concurrently satisfy GE's obligations for
21 corrective action, as set forth in WAC 173-303-64620 (including financial assurance for
22 corrective action).

23 C. By signing this Decree, the Parties agree to its entry and agree to be bound by
24 its terms.

25 D. By entering into this Decree, the Parties do not intend to discharge non-settling
26 parties from any liability they may have with respect to matters alleged in the Complaint. The

1 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
2 sums expended under this Decree.

3 E. This Decree shall not be construed as proof of liability or responsibility for any
4 releases of hazardous substances or cost for remedial action nor an admission of any facts and
5 GE reserves the right to contest any facts or liability determination made herein; provided,
6 however, that GE shall not challenge the authority of the Attorney General and Ecology to
7 enforce this Decree.

8 F. The Court is fully advised of the reasons for entry of this Decree, and good
9 cause having been shown:

10 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as
11 follows:

12 **II. JURISDICTION**

13 A. This Court has jurisdiction over the subject matter and over the Parties
14 pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

15 B. Authority is conferred upon the Washington State Attorney General by
16 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
17 after public notice and any required hearing, Ecology finds the proposed settlement would
18 lead to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b)
19 requires that such a settlement be entered as a consent decree issued by a court of competent
20 jurisdiction.

21 C. Ecology has determined that a release or threatened release of hazardous
22 substances has occurred at the Site that is the subject of this Decree.

23 D. Ecology has given notice to GE of Ecology's determination that GE is a PLP
24 for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.
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1 E. The actions to be taken pursuant to this Decree are necessary to protect public
2 health and the environment.

3 F. This Decree has been subject to public notice and comment.

4 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
5 hazardous substances at the Site in compliance with the cleanup standards established under
6 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

7 H. GE has agreed to undertake the actions specified in this Decree and consents to
8 the entry of this Decree under MTCA.

9 III. PARTIES BOUND

10 This Decree shall apply to and be binding upon the Parties to this Decree, their
11 successors and assigns. The undersigned representative of each party hereby certifies that he
12 or she is fully authorized to enter into this Decree and to execute and legally bind such party
13 to comply with this Decree. GE agrees to undertake all actions required by the terms and
14 conditions of this Decree. No change in ownership or corporate status shall alter GE's
15 responsibility under this Decree. GE shall provide a copy of this Decree to all contractors and
16 subcontractors retained to perform work required by this Decree, and shall ensure that all
17 work undertaken by such contractors and subcontractors complies with this Decree.

18 IV. DEFINITIONS

19 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
20 WAC 173-340-200 shall control the meanings of the terms in this Decree.

21 A. Site: The Site is referred to as the former GE Aviation Site. The Site is
22 generally located at 220 South Dawson Street, Seattle, Washington, and all locations where
23 hazardous substances migrating from that property have come to be located. The Site is
24 generally described in the Site Diagram (Exhibit A). The Site constitutes a Facility under
25 RCW 70.105D.020(5).
26

1 trichloroethane (TCA), and perchloroethylene (PCE) at the Property (COCs). Releases of
2 these COCs have occurred to the soils and groundwater at the former GE facility located at
3 220 South Dawson Street, Seattle, Washington.

4 D. Prior to signing Agreed Order DE02HWTRNR-4686 in 2002, GE voluntarily
5 undertook independent remedial actions at the Site. Between December 1995 and August
6 1996, GE excavated more than 3,000 tons of soil from the Site and sent it off-site for
7 treatment in a high-temperature cement kiln. During this time, GE removed from the Property
8 all soils with concentrations of total petroleum hydrocarbons and chlorinated volatile organic
9 compounds (CVOCs) that exceeded MTCA cleanup levels based on residential exposure
10 scenarios that were in effect at that time, with the exception of soils below the water table and
11 three small areas where soil excavation was not feasible due to proximity to existing
12 structures.

13 E. In August 1996, as an independent action, GE began operating a shallow
14 groundwater extraction system on the Property. The system has extracted to date in excess of
15 100 million gallons of shallow groundwater at the Site. GE also conducted periodic
16 groundwater sampling and provided reports on these activities to Ecology on a regular basis.

17 F. Based on data from investigations conducted at the Site by GE under the 2002
18 order, Ecology has determined that groundwater downgradient of the Property is known to be
19 contaminated from releases of hazardous substances at the Property. GE's investigations have
20 detected TCE, PCE, 1,1,1-TCA, vinyl chloride, cis-1,2 dichloroethylene, trans-1,2
21 dichloroethylene, 1,1-dichloroethylene, arsenic, and 1,4 dioxane in groundwater beneath
22 and/or downgradient of the Property. Many of these COCs exceeded the MTCA Method B
23 groundwater cleanup levels.

