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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF SEATTLE; and SOUTH
PARK PROPERTY DEVELOPMENT,
LLC,

Defendants.

NO. _____

CONSENT DECREE

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1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), City of Seattle, and South Park Property Development, LLC (SPPD) under this
4 Decree is to provide for remedial action at a portion of the South Park Landfill Site (Ecology
5 Facility Site Identification No. 2180) where there has been a release or threatened release of
6 hazardous substances. As more fully described in the attached Cleanup Action Plan (Exhibit A),
7 this Decree requires the Defendants to carry out specified remedial action measures at and near
8 the South Park Landfill Site generally located at 8100 and 8200 2nd Avenue South, Seattle.

9 2. Ecology has determined that these actions are necessary to protect human health
10 and the environment.

11 3. The Complaint in this action is being filed simultaneously with this Decree. An
12 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
13 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
14 Parties agree that settlement of these matters without litigation is reasonable and in the public
15 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

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

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

22 6. This Decree shall not be construed as proof of liability or responsibility for any
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;
24 provided, however, that Defendants shall not challenge the authority of the Attorney General
25 and Ecology to enforce this Decree.
26

1 7. The Court is fully advised of the reasons for entry of this Decree, and good cause
2 having been shown:

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

4 **II. JURISDICTION**

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

7 2. Authority is conferred upon the Washington State Attorney General by
8 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
9 after public notice and any required hearing, Ecology finds the proposed settlement would lead
10 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
11 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

12 3. Ecology has determined that a release or threatened release of hazardous
13 substances has occurred at the Site, a portion of which is the subject of this Decree.

14 4. Ecology has given notice to each Defendant of Ecology's determination that each
15 Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

16 5. The actions to be taken pursuant to this Decree are necessary to protect public
17 health and the environment.

18 6. This Decree has been subject to public notice and comment.

19 7. Ecology finds that this Decree will lead to a more expeditious cleanup of
20 hazardous substances at the Site in compliance with the cleanup standards established under
21 RCW 70.105D.030(2)(e) and WAC 173-340.

22 8. Defendants have agreed to undertake the actions specified in this Decree and
23 consent to the entry of this Decree under MTCA.

24 **III. PARTIES BOUND**

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

1 she is fully authorized to enter into this Decree and to execute and legally bind such party to
2 comply with this Decree. Defendants agree to undertake all actions required by the terms and
3 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'
4 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,
5 contractors, and subcontractors retained to perform work required by this Decree, and shall
6 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
7 this Decree.

8 IV. DEFINITIONS

9 1. Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
10 WAC 173-340-200 shall control the meanings of the terms in this Decree.

11 A. Site: The Site is referred to as South Park Landfill. The Site constitutes a facility
12 under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a
13 consumer product in consumer use, has been deposited, stored, disposed of, or placed, or
14 otherwise come to be located. Based on factors currently known to Ecology, the Site is generally
15 located at 8100 and 8200 2nd Avenue South, Seattle, Washington as shown in the Site Location
16 Diagram (Exhibit B).

17 B. Parties: Refers to: the State of Washington, Department of Ecology and
18 Defendants.

19 C. Defendants: Refers to: the City of Seattle and SPPD.

20 D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits
21 to this Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms
22 "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

23 E. Cleanup Action Plan: Refers to the Cleanup Action Plan (CAP) (Exhibit A)
24 issued by Ecology relating to the Settlement Area (which occupies a portion of the Site) and all
25 attachments to the CAP.

1 F. Settlement Area: The Settlement Area is limited to the area described in the
2 Settlement Area Diagram (Exhibit C). The Settlement Area is only a portion of the Site, and its
3 boundaries do not reflect the boundaries of the Site as defined by MTCA.

4 G. Hazardous Substance: As defined in RCW 70.105D.020(13), means:

- 5 a. Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (1)
6 and (7), or any dangerous or extremely dangerous waste designated by rule
7 pursuant to chapter 70.105 RCW;
- 8 b. Any hazardous substance as defined in RCW 70.105.010(10) or any hazardous
9 substance as defined by rule pursuant to chapter 70.105 RCW;
- 10 c. Any substance that, on March 1, 1989, is a hazardous substance under section
11 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
- 12 d. Petroleum or petroleum products; and
- 13 e. Any substance or category of substances, including solid waste decomposition
14 products, determined by the director by rule to present a threat to human health
15 or the environment if released into the environment.

