

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
City of Wenatchee	No. DE 15823
RE: Gold Knob Prospect Site (FSID 22496) 1200 Circle Street Wenatchee WA	

TO: Mayor Frank Kuntz
City of Wenatchee
P.O. Box 519
Wenatchee WA 98807-0519

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Wenatchee (referred to as the PLP) under this Agreed Order (Order) is to provide for an interim remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLP to perform the scope of work describe in **Exhibit B** of this order for the site identified by Ecology as the Gold Knob Prospect Site, located at 1200 Circle Street, Wenatchee, Washington (the Site). 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 PLP agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP's responsibility under this Order. The PLP 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 referred to as "Gold Knob Prospect" aka "Saddle Rock Regional Park" and is identified by Ecology as Facility Site ID 22496. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a

consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is located at 1200 Circle Street, Wenatchee, Washington as shown in the Site Location Map **(Exhibit A)**.

B. Parties: Refers to the State of Washington, Department of Ecology and the City of Wenatchee.

C. Potentially Liable Person (PLP): Refers to the City of Wenatchee.

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.

V. FINDINGS OF FACT

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

- A. The listed owner of the property located at 1200 Circle Street, Wenatchee WA is "City of Wenatchee" based on the Chelan County Assessor's website. The site is located within parcel 222016300000.
- B. The *Remedial Investigation, Saddle Rock Park, Wenatchee, Washington* report and Appendix C of the report, document historical mining activities (e.g. prospecting) that resulted in the release of mine waste.
- C. The *Remedial Investigation, Saddle Rock Park, Wenatchee, Washington* report found concentrations of metals in soil higher than natural background concentrations and in excess of MTCA cleanup levels. These metals concentrations pose a risk to human health and the environment therefore cleanup is needed.
- D. The *Feasibility Study, Saddle Rock Park, Wenatchee, Washington* report developed and screened various remedial alternatives for addressing the contamination. The Feasibility Study found Alternative 1, excavation and offsite disposal of waste rock and downgradient areas that are impacted by the waste rock piles to be the more permanent solution. The City of Wenatchee and Ecology later identified Alternative 1 as the preferred solution.

VI. ECOLOGY DETERMINATIONS

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

- A. The City of Wenatchee 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 credible evidence, Ecology issued a PLP status letter to the City of Wenatchee dated December 17, 2013, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City of Wenatchee is a PLP under RCW 70.105D.040 and notified the City of Wenatchee of this determination by letter dated March 27, 2014.
- C. 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.
- D. 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. Any 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.D. 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 PLP take the following remedial actions at the Site. And that these actions must be conducted in accordance with WAC 173-340:

A. The PLP will complete work in accordance with the schedule and terms of the Scope of Work and Schedule, **Exhibit B**, and all other requirements of this Order. The following naming conventions shall be used for documents: Draft (designation for a document not yet approved by Ecology); and Final (designation for a document after public comment and/or Ecology approval).

B. The PLP shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by email with copy by U.S. mail, to Ecology's project coordinator. The Progress Reports shall include the following:

- a. A list of on-site activities that have taken place during the quarter;
- b. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- c. Description of all deviations from the Scope of Work and Schedule (**Exhibit B**) during the current quarter and any planned deviations in the upcoming quarter;
- d. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- e. All raw laboratory data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected; and
- f. A list of deliverables for the upcoming quarter if different from the schedule.

C. All plans or other deliverables submitted by the PLP for Ecology's review and approval under the Scope of Work and Schedule (**Exhibit B**) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

D. If the Parties agree on an interim action under Section VI.H, the PLP 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 PLP is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

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

F. Except where necessary to abate an emergency situation, the PLP 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. Payment of Remedial Action Costs

The PLP 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, oversight, and administration. These costs shall include work performed 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). For all Ecology costs incurred, the PLP 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.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Frank P. Winslow
Toxics Cleanup Program
Washington State Department of Ecology
Central Regional Office
1250 W. Alder Street, Union Gap, WA 98903
Tel: 509-454-7835
Fax: 509.575.2809
frank.winslow@ecy.wa.gov

