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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

MOUNT BAKER HOUSING
ASSOCIATION, and MT. BAKER
VILLAGE LLLP,

Defendants.

NO. 16-2-29584-3 SEA

AMENDMENT NO. 3 TO PROSPECTIVE
PURCHASER CONSENT DECREE

INTRODUCTION

A. A Prospective Purchaser Consent Decree (Decree) was entered by this Court on December 8, 2016, and amended on February 24 and August 30, 2017. The Decree is a negotiated settlement between the State of Washington, Department of Ecology (Ecology) and Mount Baker Housing Association (MBHA), entered pursuant to RCW 70.105D.040(5), to (1) prospectively resolve the potential liability of MBHA for contamination at the Mount Baker Properties Site (Site) arising from a release(s) or threatened release(s) of hazardous substances, in advance of MBHA purchasing an ownership interest in the Site, and (2) facilitate the cleanup of the Site for redevelopment and reuse as transit-oriented affordable housing.

B. Under the Model Toxics Control Act, funds appropriated from the State Toxics Control Account may be used for, among other things, "Public funding to assist prospective

1 purchasers to pay for the costs of remedial action in compliance with clean-up standards under
2 RCW 70.105D.030(2)(e),” provided (1) the site at issue is located within a redevelopment
3 opportunity zone designated under RCW 70.105D.150; (2) the amount and terms of the funding
4 are established under a settlement entered into under RCW 70.105D.040(5) (i.e., a prospective
5 purchaser consent decree); and (3) the Ecology director has found the funding meets any additional
6 criteria established in rule by the department, will achieve a substantially
7 more expeditious or enhanced cleanup than would otherwise occur, and will provide a public
8 benefit in addition to cleanup commensurate with the scope of the public funding.
9 RCW 70.105D.070(3)(q).

10 C. The Decree requires that “MBHA shall use all best efforts to seek and obtain
11 Additional Funding for additional remedial actions at the Site,” which “may include working in
12 cooperation and in partnership with Ecology to obtain Public Funds . . .” Decree, Section VI.C.
13 “Public Funds” are defined under the Decree to be “public funding provided by Ecology as
14 specified in this Decree and as described in RCW 70.105D.070(q) [sic].” Decree, Section IV.E.
15 The Decree anticipates that “The Parties intend to amend this Decree . . . for the possible future
16 provision of Public Funds pursuant to RCW 70.105D.070(q) [sic].” Decree, Section VI.C; *see*
17 *also* Decree, Section I.A (“The parties may . . . amend this Decree in the future to provide for
18 Public Funds pursuant to RCW 70.105D.070(q) [sic].”).

19 D. The Legislature has appropriated \$5.1 million in Public Funds to assist MBHA with
20 the cost of remedial actions at the Site. This third amendment (Third Amendment) is to provide
21 for the provision of Public Funds in the amount of \$600,000 to MBHA, together with the utilization
22 of such funds by MBHA, under the terms of RCW 70.105D.070(3)(q) and as specified below. The
23 Parties anticipate that an additional future amendment or amendments will provide the remaining
24 appropriated Public Funds to MBHA in conjunction with further remedial actions.
25
26

1 **AMENDMENT TO CONSENT DECREE**

2 Based on the foregoing, and pursuant to the provisions of Section XVI (Amendment of
3 Decree), the Parties stipulate and agree that the Decree should be amended with the following
4 additional determinations and conditions, as follows:

5 A. All terms of the Decree remain in effect unless expressly amended herein.

6 B. In addition to the determinations in Section II (Jurisdiction), the following
7 determinations are made with respect to the criteria in RCW 70.105D.070(3)(q):

8 1. With respect to the criterion of RCW 70.105D.070(3)(q)(i), on February 7,
9 2017, by City of Seattle Resolution (Res) 31731, the Seattle City Council established the
10 Mount Baker McClellan Street Redevelopment Opportunity Zone pursuant to
11 RCW 70.105D.150(1). A true and correct copy of City of Seattle Resolution (Res) 31731
12 is attached as Exhibit 1 to the First Amendment to Prospective Purchaser Decree, entered
13 in this matter on February 24, 2017. The Site is located within the Mount Baker McClellan
14 Street Redevelopment Opportunity Zone.

15 2. With respect to the criterion of RCW 70.105D.070(3)(q)(ii), this Decree
16 constitutes a settlement pursuant to RCW 70.105.040(5) (i.e., a prospective purchaser
17 consent decree) that establishes the amount and terms of public funding under
18 RCW 70.105D.070(3)(q).