16 The term hazardous substance does not include any of the following when contained in
17 an underground storage tank from which there is not a release: crude oil or any fraction thereof
18 or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

19 V. FINDINGS OF FACTS

20 1. Ecology makes the following findings of fact without any express or implied
21 admissions of such facts by Defendants.

22 A. The Site is located in Seattle, Washington. The Site is defined by where a
23 hazardous substance, other than a consumer product in consumer use, has been deposited, stored,
24 disposed of, or placed, or otherwise come to be located. The Settlement Area is located within
25 the Site as shown in the Settlement Area Diagram (Exhibit C).

1 B. Within the Site is a historic landfill (referred to as the “Landfill Property”). From
2 the 1930s to 1966, the Landfill Property was used for landfilling activities that included disposal
3 and incineration of municipal, commercial, and industrial waste. The landfill was closed in 1966.
4 By 1970, the South Recycling and Disposal Station, Kenyon Industrial Park and other facilities
5 had been built on top of the Landfill Property portion of the Site and were operating. Defendants
6 are current owners of parcels of property within the Settlement Area.

7 C. Ecology conducted a Site Hazard Assessment at the Site in 2007. Based on the
8 releases of hazardous substances to soil and groundwater, the Site was ranked “2” on the
9 Washington State Hazardous Sites List in February, 2007. This ranking is based on a scale of 1
10 to 5. According to this scale, “1” represents the highest relative risk and “5” represents the lowest
11 relative risk. This ranking is designed to estimate the potential threat to human health and/or the
12 environment, relative to all other sites in Washington State. WAC 173-340-120(3)(b); “Model
13 Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites”
14 Ecology Focus No. 94-129, Nov. 2007 (revised), pg. 5.

15 D. In May 2009, Agreed Order No. DE 6706 was entered into by Ecology, City of
16 Seattle, and SPPD. Under the terms of the Agreed Order, the City and SPPD agreed to complete
17 a Remedial Investigation/Feasibility Study (RI/FS), and a preliminary draft Cleanup Action Plan
18 (DCAP). The Agreed Order was amended in 2013 to require an interim action take place on a
19 portion of the Site. SPPD was responsible for implementing the interim action, however both
20 SPPD and the City (as PLP signatories to the Agreed Order) are strictly, jointly, and severally
21 liable for remediation of the Site. The interim action included: construction of a landfill cap,
22 installing landfill gas and surface water control systems, establishing groundwater and landfill
23 gas monitoring and implementation of institutional controls. The Agreed Order was amended a
24 second time in February 2016 to require an interim action take place on a different portion of the
25 Site. The City was responsible for implementing the interim action, however both SPPD and the
26 City (as PLP signatories to the Agreed Order) are strictly, jointly, and severally liable for

1 remediation of the Site. The interim action included: constructing a landfill cap, installing landfill
2 gas and surface water control systems, establishing groundwater and landfill gas monitoring and
3 implementation of institutional controls.

4 E. Release(s) and/or potential release(s) of hazardous substances occurred at the
5 Site, including the placement of solid waste and burned solid waste containing various hazardous
6 substances consistent with those normally found in solid waste. Hazardous substances
7 documented at the Settlement Area, and addressed as part of this Decree, are: methane, arsenic,
8 lead, iron, manganese, petroleum hydrocarbons, trichloroethene and its degradation products cis-
9 1,2-dichloroethene and vinyl chloride, phthalates and polycyclic aromatic hydrocarbons. These
10 hazardous substances have been, and may continue to be, released from the Site into the
11 environment including soil, groundwater and air.

12 VI. WORK TO BE PERFORMED

13 1. This Decree contains a plan designed to protect human health and the
14 environment from the known release, or threatened release, of hazardous substances or
15 contaminants at, on, or from the Settlement Area. All remedial action(s) conducted by
16 Defendants at the Settlement Area shall be done in accordance with WAC 173-340.

