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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON	)	
DEPARTMENT OF ECOLOGY,	)	No.
	)	
v.	)	CONSENT DECREE
	)	
KING COUNTY DEPARTMENT OF	)	
METROPOLITAN SERVICES,	)	
	)	

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**EXHIBITS**

- |    |           |                                    |
|----|-----------|------------------------------------|
| 23 | Exhibit A | Site Diagram and Legal Description |
| 24 | Exhibit B | Cleanup Action Plan                |
| 25 | Exhibit C | Scope of Work                      |

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Exhibit D            Interagency Agreement Between the State of  
                         Washington, Department of Ecology and the  
                         Municipality of Metropolitan dated January 28,  
                         1993  
Exhibit E            Sample Notice of Completion  
Exhibit F            Sample Restrictive Covenant

1 D. By entering into this Decree, the Parties do not intend  
2 to discharge non-settling parties from any liability they may  
3 have with respect to matters alleged in the Complaint. The  
4 Parties retain the right to seek reimbursement, in whole or in  
5 part, from any liable persons for sums expended under this  
6 Decree.

7 E. This Decree shall not be construed as proof of  
8 liability or responsibility for any releases of hazardous  
9 substances or cost for remedial action nor an admission of any  
10 facts.

11 F. The Court is fully advised of the reasons for entry of  
12 this Decree and good cause having been shown: IT IS HEREBY  
13 ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

## 14 II. JURISDICTION

15 A. This Court has jurisdiction over the subject matter and  
16 over the Parties pursuant to Chapter 70.105D RCW, the Model  
17 Toxics Control Act (MTCA). Venue is properly laid in King  
18 County, the location of the property at issue.

19 B. Authority is conferred upon the Washington State  
20 Attorney General by RCW 70.105D.040(4)(a) to agree to a  
21 settlement with any potentially liable person if, after public  
22 notice and hearing, Ecology finds the proposed settlement would  
23 lead to a more expeditious cleanup of hazardous substances in  
24 compliance with cleanup standards under RCW 70.105D.030(2)(d).  
25 RCW 70.105D.040(4)(b) requires that such a settlement be entered



1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the  
3 mutual objective of the Washington State Department of Ecology  
4 (Ecology) and the Department of Metropolitan Services, King  
5 County (Metro or Defendant) is to provide for remedial action at  
6 a facility where there has been a release of hazardous substances  
7 located at Eighth Avenue South and South Dearborn Street,  
8 Seattle, Washington (Site). This Decree requires Metro to  
9 undertake remedial actions which will remove the majority of the  
10 contamination from the site. Ecology has determined that  
11 implementation of the remedial action is necessary to protect  
12 public health and the environment.

13 B. The Complaint in this action is being filed  
14 simultaneously with this Decree. An answer has not been filed,  
15 and there has not been a trial on any issue of fact or law in  
16 this case. Ecology and Metro (the Parties), however, wish to  
17 resolve the issues raised by Ecology's Complaint. In addition,  
18 the Parties agree that settlement of these matters without  
19 litigation is reasonable and in the public interest and that  
20 entry of this Decree is the most appropriate means of resolving  
21 these matters.

22 C. In signing this Decree, the Defendant agrees to its  
23 entry, agrees to be bound by its terms, and agrees not to  
24 challenge Ecology's jurisdiction in any proceeding to enforce  
25 this Decree.

1 as a consent decree issued by a court of competent jurisdiction,  
2 after public notice and hearing.

3 C. Ecology has determined that a release of hazardous  
4 substances has occurred at the Site, as defined in Section IV,  
5 which is the subject of this Decree.

6 D. Solely for the purpose of entering into this Consent  
7 Decree, Defendant has voluntarily waived its right to notice and  
8 comment under RCW 70.105D.020(8) and accepted Ecology's  
9 determination that Defendant is a potentially liable person (PLP)  
10 at the Site within the meaning of RCW 70.105D.020(8). Acceptance  
11 by Defendant of status as a potentially liable person with  
12 respect to this Site is not to be construed as an admission of  
13 liability or waiver of any defense that Defendant may have to any  
14 claims other than those resolved by this Consent Decree.

15 E. The actions to be taken pursuant to this Decree are  
16 necessary to protect public health, welfare, and the environment.

17 F. Defendant has agreed to undertake the actions specified  
18 in this Decree and consents to the entry of this Decree under the  
19 MTCA.

### 20 III. PARTIES BOUND

21 A. This Decree shall apply to and be binding upon  
22 signatories to this Decree, their successors and assigns. The  
23 undersigned representative of each Party hereby certifies that he  
24 or she is fully authorized to enter into this Decree and to  
25 execute and legally bind such Party to comply with the Decree.

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Seattle

DAVIS WRIGHT TREMAINE  
LAW OFFICES  
2600 CENTURY SQUARE • 1501 FOURTH AVENUE  
SEATTLE, WASHINGTON 98101-1688  
(206) 622-2150 • FAX: (206) 628-7033

1 Defendant agrees to undertake all actions required by the terms  
2 and conditions of this Decree and not to contest state  
3 jurisdiction regarding this Decree. No change in ownership of  
4 the Site or in the municipal status of Metro shall alter  
5 Defendant's or its successor's responsibility under this Decree.  
6 The Parties acknowledge that, by virtue of public vote and  
7 Chapter 36.94 RCW, Defendant Metro was merged into King County as  
8 of January 1, 1994.

9 B. Metro shall make a copy of this Decree available to all  
10 contractors and subcontractors retained to perform work required  
11 by this Decree and shall condition any contract for such work on  
12 compliance with this Decree.