24 G. The Site is located in an industrial portion of the Duwamish River Valley.
25 Land uses are predominantly light industrial (e.g. manufacturing and warehousing) with some
26

1 commercial businesses, occasional residences, and vacant lots. The Property is zoned
2 Industrial General 2 Unlimited/85 and the adjacent properties and properties between the site
3 and the Duwamish Waterway are also zoned for industrial purposes. Two residences are
4 located immediately south of the site: one appears to be vacant and both are located between
5 industrial facilities.

6 H. The previous Agreed Order, DE 02HWTRNR-4686 required GE to conduct
7 groundwater interim actions and remedial investigations, and to investigate vapor intrusion
8 within buildings above the contaminated groundwater.

9 I. Pursuant to Agreed Order DE 02HWTRNR-4686, GE installed a new recovery
10 well, a new shallow monitoring well, an intermediate monitoring well, and several
11 downgradient monitoring wells from 2002-2005; GE collected quarterly groundwater samples
12 and provided the results to Ecology; and GE conducted an investigation of downgradient
13 groundwater using geoprobes in 2002 and collected data for evaluating natural attenuation
14 parameters in February 2004. Sampling was conducted in August 2003 and February 2004 to
15 assess the potential for site groundwater to geochemically alter metal concentrations in
16 groundwater. Analysis of groundwater for 1,4 dioxane was also required by Ecology and
17 conducted by GE in 2004 and 2005.

18 J. GE performed several rounds of modeling to evaluate the indoor air pathway
19 for the former GE building as well as for the downgradient Liberty Ridge and former Interior
20 Environments buildings. GE sampled indoor and sub-slab air at the former GE building and
21 indoor air at the former Interior Environments building.

22 K. Based on several vapor intrusion assessment reports prepared on behalf of GE
23 for Ecology, dated February 6, 2006, October 12, 2006, and January 9, 2007, indoor air
24 concentrations of TCE were measured above the MTCA Method C air cleanup level in several
25 occupied businesses within the 220 South Dawson Street building. The MTCA Method C air
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1 cleanup level as applied by Ecology in these circumstances is a protective level set based on
2 the assumption that a person working in the building is exposed to TCE vapor twenty-four
3 (24) hours per day, seven (7) days per week, for thirty (30) years. The eight other volatile
4 compounds measured as part of the above-listed studies did not exceed the MTCA Method C
5 air cleanup levels. Indoor air TCE concentrations in some areas of the building also exceeded
6 Ecology's remediation level set for the interim action based on a forty (40) hour per week
7 worker scenario. Under Agreed Order No. DE 4258, GE installed a vapor intrusion mitigation
8 (VIM) system as an interim action to reduce a threat to human health and to reduce TCE
9 concentrations to levels below the MTCA Method C air cleanup level.

10 L. GE conducted a remedial investigation under Agreed Order No. DE
11 02HWTRNR-4686. GE also prepared a feasibility study under Agreed Order No. DE 5477.
12 Based on the Focused Feasibility Study Report (FFS Report), as modified and approved by
13 Ecology in a letter dated December 24, 2009, Ecology has selected Modified Remedial
14 Alternative 2, as described in the CAP (Exhibit B) as a final cleanup action for the Site.

15 VI. WORK TO BE PERFORMED

16 This Decree contains a program designed to protect human health and the environment
17 from the known release, or threatened release, of hazardous substances or contaminants at, on,
18 or from the Site.

19 A. GE shall perform a final cleanup action for the Site by implementing the
20 Modified Alternative 2 remedy set forth in the CAP (Exhibit B) in accordance with the Scope
21 of Work and Schedule (Exhibit C); and agrees also, if it is so determined by Ecology, that GE
22 shall perform the contingent remedy as described in the CAP. Completion of the work herein
23 shall supplant and satisfy all previous Agreed Orders between GE and Ecology, including but
24 not limited to Agreed Orders No. DE02HWTRNR-4686, No. DE 5477, and No. DE 4258.
25 Certain work items from these superseded Agreed Orders are described by Exhibits G, H, and
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1 I, and are incorporated into Exhibit C to this Decree (Scope of Work and Schedule). GE shall
2 continue to perform these items as ongoing work until the Engineering Design Report (EDR)
3 is approved and implemented.

4 B. GE agrees not to perform any remedial actions outside the scope of
5 Section VI.A above specifically, or generally, of this Decree unless the Parties agree to
6 modify the Scope of Work and Schedule (Exhibit C) and Ecology modifies the Cleanup
7 Action Plan (Exhibit B) to cover these actions. All work conducted by GE under this Decree
8 shall be done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

9 C. Ecology shall issue written notice of completion that the requirements of this
10 Decree have been satisfactorily completed when the work as described in the CAP has been
11 performed.

