STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. CHS INC., Defendant.	NO. _____ CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION 3
II. JURISDICTION 4
III. PARTIES BOUND 4
IV. DEFINITIONS 5
V. FINDINGS OF FACTS 5
VI. WORK TO BE PERFORMED 10
VII. DESIGNATED PROJECT COORDINATORS 11
VIII. PERFORMANCE 11
IX. ACCESS 12
X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY 13
XI. PROGRESS REPORTS 13
XII. RETENTION OF RECORDS 14
XIII. TRANSFER OF INTEREST IN PROPERTY 15
XIV. RESOLUTION OF DISPUTES 15
XV. AMENDMENT OF DECREE 17
XVI. EXTENSION OF SCHEDULE 18
XVII. ENDANGERMENT 19
XVIII. COVENANT NOT TO SUE 20
XIX. CONTRIBUTION PROTECTION 22
XX. LAND USE RESTRICTIONS 22
XXI. FINANCIAL ASSURANCES 22
XXII. INDEMNIFICATION 23
XXIII. COMPLIANCE WITH APPLICABLE LAWS 24
XXIV. REMEDIAL ACTION COSTS 25

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

XXV. IMPLEMENTATION OF REMEDIAL ACTION 26
XXVI. PERIODIC REVIEW 26
XXVII. PUBLIC PARTICIPATION 27
XXVIII. DURATION OF DECREE 28
XXIX. CLAIMS AGAINST THE STATE 28
XXX. EFFECTIVE DATE 28
XXXI. WITHDRAWAL OF CONSENT 28

EXHIBIT A Site Diagram
EXHIBIT B Cleanup Action Plan

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and CHS Inc. (Defendant or CHS Auburn) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendant to conduct a final cleanup action of the Site by implementing the Cleanup Action Plan (CAP) attached as Exhibit B, according to the schedule and other requirements identified in this Decree and all exhibits thereto.

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

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

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

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

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

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

II. JURISDICTION

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

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

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

D. Ecology has given notice to Defendant of Ecology's determination that Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

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

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

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

H. Defendant has agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under MTCA.

III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Defendant agrees to undertake all actions required by the terms and conditions of

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

this Decree. No change in ownership or corporate status shall alter Defendant's responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

IV. DEFINITIONS

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

A. Site: The Site is referred to as CHS Auburn and is generally located at 238 8th Street Southeast, Auburn, Washington. The Site is more particularly depicted in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology and CHS Inc.

C. Defendant: Refers to CHS Inc.

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

V. FINDINGS OF FACTS

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

A. The Site is located in Auburn, Washington, and consists of approximately 2.34 acres. A diagram of the Site is attached as Exhibit A. The Site includes portions of the following parcels:

- Parcel No. 1921059074—The area of the CHS Property that includes the eastern portion of the CHS building and the parking lot south of Parcel No. 3141600670, depicted on Exhibit A as CHS East Building;
- Parcel No. 3141600670—The area of the CHS Property that includes the pump islands and underground storage tanks (USTs), depicted on Exhibit A as CHS Pump Islands;

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

- Parcel No. 3141600800—The area of the CHS Property that includes the current truck parking area north of 8th Street Southeast, depicted on Exhibit A as CHS Across Street;
- Parcel No. 3141600810—Koong Thong Thai Restaurant (Thai Restaurant) (referred to in previous investigations as the former Tortilla Grande property), depicted on Exhibit A as Thai Restaurant;
- Parcel No. 0835000035—Washington State Independent Auto Dealers Association (WSIADA), depicted on Exhibit A as WSIADA;
- Parcel No. 1821059197—McDonald's Restaurant (once part of the former Hillman property), depicted on Exhibit A as McDonald's;
- Parcel No. 1821059324—Anytime Fitness (referred to in previous investigations as Schuck's Firehouse Square or the Hillman property), depicted on Exhibit A as Firehouse Square West; and
- Parcel No. 1821059166—Firehouse Square Strip Mall (referred to in previous investigations as the Hillman property), depicted on Exhibit A as Firehouse Square East.