19 3. With respect to the criteria of RCW 70.105D.070(3)(q)(iii), the Director of
20 Ecology has found that the provision of \$600,000 in Public Funds to MBHA will:
21 (1) achieve a substantially more expeditious or enhanced cleanup than would occur without
22 the Public Funds; and (2) provide public benefits in addition to the cleanup that are
23 commensurate with the scope of the Public Funds. As of the date of this Third Amendment,
24 Ecology has not established additional criteria in rule pertaining to the provision of public
25 funding under RCW 70.105D.070(3)(q). A true and correct copy of the Director's findings
26 is attached as Exhibit 1 to this Third Amendment.

1 C. Based on the above determinations, and as authorized by RCW 70.105D.070(3)(q),
2 Ecology is providing \$600,000 in Public Funds to MBHA to undertake remedial actions at the
3 Site, subject to the following conditions:

4 1. MBHA shall utilize the Public Funds provided through this Third
5 Amendment solely for the activities and deliverables, and in accordance with the schedule,
6 identified in the Public Funding Scope of Work and Schedule attached as Exhibit 2 to this
7 Third Amendment, which may be modified by agreement of the project coordinators
8 pursuant to Section XVI of the Decree.

9 2. The Public Funds may only be applied to costs invoiced to MBHA after the
10 date of this Third Amendment, except for certain unpaid costs described in Exhibit 2.

11 3. MBHA may only use the Public Funds to pay for “eligible costs” and
12 “conditionally eligible costs” within the scope of Condition 1 above.

13 a. “Eligible costs” are costs that are:

14 i. Direct project costs;

15 ii. The net sum of all applicable credits, refunds, discounts, and
16 adjustments;

17 iii. Reasonable and necessary to complete the activities and
18 deliverables identified in Exhibit 2;

19 iv. In general conformance with the activity budget (estimated
20 expenditures) identified in Exhibit 2, including contingency; and

21 v. Properly documented according to generally accepted
22 accounting practices, including canceled checks, invoices, logs, purchase
23 receipts, payroll time and attendance records, photos, and any other
24 materials that substantiate a cost is reasonable and necessary for the
25 performance of the tasks identified in Exhibit 2 and eligible for
26 reimbursement.

1 b. “Conditionally eligible costs” require advance written approval
2 from the Ecology financial manager prior to incurring the costs. Examples of
3 conditionally eligible costs include:

4 i. Archeological and cultural resource review and protection
5 activities;

6 ii. Conferences and meeting room rentals and refreshments;

7 iii. Computer and other electronic devices, including hardware
8 and software, laptops, tablets, cameras, projectors, and other electronic
9 devices;

10 iv. Expedite/rush charges and fees;

11 v. Force accounts;

12 vi. Insurance costs;

13 vii. Equipment and tools;

14 viii. Light refreshments for public meetings;

15 ix. Overtime compensation and differential; and

16 x. Training for MBHA’s staff.

17 c. Ineligible costs include:

18 i. Real property acquisition;

19 ii. In-kind costs;

20 iii. Tools, equipment, and training for anyone other than
21 MBHA’s staff;

22 iv. Legal expenses;

23 v. Lobbying and legislative expenses;

24 vi. Fines, penalties, or late fees;

25 vii. Costs that are considered part of overhead/indirect costs;

26 viii. Interest or other financial costs;

- ix. Oversight costs;
- x. Personal injury compensation; and
- xi. Costs billed to another state or federal funding agreement.

4. MBHA shall retain all Public Funds provided through this Third Amendment subject to the conditions of Section VI.D of the Decree. MBHA may, at its election, establish an additional dedicated and segregated account in which to solely hold the Public Funds provided through this Third Amendment.

5. In providing monthly Progress Reports as required under Section XII (Progress Reports) of the Decree, including in addressing the items identified in A, B, C, D, and F of Section XII, MBHA shall include, in a manner that is readily identifiable:

a. Information specific to the tasks and schedule of Exhibit 2 and the Public Funds provided through this Third Amendment.

b. Monthly and cumulative accountings of the funds expended by MBHA against the \$600,000 total of Public Funds provided through this Third Amendment, together with a projection of the funds expected to be expended in the forthcoming month.

c. All invoices and expense proofs paid during the reporting period utilizing Public Funds provided through this Third Amendment.

MBHA shall provide a copy of such monthly Progress Reports and supporting documentation to:

State of Washington
Department of Ecology
Attn: TCP Financial Services Unit
P.O. Box 47600
Olympia, WA 98504-7600

6. In retaining records as required under Section XIII (Retention of Records) of the Decree, MBHA shall specifically retain records relating to the holding and expenditure of the Public Funds provided through this Third Amendment:

- a. In a manner that clearly indicates total receipts and expenditures;
- b. In a manner that provides an audit trail for all expenditures; and
- c. In a common file to facilitate audits and inspections.

MBHA shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in these records.

