

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

**City of Bothell**  
At The Bothell Former Hertz Facility

Bothell Former Hertz Facility  
AGREED ORDER

No. DE 8375

TO:

Stephen L. Anderson  
Deputy City Manager  
City of Bothell  
18305 101st Avenue NE  
Bothell, WA 98011

**DRAFT**

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Bothell under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City of Bothell to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City of Bothell to conduct an a Remedial Investigation/Feasibility Study (RI/FS) and Draft Cleanup action Plan (DCAP) of the Bothell Former Hertz facility located at 18030 Bothell Way NE in Bothell, WA. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

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

## III. PARTIES BOUND

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

## IV. DEFINITIONS

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

A. Site: The Site is referred to as the Bothell Former Hertz site and is generally located at 18030 Bothell Way NE in Bothell, WA. The Site is listed by Ecology under Facility

Site ID No. 11687976, and is also known as the AA Rentals of Bothell facility. 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 the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

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

C. Potentially Liable Person (PLP): Refers to the City of Bothell, WA.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

#### V. FINDINGS OF FACT

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

A. The City of Bothell owns the property at located 18030 Bothell Way NE in Bothell, WA (King County Tax Parcel No. 945720005004. The City of Bothell acquired the property in 2009. King County Assessor Real Property Records

[http://www5.kingcounty.gov/kcgisreports/property\\_report.aspx?PIN=9457200050](http://www5.kingcounty.gov/kcgisreports/property_report.aspx?PIN=9457200050)

B. The City of Bothell performed a Phase II Environmental Site Assessment (ESA) at the Site in 2008 and reviewed data from previous cleanups and investigations. The Phase II ESA included soil and ground water sampling where three former USTs had been removed in 1993. Petroleum hydrocarbons were detected in soil and ground water exceeding MTCA Method A cleanup levels. Vinyl chloride, and volatile organic compound (VOC), and arsenic were detected at concentrations exceeding MTCA Method A cleanup levels in ground water samples. Other VOCs were detected in groundwater, including tetrachloroethene and trichloroethene, were also detected in groundwater but at concentrations below MTCA Method A cleanup levels. The VOCs and arsenic detections in groundwater appear to be from suspected upgradient sources.

F. This site is on Ecology's LUST and CSCSL databases under facility ID # 11687976.

G. The City of Bothell is undertaking the SR 522 Bothell Crossroads project that will realign SR 522 to the south of the current alignment, creating a new T- intersection with SR 527. The project, whose beginning construction phase began in summer 2010, passes thorough the Bothell Former Hertz site. Soils contaminated with chiefly oil range petroleum hydrocarbons are in the northern portion of the parcel where former underground storage tanks were located. Currently, the contaminants of concern in soil on the site are: motor oil, diesel and gasoline. In groundwater, known contaminants of concern include VOCs and petroleum hydrocarbons, halogenated volatile organic compounds (HVOCs), and arsenic. Portions of the site will be affected by the SR 522 realignment and redevelopment, making post-construction remediation more difficult to implement if not done before the construction season. Therefore, the City of Bothell conducted an independent remedial action and a limited remedial study during the summer of 2010 to coincide with the construction work.

H. The following reports document the release of hazardous substances at the site. The document, and other reports relating to the Site, are available at Ecology's Northwest Regional Office Central Records.

Phase I Environmental Site Assessment, Hertz Rentals Property, Bothell, Washington, HWA Project No. 2007-098-22, by HWA Geosciences, Inc., dated October 8, 2008.

Phase II Environmental Site Assessment, Hertz Rentals Property, Bothell, Washington, HWA Project No. 2007-098-241, by HWA Geosciences, Inc., dated October 10, 2008.

## VI. ECOLOGY DETERMINATIONS

A. The City of Bothell is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the PLP dated July 14, 2010, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated July 21, 2010, Bothell voluntarily waived its rights to notice and comment and accepted Ecology’s determination that Bothell is a PLP under RCW 70.105D.040.

D. 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 actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. Ecology, with input from the City of Bothell, will determine if interim actions are warranted, including those that reduce or eliminate sources of contamination or impacted media where they exist or are encountered at the site.

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

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLP 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:

A. A Statement of Work is attached hereto as Exhibit B for the completion of a Remedial Investigation/Feasibility Study (RI/FS), a Draft Cleanup Action Plan (DCAP), and

Interim Actions (if required). Exhibit B is incorporated by reference as an integral and enforceable part of the Order.

