

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

MOUNT BAKER HOUSING
ASSOCIATION,

Defendant.

NO. 16-2-29584-3 SEA

PROSPECTIVE PURCHASER
CONSENT DECREE

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	JURISDICTION	4
III.	PARTIES BOUND	6
IV.	DEFINITIONS	7
V.	FINDINGS OF FACT	8
VI.	WORK TO BE PERFORMED.....	11
VII.	DESIGNATED PROJECT COORDINATORS.....	13
VIII.	PERFORMANCE.....	14
IX.	CERTIFICATION OF DEFENDANT	14
X.	ACCESS	15
XI.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY	15
XII.	PROGRESS REPORTS.....	16
XIII.	RETENTION OF RECORDS	17
XIV.	TRANSFER OF INTEREST IN PROPERTY	17
XV.	RESOLUTION OF DISPUTES	18
XVI.	AMENDMENT OF DECREE.....	20
XVII.	EXTENSION OF SCHEDULE.....	20
XVIII.	ENDANGERMENT	22
XIX.	COVENANT NOT TO SUE	23
XX.	CONTRIBUTION PROTECTION.....	24
XXI.	LAND USE RESTRICTIONS.....	25

1	XXII.	FINANCIAL ASSURANCES.....	25
	XXIII.	INDEMNIFICATION	26
2	XXIV.	COMPLIANCE WITH APPLICABLE LAWS	26
	XXV.	REMEDIAL ACTION COSTS	28
3	XXVI.	IMPLEMENTATION OF REMEDIAL ACTION.....	28
	XXVII.	PERIODIC REVIEW	29
4	XXVIII.	PUBLIC PARTICIPATION	29
	XXIX.	DURATION OF DECREE.....	30
5	XXX.	CLAIMS AGAINST THE STATE.....	31
	XXXI.	EFFECTIVE DATE.....	31
6	XXXII.	WITHDRAWAL OF CONSENT	31
7	EXHIBIT A	Site Diagram	
	EXHIBIT B	Legal Property Description	
8	EXHIBIT C	Scope of Work and Schedule	
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Mount Baker Housing Association (MBHA) under this Decree is to (1) resolve
4 the potential liability of MBHA for contamination at the **Mount Baker Properties Site** (Site)
5 arising from a release(s) or threatened release(s) of hazardous substances, in advance of
6 MBHA purchasing an ownership interest in the Site, and (2) facilitate the cleanup of the Site
7 for redevelopment and reuse as transit-oriented affordable housing. MBHA is a non-profit
8 organization with a mission to create quality affordable housing in southeast Seattle. This
9 Decree requires MBHA to conduct a Remedial Investigation and Feasibility Study (RI/FS)
10 pursuant to the schedule set forth in Exhibit C, and to use all best efforts to obtain Additional
11 Funding to be used to conduct additional remedial actions at the Site, including a cleanup
12 action meeting the requirements of WAC 173-340-360 that serves as a final Site remedy. Such
13 Additional Funding may include Public Funds pursuant to RCW 70.105D.070(q). The parties
14 intend to amend this Decree in the future for MBHA to conduct additional remedial actions at
15 the Site. The parties may also amend this Decree in the future to provide for Public Funds
16 pursuant to RCW 70.105D.070(q). The redevelopment of any property within the Site is
17 contingent on such additional remedial actions occurring.

18 B. Ecology has determined that these actions are necessary to protect human health
19 and the environment.

20 C. The Complaint in this action is being filed simultaneously with this Decree. An
21 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
22 However, the Parties wish to resolve the issues raised by Ecology’s Complaint. In addition,
23 the Parties agree that settlement of these matters without litigation is reasonable and in the
24 public interest, and that entry of this Decree is the most appropriate means of resolving these
25 matters.
26

1 D. By signing this Decree, the Parties agree to its entry and agree to be bound by
2 its terms.

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

7 F. This Decree shall not be construed as proof of liability or responsibility for any
8 releases of hazardous substances or cost for remedial action nor an admission of any facts;
9 provided, however, that MBHA shall not challenge the jurisdiction of Ecology in any
10 proceeding to enforce this Decree.

11 G. The Court is fully advised of the reasons for entry of this Decree, and good
12 cause having been shown:

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

14 **II. JURISDICTION**

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

17 B. Authority is conferred upon the Washington State Attorney General by
18 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
19 after public notice and any required hearing, Ecology finds the proposed settlement would lead
20 to a more expeditious cleanup of hazardous substances. In addition, under
21 RCW 70.105D.040(5), the Attorney General may agree to a settlement with a person not
22 currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse
23 the facility, provided: the settlement will yield substantial new resources to facilitate cleanup;
24 the settlement will expedite remedial action consistent with the rules adopted under MTCA;
25 and Ecology determines based upon available information that the redevelopment or reuse of
26 the facility is not likely to contribute to the existing release or threatened release, interfere with

1 remedial actions that may be needed at the Site, or increase health risks to persons at or in the
2 vicinity of the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a
3 consent decree issued by a court of competent jurisdiction.

4 C. Ecology has determined that a release or threatened release of hazardous
5 substances has occurred at the Site that is the subject of this Decree, and that the remedial
6 actions required by this Decree are necessary to protect human health and the environment
7 based on the planned future use of the Site as contemplated by the Parties under this Decree.

8 D. MBHA has not been named a PLP for the Site, and MBHA has certified under
9 Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA.
10 MBHA is under contract to execute Purchase and Sale Agreements to acquire properties
11 located at 2800 Martin Luther King Jr. Way S., 2864 South McClellan Street, 2810 South
12 McClellan Street, 2806 South McClellan Street, and 2802 South McClellan Street (Properties)
13 from the current owners of the properties. MBHA expects to execute the Purchase and Sale
14 Agreements, and acquire the Properties, by December 31, 2016. The Properties comprise, or
15 likely comprise, portions of the Site. MBHA will incur potential liability under RCW
16 70.105D.040(1)(a) at the time it acquires an interest in the Properties at the Site for performing
17 remedial actions or paying remedial costs incurred by Ecology or third parties resulting from
18 past releases or threatened releases of hazardous substances at the Site. This Decree settles
19 MBHA's liability as described herein for this Site upon its purchase of the Properties.

20 E. Ecology finds that this Decree will yield substantial new resources to facilitate
21 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site
22 in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and
23 WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of
24 the Site; and will not be likely to contribute to the existing release or threatened release at the
25 Site, interfere with remedial actions that may be needed at the Site, or increase health risks to
26 persons at or in the vicinity of the Site. In addition, Ecology has determined that this Decree

1 will provide a substantial public benefit by: (1) significantly advancing the cleanup process at
2 the Site through completion of an RI/FS; and (2) putting the structure in place for future
3 cleanup and redevelopment of a vacant former gas/service station, a dry cleaning operation,
4 and other currently contaminated properties within the Site. MBHA will construct affordable,
5 transit-oriented housing on the Properties, which is a critical need in the City of Seattle. The
6 affordable housing at the Properties, in the southeast portion of Seattle in the North Rainier
7 neighborhood, is intended to serve a diverse population of residents. MBHA will continue to
8 own and operate the redeveloped Properties for the benefit of its tenants. This Decree will
9 facilitate redevelopment of the Properties at the Site, which is contingent on additional
10 remedial actions first occurring as described in Section VI. Once completed, the
11 redevelopment will add additional affordable, transit-oriented housing at the Site.