17 2. Defendants shall implement the CAP attached to this Decree (Exhibit A) in
18 accordance with the Schedule included in the CAP. Among other remedial actions, the CAP
19 requires Defendants to:

- 20 • Maintain a **landfill cap/cover** to protect people and animals from direct contact with
21 the landfill contents.
- 22 • Install and operate **landfill gas controls** to prevent or mitigate subsurface migration
23 of landfill gas into on-site and nearby buildings and structures.
- 24 • Install and maintain **stormwater controls** to (1) prevent stormwater from coming
25 into contact with solid waste, (2) maintain the landfill cap/cover, and (3) meet
26 regulatory requirements.

- 1 • Conduct **long-term monitoring of groundwater** to confirm that the residual vinyl
2 chloride, iron, arsenic, and manganese in the groundwater system remains at low
3 concentrations and continues to degrade over time.
- 4 • Conduct **long-term monitoring of the cap/cover, the landfill gas controls, and**
5 **groundwater** to ensure that the cleanup remedy is effective and provides long-term
6 protection of human health and the environment.
- 7 • File **environmental (restrictive) covenants** to ensure long-term compliance with
8 regulations and maintenance of the cleanup remedy.

9 3. To effectuate the work to be performed under this Decree in the most efficient
10 manner, certain parties have elected to take the lead in performing various aspects of the work
11 required under this Decree. Language in this Decree, and the exhibits attached hereto, may reflect
12 this agreement among the Defendants. However, the Defendants remain strictly, jointly, and
13 severally liable for the performance of any and all obligations under this Decree. In the event the
14 party identified as a lead should fail to timely and properly complete performance of all or any
15 portion of its work, the other party or parties must perform that remaining work, if any.

16 4. All plans or other deliverables submitted by Defendants for Ecology's review and
17 approval under the CAP (Exhibit A) shall, upon Ecology's approval, become integral and
18 enforceable parts of this Decree.

19 5. If Defendant learns of a significant change in conditions at the Settlement Area,
20 including but not limited to a statistically significant increase in contaminant and/or chemical
21 concentrations in soil, groundwater, or air, Defendant(s), within seven (7) days of learning of the
22 change in condition, shall notify Ecology in writing of said change and provide Ecology with
23 any reports or records (including laboratory analyses, sampling results) relating to the change in
24 conditions.

25 6. Pursuant to WAC 173-340-440(11), Defendant(s) shall maintain sufficient and
26 adequate financial assurance mechanisms to cover all costs associated with the operation and

1 maintenance of the remedial action at the Settlement Area, including institutional controls,
2 compliance monitoring, and corrective measures.

3 A. Within sixty (60) days of the effective date of this Decree, Defendant(s) shall
4 submit to Ecology for review and approval an estimate of the costs associated with the operation
5 and maintenance of the remedial action at the Settlement Area that it will incur in carrying out
6 the terms of this Decree. Within sixty (60) days after Ecology approves the aforementioned cost
7 estimate, Defendant(s) shall provide proof of financial assurances sufficient to cover those costs
8 in a form acceptable to Ecology.

9 B. Defendant(s) shall adjust the financial assurance coverage and provide Ecology's
10 project coordinator with documentation of the updated financial assurance for:

11 i. Inflation, annually, within thirty (30) days of the anniversary date of the
12 entry of this Decree; or if applicable, the modified anniversary date established in accordance
13 with this section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if
14 the financial test or corporate guarantee is used.

15 ii. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
16 approval of a modification or revision to the CAP that result in increases to the cost or expected
17 duration of remedial actions. Any adjustments for inflation since the most recent preceding
18 anniversary date shall be made concurrent with adjustments for changes in cost estimates. The
19 issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date
20 established under this section to become the date of issuance of such revised or modified CAP.

21 8. As detailed in the CAP, institutional controls are required at the Settlement Area.
22 Environmental (Restrictive) Covenants will be used to implement the institutional controls.

23 A. In consultation with Defendants, Ecology will prepare the Environmental
24 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or
25 procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict
26

1 future activities and uses of property within the Settlement Area as agreed to by Ecology and
2 Defendants.