12 **VII. DESIGNATED PROJECT COORDINATORS**

13 The project coordinator for Ecology is:

14 Dean Yasuda
15 Washington State Department of Ecology
16 Northwest Regional Office
17 3190 160th Avenue SE
18 Bellevue, WA 98008-5452
(425) 649-7264
Email: dyas461@ecy.wa.gov

19 The project coordinator for Defendant is:

20 Tom Antonoff
21 U.S. Remedial Project Manager - Legacy Site CoE
22 GE
23 319 Great Oaks Blvd
24 Albany, NY 12203
25 Phone: (518) 862-2720
26 Email: tom.antonoff@ge.com

Each project coordinator shall be responsible for overseeing the implementation of this
Decree. Ecology's project coordinator will be Ecology's designated representative for the
Site. To the maximum extent possible, communications between Ecology and GE and all

1 documents, including reports, approvals, and other correspondence concerning the activities
2 performed pursuant to the terms and conditions of this Decree shall be directed through the
3 project coordinators. The project coordinators may designate, in writing, working level staff
4 contacts for all or portions of the implementation of the work to be performed required by this
5 Decree.

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

8 **VIII. PERFORMANCE**

9 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
10 the supervision and direction of a geologist licensed in the State of Washington or under the
11 direct supervision of an engineer registered in the State of Washington, except as otherwise
12 provided for by Chapters 18.220 and 18.43 RCW (in this section, “direct” shall not mean
13 personal presence at the Site).

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

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

21 Any documents submitted containing geologic, hydrologic, or engineering work shall
22 be under the seal of an appropriately licensed professional as required by Chapter 18.220
23 RCW or RCW 18.43.130.

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

4 IX. ACCESS

5 Ecology or any Ecology authorized representative shall have full authority to enter and
6 freely move about all property at the Site that GE either owns, controls, or has access rights to
7 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
8 contracts related to the work being performed pursuant to this Decree; reviewing GE's
9 progress in carrying out the terms of this Decree; conducting such tests or collecting such
10 samples as Ecology may deem necessary; using a camera, sound recording, or other
11 documentary type equipment to record work done pursuant to this Decree; and verifying the
12 data submitted to Ecology by GE. Ecology or any Ecology authorized representative shall
13 provide reasonable notice as provided under WAC 173-340-800 to GE and the property owner
14 or tenant whenever it seeks direct physical access to GE's remedial equipment when GE or
15 GE's representatives are not present, unless an emergency has been determined and prevents
16 such notice. GE shall make all reasonable efforts to secure access rights for those properties
17 within the Site not owned or controlled by GE where remedial activities or investigations will
18 be performed pursuant to this Decree; provided subject to the language above, that Ecology
19 may make unannounced visits with the permission of the owners or tenants of the Site. All
20 Parties who access the Site pursuant to this section shall comply with any applicable Health
21 and Safety Plan(s). Ecology employees and their representatives shall not be required to sign
22 any liability release or waiver as a condition of Site property access.

23 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

24 With respect to the implementation of this Decree, GE shall make the results of all
25 sampling, laboratory reports, and/or test results generated by it or on its behalf available to
26

1 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology
2 in both printed and electronic formats in accordance with Section XI (Progress Reports),
3 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
4 subsequent procedures specified by Ecology for data submittal.

5 If requested by Ecology, GE shall allow Ecology and/or its authorized representative
6 to take split or duplicate samples of any samples collected by GE pursuant to the
7 implementation of this Decree. GE shall notify Ecology seven (7) days in advance of any
8 sample collection or work activity at the Site. Ecology shall, upon request, allow GE and/or
9 its authorized representative to take split or duplicate samples of any samples collected by
10 Ecology pursuant to the implementation of this Decree, provided that doing so does not
11 interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX
12 (Access), Ecology shall notify GE prior to any sample collection activity unless an emergency
13 prevents such notice.

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

17 **XI. PROGRESS REPORTS**

18 A. GE shall submit to Ecology written Progress Reports that describe the actions
19 taken during the previous month(s) to implement the requirements of this Decree. The
20 Progress Reports shall include the following:

- 21 1. A list of on-site activities that have taken place since the last reporting period;
- 22 2. Detailed description of any deviations from required tasks not otherwise
23 documented in project plans or amendment requests;

1 implementation of this Decree and shall insert a similar record retention requirement into all
2 contracts with project contractors and subcontractors. Upon request of Ecology, GE shall
3 make all records available to Ecology and allow access for review within a reasonable time.