#### 13 IV. DEFINITIONS

14 Except as specified herein, all definitions in Ch. 70.105D  
15 RCW and Ch. 173-340-200 WAC shall control the meaning of the  
16 terms in this Decree.

17 A. Consent Decree or Decree: Refers to this Consent  
18 Decree and each of the exhibits to the Decree. All exhibits are  
19 integral and enforceable parts of this Consent Decree.

20 B. Days: Refers to calendar days, unless specified  
21 otherwise.

22 C. Defendant: Refers to the King County Department of  
23 Metropolitan Services (Metro).

24 D. Interagency Agreement: Refers to the Interagency  
25 Agreement Between the State of Washington, Department of Ecology

1 and the Municipality of Metropolitan Seattle entered into on  
2 January 28, 1993, and attached to this Decree as Exhibit D.

3 E. Notice of Completion: Refers to written notice by the  
4 Washington State Department of Ecology to the Defendant that the  
5 work designated as the cleanup action under this Consent Decree  
6 is considered complete, the illustrative form of which is  
7 attached as Exhibit E.

8 F. Parties: Refers to the Washington State Department of  
9 Ecology and the Defendant.

10 G. Site: Refers to property located on the northeast and  
11 northwest quadrants of the intersection of Eighth Avenue South  
12 and South Dearborn Street, Seattle, in King County, Washington.  
13 The Site is more particularly described, without prejudice, in  
14 Exhibit A to this Decree.

15 **V. STATEMENT OF FACTS**

16 A. Ecology makes the following findings of fact without  
17 any express or implied admissions by Defendant and without  
18 prejudice to Defendant's right to deny or otherwise challenge  
19 these findings of fact.

20 1. The Site is a former Metro storage and service  
21 facility. It is located adjacent to and north of the  
22 intersection of Eighth Avenue South and South Dearborn Street in  
23 Seattle. The Site consists of two parcels, one on the east and  
24 one on the west of Eighth Avenue South.

1           2.    The East parcel of the Site is approximately one  
2 acre in size.  Approximately one-half of the East parcel is  
3 covered with an abandoned concrete block and wooden building  
4 estimated to be 40 years old, most recently used as a warehouse.  
5 According to available records, the East parcel was used for  
6 vehicle maintenance, fueling and parking from 1947 until the  
7 December, 1990.

8           3.    The West parcel of the Site is approximately 0.6  
9 acres in area and is currently a paved parking lot.  According to  
10 available records, the West parcel has been used since at least  
11 1936 for residences, a hotel, a restaurant and a winery.  The  
12 West parcel is paved and has been used for parking since 1974.

13           4.    Metro acquired the Site in February, 1974.  In  
14 1964, the eastern portion of the East parcel had been truncated  
15 and part of the building demolished associated with the  
16 construction of Interstate Five.

17           5.    In December, 1990, five underground storage tanks  
18 were decommissioned and removed from the East parcel of the Site.  
19 Soil sample results indicated the presence of gasoline, kerosene  
20 and possibly diesel fuel in the soils beneath the former location  
21 of the tanks.  At the time of removal, one of the tanks contained  
22 fresh motor oil, two contained unleaded gasoline and two  
23 contained diesel fuel.

24           6.    An environmental assessment of soils around the  
25 locations of the five former underground storage tanks (UST) was

1 conducted in January 1991 and identified soil contamination at  
2 three of the cavities. The contaminants reported were  
3 constituents of gasoline, kerosene and possibly diesel fuel. In  
4 September 1991, a site investigation (Phase 1) was conducted in  
5 soils and ground water around the UST areas. Results confirmed  
6 soil and ground water contamination on the East parcel and  
7 identified new areas of soil contamination beneath the building  
8 (Enviros, November 1991). Investigation was expanded (Phase 2)  
9 to characterize the site hydrogeologic conditions and determine  
10 the presence and extent of hydrocarbon concentrations (Enviros,  
11 October 1993).

12 7. The studies identified five generally defined  
13 contamination units mostly located on the east parcel of the  
14 site. The units were defined by four soil location areas with  
15 the fifth unit being ground water. Shallow soil contamination--  
16 Units A and B--was identified in both the east and west parcels.  
17 Deeper soil contamination--Units C and D--was identified in the  
18 east parcel. Ground water contamination--Unit E--was identified  
19 underlying a portion of the east parcel. No known off-site  
20 contamination has been identified to date.

21 8. The four contaminated soil units are distinguished  
22 by location, depth and the nature of contamination. Unit A was  
23 defined to consist of very shallow or surface soils sporadically  
24 contaminated with oils. Unit B was defined as the clay silty  
25 soil located from the ground surface to a depth of 15 feet below

1 ground surface and is contaminated with petroleum hydrocarbons  
2 including oil, diesel and gasoline. Unit C was defined as a deep  
3 soil, clay substance and is located from approximately 15 feet  
4 below ground surface to above the ground water and is  
5 contaminated with diesel and gasoline constituents. Unit D is  
6 deep sandy soil, and is generally located below Unit C and  
7 generally at depths greater than 15 feet below the surface.  
8 Unit D shows contamination due to gasoline constituents. Lastly,  
9 the fifth unit is ground water and shows evidence of petroleum  
0 hydrocarbon contamination primarily oil and gasoline, with semi-  
11 volatile and volatile organic compounds in some locations.

12 9. The investigations described herein were conducted  
13 as independent remedial actions, all of which have been provided  
14 to Ecology.

15 B. Based on these facts, Ecology has determined that a  
16 release of hazardous substances at the Site requires remedial  
17 action to protect public health and the environment. This Decree  
18 sets forth remedial measures necessary to protect public health  
19 and the environment and to clean up the Site in compliance with  
20 the cleanup standards under Ch. 70.105D RCW.

