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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

MOUNT BAKER HOUSING
ASSOCIATION

Defendant.

NO. 18-2-14714-0

PROSPECTIVE PURCHASER
CONSENT DECREE

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Mount Baker Housing Association (MBHA) under this Decree is to (1) resolve the potential liability of MBHA for contamination at the Grand Street Commons Project Site (Site) arising from a release(s) or threatened release(s) of hazardous substances, in advance of MBHA obtaining an ownership interest in real property within the Site, and (2) facilitate the cleanup of the Site for redevelopment and reuse as transit-oriented affordable and market rate housing. MBHA is a non-profit organization with a mission to create quality affordable housing in southeast Seattle. MBHA has substantial and successful experience in brownfield redevelopment projects. This Decree requires MBHA to conduct a Remedial Investigation and Feasibility Study (RI/FS) pursuant to the schedule set forth in Exhibit C. MBHA will also use all best efforts to obtain Additional Funding to be used to conduct additional remedial actions at the Site, including a cleanup action meeting the requirements of WAC 173-340-360 that serves as a final Site remedy. Such Additional Funding may include Public Funds pursuant to RCW 70.105D.070(3)(q), or other applicable public funding. The parties intend to amend this Decree in the future for MBHA to conduct additional remedial actions at the Site. The parties may also amend this Decree in the future to provide for Public Funds pursuant to RCW 70.105D.070(3)(q), or to provide for other applicable public funding. The redevelopment of any property within the Site is contingent on such additional remedial actions occurring.

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

1 Parties agree that settlement of these matters without litigation is reasonable and in the public
2 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

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

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

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

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

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

16 **II. JURISDICTION**

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

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

1 and Ecology determines based upon available information that the redevelopment or reuse of
2 the facility is not likely to contribute to the existing release or threatened release, interfere with
3 remedial actions that may be needed at the Site, or increase health risks to persons at or in the
4 vicinity of the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a
5 consent decree issued by a court of competent jurisdiction.

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

10 D. MBHA has not been named a PLP for the Site, and MBHA has certified under
11 Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA.
12 MBHA is a member in Grand Street Commons LLP ("GSC"), a joint venture formed by
13 MBHA and Lake Union Partners and HAL Real Estate Inc. to purchase and take title to fifteen
14 parcels located between Rainer Avenue South and 23rd Avenue South, and South State Street
15 and South Holgate Street (the Properties) from the current owners of the Properties. As a
16 member of GSC, MBHA will have an ownership interest in the Properties. Legal descriptions
17 and addresses of the Properties are provided in Exhibit B. MBHA expects GSC and its partners
18 to execute the Purchase and Sale Agreements, and acquire the Properties, no later than **June**
19 **30, 2018**. The Properties comprise, or likely comprise, portions of the Site. MBHA will incur
20 potential liability under RCW 70.105D.040(1)(a) at the time it acquires an interest in the
21 Properties at the Site for performing remedial actions or paying remedial costs incurred by
22 Ecology or third parties resulting from past releases or threatened releases of hazardous
23 substances at the Site. This Decree settles MBHA's liability as described herein for this Site
24 upon it obtaining an ownership interest in the Properties.

25 E. Ecology finds that this Decree will yield substantial new resources to facilitate
26 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site

1 in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and
2 WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of
3 the Site; and will not be likely to contribute to the existing release or threatened release at the
4 Site, interfere with remedial actions that may be needed at the Site, or increase health risks to
5 persons at or in the vicinity of the Site. In addition, Ecology has determined that this Decree
6 will provide a substantial public benefit by: (1) significantly advancing the cleanup process at
7 the Site through completion of an RI/FS; and (2) putting the structure in place for future
8 cleanup and redevelopment of a partially vacant, no longer operating former commercial
9 equipment manufacturing facility. MBHA and GSC plan to construct a mix of affordable and
10 market-rate transit-oriented housing on the Properties. GSC's involvement and the inclusion of
11 market-rate housing will facilitate the development of affordable housing at the Properties,
12 which is a critical need in the City of Seattle. The affordable housing at the Properties, in the
13 southeast portion of Seattle in the North Rainier neighborhood, is intended to serve a diverse
14 population of residents. The Properties are located two blocks south of the future East Link
15 Light Rail station, which will provide light rail service to Bellevue and other communities.
16 MBHA will continue to own and operate the redeveloped Properties used for affordable
17 housing for the benefit of its tenants. This Decree will facilitate redevelopment of the
18 Properties at the Site, which is contingent on additional remedial actions first occurring as
19 described in Section VI (Work to be Performed). Once completed, the redevelopment will add
20 additional affordable, transit-oriented housing at the Site.

