

**JESSEN ESTATE AND CITY OF BATTLE GROUND MEMORANDUM OF UNDERSTANDING RE:  
MAIN STREET ENVIRONMENTAL MONITORING**

This Memorandum of Understanding Re: Main Street Environmental Monitoring ("MOU") is entered and effective as of the 1<sup>st</sup> day of September, 2015, by and between the City of Battle Ground, a Washington State municipal corporation ("City"), and the Estate of Irwin Jessen ("Jessen").

WHEREAS, Jessen owns property at 805 Main Street, Battle Ground, WA that was formerly used as a gas station and convenience store;

WHEREAS, gasoline petroleum hydrocarbons were released from the gas station operations, contaminating soil and groundwater into an area underneath the City's sidewalk and Main Street Right-of-Way adjacent to the property;

WHEREAS, Jessen has or will have excavated from its property all petroleum contaminated soil with concentrations exceeding Washington's Model Toxics Control Act ("MTCA") cleanup levels;

WHEREAS, Jessen has submitted to the Washington Department of Ecology a work plan dated June 25, 2015 under Project Number 1191-01 and entitled *NORTH BOUNDARY SOIL REMOVAL AND SITE CLOSURE PLAN, Former Battle Ground Plaza Mini-Mart, 805 West Main Street, Battle Ground, Washington*, by PNG Environmental, for removal of additional soil on its property bordering the West Main Street right-of-way, which when completed is expected to allow soil and groundwater quality on the former Mini-Mart property to comply with MTCA cleanup levels on a point to point basis and throughout the Site.

However, an area of residual soil and associated groundwater contamination will remain off-site beneath City's Right-of-Way. The environmental condition of the former Mini-Mart and adjacent City of Battle Ground properties will be different following the planned additional soil removal, and therefore the properties are proposed for separate property closures.

WHEREAS, the remaining contaminated soil and groundwater in the City's Right-of-Way is at depths of eight feet or more below ground surface, and therefore do not pose a threat to human health or the environment, and are in an area that is not accessible for further removal without disrupting a major City street and without incurring disproportionately high costs;

WHEREAS, upon removal of all accessible contaminated soil on the Jessen property, the residual petroleum contamination underneath the City's Right-of-Way will biodegrade or otherwise naturally dissipate over time;

WHEREAS, Jessen will need access to periodically monitor groundwater underneath the City's Right-of-Way to confirm and track the reduction in petroleum concentrations over time; and

WHEREAS, Jessen will establish a trust fund for the purpose of paying for periodic groundwater monitoring, reporting to the Department of Ecology, soil sampling once groundwater achieves MTCA cleanup levels, and removal of any monitoring wells on City Right-of-Way.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Jessen hereby agree as follows:

**1. Grant of Access and Term.**

1.1 Access. During the "Term" (defined below), and on the terms and conditions set forth in this MOU, Jessen, and its contractors and/or consultants, are granted access to the Main Street Right-of-Way area adjacent to Jessen's property for the purpose of conducting the monitoring and testing work required to comply with MTCA. Access may be reasonably conditioned by the City for elements of public safety and convenience, but the Estate shall not be charged a fee for such access.

1.2 Term. The term of this MOU and access shall be for a period of twenty (20) years, commencing on \_\_\_\_\_ (month/day), 2015, and shall expire on (month/day), 2035 or at such other time as the Department of Ecology release Battle Ground from any liability, and is subject to renewal thereafter if requested by Jessen at least one hundred eighty (180) days prior to the date of expiration of the Term.

**2. MOU Access Area and Trust Fund.**

2.1 Access Area. Subject to all laws and governmental regulations applicable to the Access Area, Jessen shall have the right to access the MOU Access Area as outlined in Exhibit A for purposes specified in Section 1.1.

2.2 Trust Fund.

2.2.1 Jessen's environmental consultants estimated the cost to perform groundwater monitoring, reporting, soil sampling, soil removal contingency, and monitoring well removal over the term of this MOU as \$127,100.00. Jessen has added a 25% contingency in addition to the estimated costs to cover the risk of cost overruns. See Exhibit B to this MOU. Within thirty (30) days of completion of the removal of all accessible contaminated soil on the Jessen property, Jessen will deposit \$158,875.00 into a trust account maintained by Jessen's probate counsel, Jerome F. Eline II, and identified as the Jessen Battle Ground Trust. Should Mr. Eline no longer be able to manage the trust account, such responsibility shall be transferred to another qualified attorney who is in good standing to practice law in the state of Washington, and such attorney shall become the contact in Section 7.2, below.