The project coordinator for the PLP is:

Mr. Dave Erickson
Parks, Recreation and Cultural Services Director
City of Wenatchee
PO Box 519
1350 McKittrick Street
Wenatchee WA 98801

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 PLP, 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, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The PLP shall notify Ecology in writing of the identity of any supervising engineer(s) and geologist(s), contractor(s) and subcontractor(s) 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 PLP either own, control, or have 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 PLP'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 PLP. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP 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 PLP unless an emergency prevents such notice. For access to the facility necessary for any activity related to the terms of this Order, the City of Wenatchee agrees to facilitate such access. 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 PLP 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 generated under this order 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 PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order, provided that doing so does not interfere with the PLP's sampling. The PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP 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.D (Access), Ecology shall notify the PLP seven (7) days prior

to any sample collection activity (other than split sampling activities) 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.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLP 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 meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP 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. Wenatchee Public Library
310 Douglas St, Wenatchee, WA 98801
- b. Department of Ecology
Central Regional Office
1250 W. Alder St, Union Gap, WA 98903

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 Central Regional Office in Union Gap 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 PLP shall preserve all records, reports, 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 and subcontractors. Upon request of Ecology, the PLP 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 PLP 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 PLP withholds any requested records based on an assertion of privilege, the PLPs 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 PLP elects to invoke dispute resolution the PLPs 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 PLP 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 PLP'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 PLP may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Central 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 X (Enforcement).

I. Extension of Schedule

1. The PLP request for 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 PLP 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 PLP 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 PLP;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

- c. Endangerment as described in Section VIII.K (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 PLP.

3. Ecology shall act upon the PLP's written request for extension in a timely fashion. Ecology shall give the PLP 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.J (Amendment of Order) when a schedule extension is granted.

4. At the PLP's request, 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.K (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.L (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 PLP. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the PLP shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the

Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (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 PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP 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 PLP may cease such activities. The PLP 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 PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLP'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.I (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 PLP 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 PLP regarding remedial actions required by this Order, provided the PLP 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 or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding any 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 PLP does not admit to any liability for the Site. Although the PLP is committing to conducting the work required by this Order under the terms of this Order, the PLP 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 PLP 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 PLP transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP 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 PLP shall notify Ecology of said transfer. Upon transfer of any interest, the PLP shall notify all transferees of any 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 PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, 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. The PLP has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLP must implement those requirements.

2. All actions carried out by the PLP pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the PLP may be 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 PLP shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The PLP 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 PLP determine 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 PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP 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 PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 PLP 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 or approvals.

O. Indemnification

The PLP 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 PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP 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 the PLP's receipt of written notification from Ecology that the PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the PLP has complied with all other provisions of this Agreed Order.