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

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

24 III. PARTIES BOUND

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

1 authorized to enter into this Decree and to execute and legally bind such party to comply with
2 the Decree. MBHA agrees, as herein described, to undertake all actions required by the terms
3 and conditions of this Decree. No change in ownership or corporate status shall alter MBHA's
4 responsibility under this Decree. MBHA 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 the Grand Street Commons Project Site and is
12 generally located between Rainier Avenue South and 23rd Avenue South and between South
13 State and South Holgate streets. The Site comprises approximately 3.2 acres and includes all
14 areas where contamination has come to be located from releases at the former Penthouse
15 Drapery operation and property at 1752 Rainier Avenue South (former Penthouse Drapery
16 property), currently owned and operated by Seattle Collision Center (SCC), and from
17 commercial equipment manufacturing operations at the former Belshaw facility. This former
18 facility consists of multiple parcels located between Rainier Avenue South and 23rd Avenue
19 South and between South State and South Holgate streets (former Belshaw property). These
20 releases have likely commingled at the Site, which is more particularly described in the Site
21 Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

22 B. Properties: Refers to the fifteen parcels located between Rainier Avenue South
23 and 23rd Avenue South and between South State and South Holgate streets that MBHA and
24 GSC intend to purchase. The parcel addresses and legal description of the Properties is
25 attached as Exhibit B. The Properties comprise, or likely comprise, portions of the Site.
26 Collectively, the Properties comprise the Grand Street Commons Redevelopment Project.

1 C. Parties: Refers to the State of Washington, Department of Ecology (Ecology),
2 Mount Baker Housing Association (MBHA), and all entities created by MBHA for the purpose
3 of owning real property within the Site (collectively “the MBHA entities”).

4 D. Consent Decree or Decree: Refers to this Prospective Purchaser Consent
5 Decree, each of the exhibits to the Decree, and any future amendments to the Decree. All
6 exhibits are integral and enforceable parts of this Prospective Purchaser Consent Decree. The
7 terms “Consent Decree” or “Decree” shall include all exhibits and any future amendments to
8 this Prospective Purchaser Consent Decree.

9 E. Public Funds: Refers to public funding provided by Ecology as specified in this
10 Decree or amendments to this Decree, and as described in RCW 70.105D.070(3)(q) or other
11 authorized public funding. Nothing in this definition shall be construed to limit MBHA from
12 seeking and receiving funding from any other public source that can be applied toward
13 remedial actions.

14 F. Redevelopment: Refers to construction activity, other than building demolition
15 or any activity that also serves as a remedial action (e.g., soil excavation), that improves
16 property for conversion to a new use. Such new uses include, but are not limited to, affordable
17 housing and market-rate mixed commercial and residential use.

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

22 V. FINDINGS OF FACT

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

25 A. The Site is located in Seattle, Washington, and consists of approximately
26 3.2 acres. The Site is located between Rainier Avenue South and 23rd Avenue South and

1 between South State and South Holgate streets. A diagram of the Site is attached as Exhibit A.
2 A portion of the Site, the former Penthouse Drapery property at 1752 Rainier Avenue South,
3 has been designated by Ecology's Voluntary Cleanup Program (VCP) as the Penthouse
4 Drapery Cleaners, VCP Project No. NW2278.

5 B. MBHA and GSC are under contract to purchase the Properties and intend to
6 close on the Properties no later than June 30, 2018.

7 C. Over the last several decades, businesses operating at the Site released hazardous
8 substances into soil, groundwater and soil gas at the Site. With respect to the former Penthouse
9 Drapery property at 1752 Rainier Avenue South, this property has been occupied by multiple
10 commercial and/or light industrial facilities from approximately the early 1950s to the present.
11 Between approximately 1984 and 1990, the former Penthouse Drapery property was used by
12 Penthouse Drapery as a commercial dry cleaning operation that used tetrachloroethene (PCE) as
13 a dry cleaning solvent. Significant amounts of PCE were released at the former Penthouse
14 Drapery property to soil and groundwater. Groundwater with levels of PCE above applicable
15 MTCA cleanup levels has migrated south onto the Properties. Since approximately 1994, the
16 former Penthouse Drapery Property has been owned by Seattle Collision Center, which has
17 operated a vehicle repair and painting business. MBHA and GSC are not purchasing the former
18 Penthouse Drapery property.

19 D. Commercial and industrial operations have been conducted at the Properties
20 from approximately 1916 until the early 2000s. The Properties are also the location of the
21 former Belshaw operation. Belshaw Brothers, Inc. (BBI) owned the Properties from
22 approximately 1924 until the early 2000s. BBI operated a commercial equipment
23 manufacturing facility that produced bakery and restaurant equipment at the Properties. The
24 operation encompassed several parcels and included a paint building, welding shop, an on-site
25 foundry used for aluminum parts casting, warehouses, production buildings, and an un-paved
26 parking lot. Contamination at the Site is related to these past operations and includes releases

1 from past operations of chlorinated solvents and petroleum hydrocarbons to soil, soil gas and
2 groundwater.

3 E. Due to the nature of its operation, Ecology determined that BBI was a large
4 quantity generator of hazardous waste, and BBI was issued the generator number
5 WAD103351581. Ecology issued BBI a Notice of Correction on March 15, 1999 due to
6 improper hazardous waste handling and storage issues.

7 F. BBI operations at the Properties included two underground storage tanks (UST).
8 Although the exact contents of these former USTs is unknown, results of soil and groundwater
9 investigations indicate that these USTs contained petroleum products such as leaded gasoline,
10 diesel, and heating oil.

11 G. Between 2002 and 2008, several environmental investigations were conducted
12 on a portion of the Properties by private parties and their consultants. These investigations
13 included soil and groundwater sampling and demonstrated that chlorinated solvents were
14 present and above appropriate MTCA cleanup levels.