4 Nothing in this Decree is intended by GE to waive any right it may have under
5 applicable law to limit disclosure of documents protected by the attorney work-product and/or
6 attorney/client privilege. If GE withholds any requested records based on an assertion of
7 privilege, it shall provide Ecology with a privilege log specifying the records withheld and the
8 applicable privilege. No actual data collected on Site pursuant to this Decree shall be
9 considered privileged.

10 **XIII. TRANSFER OF INTEREST IN PROPERTY**

11 The following conditions apply to the extent GE holds or in the future comes to hold
12 any interest in all or any portion of the Site.

13 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
14 interest in any portion of the Site shall be consummated by GE without provision for
15 continued operation and maintenance of any containment system, treatment system, and/or
16 monitoring system installed or implemented pursuant to this Decree.

17 Prior to GE's transfer of any interest in all or any portion of the Site, and during the
18 effective period of this Decree, GE shall provide a copy of this Decree to any prospective
19 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty
20 (30) days prior to any transfer, GE shall notify Ecology of said transfer. Upon transfer of any
21 interest, GE shall restrict uses and activities to those consistent with this Consent Decree and
22 notify all transferees of the restrictions on the use of the property.

23 **XIV. RESOLUTION OF DISPUTES**

24 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
25 other decision or action by Ecology's project coordinator, or an itemized billing statement
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1 under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution
2 procedure set forth below.

3 1. Upon receipt of Ecology's project coordinator's written decision, or the
4 itemized billing statement, GE has fourteen (14) days within which to notify Ecology's
5 project coordinator in writing of its objection to the decision or itemized statement.

6 2. The Parties' project coordinators shall then confer in an effort to resolve
7 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)
8 days of Ecology's receipt of GE's written notice of objection, unless a longer period is
9 mutually agreed to by the Parties, Ecology's project coordinator shall issue a written
10 decision.

11 3. GE may then request regional management review of the decision.
12 This request shall be submitted in writing to the Hazardous Waste & Toxics Reduction
13 Program's Northwest Region Section Manager within seven (7) days of receipt of
14 Ecology's project coordinator's written decision.

15 4. Ecology's Hazardous Waste & Toxics Reduction Program's Northwest
16 Region Section Manager shall conduct a review of the dispute and shall endeavor to
17 issue a written decision regarding the dispute within thirty (30) days of GE's request
18 for review.

19 5. If GE finds Ecology's Hazardous Waste & Toxics Reduction Program's
20 Northwest Region Section Manager's decision unacceptable, GE may then request
21 final management review of the decision. This request shall be submitted in writing to
22 the Ecology Hazardous Waste & Toxics Reduction Program Manager within seven (7)
23 days of receipt of the Hazardous Waste & Toxics Reduction Program's Northwest
24 Region Section Manager's decision.

1 1. Circumstances beyond the reasonable control and despite the due
2 diligence of GE including delays caused by unrelated third parties or Ecology, such as
3 (but not limited to) delays by Ecology in reviewing, approving, or modifying
4 documents submitted by GE;

5 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
6 storm, or other unavoidable casualty; or

7 3. Endangerment as described in Section XVII (Endangerment).

8 However, neither increased costs of performance of the terms of this Decree nor
9 changed economic circumstances shall be considered circumstances beyond the reasonable
10 control of GE.

11 C. Ecology shall act upon any written request for extension in a timely fashion.
12 Ecology shall give GE written notification of any extensions granted pursuant to this Decree.
13 A requested extension shall not be effective until approved by Ecology or, if required, by the
14 Court. Ecology shall not unreasonably deny a request for extension of time. Unless the
15 extension is a substantial change, it shall not be necessary to amend this Decree pursuant to
16 Section XV (Amendment of Decree) when a schedule extension is granted.

17 D. An extension shall only be granted for such period of time as Ecology
18 determines is reasonable under the circumstances. Ecology may grant schedule extensions
19 exceeding ninety (90) days only as a result of:

20 1. Delays in the issuance of a necessary permit which was applied for in a
21 timely manner;

22 2. Other circumstances deemed exceptional or extraordinary by
23 Ecology; or

24 3. Endangerment as described in Section XVII (Endangerment).
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1 **XVII. ENDANGERMENT**

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

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

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

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

21 **XVIII. COVENANT NOT TO SUE**

22 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
23 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
24 actions against Defendant regarding the release or threatened release of hazardous substances
25 covered by this Decree.
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1 This Decree covers only the Site specifically identified in this Consent Decree and
2 those hazardous substances that Ecology knows are located at the Site as of the date of entry
3 of this Decree. This Decree does not cover any other hazardous substance or area. Ecology
4 retains all of its authority relative to any substance or area not covered by this Decree.