#### 21 VI. WORK TO BE PERFORMED

22 This Decree contains a program designed to protect public  
23 health, welfare and the environment from the known or threatened  
24 release of hazardous substances at, on, or from the Site.  
25

1 required. If Ecology determines that a practicable benefit can  
2 be achieved from an additional period of operation, then Ecology  
3 will provide a written finding and the vapor extraction and  
4 sparging will be run for such an additional time period, not to  
5 exceed six months.

6 5. Any residual contamination will be monitored as  
7 set forth in a Compliance Monitoring Plan to be prepared pursuant  
8 to the Cleanup Action Plan.

9 C. All work conducted under this Decree shall be done in  
10 accordance with Ch. 70.105D RCW and Ch. 173-340 WAC unless  
11 otherwise provided herein.

12 D. Ecology will review and approve or comment upon all  
13 documents in a timely fashion and will endeavor to provide  
14 written responses within the times set forth in the Scope of  
15 Work.

16 E. The Cleanup Action Plan assumes that groundwater in the  
17 shallow aquifer will not be utilized or consumed. A restrictive  
18 covenant in a form substantially equivalent to Exhibit F, will be  
19 recorded with deed of title upon receipt of the Notice of  
20 Completion. Metro will provide Ecology with a copy of the filed  
21 covenant. If the shallow aquifer returns to Method A cleanup  
22 levels, the restrictive covenant shall not be required and can be  
23 removed from the deed of title with Ecology's approval.



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**VII. GRANT FUNDING**

Pursuant to RCW 70.105D.070(3)(a) and Ch. 173-322 WAC,  
Ecology has made the following determinations:

A. Metro is a local government required, pursuant to this  
Consent Decree, to undertake remedial action at the Site;

B. Metro is prepared to proceed promptly to accomplish the  
remediation set forth in Exhibit B and Exhibit C, and expenses  
incurred in implementing the Section VI Work to Be Performed,  
hereunder are eligible for a local government grant; and

C. Implementation of this Consent Decree will lead to a  
more expeditious cleanup of hazardous substances at the Site in  
compliance with the cleanup standards of RCW 70.105D.030(2)(d).

**VIII. DESIGNATED PROJECT COORDINATORS**

The project coordinator for Ecology is:

Maura S. O'Brien  
Department of Ecology  
Northwest Regional Office  
3190 160th Avenue S.E.  
Bellevue, WA 98008-5452  
Phone: (206) 649-7249

The project coordinator for Metro is:

Judy A. Riley  
King County Division of Metropolitan Services  
821 Second Avenue, M/S 118  
Seattle, WA 98104-1598  
Phone: (206) 684-1401

Each project coordinator shall be responsible for overseeing  
the implementation of the Parties' respective responsibilities  
under this Decree. The Ecology project coordinator will be

1 Ecology's designated representative at the Site. To the maximum  
2 extent possible, communications between Ecology and the Defendant  
3 and all documents, including reports, approvals, and other  
4 correspondence concerning the activities performed pursuant to  
5 the terms and conditions of this Decree, shall be directed  
6 through the project coordinators. The project coordinators may  
7 designate, in writing, working level staff contacts for all or  
8 portions of the implementation of the remedial work required by  
9 this Decree. The project coordinators may agree to minor  
10 modifications of the work to be performed without formal  
11 amendment to the Decree. Minor modification, as agreed to and  
12 determined by Ecology, will be documented in writing by Ecology.

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

#### 16 IX. PERFORMANCE

17 All work performed by Metro pursuant to this Decree shall be  
18 under the direction and supervision, as necessary, of an  
19 appropriate professional with experience and expertise in  
20 hazardous waste site investigation and cleanup.

#### 21 X. ACCESS

22 A. Ecology or any Ecology authorized representatives shall  
23 have the authority to enter and freely move about the Site during  
24 normal business hours for the purposes of, inter alia:  
25 inspecting records, operation logs, and contracts related to the

1 work being performed pursuant to this Decree; reviewing  
2 Defendant's progress in carrying out the terms of this Decree;  
3 conducting such tests or collecting samples as Ecology may deem  
4 necessary; using a camera, sound recording, or other documentary  
5 type equipment to record work done pursuant to this Decree; and  
6 verifying the data submitted to Ecology by the Defendant. While  
7 Ecology reserves its right to enter and inspect as set forth in  
8 the previous sentences, Ecology will make best efforts to provide  
9 Defendant with 48 hours advance notice prior to entering the  
10 Site.

11 B. Ecology, in exercising its rights under this section,  
12 shall comply with approved health and safety plans. Ecology  
13 shall make the results of all sampling, laboratory reports,  
14 videos, and/or test results generated by it or on its behalf,  
15 collected for purposes of this Consent Decree, available to  
16 Defendant unless an exemption from disclosure is available under  
17 Chapter 42.17 RCW.

#### 18 XI. SAMPLING, DATA REPORTING AND AVAILABILITY

19 A. Defendant shall make the laboratory quality-assured  
20 results of all sampling, laboratory reports, and/or test results  
21 generated on its behalf, available to Ecology. Defendant shall  
22 make any raw data and quality assurance data pertaining to the  
23 Site available to Ecology upon request within ten working days.

24 B. If requested by Ecology, Defendant shall allow split  
25 or duplicate samples to be taken by Ecology and/or its authorized

1 representatives of any samples collected by Metro pursuant to the  
2 implementation of this Decree. Defendant shall use best efforts  
3 to provide Ecology with notice at least five (5) working days in  
4 advance of any sample collection activity and will give  
5 reasonable notice of emergency sampling.

