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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF BOTHELL, BOTHELL  
SERVICE CENTER ASSOCIATES,  
NORMAN OLSEN, NANCY  
OLSEN, LANCE CROSS, ANITA  
CROSS, ROSS LUNDE, and  
ESTATE OF MERCER RHODES,

Defendants.

NO. \_\_\_\_\_

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology), the Defendants City of Bothell (City), Bothell Service Center Associates (BSCA),  
4 Norman Olsen, Nancy Olsen, Lance Cross, Anita Cross, Ross Lunde, and the Estate of Mercer  
5 Rhodes (collectively the Defendants) under this Decree is to provide for remedial action at a  
6 facility where there has been a release or threatened release of hazardous substances. This  
7 Decree requires Defendants to implement the Cleanup Action Plan (CAP) (Exhibit C) for the  
8 Bothell Service Center Simon & Sons (BSCSS) Site (Site).

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

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

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

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

22 F. This Decree shall not be construed as proof of liability or responsibility for any  
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
24 provided, however, that Defendants shall not challenge the authority of the Attorney General  
25 and Ecology to enforce this Decree.  
26

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

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

## 4 II. JURISDICTION

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

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

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

14 D. Defendants each waive the procedural requirements of WAC 173-340-500 and  
15 accept PLP status for purposes of this Decree.

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

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

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

22 H. Defendants have agreed to undertake the actions specified in this Decree and  
23 consents to the entry of this Decree under MTCA.

## 24 III. PARTIES BOUND

25 This Decree shall apply to and be binding upon the Parties to this Decree, their successors  
26 and assigns. The undersigned representative of each party hereby certifies that he or she is fully

1 authorized to enter into this Decree and to execute and legally bind such party to comply with  
2 this Decree. Defendants agree to undertake all actions required by the terms and conditions of  
3 this Decree. No change in ownership or corporate status shall alter Defendants' responsibility  
4 under this Decree. Defendants shall provide a copy of this Decree to all agents, contractors, and  
5 subcontractors retained to perform work required by this Decree, and shall ensure that all work  
6 undertaken by such agents, contractors, and subcontractors complies with this Decree.

#### 7 **IV. DEFINITIONS**

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

10 A. Site: The Site is referred to as BSCSS Site and is generally located at 18107  
11 Bothell Way NE, Bothell, WA in the location shown on the Site Location Diagram (Exhibit A).  
12 The currently documented boundaries of the Site are more particularly described in the  
13 Settlement Area Diagram (Exhibit B). The Site constitutes a facility under RCW  
14 70.105D.020(8). RCW 70.105D.020(8) defines a "facility" as including any site or area where a  
15 hazardous substance, other than a consumer product in consumer use, has been deposited, stored,  
16 disposed of, or placed or otherwise come to be located. As a result, the boundary of the Site may  
17 expand beyond the boundaries shown in the Settlement Area Diagram (Exhibit B) if Ecology  
18 finds that the facility boundaries must expand to meet the statutory definition.

19 B. Settlement Area: The Settlement Area is limited to the area where the Remedial  
20 Investigation/Feasibility Study (RIFS) for the BSCSS Site (*Remedial Investigation/Feasibility*  
21 *Study Report, Bothell Service Center, Bothell, WA* (Kane, October 4, 2017)) has documented the  
22 release of hazardous substances (which the RIFS refers to as contaminants of concern) from the  
23 former drycleaner at the northwest corner of the Site, and Ecology has agreed to provide a  
24 Covenant Not to Sue as provided in Section XVIII. The Settlement Area is depicted in the  
25 Settlement Area Diagram (Exhibit B). The Settlement Area is only a portion of the Site, and its  
26 boundaries do not necessarily reflect the boundaries of the Site as defined by MTCA.

1 C. Parties: Refers to the State of Washington, Department of Ecology, the City,  
2 BSCA, Norman Olsen, Nancy Olsen, Lance Cross, Anita Cross, Ross Lunde, and the Estate of  
3 Mercer Rhodes .

4 D. Defendants: Refers to the City, BSCA, Norman Olsen, Nancy Olsen, Lance  
5 Cross, Anita Cross, Ross Lunde and the Estate of Mercer Rhodes .

6 E. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits  
7 to this Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms  
8 “Consent Decree” or “Decree” shall include all exhibits to this Consent Decree.