15 H. On or around 2002, the Enodis Corporation (Enodis) acquired BBI through a
16 stock purchase. Enodis subsequently sold the BBI stock to AGAFoodservice. In or around
17 2005, Centioli Improvements LLC acquired the Properties and currently owns the Properties.

18 I. Between 2004 and 2007, Enodis enrolled a portion of the Site into Ecology's
19 Voluntary Cleanup Program (VCP Project No. NW1254) in order to receive a technical opinion
20 related to petroleum releases at the Site. Enodis installed and operated a dual-phase vacuum
21 extraction system to remediate petroleum contamination at the Site. The system extracted some
22 petroleum products, light non-aqueous phase liquid and possibly chlorinated solvents from
23 groundwater at the Site. Enodis was terminated from the VCP by Ecology in 2008.

24 J. In 2014, Penthouse Drapery entered the VCP and Ecology assigned it VCP
25 Project No. NW2278. Through several VCP opinions, Ecology determined that total petroleum
26 hydrocarbons in the gasoline range (TPH-G) and PCE have been released to soil, and that PCE,

1 trichloroethylene (TCE), cis-1,2-dichloroethene (DCE), 1,1,1-trichloroethane (TCA), 1,1-
2 dichloroethene, 1,1-dichloroethane, and 1,4-dioxane have been released to groundwater, and
3 that PCE has been released to the air, at the Site.

4 K. Additionally, based on the analytical results from 2017 environmental
5 investigations, the contaminants of concern at the Site that exceed MTCA cleanup levels
6 include lead in soil, diesel-range hydrocarbons (TPH-D), benzene, and total xylenes in
7 groundwater, and benzene and TCE and vinyl chloride in soil gas. Although Ecology has not
8 yet assigned the Site an overall priority rank pursuant to MTCA, an Ecology-approved cleanup
9 action consisting of Electrical Resistance Heating (ERH) is being performed at the former
10 Penthouse Drapery property and in a limited northwest portion of the Properties as part of VCP
11 Project No. NW2278. The cleanup action is being performed by the former Penthouse Drapery
12 and SCC to address the PCE contamination that originated from the former Penthouse Drapery
13 property and migrated to the Properties. No cleanup action plan has been provided by Enodis or
14 BBI to Ecology for addressing contamination at the Properties.

15 L. The Site has been used for manufacturing, commercial dry cleaning and vehicle
16 repair and painting. The Site is zoned C1-65 by the City of Seattle to provide for mixed
17 residential and commercial uses.

18 M. MBHA and GSC have entered into Purchase and Sale Agreements with the
19 current owners of the Properties. Pursuant to these contracts, MBHA and GSC intend to
20 purchase the Properties no later than June 30, 2018.

21 N. MBHA proposes to conduct remedial actions at the Site and redevelop the
22 Properties for transit-oriented market-rate housing, affordable housing and mixed commercial
23 use as provided in this Decree, consistent with MTCA and its implementing regulations, WAC
24 173-340, and applicable City of Seattle zoning provisions and comprehensive plan
25 designations.
26

1 O. The mix of market-rate housing with affordable housing and associated joint
2 ventures are essential to acquire and develop contaminated properties on this scale. By itself,
3 MBHA does not have sufficient financial resources and tools to clean up and redevelop a
4 project of this scale, and the joint venture provides the additional financial resources necessary
5 to realize this project. Further, the mix of market-rate and affordable housing provides
6 complimentary uses and is desirable in terms of forming a diverse community with a variety of
7 housing options.

8 VI. WORK TO BE PERFORMED

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

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

21 B. Following the completion of the Final RI/FS report, the Parties intend to amend
22 the Decree to provide for MBHA to conduct additional remedial actions at the Site. Such
23 additional remedial actions by MBHA are contingent upon MBHA obtaining or having
24 sufficient Additional Funding to conduct additional remedial actions; provided, that this
25 contingency does not bind Ecology in the event the circumstances described in the reopener
26 provisions of Section XIX (Covenant Not to Sue) B.3 or B.4 arise. These additional remedial

1 actions will include a cleanup action meeting the requirements of WAC 173-340-360 that
2 serves as a final Site remedy. Until such time as this Decree is amended to provide for the
3 implementation of such a cleanup action, no redevelopment of any properties within the Site
4 may proceed; provided, that this Decree may be amended to allow for redevelopment to occur
5 on a property-specific basis if: (1) a final Cleanup Action Plan for the Site has been issued by
6 Ecology; (2) the property-specific redevelopment is accompanied by a remedial action that
7 implements Ecology's selected cleanup action for that portion of the Site; and (3) Ecology
8 determines that proceeding with the property-specific redevelopment and remedial action: (a)
9 is consistent with, and will not preclude, complicate, or render more expensive the final
10 cleanup action for the Site as a whole; and (b) will not result in recontamination of the subject
11 property.

12 C. During the pendency of this Decree, MBHA shall use all best efforts to seek and
13 obtain Additional Funding for additional remedial actions at the Site. This may include
14 working in cooperation and in partnership with Ecology to obtain Public Funds as described in
15 RCW 70.105D.070(3)(q), or any other authorized public funding. After the completion of the
16 Final RI/FS report, the Parties shall meet not less than once per quarter, unless the Parties agree
17 to a different timeframe, to discuss the status and progress of obtaining Additional Funding for
18 future remedial actions. The Parties intend to amend this Decree to accomplish future remedial
19 actions and for the possible future provision of Public Funds pursuant to
20 RCW 70.105D.070(3)(q) or any other authorized public funding.