12 F. MBHA has agreed to undertake the actions specified in this Decree and
13 consents to the entry of this Decree under MTCA.

14 G. This Decree has been subject to public notice and comment.

15 III. PARTIES BOUND

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

1 **IV. DEFINITIONS**

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

4 A. Site: The Site is referred to as the **Mount Baker Properties** Site and is
5 generally located along and to the north and south of South McClellan Street between Martin
6 Luther King Jr. Way S. and 29th Avenue S. The Site includes all areas where contamination
7 has come to be located from releases at the Mount Baker Cleaners' operation and property at
8 2864 South McClellan Street, and is commingled with releases at the former retail gas station
9 at 2800 Martin Luther King Jr. Way S. The Site is more particularly described in the Site
10 Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

11 B. Properties: Refers to the properties located at 2800 Martin Luther King Jr. Way
12 S., 2864 South McClellan Street, 2810 South McClellan Street, 2806 South McClellan Street,
13 and 2802 South McClellan Street that MBHA intends to purchase. A legal description of the
14 Properties is attached as Exhibit B. The Properties comprise, or likely comprise, portions of
15 the Site.

16 C. Parties: Refers to the State of Washington, Department of Ecology (Ecology),
17 Mount Baker Housing Association (MBHA), and all entities created by MBHA for the purpose
18 of owning real property within the Site (collectively "the MBHA entities"). Upon assuming
19 such ownership, the MBHA entities will be added as defendants to this Decree through
20 amendment, without the need for additional public notice and comment under RCW 70.105D
21 and WAC 173-340-600(10)(e). Where this Decree references MBHA, the references shall
22 attach to MBHA and the MBHA entities.

23 D. Consent Decree or Decree: Refers to this Prospective Purchaser Consent
24 Decree, each of the exhibits to the Decree, and any future amendments to the Decree. All
25 exhibits are integral and enforceable parts of this Prospective Purchaser Consent Decree. The
26

1 terms "Consent Decree" or "Decree" shall include all exhibits and any future amendments to
2 this Prospective Purchaser Consent Decree.

3 E. Public Funds: Refers to public funding provided by Ecology as specified in this
4 Decree and as described in RCW 70.105D.070(q). Nothing in this definition shall be
5 construed to limit MBHA from seeking and receiving funding from any other public source
6 that can be applied toward remedial actions.

7 F. Redevelopment: Refers to construction activity, other than building demolition
8 or any activity that also serves as a remedial action (e.g., soil excavation), that improves
9 property for conversion to a new use. Such new uses include, but are not limited to, affordable
10 housing and mixed commercial use.

11 G. Additional Funding: Refers to funds that MBHA will seek to obtain or use to
12 fund remedial action at the Site, including, but not limited to, Public Funds, insurance policy
13 coverage payments, and settlement funds obtained from other Potentially Liable Persons. This
14 term does not refer to MBHA's assets or the liquidation of MBHA's assets.

15 V. FINDINGS OF FACT

16 Ecology makes the following findings of fact without any express or implied
17 admissions of such facts by MBHA.

18 A. The Site is located in Seattle, Washington, and consists of approximately six
19 acres. The Site is located along and north and south of South McClellan Street and is bounded
20 by Martin Luther King Jr. Way S. (to the west) and 29th Avenue S. (to the east). The Site
21 includes a number of properties. A diagram of the Site is attached as Exhibit A. A portion of
22 the Site, the property at 2800 Martin Luther King Jr. Way S., has been designated by Ecology's
23 Voluntary Cleanup Program (VCP) as the Phillips 66 070644 Site.

24 B. MBHA is under contract to purchase the Properties and intends to close on the
25 Properties by December 31, 2016.

1 C. Over the last several decades, businesses operating at the Site released
2 hazardous substances at the Site. With respect to the property at 2800 Martin Luther King Jr.
3 Way S., between approximately 1955 and 1989, the property was used by predecessors of
4 Phillips 66, Inc., as a retail gas station. During the 1990s and until 2004, the 2800 Martin
5 Luther King Jr. Way S. property was used as an auto repair business. Contamination at the
6 Site is related to these past operations. Petroleum-related contamination was first confirmed at
7 the 2800 Martin Luther King Jr. Way S. property in about 2005 in soil and groundwater.
8 Environmental sampling has also found solvent-related contamination on the 2800 Martin
9 Luther King Jr. Way S. property and other areas of the Site. Through the VCP, Ecology has
10 determined that total gasoline-range petroleum hydrocarbons (TPHg), total diesel-range
11 petroleum hydrocarbons (TPHd), total oil-range petroleum hydrocarbons (TPHo) and
12 associated benzene, toluene, ethylbenzene, and xylenes (BTEX) are present in soil and
13 groundwater, carcinogenic polynuclear aromatic hydrocarbons (cPAHs) are present in soil, and
14 chlorinated and non-chlorinated volatile organic compounds (VOCs) are present in
15 groundwater, all above applicable MTCA cleanup levels at the 2800 Martin Luther King Jr.
16 Way S. property.

17 D. Three underground storage tanks were removed at the 2800 Martin Luther King
18 Jr. Way S. property in 1989. In 2005 other gas/service station equipment was removed and a
19 petroleum-related release was reported to Ecology in August 2005. In 2005–06, several soil
20 and groundwater borings were advanced. In 2005, five ozone injection points were installed,
21 ozone was applied, and this system operated until 2007. In 2007, additional treatment was
22 conducted through in-situ chemical oxidation. In addition, chlorinated and non-chlorinated
23 VOCs have been detected at the Site and the 2800 Martin Luther King Jr. Way S. property.
24 Ecology has opined in the context of the VCP that this VOC contamination may be from
25 releases of solvents on the 2800 Martin Luther King Jr. Way S. property, may be the result of
26 solvent releases from Mount Baker Cleaners, located on the north side of South McClellan

1 Street at 2864 South McClellan Street, which may have migrated onto the 2800 Martin Luther
2 King Jr. Way S. property, or may be the result of both. Since 2010, Phillips 66 has conducted
3 additional sampling in the VCP at the property. No additional remedial actions have been
4 conducted. There have been no remedial actions associated with Mount Baker Cleaners'
5 property at 2864 South McClellan Street. VOC and petroleum contamination is commingled at
6 the Site.

7 E. Ecology received a release report for releases at Mount Baker Cleaners, 2864
8 South McClellan Street, in 2009. Ecology has assigned Cleanup Site ID No. 11447 to that
9 release. Ecology's Site Hazard Assessment concluded that releases of the VOCs
10 tetrachloroethene (PCE), trichloroethene (TCE), and cis-1,2-dichloroethene (DCE) were
11 released at Mount Baker Cleaners, 2864 South McClellan Street. No remedial action has
12 occurred since the release was reported in 2009.

13 F. The contaminants of concern at the Site that exceed MTCA cleanup levels are
14 TPHg, TPHd, TPHo and BTEX in soil and groundwater, cPAHs in soil, and chlorinated and
15 non-chlorinated VOCs in groundwater. Ecology has not yet assigned the Site an overall
16 priority rank pursuant to MTCA, but in 2015, Ecology ranked the release at the Mount Baker
17 Cleaners, 2864 South McClellan Street, as a 3 on Ecology's hazard ranking system.