5 This Covenant Not to Sue shall have no applicability whatsoever to:

- 6 1. Criminal liability;
- 7 2. Liability for damages to natural resources; and
- 8 3. Any Ecology action, including cost recovery, against PLPs not a party
9 to this Decree.

10 If factors not known at the time of entry of the settlement agreement are discovered
11 and present a previously unknown threat to human health or the environment, the Court shall
12 amend this Covenant Not to Sue.

13 B. Reopeners: Ecology specifically reserves the right to institute legal or
14 administrative action against Defendant to require it to perform additional remedial actions at
15 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
16 following circumstances:

- 17 1. Upon Defendant's failure to meet the requirements of this Decree,
18 including, but not limited to, failure of the remedial action to meet the cleanup
19 standards identified in the CAP (Exhibit B);
- 20 2. Upon Ecology's determination that remedial action beyond the terms of
21 this Decree is necessary to abate an imminent and substantial endangerment to human
22 health or the environment;
- 23 3. Upon the availability of new information regarding factors previously
24 unknown to Ecology, including the nature or quantity of hazardous substances at the
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1 Site, and Ecology's determination, in light of this information, that further remedial
2 action is necessary at the Site to protect human health or the environment; or

3 4. Upon Ecology's determination that additional remedial actions beyond
4 those described in the CAP (which include the contingent remedy described in Section
5 7 of the CAP) are necessary to achieve cleanup standards within the reasonable
6 restoration time frame set forth in the CAP. For the purposes of this reopener, "the
7 reasonable restoration timeframe set forth in the CAP" anticipates the possibility, as
8 described in Section 7 of the CAP, that a contingent remedy may need to be
9 implemented in the event Modified Alternative 2, with optimized or not-optimized
10 hydraulic control, does not achieve the Site cleanup levels. "The reasonable
11 restoration timeframe set forth in the CAP" further includes any timeframes that may
12 be revised as necessary per WAC 173-340-360(4). An Ecology determination that it is
13 necessary to implement the contingent remedy procedures set forth in Section 7 of the
14 CAP will not trigger this reopener.

15 C. Except in the case of an emergency, prior to instituting legal or administrative
16 action against Defendant pursuant to this section, Ecology shall provide Defendant with
17 fifteen (15) calendar days notice of such action.

18 **XIX. CONTRIBUTION PROTECTION**

19 With regard to claims for contribution against GE, the Parties agree that GE is entitled
20 to protection against claims for contribution for matters addressed in this Decree as provided
21 by RCW 70.105D.040(4)(d). The "matters addressed" in this Consent Decree are all remedial
22 actions taken or to be taken and all remedial costs (including Ecology's oversight costs)
23 incurred or to be incurred by Ecology or any other person with respect to the Site.
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1 apply to this remedial action, and the words “remedial action” are hereby substituted for the
2 words “closure,” “post closure,” “post-closure,” or “postclosure” in the above listed
3 regulations as needed to produce this result.

4 D. Ecology’s Financial Assurance Officer will use the following resources as
5 guidance (in no particular order of importance):

6 1. The Standards Applicable to Owners and Operators of Hazardous
7 Waste Treatment, Storage, and Disposal Facilities, Financial Assurance for Corrective
8 Action Proposed Rule, 51 Fed. Reg. 37853 (Oct. 24, 1986);

9 2. The financial assurance provisions of Corrective Action for Releases
10 from Solid Waste Management Units at Hazardous Waste Management Facilities
11 Advance Notice of Proposed Rulemaking, 61 Fed. Reg. 19432 (May 1, 1996);

12 3. The Interim Guidance on Financial Responsibility for Facilities Subject
13 to RCRA Corrective Action (U.S. EPA, Sept. 30, 2003); and/or

14 4. Any other guidance applicable to financial assurance and corrective or
15 remedial action that may be available at the time.

16 The financial assurance provisions of the Corrective Action for Solid Waste Management
17 Units at Hazardous Waste Management Facilities, 55 Fed. Reg. 30798 (July 27, 1990), may be
18 used as secondary guidance at the discretion of Ecology. Unless otherwise specified herein,
19 where the language of this Decree conflicts with these rules, proposed rules, notices, and
20 guidance documents, the language of this Decree shall prevail.