B. Between approximately 1920 and 1985, the Site was used by Valley Supply Co-op for gasoline distribution. Cenex Supply and Marketing, Inc. (Cenex) (corporate predecessor to CHS Inc.) purchased the facility from Valley Supply in 1985. Cenex and later CHS Inc. continued business operations at the CHS Property including bulk and retail sales of petroleum products such as diesel fuel, stove oil, and regular and unleaded gasoline. For ease of reference, Cenex and CHS Inc. shall be collectively referred to in this Decree as "CHS." These products were contained in above-ground and/or underground storage tanks (UST) and were received in bulk and dispensed in bulk and at retail sale at various locations on the CHS Property.

C. In or about February through August 1987, petroleum hydrocarbon constituents were found in groundwater collected from monitoring wells installed at a former City of Auburn fire station located northeast of the CHS Property. This property was later referred to as the Hillman property and then subdivided into the East and West Firehouse Square and McDonald's properties. The City of Auburn conducted an independent remedial action, removing five USTs at the fire station/Hillman property in February 1987. Investigations were initiated by the City

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

of Auburn following the removal of the USTs, and soil contaminated with gasoline was encountered at one underground storage tank basin. As further independent remedial action, approximately 800 cubic yards of gasoline contaminated soil was excavated on the fire station property.

D. Contamination at the Site is related to discovery of petroleum hydrocarbons in soil and groundwater at the CHS Property and adjacent areas to the north-northeast in mid-1994. In or about mid-May through July 1994, CHS identified petroleum hydrocarbons in soil and groundwater at the CHS Property and subsequently in adjacent areas. Remedial investigations identified a leaking product line associated with the above-ground bulk fuel storage tanks as one of the sources at the Site. The total volume of product recovered to date exceeds 13,000 gallons.

E. CHS entered into Agreed Order DE-94TC-N396 (1994 Order) with Ecology on November 7, 1994. The 1994 Order, an emergency order, stipulated the operation of a soil vapor extraction and air sparging (SVE/AS) treatment system and a groundwater extraction and treatment system at the Site until "the continued operation of the systems is no longer efficient or effective" to the satisfaction of Ecology. The 1994 Order also required installation and operation of a groundwater extraction and light non-aqueous phase liquid (LNAPL) recovery well on the Hillman property and established monitoring requirements.

F. Defendant entered into Agreed Order No. 4033 (2007 Order) with Ecology in June 12, 2007. Under the 2007 Order, Defendant agreed to perform a Remedial Investigation/Feasibility Study (RI/FS) and continues to maintain and operate the SVE/AS system. The 2007 Order expressly superseded the 1994 Order.

G. Ecology-supervised remedial activities at the Site began in 1994, and have continued through the present. Interim cleanup actions conducted at the Site during this time have included:

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

- Installation of AS and SVE systems from 1994 to 1996, to treat soil and groundwater at the perimeter of the CHS Property and the central and down-gradient portions of the Site;
- Extraction of groundwater and LNAPL, initially with off-site disposal and subsequently using on-site treatment and re-infiltration of groundwater from 1994 to 1996;
- Closure of 14 USTs and 12 aboveground storage tanks (ASTs) on the CHS Property in 1997 and 1998;
- Excavation of over 8,100 tons of petroleum-contaminated soil from the bulk fuel storage area at the CHS Property and disposal off the Site in 1998, at a licensed treatment or disposal facility;
- In July and August 2005, an in-situ chemical oxidation pilot study was conducted to assess the feasibility of the injection of chemical oxidants to treat contaminated groundwater at the site. The pilot study did not demonstrate a significant reduction in petroleum hydrocarbon concentrations in groundwater samples (Report by Farallon Consulting, L.L.C. titled, "Chemical Oxidation Pilot Testing Results, CHS Auburn Site, Auburn, Washington" April 29, 2008).
- In 2006 and beginning in 2009 to the present, dissolved-oxygen enhancement testing was conducted to assess the effects of focused air sparging and higher air flows on dissolved oxygen and contaminant concentrations in groundwater. Results from the testing showed inconsistent and temporary increases in dissolved oxygen with increased airflows in air sparging wells. The study following the testing concluded that the current configuration and operation of the air sparging system was not capable of delivering sufficient dissolved oxygen on a continuous basis to promote aerobic degradation of petroleum hydrocarbons in groundwater over a wide area. See Groundwater Monitoring Reports by Farallon Consulting, L.L.C., from 2006 to 2010;
- A limited natural attenuation study was conducted from June 2008 to March 2009, at the Site. The results supported anaerobic degradation of petroleum hydrocarbon contaminants in groundwater at the Site;
- Groundwater monitoring of the contaminant plumes at the Site has been conducted from 1994 to the present.