6 C. Upon request Ecology shall allow either split or  
7 duplicate samples to be taken by Defendant or their authorized  
8 representatives of any samples collected by Ecology pursuant to  
9 implementation of this Decree.

## 10 XII. PROGRESS REPORTS

11 Metro shall submit to Ecology written monthly progress  
12 reports that describe the actions taken during the previous month  
13 to implement the requirements of this Decree. The report shall  
14 include the following:

15 A. A list of on-Site activities that have taken place  
16 during the month;

17 B. Detailed description of any deviations from required  
18 tasks not otherwise documented in project plans or amendment  
19 requests;

20 C. Description of all deviations from the Scope of  
21 Work/Schedule during the current month and any planned deviations  
22 in the upcoming month(s);

23 D. For any deviations in Scope of Work/Schedule, a plan  
24 for recovering lost time and maintaining compliance with the  
25 schedule.

1 All progress reports shall be submitted by the tenth day of  
2 the month in which they are due. The first progress report shall  
3 be due within ten (10) days after the first full month following  
4 the effective date of this Decree. After receipt of the Notice  
5 of Completion, the progress reports, if any, shall be due  
6 quarterly, by the 10th day of the first month of the quarter or  
7 as set forth in the approved compliance monitoring plan.

#### 8 XIII. RETENTION OF RECORDS

9 In accordance with WAC 173-340-850, Metro shall preserve,  
0 during the pendency of this Decree and for ten (10) years from  
1 the date of issuance of the Notice of Completion described in  
2 Section XXVI (Duration of Decree), all records, reports,  
3 documents, and underlying data in their possession in connection  
4 with the remedial actions called for under this Decree and Metro  
5 shall insert in contracts with project contractors a similar  
6 record retention requirement. Upon request of Ecology, Defendant  
7 shall make all non-archived records in its possession available  
8 to Ecology and allow access for review. All requested archived  
9 records shall be made available to Ecology within a reasonable  
10 period of time.

#### 11 XIV. TRANSFER OF INTEREST IN PROPERTY

12 Any voluntary conveyance or relinquishment of title,  
13 easement, leasehold, or other interest in any portion of the Site  
14 shall not preclude or adversely impact the continued operation  
15

1 and maintenance of any containment system, treatment system, or  
2 monitoring system required under this Decree.

3 Prior to transfer of any legal or equitable interest in all  
4 or any portion of the property, during the effective period of  
5 this Decree, the Defendant shall serve a copy of this Decree upon  
6 any prospective purchaser, lessee, transferee, assignee, or other  
7 successor in interest of the property.

#### 8 XV. RESOLUTION OF DISPUTES

9 A. In the event a dispute arises as to an approval,  
10 disapproval, proposed modification or other decision or action by  
11 Ecology's project coordinator, the parties shall utilize the  
12 dispute resolution procedure set forth below.

13 1. Upon receipt of the Ecology project coordinator's  
14 decision, the Defendant has fourteen (14) days within which to  
15 notify Ecology's project coordinator of its objection to the  
16 decision.

17 2. The Parties' project coordinators, the Site  
18 Management Unit Supervisor or Ecology section supervisor and  
19 Defendant and Defendant's agents shall then confer in a good  
20 faith effort to resolve the dispute. If the Parties cannot  
21 resolve the dispute within fourteen (14) days, Ecology's project  
22 coordinator shall issue a written decision signed by the Site  
23 Management Unit Supervisor or Ecology section supervisor.

24 3. The Defendant may then request Ecology to review  
25 the decision. This request shall be submitted in writing to the

1 Toxics Cleanup Program Manager within seven (7) days of receipt  
2 of Ecology's Site Management Unit Supervisor or Section  
3 Supervisor decision.

4 4. Upon request, Ecology's Program Manager shall  
5 conduct a review of the dispute and shall issue a written  
6 decision regarding the dispute within thirty (30) days of the  
7 Defendant's request for review. The Program Manager's decision  
8 shall be Ecology's final decision on the disputed matter.

9 5. If Ecology's final written decision is  
10 unacceptable to a Defendant or if Ecology fails to issue a final  
11 decision within thirty (30) days of receipt of the request for  
12 review, the Defendant has the right to submit the dispute to this  
13 Court for resolution. The Parties agree that one judge should  
14 retain jurisdiction over this case and shall, as necessary,  
15 resolve any dispute arising under this Decree.

16 B. The Court shall review any action or decision of  
17 Ecology within the scope of RCW 70.105D.060 on the basis of  
18 whether such action or decision was arbitrary and capricious.  
19 All other actions or decisions of Ecology shall be reviewed on a  
20 standard to be determined by the Court.

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

1 D. Each Party shall bear its own attorney's fees, expert  
2 witness fees and other legal costs resulting from utilization of  
3 the judicial review provisions of this dispute resolution  
4 procedure, unless the Court finds any Party has acted in bad  
5 faith or for purposes of delay, in which case the Court may award  
6 sanctions.

7 E. Implementation of these dispute resolution procedures  
8 shall not provide a basis for delay of any activities required in  
9 this Decree, unless Ecology agrees in writing to a schedule  
10 extension or the Court so orders.

11 **XVI. AMENDMENT OF CONSENT DECREE**

12 A. With the exception set forth in Paragraph C below, and  
13 minor modifications as set forth in Section VI (Work to be  
14 Performed), this Decree may only be amended by order of the Court  
15 or by a written stipulation among the Parties to this Decree that  
16 is entered by the Court. If the amendment to the Decree is  
17 substantial, Ecology will provide public notice and opportunity  
18 for comment. Such amendment shall become effective upon entry by  
19 the Court. Agreement to amend shall not be unreasonably withheld  
20 by any Party to the Decree.