X. 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: OCT 25 2018

CITY OF WENATCHEE



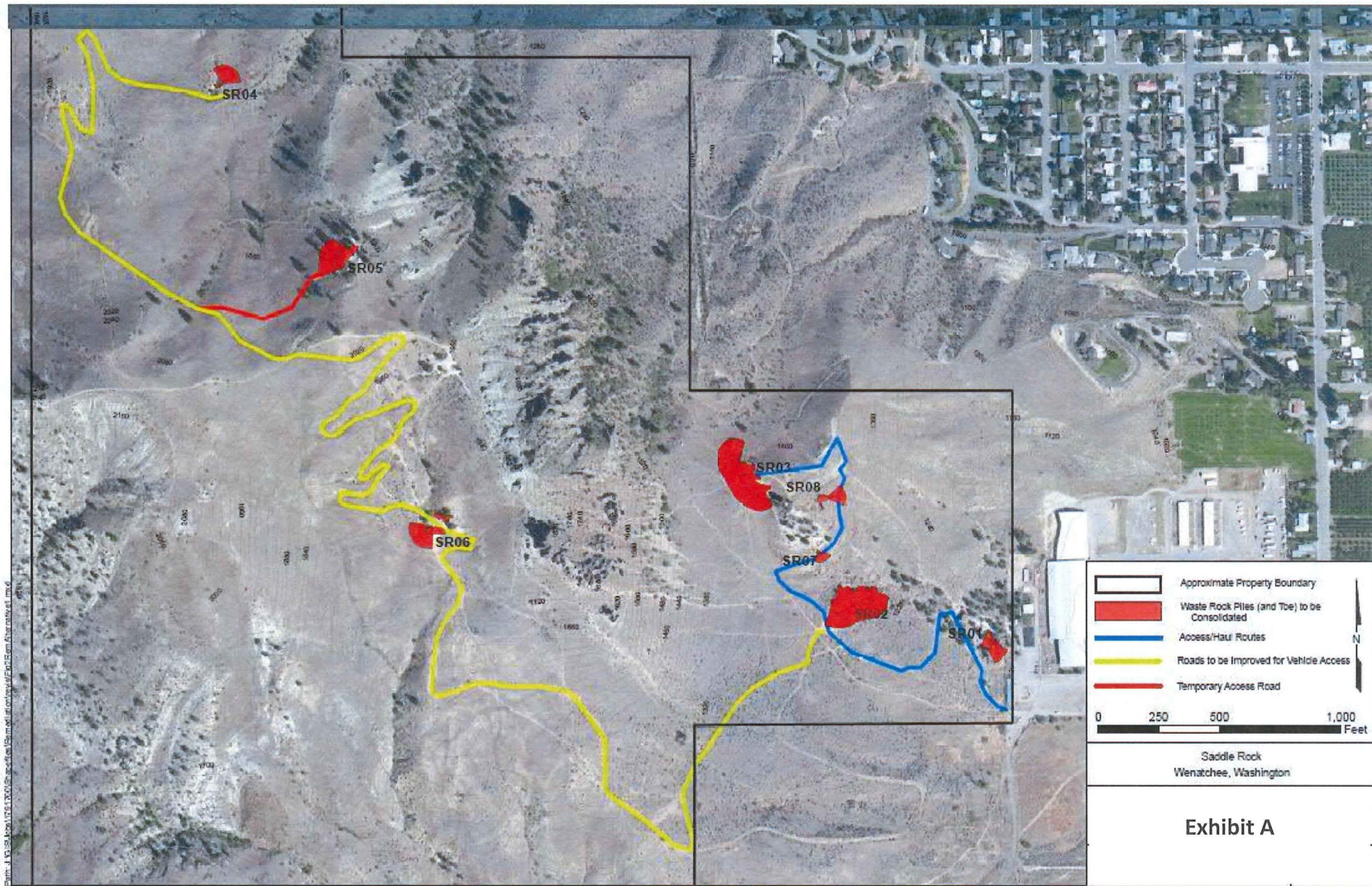
Frank Kuntz
Mayor
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P.O. Box 519
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Valerie Bound
Section Manager
Toxics Cleanup Program
Central Regional Office
(509) 454-7886

EXHIBIT A – SITE LOCATION MAP



*Note: The Site is generally located at 1200 Circle Street in Wenatchee, and is defined by the extent of waste rock and soil contamination, not property boundaries. The mapped waste rock piles and associated downslope areas are shown in red.

Map source: HartCrowser 2013.

EXHIBIT B –SCOPE OF WORK (SOW) AND SCHEDULE

SCOPE OF WORK

PURPOSE

The work under this Agreed Order (AO) involves the steps needed in order to complete Interim Remedial, Action (IRA) cleanup activities at the Site. A Feasibility Study report was prepared for the City of Wenatchee (CITY) in June 2013. This Feasibility Study identified and screened various remedial alternatives for the Site. The more permanent option for the Site was identified as excavation and offsite disposal of waste rock piles in addition to downslope areas impacted by the waste rock piles.