3 B. After approval by Ecology, Defendants shall record the Environmental
4 (Restrictive) Covenant for affected properties it owns with the office of the King County Auditor
5 as detailed in the CAP Schedule (Exhibit A). Defendants shall provide Ecology with the original
6 recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

7 9. Unless otherwise directed by Ecology, Defendants shall submit to Ecology
8 written monthly Progress Reports that describe the actions taken during the previous month to
9 implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth
10 (10th) day of the month in which they are due after the effective date of this Decree. Unless
11 otherwise specified in writing by Ecology, Progress Reports and any other documents submitted
12 pursuant to this Decree shall be sent by certified mail, return receipt requested to Ecology's
13 project coordinator. The Progress Reports shall include the following:

14 A. A list of activities that have taken place during the month at the Settlement Area;

15 B. Description of any sample results which deviate from the norm;

16 C. Detailed description of any deviations from required tasks not otherwise
17 documented in project plans or amendment requests;

18 D. Description of all deviations from the CAP or Schedule (Exhibit A) during the
19 current month and any planned deviations in the upcoming month;

20 E. For any deviations in schedule, a plan for recovering lost time and maintaining
21 compliance with the schedule;

22 F. All raw data (including laboratory analyses) received by Defendants during the
23 past month and an identification of the source of the sample; and

24 G. A list of planned activities for the upcoming month.

25 10. Except in the case of an emergency, Defendants agree not to perform any
26 remedial actions at the Settlement Area outside the scope of this Decree without prior written

1 approval of Ecology. In the case of an emergency, Defendants must notify Ecology of the event
2 and remedial action(s) as soon as practical, but no later than 24 hours after discovery of the
3 emergency.

4 **VII. DESIGNATED PROJECT COORDINATORS**

- 5 1. The project coordinator for Ecology is:

6 Jerome Cruz
7 Department of Ecology
8 Toxics Cleanup Program
9 3190 160th Ave. SE
10 Bellevue, WA 98008
11 Phone: (425) 649-7094

- 12 2. The project coordinator for SPPD is:

13 Robert A. Howie, Jr.
14 South Park Property Development, L.L.C.
15 165 N.E. Juniper Street, Suite 100
16 Issaquah, WA 98027
17 (425) 837-9720

- 18 3. The project coordinator for the City of Seattle is:

19 Jeff Neuner
20 Seattle Public Utilities
21 700 5th Avenue, Suite 4900
22 PO Box 34018
23 Seattle WA 98124-4018

24 4. Each project coordinator shall be responsible for overseeing the implementation
25 of this Decree. The Defendants will hire a Coordinator to be the designated representative for
26 the Defendants for the Site. The information on the Defendants' Coordinator will be provided to
Ecology within thirty (30) days of the effective date of this Decree. Ecology's project coordinator
will be Ecology's designated representative for the Site. To the maximum extent possible,
communications between Ecology and Defendants and all documents, including reports,
approvals, and other correspondence concerning the activities performed pursuant to the terms
and conditions of this Decree shall be directed through Ecology's project coordinator and the
Defendants' Coordinator. The Ecology's project coordinator and Defendants' Coordinator may

1 designate, in writing, working level staff contacts for all or portions of the implementation of the
2 work to be performed required by this Decree.

3 5. Any party may change its respective project coordinator or the Defendants'
4 Coordinator. Written notification shall be given to the other party at least ten (10) calendar days
5 prior to the change.

6 **VIII. PERFORMANCE**

7 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
8 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
9 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
10 supervision of an engineer registered by the State of Washington.

11 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
12 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
13 registered by the State of Washington.

14 3. Except as otherwise provided for by RCW 18.43.130, all construction work
15 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
16 registered by the State of Washington or a qualified technician under the direct supervision of a
17 professional engineer registered by the State of Washington.

18 4. As required by RCW 18.43 and 18.220, any documents submitted containing
19 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
20 professional.

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

24 **IX. ACCESS**

25 1. Ecology or any Ecology authorized representative shall have access to enter and
26 freely move about all property within the Settlement Area that Defendants either own, control,

1 or have access rights to at all reasonable times for the purposes of, inter alia: inspecting records,
2 operation logs, and contracts related to the work being performed pursuant to this Decree;
3 reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests
4 or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
5 other documentary type equipment to record work done pursuant to this Decree; and verifying
6 the data submitted to Ecology by Defendants.