18 G. The Site has been used for residential, dry cleaning, retail petroleum and service
19 station purposes and is zoned SM65 by the City of Seattle to provide for mixed residential and
20 commercial uses.

21 H. MBHA has entered into Purchase and Sale Agreements with the current owners
22 of the Properties. Pursuant to these contracts, MBHA intends to purchase the Properties by
23 December 31, 2016.

24 I. MBHA proposes to conduct remedial actions at the Site and redevelop the
25 Properties for transit-oriented affordable housing and mixed commercial use as provided in this
26

1 Decree, consistent with MTCA and its implementing regulations, WAC 173-340, and
2 applicable City of Seattle zoning provisions and comprehensive plan designations.

3 J. Ecology anticipates that the application of MTCA residential cleanup standards
4 will be appropriate at the Site based on the planned future use of the Site as contemplated by
5 the Parties under this Decree.

6 VI. WORK TO BE PERFORMED

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

10 A. MBHA will conduct an RI/FS at the Site in accordance with the Scope of Work
11 and Schedule attached as Exhibit C. Specifically, MBHA shall submit an Agency Review
12 Draft RI/FS work plan for Ecology review. Once approved by Ecology, MBHA shall produce
13 a Final RI/FS work plan and shall conduct the work required by the Final RI/FS work plan. At
14 the conclusion of the RI/FS work, MBHA shall provide an Agency Review RI/FS report for
15 Ecology review. Once approved by Ecology, MBHA shall produce a Public Review Draft
16 RI/FS report for public review and comment. At the conclusion of the public comment period,
17 and after incorporating any changes resulting from the public comment period, MBHA shall
18 produce a Final RI/FS report.

19 B. Following the completion of the Final RI/FS report, the Parties intend to amend
20 the Decree to provide for MBHA to conduct additional remedial actions at the Site. Such
21 additional remedial actions by MBHA are contingent upon MBHA obtaining or having
22 sufficient Additional Funding to conduct additional remedial actions; provided, that this
23 contingency does not bind Ecology in the event the circumstances described in the reopener
24 provisions of Section XIX.B.3 or B.4 arise. These additional remedial actions will include a
25 cleanup action meeting the requirements of WAC 173-340-360 that serves as a final Site
26 remedy. Until such time as this Decree is amended to provide for the implementation of such a

1 cleanup action, no redevelopment of any properties within the Site may proceed; provided, that
2 this Decree may be amended to allow for redevelopment to occur on a property-specific basis
3 if: (1) a final Cleanup Action Plan for the Site has been issued by Ecology; (2) the property-
4 specific redevelopment is accompanied by a remedial action that implements Ecology's
5 selected cleanup action for that portion of the Site; and (3) Ecology determines that proceeding
6 with the property-specific redevelopment and remedial action: (a) is consistent with, and will
7 not preclude, complicate, or render more expensive the final cleanup action for the Site as a
8 whole; and (b) will not result in recontamination of the subject property.

9 C. During the pendency of this Decree, MBHA shall use all best efforts to seek and
10 obtain Additional Funding for additional remedial actions at the Site. This may include
11 working in cooperation and in partnership with Ecology to obtain Public Funds as described in
12 RCW 70.105D.070(q). After the completion of the Final RI/FS report, the Parties shall meet
13 not less than once per quarter, unless the Parties agree to a different timeframe, to discuss the
14 status and progress of obtaining Additional Funding for future remedial actions. The Parties
15 intend to amend this Decree to accomplish future remedial actions and for the possible future
16 provision of Public Funds pursuant to RCW 70.105D.070(q).

17 D. MBHA shall retain all such Additional Funding obtained for remedial actions at
18 the Site in a dedicated and segregated account in accordance with standard accounting
19 principles. MBHA shall provide Ecology with an accounting of the account twice per calendar
20 year, by the end of July (for the preceding six months ending in June) and by the end of
21 January (for the preceding six months ending in December). MBHA shall also include this
22 account in its annual audit. The results of the annual audit for this account shall be provided
23 to Ecology by May 31 of each calendar year while this Decree is in effect.

24 E. MBHA agrees not to perform any remedial actions outside the scope of this
25 Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit C) to
26

1 cover these actions. All work conducted by MBHA under this Decree shall be done in
2 accordance with WAC 173-340 unless otherwise provided herein.

3 F. All plans or other deliverables submitted by MBHA for Ecology's review and
4 approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval,
5 become integral and enforceable parts of this Decree.

6 VII. DESIGNATED PROJECT COORDINATORS

7 The project coordinator for Ecology is:

8 Ching-Pi Wang
9 Northwest Regional Office
10 Washington State Department of Ecology
11 3190 160th Avenue SE
12 Bellevue, WA 98008-5452
13 (425) 649-7134
14 Email: cwan461@ecy.wa.gov

15 The project coordinator for MBHA is:

16 Dave Cook, Principal Geologist
17 Aspect Consulting
18 401 Second Avenue S., Suite 201
19 Seattle, WA 98104
20 (206) 328-7443
21 Email: dcook@aspectconsulting.com

22 Each project coordinator shall be responsible for overseeing the implementation of this
23 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
24 To the maximum extent possible, communications between Ecology and MBHA and all
25 documents, including reports, approvals, and other correspondence concerning the activities
26 performed pursuant to the terms and conditions of this Decree 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
Decree.

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.

1 **VIII. PERFORMANCE**

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

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

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

13 Any documents submitted containing geologic, hydrologic, or engineering work shall
14 be under the seal of an appropriately licensed professional as required by RCW 18.43
15 and 18.220.

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

19 **IX. CERTIFICATION OF DEFENDANT**

20 MBHA represents and certifies that, to the best of its knowledge and belief, it has fully
21 and accurately disclosed to Ecology the information currently in its possession or control that
22 relates to the environmental conditions at and in the vicinity of the Site, or to MBHA's right
23 and title thereto.

24 MBHA represents and certifies that it did not cause or contribute to a release or
25 threatened release of hazardous substances at the Site and is not otherwise currently potentially
26 liable for the Site under RCW 70.105D.040(1).

1 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
2 MBHA and/or its authorized representative to take split or duplicate samples of any samples
3 collected by Ecology pursuant to the implementation of this Decree, provided that doing so
4 does not interfere with Ecology's sampling. Without limitation on Ecology's rights under
5 Section X (Access), Ecology shall notify MBHA prior to any sample collection activity unless
6 an emergency prevents such notice.

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

10 **XII. PROGRESS REPORTS**

11 MBHA shall submit to Ecology written monthly Progress Reports that describe the
12 actions taken during the previous month to implement the requirements of this Decree. The
13 Progress Reports shall include the following unless Ecology determines otherwise as provided
14 in this Section:

- 15 A. A list of on-site activities that have taken place during the month;
- 16 B. Detailed description of any deviations from required tasks not otherwise
17 documented in project plans or amendment requests;
- 18 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)
19 during the current month and any planned deviations in the upcoming month;
- 20 D. For any deviations from the schedule, a plan for recovering lost time and
21 maintaining compliance with the schedule;
- 22 E. All raw data (including laboratory analyses) received by MBHA during the past
23 month and an identification of the source of the sample; and
- 24 F. A list of deliverables for the upcoming month if different from the schedule.