21 B. The Party seeking amendment shall submit a request for  
22 an amendment to the other Party (the Responding Party) for  
23 approval. The Responding Party shall indicate its approval or  
24 disapproval in a timely manner after the request for amendment is  
25 received, but no longer than thirty (30) days after receipt of



1 the request. If additional time is necessary to review the  
2 request for amendment, Ecology shall notify Defendant within  
3 fifteen (15) days whether an extension to the Schedule is  
4 granted, if necessary, during the pendency of the review of the  
5 proposed amendment. Reasons for the disapproval of a proposed  
6 amendment shall be stated in writing. If the Responding Party  
7 does not agree to any proposed amendment, the disagreement may be  
8 addressed through the dispute resolution procedures described in  
9 Section XIV of this Decree.

10 C. Written stipulation by the Parties is not needed for  
11 schedule extensions granted pursuant to Section XVII of this  
12 Decree. Any such extension shall become effective on the date on  
13 which Ecology issues its written approval.

#### 14 XVII. EXTENSION OF SCHEDULE

15 A. An extension of schedule shall be granted by Ecology  
16 only when a request for an extension is submitted in a timely  
17 fashion, generally at least fifteen (15) days prior to expiration  
18 of the deadline for which the extension is requested, and good  
19 cause exists for granting the extension. All extensions shall be  
20 requested in writing. The request shall specify the reason(s)  
21 the extension is needed.

An extension shall only be granted for such period of time  
as is reasonable under the circumstances. A requested extension  
shall not be effective until approved by Ecology or the Court.  
Ecology shall act upon any written request for extension in a

1 timely fashion and, to the extent possible, within seven (7) days  
2 of the request. It shall not be necessary to formally amend this  
3 Decree pursuant to Section XVI (Amendment of Consent Decree) when  
4 a schedule extension is granted pursuant to this section of the  
5 Decree.

6 B. The burden shall be on the Defendant seeking the  
7 extension to demonstrate to the satisfaction of Ecology that the  
8 request for such extension has been submitted in a timely fashion  
9 and that good cause exists for granting the extension. Good  
10 cause includes, but is not limited to, the following.

11 1. Circumstances beyond the reasonable control and  
12 despite the due diligence of the Defendant including delays  
13 caused by unrelated third parties or Ecology, such as (but not  
14 limited to) delays by Ecology in reviewing, approving, or  
15 modifying documents submitted by Defendant;

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

18 3. Delays resulting from changes in permit terms or  
19 conditions, or a delay in issuing or refusal to grant a permit  
20 needed to implement the requirements of this Decree, provided the  
21 Defendant filed a timely application for the permit;

22 4. Judicial review of the issuance, non-issuance, or  
23 reissuance of a permit necessary for the continuation of work;  
24  
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1           5. Other circumstances deemed in written notice by  
2 Ecology to be exceptional, extraordinary, or otherwise necessary  
3 to protect the environment or public interest; or

4           6. Endangerment as described in Section XVIII.

5           However, neither increased costs of performance of the terms  
6 of the Decree nor changed economic circumstances shall be  
7 considered circumstances beyond the reasonable control of  
8 Defendant.

9           C. Ecology may extend the schedule for a period not to  
10 exceed ninety (90) days, except where a longer extension is  
11 needed as a result of:

12           1. Delays in the issuance of a necessary permit which  
13 was applied for in a timely manner; or

14           2. Other circumstances deemed exceptional or  
15 extraordinary by Ecology; or

16           3. Endangerment as described in Section XVIII.

17           Ecology shall give the Defendant written notice in a timely  
18 fashion of any extensions granted pursuant to this Section.

19                                   **XVIII. ENDANGERMENT**

20           A. In the event Ecology determines that activities  
21 implementing or in noncompliance with this Decree, or any other  
22 circumstances or activities, are creating or have the potential  
23 to create a danger to the health or welfare of the people on the  
24 Site or in the surrounding area or to the environment, Ecology  
25 may order Defendant to stop further implementation of this Decree

1 for such period of time as needed to abate the danger or may  
2 petition the Court for an order, as appropriate.

3 B. During any stoppage of work under this section, the  
4 obligations of Defendant with respect to the work under this  
5 Decree which is ordered to be stopped shall be suspended and the  
6 time periods for performance of that work, as well as the time  
7 period for any other work dependent upon the work which is  
8 stopped, shall be extended, pursuant to Section XVII Schedule of  
9 this Decree, for such period of time as Ecology determines is  
10 reasonable under the circumstances.

11 C. In the event Defendant determines that activities that  
12 the Defendant has undertaken in furtherance of this Decree or any  
13 other circumstances or activities are creating an endangerment to  
14 the people on the Site or in the surrounding area or to the  
15 environment, the Defendant may stop implementation of such  
16 activities required under this Decree for such period of time  
17 necessary for Ecology to evaluate the situation and determine  
18 whether Defendant should proceed with implementation of the  
19 Decree or whether the work stoppage should be continued until the  
20 danger is abated. The Defendant shall notify Ecology's project  
21 coordinator as soon as possible, but no later than twenty-four  
22 (24) hours after such stoppage of work, and thereafter provide  
23 Ecology with documentation of the basis for the work stoppage.  
24 If Ecology disagrees with the Defendant's determination, it may  
25 order the Defendant to resume implementation of this Decree. If

1 Ecology concurs with the work stoppage, the Defendant's  
2 obligations shall be suspended and the time period for  
3 performance of that work, as well as the time period for any  
4 other work dependent upon the work which was stopped, shall be  
5 extended, pursuant to Section XVI of this Decree, for such period  
6 of time as Ecology determines is reasonable under the  
7 circumstances.