H. The SVE component of the Central and Perimeter Systems was shut down with Ecology approval in late 1999, due to the low concentrations of petroleum hydrocarbon vapors present. The AS component of the Central System continues to operate in the central portion of

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

the Site. The AS component of the Perimeter System was shut down during dissolved-oxygen enhancement testing from 2009 to the present so sparge air flow could be maximized in the area down-gradient of the adjacent Central System where residual concentrations of COCs in groundwater are now located. The SVE component of the Down-Gradient System was shut down in the late 1990s, and the AS component was turned off in 2007. The Down-Gradient System was decommissioned in July 2010, in conjunction with City of Auburn improvements to D Street Southeast, south of State Route 18.

I. Following a schedule extension at the request of Defendant, RI field activities were completed in 2011. Ecology accepted the Final Public Review Draft RI Report in 2011 and accepted the Final Public Review Draft FS Report in 2014. (Farallon Consulting, L.L.C., July 20, 2011 and Farallon Consulting, L.L.C., August 6, 2014)

J. The contaminants of concern at the Site that exceed MTCA cleanup levels are diesel-, oil-, and gasoline-range petroleum hydrocarbons and benzene, toluene, ethylbenzene, and xylenes constituents in soil and groundwater. Ecology has assigned the Site an overall ranking of "3" on the Washington State Hazardous Sites List in August 1995, pursuant to MTCA. This ranking is based on a scale of 1 to 5. According to this scale, "1" represents the highest relative risk and, "5" represents the lowest relative risk. This ranking is designed to estimate the potential threat to human health and/or the environment, relative to all other sites in Washington State.

K. As documented in the CAP (Exhibit B), the cleanup action to be implemented at the Site includes additional treatment of soil and groundwater, monitoring, and institutional controls as required by WAC 173-340-360(2)(d) and -440.

L. Several reports document the investigation and cleanup activities performed at the Site. The draft RI/FS Report references these reports and document the above remedial actions at the Site. These documents, and other reports relating to the Site including the draft RI/FS reports, are available at Ecology's Northwest Regional Office Central Records.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

VI. WORK TO BE PERFORMED

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

Defendants shall implement the CAP attached to this Decree (Exhibit B). Among other remedial actions, the CAP requires:

1. Enhanced AS with targeted SVE to remediate groundwater as well as institutional controls for soil. Following the AS and SVE, additional treatments such as a reduced air flow enhanced bioaugmentation operational mode, monitored natural attenuation (MNA), and additional institutional controls will also be evaluated as contingent remediation if enhanced AS and targeted SVE are unsuccessful in reducing concentrations of contaminants of concern below applicable cleanup levels within a reasonable restoration timeframe. These additional remedial actions are contingent and will be implemented as necessary to address potential residual groundwater contamination following AS/SVE operation.

2. New, additional groundwater remediation consisting of installation of additional AS wells on the WSIADA and Thai Restaurant properties south of the intersection of 7th Street Southeast and Auburn Way South and along the southwest side of the Auburn Way South right-of-way. Several SVE wells will be installed on the WSIADA property. Select Central System AS wells will also be operated to facilitate groundwater remediation.