B. The work to be performed includes the planning, implementation, and reporting of all phased RI/FS investigations and other remedial actions conducted at the Bothell Former Hertz site.

1. The projected number of phases and scope of work for each phase shall be included in the RI/FS Work Plan in order to demonstrate that the scope and extent of RI/FS work will achieve the minimum requirements for remedial investigations and feasibility studies under MTCA.
2. Work schedules for any supplemental phased work under this Order shall be submitted to Ecology for approval at least 30 days before work starts.
3. The results from any phased RI/FS work may be used to identify data gaps that must be addressed for the completion of a final Remedial Investigation/Feasibility Study (RI/FS) of the site. Data collected during each of the phased RI/FS work may be used in the final RI/FS report upon Ecology approval.
4. The scope of work and any specific work plans for different phases of the RI/FS shall require Ecology approval before implementation.
5. If, during the implementation of the RI/FS work plan, deviations occur in the scope or extent of work based on site findings, proposals to limit or supplement any further RI/FS work shall be submitted in a timely manner to Ecology for approval.
6. The scope of work and any specific work plans for interim actions shall require Ecology approval before implementation.
7. If, during the implementation of the Interim Action Work Plan, deviations occur in the scope or extent of work based on site findings, proposals to limit or supplement any further interim action work shall be submitted in a timely manner to Ecology for approval.

C. Electronic data shall be entered into Ecology's Environmental Information Management (EIM) System.

D. 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.

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

##### **A. Public Notice**

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 this Order is inadequate or improper in any respect.

##### **B. Remedial Action Costs**

The PLP 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 this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLP shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly. Pursuant

to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

Ecology hereby incorporates into this Order the previous remedial actions described in Section V (Findings of Fact). Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the work performed complies with the substantive requirements of Chapter 173-340 WAC and is consistent with the remedial action required under this Order. The costs associated with Ecology's determinations on the past independent remedial actions described in Section V (Findings of Fact) are recoverable under this Order.

**C. Implementation of Remedial Action**

If Ecology determines that the PLP has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLP, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLP's failure to comply with its obligations under this Order, the PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B (Remedial Action Costs), provided that the PLP is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLP 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.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Jerome Cruz  
Department of Ecology  
3190 160th Avenue SE  
Bellevue, WA 98008-5452  
Phone: (425) 649-7094  
Email: [jcru461@ecy.wa.gov](mailto:jcru461@ecy.wa.gov)

The project coordinator for the PLP is:  
Nduta Mbuthia  
Project Engineer, Capital Projects  
City of Bothell, Public Works Department  
9654 NE 182nd Street  
Bothell, WA 98011  
Phone: (425) 806-6829  
Email: [Nduta.Mbuthia@ci.bothell.wa.us](mailto:Nduta.Mbuthia@ci.bothell.wa.us)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLP, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

**E. Performance**

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

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

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

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

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

**F. Access**

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that the PLP 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 PLP'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 PLP. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLP unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

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

With respect to the implementation of this Order, the PLP shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII. (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

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

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

#### **H. 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. If no plan exists, Ecology shall develop a public participation plan alone or in conjunction with the PLP.

Ecology shall maintain the responsibility for public participation at the Site, and the PLP shall cooperate with Ecology.

1. Ecology will develop appropriate mailing lists with input from the PLP, 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, interim actions and cleanup action plans. Ecology will edit, finalize and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings. The PLP will be provided an opportunity to review fact sheets and public notices prior to distribution.

2. The PLP shall notify Ecology's project coordinator prior to any of the following regarding the site: 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 PLP 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 PLP that do not receive prior Ecology approval, the PLP shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

- (a) King County Bothell Library  
18215 98th Ave. NE  
Bothell, WA 98011
  
- (b) Ecology's Northwest Regional Office  
3190 160<sup>th</sup> Avenue 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.

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

**J. Resolution of Disputes**

1. 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 Section VIII. B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

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

b. 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.

c. The PLP may then request regional 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 written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLP's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

**K. Extension of Schedule**

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

All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

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

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLP 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 PLP;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. M (Endangerment).

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

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLP written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is

a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII. L (Amendment of Order) when a schedule extension is granted.

4. 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:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII. M (Endangerment).

