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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY,

11 Plaintiff,

12 v.

13 CITY OF BOTHELL, BOTHELL
14 SERVICE CENTER ASSOCIATES,
15 NORMAN OLSEN, NANCY
16 OLSEN, LANCE CROSS, ANITA
17 CROSS, ROSS LUNDE, and
18 ESTATE OF MERCER RHODES,

19 Defendants.

NO. 18-2-02852-3 SEA

CONSENT DECREE

17
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1 G. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause 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
26 successors and assigns. The undersigned representative of each party hereby certifies that he or

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

8 IV. DEFINITIONS

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

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

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

1 in the Settlement Area Diagram (Exhibit B). The Settlement Area is only a portion of the Site,
2 and its boundaries do not necessarily reflect the boundaries of the Site as defined by MTCA.

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

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

8 E. Consent Decree or Decree: Refers to this Consent Decree and each of the
9 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
10 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

11 V. FINDINGS OF FACTS

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

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

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

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

24 D. The contaminants of concern at the Site that exceed MTCA cleanup levels are
25 chlorinated solvents, i.e., Tetrachloroethene (PCE), Trichloroethene (TCE), Cis-1,2
26

1 Dichloroethene (DCE), and Vinyl Chloride (VC) in soil and groundwater. Ecology has not
2 assigned the Site an overall priority ranking pursuant to MTCA.

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

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

9 G. BSCA was an “owner or operator” at the time of initial release of hazardous
10 substances at the Site, remained an “owner or operator” until the City acquired the property in
11 2015, and is a PLP.

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

16 VI. WORK TO BE PERFORMED

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

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

22 B. Defendants agree not to perform any remedial actions outside the scope of this
23 Decree unless the Parties agree to modify the CAP (Exhibit C) and Schedule (Exhibit D) to
24 cover these actions. All work conducted by Defendants under this Decree shall be done in
25 accordance with WAC 173-340 unless otherwise provided herein.
26

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

4 **VII. DESIGNATED PROJECT COORDINATORS**

5 The project coordinator for Ecology is:

6 Jerome Cruz
7 Department of Ecology
8 3190 160th Avenue SE
9 Bellevue, WA 98008-5452
10 Phone: 425-649-7094
11 Email: jcru461@ecy.wa.gov

12 The project coordinator for Defendant City is:

13 Nduta Mbuthia
14 Senior Capital Project Engineer
15 City of Bothell Public Works Department
16 18415 101st Avenue NE
17 Bothell, WA 98011
18 Phone: 425-806-6829
19 Email: nduta.mbuthia@bothellwa.gov

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

22 Norm Olsen
23 NLO Property Management, LLC
24 3035 170th Pl SE
25 Bellevue, WA 98008
26 425-890-3908
nloproperties@hotmail.com

Each project coordinator shall be responsible for overseeing the implementation of this
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

1 contacts for all or portions of the implementation of the work to be performed required by this
2 Decree.

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

5 **VIII. PERFORMANCE**

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

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

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

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

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

23 **IX. ACCESS**

24 Ecology or any Ecology authorized representative shall have access to enter and freely
25 move about all property at the Site that Defendants either own, control, or have access rights to
26 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and

1 contracts related to the work being performed pursuant to this Decree; reviewing Defendants'
2 progress in carrying out the terms of this Decree; conducting such tests or collecting such
3 samples as Ecology may deem necessary; using a camera, sound recording, or other
4 documentary type equipment to record work done pursuant to this Decree; and verifying the
5 data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to
6 secure access rights for those properties within the Site not owned or controlled by Defendants
7 where remedial activities or investigations will be performed pursuant to this Decree. Ecology
8 or any Ecology authorized representative shall give reasonable notice before entering any Site
9 property owned or controlled by Defendants unless an emergency prevents such notice. All
10 Parties who access the Site pursuant to this section shall comply with any applicable health and
11 safety plan(s). Ecology employees and their representatives shall not be required to sign any
12 liability release or waiver as a condition of Site property access.

13 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

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

20 If requested by Ecology, Defendants shall allow Ecology and/or its authorized
21 representative to take split or duplicate samples of any samples collected by Defendants
22 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
23 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
24 allow Defendants and/or its authorized representative to take split or duplicate samples of any
25 samples collected by Ecology pursuant to the implementation of this Decree, provided that
26 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights

1 under Section IX (Access), Ecology shall notify Defendants prior to any sample collection
2 activity unless an emergency prevents such notice.