#### 9 V. FINDINGS OF FACTS

10 Ecology makes the following findings of fact without any express or implied admissions  
11 of such facts by Defendants.

12 A. The Site is located in Bothell, Washington, and consists of approximately four  
13 acres. The Site is currently expected to be within a city block generally bounded by 98th Ave  
14 NE, SR 522, NE Bothell Way and Main Street (extension). A diagram of the Site location is  
15 attached as Exhibit A.

16 B. Between approximately 1988 and 2015, the Site was used by various tenants for  
17 a variety of commercial uses. Contamination at the Site is related to dry cleaning operations at  
18 the Site. Soil, groundwater and soil vapor samples have been collected at the Site and chlorinated  
19 solvents, such as PCE, have been detected at levels that represent a risk to human health and the  
20 environment and require remedial action.

21 C. A series of investigations have been performed, including the RIFS.

22 D. The contaminants of concern at the Site that exceed MTCA cleanup levels are  
23 chlorinated solvents, i.e., Tetrachloroethene (PCE), Trichloroethene (TCE), Cis-1,2  
24 Dichloroethene (DCE), and Vinyl Chloride (VC) in soil and groundwater. Ecology has not  
25 assigned the Site an overall priority ranking pursuant to MTCA.  
26

1 E. As documented in the CAP (Exhibit C), the cleanup action to be implemented at  
2 the Site includes the a combination of electrical resistance heating, soil vapor extraction,  
3 biological groundwater treatment and circulation, monitoring, targeted soil removal, and  
4 institutional controls as required by WAC 173-340-360(8)(b).

5 F. The City is the current “owner or operator” of the Site as that term is defined in  
6 RCW 70.105D.020(22), and is a PLP.

7 G. BSCA was an “owner or operator” at the time of initial release of hazardous  
8 substances at the Site, remained an “owner or operator” until the City acquired the property in  
9 2015, and is a PLP.

10 H. Norman Olsen, Nancy Olsen, Lance Cross, Anita Cross, Ross Lunde, and the  
11 Estate of Mercer Rhodes are current or former partners in BSCA, a Washington general  
12 partnership, were “owners or operators” of the Site during the time period that BSCA was an  
13 “owner or operator,” and are PLPs.

## 14 VI. WORK TO BE PERFORMED

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

18 A. Defendants shall implement the activities in the CAP (Exhibit C) and Schedule  
19 (Exhibit D).

20 B. Defendants agree not to perform any remedial actions outside the scope of this  
21 Decree unless the Parties agree to modify the CAP (Exhibit C) and Schedule (Exhibit D) to cover  
22 these actions. All work conducted by Defendants under this Decree shall be done in accordance  
23 with WAC 173-340 unless otherwise provided herein.

24 C. All plans or other deliverables submitted by Defendants for Ecology’s review and  
25 approval under the CAP (Exhibit C) and Schedule (Exhibit D) shall, upon Ecology’s approval,  
26 become integral and enforceable parts of this Decree.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Jerome Cruz  
4 Department of Ecology  
5 3190 160<sup>th</sup> Avenue SE  
6 Bellevue, WA 98008-5452  
7 Phone: (425) 649-7094  
8 Email: jcr461@ecy.wa.gov

9 The project coordinator for Defendant City is:

10 Nduta Mbuthia  
11 Senior Capital Project Engineer  
12 City of Bothell Public Works Department  
13 18415 101<sup>st</sup> Avenue NE  
14 Bothell, WA 98011  
15 Phone: 425-806-6829  
16 Email: nduta.mbuthia@bothellwa.gov

17 The project coordinator for Defendants BSCA, Norman Olsen, Nancy Olsen, Lance  
18 Cross, Anita Cross, Ross Lunde, and the Estate of Mercer Rhodes is:

19 Norm Olsen  
20 NLO Property Management, LLC  
21 3035 170th Pl SE  
22 Bellevue, WA 98008  
23 425-890-3908  
24 nloproperties@hotmail.com

25 Each project coordinator shall be responsible for overseeing the implementation of this  
26 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.  
To the maximum extent possible, communications between Ecology and Defendants and all  
documents, including reports, approvals, and other correspondence concerning the activities  
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 Washington,  
5 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 otherwise  
8 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 a  
11 professional engineer. The professional engineer must be registered by the State of Washington,  
12 except as otherwise provided for by RCW 18.43.130.