25 As appropriate, the project coordinators shall discuss the level of detail for the Progress
26 Reports or a specific Progress Report. Ecology's project coordinator may find that the

1 Progress Reports or a specific Progress Report does not need to include all of the elements
2 listed in this Section. All Progress Reports shall be submitted by the tenth (10th) day of the
3 month in which they are due after the effective date of this Decree. Unless otherwise specified,
4 Progress Reports and any other documents submitted pursuant to this Decree shall be sent by
5 certified mail, return receipt requested, to Ecology's project coordinator.

6 **XIII. RETENTION OF RECORDS**

7 During the pendency of this Decree, and for ten (10) years from the date this Decree is
8 no longer in effect as provided in Section XXIX (Duration of Decree), MBHA shall preserve
9 all records, reports, documents, and underlying data in its possession relevant to the
10 implementation of this Decree and shall insert a similar record retention requirement into all
11 contracts with project contractors and subcontractors. Upon request of Ecology, MBHA shall
12 make all records available to Ecology and allow access for review within a reasonable time.

13 Nothing in this Decree is intended by MBHA to waive any right it may have under
14 applicable law to limit disclosure of documents protected by the attorney work-product
15 privilege and/or the attorney-client privilege. If MBHA withholds any requested records based
16 on an assertion of privilege, MBHA shall provide Ecology with a privilege log specifying the
17 records withheld and the applicable privilege. No Site-related data collected pursuant to this
18 Decree shall be considered privileged.

19 **XIV. TRANSFER OF INTEREST IN PROPERTY**

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

24 Prior to MBHA's transfer of any interest in all or any portion of the Site, and during the
25 effective period of this Decree, MBHA shall provide a copy of this Decree to any prospective
26 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty

1 (30) days prior to any transfer, MBHA shall notify Ecology of said transfer. Upon transfer of
2 any interest, MBHA shall notify all transferees of the restrictions on the activities and uses of
3 the property under this Decree and incorporate any such use restrictions into the transfer
4 documents.

5 **XV. RESOLUTION OF DISPUTES**

6 A. In the event that MBHA elects to invoke dispute resolution, MBHA must utilize
7 the procedure set forth below.

8 1. Upon the triggering event (receipt of Ecology's project coordinator's
9 written decision or an itemized billing statement), MBHA has fourteen (14) calendar
10 days within which to notify Ecology's project coordinator in writing of its dispute
11 ("Informal Dispute Notice").

12 2. The Parties' project coordinators shall then confer in an effort to resolve
13 the dispute informally. The parties shall informally confer for up to fourteen (14)
14 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
15 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
16 days Ecology's project coordinator shall issue a written decision ("Informal Dispute
17 Decision") stating: the nature of the dispute; MBHA's position with regards to the
18 dispute; Ecology's position with regards to the dispute; and the extent of resolution
19 reached by informal discussion.

20 3. MBHA may then request regional management review of the dispute.
21 This request ("Formal Dispute Notice") must be submitted in writing to the Northwest
22 Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of
23 Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a
24 written statement of dispute setting forth: the nature of the dispute; the disputing
25 Party's position with respect to the dispute; and the information relied upon to support
26 its position.

1 4. The Section Manager shall conduct a review of the dispute and shall
2 issue a written decision regarding the dispute (“Decision on Dispute”) within thirty (30)
3 calendar days of receipt of the Formal Dispute Notice.

4 5. If MBHA finds Ecology’s Regional Section Manager’s decision
5 unacceptable, MBHA may then request final management review of the decision. This
6 request (“Final Review Request”) shall be submitted in writing to the Toxics Cleanup
7 Program Manager within seven (7) calendar days of MBHA’s receipt of the Decision
8 on Dispute. The Final Review Request shall include a written statement of dispute
9 setting forth: the nature of the dispute; the disputing Party’s position with respect to the
10 dispute; and the information relied upon to support its position.

11 6. Ecology’s Toxics Cleanup Program Manager shall conduct a review of
12 the dispute and shall issue a written decision regarding the dispute (“Final Decision on
13 Dispute”) within thirty (30) calendar days of receipt of the Final Review Request. The
14 Toxics Cleanup Program Manager’s decision shall be Ecology’s final decision on the
15 disputed matter.

16 B. If Ecology’s Final Decision on Dispute is unacceptable to MBHA, MBHA has
17 the right to submit the dispute to the Court for resolution. The Parties agree that one judge
18 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
19 under this Decree. In the event MBHA presents an issue to the Court for review, the Court
20 shall review the action or decision of Ecology on the basis of whether such action or decision
21 was arbitrary and capricious and render a decision based on such standard of review.

22 C. The Parties agree to only utilize the dispute resolution process in good faith and
23 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
24 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
25 the other party may seek sanctions.

1 D. Implementation of these dispute resolution procedures shall not provide a basis
2 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
3 schedule extension or the Court so orders.

4 E. In case of a dispute, failure to either proceed with the work required by this
5 Decree or timely invoke dispute resolution may result in Ecology's determination that
6 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
7 undertaking the work under Section XXVI (Implementation of Remedial Action).

8 **XVI. AMENDMENT OF DECREE**

9 The project coordinators may agree to minor changes to the work to be performed
10 without formally amending this Decree. Minor changes will be documented in writing by
11 Ecology.

12 Substantial changes to the work to be performed shall require formal amendment of this
13 Decree. This Decree may only be formally amended by a written stipulation among the Parties
14 that is entered by the Court, or by order of the Court. Such amendment shall become effective
15 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
16 by any party.

17 MBHA shall submit a written request for amendment to Ecology for approval. Ecology
18 shall indicate its approval or disapproval in writing in a timely manner after the written request
19 for amendment is received. If the amendment to the Decree is a substantial change, Ecology
20 will provide public notice and opportunity for comment. Reasons for the disapproval of a
21 proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to a
22 proposed amendment, the disagreement may be addressed through the dispute resolution
23 procedures described in Section XV (Resolution of Disputes).

24 **XVII. EXTENSION OF SCHEDULE**

25 A. An extension of schedule shall be granted only when a request for an extension
26 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the

1 deadline for which the extension is requested, and good cause exists for granting the extension.

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

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

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

- 11 1. Circumstances beyond the reasonable control and despite the due
12 diligence of MBHA including delays caused by unrelated third parties or Ecology, such
13 as (but not limited to) delays by Ecology in reviewing, approving, or modifying
14 documents submitted by MBHA; or
- 15 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
16 storm, or other unavoidable casualty; or
- 17 3. Endangerment as described in Section XVIII (Endangerment).

18 However, neither increased costs of performance of the terms of this Decree nor
19 changed economic circumstances shall be considered circumstances beyond the reasonable
20 control of MBHA.

21 C. Ecology shall act upon any written request for extension in a timely fashion.
22 Ecology shall give MBHA written notification of any extensions granted pursuant to this
23 Decree. A requested extension shall not be effective until approved by Ecology or, if required,
24 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
25 this Decree pursuant to Section XVI (Amendment of Decree) when a schedule extension is
26 granted.

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

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

6 2. Other circumstances deemed exceptional or extraordinary by
7 Ecology; or

8 3. Endangerment as described in Section XVIII (Endangerment).

9 **XVIII. ENDANGERMENT**

10 In the event Ecology determines that any activity being performed at the Site under this
11 Decree is creating or has the potential to create a danger to human health or the environment,
12 Ecology may direct MBHA to cease such activities for such period of time as it deems
13 necessary to abate the danger. MBHA shall immediately comply with such direction.