2.2.2 The environmental consultants shall perform all work described in Exhibit B in accordance with Department of Ecology guidelines and all other applicable rules and regulations. The environmental consultants shall submit their invoices for such services to Mr. Eline, who shall in turn pay them from the Jessen Battle Ground Trust.

2.2.3 When the work is completed to MTCA requirements and the Battle Ground Access Area is determined to meet MTCA requirements, all remaining funds in the Jessen Battle Ground Trust shall be paid over to the City of Battle Ground to be used as it sees fit, even if this occurs before the end of the 20 year Term.

**3. Modification of MOU.** Any modification of this MOU or additional obligation assumed by any party in connection with this MOU shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

**4. Assignment of Rights.** The rights of each party under this MOU are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

**5. Entire Agreement.** This MOU constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on any party except to the extent incorporated in this MOU.

**6. Governing Law.** This License shall be governed by, construed, and enforced in accordance with the laws of the state of Washington.

**7. Notice.** Any notice provided for or concerning this MOU shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this MOU.

7.1 City Contact. The principal contact for the City is:

Director of Public Works  
109 SW 1st Street, Suite 122  
Battle Ground WA 98604  
Phone: 360-342-5075  
Email:

**7.2 Jessen Contact. The principal contact for Jessen is:**

Jerome F. Eline II  
Attorney At Law  
1010 Esther Street  
Vancouver, Washington 98660  
(360)737-1978 tel  
(360)695-9491 fax  
[jeline@jelinelaw.com](mailto:jeline@jelinelaw.com)

With a Copy to:  
Eugene and Linda Anderson  
PO Box 821669  
Vancouver, WA 98682  
Tel.: (360) 892-3645  
Email: [glprop@aol.com](mailto:glprop@aol.com)

**IN WITNESS WHEREOF**, the City has caused this MOU to be executed by its City Manager or other duly authorized agent; and Jessen has caused this MOU to be executed by the duly authorized personal representative(s) as of the day and year below written.

**CITY OF BATTLE GROUND**

**ESTATE OF IRWIN JESSEN**

By: 

By: 

Title: City manager

Title: Personal Rep.