**L. Amendment of Order**

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

Except as provided in Section VIII. N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLP. The PLP 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 this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII. J (Resolution of Disputes).

**M. Endangerment**

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 PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP 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, the PLP may cease such activities. The PLP 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 PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. M (Endangerment), the PLP's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII. K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

**N. Reservation of Rights**

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 PLP 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 PLP regarding remedial actions required by this Order, provided the PLP complies with this Order.

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.

**O. Transfer of Interest in Property**

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

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

**P. Compliance with Applicable Laws**

1. All actions carried out by the PLP 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.

2. Pursuant to RCW 70.105D.090(1), the PLP is 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 PLP 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 Section.

The PLP has 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 PLP 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 PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP 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 PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 that is necessary for the State to administer any federal law, the exemption shall not apply and the PLP 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.

**Q. Indemnification**

The PLP 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 arising from or on account of acts or omissions of the PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP shall not indemnify the State of Washington nor save nor hold its

employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

#### **IX. SATISFACTION OF ORDER**

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

#### **X. ENFORCEMENT**

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

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

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

C. In the event the PLP refuses, without sufficient cause, to comply with any term of this Order, the PLP 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 twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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

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

**CITY OF BOTHELL, WA**



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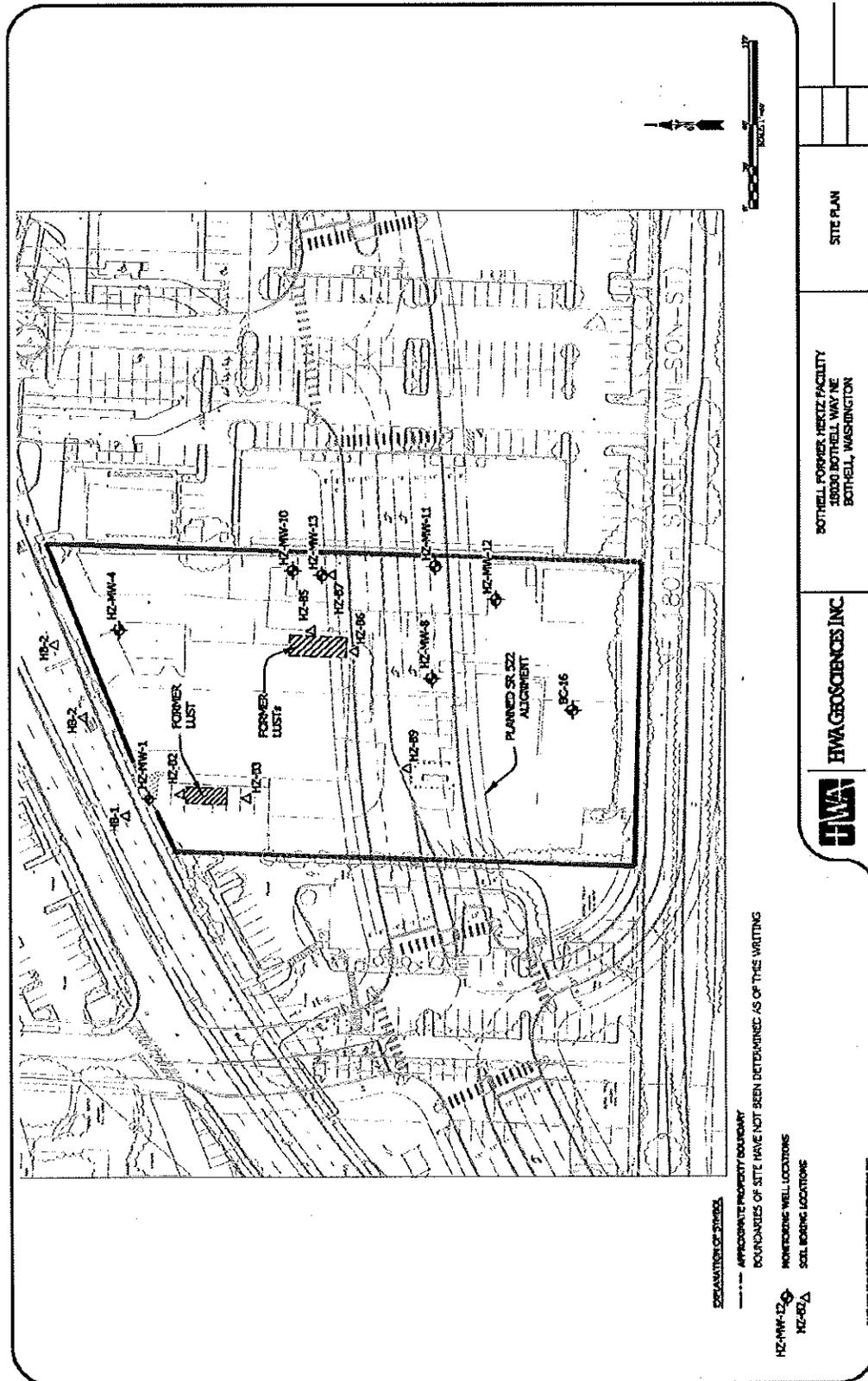
Stephen L. Anderson  
Deputy City Manager  
City of Bothell  
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Bothell, WA 98011  
(425) 486-3256

