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AUDITOR, Pierce County, WASHINGTON

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NOV 10 2014

WA State Department
of Ecology (SWRO)

After Recording Return
Original Signed Covenant to:
Marv Coleman
Toxics Cleanup Program
Department of Ecology
P.O. Box 47775
Olympia, WA 98504

AUDITOR'S NOTE

LEGIBILITY FOR RECORDING AND COPYING UN-
SATISFACTORY IN A PORTION OF THIS INSTRU-
MENT WHEN RECEIVED

Environmental Covenant

Grantor: Foss Waterway Development Authority

Grantee: State of Washington, Department of Ecology

Brief Legal Description: Southwest ¼ of the southwest ¼ of Section 4, Township 20 north, Range 3 east and at latitude north 47° 14' 37" and longitude west 122° 25' 51"

Tax Parcel Nos.: 8950001761

Cross Reference: Prospective Purchaser Consent Decree No. 03 2 14513 6

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as American Plating, FSID No. 1202. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Cadmium, Lead, Nickel, Chromium, Cyanide, Vinyl Chloride
Groundwater	Nickel, Cyanide, Vinyl Chloride
Surface Water/Sediment	N/A

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology. This includes, but is not limited to, the following documents: *Final Cleanup Action Plan*, GeoEngineers, Inc., November 24, 2003, *Draft Engineering Design Report*, GeoEngineers, Inc., December 22, 2011, *American*

Plating Site Remedial Action Construction Report, GeoEngineers, Inc., May 14, 2013, and a series of groundwater monitoring reports prepared by Ecology's Environmental Assessment Program (EAP).

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 USC Chapter 103.

COVENANT

Foss Waterway Development Authority, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. **Land use.** The remedial action for the Property is based on a cleanup designed for a public park. As such, the Property shall be used in perpetuity only for a public park. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, grazing of animals, and growing of food crops.

b. **Containment of soil/waste materials.** The remedial action for the Property is based on containing contaminated soil under a cap consisting of a minimum of three feet of clean soil in areas that are vegetated or gravel or sixteen inches of base course and 3 inches minimum of asphalt in areas that are paved, and located as illustrated in Exhibit B. The primary purpose of this cap is to minimize the potential for contact with contaminated soil and prevent storm water and runoff from coming in contact with contaminated soil. As such, the following restrictions shall apply within the area illustrated in Exhibit B: Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

c. **Stormwater facilities.** To minimize the potential for mobilization of contaminants remaining in the soil and groundwater on the Property, no storm water infiltration facilities or ponds shall be constructed on the Property. All storm water catch basins, conveyance systems, and other appurtenances located on the Property shall be of water-tight construction.

d. **Groundwater use.** The groundwater beneath the property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

e. **Monitoring.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

f. **Other.** As part of the CERCLA cleanup of Thea Foss Waterway, the City of Tacoma did habitat restoration and riparian improvement along the banks of the Property. The existing riparian area shall be preserved as it currently exists. Any activity that has a potential to alter the existing riparian area shall be reported to and approved by Ecology at least thirty (30) days prior to commencement of any such activity. Routine maintenance of the existing riparian area does not require Ecology notification.

Section 3. Access.

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the property illustrated in Exhibit B, including but not limited to title, easement, leases, and security or other interests, must:

- i. Notify Ecology at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON (DATE)_____AND RECORDED WITH THE PIERCE COUNTY AUDITOR UNDER RECORDING NUMBER (Recording No.)_____. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.
- c. **Emergencies.** For any emergency or significant change in Property conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.
- d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Su Dowie, Director Foss Waterway Development Authority	Environmental Covenants Coordinator Washington State Department of Ecology
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535 E. Dock Street, Suite 204 Tacoma, WA 98402 (253) 597-8122	Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 —7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Section 5. Modification or Termination.

- a. If the conditions at the Property requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.
- b. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants the Authority holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 8th day of October, 2014.