Date: 9/1/15

Date: 8/18/15

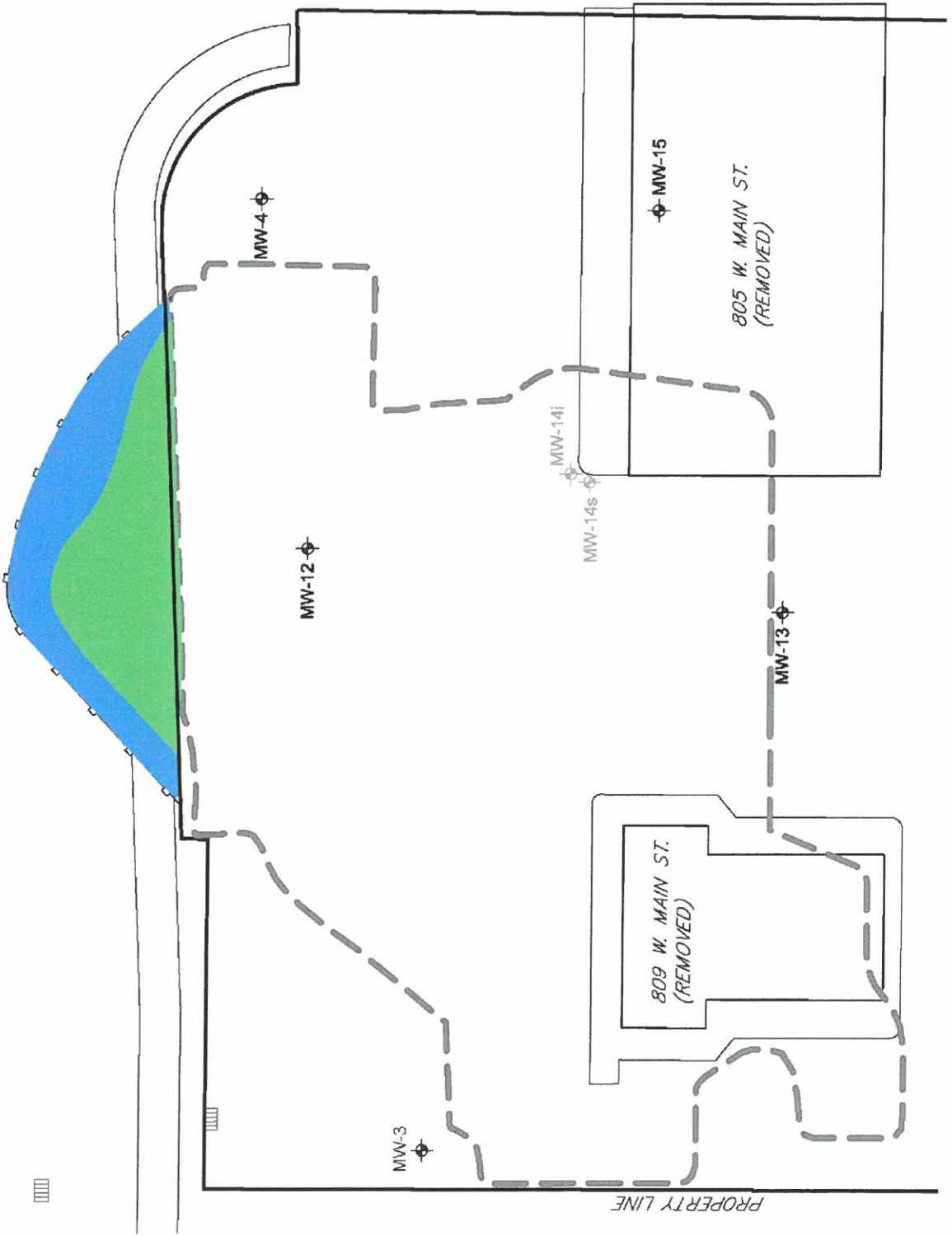
**APPROVED AS TO FORM:**

By: 

City Attorney

# Exhibit A

WEST MAIN STREET



# EXHIBIT B

## Work Description and Estimate Costs

1) Groundwater monitoring will be required every 1.5 years for up to an estimated 20 years. For the first three events (totaling 4.5 years), the monitoring will consist of seven monitoring wells monitored for groundwater level, and five wells sampled for parameter analysis of TPH-G, BTEX, naphthalene, and MTBE. For the next three events (4.5 years), and concurrence by Ecology to reduce the monitoring scope, monitoring requirements will consist of seven wells monitored for groundwater levels and three wells sampled for the preceding parameter analysis. After 9 years, and assuming concurrence by Ecology, monitoring requirements will be further reduced to consist of groundwater sampling of those wells solely in the city right-of-way.

2) At the end of the 20 year period, soil and groundwater quality beneath West Main Street will be evaluated. Specifically, soil and groundwater samples will be collected, analyzed, evaluated relative to MTCA cleanup rules, with data reported to Ecology.

3) At the end of 20 years, we believe Ecology will approve closure of the City of Battle Ground right-of-way resulting in abandonment of the three wells on that property.

4) If contaminated soil is encountered in the future and requires offsite disposal, we estimate the soil volume on City right-of-way at 100 tons and include some pit water at up to 1000 gal for removal and disposal.

In our opinion, PNG Environmental estimates the following costs for items 1, 2, 3, and 4 are:

1) Groundwater monitoring	\$89,000
(3 events x \$10,500 per event = \$31,500)	
(3 events x \$7,500 per event = \$22,500)	
(7 events x \$5,000 per event = \$35,000)	
2) West Main Street soil and groundwater evaluation	\$30,000
3) Monitoring well abandonment	\$4,500
4) Soil (100 tons) and pit water (1,000 gal) disposal	\$3,600
Contingency (25%)	<u>\$31,775</u>
<b>Total</b>	<b>\$158,875</b>