

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The City of Bellingham

AGREED ORDER

No. DE 15776

TO: City of Bellingham
210 Lottie Street
Bellingham, WA 98225

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Bellingham (the City) under this Agreed Order (Agreed Order or Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City to prepare and submit for Ecology review and approval all documents necessary to complete the design and permitting of the cleanup action described in the Cleanup Action Plan (CAP) (Exhibit B). This Order contemplates the potential for interim actions at the Site and sets out a process for approval of any interim actions proposed by the City. Upon the entry of this Order by Ecology, it will supersede and replace Agreed Order No. 2186 (2005 Order), the First Amendment to the 2005 Order (First Amendment), and the Second Amendment to the 2005 Order. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

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

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is generally located at 500 Cornwall Avenue in Bellingham, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is generally described 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 the City.

C. Potentially Liable Person (PLP): Refers to the City, the Port of Bellingham, the Washington State Department of Natural Resources, and Brooks Manufacturing Co. (the PLPs).

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

E. 2005 Order: Refers to Agreed Order for RI/FS No. 2186, entered in 2005 by Ecology and Douglas Management, for the purpose of conducting a remedial investigation/feasibility study (RI/FS), and the First and Second Amendments to that 2005 Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the City:

A. The Site is generally located at 500 Cornwall Avenue in Bellingham. The Site consists of an upland area and a marine portion, which extends into both intertidal and subtidal waters of Bellingham Bay.

B. Prior to ownership by the City of Bellingham, the upland and in-water areas were owned by Bellingham Bay Improvement Company (1887-1912), Bellingham Bay Lumber Company (1912-1913), Bloedel Donovan Lumber Company (1913-1947) (all of which operated lumber mills); the Port of Bellingham (1947 - 1962), which owned and leased portions of the Site to International Cross Arm Co. (1948-1955) and to RG Haley (1955-1962); RG Haley Company (1962-1990); Douglas Management Company (1990 to 2009), and the City of Bellingham (2009-present). The State owned property, managed by the Department of Natural Resources and its

predecessors, was leased to the Port of Bellingham (1947 to 1965) and Frank Brooks Manufacturing (1965-1985) and Georgia Pacific (1985-2001).

C. From the 1880s through 1990, the upland properties have been used for lumber milling, wood treatment and storage.

D. The state of Washington is the owner of the aquatic lands within the Site.

E. In 1986 the U.S. Environmental Protection Agency investigated the Site and applied EPA's Hazard Ranking System. The Site was ranked lower than the threshold for inclusion in the Superfund National Priorities List (NPL).

F. A Phase 1 environmental site assessment was conducted by W.D. Purnell in 1991 on behalf of Georgia Pacific.

G. In 1992, Ecology conducted a Site Hazard Assessment. A ranking of "3" was determined for the Site following Ecology's WARM ranking methods.

H. In 2008 and 2009, the Ecology and DNR commissioned sediment studies in Bellingham Bay which included portions of the Haley Site and nearby areas of Bellingham Bay. These studies identified hazardous substances in sediment.

I. In 2005, Ecology and Douglas Management entered into the 2005 Order that required Douglas Management to perform a remedial investigation/feasibility study (RI/FS) for the Site.

J. In 2010, the City of Bellingham and Ecology entered into the First Amendment, which removed Douglas Management as a signatory party from further obligation under the 2005 Order and added the City as signatory to complete its requirements. In 2013, the Second Amendment to the 2005 Order required the City to perform an interim action to contain petroleum hydrocarbons emerging from sediment in Bellingham Bay at the Site.

K. As part of the RI/FS the City conducted sampling and testing of marine sediments.

L. In 2016, an RI/FS for the Site, prepared by the City of Bellingham and its consultant GeoEngineers, was finalized after public notice and opportunity to comment.

M. The RI/FS's findings are as follows: Releases of wood treatment chemicals resulted in hazardous substances such as petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), pentachlorophenol (PCP) and dioxins/furans to be present in Site soil, soil vapor, groundwater and/or sediment at concentrations that represent a potential threat to human and ecological health. Site cleanup units consist of the upland unit and the marine unit as defined in the RI/FS and CAP. A plume of potentially mobile light non-aqueous phase liquid (LNAPL) remains near the shoreline. A preferred cleanup alternative was selected in accordance with MTCA requirements (WAC 173-340-350 and -360). The preferred cleanup alternative utilizes a combination of in-situ solidification, low-permeability capping, sediment excavation and sediment capping and natural recovery methods as presented in the CAP.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the City.