21 D. MBHA shall retain all such Additional Funding obtained for remedial actions at
22 the Site in a dedicated and segregated account in accordance with standard accounting
23 principles. MBHA shall provide Ecology with an accounting of the account twice per calendar
24 year, by the end of July (for the preceding six months ending in June) and by the end of
25 January (for the preceding six months ending in December). MBHA shall also include this
26

1 account in its annual audit. The results of the annual audit for this account shall be provided to
2 Ecology by May 31 of each calendar year while this Decree is in effect.

3 E. MBHA agrees not to perform any remedial actions outside the scope of this
4 Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit C) to
5 cover these actions. All work conducted by MBHA under this Decree shall be done in
6 accordance with WAC 173-340 unless otherwise provided herein.

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

10 VII. DESIGNATED PROJECT COORDINATORS

11 The project coordinator for Ecology is:

12 Ching-Pi Wang
13 Northwest Regional Office
14 Washington State Department of Ecology
15 3190 160th Avenue SE
16 Bellevue, WA 98008-5452
17 425-649-7134
18 Email: cwan461@ecy.wa.gov

16 The project coordinator for MBHA is:

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

21 Each project coordinator shall be responsible for overseeing the implementation of this
22 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
23 To the maximum extent possible, communications between Ecology and MBHA and all
24 documents, including reports, approvals, and other correspondence concerning the activities
25 performed pursuant to the terms and conditions of this Decree shall be directed through the
26 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 Washington,
9 except as otherwise provided for by RCW 18.43, .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 otherwise
12 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 a
15 professional engineer. The professional engineer must be registered by the State of Washington,
16 except as otherwise provided for by RCW 18.43.130.

17 Any documents submitted containing geologic, hydrologic, or engineering work shall be
18 under the seal of an appropriately licensed professional as required by RCW 18.43, .220.

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

22 **IX. CERTIFICATION OF DEFENDANT**

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

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

4 X. ACCESS

5 Ecology or any Ecology-authorized representative shall have access to enter and freely
6 move about all property at the Site that MBHA either owns, controls, or has access rights to at
7 all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
8 contracts related to the work being performed pursuant to this Decree; reviewing MBHA's
9 progress in carrying out the terms of this Decree; conducting such tests or collecting such
10 samples as Ecology may deem necessary; using a camera, sound recording, or other documentary
11 type equipment to record work done pursuant to this Decree; and verifying the data submitted to
12 Ecology by MBHA. MBHA shall make all reasonable efforts to secure access rights for those
13 properties within the Site not owned or controlled by MBHA and where remedial activities or
14 investigations will be performed pursuant to this Decree. Ecology or any Ecology-authorized
15 representative shall give reasonable notice before entering any Site property owned or controlled
16 by MBHA unless an emergency prevents such notice. All Parties who access the Site pursuant
17 to this section shall comply with any applicable health and safety plan(s). Ecology employees
18 and their representatives shall not be required to sign any liability release or waiver as a condition
19 of Site property access.

20 XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

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

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

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

13 XII. PROGRESS REPORTS

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

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

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

3 As appropriate, the project coordinators shall discuss the level of detail for the
4 Progress Reports or a specific Progress Report. Ecology's project coordinator may find that the
5 Progress Reports or a specific Progress Report does not need to include all of the elements listed
6 in this Section. All Progress Reports shall be submitted by the tenth (10th) day of the month in
7 which they are due after the effective date of this Decree. Unless otherwise specified, Progress
8 Reports and any other documents submitted pursuant to this Decree shall be sent by certified
9 mail, return receipt requested, to Ecology's project coordinator.

10 XIII. RETENTION OF RECORDS

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

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

23 XIV. TRANSFER OF INTEREST IN PROPERTY

24 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest
25 in any portion of the Site shall be consummated by MBHA without provision for continued
26

1 operation and maintenance of any containment system, treatment system, and/or monitoring
2 system installed or implemented pursuant to this Decree.

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

9 **XV. RESOLUTION OF DISPUTES**

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

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

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

24 3. MBHA may then request regional management review of the dispute.
25 This request (Formal Dispute Notice) must be submitted in writing to the Northwest
26 Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of

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

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

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

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

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

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

1 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
2 the other party may seek sanctions.

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

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

10 **XVI. AMENDMENT OF DECREE**

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

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

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

26

1 **XVII. EXTENSION OF SCHEDULE**

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

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

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

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

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

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

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

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

24 C. Ecology shall act upon any written request for extension in a timely fashion.
25 Ecology shall give MBHA written notification of any extensions granted pursuant to this Decree.
26 A requested extension shall not be effective until approved by Ecology or, if required, by the

1 Court. Unless the extension is a substantial change, it shall not be necessary to amend this Decree
2 pursuant to Section XVI (Amendment of Decree) when a schedule extension is granted.

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

- 6 1. Delays in the issuance of a necessary permit which was applied for in a
7 timely manner.
- 8 2. Other circumstances deemed exceptional or extraordinary by Ecology.
- 9 3. Endangerment as described in Section XVIII (Endangerment).