14 In the event MBHA determines that any activity being performed at the Site under this
15 Decree is creating or has the potential to create a danger to human health or the environment,
16 MBHA may cease such activities. MBHA shall notify Ecology's project coordinator as soon
17 as possible, but no later than twenty-four (24) hours after making such determination or
18 ceasing such activities. Upon Ecology's direction, MBHA shall provide Ecology with
19 documentation of the basis for the determination or cessation of such activities. If Ecology
20 disagrees with MBHA's cessation of activities, it may direct MBHA to resume such activities.

21 If Ecology concurs with or orders a work stoppage pursuant to this section, MBHA's
22 obligations with respect to the ceased activities shall be suspended until Ecology determines
23 the danger is abated, and the time for performance of such activities, as well as the time for any
24 other work dependent upon such activities, shall be extended, in accordance with Section XVII
25 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
26 circumstances.

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

3 **XIX. COVENANT NOT TO SUE**

4 A. Covenant Not to Sue: In consideration of MBHA's compliance with the terms
5 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
6 against MBHA regarding the release or threatened release of hazardous substances covered by
7 this Decree.

8 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
9 and those hazardous substances that Ecology knows are located at the Site as of the date of
10 entry of this Decree. This Decree does not cover any other hazardous substance or area. This
11 Decree and this covenant may be amended to include other hazardous substances or areas as
12 additional information may warrant. Ecology retains all of its authority relative to any
13 substance or area not covered by this Decree. In addition, this Decree does not settle any
14 potential liability MBHA may incur for acquiring any further interest in the Site not addressed
15 under this Decree.

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

- 17 1. Criminal liability;
18 2. Liability for damages to natural resources;
19 3. Any Ecology action, including cost recovery, against PLPs not a party to
20 this Decree.

21 If factors not known at the time of entry of this Decree are discovered and present a
22 previously unknown threat to human health or the environment, the Court shall amend this
23 Covenant Not to Sue.

24 B. Reopeners: Ecology specifically reserves the right to institute legal or
25 administrative action against MBHA to require it to perform additional remedial actions at the
26

1 Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
2 following circumstances:

3 1. Upon MBHA's failure to meet the requirements of this Decree;

4 2. If and when this Decree is amended to provide for a final cleanup action,
5 upon failure of the cleanup action to meet the cleanup standards identified in Ecology's
6 Cleanup Action Plan (CAP);

7 3. Upon Ecology's determination that remedial action beyond the terms of
8 this Decree is necessary to abate an imminent and substantial endangerment to human
9 health or the environment;

10 4. Upon the availability of new information regarding factors previously
11 unknown to Ecology, including the nature or quantity of hazardous substances at the
12 Site, and Ecology's determination, in light of this information, that further remedial
13 action is necessary at the Site to protect human health or the environment; or

14 5. If and when this Decree is amended to provide for a final cleanup action,
15 upon Ecology's determination that additional remedial actions are necessary to achieve
16 cleanup standards within the reasonable restoration time frame set forth in the CAP.

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

20 **XX. CONTRIBUTION PROTECTION**

21 With regard to claims for contribution against MBHA, the Parties agree that MBHA is
22 entitled to protection against claims for contribution for matters addressed in this Decree as
23 provided by RCW 70.105D.040(4)(d).

24 //

25 //

26 //

1 **XXI. LAND USE RESTRICTIONS**

2 If this Decree is amended to provide for a final cleanup action that requires an
3 Environmental (Restrictive) Covenant or Covenants to be recorded pursuant to WAC 173-340-
4 440, or if Ecology determines that portions of the Site may require Environmental (Restrictive)
5 Covenant or Covenants to be recorded pursuant to WAC 173-340-440, the following section
6 will apply: In consultation with MBHA, Ecology will prepare the Environmental (Restrictive)
7 Covenant consistent with WAC 173-340-440 and RCW 64.70. After approval by Ecology,
8 MBHA shall record the Environmental (Restrictive) Covenant with the office of the King
9 County Auditor. The Environmental (Restrictive) Covenant shall restrict future activities and
10 uses of the Site as agreed to by Ecology and MBHA. MBHA shall provide Ecology with the
11 original recorded Environmental (Restrictive) Covenant within thirty (30) days of the
12 recording date.

13 **XXII. FINANCIAL ASSURANCES**

14 If this Decree is amended to provide for a final cleanup action that includes engineered
15 and/or institutional controls that require financial assurances under WAC 173-340-440(11), the
16 following section will apply: Pursuant to WAC 173-340-440(11), MBHA shall maintain
17 sufficient and adequate financial assurance mechanisms to cover all costs associated with the
18 operation and maintenance of the remedial action at the Site, including institutional controls,
19 compliance monitoring, and corrective measures.

20 Within sixty (60) days of an amendment providing for a final cleanup action that
21 includes engineered and/or institutional controls that require financial assurances under
22 WAC 173-340-440(11), MBHA shall submit to Ecology for review and approval an estimate
23 of the costs that it will incur in carrying out the terms of this Decree, including operation and
24 maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the
25 aforementioned cost estimate, MBHA shall provide proof of financial assurances sufficient to
26 cover all such costs in a form acceptable to Ecology.

1 MBHA shall adjust the financial assurance coverage and provide Ecology's project
2 coordinator with documentation of the updated financial assurance for:

3 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
4 this Decree; or if applicable, the modified anniversary date established in accordance with this
5 section, or if applicable, ninety (90) days after the close of MBHA's fiscal year if the financial
6 test or corporate guarantee is used.

7 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
8 approval of a modification or revision to the CAP that result in increases to the cost or
9 expected duration of remedial actions. Any adjustments for inflation since the most recent
10 preceding anniversary date shall be made concurrent with adjustments for changes in cost
11 estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the
12 anniversary date established under this section to become the date of issuance of such revised
13 or modified CAP.

14 **XXIII. INDEMNIFICATION**

15 MBHA agrees to indemnify and save and hold the State of Washington, its employees,
16 and agents harmless from any and all claims or causes of action (1) for death or injuries to
17 persons, or (2) for loss or damage to property to the extent arising from or on account of acts or
18 omissions of MBHA, its officers, employees, agents, or contractors in entering into and
19 implementing this Decree. However, MBHA shall not indemnify the State of Washington nor
20 save nor hold its employees and agents harmless from any claims or causes of action to the
21 extent arising out of the negligent acts or omissions of the State of Washington, or the
22 employees or agents of the State, in entering into or implementing this Decree.

23 **XXIV. COMPLIANCE WITH APPLICABLE LAWS**

24 A. All actions carried out by MBHA pursuant to this Decree shall be done in
25 accordance with all applicable federal, state, and local requirements, including requirements to
26 obtain necessary permits, except as provided in RCW 70.105D.090.

1 B. Pursuant to RCW 70.105D.090(1), MBHA is exempt from the procedural
2 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
3 or authorizing local government permits or approvals. However, MBHA shall comply with the
4 substantive requirements of such permits or approvals. The exempt permits or approvals and
5 the applicable substantive requirements of those permits or approvals, will be identified in the
6 Cleanup Action Plan (CAP).