21 E. Within thirty (30) days from the effective date of this Decree, GE shall submit
22 to Ecology for review and approval a written cost estimate to cover the activities listed in the
23 Scope of Work and Schedule (Exhibit C). If Ecology rejects GE’s cost estimate as submitted,
24 Ecology shall provide to GE a revised cost estimate amount that will be the approved cost
25 estimate. Ecology will, if requested by GE in writing, provide a written explanation of the
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1 variance between GE's proposed cost estimate and Ecology's approved cost estimate. Within
2 thirty (30) days after Ecology's final approval of GE's cost estimate amount or GE's receipt of
3 Ecology's approved cost estimate amount, GE shall establish and maintain continuous
4 coverage of financial assurance in the amount of the approved cost estimate and submit the
5 applicable financial assurance documentation per paragraph B of this section. If Ecology does
6 not accept, reject, or revise GE's cost estimate within sixty (60) days after submittal, GE's
7 cost estimate will be deemed approved for purposes of this paragraph. Ecology reserves the
8 right to review and revise GE's cost estimate after the 60-day review period. If Ecology
9 revises the GE's cost estimate after the 60-day review period, GE will have thirty (30) days
10 after the revision to provide an updated financial assurance instrument.

11 F. If GE is required to submit an additional work plan(s) under this Decree, or to
12 conduct activities related to remedial action not previously part of the original cost estimate,
13 the process outlined in paragraph E above shall apply in the submission process of an
14 additional work plan(s).

15 G. If GE believes that the estimated cost of work to complete activities under this
16 Decree has diminished below the amount covered by existing financial assurance provided
17 under this Decree, GE may submit a written proposal to Ecology to reduce the amount of the
18 financial assurance provided under this section so that the amount of the financial assurance is
19 equal to the estimated cost of the remaining work to be performed. The written proposal shall
20 specify, at a minimum, the cost the remaining work to be performed and the basis upon which
21 such cost was calculated. If Ecology decides to accept such a proposal, Ecology shall notify
22 GE of its decision in writing. After receiving Ecology's written decision, GE may reduce the
23 amount of financial assurance only in accordance with and to the extent permitted by such
24 written decision. Within thirty (30) days after receipt of Ecology's written decision, GE shall
25 submit the applicable financial assurance documentation per paragraph B of this section. No
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1 change to the form or terms of any financial assurance provided under this section, other than
2 a reduction in amount, is authorized under this paragraph.

3 H. All cost estimates must be based on the costs to the owner or operator of hiring
4 a third party to complete the work. A third party is neither a parent nor a subsidiary of GE.
5 On a case-by-case basis, Ecology may also determine that a company which shares a common
6 higher-tier corporate parent or subsidiary might not qualify as a third party. A cost estimate
7 may not incorporate any salvage value that may be realized with the sale of wastes, facility
8 structures or equipment, land, or other assets associated with the facility. GE may also not
9 incorporate a zero cost for wastes that might have economic value.

10 I. GE shall annually adjust all cost estimates for inflation. Adjustments for
11 inflation shall be calculated in accordance with the procedure outlined in 40 C.F.R.
12 § 264.143(b).

13 J. Acceptable financial assurance mechanisms are trust funds, surety bonds,
14 letters of credit, insurance, the financial test, and the corporate guarantee. Ecology may allow
15 other financial assurance mechanisms if they are consistent with the laws of Washington and
16 if GE demonstrates to the satisfaction of Ecology that those mechanisms provide adequate
17 financial assurance.

18 K. If GE is using the financial test or corporate guarantee to meet its financial
19 assurance obligation, the annual inflationary adjustment shall occur within ninety (90) days
20 after the close of GE's fiscal year. If GE is using any mechanism other than the financial test
21 or corporate guarantee, this adjustment shall occur each year within thirty (30) days after the
22 anniversary of the effective date of this Decree.

23 L. If GE seeks to establish financial assurance by using a surety bond for payment
24 or a letter of credit, GE shall at the same time establish and thereafter maintain a standby trust
25 fund acceptable to Ecology into which funds from the other financial assurance instrument can
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1 be deposited, if the financial assurance provider is directed to do so by Ecology, pursuant to
2 the terms of this Decree.

3 M. GE shall notify Ecology's project coordinator and Financial Assurance Officer
4 by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding,
5 naming GE as debtor, within ten (10) days after commencement of the proceeding. A
6 guarantor of a corporate guarantee must make such a notification if it is named as debtor as
7 required under the terms of the corporate guarantee.

8 N. Once GE has established financial assurance with an acceptable mechanism as
9 described above, GE will be deemed to be without the required financial assurance:

- 10 1. In the event of bankruptcy of the trustee or issuing institution; or
- 11 2. If the authority of the trustee institution to act as trustee has been
12 suspended or revoked; or
- 13 3. If the authority of the institution issuing the surety bond, letter or credit,
14 or insurance policy has been suspended or revoked.

15 In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the
16 trustee institution to act as a trustee, GE must establish a replacement financial assurance
17 mechanism by any means specified in WAC 173-303-620 or other financial instrument as
18 approved by Ecology within sixty (60) days after such an event.