FOSS WATERWAY
DEVELOPMENT AUTHORITY

Signature: 
Executive Director, FWDA

Dated: 10.08.14

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Signature: 
Program Manager, Toxics Cleanup Program

Dated: 10/21/14

GRANTOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20____, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

GRANTOR AUTHORITY ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF Pierce

On this 8th day of October, 2014, I certify that _____ Susan Dowie personally appeared before me, acknowledged that **he/she** is the Executive Director of the Authority that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said Authority.

Linnea L. Meredith
Notary Public in and for the State of

Washington, residing at Pierce.

My appointment expires 6/29/15.



Exhibit A

LEGAL DESCRIPTION

SECTION 04 TOWNSHIP 20 RANGE 03 QUARTER 43 TACOMA TIDELANDS: TACOMA
TIDELANDS SE 04 & NE 09 20-03E L 3 THRU 12 B 55 EXC THAT POR CYD TO CY OF
TACOMA FOR R/W PER ETN 4074656 OUT OF 176-0, 177-0 & 178-0 SEG I0656CL
04/16/97 DC05/26/06LW.



Exhibit B
PROPERTY MAP



Overview of Remaining Remedial Actions

Engineering Design Report
American Plating Site Remediation Project
Tacoma, Washington

GEOENGINEERS

Figure 3

Legend

- Existing Monitoring Well Number and Approximate Location To be Decommissioned During Remedial Action
- ⊗ New Monitoring Well Number and Approximate Location To be Installed After Remedial Action

Remedial Excavation Areas

Utility Corridor Areas

American Plating Site Boundary and Area of Site Capping

Ordinary High Water Line

Scale: 0 50 Feet

North Arrow

Data Source: Aerial image from Aerial Express, Seattle, 2009.
Site locations provided by American Plating, Inc. and GeoEngineers, Inc.
Projection: NAD 1983 StatePlane Washington South FIPS 4602 Feet

Notes:
1. Locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. cannot guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.

AUDITOR'S NOTE

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Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

LEGEND

REMEDIAL EXCAVATION CONFIRMATION
SOIL SAMPLE LOCATION

MONITORING WELL

BOUNDARY LINE

LIMITS OF REMEDIAL
EXCAVATION AREA (REA)

LIMITS OF UTILITY CORRIDOR
EXCAVATION AREA (UCA)

REMEDIAL EXCAVATION AREA 1

UTILITY CORRIDOR EXCAVATION AREA 1

BUILDING LINE

STREET CENTERLINE

EDGE OF PAVEMENT

EDGE OF GRAVEL

FLOW LINE

TOP BACK OF CURB LINE

EDGE OF CONCRETE

LIMITS OF CONSTRUCTION

GROUND BREAK LINE

FENCE LINE

CULVERT LINE

INDEX CONTOUR (5 FOOT INTERVAL)

CONTOUR (1 FOOT INTERVAL)

STORM MANHOLE

UTILITY POLE

SIGN

STORM CATCH BASIN



Notes:

- The locations of all features shown are approximate.
- This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document.

GeoEngineers, Inc. cannot guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.