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

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

18 **IX. ACCESS**

19 Ecology or any Ecology authorized representative shall have access to enter and freely  
20 move about all property at the Site that Defendants either own, control, or have access rights to  
21 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and  
22 contracts related to the work being performed pursuant to this Decree; reviewing Defendants’  
23 progress in carrying out the terms of this Decree; conducting such tests or collecting such  
24 samples as Ecology may deem necessary; using a camera, sound recording, or other documentary  
25 type equipment to record work done pursuant to this Decree; and verifying the data submitted to  
26 Ecology by Defendants. Defendants shall make all reasonable efforts to secure access rights for

1 those properties within the Site not owned or controlled by Defendants where remedial activities  
2 or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized  
3 representative shall give reasonable notice before entering any Site property owned or controlled  
4 by Defendants unless an emergency prevents such notice. All Parties who access the Site  
5 pursuant to this section shall comply with any applicable health and safety plan(s). Ecology  
6 employees and their representatives shall not be required to sign any liability release or waiver  
7 as a condition of Site property access.

#### 8 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

9 With respect to the implementation of this Decree, Defendants shall make the results of  
10 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
11 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in  
12 both printed and electronic formats in accordance with Section XI (Progress Reports), Ecology's  
13 Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent  
14 procedures specified by Ecology for data submittal.

15 If requested by Ecology, Defendants shall allow Ecology and/or its authorized  
16 representative to take split or duplicate samples of any samples collected by Defendants pursuant  
17 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance  
18 of any sample collection or work activity at the Site. Ecology shall, upon request, allow  
19 Defendants and/or its authorized representative to take split or duplicate samples of any samples  
20 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does  
21 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX  
22 (Access), Ecology shall notify Defendants prior to any sample collection activity unless an  
23 emergency prevents such notice.

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

1 **XI. PROGRESS REPORTS**

2 Defendants shall submit to Ecology written monthly Progress Reports that describe the  
3 actions taken during the previous month to implement the requirements of this Decree. The  
4 Progress Reports shall include the following:

5 A. A list of on-site activities that have taken place during the month;

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

8 C. Description of all deviations from the CAP (Exhibit C) and Schedule (Exhibit D)  
9 during the current month and any planned deviations in the upcoming month;

10 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
11 compliance with the schedule;

12 E. All raw data (including laboratory analyses) received by Defendants during the  
13 past month and an identification of the source of the sample; and

14 F. A list of deliverables for the upcoming month if different from the schedule.

15 All Progress Reports shall be submitted by the tenth (10th) day of the month in which  
16 they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports  
17 and any other documents submitted pursuant to this Decree shall be sent by certified mail, return  
18 receipt requested, to Ecology’s project coordinator.

19 **XII. RETENTION OF RECORDS**

20 During the pendency of this Decree, and for ten (10) years from the date this Decree is  
21 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants shall  
22 preserve all records, reports, documents, and underlying data in its possession relevant to the  
23 implementation of this Decree and shall insert a similar record retention requirement into all  
24 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants  
25 shall make all records available to Ecology and allow access for review within a reasonable time.  
26

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

### 7 **XIII. TRANSFER OF INTEREST IN PROPERTY**

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

12 Prior to Defendants' transfer of any interest in all or any portion of the Site, and during  
13 the effective period of this Decree, Defendants shall provide a copy of this Decree to any  
14 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
15 least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said transfer. Upon  
16 transfer of any interest, Defendants shall notify all transferees of the restrictions on the activities  
17 and uses of the property under this Decree and incorporate any such use restrictions into the  
18 transfer documents.

### 19 **XIV. RESOLUTION OF DISPUTES**

20 A. In the event that Defendants elects to invoke dispute resolution, Defendants must  
21 utilize the procedure set forth below.

22 1. Upon the triggering event (receipt of Ecology's project coordinator's  
23 written decision or an itemized billing statement), Defendants have fourteen (14)  
24 calendar days within which to notify Ecology's project coordinator in writing of its  
25 dispute ("Informal Dispute Notice").  
26

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

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

15           4.       The Section Manager shall conduct a review of the dispute and shall issue  
16 a written decision regarding the dispute ("Decision on Dispute") within thirty (30)  
17 calendar days of receipt of the Formal Dispute Notice.