8 D. Any disagreements pursuant to the clause shall be  
9 resolved through the dispute resolution procedures in  
10 Section XIV.

#### 11 XIX. OTHER ACTIONS

12 A. Ecology reserves its right to institute remedial  
13 action(s) at the Site and subsequently pursue cost recovery, and  
14 Ecology reserves its right to issue orders and/or penalties or  
15 take any other enforcement action pursuant to available statutory  
16 authority under the following circumstances:

17 1. Where Defendant fails, after first notice, to  
18 comply with any requirement under this Decree, and after written  
19 notice (second notice) of default, fails to come into compliance;

20 2. In the event or upon the discovery of a release or  
21 threatened release of hazardous substances not addressed by this  
22 Decree, which Defendant, after notice, fails to address;

23 3. Upon Ecology's determination that actions beyond  
24 the terms of this Decree are necessary to abate an emergency  
25 situation which threatens human health or the environment

CONSENT DECREE - 26

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Seattle

DAVIS WRIGHT TREMAINE  
Law Offices

2600 CENTURY SQUARE • 1501 FOURTH AVENUE  
SEATTLE, WASHINGTON 98101-1688  
12061 622-1150 • FAX: 1206 625-7690

1 provided, however, that Ecology will first give the Defendant  
2 notice and opportunity to perform such remedial action unless the  
3 threat is so immediate as to not permit the giving of notice; or

4 4. Upon the occurrence or discovery of a situation  
5 beyond the scope of this Decree as to which Ecology has the  
6 authority to perform any remedial action or to issue an order  
7 and/or penalty, or to take any enforcement action.

8 B. With the exceptions set forth in paragraph A of this  
9 Section, in consideration of the Defendant's performance of the  
10 terms and conditions of this Decree, Ecology agrees that, during  
11 the period of performance of the terms and conditions of this  
12 Decree, compliance with this Decree shall stand in lieu of any  
13 and all administrative, legal, and equitable remedies available  
14 to Ecology to respond to the release or threatened release of  
15 hazardous substances addressed by this Consent Decree.

16 C. Ecology reserves all rights regarding the injury to,  
17 destruction of, or loss of natural resources resulting from the  
18 release or threatened release of hazardous substances from the  
19 Site.

20 D. Ecology reserves the right to take any enforcement  
21 action whatsoever, including a cost recovery action, against  
22 potentially liable persons not party to this Decree.

#### 23 XX. INDEMNIFICATION

24 A. To the extent permitted by law, Defendant agrees to  
25 indemnify and save and hold the State of Washington, its

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

1 B. To the extent permitted by law, Ecology agrees to  
2 indemnify and save and hold the Defendant, its agents and  
3 employees harmless from any and all claims or causes of action  
4 for death or injuries to persons or for loss or damage to  
5 property arising from or on account of acts or omissions of  
6 Ecology, its employees, agents, or contractors in entering into  
7 and implementing this Decree. However, Ecology will not  
8 indemnify Defendant for the reckless or willful misconduct of any  
9 Ecology contractors. In addition, Ecology shall not indemnify  
10 the Defendant nor save nor hold their employees and agents  
11 harmless from any claims or causes of action arising out of the  
12 intentional or negligent acts or omissions of the Defendant, or  
13 the employees and agents of the Defendant in implementing the  
14 activities pursuant to this Decree.  
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1                   **XXI. COMPLIANCE WITH APPLICABLE LAWS**

2           All actions carried out by Defendant pursuant to this Decree  
3 shall be done in accordance with all applicable federal, state,  
4 and local requirements, including requirements to obtain  
5 necessary permits. Pursuant to ESSB 6339 PL, Ecology is  
6 developing procedures that waive compliance with procedural  
7 requirements for certain permits while assuring substantive  
8 requirements are met. When those procedures are in place, they  
9 will designate procedures for compliance under this Consent  
10 Decree, including any applicable requirements for public notice  
11 and opportunity for comment. In the interim, due to the limited  
12 permits that are required for this remedial action and absence of  
13 Ecology's procedures, Metro will obtain the necessary permits  
14 under existing procedures.

15                   **XXII. OVERSIGHT COSTS**

16           A. Consistent with the Interagency Agreement attached  
17 hereto as Exhibit D, Metro shall reimburse Ecology for the costs  
18 Ecology incurs to provide "compensable services" to implement  
19 this Decree.

20           1. "Compensable services" shall include, but not be  
21 limited to, work related to preparation, negotiation, oversight  
22 and administration of this Consent Decree, including the review  
23 of the remedial investigation and feasibility study and review  
24 and approval of cleanup action plan developed for the Site, and  
25



1 discussion and processing of any remedial action grant  
2 application associated with work to be done under the Decree.

3           2. Costs incurred in providing compensable services  
4 to implement this Decree shall include costs of direct activities  
5 and agency indirect costs of direct activities. Costs of direct  
6 activities shall include: (1) the full costs of the staff person  
7 hired to fulfill the obligations of the Interagency Agreement and  
8 the cost of equipment necessitated by the hiring of such person,  
9 pursuant to the terms of that Agreement; (2) the costs of salary  
10 and employee benefits of other Ecology staff who work to  
11 implement the Decree; and (3) laboratory costs and contractual  
12 costs attributed to this Decree. Indirect costs shall be  
13 calculated by multiplying direct salary and employee benefit  
14 charges by the current agency-approved indirect rate which will  
15 be expressed as a percentage.