19 O. Ecology's Financial Assurance Officer is:

20 Kimberly Goetz
21 Department of Ecology
22 Hazardous Waste and Toxics Reduction Program
23 P.O. Box 47600
24 Olympia, WA 98504-7600
25 Telephone: (360) 407-6754
26 Fax: (360) 407-6715
E-mail: kimberly.goetz@ecy.wa.gov

1 **XXII. INDEMNIFICATION**

2 Defendant agrees to indemnify and save and hold the State of Washington, its
3 employees, and agents harmless from any and all claims or causes of action for death or
4 injuries to persons or for loss or damage to property to the extent arising from or on account of
5 acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into
6 and implementing this Decree. However, Defendant shall not indemnify the State of
7 Washington nor save nor hold its employees and agents harmless from any claims or causes of
8 action to the extent arising out of the negligent acts or omissions of the State of Washington,
9 or the employees or agents of the State, in entering into or implementing this Decree.

10 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

11 A. All actions carried out by GE pursuant to this Decree shall be done in
12 accordance with all applicable federal, state, and local requirements, including requirements to
13 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
14 federal, state, or local requirements that Ecology has determined are applicable and that are
15 known at the time of entry of this Decree have been identified in Exhibit F.

16 B. Pursuant to RCW 70.105D.090(1), GE is exempt from the procedural
17 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48 RCW as it relates to state Waste
18 Discharge Permits, and Chapter 90.58 RCW and of any laws requiring or authorizing local
19 government permits or approvals. However, GE shall comply with the substantive
20 requirements of such permits or approvals. The exempt permits or approvals and the
21 applicable substantive requirements of those permits or approvals, as they are known at the
22 time of entry of this Decree, have been identified in Exhibit F.

23 GE has a continuing obligation to determine whether additional permits or approvals
24 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under
25 this Decree. In the event either Ecology or GE determines that additional permits or approvals
26 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under

1 this Decree, it shall promptly notify the other party of this determination. Ecology and GE
2 shall jointly determine whether Ecology or GE shall be responsible to contact the appropriate
3 state and/or local agencies. If Ecology so requires, GE shall promptly consult with the
4 appropriate state and/or local agencies and provide Ecology with written documentation from
5 those agencies of the substantive requirements those agencies believe are applicable to the
6 remedial action. Ecology shall make the final determination on the additional substantive
7 requirements that must be met by GE and on how GE must meet those requirements. Ecology
8 shall inform GE in writing of these requirements. Once established by Ecology, the additional
9 requirements shall be enforceable requirements of this Decree. GE shall not begin or continue
10 the remedial action potentially subject to the additional requirements until Ecology makes its
11 final determination.

12 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
13 exemption from complying with the procedural requirements of the laws referenced in
14 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
15 necessary for the State to administer any federal law, the exemption shall not apply and GE
16 shall comply with both the procedural and substantive requirements of the laws referenced in
17 RCW 70.105D.090(1), including any requirements to obtain permits.

18 **XXIV. REMEDIAL ACTION COSTS**

19 GE shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
20 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
21 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
22 and Decree preparation, negotiation, oversight, and administration. These costs shall include
23 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs
24 shall include costs of direct activities and support costs of direct activities as defined in
25 WAC 173-340-550(2). GE shall pay \$58,314.56 to Ecology for settlement of remedial action
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1 costs related to this Site as of June 30, 2011. Payment shall be submitted within thirty (30)
2 days of the effective date of this Decree, and any claim for the balance shall be released.
3 Ecology shall not attempt to collect costs for any additional time incurred prior to June 30,
4 2011. For all costs incurred subsequent to June 30, 2011, GE shall pay the required amount
5 within thirty (30) days of receiving from Ecology an itemized statement of costs that includes
6 a summary of costs incurred, an identification of involved staff, and the amount of time spent
7 by involved staff members on the project. A general statement of work performed will be
8 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to
9 WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the
10 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)
11 per annum, compounded monthly.

12 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
13 authority to recover unreimbursed remedial action costs by filing a lien against real property
14 subject to the remedial actions.

15 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

16 If Ecology determines that GE has failed without good cause to implement the
17 remedial action, in whole or in part, Ecology may, after thirty (30) days written notice to GE,
18 perform any or all portions of the remedial action that remain incomplete. If Ecology
19 performs all or portions of the remedial action because of GE's failure to comply with its
20 obligations under this Decree, GE shall reimburse Ecology for the costs of doing such work in
21 accordance with Section XXIV (Remedial Action Costs), provided that GE is not obligated
22 under this section to reimburse Ecology for costs incurred for work inconsistent with or
23 beyond the scope of this Decree. GE and Ecology agree to first meet and confer before
24 Ecology exercises its option under this section.
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1 Except where necessary to abate an emergency situation, GE shall not perform any
2 remedial actions at the Site outside those remedial actions required by this Decree, unless
3 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
4 (Amendment of Decree).