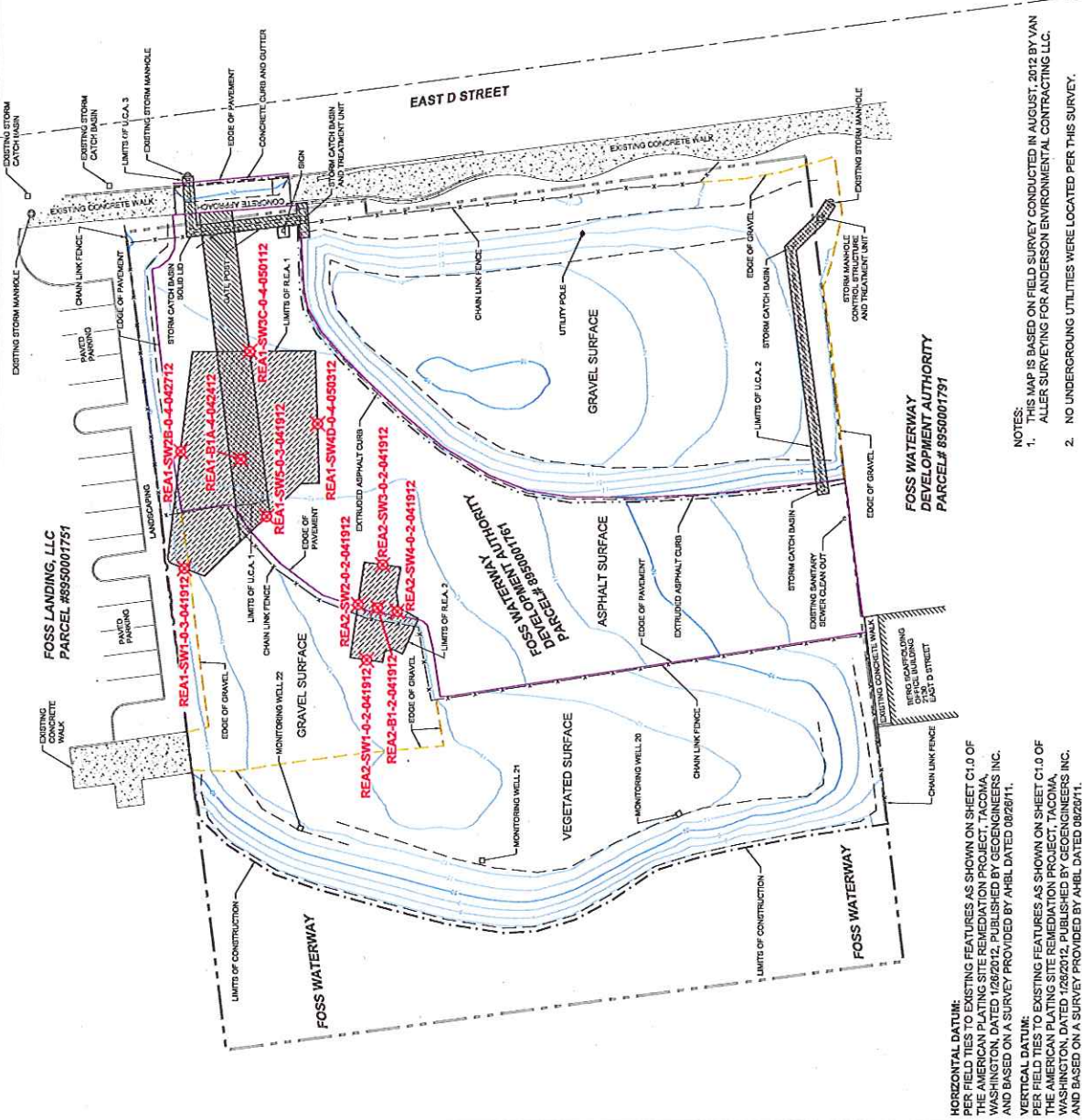
Reference: Base CAD drawing provided by Van Aller Surveying, dated 03-25-2013.

Completed Remedial Actions

Remedial Action Construction Report
American Plating Site Remediation Project
Tacoma, Washington

GEOENGINEERS

Figure 2



Notes:

- THIS MAP IS BASED ON FIELD SURVEY CONDUCTED IN AUGUST, 2012 BY VAN ALLER SURVEYING FOR ANDERSON ENVIRONMENTAL CONTRACTING LLC.
- NO UNDERGROUND UTILITIES WERE LOCATED PER THIS SURVEY.

HORIZONTAL DATUM:
PER FIELD TIES TO EXISTING FEATURES AS SHOWN ON SHEET C1.0 OF THE AMERICAN PLATING SITE REMEDIATION PROJECT, TACOMA, WASHINGTON, DATED 12/26/2012, PUBLISHED BY GEOENGINEERS INC. AND BASED ON A SURVEY PROVIDED BY AHEL DATED 08/26/11.

VERTICAL DATUM:
PER FIELD TIES TO EXISTING FEATURES AS SHOWN ON SHEET C1.0 OF THE AMERICAN PLATING SITE REMEDIATION PROJECT, TACOMA, WASHINGTON, DATED 12/26/2012, PUBLISHED BY GEOENGINEERS INC. AND BASED ON A SURVEY PROVIDED BY AHEL DATED 08/26/11.