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

6 **XI. PROGRESS REPORTS**

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

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

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

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

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

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

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

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

24 **XII. RETENTION OF RECORDS**

25 During the pendency of this Decree, and for ten (10) years from the date this Decree is
26 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants shall

1 preserve all records, reports, documents, and underlying data in their possession relevant to the
2 implementation of this Decree and shall insert a similar record retention requirement into all
3 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants
4 shall make all records available to Ecology and allow access for review within a reasonable
5 time.

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

12 **XIII. TRANSFER OF INTEREST IN PROPERTY**

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

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

24 **XIV. RESOLUTION OF DISPUTES**

25 A. In the event that Defendants elect to invoke dispute resolution, Defendants must
26 utilize the procedure set forth below.

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

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

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

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

23 5. If Defendants find Ecology's Regional Section Manager's decision
24 unacceptable, Defendants may then request final management review of the decision.
25 This request ("Final Review Request") shall be submitted in writing to the Toxics
26 Cleanup Program Manager within seven (7) calendar days of Defendants' receipt of the

1 Decision on Dispute. The Final Review Request shall include a written statement of
2 dispute setting forth: the nature of the dispute; the disputing Party's position with
3 respect to the dispute; and the information relied upon to support its position.

4 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
5 the dispute and shall issue a written decision regarding the dispute ("Final Decision on
6 Dispute") within thirty (30) calendar days of receipt of the Final Review Request. The
7 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
8 disputed matter.

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

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

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

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

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

4 1. Circumstances beyond the reasonable control and despite the due
5 diligence of Defendants including delays caused by unrelated third parties or Ecology,
6 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
7 documents submitted by Defendants.

8 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
9 storm, or other unavoidable casualty.

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

11 However, neither increased costs of performance of the terms of this Decree nor
12 changed economic circumstances shall be considered circumstances beyond the reasonable
13 control of Defendants.

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

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

23 1. Delays in the issuance of a necessary permit which was applied for in a
24 timely manner.

25 2. Other circumstances deemed exceptional or extraordinary by Ecology.

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

1 **XVII. ENDANGERMENT**

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

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

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

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

22 **XVIII. COVENANT NOT TO SUE**

23 A. Covenant Not to Sue: In consideration of Defendants' compliance with the
24 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
25 actions against Defendants regarding the release or threatened release of hazardous substances
26 covered by this Decree that are: (1) within the Settlement Area detailed in the Settlement Area

1 Diagram (Exhibit B), and (2) are Tetrachloroethene (PCE), Trichloroethene (TCE), Cis-1,2
2 Dichloroethene (DCE), or Vinyl Chloride (VC) from the former drycleaners at the northwest
3 corner of the Site and subject to remediation pursuant to the CAP.

4 This Covenant Not to Sue does not cover any other hazardous substances including but
5 not limited to hazardous substances originating at the Bothell Hertz MTCA site and/or the
6 Wexler/Schucks MTCA site which may have come to be located within the Settlement Area.
7 This Covenant Not to Sue does not cover any area other than the Settlement Area. Ecology
8 retains all of its authority relative to any hazardous substance(s) or area(s) not covered by this
9 Covenant Not to Sue.

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

- 11 1. Criminal liability.
- 12 2. Liability for damages to natural resources.
- 13 3. Any Ecology action, including cost recovery, against PLPs not a party to
14 this Decree.

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

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

- 22 1. Upon Defendants' failure to meet the requirements of this Decree.
- 23 2. Failure of the remedial action to meet the cleanup standards identified in
24 the CAP (Exhibit C).

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

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

8 5. Upon Ecology's determination that additional remedial actions are
9 necessary to achieve cleanup standards within the reasonable restoration time frame set
10 forth in the CAP.

11 C. Except in the case of an emergency, prior to instituting legal or administrative
12 action against Defendants pursuant to this section, Ecology shall provide Defendants with
13 fifteen (15) calendar days' notice of such action.

14 **XIX. CONTRIBUTION PROTECTION**

15 With regard to claims for contribution against Defendants, the Parties agree that
16 Defendants are entitled to protection against claims for contribution for matters addressed in
17 this Decree as provided by RCW 70.105D.040(4)(d).

18 **XX. LAND USE RESTRICTIONS**

19 The Parties will negotiate a draft Environmental (Restrictive) Covenant consistent with
20 WAC 173-340-440 and RCW 64.70. The geographic scope of the Environmental (Restrictive)
21 Covenant to address the hazardous substances covered by this Decree (as described in Section
22 XVIII) will be limited to the Settlement Area. Defendants shall record the Environmental
23 (Restrictive) Covenant with the office of the King County Auditor according to the Schedule
24 (Exhibit D). The Environmental (Restrictive) Covenant shall restrict future activities and uses
25 of the Site as agreed to by Ecology and Defendants. Defendants shall provide Ecology with the
26 original recorded Environmental (Restrictive) Covenant within thirty (30) days of the

1 recording date. The City and Ecology may negotiate amendments to the Environmental
2 (Restrictive) Covenant.