3. The CAP requires recording environmental covenants on properties within the Site in areas where concentrations of contaminants of concern in soil at depths of less than 15 feet below ground surface are not reduced to below MTCA cleanup levels after implementation of focused SVE. These areas include the east and west perimeters of the 1998 excavation at the bulk fuel storage area and at the former location of heating oil Tank H-1, which was removed in 1998 (see Figure 8 of the CAP).

4. The environmental covenants will describe procedures to be followed during any future excavation activities that could result in worker exposure or the transfer of contaminated subsurface soil to the surface. The procedures will include worker health and safety training requirements and contaminated soil management protocols.

Defendant agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the Work to Be Performed and the CAP to cover these actions. All work conducted by Defendant under this Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein. All plans or other deliverables submitted by

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

Defendant for Ecology's review and approval under the CAP (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Decree.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Jerome Cruz
Department of Ecology
3190 160th SE
Bellevue, WA 98008
(425) 649-7094

The project coordinator for Defendant is:

Jerry Eide
763 Willoughby Lane
Stevensville, MT 59870
(406) 777-0114

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 Defendant 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.

VIII. PERFORMANCE

All geologic and hydrogeologic work performed pursuant to this Decree shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.220.

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

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

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43.220.

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

IX. ACCESS

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Defendant either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Defendant where remedial activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

by Defendant unless an emergency prevents such notice. All Parties who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

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

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

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

XI. PROGRESS REPORTS

Defendant shall submit to Ecology written monthly Progress Reports for the first year of operation of the remedial system that describe the actions taken during the previous month to

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

implement the requirements of this Decree. The Progress Reports shall be submitted quarterly thereafter. The Progress Reports shall include the following:

A. A list of on-site activities that have taken place during the reporting period;

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

C. Description of all deviations from the CAP (Exhibit B) and any applicable scope of work during the current reporting period and any planned deviations in the upcoming reporting period;

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

E. All raw data (including laboratory analyses) received by Defendant during the past reporting period and an identification of the source of the sample; and

F. A list of deliverables for the upcoming reporting period if different from the schedule.

All Progress Reports shall be submitted by the fourteenth (14th) day of the month or quarter (each April, July, October, and January) in which they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports and any other documents submitted pursuant to this Decree shall be sent via electronic mail to Ecology's project coordinator.

XII. RETENTION OF RECORDS

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

XIII. TRANSFER OF INTEREST IN PROPERTY

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

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

XIV. RESOLUTION OF DISPUTES

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

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

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

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

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

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

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

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

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

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

XV. AMENDMENT OF DECREE

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

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

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

XVI. EXTENSION OF SCHEDULE

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

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

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

1. Circumstances beyond the reasonable control and despite the due diligence of Defendant including delays caused by unrelated third parties or Ecology,

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

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

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

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

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

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

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

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

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

XVII. **ENDANGERMENT**

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

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

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

XVIII. COVENANT NOT TO SUE

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

This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A) and those hazardous substances that Ecology knows are located at the Site as of the date of entry of this Decree. This Decree does not cover any other hazardous substance or area. Ecology retains all of its authority relative to any substance or area not covered by this Decree.

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

1. Criminal liability;

2. Liability for damages to natural resources; and

3. Any Ecology action, including cost recovery, against PLPs not a party to this Decree.

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

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

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

2. Failure of the remedial action to meet the cleanup standards identified in the Cleanup Action Plan (CAP) (Exhibit B);

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

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

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

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

XIX. CONTRIBUTION PROTECTION

With regard to claims for contribution against Defendant, the Parties agree that Defendant is entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d). The matters addressed in this Decree are all remedial actions taken by Defendant to investigate and clean up the hazardous substances that Ecology knows are located at the Site (as of the date of entry of this Decree and as described in the Final Public Review Draft RI Report dated July 20, 2011).