A. The City is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued PLP status letters to the City of Bellingham, Port of Bellingham, DNR, and Brooks Manufacturing Company dated November 24, 2009 April 9, 2010, March 26, 2015, and April 23, 2015, respectively, pursuant to RCW 70.105D.040, -.020(26) and WAC 173-340-500. By letter dated December 7, 2009, the City voluntarily waived its rights to notice and comment "without admitting liability and for purpose of facilitating agree order negotiations only" and accepted Ecology's determination that the City is a PLP under RCW 70.105D.040. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supplied a finding of potential liability, Ecology issued a determination that the City of Bellingham, Port of Bellingham,

DNR, and Brooks Manufacturing Company are PLPs under RCW 70.105D.040. Ecology notified the Port of Bellingham by letter on September 28, 2010, and by letters to DNR and Brooks Manufacturing Company on May 4, 2015 of this determination.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require [PLPs] to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City take the following remedial actions at the Site and that these actions be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. The City shall prepare and submit for Ecology review and approval all documents necessary to complete the design and permitting of the cleanup action described in the Cleanup Action Plan (CAP) (Exhibit B). The Scope of Work and Schedule (Exhibit C) specifies the required deliverables and the schedule by which they must be submitted. The work to be performed includes the following:

1. Preparation of draft Pre-Remedial Design Investigation (PRDI) Project Plans for Ecology review, followed by preparation of final documents addressing Ecology's review comments. The Project Plans include a Work Plan, Sampling and Analysis Plan, Quality Assurance Project Plan, and a Health and Safety Plan.

2. Completion of the work described in the PRDI Project Plans.

3. Preparation of an Ecology review draft, public review draft and final Engineering Design Report (EDR) that address Ecology's review comments, public comments and the requirements imposed by permitting agencies, to the extent those requirements are available. The EDR shall incorporate the PRDI findings and the results of engineering evaluations required to complete the design.

4. Preparation of 60% complete Construction Plans and Specifications (Plans and Specs) for Ecology review, followed by preparation of 90% and 100% complete documents addressing Ecology's review comments. The Plans and Specs shall be based on the EDR.

5. Preparation of permitting application documents from the appropriate permitting authorities, if both Ecology and the City agree it is advisable to proceed with this aspect of the remedial action. Draft permitting documents shall be provided to Ecology for review, followed by preparation of final permitting documents addressing Ecology's review comments.

B. The City shall perform the remedial actions required by this Order according to the work schedule set forth in Exhibit C.

C. If the Parties agree on an interim action under Section VI.E, the City shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLP shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order,

and the City is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

D. If Ecology determines that the City has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all of the remedial action or at Ecology's discretion allow the City the opportunity to correct. The City shall reimburse Ecology for the costs of doing such work in accordance with Section VII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

E. Except where necessary to abate an emergency situation, the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

The City shall pay to Ecology costs incurred by Ecology pursuant to this Order 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 Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The City 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 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 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Mark Adams
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7107

The project coordinator for the City is:

Craig Mueller
104 W. Magnolia Street
Bellingham, WA 98225
(360) 778-7922

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

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.

C. Performance

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

All engineering work performed pursuant to this Order 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 Order 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 and 18.220.

The City 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 Order, in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the City 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 Order; reviewing the City's progress in carrying out the terms of this Order; 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 Order; and verifying the data submitted to Ecology by the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City or any other PLP unless an emergency prevents such notice. All persons 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.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the City 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 VII (Work to be Performed), 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, the City shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the City 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.

F. Public Participation

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment,

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

1. If agreed to by Ecology, develop appropriate mailing lists and 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.

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

3. 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.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Bellingham Public Library
210 Central Avenue
Bellingham, Washington 98225
- b. Ecology's Northwest Regional Office

3190 160th Avenue SE
Bellevue, Washington 98008-5452

- c. Ecology's Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, Washington 98225

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

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the City shall preserve all records, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors. Upon request of Ecology, the City shall make all records available to Ecology and allow access for review within a reasonable time.

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

H. Resolution of Disputes

1. In the event that the City elects to invoke dispute resolution the City must utilize the procedure set forth below.

- a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the City has fourteen (14) calendar days

within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. 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 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 City's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The City 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.

d. 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. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. 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.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order 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 VII.E (Work to be Performed) or initiating enforcement under Section XI (Enforcement).

I. Extension of Schedule

1. 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:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the City 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:

- a. Circumstances beyond the reasonable control and despite the due diligence of the City including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the City;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.L (Endangerment).

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

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a

substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.K (Amendment of Order) when a schedule extension is granted.

4. 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:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.L (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.M (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the City. The City 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 this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order 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 VIII.I (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or

surrounding the Site, Ecology may direct the City to cease such activities for such period of time as it deems necessary to abate the danger. The City shall immediately comply with such direction.