10 XVIII. ENDANGERMENT

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

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

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

1 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
2 circumstances.

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

5 **XIX. COVENANT NOT TO SUE**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **XX. CONTRIBUTION PROTECTION**

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

24 **XXI. LAND USE RESTRICTIONS**

25 If this Decree is amended to provide for a final cleanup action that requires an
26 Environmental (Restrictive) Covenant or Covenants to be recorded pursuant to

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

10 **XXII. FINANCIAL ASSURANCES**

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

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

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

1 substantive requirements of such permits or approvals. The exempt permits or approvals and the
2 applicable substantive requirements of those permits or approvals, will be identified in the CAP.

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

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

24 **XXV. REMEDIAL ACTION COSTS**

25 MBHA shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
26 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or

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

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

16 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

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

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

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XXVII. PERIODIC REVIEW

If this Decree is amended to provide for a final cleanup action that requires a periodic review under WAC 173-340-420(2), the following section will apply: 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 further remedial action at the Site. At least ninety (90) days prior to each periodic review, MBHA shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Under Section XIX (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.

XXVIII. PUBLIC PARTICIPATION

Ecology shall maintain the responsibility for public participation at the Site. However, MBHA 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 MBHA 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 MBHA that do not receive prior

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

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

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

- 8 1. Beacon Hill Public Library
9 2821 Beacon Avenue S.
Seattle, WA 98144
- 10 2. Downtown Public Library
11 1000 Fourth Avenue
Seattle, WA 98104
- 12 3. Ecology's Northwest Regional Office
13 3190 160th Avenue SE
Bellevue, WA 98008-5452

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

18 **XXIX. DURATION OF DECREE**

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

24 **XXX. CLAIMS AGAINST THE STATE**

25 MBHA hereby agrees that they will not seek to recover any costs accrued in
26 implementing the remedial action required by this Decree from the State of Washington or any

1 of its agencies; and further, that MBHA will make no claim against the State Toxics Control
2 Account or any local Toxics Control Account for any costs incurred in implementing this Decree.
3 Notwithstanding the foregoing, nothing in this Decree shall be construed to prevent MBHA from
4 receiving Public Funds as provided in RCW 70.105D.070(3)(q), nor limit or address funding
5 that may be provided under WAC 173-322A or any other public source, including, but not
6 limited to, any other authorized public funding. Except as provided above, MBHA expressly
7 reserves its rights to seek to recover any costs incurred in implementing this Decree from any
8 other PLP.

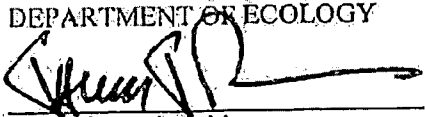
9 **XXXI. EFFECTIVE DATE**

10 This Decree is effective only upon the date (Effective Date) that title to the Property vests
11 in MBHA and GSC, following entry of this Decree by the Court. If MBHA and GSC do not
12 purchase the Properties no later than June 30, 2018, the parties shall meet and confer regarding
13 the status of MBHA's and GSC's pending purchase of the Properties. After this conference, the
14 parties may determine that this Decree shall be null and void, and MBHA will be under no
15 obligation to perform the work required by this Decree.

16 **XXXII. WITHDRAWAL OF CONSENT**

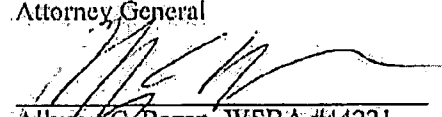
17 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at
18 the option of any party and the accompanying Complaint shall be dismissed without costs and
19 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.
20

21 STATE OF WASHINGTON
22 DEPARTMENT OF ECOLOGY

23 
24 James J. Pendowski
25 Program Manager
26 Toxics Cleanup Program
360-407-7177

Date: 5/30/18

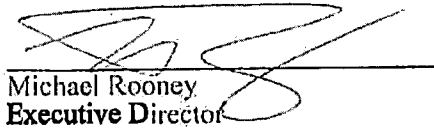
ROBERT W. FERGUSON
Attorney General


Allyson C. Bazan, WSBA #44221
Assistant Attorney General
360-586-3589

Date: 5/30/18

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MOUNT BAKER HOUSING ASSOCIATION



Michael Rooney
Executive Director
206-725-4152

Date: 5/31/18

ENTERED this 12 day of Sept, 2018

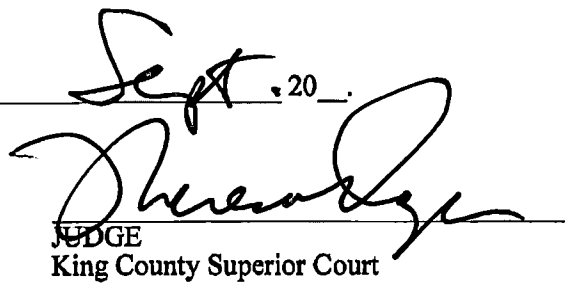
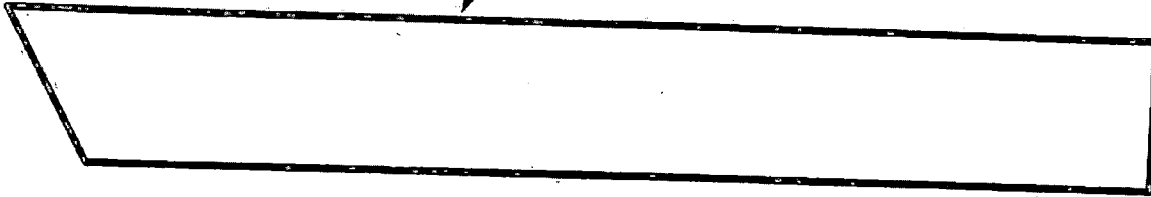