7. All expenditures by MBHA utilizing Public Funds provided through this Third Amendment are subject to approval and audit by Ecology. Cost eligibility determinations shall be made by the Ecology financial manager in conformance with WAC 173-322A, Remedial Action Grants and Loans; Ecology's administrative standards and requirements applicable to all Ecology grants and loans (The Yellow Book); and the 2018–2021 Remedial Action Grant Program Guidelines. Costs not approved by the Ecology financial manager shall be the responsibility of MBHA and any unallowable expenditure shall be refunded to Ecology by MBHA. Such refund shall be made by check payable to Ecology in the amount of such ineligible cost or erroneous payment or overpayment within thirty (30) days of a written notice by Ecology. Interest will accrue at the rate of twelve percent (12%) per year from the time Ecology demands repayment of funds.

8. If any portion of the Public Funds provided through this Third Amendment are not expended by MBHA upon the completion of the tasks and/or conclusion of the schedule identified in Exhibit 2, MBHA shall identify the unspent amount to Ecology no later than in conjunction with its next-scheduled accounting under Section VI.D of the Decree. MBHA shall promptly return any unspent amount to Ecology, unless Ecology provides written approval for the unspent funds to be used to assist with remedial actions beyond those specified in Exhibit 2, or beyond the schedule in Exhibit 2. In such case: (1) the remedial actions and timeframe shall be specified in Ecology's written approval, with the unspent funds to be applied solely toward completing such specified actions within

1 such timeframe; and (2) all conditions of this Third Amendment shall continue to apply to
2 such funds until they are exhausted.

3 9. If, in complying with Section VI.C of the Decree, MBHA obtains
4 Additional Funding that exceeds the cost of implementing a final cleanup action (including,
5 as applicable, the costs of post-construction operation and maintenance, maintaining
6 institutional controls, providing financial assurance, and/or providing for contingency),
7 Ecology reserves the right to seek reimbursement of all or part of the Public Funds provided
8 through this Third Amendment from such excess Additional Funding.

9
10 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

11 *Rebecca Lawson for*

12 James J. Pendowski
13 Program Manager
14 Toxics Cleanup Program
15 360-407-7177

16 Date: 7/17/2018

ROBERT W. FERGUSON
Attorney General

Andrew A. Fitz WSBA 44221 FOR

17 Andrew A. Fitz, WSBA #22169
18 Senior Counsel
19 360-586-6752

20 Date: 7/17/2018

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1 MOUNT BAKER HOUSING
2 ASSOCIATION

3 
4 Michael Rooney
5 Executive Director
6 206-725-4152

7 Date: 7/18/2018

MT. BAKER VILLAGE LLLP, a
Washington Limited Liability Limited
Partnership, by 2914 MCCLELLAN LLC, a
Washington Limited Liability Company, its
General Partner, and by MOUNT BAKER
HOUSING ASSOCIATION, a Washington
Public Benefit Nonprofit Corporation, its sole
member and Manager

8 
9 Michael Rooney
10 Executive Director
11 206-725-4152

12 Date: 7/18/2018

13 ENTERED this _____ day of _____, 2018.

14 _____
15 JUDGE/COMMISSIONER
16 King County Superior Court

EXHIBIT 1 DIRECTOR'S FINDINGS

Under RCW 70.105D.070(3)(q), monies appropriated from the State Toxics Control Account may be provided as public funding to assist prospective purchasers with the costs of remedial action associated with brownfields properties if, among other criteria, the Director of the Department of Ecology finds that the funding: (1) meets any additional criteria established in rule by the department; (2) will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur; and (3) will provide a public benefit in addition to cleanup commensurate with the scope of the public funding.

I hereby make the following findings with respect to providing up to \$600,000 in public funding to the Mount Baker Housing Association (MBHA) through an third amendment to the Prospective Purchaser Consent Decree (PPCD) entered in *Department of Ecology v. Mount Baker Housing Association*, No. 16-2-29584-3 SEA (King Cty. Super. Ct. Dec. 8, 2016):

1. As of the date of these findings, Ecology has not established additional criteria in rule pertaining to the provision of public funding under RCW 70.105D.070(3)(q). There is thus no finding to be made in this regard.
2. I find that providing the funding will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur. MBHA is a private, non-profit corporation that develops affordable housing in southeast Seattle. MBHA entered the PPCD with knowledge it would have to generate new, additional funding in order to complete the near-term remedial actions required by the PPCD and a final cleanup action that, under the terms of the PPCD, must be completed at the Mount Baker Properties Site (Site) before MBHA can redevelop properties within the Site. The terms of the PPCD provide that such additional remedial actions are contingent upon MBHA "obtaining or having sufficient Additional Funding" and require MBHA to "use all best efforts to seek and obtain Additional Funding." See PPCD at 11-12 (Sections VI.B, C). The currently identified potential sources of these additional funds include obtaining insurance policy coverage payments and settlement funds from other potentially liable persons. *Id.* at 8 (Section IV.G). Providing up to \$600,000 in public funding to MBHA will substantially advance MBHA's work in completing the remedial investigation/feasibility study currently required by the PPCD and allow it to leverage its existing and future resources toward obtaining additional funds and completing a final cleanup of the Site.
3. I find that providing the funding will provide a public benefit in addition to cleanup commensurate with the scope of the public funding. The Mount Baker neighborhood is one of Seattle's most economically and culturally diverse neighborhoods. The properties within the Site are currently underutilized, being occupied by, among other things, a vacant dry cleaning operation and a vacant gas/service station. MBHA's proposed redevelopment involves providing approximately 150 new affordable housing units on these properties. The