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

13 3. Defendants shall make all reasonable efforts to secure access rights for those
14 properties within the Settlement Area not owned or controlled by Defendants where remedial
15 activities or investigations will be performed pursuant to this Decree.

16 4. Ecology or any Ecology authorized representative shall give reasonable notice
17 before entering any property owned or controlled by Defendants within the Settlement Area
18 unless an emergency prevents such notice. All Parties who access property within the Settlement
19 Area pursuant to this section shall comply with any applicable health and safety plans. Ecology
20 employees and their representatives shall not be required to sign any liability release or waiver
21 as a condition of property access within the Settlement Area.

22 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

23 1. With respect to the implementation of this Decree, Defendants shall make the
24 results of all sampling, laboratory reports, and/or test results generated by them or on their behalf
25 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
26 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in

1 accordance with Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements),
2 and/or any subsequent procedures specified by Ecology for data submittal.

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

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

15 **XI. RETENTION OF RECORDS**

16 1. During the pendency of this Decree, and for ten (10) years from the date this
17 Decree is no longer in effect as provided in Section XXV (Duration of Decree), Defendants shall
18 preserve all records, reports, documents, and underlying data in their possession relevant to the
19 implementation of this Decree and shall insert a similar record retention requirement into all
20 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall
21 make all records available to Ecology and allow access for review within a reasonable time.

22 2. Nothing in this Decree is intended by Defendants to waive any right they may
23 individually or collectively have under applicable law to limit disclosure of documents protected
24 by the attorney work-product privilege and/or the attorney-client privilege. If any Defendant
25 withholds any requested record based on an assertion of privilege, that Defendant shall provide
26

1 Ecology with a privilege log specifying the records withheld and the applicable privilege. No
2 Site-related data collected pursuant to this Decree shall be considered privileged.

3 **XII. TRANSFER OF INTEREST IN PROPERTY**

4 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
5 interest in any portion of the Settlement Area shall be consummated by any Defendant without
6 provision for continued operation and maintenance of any containment system (including
7 engineered controls such as surface capping), treatment system, and/or monitoring system
8 installed or implemented pursuant to this Decree.

9 2. Prior to any Defendant's transfer of any interest in all or any portion of the
10 Settlement Area, and during the effective period of this Decree, that Defendant shall provide a
11 copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor
12 in said interest; and, at least thirty (30) days prior to any transfer, that Defendant shall notify
13 Ecology of said transfer. Upon transfer of any interest, the transferring Defendant shall notify all
14 transferees of the restrictions on the activities and uses of the property under this Decree and
15 incorporate any such use restrictions into the transfer documents.

16 **XIII. RESOLUTION OF DISPUTES**

17 1. In the event that any Defendant elects to invoke dispute resolution, that Defendant
18 must utilize the procedure set forth below.

19 A. Upon the triggering event (receipt of Ecology's project coordinator's written
20 decision or an itemized billing statement), Defendant has fourteen (14) calendar days within
21 which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

22 B. The Parties' project coordinators shall then confer in an effort to resolve the
23 dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from
24 receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute
25 within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator
26 shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the

1 Defendant's position with regards to the dispute; Ecology's position with regards to the dispute;
2 and the extent of resolution reached by informal discussion.

3 C. The Defendant may then request regional management review of the dispute. This
4 request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Toxics
5 Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal
6 Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting
7 forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the
8 information relied upon to support its position.

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

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

19 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of the
20 dispute and shall issue a written decision regarding the dispute (Final Decision on Dispute)
21 within thirty (30) calendar days of receipt of the Final Review Request. The Toxics Cleanup
22 Program Manager's decision shall be Ecology's final decision on the disputed matter.

23 2. If Ecology's Final Decision on Dispute is unacceptable to the Defendant, that
24 Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that
25 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
26

1 arising under this Decree. Under RCW 70.105D.060, Ecology's investigative and remedial
2 decisions shall be upheld unless they are arbitrary and capricious.

3 3. The Parties agree to only utilize the dispute resolution process in good faith and
4 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
5 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
6 the other party may seek sanctions.

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

10 5. In case of a dispute, failure to either proceed with the work required by this
11 Decree or timely invoke dispute resolution may result in Ecology's determination that
12 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
13 undertaking the work under Section XXII (Implementation of Remedial Action).