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

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Robert W. Warren, P.Hg., MBA  
Section Manager  
Toxics Cleanup Program  
Northwest Regional Office  
(425) 649-7054

EXHIBIT A: SITE DIAGRAM



## **EXHIBIT B: STATEMENT OF WORK**

The Potentially Liable Persons (PLPs) shall take the following remedial actions per the Schedule detailed in Exhibit C of this Agreed Order (Order) for conducting a remedial investigation and feasibility study (RI/FS) and preparing a draft cleanup action plan (DCAP). The PLPs will work cooperatively with Ecology to support public participation in the scoping and implementation of the work performed under this Agreed Order in accordance with Section VIII.H of the Agreed Order. All deliverables will adhere to Ecology Executive Policy 1-81 (Establishing Plain Talk at Ecology).

This Statement of Work will investigate contamination at the Bothell Former Hertz facility Site (Site) located at 18030 Bothell Way NE, Bothell, Washington. This Statement of Work is to be used by the potentially liable person (PLP) to develop Work Plans in order to complete a Remedial Investigation/Feasibility Study (RI/FS) at the Site within the scope of the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC).

The RI will determine the nature and extent of contamination at the Site. The FS will evaluate remedial alternatives that are applicable for the Site. The information and data gathered during the RI/FS will be used to identify if additional data need to be collected and determine an appropriate remedial action. The information and data gathered during the RI/FS will be used to identify additional data gaps and help determine an appropriate remedial action. The PLP will furnish all personnel, materials, and services necessary for, or incidental to, performing the Remedial Investigation and Feasibility Study at the Site.

The RI/FS Work Plan will include a Sampling and Analysis Plan, Quality Assurance Plan, and Health and Safety Plan. The RI/FS work must include the following tasks:

### **Task I: RI/FS Project Plan**

#### **A. RI/FS Work Plan**

A Work Plan is to be prepared outlining procedures for the Remedial Investigation and Feasibility Study (RI/FS). The Work Plan shall be based on the state of knowledge regarding known or suspected contamination at the site. A RI/FS Work

Plan will be prepared to compile and analyze past investigation results, reports, and remedial actions undertaken at the Bothell Former Hertz Site. The RI/FS Work Plan will also identify data gaps and specify a scope of work necessary to complete an RI/FS. The purpose of the RI/FS is to collect, develop, and evaluate sufficient preliminary information regarding the Bothell Former Hertz Site to ultimately select a cleanup action under Chapters 173-340-350 through 173-340-390 of the Washington Administrative Code. The RI/FS Work Plan shall include the following information:

1. Evaluation of existing data including but not limited to the planning for monitoring wells, soil borings, test pits, and additional data objectives.
2. Schedule and scope of work for the RI/FS study, including the number of investigations or phases, the locations or areas of investigation, the nature of the work and results expected, and information on how this will be brought together to complete the RI/FS and DCAP. As work progresses, if it is determined that additional supplemental work is needed, a technical memorandum including revised schedule for each phase shall be submitted to Ecology as an amendment to the RI/FS Work Plan. Each additional phase will be implemented only upon mutual agreement between Ecology and the PLP. See Exhibit C, Deliverable 1c for submission requirements.
3. Description of Tasks II and III RI/FS implementation, including:
  - a. Sampling and Analysis Plan (SAP)
  - b. Quality Assurance Project Plan (QAPP)
  - c. Health and Safety Plan including Protection Monitoring (HSP)
  - d. Public Participation Support
4. Project Management - Project team, roles, and responsibilities.
5. Deliverables and schedule for the RI/FS phased work and final RI/FS study.