7 MBHA has a continuing obligation to determine whether additional permits or
8 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
9 action under this Decree. In the event either MBHA or Ecology determines that additional
10 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
11 remedial action under this Decree, it shall promptly notify the other party of this determination.
12 Ecology shall determine whether Ecology or MBHA shall be responsible to contact the
13 appropriate state and/or local agencies. If Ecology so requires, MBHA shall promptly consult
14 with the appropriate state and/or local agencies and provide Ecology with written
15 documentation from those agencies of the substantive requirements those agencies believe are
16 applicable to the remedial action. Ecology shall make the final determination on the additional
17 substantive requirements that must be met by MBHA and on how MBHA must meet those
18 requirements. Ecology shall inform MBHA in writing of these requirements. Once
19 established by Ecology, the additional requirements shall be enforceable requirements of this
20 Decree. MBHA shall not begin or continue the remedial action potentially subject to the
21 additional requirements until Ecology makes its final determination.

22 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
23 exemption from complying with the procedural requirements of the laws referenced in
24 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
25 necessary for the state to administer any federal law, the exemption shall not apply and MBHA
26

1 shall comply with both the procedural and substantive requirements of the laws referenced in
2 RCW 70.105D.090(1), including any requirements to obtain permits.

3 **XXV. REMEDIAL ACTION COSTS**

4 MBHA shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
5 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
6 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and
7 Decree preparation, negotiation, oversight, and administration. These costs shall include work
8 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
9 include costs of direct activities and support costs of direct activities as defined in
10 WAC 173-340-550(2). For all costs incurred subsequent to the entry of this Decree, MBHA
11 shall pay the required amount within thirty (30) days of receiving from Ecology an itemized
12 statement of costs that includes a summary of costs incurred, an identification of involved staff,
13 and the amount of time spent by involved staff members on the project. A general statement of
14 work performed will be provided upon request. Itemized statements shall be prepared
15 quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90)
16 days of receipt of the itemized statement of costs will result in interest charges at the rate of
17 twelve percent (12%) per annum, compounded monthly.

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

21 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

22 If Ecology determines that MBHA has failed to make sufficient progress or failed to
23 implement the remedial action required by this Decree, in whole or in part, Ecology may, after
24 notice to MBHA, perform any or all portions of the remedial action or at Ecology's discretion
25 allow MBHA the opportunity to correct. MBHA shall reimburse Ecology for the costs of
26 doing such work in accordance with Section XXV (Remedial Action Costs).

1 Except where necessary to abate an emergency situation, MBHA shall not perform any
2 remedial actions at the Site outside those remedial actions required by this Decree, unless
3 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XVI
4 (Amendment of Decree).

5 **XXVII. PERIODIC REVIEW**

6 If this Decree is amended to provide for a final cleanup action that requires a periodic
7 review under WAC 173-340-420(2), the following section will apply: As remedial action,
8 including groundwater monitoring, continues at the Site, the Parties agree to review the
9 progress of remedial action at the Site, and to review the data accumulated as a result of
10 monitoring the Site as often as is necessary and appropriate under the circumstances. At least
11 every five (5) years after the initiation of cleanup action at the Site, the Parties shall meet to
12 discuss the status of the Site and the need, if any, for further remedial action at the Site. At
13 least ninety (90) days prior to each periodic review, MBHA shall submit a report to Ecology
14 that documents whether human health and the environment are being protected based on the
15 factors set forth in WAC 173-340-420(4). Under Section XIX (Covenant Not to Sue), Ecology
16 reserves the right to require further remedial action at the Site under appropriate circumstances.
17 This provision shall remain in effect for the duration of this Decree.

18 **XXVIII. PUBLIC PARTICIPATION**

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

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

1 B. Notify Ecology's project coordinator prior to the preparation of all press
2 releases and fact sheets, and before major meetings with the interested public and local
3 governments. Likewise, Ecology shall notify MBHA prior to the issuance of all press releases
4 and fact sheets, and before major meetings with the interested public and local governments.
5 For all press releases, fact sheets, meetings, and other outreach efforts by MBHA that do not
6 receive prior Ecology approval, MBHA shall clearly indicate to its audience that the press
7 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by
8 Ecology.

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

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

- 14 1. Beacon Hill Public Library
15 2821 Beacon Avenue S.
16 Seattle, WA 98144
- 17 2. Downtown Public Library
18 1000 Fourth Avenue
19 Seattle, WA 98104
- 20 3. Ecology's Northwest Regional Office
21 3190 160th Avenue SE
22 Bellevue, WA 98008-5452

23 At a minimum, copies of all public notices, fact sheets, and documents relating to public
24 comment periods shall be promptly placed in these repositories. A copy of all documents
25 related to this Site shall be maintained in the repository at Ecology's Northwest Regional
26 Office in Bellevue, Washington.

24 **XXIX. DURATION OF DECREE**

25 The remedial program required pursuant to this Decree shall be maintained and
26 continued until MBHA has received written notification from Ecology that the requirements of

1 this Decree have been satisfactorily completed. This Decree shall remain in effect until
2 dismissed by the Court. When dismissed, Section XIX (Covenant Not to Sue) and Section XX
3 (Contribution Protection) shall survive.

4 **XXX. CLAIMS AGAINST THE STATE**

5 MBHA hereby agrees that it will not seek to recover any costs accrued in implementing
6 the remedial action required by this Decree from the State of Washington or any of its
7 agencies; and further, that MBHA will make no claim against the State Toxics Control
8 Account or any local Toxics Control Account for any costs incurred in implementing this
9 Decree. Notwithstanding the foregoing, nothing in this Decree shall be construed to prevent
10 MBHA from receiving Public Funds as provided in RCW 70.105D.070(q), nor limit or address
11 funding that may be provided under WAC 173-322A or any other public source. Except as
12 provided above, MBHA expressly reserves its right to seek to recover any costs incurred in
13 implementing this Decree from any other PLP.

14 **XXXI. EFFECTIVE DATE**

15 This Decree is effective only upon the date (Effective Date) that title to the Property
16 vests in MBHA, following entry of this Decree by the Court. If MBHA does not purchase the
17 Properties by December 31, 2016, the parties shall meet and confer regarding the status of
18 MBHA's pending purchase of the Properties. After this conference, the parties may determine
19 that this Decree shall be null and void, and MBHA will be under no obligation to perform the
20 work required by this Decree.

21 **XXXII. WITHDRAWAL OF CONSENT**

22 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
23 at the option of any party and the accompanying Complaint shall be dismissed without costs


24 //


25 //

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

3 STATE OF WASHINGTON
4 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General


5 
6 James J. Pendowski
7 Program Manager
8 Toxics Cleanup Program
9 (360) 407-7177


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

10 Date: 12/7/16

Date: 12/8/16

11 MOUNT BAKER HOUSING ASSOCIATION

12 
13 Mike Rooney
14 Executive Director
15 (206) 725-4152

16 Date: 10-19-2016


17 ENTERED this _____ day of _____ 20__.

18 _____
19 JUDGE
20 King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number: 16-2-29584-3
Case Title: STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY vs
MOUNT BAKER HOUSING ASSOCIATION
Document Title: AGREED ORDER

Signed by: Commissioner Henry Judson
Date: 12/8/2016 3:24:30 PM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'H. Judson' written in a cursive style.