In the event the City determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the City may cease such activities. The City 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, the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's cessation of activities, it may direct the City to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the City'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 VIII.J (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the City to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City regarding remedial actions required by this Order, provided the City complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology

also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the City does not admit to any liability for the Site. Although the City is committing to conducting the work required by this Order under the terms of this Order, the City expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. 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 the City without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

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

N. Compliance with Applicable Laws

1. All actions carried out by the City pursuant to this Order 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. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the City 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, the City shall comply with the

substantive requirements of such permits or approvals. At this time, no federal, state, or local requirements have been identified as being applicable but procedurally exempt under this section.

The City 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 Order. In the event either Ecology or the City determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City 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 the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 the City 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.

O. Indemnification

The City 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 the City, its officers, employees, agents, or contractors in entering into and implementing this

Order. However, the City shall not indemnify the State of Washington 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 Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon City's receipt of written notification from Ecology that City has completed the remedial activity required by this Order, as amended by any modifications, and that the City has complied with all other provisions of this Agreed Order.

X. TERMINATION OF 2005 ORDER

This Order supersedes the 2005 Order and its amendments, which terminates upon the effective date of this Order.

XI. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
 - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 6/1/18

CITY OF BELLINGHAM



~~KELLI LINVILLE~~ *Pinky Vargas*
Mayor, City of Bellingham
(360) ~~778-8100~~
Pro Tempore

Dated: 5/23/18

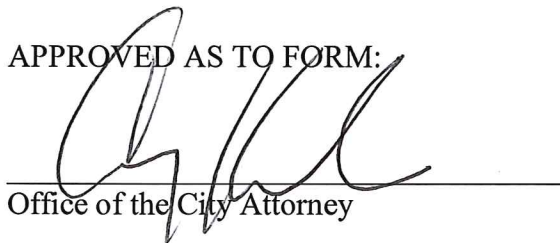
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



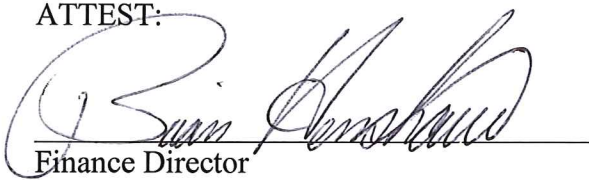
~~ROBERT W. WARREN, P. Eng., MBA~~ *RW*
Regional Manager
Northwest Regional Office
Toxics Cleanup Program
(425) 649-7054

Dated: 6/1/18

APPROVED AS TO FORM:


Office of the City Attorney

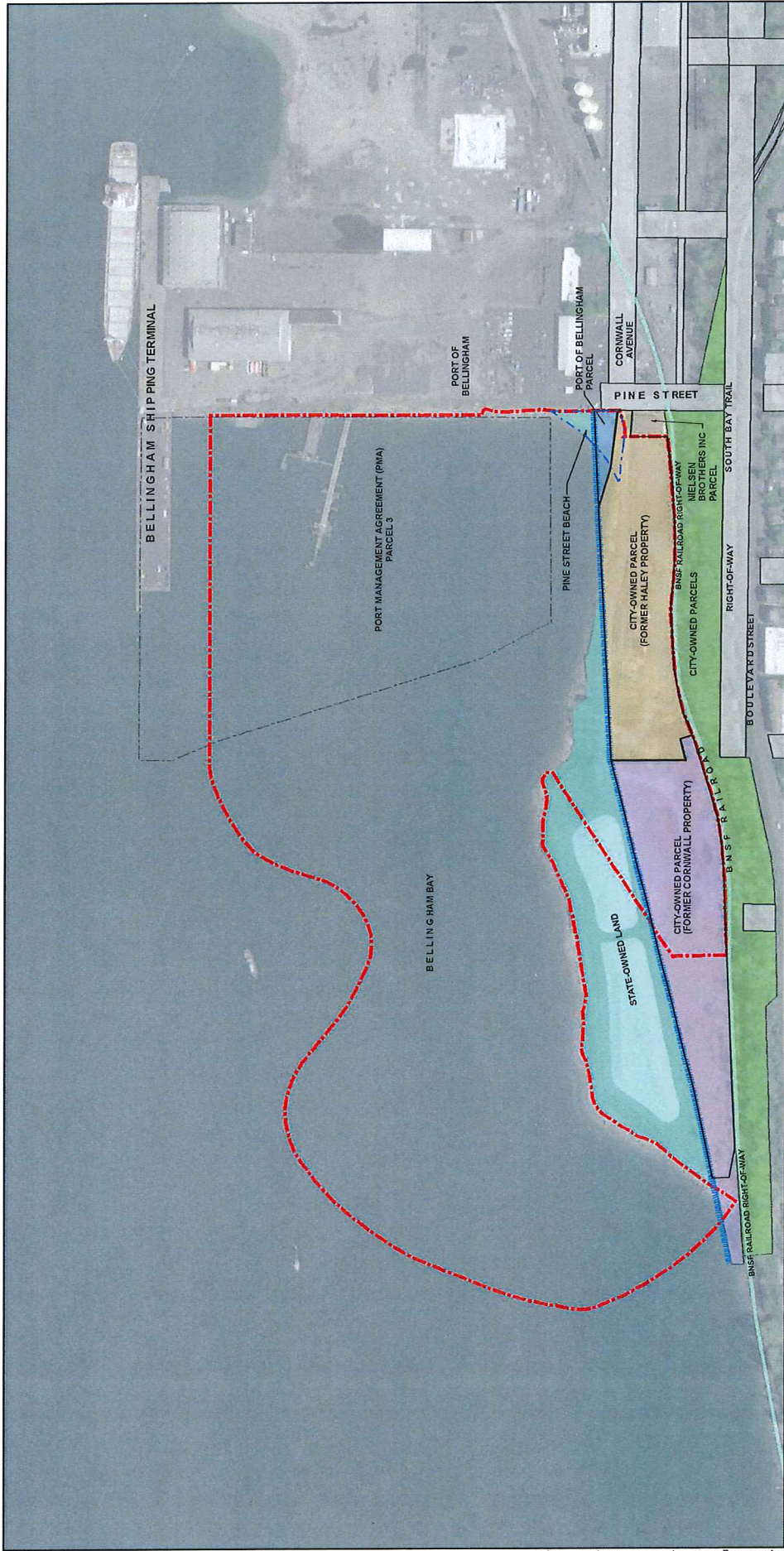
ATTEST:


Finance Director

Dated: 5.24.18

DEPARTMENTAL APPROVAL:


PETER RUFFATTO
City Attorney



Legend

- Red dashed line: Haley Upland and Marine Unit Boundary
- Blue dashed line: Inner Harbor Line

Scale: 0 100 200 Feet

North Arrow: Project North

Notes:

- The locations of all features shown are approximate.
- The accuracy of the features shown is not guaranteed. The accuracy of the features shown is dependent on the accuracy of the data used to create this map. The accuracy of the data used to create this map is not guaranteed. The accuracy of the data used to create this map is not guaranteed.
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Reference: Aerial from Esri, 2013.

Haley Cleanup and Ownership Boundaries
 R.G. Haley Site
 Bellingham, Washington

GEOENGINEERS

Figure 2

Agreed Order - Exhibit A

EXHIBIT B
R.G. HALEY SITE CLEANUP ACTION PLAN

EXHIBIT C
R.G HALEY SITE SCOPE OF WORK AND SCHEDULE

Deliverables		Due¹
A. Administrative		
A.1	Progress Reports	Quarterly on the 20 th of the month beginning after the effective date of the Agreed Order
B. Design		
B.1	Draft Pre-Remedial Design Investigation (PRDI) Project Plans	Within 60 days of the effective date of the Agreed Order
B.2	Final PRDI Project Plans	Within 30 days of receipt of Ecology's comments on the Draft PRDI Project Plans (B.1)
B.3	Complete Pre-Design Field Investigation	Within 90 days of Ecology approval of Final PRDI Project Plans or other date approved by Ecology (B.2) ²
B.4	Ecology Review Draft Engineering Design Report (EDR)	Within 210 days of completion of field investigations (B.3)
B.5	Public Review Draft EDR	Within 90 days of receipt of Ecology's comments on the Ecology Review Draft EDR (B.4)
B.6	Final EDR	Within 30 days of receipt of issuance of Ecology comments on Public Review Draft EDR (B.5)
B.7	60 % Construction Plans and Specifications (Plans and Specs) [per WAC 173-340-400(4)(b)]	Within 120 days of receipt of Ecology comments on Public Review Draft EDR (B.5) and resolution of substantive permit issues.
B.8	90 % Construction Plans and Specifications (Plans and Specs) [per WAC 173-340-400(4)(b)] ³	Within 90 days of receipt of Ecology comments on the 60% Construction Plans and Specifications (B.7)
B.9	100 % Construction Plans and Specifications	Within 30 days of receipt of Ecology comments on 90 % Construction Plans and Specifications (B.8)

- 1) Schedule is in calendar days. Deliverable due date may be modified with Ecology concurrence without amendment to the Agreed Order.
- 2) Habitat studies may have seasonal constraints that would require a schedule for completion beyond the 90-day period. These studies will be initiated following Ecology's approval based on scheduling to be determined.
- 3) Completion of deliverable is subject to approval and issuance of all applicable permits and regulatory approvals.