This Scope of Work (SOW) is for the development and implementation of an IRA at the Site. The Department of Ecology (Ecology) and CITY have procured grant funds for cleanup of the Site; however, the grant funds allocated for 2018 and 2019 are not anticipated to be sufficient for cleanup of the entire Site. Therefore, this SOW is for the first phase of cleanup (Phase 1) at the Site. The IRA presented herein is for the cleanup of four waste rock piles and their associated impacted downslope areas. The four waste rock piles to be addressed during Phase 1 are SR-01, SR-02, SR-03, and SR-08. These four waste rock piles contain approximately 87% of the arsenic mass and total waste rock volume, and are located with the lower 33% of the Site with respect to elevation. The remaining areas; SR-04, SR-05, and SR-06, will be addressed in a later phase. The remaining piles, although containing only 13% of the arsenic mass and waste rock volume, offer considerable more challenges with respect to slope and distance. It is anticipated that the lessons learned during the Phase 1 IRA will help considerably in developing cleanup plans for the remaining waste rock piles.

The CITY shall coordinate with Ecology throughout the development of the project tasks and shall keep Ecology informed of changes to any project plans, and of any issues or problems as they develop.

The SOW is divided into four major tasks as follows:

- TASK 1. Interim Remedial Action Preliminary Design and Costs
- TASK 2. Interim Remedial Action Design Sampling and Analysis
- TASK 3. Interim Remedial Action Final Design
- TASK 4. Interim Remedial Action Implementation
- TASK 5. State Environmental Policy Act (SEPA) Compliance Support

TASK 1. INTERIM REMEDIAL ACTION PRELIMINARY DESIGN AND COST ESTIMATION

Purpose of IRA Preliminary Design

The planned IRA has some challenges with respect to implementation due to the steep slopes at the Site. The alternatives evaluated during the FS included the assumption that the existing road and trail system would be utilized to the extent possible to retain the aesthetic character of the area for recreational purposes and to reduce road construction costs.

Within the Phase 1 area, the existing road and trail system includes road segments with slopes as steep as 22%. Slopes on the individual waste rock piles range from a minimum of 17% (SR-02 and SR-03) to a maximum of 46% (SR-08). For comparison purposes, the maximum slope on an interstate highway is 6 to 7%, and the maximum slope for mining work with heavy equipment is typically limited to 10%. A maximum slope for light vehicles, is commonly specified at 20%. Therefore, use of the existing roads and trail system for implementing the IRA carries some very significant implementability and safety considerations.

Prior to moving forward with the design and implementation of the IRA, validation of the assumed usage of the existing road and trail system is needed. This validation is to be provided within an IRA Preliminary Design Report. The purpose of the IRA Preliminary Design Report is to 1) ensure that the scope of work to be executed is consistent with CITY and Ecology expectations, and 2) provide a sufficient basis for creating a detailed cost estimate for implantation of the IRA.

Components of the IRA Preliminary Design

Components of the Preliminary Design Report will include:

1. Narrative describing the purpose of the Preliminary Design Report, objectives of the project, overview of methods to be employed, and project deliverables.
2. Identification of the heavy equipment (makes and models) that could potentially be used for excavation of waste rock and soil, and hauling the soil to a loading and unloading area located at the base of the hill. This analysis should also include recommendations for equipment to be used based on technical, safety, and cost considerations.
3. Verification of the routing of the roadways that will be used to access the Phase 1 waste rock piles (SR-01, SR-02, SR-03, and SR-08), including which roads will be kept and which roads will be reclaimed, at the end of the IRA.