18           5.       If Defendants find Ecology's Regional Section Manager's decision  
19 unacceptable, Defendants may then request final management review of the decision.  
20 This request ("Final Review Request") shall be submitted in writing to the Toxics  
21 Cleanup Program Manager within seven (7) calendar days of Defendants' receipt of the  
22 Decision on Dispute. The Final Review Request shall include a written statement of  
23 dispute setting forth: the nature of the dispute; the disputing Party's position with respect  
24 to the dispute; and the information relied upon to support its position.

25           6.       Ecology's Toxics Cleanup Program Manager shall conduct a review of  
26 the dispute and shall issue a written decision regarding the dispute ("Final Decision on

1 Dispute”) within thirty (30) calendar days of receipt of the Final Review Request. The  
2 Toxics Cleanup Program Manager’s decision shall be Ecology’s final decision on the  
3 disputed matter.

4 B. If Ecology’s Final Decision on Dispute is unacceptable to Defendants,  
5 Defendants have the right to submit the dispute to the Court for resolution. The Parties agree  
6 that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute  
7 arising under this Decree. In the event Defendants present an issue to the Court for review, the  
8 Court shall review the action or decision of Ecology on the basis of whether such action or  
9 decision was arbitrary and capricious and render a decision based on such standard of review.

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

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

17 E. In case of a dispute, failure to either proceed with the work required by this  
18 Decree or timely invoke dispute resolution may result in Ecology’s determination that  
19 insufficient progress is being made in preparation of a deliverable, and may result in Ecology  
20 undertaking the work under Section XXV (Implementation of Remedial Action).

## 21 **XV. AMENDMENT OF DECREE**

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

25 Substantial changes to the work to be performed shall require formal amendment of this  
26 Decree. This Decree may only be formally amended by a written stipulation among the Parties

1 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
2 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
3 by any party.

4 Defendants shall submit a written request for amendment to Ecology for approval.  
5 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the  
6 written request for amendment is received. If the amendment to the Decree is a substantial  
7 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
8 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
9 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
10 resolution procedures described in Section XIV (Resolution of Disputes).

#### 11 **XVI. EXTENSION OF SCHEDULE**

12 A. An extension of schedule shall be granted only when a request for an extension  
13 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
14 deadline for which the extension is requested, and good cause exists for granting the extension.  
15 All extensions shall be requested in writing. The request shall specify:

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

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

- 24 1. Circumstances beyond the reasonable control and despite the due  
25 diligence of Defendants including delays caused by unrelated third parties or Ecology,  
26

1 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
2 documents submitted by Defendants;

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

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

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

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

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

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

20 2. Other circumstances deemed exceptional or extraordinary by Ecology; or

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

## 22 **XVII. ENDANGERMENT**

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



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

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

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

## 17 **XVIII. COVENANT NOT TO SUE**

18 A. Covenant Not to Sue: In consideration of Defendants' compliance with the terms  
19 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions  
20 against Defendants regarding the release or threatened release of hazardous substances covered  
21 by this Decree that are: (1) within the Settlement Area detailed in the Settlement Area Diagram  
22 (Exhibit B), and (2) are Tetrachloroethene (PCE), Trichloroethene (TCE), Cis-1,2  
23 Dichloroethene (DCE), or Vinyl Chloride (VC) from the former drycleaners at the northwest  
24 corner of the Site and subject to remediation pursuant to the CAP.

25 This Covenant Not to Sue does not cover any other hazardous substances including but  
26 not limited to hazardous substances originating at the Bothell Hertz MTCA site and/or the

1 Wexler/Schucks MTCA site which may have come to be located within the Settlement Area.  
2 This Covenant Not to Sue does not cover any area other than the Settlement Area. Ecology  
3 retains all of its authority relative to any hazardous substance(s) or area(s) not covered by this  
4 Covenant Not to Sue.

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

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

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

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

- 17 1. Upon Defendants' failure to meet the requirements of this Decree;
- 18 2. Failure of the remedial action to meet the cleanup standards identified in  
19 the CAP (Exhibit C);
- 20 3. Upon Ecology's determination that remedial action beyond the terms of  
21 this Decree is necessary to abate an imminent and substantial endangerment to human  
22 health or the environment;
- 23 4. Upon the availability of new information regarding factors previously  
24 unknown to Ecology, including the nature or quantity of hazardous substances at the Site,  
25 and Ecology's determination, in light of this information, that further remedial action is  
26 necessary at the Site to protect human health or the environment; or





1 action to the extent arising out of the negligent acts or omissions of the State of Washington, or  
2 the employees or agents of the State, in entering into or implementing this Decree.