JUDGE
King County Superior Court

EXHIBIT A

Judkins Park and
Playfield

23RD AVE S

**Future Judkins Park
Light Rail Station**



S ATLANTIC ST

22ND AVE S

S MASSACHUSETTS ST

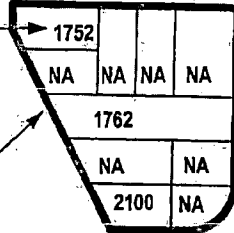
23RD AVE S

VALENTINE PL S

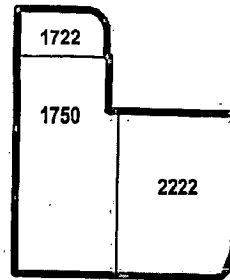
RAINIER AVE S

S STATE ST

**Seattle Collision
Center Parcel
(former Penthouse Drapery)**



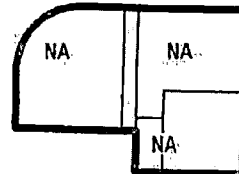
Belshaw Parcels



Belshaw Parcels

S GRAND ST

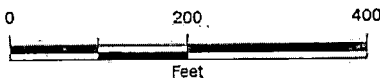
21ST AVE S



Belshaw Parcels

S HOLGATE ST

24TH AVE S



NA = No Address

GIS Parcel Data: SVA08, Belshaw, 210304, Delivered Through Parcel Development Termination | Carolina's System: 1503 Statewide Washington North PPS 4801 Fed | Date Saved: 1/25/2018 | User: rsmith@car | Print Date: 4/9/2018

1752 Rainier Avenue S

File No.: 20376387-410-MP2

EXHIBIT B
LEGAL DESCRIPTION

LOT 10 IN BLOCK 26 OF SANDER'S SUPPLEMENTAL PLAT, ACCORDING TO PLAT RECORDED IN VOLUME 1 OF PLATS AT PAGE 210, IN KING COUNTY, WASHINGTON;

EXCEPT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 29945 FOR RAINIER AVENUE;

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

PARCEL MAP



**EXHIBIT B
LEGAL DESCRIPTION**

PARCEL A:

LOTS 1 AND 2, BLOCK 26 OF SANDER'S SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL B:

LOTS 1 AND 2, BLOCK 1 OF CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL C:

LOT 3, AND THAT PORTION OF LOT 8 LYING EAST OF RAINIER AVENUE, BLOCK 26, SANDERS SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH LOT 3, BLOCK 1, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL D:

LOT 4 AND THAT PORTION OF LOT 7, LYING EAST OF RAINIER AVENUE, BLOCK 26, SANDERS SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL E:

LOT 9, BLOCK 26, SANDERS SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 29945 FOR RAINIER AVENUE AS PROVIDED BY ORDINANCE NO. 6047 OF THE CITY OF SEATTLE.

PARCEL F:

LOT 4, BLOCK 1, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

EXHIBIT B
(Continued)

PARCEL G:

THAT PORTION OF LOTS 5 AND 6, BLOCK 26, SANDER'S SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 210, IN KING COUNTY, WASHINGTON, LYING EASTERLY OF RAINIER AVENUE SOUTH.

PARCEL H:

LOT 5, BLOCK 1, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON.

PARCEL I:

LOTS 8 THROUGH 14, INCLUSIVE, BLOCK 5, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING OR ABUTTING THEREON, WHICH UPON VACATION, ATTACHED TO SAID PREMISES BY ORDINANCE NO. 114505, RECORDED UNDER RECORDING NUMBER 8905241034.

PARCEL J:

**BEGINNING 299 90 FEET SOUTH OF INTERSECTION OF THE WEST LINE OF 23RD AVENUE SOUTH WITH THE SOUTH LINE OF S MASSACHUSETTS STREET;
THENCE WEST 135 04 FEET;
THENCE SOUTHERLY 185.06 FEET TO NORTH LINE OF GRAND STREET;
THENCE EASTERLY ALONG GRAND STREET 109.92 FEET;
THENCE ON A CURVE TO THE LEFT A RADIUS OF 15 FEET A DISTANCE OF 18.59 FEET;
THENCE NORTHEASTERLY 35.27 FEET TO A POINT ON THE WEST LINE OF 23RD AVENUE SOUTH 44.09 FEET NORTH OF NORTH LINE OF GRAND STREET;
THENCE NORTHERLY ALONG WEST LINE OF 23RD AVENUE SOUTH TO POINT OF BEGINNING;
IN SECTION 9, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.**

PARCEL K:

LOTS 6 AND 7, BLOCK 5, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NUMBER 8902070880.