3 **XXI. FINANCIAL ASSURANCES**

4 Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and adequate
5 financial assurance mechanisms to cover all costs associated with the operation and
6 maintenance of the remedial action at the Site, including institutional controls, compliance
7 monitoring, and corrective measures.

8 Within sixty (60) days of the effective date of this Decree, Defendants shall submit to
9 Ecology for review and approval an estimate of the costs that it will incur in carrying out the
10 terms of this Decree, including operation and maintenance, and compliance monitoring. Within
11 sixty (60) days after Ecology approves the aforementioned cost estimate, Defendants shall
12 provide proof of financial assurances sufficient to cover all such costs in a form acceptable to
13 Ecology.

14 Defendants shall adjust the financial assurance coverage and provide Ecology's project
15 coordinator with documentation of the updated financial assurance for:

16 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
17 this Decree; or if applicable, the modified anniversary date established in accordance with this
18 section, or if applicable, ninety (90) days after the close of Defendants' fiscal year if the
19 financial test or corporate guarantee is used.

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

1 **XXII. INDEMNIFICATION**

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

11 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

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

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

23 Defendants have a continuing obligation to determine whether additional permits or
24 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
25 action under this Decree. In the event either Ecology or Defendants determine that additional
26 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the

1 remedial action under this Decree, it shall promptly notify the other party of this determination.
2 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
3 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly
4 consult with the appropriate state and/or local agencies and provide Ecology with written
5 documentation from those agencies of the substantive requirements those agencies believe are
6 applicable to the remedial action. Ecology shall make the final determination on the additional
7 substantive requirements that must be met by Defendants and on how Defendants must meet
8 those requirements. Ecology shall inform Defendants in writing of these requirements. Once
9 established by Ecology, the additional requirements shall be enforceable requirements of this
10 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
11 additional requirements until Ecology makes its final determination.

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

18 **XXIV. REMEDIAL ACTION COSTS**

19 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
20 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
21 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and
22 Decree preparation, negotiation, oversight, and administration. These costs shall include work
23 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
24 include costs of direct activities and support costs of direct activities as defined in
25 WAC 173-340-550(2). Ecology has accumulated \$6,749.10 in remedial actions costs plus
26 \$6,359.73 in unpaid remedial action costs under VCP Project No. NW2946 related to this

1 facility as of September 26, 2017, for a total owed to Ecology of \$13,108.83. Payment for this
2 amount shall be submitted within thirty (30) days of the effective date of this Decree. For all
3 costs incurred subsequent to September 26, 2017, Defendants shall pay the required amount
4 within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
5 summary of costs incurred, an identification of involved staff, and the amount of time spent by
6 involved staff members on the project. A general statement of work performed will be
7 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to
8 WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the
9 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)
10 per annum, compounded monthly.

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

14 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

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

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

24 **XXVI. PERIODIC REVIEW**

25 As remedial action, including groundwater monitoring, continues at the Site, the Parties
26 agree to review the progress of remedial action at the Site, and to review the data accumulated

1 as a result of monitoring the Site as often as is necessary and appropriate under the
2 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
3 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
4 action at the Site. At least ninety (90) days prior to each periodic review, Defendant shall
5 submit a report to Ecology that documents whether human health and the environment are
6 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII
7 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
8 under appropriate circumstances. This provision shall remain in effect for the duration of this
9 Decree.

10 **XXVII. PUBLIC PARTICIPATION**

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

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

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

22 B. Notify Ecology's project coordinator prior to the preparation of all press
23 releases and fact sheets, and before major meetings with the interested public and local
24 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press
25 releases and fact sheets, and before major meetings with the interested public and local
26 governments. For all press releases, fact sheets, meetings, and other outreach efforts by

1 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to its
2 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
3 or endorsed by Ecology.

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

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

- 9 1. King County Library
10 18215 98th Ave. NE
Bothell, WA 98011
- 11 2. Ecology's Northwest Regional Office
12 Central Records Office
3190 160th Ave. SE
13 Bellevue, WA 98008
14 Call for an appointment:
Sally Perkins
15 Phone: 425-649-7109
Fax: 425-649-4450
16 E-mail: nwro_public_request@ecy.wa.gov
- 17 3. City of Bothell—City Hall
18 18415 101st Ave NE
Bothell, WA 98011
Phone 425-806-6100
- 19 4. Bothell Public Library
20 18215 98th Ave NE
Bothell, WA 98011
21 Phone: 425-486-7811

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

1 **XXVIII. DURATION OF DECREE**

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

7 **XXIX. CLAIMS AGAINST THE STATE**

8 Defendants hereby agree that they will not seek to recover any costs accrued in
9 implementing the remedial action required by this Decree from the State of Washington or any
10 of its agencies; and further, that Defendants will make no claim against the State Toxics
11 Control Account or any local Toxics Control Account for any costs incurred in implementing
12 this Decree. Except as provided above, however, Defendants expressly reserve its right to seek
13 to recover any costs incurred in implementing this Decree from any other PLP. This section
14 does not limit or address funding that may be provided under WAC 173-322A.