### 3 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

4 A. All actions carried out by Defendants pursuant to this Decree shall be done in  
5 accordance with all applicable federal, state, and local requirements, including requirements to  
6 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
7 federal, state, or local requirements that the agency has determined are applicable and that are  
8 known at the time of entry of this Decree have been identified in the CAP (Exhibit C).

9 B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural  
10 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring  
11 or authorizing local government permits or approvals. However, Defendants shall comply with  
12 the substantive requirements of such permits or approvals. The exempt permits or approvals and  
13 the applicable substantive requirements of those permits or approvals, as they are known at the  
14 time of entry of this Decree, have been identified in the CAP (Exhibit C).

15 Defendants have a continuing obligation to determine whether additional permits or  
16 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
17 action under this Decree. In the event either Ecology or Defendants determine that additional  
18 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
19 remedial action under this Decree, it shall promptly notify the other party of this determination.  
20 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the  
21 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly  
22 consult with the appropriate state and/or local agencies and provide Ecology with written  
23 documentation from those agencies of the substantive requirements those agencies believe are  
24 applicable to the remedial action. Ecology shall make the final determination on the additional  
25 substantive requirements that must be met by Defendants and on how Defendants must meet  
26 those requirements. Ecology shall inform Defendants in writing of these requirements. Once

1 established by Ecology, the additional requirements shall be enforceable requirements of this  
2 Decree. Defendants shall not begin or continue the remedial action potentially subject to the  
3 additional requirements until Ecology makes its final determination.

4 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
5 exemption from complying with the procedural requirements of the laws referenced in  
6 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary  
7 for the state to administer any federal law, the exemption shall not apply and Defendants shall  
8 comply with both the procedural and substantive requirements of the laws referenced in RCW  
9 70.105D.090(1), including any requirements to obtain permits.

#### 10 **XXIV. REMEDIAL ACTION COSTS**

11 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
12 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or  
13 its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Decree  
14 preparation, negotiation, oversight, and administration. These costs shall include work  
15 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include  
16 costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).  
17 Ecology has accumulated \$6,749.10 in remedial actions costs plus \$6,359.73 in unpaid remedial  
18 action costs under VCP Project No. NW2946 related to this facility as of September 26, 2017,  
19 for a total owed to Ecology of \$13,108.83. Payment for this amount shall be submitted within  
20 thirty (30) days of the effective date of this Decree. For all costs incurred subsequent to  
21 September 26, 2017, Defendants shall pay the required amount within thirty (30) days of  
22 receiving from Ecology an itemized statement of costs that includes a summary of costs incurred,  
23 an identification of involved staff, and the amount of time spent by involved staff members on  
24 the project. A general statement of work performed will be provided upon request. Itemized  
25 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay  
26

1 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result  
2 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

#### 6 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

7 If Ecology determines that the Defendants have failed to make sufficient progress or  
8 failed to implement the remedial action, in whole or in part, Ecology may, after notice to  
9 Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow  
10 the Defendants opportunity to correct. The Defendants shall reimburse Ecology for the costs of  
11 doing such work in accordance with Section XXIV (Remedial Action Costs).

12 Except where necessary to abate an emergency situation, Defendants shall not perform  
13 any remedial actions at the Site outside those remedial actions required by this Decree, unless  
14 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV  
15 (Amendment of Decree).

#### 16 **XXVI. PERIODIC REVIEW**

17 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
18 agree to review the progress of remedial action at the Site, and to review the data accumulated  
19 as a result of monitoring the Site as often as is necessary and appropriate under the  
20 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
21 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action  
22 at the Site. At least ninety (90) days prior to each periodic review, Defendant shall submit a  
23 report to Ecology that documents whether human health and the environment are being protected  
24 based on the factors set forth in WAC 173-340-420(4). Under Section XVIII (Covenant Not to  
25 Sue), Ecology reserves the right to require further remedial action at the Site under appropriate  
26 circumstances. This provision shall remain in effect for the duration of this Decree.