16           3. Ecology will submit an invoice to Metro quarterly  
17 pursuant to the terms of the Interagency Agreement. Defendant  
18 agrees to pay the requested amount within ninety (90) days of  
19 receiving from Ecology an itemized statement of costs including a  
20 summary of costs incurred, an identification of involved staff,  
21 and the amount of time spent on this site by involved staff. A  
22 general statement of the work performed will be provided upon  
23 request. Failure to pay Ecology's costs within ninety (90) days  
24 of receipt of the itemized statement will result in interest  
25 charges.

1           4.    The Interagency Agreement shall govern expenses  
2 not typically billed to a specific site (i.e., training, leave  
3 and holiday time, non-site meetings, and other non-site expenses  
4 incurred to retain staff).

5           B.    Any disputes regarding oversight costs for the Site  
6 shall be subject to dispute resolution pursuant to Section XV  
7 (Resolution of Disputes) of this Decree.

8                   **XXIII.   IMPLEMENTATION OF REMEDIAL ACTION**

9           If Ecology determines that Defendant has failed without good  
10 cause to implement any material requirement of this Decree,  
11 Ecology may, after notice to Defendant, order Defendant to  
12 suspend implementation of this Consent Decree. The Parties shall  
13 then attempt in good faith to resolve any dispute pursuant to  
14 Section XV (Resolution of Disputes). If the dispute remains  
15 unresolved and is submitted to court for resolution, Ecology may,  
16 after notice to Defendant, perform any or all portions of the  
17 work required under this Decree that remain incomplete. If  
18 Ecology's position is upheld by the court and Ecology performs  
19 all or portions of the remedial action, Defendant shall reimburse  
20 Ecology for the costs of doing work in accordance with  
21 Section XXII, provided that Defendant is not obligated under this  
22 Section to reimburse Ecology for costs incurred for work  
23 inconsistent with or beyond the scope of this Decree.  
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**XXIV. FIVE YEAR REVIEW**

2 If remedial actions, including groundwater monitoring,  
3 continue at the Site beyond the Notice of Completion, the Parties  
4 agree to review the progress of remedial action at the Site, and  
5 to review the data accumulated as a result of site monitoring as  
6 often is necessary and appropriate under the circumstances. At  
7 least once every five years the Parties shall meet to discuss the  
8 status of the Site and the need, if any, of further remedial  
9 action at the Site. This provision shall remain in effect for  
0 the duration of the decree.

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**XXV. PUBLIC PARTICIPATION**

2 Ecology shall maintain the responsibility for public  
3 participation at the Site but shall use its best efforts to  
4 coordinate all public participation with Defendant. However,  
5 Defendant shall cooperate with Ecology and, if agreed to by  
6 Ecology, shall do the following:

7 A. Prepare drafts of public notices and fact sheets at  
8 important stages of the remedial action, such as the submission  
9 of work plans, and engineering design reports. Ecology will  
10 finalize (including editing if necessary) and distribute such  
11 fact sheets and prepare and distribute public notices of  
12 Ecology's presentations and meetings;

13 B. Notify Ecology's project coordinator at least three  
14 days prior to the issuance of all press releases and fact sheets,  
15 and before major meetings with the interested public and local

1 governments. Likewise, Ecology shall notify Defendant at least  
2 three days prior to the issuance of all press releases and fact  
3 sheets, and before major meetings with the interested public and  
4 local governments;

5 C. Participate in public presentations on the progress of  
6 the remedial action at the Site. Participation may be through  
7 attendance at public meetings to assist in answering questions,  
8 or as a presenter;

9 D. In cooperation with Ecology, arrange and/or continue  
10 information repositories to be located at Ecology's Northwest  
11 Regional Office in Bellevue, public libraries in Seattle and the  
12 Seattle Chinatown International District Preservation and  
13 Development Authority offices. At a minimum, copies of all  
14 public notices, fact sheets, and press releases; all quality  
15 assured groundwater, surface water, soil sediment, and air  
16 monitoring data; remedial actions plans, supplemental remedial  
17 planning documents, and all other similar documents relating to  
18 performance of the remedial action required by this Decree shall  
19 be promptly placed in these repositories.

#### 20 XXVI. DURATION OF DECREE

21 This Decree shall remain in effect and the remedial action  
22 program described in the Decree shall be maintained and continued  
23 until the Defendant has received written Notice of Completion  
24 from Ecology or the Court determines that the requirements of  
25 this Decree have been satisfactorily completed.

1           XXVII. COMPLETION AND ACCEPTANCE OF CLEANUP WORK

2           A. Defendant shall request that Ecology make a final  
3 inspection upon completion of the on site construction,  
4 excavation and extraction work but not any long term monitoring  
5 as described in Exhibit B. Ecology shall promptly inspect the  
6 work to determine if such work has been completed in accordance  
7 with this Decree. The inspection shall occur within thirty (30)  
8 days of the request unless the Parties agree to a later date.

9           B. Ecology shall provide Defendant with a Notice of  
0 Completion substantially similar to Exhibit E in writing within  
1 fifteen (15) days of the initial inspection, or within sixty (60)  
2 days of completing the inspection if sampling or testing is  
3 required, that the work has been satisfactorily completed. In  
4 the alternative, Ecology shall specify any additional corrective  
5 work it believes to be needed. Defendant shall notify Ecology of  
6 the completion of any required corrective work. Ecology shall  
7 reinspect if it deems it necessary within ten (10) days of the  
8 notification from Defendant.

9           C. This procedure shall be utilized, in combination with  
0 the dispute resolution procedures set forth in Section XV  
1 (Resolution of Disputes) if necessary, until it has been  
2 determined that the work has been satisfactorily completed, and a  
3 Notice of Completion is issued. Within ten (10) days of  
4 determining that the work has been satisfactorily completed,  
5 Ecology shall issue a written Notice of Completion to Defendant.