The SAP, QAPP, and HSP will be written so as to be applicable and relevant to all the RI/FS work planned for the site including phased work, if applicable. Separate plans may be written for each phase if appropriate and with Ecology and PLP concurrence.

The RI/FS work plan shall not be implemented until approved by Ecology. Once approved by Ecology, the PLPs will implement the work plan according to the schedule contained in Exhibit C unless schedules contained or revised in the work plan are approved by Ecology, in which case the revised schedules shall govern. The PLPs shall prepare an adequate number of copies of the Draft RI/FS work plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After addressing Ecology's comments on the draft work plan and after Ecology approval, the PLPs shall prepare an adequate number of copies of the final work plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution.

#### B. Sampling and Analysis Plan

The PLP must prepare as part of the RI/FS Work Plan an initial Sampling and Analysis Plan (SAP) for use during all Site characterization studies. Additional investigative plans may be required by Ecology. All SAPs prepared for the Site must contain:

1. Field Investigations, Sampling, and Testing – The field sampling and testing component of the SAP will describe in detail the rationale for data collection, including sampling, testing, and data gathering methods, locations, frequency and other field study procedures that will be used for obtaining data required to complete the RI/FS. This component will include but not be limited to the following:
  - a. Proposed number and location of monitoring wells, soil borings, test pits and other investigative activities.

- b. Types of media to be sampled and the number of samples of each.
  - c. Sampling locations and designations, including access considerations.
  - d. Discussion of data objectives and linkage to conceptual site model.
  - e. Specific sampling methods, including number and type of Quality Assurance/Quality Control (QA/QC) samples.
  - f. Schedule and task assignments.
  - g. Supplies and equipment.
  - h. Monitoring well construction requirements.
  - i. Analytical procedures, methods, and detection limits.
  - j. Shipping and handling arrangements
2. Preliminary analysis and presentation of Applicable, Relevant and Appropriate Requirements (ARARs) in support of data quality objectives determination (e.g., analytical detection limits).

C. Quality Assurance Project Plan (QAPP)

The QAPP will include the following elements:

- a. Field QA/QC methods.
- b. Chain of custody procedures.
- c. Decontamination procedures.
- d. Laboratory analyses and QA/QC methods.
- e. Sample custody procedures, including holding times, containers, and preservation.

D. Health and Safety Plan

The Health and Safety plan will include the following elements:

- a. Level of protection.
- b. Hazard evaluation.
- c. Waste characteristics.
- d. Special considerations and emergency information.

A. Public Participation

Ecology will prepare a Public Participation Plan in accordance with WAC 173-340-600. The PLP will be provided an opportunity to provide feedback about the Plan and participate in the implementation. Ecology will provide public notice and comment opportunities for the results of the Remedial Investigation and Feasibility Study.

**Task II: Remedial Investigation**

The purpose of the Remedial Investigation (RI) is to obtain the information necessary to understand site conditions in relationship to known or suspected releases of contaminants. Specifically, new and existing information will be used to characterize the Site, identify known and potential contaminant sources, and establish the nature and extent of contamination present to support future work to complete a Remedial Investigation/Feasibility Study and select an appropriate remedial action. The RI data must meet the criteria set out in the QAPP and be of sufficient quality to support the ultimate development of an appropriate remedial action for the Site. The investigation will meet the requirements stated in WAC 173-340-350 and, more specifically, must include the following elements:

A. Site Characterization

Collect analytical data on groundwater and soils contamination in the vicinity of the Site. Considering information on historical operations and hydrogeology, the

data must be sufficient to delineate the type, depth, concentration and areal distribution of contaminants, along with information that addresses the rate and direction of contaminant movement.

1. Collect background information from previous environmental investigations, other Ecology information, and any other historical data.
2. Collect hydrogeological information, including investigation of the regional and Site-specific geologic and hydrogeologic characteristics affecting groundwater flow through the Site:
  - a. Evaluate and monitor all existing monitoring wells that comply with the requirements of 173-160 WAC.
  - b. Install new groundwater monitoring wells and soil borings where needed.
  - c. Characterize site-specific stratigraphy and lithology based on well logs, maps, and any other information available, including identification of major aquifer and aquitard units.
  - d. Estimate or measure hydraulic conductivity and porosity based on well logs, samples, aquifer tests, and other general information available.
  - e. Prepare maps showing water levels and regional/Site hydrogeology, and inferred direction of groundwater flow
  - f. Collect groundwater monitoring data (water levels, contaminant concentrations and related parameters) over time in order to evaluate seasonal fluctuations and long term behavior.