14 **XIV. AMENDMENT OF DECREE**

15 1. The Parties may agree to minor changes to the work to be performed without
16 formally amending this Decree. Minor changes will be documented in writing by Ecology.

17 2. Substantial changes to the work to be performed shall require formal amendment
18 of this Decree. This Decree may only be formally amended by a written stipulation among the
19 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written
20 consent to a formal amendment only after public notice and opportunity to comment on the
21 formal amendment. Such amendment shall become effective upon entry by the Court.
22 Agreement to amend the Decree shall not be unreasonably withheld by any party.

23 3. When requesting a change to the Decree, Defendants shall submit a written
24 request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing
25 and in a timely manner after the written request is received. If Ecology determines that the
26 change is substantial, then the Decree must be formally amended. Reasons for the disapproval

1 of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the
2 requested change, the disagreement may be addressed through the dispute resolution procedures
3 described in Section XIII (Resolution of Disputes).

4 **XV. EXTENSION OF SCHEDULE**

5 1. Defendants' request for an extension of schedule shall be granted only when a
6 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior
7 to expiration of the deadline for which the extension is requested, and good cause exists for
8 granting the extension. All extensions shall be requested in writing. The request shall specify:

9 A. The deadline that is sought to be extended;

10 B. The length of the extension sought;

11 C. The reason(s) for the extension; and

12 D. Any related deadline or schedule that would be affected if the extension were
13 granted.

14 2. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology
15 that the request for such extension has been submitted in a timely fashion and that good cause
16 exists for granting the extension. Good cause may include, but may not be limited to:

17 A. Circumstances beyond the reasonable control and despite the due diligence of
18 Defendants including delays caused by unrelated third parties or Ecology, such as (but not
19 limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by
20 Defendants;

21 B. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other
22 unavoidable casualty; or

23 C. Endangerment as described in Section XVI (Endangerment).

24 3. However, neither increased costs of performance of the terms of this Decree nor
25 changed economic circumstances shall be considered circumstances beyond the reasonable
26 control of Defendants.

1 4. Ecology shall act upon any Defendant's written request for extension in a timely
2 fashion. Ecology shall give Defendants written notification of any extensions granted pursuant
3 to this Decree. A requested extension shall not be effective until approved by Ecology or, if
4 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
5 amend this Decree pursuant to Section XIV (Amendment of Decree) when a schedule extension
6 is granted.

7 5. At any Defendant's request an extension shall only be granted for such period of
8 time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
9 extensions exceeding ninety (90) days only as a result of:

10 A. Delays in the issuance of a necessary permit which was applied for in a timely
11 manner;

12 B. Other circumstances deemed exceptional or extraordinary by Ecology; or

13 C. Endangerment as described in Section XVI (Endangerment).

14 **XVI. ENDANGERMENT**

15 1. In the event Ecology determines that any activity being performed at the
16 Settlement Area under this Decree is creating or has the potential to create a danger to human
17 health or the environment, Ecology may direct Defendants to cease such activities for such
18 period of time as it deems necessary to abate the danger. Defendants shall immediately comply
19 with such direction.

20 2. In the event any Defendant determines that any activity being performed at the
21 Settlement Area under this Decree is creating or has the potential to create a danger to human
22 health or the environment, Defendant(s) may cease such activities. Defendant(s) who made the
23 determination or whose activities cease shall notify Ecology's project coordinator as soon as
24 possible, but no later than twenty-four (24) hours after making such determination or ceasing
25 such activities. Upon Ecology's direction, Defendant(s) shall provide Ecology with
26 documentation of the basis for the determination or cessation of such activities. If Ecology

1 disagrees with Defendants' determination that an activity is creating or has the potential to create
2 a danger to human health or the environment, Ecology may direct Defendant(s) to resume such
3 activities notwithstanding Defendants' objections.

4 3. If Ecology concurs with or orders a work stoppage pursuant to this Section XVI,
5 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology
6 determines the danger is abated, and the time for performance of such activities, as well as the
7 time for any other work dependent upon such activities, shall be extended, in accordance with
8 Section XV (Extension of Schedule), for such period of time as Ecology determines is reasonable
9 under the circumstances.