EXHIBIT B

(Continued)

PARCEL L:

THE SOUTH HALF OF LOT 5 AND ALL OF LOT 6, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF VOLUME 1 OF PLATS, PAGE 123 RECORDS OF KING COUNTY, WASHINGTON:

EXCEPT THE WEST 30 FEET OF SAID LOTS 5 AND 6.

PARCEL M:

THE NORTH 15 FEET OF LOT 1 AND ALL OF LOTS 2 AND 3, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF LOTS 2 AND 3 AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 76454 FOR STREET PURPOSES, AS PROVIDED IN CITY OF SEATTLE ORDINANCE NO. 21630.

PARCEL N:

THE NORTH HALF OF LOT 5 AND THE WEST 30 FEET OF THE SOUTH HALF LOT 5 AND ALL OF LOT 4, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL O:

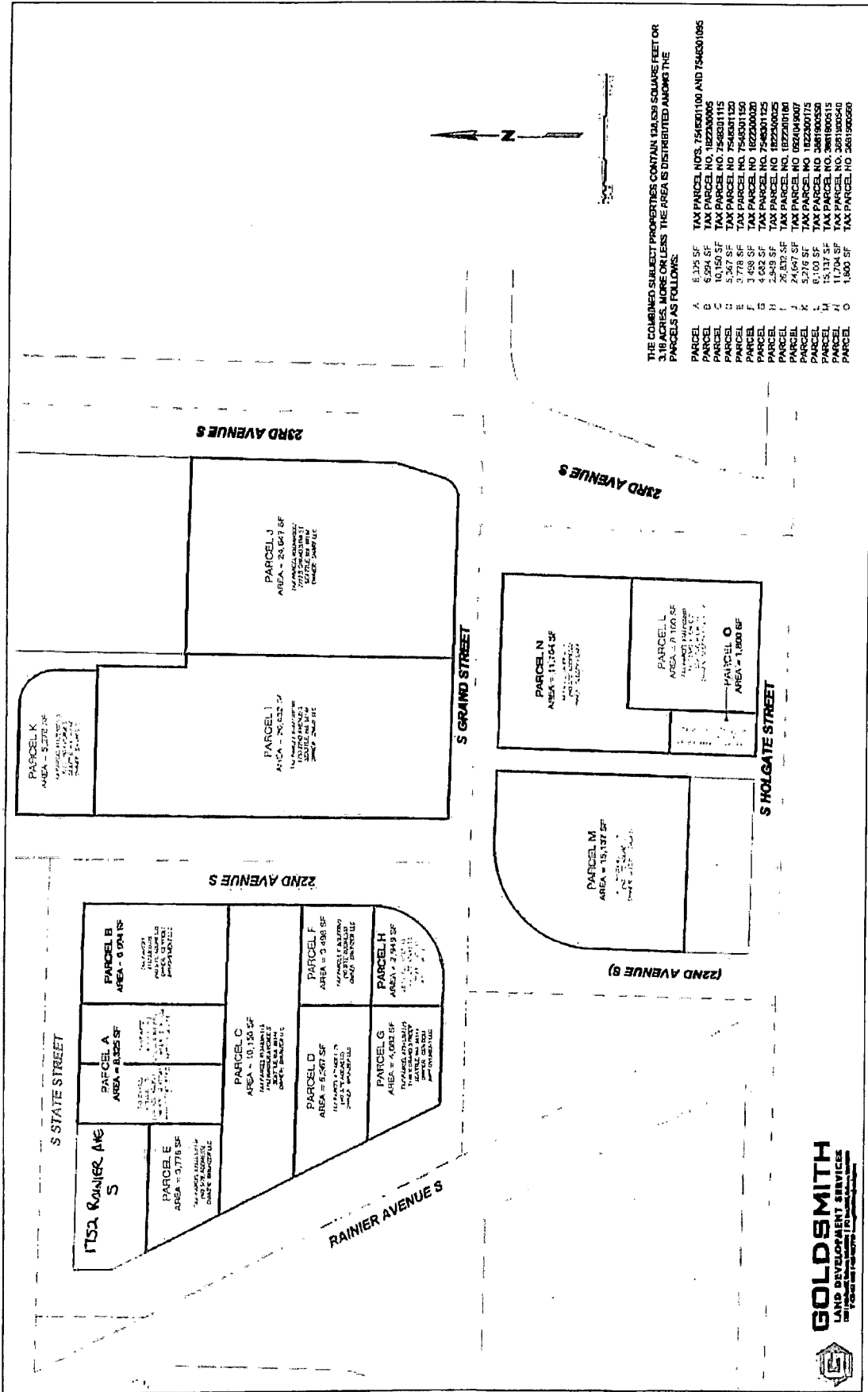
THE WEST 30 FEET OF LOT 6, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON.