proposed new affordable housing units will address a well-documented critical need for such housing in Seattle. *See, e.g., Seattle Housing Affordability and Livability Agenda Advisory Committee, Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council* (July 13, 2015). Further, the proposed redevelopment is expected to encourage additional sustainable, transit-oriented development near the Mount Baker Light Rail Station, which is located in the vicinity of the proposed redevelopment site.

DATED this 21st day of June, 2018.



MAIA D. BELLON, Director
Washington State Department of Ecology

THIRD AMENDMENT, EXHIBIT 2

PUBLIC FUNDING SCOPE OF WORK AND SCHEDULE

Phase 2. Completion of Remedial Investigation and Prepare Remedial Investigation Report			
Schedule	Activity	Deliverables	Estimated Expenditures by MBHA
January–May 2017	Planning, Reporting and Collaboration Meetings and Preparation of Supplemental RI Work Plan.	Draft and final supplemental RI work plan.	PAST WORK \$50,000 Unpaid Costs eligible as described in the Third Amendment to Prospective Purchaser Consent Decree, Section C
June–July 2018	Field Planning and Logistical Coordination to Implement Supplemental RI Work.	None.	CURRENT WORK \$25,000 Includes Unpaid Costs eligible as described in the Third Amendment to Prospective Purchaser Consent Decree, Section C
August 2018	Plan and Implement Mount Baker Cleaners Demolition.	Provide demolition work plan to Ecology for review. Implement demo.	\$100,000
August–September 2018	Complete Supplemental RI Field Investigations.	Install/sample supplemental monitoring wells. Conduct supplemental soil sampling; evaluate vertical extent of PCE contamination beneath dry cleaners.	\$110,000

September– October 2018	Complete Contained-In Determination.	Prepare and submit Agency Review draft CID Report (Sept.) for Ecology review/approval and Final CID Report (Oct.).	\$10,000
October– December 2018	Complete Draft and Final RI Report.	Prepare and submit Agency Review draft RI Report (Oct.) for Ecology review/approval and Final RI Report (Nov.).	\$50,000
Subtotal of Phase 2			\$345,000
Phase 3. Complete Feasibility Study Report, Disproportionate Cost Analysis, and Cleanup Action Plan			
October 2018– February 2019	Complete Feasibility Study (FS), Disproportionate Cost Analysis (DCA), and Cleanup Action Plan (CAP).	Prepare and submit Agency Review draft FS/DCA and CAP for Ecology review/approval. Prepare and submit Public Review draft FS/DCA and CAP for Ecology review/approval. Prepare and submit Final FS/DCA and CAP Report(s).	\$90,000
Subtotal of Phase 3			\$90,000
Phase 4. Preparation for Construction and Remediation			
February– August 2019	Construction and Remediation Planning. Environmental Construction Contingency Plan; Soil Disposal Profile; Oversight for UST Removal at Mount Baker Cleaners.	Prepare and submit Agency Review draft Environmental Construction Contingency Plan (CCP) (soil and groundwater management) for Ecology review/approval. Prepare and submit Final CCP Report.	\$40,000
Subtotal of Phase 4			\$40,000
Total for Phases 2, 3, 4 (Pre-Remediation Work and Planning)			\$475,000
Contingency			\$125,000
Total for these phases of MBHA Gateway project			\$600,000

King County Superior Court
Judicial Electronic Signature Page

Case Number: 16-2-29584-3
Case Title: WASHINGTON STATE OF ECOLOGY VS MOUNT BAKER
HOUSING ASSN
Document Title: ORDER AMENDMENT

Signed by: Ken Schubert
Date: 7/26/2018 9:40:53 AM

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'K. Schubert'.

Judge/Commissioner: Ken Schubert

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: DD0B77FAA811094F98F978B405AB7381451AEA59
Certificate effective date: 7/16/2018 2:17:13 PM
Certificate expiry date: 7/16/2023 2:17:13 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Ken Schubert:
gDc9DwrS5hGbrdz1AFk6yQ=="