Judge/Commissioner: Commissioner Henry Judson

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 252A2613AD1DF6F184ADD5EFD5753C76D53A5CB8
Certificate effective date: 7/16/2014 12:09:30 PM
Certificate expiry date: 7/16/2019 12:09:30 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Henry Judson:
WPypi5D74hGx6nH1YIhwmw=="

Exhibit A:
Site Diagram

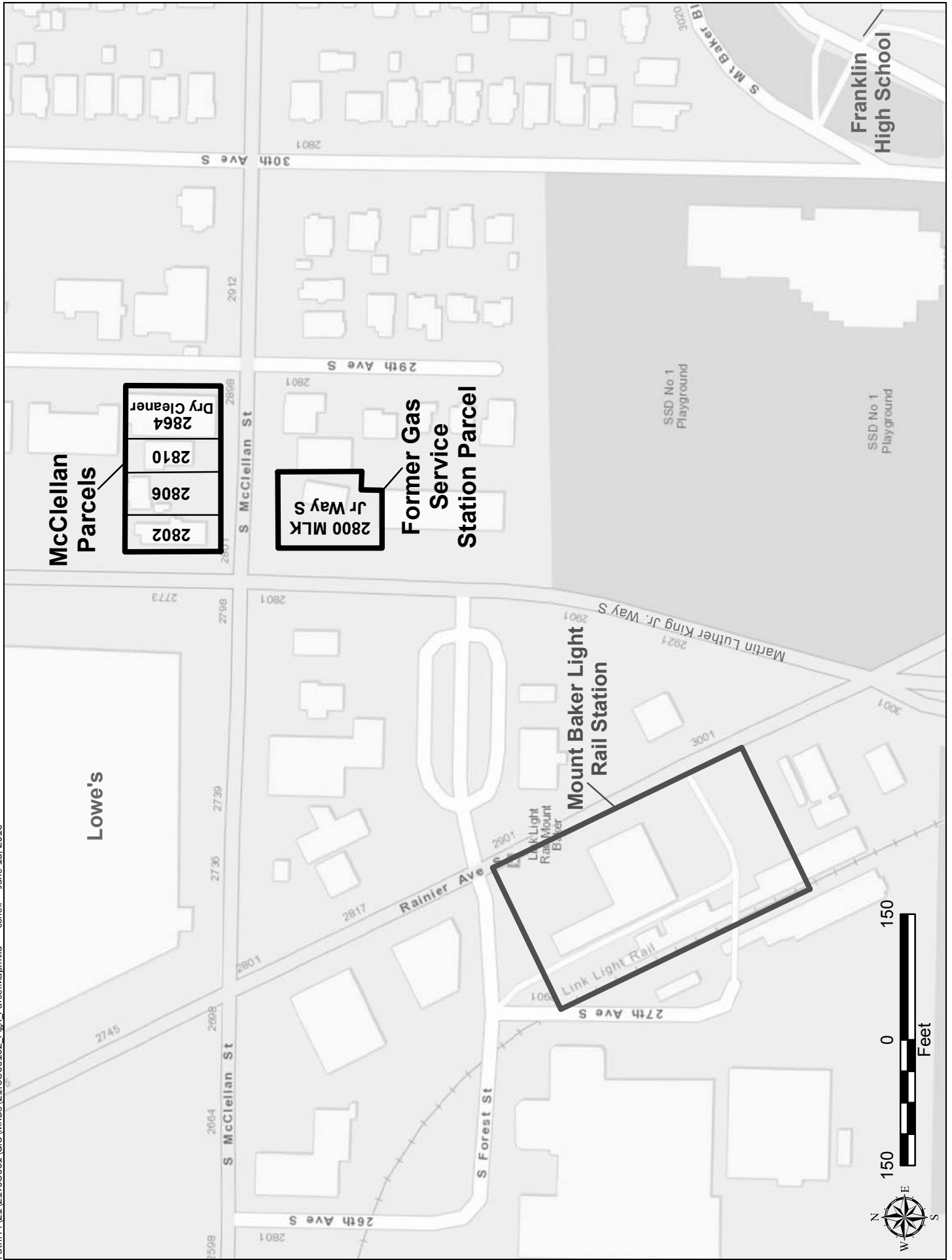


Exhibit B:
Property Descriptions

PARCEL A:

THAT PORTION OF THE EDWARD HANFORD DONATION LAND CLAIM NO. 44 IN SECTION 9,
TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE INTERSECTION OF MCCLELLAN STREET AND
29TH AVENUE SOUTH;

THENCE WESTERLY ALONG THE NORTHERLY LINE OF MCCLELLAN STREET, 150 FEET TO THE TRUE
POINT OF BEGINNING;

THENCE CONTINUING WESTERLY ALONG SAID NORTHERLY LINE 33.1 FEET;

THENCE NORTHERLY ALONG A LINE PARALLEL WITH THE WESTERLY LINE OF 29TH AVENUE SOUTH
100 FEET;

THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF MCCLELLAN STREET 33.1 FEET;

THENCE SOUTHERLY PARALLEL WITH THE WESTERLY LINE OF 29TH AVENUE SOUTH 100 FEET TO
THE TRUE POINT OF BEGINNING;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL B:

THAT PORTION OF THE EDWARD HANFORD DONATION LAND CLAIM NO. 44 IN SECTION 9,
TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF MCCLELLAN STREET, 100 FEET WEST FROM ITS
INTERSECTION WITH THE WEST LINE OF 29TH AVENUE SOUTH, PRODUCED NORTH;

THENCE NORTH, PARALLEL WITH THE WEST LINE OF 29TH AVENUE SOUTH, 100 FEET;

THENCE WEST PARALLEL WITH THE NORTH LINE OF MCCLELLAN STREET, 50 FEET;

THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID 29TH AVENUE SOUTH, 100 FEET TO THE
NORTH LINE OF MCCLELLAN STREET;

THENCE EAST ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

THAT PORTION OF THE EAST "HANFORD'S DONATION CLAIM" DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF MCCLELLAN STREET 53 FEET WEST FROM ITS INTERSECTION WITH THE WEST LINE OF 29TH AVENUE SOUTH PRODUCED NORTH;
THENCE NORTH PARALLEL WITH THE WEST LINE OF 29TH AVENUE SOUTH PRODUCED NORTH A DISTANCE OF 100 FEET;
THENCE WEST PARALLEL WITH SAID NORTH LINE OF MCCLELLAN STREET 47 FEET;
THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID 29TH AVENUE SOUTH 100 FEET TO THE NORTH LINE OF SAID MCCLELLAN STREET;
THENCE EAST ALONG SAID LINE 47 FEET TO THE POINT OF BEGINNING;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.