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

PARCEL MAP



EXHIBIT B



THE COMBINED SUBJECT PROPERTIES CONTAIN 124,528 SQUARE FEET OR 3.18 ACRES, MORE OR LESS. THE AREA IS DISTRIBUTED AMONG THE PARCELS AS FOLLOWS:

PARCEL A	8,236 SF	TAX PARCEL NOS. 754501100 AND 754501095
PARCEL B	5,278 SF	TAX PARCEL NO. 182220005
PARCEL C	10,150 SF	TAX PARCEL NO. 754501150
PARCEL D	5,567 SF	TAX PARCEL NO. 754501150
PARCEL E	3,778 SF	TAX PARCEL NO. 754501150
PARCEL F	4,635 SF	TAX PARCEL NO. 182220000
PARCEL G	4,635 SF	TAX PARCEL NO. 754501125
PARCEL H	2,843 SF	TAX PARCEL NO. 182220005
PARCEL I	24,697 SF	TAX PARCEL NO. 182220000
PARCEL J	8,101 SF	TAX PARCEL NO. 182220015
PARCEL K	15,137 SF	TAX PARCEL NO. 381800550
PARCEL L	11,704 SF	TAX PARCEL NO. 381800515
PARCEL M	1,800 SF	TAX PARCEL NO. 381800540
PARCEL N	1,800 SF	TAX PARCEL NO. 381800560



EXHIBIT C: SCOPE OF WORK AND SCHEDULE

Scope of Work

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

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

- Further evaluate nature and extent of chlorinated solvents contamination in soil, soil gas, and groundwater at the Seattle Collision Center (SCC, former Penthouse Drapery) and Belshaw parcels and adjacent properties including City of Seattle's rights-of-way (Rainier Avenue South, 22nd Avenue South, South State Street, and South Grand Street) following completion of the Electrical Resistance Heating (ERH) remedial operations.
- Delineate the lateral and vertical extent of chlorinated solvents contaminants in soil and ground water at and in the vicinity of SCC and Belshaw parcels including the adjacent City of Seattle's rights-of-way.
- Delineate the lateral and vertical extent of petroleum contamination in soil and groundwater at the Belshaw parcels and vicinity.
- Assess potential for vapor intrusion, if chlorinated solvents or volatile petroleum contamination is identified at these properties. Measure vapor contaminant in the buildings, if necessary.
- Evaluate subsurface utilities and their role as preferential pathways for potential contamination migration.
- Determine the extent of "Site" and develop a Conceptual Site Model.
- Based on the RI data, develop cleanup options for affected media at the Site and evaluate the cleanup options through a Feasibility Study. Present the results of the RI and FS in a single RI/FS Report to Ecology for review and applicable public comment.

Additional Remedial Actions

Following completion of the Final RI/FS report, MBHA shall prepare a draft Cleanup Action Plan (CAP) for public comment and Ecology review. The Parties intend that Ecology will select a final Site remedy in a final CAP and that MBHA will conduct additional remedial actions pursuant to and consistent with the CAP.

When MBHA has obtained sufficient funds to complete additional remedial action(s) at the Site, the Parties shall revise this Scope of Work and Schedule to govern such additional remedial action(s). The Parties understand that the Site consists of multiple parcels and that MBHA will likely seek to redevelop

parcels at the Site in phases. Ecology may authorize parcel-specific redevelopment and remedial action where such redevelopment and remedial action implements the CAP for that portion of the Site, the redevelopment and remedial action is consistent with, will not preclude, complicate, or render more expensive the final Site-wide cleanup action in the CAP, and that the redevelopment and remedial action will not result in re-contamination at the Site.

Proposed RI/FS Scope and Schedule

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

1. RI/FS Planning	
May – June 2018	Data Review. MBHA will review previous environmental reports including results from the 2017 environmental investigations to design the proposed RI/FS.
July – August 2018	Draft RI/FS Work Plan. MBHA will prepare a Draft RI/FS Work Plan that outlines the goals, scope, exploration locations, sampling, and chemical testing rationale, analytical methods, field screening procedures, and quality assurance and quality control measures that will be utilized for completing the RI/FS. The Draft RI/FS Work Plan will be submitted to Ecology for review and comment.
August – September 2018	Ecology review of the Draft RI/FS Work Plan: Two months from the date the Draft Work Plan is submitted to Ecology.
October 2018	Finalize RI/FS Work Plan: One month after Ecology review comments are received.
2 RI/FS Implementation and Reporting	
November – December 2018	Obtain permits from City of Seattle for drilling and sampling in rights-of-way.
January – February 2019	Remedial Investigation. Conduct explorations and sampling (soil, groundwater, and soil gas). Samples will be submitted to an Ecology-accredited laboratory for chemical analysis.
March 2019	Additional Explorations. Evaluate the need for additional subsurface sampling based on the chemical analytical results.
April 2019	Vapor Intrusion. Risk of potential for Vapor Intrusion (VI) will be assessed and workplan will be prepared as needed.

May – June 2019	Draft RI. Results of all environmental investigations including VI assessment will be summarized in a Draft Remedial Investigation (RI) report which will be completed in accordance with all substantive requirements of MTCA.
July 2019	Draft FS and DCA. Based on the RI, potential cleanup options will be developed and evaluated through a Draft Feasibility Study (FS) and Disproportionate Cost Analysis (DCA) which will be completed in accordance with MTCA requirements.
August – September 2019	Ecology RI/FS review: Two months, or additional review time as needed, depending on the construction schedule, from the date the Draft RI/FS Report is submitted to Ecology.
October – December 2019	Public review and comment: Three months after Ecology comments are received.
January 2020	Final RI/FS Report: One month after public comments are received.