Exhibit B Scope of Work and Schedule

4. Verification of the road/trail improvements that will be required to safely implement the IRA. To include storm water management features.
5. Details of post IRA reclamation and revegetation requirements, materials and procedures. This includes delineation of anticipated revegetation areas for each waste rock pile and road that will be reclaimed. Also includes anticipated grading, addition of soil amendments, and erosion control.
6. Estimated schedule for IRA Design and Implementation, including bidding and contracting phases.
7. Definition of safe operating hours with respect to daylight, traffic, and public safety considerations and defined routes of dump trucks to and from the Wenatchee Regional Landfill.
8. Dust control requirements and procedures.
9. Contaminated area physical delineation methods (for both delineating contaminated areas prior to the IRA Implementation, and delineated contaminated versus clean areas during the IRA Implementation).
10. A detailed engineering cost estimate for IRA Implementation (to be provided under separate cover from the IRA Preliminary Design Report). This engineering estimate should provide estimated costs for the estimated quantities of contaminated waste rock and downslope soils from the FS report, and also provide for costs for an estimated additional quantity of waste rock and downslope soils, based on known uncertainties. This cost estimate should also include estimated quantities of revegetation materials for each waste rock area and road to be reclaimed. The detailed engineering cost estimate will also need to include separate line items for Design Sampling and Analysis and IRA implementation Sampling and Analysis, discussed below under TASK2.
11. Development of an appropriate cost basis for bidding of the IRA construction (i.e. Schedule of Values table), given uncertainties in the amount of waste rock and soil (waste) that will need to be removed at each of the four Phase 1 waste rock areas. This is an important consideration since uncertainties with volumes under a lump sum contract would require contractors to assume worst case scenarios in order to mitigate risks. The preliminary design report should discuss uncertainties in volumes for each of the four pile areas. Note: a change of waste volume at a distant and higher elevation pile (e.g. SR-03) would have a significantly larger cost consequence than a change of volume at a lower elevation pile (e.g. SR-01). Therefore, costing in the Schedule of Values table should be provided on a per pile basis, with unit cost adjustments for amounts less than or greater than estimated volumes.

IRA Preliminary Design Report

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Preliminary Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* IRA Preliminary Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology. IRA estimated costs developed under this task will be provided under separate cover.

TASK 2. INTERIM REMEDIAL ACTION DESIGN SAMPLING AND ANALYSIS

The CITY's consultant/contractor shall conduct design sampling and analysis to 1) establish arsenic background concentrations for each waste rock pile area and 2) to determine whether or not downslope areas have been impacted by waste rock. These determinations shall be made through IRA Design Sampling and Analysis, consistent with Ecology's 2018 *Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas*.

At the end of the IRA Design Sampling and Analysis, data should be sufficient to physically delineate (e.g. with flagging) the areas where excavation and offsite disposal is required based on downslope soils having arsenic concentrations statistically significantly greater than upslope soil. The CITY's consultant/contractor will prepare an IRA Design Sampling and Analysis Report, which will present the methods and results of the assessment and make recommendations with respect to cleanup of downslope areas.

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Design Sampling and Analysis Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* IRA Design Sampling and Analysis Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

TASK 3. INTERIM REMEDIAL ACTION DESIGN

The CITY's consultant/contractor shall prepare a draft IRA Design Report for submittal to Ecology.

Components of the IRA Design Report

This report will provide details on cleanup activities to be conducted including the following components:

1. IRA Design narrative including discussion of the purpose of the document,
2. Reiteration of the contents of the Preliminary Design Report.

Exhibit B Scope of Work and Schedule

3. Narrative description of planned remedial action
4. IRA Schedule
5. IRA Design Drawings (Plans and Sections)
6. IRA Design Specifications
7. IRA Safety Plan
8. IRA Confirmatory SAP
9. Landfill acceptance of waste documentation

IRA Schedule

The IRA Schedule should define the anticipated cleanup schedule including preparatory activities such as design sampling and analysis, and preparation work for roads and the loading and unloading area, and the anticipated schedule for each waste rock area, based on the current estimated volumes. It is understood that changes in volumes will result in a change of schedule.

IRA Design Drawings and Specifications

IRA Design Drawings shall include plans and sections including a topographic map and several sections for the Site as a whole, and a detailed topographic plan map and several sections for each waste rock pile. The sections should include both the current surface and the anticipated post excavation surface. A plan map should also be provided for the loading area.

IRA Design Specifications should include detailed specifications for road and trail construction (including storm water management features), specifications for the construction of the loading area, specifications for grading and reclamation of the excavated areas and temporary access road.

IRA Safety Plans

The IRA Safety Plan will include safety procedures for the project including prevention of contamination exposure to workers, locations of hospitals and emergency procedures, a site security plan to ensure no members of the public have access to the areas where work is being performed, safety plans specific to steep slope operations, and safety plans for hauling soil from the Site to the Greater Wenatchee Regional Landfill.