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

12 **XVII. COVENANT NOT TO SUE**

13 1. In consideration of Defendants' compliance with the terms and conditions of this
14 Decree, Ecology covenants not to institute legal or administrative actions against Defendants
15 regarding the release or threatened release of those hazardous substances detailed in Section V.F.
16 (Findings of Fact) located within the Settlement Area as described in the Settlement Area
17 Diagram (Exhibit C). This Covenant Not to Sue does not cover any other hazardous substance
18 within the Settlement Area, any hazardous substance at the Site outside the Settlement Area, or
19 the area of the Site beyond the Settlement Area. Ecology retains all of its authority relative to
20 any hazardous substance(s) or area(s) not covered by this Decree.

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

- 22 A. Criminal liability;
 - 23 B. Liability for damages to natural resources; and
 - 24 C. Any Ecology action, including cost recovery, against PLPs not a party to
25 this Decree.
- 26

1 2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not
2 to Sue if factors not known at the time of entry of this Decree are discovered and present a
3 previously unknown threat to human health or the environment.

4 3. Reopeners: Ecology specifically reserves the right to institute legal or
5 administrative action against Defendants to require it to perform additional remedial actions at
6 the Settlement Area and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050,
7 under any of the following circumstances:

8 A. Upon Defendants' failure to meet the requirements of this Decree;

9 B. Failure of the remedial action to meet the cleanup standards identified in
10 the CAP (Exhibit A);

11 C. Upon Ecology's determination that remedial action beyond the terms of
12 this Decree is necessary to abate an imminent and substantial endangerment to human
13 health or the environment;

14 D. Upon the availability of information previously unknown to Ecology
15 regarding the Settlement Area factors including the nature, quantity, migration, pathway,
16 or mobility of hazardous substances, and Ecology's determination, in light of this
17 information, that further remedial action is necessary at the Settlement Area to protect
18 human health or the environment; or

19 E. Upon Ecology's determination that additional remedial actions are
20 necessary to achieve cleanup standards within the reasonable restoration time frame set
21 forth in the CAP.

22 4. Except in the case of an emergency, prior to instituting legal or administrative
23 action against Defendants pursuant to this section, Ecology shall provide Defendants with
24 fifteen (15) calendar days' notice of such action.
25
26

1 **XVIII. CONTRIBUTION PROTECTION**

2 1. With regard to claims for contribution against Defendants, the Parties agree that
3 Defendants are entitled to protection against claims for contribution for matters addressed in this
4 Decree as provided by RCW 70.105D.040(4)(d). This Decree covers only the Settlement Area
5 specifically identified in the Settlement Area Diagram (Exhibit C) and those hazardous
6 substances at the Settlement Area addressed under this Decree detailed in Section V.F. (Findings
7 of Fact). This Decree does not cover any other hazardous substance or area beyond the
8 Settlement Area.

9 **XIX. INDEMNIFICATION**

10 1. To the extent allowed by law, Defendants agree to indemnify and save and hold
11 the State of Washington, its employees, and agents harmless from any and all claims or causes
12 of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent
13 arising from or on account of acts or omissions of Defendants, their officers, employees, agents,
14 or contractors in entering into and implementing this Decree. However, Defendants shall not
15 indemnify the State of Washington nor save nor hold its employees and agents harmless from
16 any claims or causes of action to the extent arising out of the negligent acts or omissions of the
17 State of Washington, or the employees or agents of the State, in entering into or implementing
18 this Decree.

19 **XX. COMPLIANCE WITH APPLICABLE LAWS**

20 1. All actions carried out by Defendants pursuant to this Decree shall be done in
21 accordance with all applicable federal, state, and local requirements, including requirements to
22 obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal,
23 state, or local requirements have been identified as being applicable to the actions required by
24 this Decree. Defendants have a continuing obligation to identify any applicable federal, state,
25 and local requirements which apply to actions carried out pursuant to this Decree, and to comply
26 with those requirements. As federal, state, and local requirements are identified by Ecology or

1 the Defendants, Ecology will document in writing if they are applicable to actions carried out
2 pursuant to this Decree, and the Defendants must implement those requirements..