3. Soils

- a. Drill soil borings and/or excavate test pits, where needed. Collect and analyze surface and subsurface soil samples, as appropriate, to support characterization of vadose zone conditions and support contaminant fate and transport analyses.
- b. Characterize soil samples using the Unified Soil Classification System (USCS).
- c. Prepare boring logs for each boring.

B. Characterization of Contamination including Sources of Contamination, Impacted Media, and Plumes

1. Identify known or potential sources of contamination based on past facility practices, reported spills or releases. Evaluate possible facility areas where hazardous substance use, storage or release may have occurred using appropriate intrusive or non-intrusive methods of investigation.
2. Sampling locations will be selected to characterize the contamination including the nature and extent of soil and groundwater contamination and its transport and fate characteristics.
3. Analytical data collected must help describe the nature and extent of existing and potential sources of contamination including non-aqueous phase liquids in the site.
4. Exposure pathways and risk from contaminants of concern will be characterized and evaluated for the remedial investigation. Data will be collected in support of development of a site conceptual model and evaluation for cleanup.
5. Characterize soil and groundwater quality impacts, and groundwater plumes (including nature and extent) using data collected from the site.

### C. Potential Receptor Information

Collect data to permit the evaluation of appropriate human and ecological cleanup standards (WAC 173-340-700 through 760). This may include:

1. Public Use/Site Access – Potential uses of the affected properties, including zoning and land use. The presence or absence of controls on Site access.
2. Potential Groundwater/Surface Water Uses – Any consumptive, recreational, or other use of groundwater and surface water in the area, and used by which populations.
3. Potential air and soil-gas pathways – Any basements or other spaces that are below grade.
4. Environmental Receptors – Information on ecological environments at the site, including the presence of endangered or threatened species.

### **Task III: Feasibility Study**

The purpose of the Feasibility Study is to evaluate potential remedial technologies and approaches to enable selection of an appropriate remedial action for the Site. The selected remedy will be established by Ecology with the Draft Cleanup Action Plan (DCAP), to be developed following completion and approval of the final RI/FS Report. Ecology will provide an evaluation of preliminary cleanup standards for the Site, as appropriate, to guide cleanup alternatives development. The Feasibility Study must meet the requirements stated in WAC 173-340-350(8).

### **Task IV: Progress Reports**

The PLPs shall submit progress reports every three months or as appropriately scheduled with Ecology. Progress reports shall be submitted to Ecology until satisfaction of the AO in accordance with Section IX of the AO. 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.
- Summaries of sampling and testing reports and other data reports received by the PLPs
- 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 governments
- Summaries of deviations, 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
- A description of work planned for the next reporting period

**Task V: RI/FS Report**

The PLP will complete a report documenting the Remedial Investigation/Feasibility Study as required by WAC 173-340-350(7) and (8). This report will include the following elements:

1. Background Information
  - a. Site History.
  - b. Previous Studies.
2. Nature and Extent of Contamination

The PLP will prepare an assessment and description of the degree and extent of contamination. This should include:

- a. Data Analysis – Analyze all data collected during previous Tasks and prepare supporting maps and tables.

- b. Lab reports, previous investigations, well and boring logs, and any other documentation of characterization activities must be included.
    - c. Presentation of conceptual site model(s).
3. Applicable Relevant and Appropriate Requirements (ARARs) Analysis  

Identify Applicable State and Federal Laws for cleanup of the Site in accordance with WAC 173-340-710.
4. Cleanup Levels/Risk Assessment Analysis  

Perform a baseline Model Toxics Cleanup Act (MTCA) cleanup levels analysis/baseline risk assessment characterizing the current and potential threats to public health and the environment that may be posed by hazardous substances at the facility. The assessment will integrate cleanup standards and risk assessment as required by WAC 173-340-357 and WAC 173-340-708.
5. Discussion and Recommendations
  - a. Interpret and discuss data to determine the nature and extent of the contamination and to support final recommendations for the Site.
  - b. A summary of all possible and suspected source areas of contamination based on the data collected will be included.
  - c. Any known or potential risks to the public health, welfare, and the environment should be discussed.
  - d. Recommendations should be provided identifying additional data requirements in support of a Remedial Investigation/Feasibility Study (RI/FS).