THAT PORTION OF THE E. HANFORD'S DONATION CLAIM, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF MCCLELLAN STREET 3 FEET WEST FROM ITS INTERSECTION WITH THE WEST LINE OF 29TH AVENUE SOUTH PRODUCED NORTH;
THENCE NORTH PARALLEL WITH THE WEST LINE OF 29TH AVENUE SOUTH PRODUCED NORTH 100 FEET,
THENCE WEST PARALLEL WITH THE SAID NORTH LINE OF MCCLELLAN STREET 50 FEET;
THENCE SOUTH PARALLEL WITH THE WEST LINE OF 29TH AVENUE SOUTH PRODUCED NORTH 100 FEET TO THE NORTH LINE OF MCCLELLAN STREET;
THENCE EAST ALONG SAID LINE TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

2800 Martin Luther King Way S.

20070605000433.003

CHICAGO TITLE INSURANCE COMPANY

Escrow No.: 1235287

The land referred to is situated in the State of Washington, County of KING, and is described as follows:

THAT PORTION OF EDWARD HANFORD'S DONATION CLAIM NO. 44 AND OF LOTS 1 AND 2, BLOCK 2, PETERS GARDENS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 25 OF PLATS, PAGE 44, RECORDS OF KING COUNTY, WASHINGTON, AND OF VACATED ALLEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF MCCLELLAN STREET, AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 59194, AS PROVIDED BY ORDINANCE NO. 17060 OF THE CITY OF SEATTLE WITH THE EASTERLY LINE OF EMPIRE WAY (NOW KNOWN AS ML KING JR. WAY S.), AS DEEDED TO THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NUMBER 3211266, RECORDS OF KING COUNTY, WASHINGTON;
THENCE EASTERLY ALONG SAID SOUTHERLY LINE TO A POINT 10.76 FEET EASTERLY OF THE NORTHWEST CORNER OF SAID BLOCK 2;
THENCE SOUTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK, A DISTANCE OF 100.00 FEET TO THE SOUTHERLY LINE OF LOT 2 IN SAID BLOCK;
THENCE WESTERLY ALONG SAID SOUTHERLY LINE AND THE PRODUCTION THEREOF 20.76 FEET TO THE WESTERLY LINE OF VACATED ALLEY;
THENCE SOUTHERLY ALONG SAID WESTERLY LINE 25.00 FEET;
THENCE WESTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID MCCLELLAN STREET TO THE EASTERLY LINE OF SAID EMPIRE WAY (NOW KNOWN AS ML KING JR. WAY S.);
THENCE NORTHERLY ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING;

IN KING COUNTY, WASHINGTON.

EXLEGALE/RDA/089

Exhibit C:

Scope of Work and Schedule

EXHIBIT C: SCOPE OF WORK AND SCHEDULE

Scope of Work

Pursuant to the Prospective Purchaser Consent Decree (PPCD), Mount Baker Housing Association (MBHA) will complete a Remedial Investigation and Feasibility Study (RI/FS) for the Site in accordance with the Model Toxics Control Act (MTCA) Regulation (Washington Administrative Code [WAC] 173-340) subject to Washington State Department of Ecology (Ecology) review and approval. Following completion of the final RI/FS report, a final cleanup remedy will be selected for the Site to coincide with redevelopment at the Site and the availability of cleanup funds to implement the remedy.

The RI/FS work will consist of: (1) developing a Draft RI/FS Work Plan, (2) completing Ecology review of the Draft RI/FS Work Plan, (3) finalizing the RI/FS Work Plan, (4) implementation of the approved RI/FS Work Plan, (5) public comment and Ecology review of the Draft RI/FS Report, and (6) finalizing the RI/FS Report. The RI/FS Report will be consistent with Ecology's RI and FS Checklists (Publication Nos. 16-09-006 and 16-09-007, respectively) dated May 2016 and shall accomplish the following objectives:

- Evaluate subsurface utilities and their role as preferential pathways for potential contamination migration.
- Further evaluate nature and extent of chlorinated solvents contamination in soil and groundwater at the McClellan Parcels and adjacent properties including City of Seattle's rights-of-way (Martin Luther King Jr. Way S., 29th Avenue S., and South McClellan Street) and at the Former Gasoline Service Station Parcel.
- Delineate the lateral and vertical extent of contaminants in soil and groundwater at and in the vicinity of McClellan Parcels.
- Delineate the lateral and vertical extent of petroleum and chlorinated solvents contamination in soil and groundwater at the Former Gasoline Service Station Parcel and vicinity. The Phillips 66 070644 Site, which is VCP NW2612 and FSID 42746846 and vicinity, including the potential migration of PCE-contaminated groundwater onto this Parcel from upgradient sources located to the northwest.
- Assess potential for vapor intrusion in existing buildings located at properties in proximity to the dry cleaner, if chlorinated solvents contamination is identified at these properties. Measure vapor contaminant in the buildings if necessary.
- Determine the extent of "Site" and develop a Conceptual Site Model.
- Based on the RI data, develop cleanup options for affected media at the Site and evaluate the cleanup options through a Feasibility Study. Present the results of the RI and FS in a single RI/FS Report to Ecology for review and applicable public comment.

Additional Remedial Actions

Following completion of the Final RI/FS report, the Parties intend to amend the Decree to provide for MBHA to conduct additional remedial actions at the Site. This is anticipated to include MBHA preparing a draft Cleanup Action Plan (CAP) for Ecology's review. The Parties intend that Ecology will select a final Site remedy in a final CAP and that MBHA will conduct additional remedial actions pursuant to and consistent with the CAP.

When MBHA has obtained sufficient funds to complete additional remedial action(s) at the Site, the Parties shall revise this Scope of Work and Schedule in conjunction with the PPCD to govern such additional remedial action(s). The Parties understand that the Site consists of multiple parcels and that MBHA will likely seek to redevelop parcels at the Site in phases. Ecology may authorize parcel-specific redevelopment and remedial action as specified in Section VI.B of the PPCD.

Proposed RI/FS Scope and Schedule

MBHA will begin RI/FS activities prior to property acquisition and entry of the PPCD to expedite the remedial process. The following is the proposed scope and schedule for the RI/FS:

1. RI/FS Planning	
June–December 2016	Data Review. MBHA will review previous environmental reports including results from fall 2016 McClellan Parcels site characterization funded by U.S. Environmental Protection Agency (EPA) Brownfields Program to design the proposed RI/FS.
January–March 2017	Draft RI/FS Work Plan. MBHA will prepare a Draft RI/FS Work Plan that outlines the goals, scope, exploration locations, sampling, chemical testing rationale, analytical methods, field screening procedures, and quality assurance and quality control measures that will be utilized for completing the RI/FS. The Draft RI/FS Work Plan will be submitted to Ecology for review and comment.
April/May 2017	Ecology review of the Draft RI/FS Work Plan: Two months from the date the Draft Work Plan is submitted to Ecology.
June 2017	Finalize RI/FS Work Plan: One month after Ecology review comments are received.
2. RI/FS Implementation and Reporting	
July 2017	Obtain permits from City of Seattle for drilling and sampling in rights-of-way.
August 2017	Remedial Investigation. Conduct explorations and sampling (soil, groundwater, and soil gas). Samples will be submitted to an Ecology-accredited laboratory for chemical analysis.
September 2017	Additional Explorations. Evaluate the need for additional subsurface sampling based on the chemical analytical results.
October 2017	Vapor Intrusion. Risk of potential for Vapor Intrusion (VI) will be assessed and work plan will be prepared as needed.

November/December 2017	Draft RI. Results of all environmental investigations including VI assessment will be summarized in a Draft Remedial Investigation (RI) report, which will be completed in accordance with all substantive requirements of MTCA.
December 2017/January 2018	Draft FS and DCA. Based on the RI, potential cleanup options will be developed and evaluated through a Draft Feasibility Study (FS) and Disproportionate Cost Analysis (DCA), which will be completed in accordance with MTCA requirements.
February/March 2018	Ecology RI/FS review: Two months, or additional review time as needed, depending on the construction schedule, from the date the Draft RI/FS Report is submitted to Ecology.
April through June 2018	Public review and comment: Three months after Ecology comments are received.
July 2018	Final RI/FS Report: One month after public comments are received.