1 **XXVII. PUBLIC PARTICIPATION**

2 A Public Participation Plan is required for this Site. Ecology shall review any existing  
3 Public Participation Plan to determine its continued appropriateness and whether it requires  
4 amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in  
5 conjunction with Defendants.

6 Ecology shall maintain the responsibility for public participation at the Site. However,  
7 Defendants shall cooperate with Ecology, and shall:

8 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public  
9 notices and fact sheets at important stages of the remedial action, such as the submission of work  
10 plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering  
11 design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and  
12 prepare and distribute public notices of Ecology’s presentations and meetings.

13 B. Notify Ecology’s project coordinator prior to the preparation of all press releases  
14 and fact sheets, and before major meetings with the interested public and local governments.  
15 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact  
16 sheets, and before major meetings with the interested public and local governments. For all press  
17 releases, fact sheets, meetings, and other outreach efforts by Defendants that do not receive prior  
18 Ecology approval, Defendants shall clearly indicate to its audience that the press release, fact  
19 sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

- 25 1. King County Library  
26 18215 98th Ave. NE  
Bothell, WA 98011



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2. Ecology's Northwest Regional Office  
Central Records Office  
3190 160th Ave. SE  
Bellevue, WA 98008  
  
Call for an appointment:  
Sally Perkins  
Phone: (425) 649-7109  
Fax: (425) 649-4450  
E-mail: nwro\_public\_request@ecy.wa.gov
  3. City of Bothell – City Hall  
18415 101<sup>st</sup> Ave NE  
Bothell, WA 98011  
Phone (425) 806-6100
  4. Bothell Public Library  
18215 98<sup>th</sup> Ave NE  
Bothell, WA 98011  
Phone: (425) 486-7811

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

16 **XXVIII. DURATION OF DECREE**

17 The remedial program required pursuant to this Decree shall be maintained and continued  
18 until Defendants have received written notification from Ecology that the requirements of this  
19 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed  
20 by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section XIX  
21 (Contribution Protection) shall survive.

22 **XXIX. CLAIMS AGAINST THE STATE**

23 Defendants hereby agree that they will not seek to recover any costs accrued in  
24 implementing the remedial action required by this Decree from the State of Washington or any  
25 of its agencies; and further, that Defendants will make no claim against the State Toxics Control  
26

1 Account or any local Toxics Control Account for any costs incurred in implementing this Decree.  
2 Except as provided above, however, Defendants expressly reserve its right to seek to recover  
3 any costs incurred in implementing this Decree from any other PLP. This section does not limit  
4 or address funding that may be provided under WAC 173-322.

5 **XXX. EFFECTIVE DATE**

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

7 **XXXI. WITHDRAWAL OF CONSENT**

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

11 **XXXII. GRANT FUNDING**

12 Ecology hereby incorporates into this Consent Decree the previous remedial actions  
13 described in the RIFS. Reimbursement for specific project tasks under a grant agreement with  
14 Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the  
15 retroactive costs are eligible under WAC 173-332A-320(6), the work performed complies with  
16 the substantive requirements of WAC 173-340, and the work is consistent with the remedial  
17 actions required under this Consent Decree. The costs associated with Ecology's determination  
18 on past independent remedial actions described in the RIFS are recoverable under this Decree.  
19 Unless and until Ecology agrees to provide grant funding under WAC 173-332A, this paragraph  
20 is inoperative.

21  
22 STATE OF WASHINGTON  
23 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

24  
25 \_\_\_\_\_  
26 Jim Pendowski  
Program Manager  
Toxics Cleanup Program  
425-649-7054

\_\_\_\_\_  
Ann C. Essko, WSBA #15472  
Senior Counsel  
360-586-3633

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CITY OF BOTHELL

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Jennifer Phillips  
City Manager  
425-806-6100

Date: \_\_\_\_\_

BOTHELL SERVICE CENTER ASSOCIATES  
By Norman Olsen

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Date: \_\_\_\_\_

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NORMAN OLSEN

\_\_\_\_\_

Date: \_\_\_\_\_

NANCY OLSEN

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ESTATE OF MERCER RHODES  
By Robert Hackman

\_\_\_\_\_

Date: \_\_\_\_\_

ENTERED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
JUDGE  
King County Superior Court