15 **XXX. EFFECTIVE DATE**

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

17 **XXXI. WITHDRAWAL OF CONSENT**

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

22 **XXXII. GRANT FUNDING**

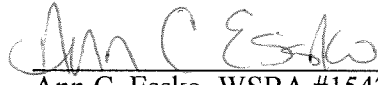
23 Ecology hereby incorporates into this Consent Decree the previous remedial actions
24 described in the RIFS. Reimbursement for specific project tasks under a grant agreement with
25 Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the
26

1 retroactive costs are eligible under WAC 173-322A-320(6), the work performed complies with
2 the substantive requirements of WAC 173-340, and the work is consistent with the remedial
3 actions required under this Consent Decree. The costs associated with Ecology's determination
4 on past independent remedial actions described in the RIFS are recoverable under this Decree.
5 Unless and until Ecology agrees to provide grant funding under WAC 173-322A, this
6 paragraph is inoperative.

7
8 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

9 
10 Jim Pendowski
11 Program Manager
12 Toxics Cleanup Program
13 425-649-7054


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

14 Date: 1/26/18

Date: 2/1/18

15
16 CITY OF BOTHELL

17 Jennifer Phillips
18 City Manager
19 425-806-6100

20 Date: _____

21 BOTHELL SERVICE CENTER ASSOCIATES
22 By Norman Olsen

23 Date: _____

24 //

25 //

26 //

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5 Unless and until Ecology agrees to provide grant funding under WAC 173-322A, this
6 paragraph is inoperative.

7
8 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

9
10 _____
Jim Pendowski
Program Manager
11 Toxics Cleanup Program
425-649-7054

12 _____
Ann C. Essko, WSBA #15472
Senior Counsel
360-586-3633

13 Date: _____

Date: _____

14 CITY OF BOTHELL

15 _____
16 _____
Jennifer Phillips
City Manager
17 425-806-6100

18 Date: 1/18/18

19
20 BOTHELL SERVICE CENTER ASSOCIATES
By Norman Olsen

21
22 _____
23 Date: _____

24 //

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4 on past independent remedial actions described in the RIFS are recoverable under this Decree.
5 Unless and until Ecology agrees to provide grant funding under WAC 173-322A, this
6 paragraph is inoperative.

7
8 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

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10 _____
Jim Pendowski
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425-649-7054

Ann C. Essko, WSBA #15472
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Jennifer Phillips
City Manager
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18 Date: _____

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20 BOTHELL SERVICE CENTER ASSOCIATES
By Norman Olsen

21 _____
22 

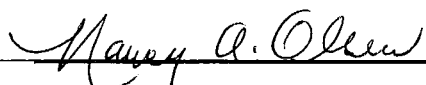
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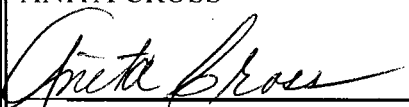
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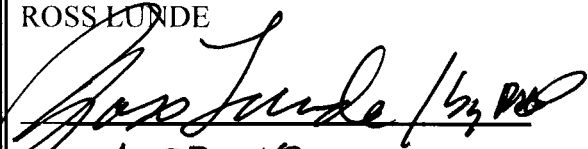
26 //

1 NORMAN OLSEN
2 
3 Date: 1-21-18

5 NANCY OLSEN
6
7 
8 Date: 1-21-18

10 LANCE CROSS
11 
12 Date: 1-21-18

14 ANITA CROSS
15 
16 Date: 1-21-18

19 ROSS LUNDE
20 
21 Date: 1-22-18

23 //
24 //
25 //
26 //

1 ESTATE OF MERCER RHODES
2 By Robert Hackman

3 

4 Date: 1-22-18

5 ENTERED this 2nd day of February 2018.

6
7 See attached for Judge's signature

8 JUDGE
9 King County Superior Court
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-02852-3
Case Title: Dept. of Ecology vs City of Bothell, et al.

Document Title: Order

Signed by: Commissioner Henry Judson
Date: 2/2/2018 9:07:44 AM

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