IRA Confirmatory Sampling and Analysis Plan

The IRA Confirmatory SAP will define the criteria for the confirmatory soil sampling program. This SAP should be prepared by the CITY's Consultant/Contractor consistent with Ecology's 2018 *Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas*. This will include the spacing and depths of sampling locations and sampling and analysis methods. The IRA Confirmatory SAP should include a plan map for each waste rock/toe area depicting planned sampling locations. The SAP methods should also be consistent with the discussion of the

Exhibit B Scope of Work and Schedule

Confirmatory Sampling and Analysis Program, discussed under Task 4, below. The SAP should detail all equipment to be used and operating and calibration procedures. The SAP should include specifications for QA/QC samples (types and frequencies) including performance evaluation standards, field duplicates, and decontamination rinsate blanks. The SAP should also discuss the data quality review components of laboratory analytical data and associated QA/QC samples.

IRA Design Report

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* Remedial Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

TASK 4. INTERIM REMEDIAL ACTION IMPLEMENTATION

After Ecology approval of the Remedial Design Report, the CITY shall implement the Phase 1 IRA.

Components of the Phase 1 IRA

The components of the remedial action will include the following components:

1. Project infrastructure setup (loading and unloading area, road and trail development)
2. Excavation areas delineation
3. Excavation and hauling of waste rock and soil from pile areas to loading and unloading area
4. Loading of dump trucks at the loading and unloading area and hauling to the Wenatchee Regional landfill
5. Confirmatory soil sampling
6. Surface reclamation and revegetation (e.g. surface grading, soil amendment (if needed), seeding, and erosion control/mulching)
7. Remedial Action completion report

Loading and Unloading Area Preparation

The SOW requires the CITY to develop a loading and unloading area in a relatively flat area at the base of the hill. This loading and unloading area needs to be sufficiently large for heavy equipment to safely bring and unload waste rock and soil from the Site, temporarily place this material in stockpiles, and then load dump trucks for hauling the soil to the landfill.

Road and Trail Development

Road and trail work will include modifications as required for safe operations, correcting existing erosion problems, and making stormwater management improvements. Each waste rock area will need a safe work area for loading of waste to haul to the loading and unloading area. This may require some regrading efforts to ensure safe movement of heavy equipment.

Excavation Areas Preliminary Delineation

The preliminary delineation of excavation areas will be based on the results of the IRA Design Sampling and Analysis conducted under Task 2 plus data from the RI Report. The delineated area polygons should be recorded using GPS equipment to allow for mapping of the four waste rock and associated contaminated toe areas. Physical area delineation (e.g. pin flags and/or flagging), should be maintained to the extent possible during the execution of the IRA, with the understanding that final excavation limits will be determined after completion of the confirmatory sampling and analysis program.

Confirmatory Sampling and Analysis Program

Confirmatory sampling and analysis will be conducted consistent with Ecology's 2018 *Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas*. During excavation, it is anticipated that there may be no clear visual difference between contaminated and uncontaminated (or native) soils. Therefore, confirmatory sampling and analysis will need to be performed continuously as part of the IRA. Arsenic will be used as an indicator hazardous substance during cleanup. A high quality field x-ray fluorescence (XRF) instrument, when calibrated and used properly, is anticipated to provide sufficient quality arsenic data to guide the cleanup.

After cleanup is complete at a given waste rock area based on XRF results, confirmatory samples will be collected and analyzed at an offsite laboratory for site constituents of concern using EPA standard analytical methods with reporting limits lower than the proposed cleanup levels. Additional excavation and confirmatory sampling may be required if the confirmatory laboratory analytical results indicate exceedance of cleanup levels for any of the Site constituents of concern, as directed by Ecology.

Final Excavation Limits

The final excavation limits and topography should be mapped for inclusion in As-Built drawings for each waste rock/contaminated downslope area. The final limit of the excavation should be marked with pin flags or survey tape after excavation is complete.

Surface reclamation and revegetation

In addition to mapping of areas that have been excavated during the IRA, additional mapped overlays should be prepared for reclamation regrading, and revegetation efforts. These features will be included in As-Built drawings for each waste rock/contaminated downslope area. The estimated amount and types of materials deployed for revegetation purposes should be tabulated by waste rock area and road/trail area being reclaimed.