XX. LAND USE RESTRICTIONS

In consultation with Defendant, Ecology will prepare the Environmental (Restrictive) Covenant for the CHS Property consistent with WAC 173-340-440 and RCW 64.70. After approval by Ecology, Defendant shall record the Environmental (Restrictive) Covenant on the CHS Property with the office of the King County Auditor within ninety (90) days of the effective date of this Decree. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the CHS Property as agreed to by Ecology and Defendant. Defendant shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date. Ecology will evaluate whether additional Environmental (Restrictive) Covenants will be required at properties downgradient of the CHS Property once the five-year review required under the Schedule of Implementation (Exhibit C) has been completed, or if Ecology otherwise determines such covenants are necessary to protect human health and the environment.

XXI. FINANCIAL ASSURANCES

Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Decree, Defendant shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the operation and maintenance, as defined in WAC 173-340-440(11), required by the terms of this Decree. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendant shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

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

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

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

XXII. **INDEMNIFICATION**

Defendant agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, Defendant shall not indemnify the State of Washington

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Decree.

XXIII. COMPLIANCE WITH APPLICABLE LAWS

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

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

Defendant has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree. In the event either Ecology or Defendant determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or Defendant shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Defendant and on how Defendant must meet those

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

requirements. Ecology shall inform Defendant in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendant shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

XXIV. REMEDIAL ACTION COSTS

Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Decree preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated $66.34 in remedial action costs related to this facility as of September 30, 2017. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Decree. For all costs incurred subsequent to September 30, 2017, Defendant shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

XXV. IMPLEMENTATION OF REMEDIAL ACTION

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

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

XXVI. PERIODIC REVIEW

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for (1) further remedial action at the Site and (2) additional institutional controls, such as Environmental (Restrictive) Covenants on properties at the Site that are downgradient of the CHS Property. Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

XXVII. PUBLIC PARTICIPATION

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

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

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

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

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

1. Auburn Public Library
   1102 Auburn Way South
   Auburn, WA 98002

2. Ecology's Northwest Regional Office
   3190 160th Avenue SE
   Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

XXVIII. DURATION OF DECREE

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

XXIX. CLAIMS AGAINST THE STATE

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

XXX. EFFECTIVE DATE

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

XXXI. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY	ROBERT W. FERGUSON Attorney General
_____ JAMES PENDOWSKI	_____ ALLYSON C. BAZAN, WSBA #44221

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

Program Manager,
Toxics Cleanup Program
(360) 407-7177

Date: _____

Assistant Attorney General
(360) 586-3589

Date: _____

CHS INC.

Scott J. Sinclair

SCOTT SINCLAIR
[Title of signatory]
[Telephone]

Date: 5/21/18

ENTERED this _____ day of _____ 2016.

_____
JUDGE
King County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

JAMES PENDOWSKI
Program Manager,
Toxics Cleanup Program
360-407-7177

Date: 6/8/18

ROBERT W. FERGUSON
Attorney General

ALLYSON C. BAZAN, WSBA #44221
Assistant Attorney General
360-586-3589

Date: 6/11/18

CHS INC.

SCOTT SINCLAIR

Date: _____

ENTERED this 20th day of June 2018.

see attached for judge's signature
JUDGE
King County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770

King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-15430-8
Case Title: Department of Ecology vs CHS Inc.

Document Title: Order

Signed by: Brad Moore
Date: 6/20/2018 1:42:28 PM

Bradford G. Moore

Judge/Commissioner: Brad Moore

This document is signed in accordance with the provisions in GR 30.
Certificate Hash: FC8744E49A72FF0F850BE061D5A0A1A293B475BB
Certificate effective date: 5/22/2017 2:57:35 PM
Certificate expiry date: 5/22/2022 2:57:35 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=kcdja, O=kcdja, CN="Brad Moore: kHmbWor95BGfWFJmHl1GsA=="