- e. Develop a site conceptual model based on results of the remedial investigation.

The PLPs shall prepare an adequate number of copies of the draft RI/FS report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After addressing Ecology's comments on the draft RI/FS report and after Ecology approval, the PLPs shall prepare an adequate number of copies of the final RI/FS report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

**Task VI: Draft Cleanup Action Plan**

The PLPs will submit a draft Cleanup Action Plan (DCAP) for Ecology's review and approval. The DCAP will include, but not be limited to, the information listed under WAC 173-340-380. After receiving Ecology's comments on the DCAP, if any, the PLPs shall revise the report to address Ecology's comments and, resubmit the report.

**Task VII: Interim Actions (if required)**

A. Interim Action Work Plans

The PLPs will submit a draft and final Interim Action Work Plan for Ecology's review and approval. The draft Interim Action Work Plan will also include the design and implementation of interim actions to facilitate protection of human health and the environment. The scope of the interim action may include excavation and off site disposal, confirmational sampling, backfill with clean material, and groundwater monitoring in major areas of contamination at the site as identified in remedial investigative work. The Interim Action Work Plans shall include, as appropriate, submittal requirements in accordance with WAC 173-340-430(7).

The interim action shall be designed in a manner that will not foreclose reasonable alternatives for the final cleanup action in accordance with WAC 173-340-430(3)(b).

**B. Implement Approved Interim Action**

Implement approved interim action(s) after Ecology review and approval and public review and comment necessary under WAC 173-340-600(16) and the State Environmental Policy Act.

The PLP shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), the PLP shall be responsible for the preparation of Draft and Final environmental impact statements. The PLP shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

**C. Interim Action Report**

An Interim Action Report shall be prepared as a separate deliverable that includes the information listed in WAC 173-340-430(7). A draft and final Interim Action Report shall be submitted for Ecology review and approval.

**EXHIBIT C: SCHEDULE OF DELIVERABLES**

***Deliverable 1. Remedial Investigation Work Plan(s)*** [Including detailed schedule and scope of work for phased remedial investigations, sampling and analysis plan, quality assurance project plan, and health and safety plan]. Additional investigative plans may be required by Ecology for each proposed phase of the remedial investigation.

- |   |   |
|---|---|
| 1a. Draft to Ecology                              | 30 days after Effective Date of Agreed Order.   |
| 1b. Final to Ecology                              | 30 days after receipt of Ecology approval of Draft.   |
| 1c. Memorandum proposing Supplemental Phased Work | Memo (including timetable) to be submitted to Ecology for approval at least 30 days before work projected to begin. |

***Deliverable 2. Remedial Investigation/Feasibility Study***

To be implemented according to Final RI/FS Work Plan schedule upon Ecology approval.

***Deliverable 3. Progress Reports***

To be submitted every three months or as agreed upon with Ecology.

***Deliverable 4. Remedial Investigation/Feasibility Study Report***

- |                      |   |
|----------------------|---|
| 5a. Draft to Ecology | 60 days after completing RI/FS.                     |
| 5b. Final to Ecology | 30 days after receipt of Ecology approval of Draft. |

***Deliverable 5. Draft Cleanup Action Plan***

- |                            |   |
|----------------------------|---|
| 5a. Draft to Ecology       | 30 days after Ecology approval of final RI/FS Study Report. |
| 5b. Final Draft to Ecology | 30 days after receipt of Ecology approval of Draft.         |

***Deliverable 6. Interim Actions (if required)***

- |                                    |   |
|------------------------------------|---|
| 6a. Draft Interim Action Work Plan | To be submitted for Ecology review and approval. Includes cover letter with description of proposed interim action, objectives, and schedule. |
| 6b. Public Comment Period          | 30 days at a minimum, unless stated otherwise in public notice.   |
| 6c. Final Interim Action Work Plan | 30 days after receipt of Ecology approval of Draft  |
| 6d. Draft Interim Action Report    | 60 days after completion of interim action.   |
| 6e. Final Interim Action Report    | 30 days after receipt of Ecology approval of Draft Interim Action Report.   |