Exhibit B Scope of Work and Schedule

Deliverables

The IRA completion report should include the following components:

- Disposal weight tickets and estimated volume by waste rock area.
- As-built maps for each waste rock area delineating the waste rock areas on topography before excavation and overlays for excavation, regrading, and revegetation areas and added storm water management features.
- Maps for each waste rock area confirmatory sampling locations and depths (final not interim locations).
- Tabulations of confirmatory results for Site constituents of concern (including both confirmatory arsenic XRF results and laboratory analytical results for constituents of concern).
- Data quality review for the XRF results.
- Laboratory analytical reports including laboratory QA/QC samples, and associated data quality review.
- Receipts for purchased revegetation materials

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Completion Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* IRA Completion Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

TASK 5. SEPA COMPLIANCE

The CITY shall be responsible for assisting Ecology with its compliance with the State Environmental Policy Act (SEPA) Rules (WAC 197-11-250 through 268), including the CITY's preparing and submitting a draft and final environmental checklist and, if the result of the threshold determination is a determination of significance (DS), preparing and submitting draft and draft final environmental impact statements. The CITY shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the CITY received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date that Ecology receives the deliverable by email.

Task	SOW Deliverable	Deliverable description	Subtask Duration	Completion Times	Estimated Date
	Effective date of Agreed Order			After signing and public notice.	
	Procurement of ENGINEER	RFP Package and CITY selection materials	30 days	Within 30 days following signing of Agreed Order.	
		Selection and Contracting of ENGINEER	30 days	Within 30 days of Proposal deadline.	
1.	IRA Preliminary Design and Cost Estimate	Submittal of draft document to CITY & Ecology	60 days	Within 60 calendar days following the effective date of the Agreed Order	
		IRA Preliminary Design Review Meeting	1 day	Within 10 calendar days following receipt of draft document	
		Submittal of final document to CITY & Ecology ¹	30 days	Within 30 calendar days of submittal of draft document	
2.	IRA Design Sampling & Analysis	Submittal of draft document to CITY & Ecology ²	90 days	Within 90 calendar days following the effective date of the Agreed Order	
		Submittal of final document to CITY & Ecology ¹	30 days	Within 30 calendar days of submittal of draft document	
3.	IRA Design	Submittal of draft document and Bid Package	120 days	Within 120 days following City & Ecology approval	

Exhibit B Scope of Work and Schedule

		to CITY & Ecology		of IRA Preliminary design and Cost estimate	
		IRA Preliminary Design Review Meeting	1 day	Within 10 calendar days following receipt of draft document	
		Submittal of final document and Bid Package to CITY & Ecology ¹	30 days	Within 30 calendar days of submittal of draft document	
	Procurement of Construction CONTRACTOR	Bidding by City	60 days	Within 60 days following City & Ecology approval of design document and bid package	
		Selection & Contracting of CONTRACTOR	30 days	Within 30 days of bid due deadline.	
4a.	IRA Field Implementation	IRA Field Implementation Kickoff Meeting	1 day	Within 30 days of Ecology approval of Final Design Report	
		Start of IRA Field Implementation	1 day	Within 1 day following Kickoff meeting	
		Completion of IRA Field Implementation ²	90 days	Within 90 days of Field Implementation Start	
4b.	IRA Completion Report	Submittal of draft document to CITY & Ecology	60 days	Within 60 days following completion of field implementation	
		IRA Completion Report Review Meeting	1 Day	Within 10 days following submittal of draft document.	
		City & Ecology comments on draft document	30 days	Within 30 calendar days following receipt of draft document	
		Submittal of final document to CITY & Ecology ¹	30 days	Within 30 calendar days of City & Ecology approval of responses to comments	

Exhibit B Scope of Work and Schedule

1 – Ecology reserves the right, at the sole discretion of Ecology, to require one additional comment and document revision round, if needed. All Ecology comments must be addressed to Ecology's satisfaction prior to document finalization.

2 – Any field delays due to weather or safety considerations shall be considered by Ecology.