1                   **XXVIII. CLAIMS AGAINST THIRD PARTIES**

2           The Defendant expressly reserves its rights to recover any  
3 costs incurred in implementing this Decree from any other  
4 potentially liable person not a party to this Consent Decree.

5                   **XXIX. CLAIMS AGAINST THE STATE**

6           Defendant hereby agrees that it will not seek to recover any  
7 costs accrued in implementing the remedial action required by  
8 this Decree from the State of Washington or any of its agencies;  
9 and further, that the Defendant will make no claim against the  
10 State Toxics Control Account or the Local Toxics Control Account  
11 for any costs incurred in implementing this Decree.

12           Nothing in this Decree shall impair the Metro's right to  
13 obtain grant funding from the Local Toxics Control Account under  
14 RCW 70.105D.070(3) and ch. 173-322 WAC for any eligible portion  
15 of the work required by this Decree. The submission of an  
16 application for such grant funding shall not be deemed to be the  
17 filing of a "claim" for the purposes of this Section.

18                   **XXX. EFFECTIVE DATE**

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

21                   **XXXI. COVENANT NOT TO SUE**

22           A. In consideration of Defendant's compliance with the  
23 terms and conditions of this Decree, the state covenants not to  
24 institute legal or administrative actions against Defendant  
25 regarding contamination covered by this Decree. Compliance with

1 this Decree shall stand in lieu of any and all administrative,  
2 legal, and equitable remedies and enforcement actions available  
3 to the state against Defendant for the release or threatened  
4 release of hazardous substances covered by the terms of this  
5 Decree.

6 This covenant is strictly limited in its application to the  
7 Site specifically defined in Exhibit A and to those hazardous  
8 substances of which Ecology has notice.

9 B. The State of Washington may exercise its full legal  
10 authority to address releases of hazardous substances at the  
11 Site, notwithstanding the covenant not to sue set forth above in  
12 the event factors not known at the time of entry of this Decree  
13 are discovered and present previously unknown threats to human  
14 health or the environment.

15 **XXXII. CONTRIBUTION PROTECTION**

16 The Defendant shall not be liable for claims of contribution  
17 by other persons not signatories to the Decree regarding matters  
18 addressed in this Decree. The percentage of response costs paid  
19 by Defendant under this Decree shall in no way constitute an  
20 admission as to an appropriate allocation of liability, if any,  
21 at the Site. This section shall apply but is not limited to  
22 successors in interest who assume obligations under this Decree.

23 **XXXIII. RESERVATION OF RIGHTS**

24 By agreeing to entry of this Decree, the Defendant and  
25 Ecology agree to abide by its terms. While the Parties believe

1 that the recitals contained in this Decree are accurate the  
2 execution and performance of the Decree is not however, an  
3 admission by the Defendant of any fact or liability for any  
4 purpose other than as a foundation for the entry of this Decree.  
5 Defendant's performance under the Decree is undertaken without  
6 waiver of or prejudice to any claims or defenses whatsoever that  
7 may be asserted in the event of further administrative  
8 proceedings or litigation not associated with, or related to,  
9 this Decree. Nor is the execution or performance of the Decree  
0 agreement by Defendant to take any action at the Site other than  
1 that described in this Decree. Defendant expressly reserves its  
2 rights to seek to recover any cost incurred in implementing this  
3 Decree from any other potentially liable person.

4 **XXXIV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

5 This Decree has been the subject of public notice and  
6 comment under RCW 70.105D.040(4)(a). As a result of this process,  
7 Ecology has found that this Decree will lead to a more  
8 expeditious cleanup of hazardous substances at the Site, in  
9 compliance with applicable cleanup standards.

10 If the Court withholds or withdraws its consent to this  
11 Decree, it shall be null and void at the option of either Party  
12 and the accompanying Complaint shall be dismissed without costs  
13  
14  
15



1 and without prejudice. In such an event, no Party shall be bound  
2 by the requirements of this Decree.

3 Mary E. Burg  
4 Carol Kraege  
5 Toxics Cleanup Program

November 9, 1994  
Date

6 Gary Locke  
7 Gary Locke  
8 King County Executive

Sept 2, 1994  
Date

9 THIS DECREE is approved and IT IS SO ORDERED this 29<sup>th</sup> day  
10 of November, 1994.

11 MAURICE M. EPSTEIN  
12 SUPERIOR COURT JUDGE  
13 King County Superior Court

1 EXHIBIT A

2 A certain tract of land situated in King County, Washington  
3 and more particularly described as follows:

4 PARCEL NO. 1

5 Lots 1 and 8 inclusive, Block 3, Terry's 5th Addition to the  
6 City of Seattle, according to plat recorded in Volume 2 of Plats,  
page 55 in King County, Washington;

7 EXCEPT the south 12 feet of said Lots 6, 7 and 8, condemned  
8 in King County Superior Court Case No. 52652 for widening of  
Dearborn Street as provided by Ordinance No. 13320 of the City of  
Seattle, and

9 EXCEPT the east 112 feet thereof condemned in King County  
10 Superior Court Cause No. 600725 for Primary State Highway 1.

11 PARCEL NO. 2

12 Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Turner's Supplemental Plat  
13 of the east half of Block 52, D.S. Maynard's Plat of the Town  
(now City) of Seattle, according to plat recorded in Volume 1 of  
the Plats, page 169, in King County, Washington;

14 EXCEPT the south 12 feet of said Lots 1 to 4, condemned in  
15 King County Superior Court Cause No. 13320 of the City of  
Seattle.

**EXHIBIT B**

**Cleanup Action Plan**

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