5 **XXVI. PERIODIC REVIEW**

6 As remedial action, including groundwater monitoring, continues at the Site, the
7 Parties agree to review the progress of remedial action at the Site, and to review the data
8 accumulated as a result of monitoring the Site as often as is necessary and appropriate under
9 the circumstances. At least every five (5) years after the initiation of cleanup action at the Site
10 the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
11 action at the Site. At least ninety (90) days prior to each periodic review, GE shall submit a
12 report to Ecology that documents whether human health and the environment are being
13 protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right
14 to require further remedial action at the Site under appropriate circumstances.

15 **XXVII. PUBLIC PARTICIPATION**

16 A Public Participation Plan (Exhibit E) is required for this Site. Ecology shall review
17 any existing Public Participation Plan to determine its continued appropriateness and whether
18 it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan
19 alone or in conjunction with GE.

20 Ecology shall maintain the responsibility for public participation at the Site. However,
21 GE shall cooperate with Ecology, and shall:

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

3 B. Notify Ecology's project coordinator prior to the preparation of all press
4 releases and fact sheets, and before major meetings with the interested public and local
5 governments, except as set forth below. Likewise, Ecology shall notify GE prior to the
6 issuance of all press releases and fact sheets, and before major meetings with the interested
7 public and local governments, except as set forth below. For all press releases, fact sheets,
8 meetings, and other outreach efforts by GE that do not receive prior Ecology approval, GE
9 shall clearly indicate to its audience that the press release, fact sheet, meeting, or other
10 outreach effort was not sponsored or endorsed by Ecology. This section does not apply to
11 communications by GE that are required or conducted pursuant to law(s) or regulations other
12 than MTCA or the MTCA Cleanup Regulation, Chapter 173-340 WAC, or communications
13 by GE with investors or insurance carriers.

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

17 D. When requested by Ecology, arrange and/or continue information repositories
18 at the following locations:

- 19 1. New Holly Library
20 7058 32nd Avenue S.
21 Seattle, WA 98118
- 22 2. Department of Ecology
23 Northwest Regional Office
24 3190 160th Avenue SE
25 Bellevue, WA 98008-5452
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1 At a minimum, copies of all public notices, fact sheets, and documents relating to public
2 comment periods shall be promptly placed in these repositories. A copy of all documents
3 related to this Site shall be maintained at these repositories.

4 **XXVIII. DURATION OF DECREE**

5 The remedial program required pursuant to this Decree shall be maintained and
6 continued until GE has received written notification from Ecology that the requirements of
7 this Decree have been satisfactorily completed. This Decree shall remain in effect until
8 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and
9 Section XIX (Contribution Protection) shall survive, in addition to any other sections that
10 explicitly extend beyond the duration of the decree. Periodic review is not a basis for
11 continuation of this Decree.

12 **XXIX. CLAIMS AGAINST THE STATE**

13 GE hereby agrees that it will not seek to recover any costs accrued in implementing the
14 remedial action required by this Decree from the State of Washington or any of its agencies;
15 and further, that GE will make no claim against the State Toxics Control Account or any local
16 Toxics Control Account for any costs incurred in implementing this Decree. Except as
17 provided above, however, GE expressly reserves its right to seek to recover any costs incurred
18 in implementing this Decree from any other PLP. This section does not limit or address
19 funding that may be provided under Chapter 173-322 WAC.

20 **XXX. EFFECTIVE DATE**

21 This Decree is effective upon the date it is entered by the Court.

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1 **XXXI. WITHDRAWAL OF CONSENT**

2 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
3 at the option of any party and the accompanying Complaint shall be dismissed without costs
4 and without prejudice. In such an event, no party shall be bound by the requirements of this
5 Decree.

6 STATE OF WASHINGTON
7 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

8 _____
9 Katherine B. Seiler
10 Program Manager
11 Hazardous Waste & Toxics Reduction Program
12 (360) 407-6702

Andrew A. Fitz, WSBA #22169
Senior Counsel
(360) 586-6752

11 Date: _____

Date: _____

13 GENERAL ELECTRIC CO.

K&L GATES LLP
Attorneys for Defendant

14 _____
15 Ann R. Klee
16 Vice President
17 Environmental Health and Safety

William H. Chapman, WSBA #14294
Partner
(206) 623-7580

18 Dated: _____

Date: _____

19
20 ENTERED this ____ day of _____ 20____.

21
22 _____
23 JUDGE
24 King County Superior Court
25
26