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

9 3. Pursuant to RCW 70.105D.090(1), Defendants may be exempt from the
10 procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws
11 requiring or authorizing local government permits or approvals. However, Defendants shall
12 comply with the substantive requirements of such permits or approvals. For permits and
13 approvals covered under RCW 70.105D.090(1) that have been issued by local government, the
14 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
15 government permits and/or approvals. At this time, no state or local permits or approvals have
16 been identified as being applicable but procedurally exempt under this section.

17 4. Defendants have a continuing obligation to determine whether additional permits
18 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
19 action under this Decree. In the event either Ecology or Defendants determine that additional
20 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
21 remedial action under this Decree, it shall promptly notify the other party of its determination.
22 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
23 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
24 with the appropriate state and/or local agencies and provide Ecology with written documentation
25 from those agencies of the substantive requirements those agencies believe are applicable to the
26 remedial action. Ecology shall make the final determination on the additional substantive

1 requirements that must be met by Defendants and on how Defendants must meet those
2 requirements. Ecology shall inform Defendants in writing of these requirements. Once
3 established by Ecology, the additional requirements shall be enforceable requirements of this
4 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
5 additional requirements until Ecology makes its final determination.

6 5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
7 exemption from complying with the procedural requirements of the laws referenced in
8 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary
9 for the state to administer any federal law, the exemption shall not apply and Defendants shall
10 comply with both the procedural and substantive requirements of the laws referenced in
11 RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

12 **XXI. REMEDIAL ACTION COSTS**

13 1. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this
14 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by
15 Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions
16 and Decree preparation, negotiation, oversight, and administration. These costs shall include
17 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
18 include costs of direct activities and support costs of direct activities as defined in WAC 173-
19 340-550(2). For all costs incurred, Defendants shall pay the required amount within thirty (30)
20 days of receiving from Ecology an itemized statement of costs that includes a summary of costs
21 incurred, an identification of involved staff, and the amount of time spent by involved staff
22 members on the project. A general statement of work performed will be provided upon request.
23 Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to
24 pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will
25 result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.
26

1 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may
2 utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property
3 subject to the remedial actions to recover unreimbursed remedial action costs.

4 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

5 1. If Ecology determines that the Defendants have failed to make sufficient progress
6 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to
7 Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow
8 the Defendants opportunity to correct. In an emergency, Ecology is not required to provide notice
9 to Defendants, or an opportunity for dispute resolution. The Defendants shall reimburse Ecology
10 for the costs of doing such work in accordance with Section XXI (Remedial Action Costs).

11 2. Except where necessary to abate an emergency situation or where required by
12 law, the Defendants shall not perform any remedial actions at the Settlement Area outside those
13 remedial actions required by this Decree to address the contamination that is the subject of this
14 Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to
15 Section XIV (Amendment of Decree). In the event of an emergency, or where actions are taken
16 as required by law, Defendants must notify Ecology in writing of the event and remedial action(s)
17 planned or taken as soon as practical but no later than within 24 hours of the discovery of the
18 event.

19 **XXIII. PERIODIC REVIEW**

20 1. So long as remedial action continues at the Settlement Area, the Parties agree to
21 review the progress of remedial action at the Settlement Area, and to review the data accumulated
22 as a result of monitoring the Settlement Area as often as is necessary and appropriate under the
23 circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the
24 initiation of cleanup action at the Settlement Area the Parties shall confer regarding the status of
25 the Settlement Area and the need, if any, for further remedial action at the Settlement Area. At
26 least ninety (90) days prior to each periodic review, Defendants shall submit a report to Ecology

1 that documents whether human health and the environment are being protected based on the
2 factors set forth in WAC 173-340-420(4). Under Section XVII (Covenant Not to Sue), Ecology
3 reserves the right to require further remedial action at the Settlement Area under appropriate
4 circumstances. This provision shall remain in effect for the duration of this Decree.

5 **XXIV. PUBLIC PARTICIPATION**

6 1. Ecology shall maintain the responsibility for public participation at the Settlement
7 Area. However, Defendants shall cooperate with Ecology, and shall:

8 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public
9 notices and fact sheets at important stages of the remedial action, such as the submission of work
10 plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering
11 design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and
12 prepare and distribute public notices of Ecology's presentations and meetings.

13 B. Notify Ecology's project coordinator prior to the preparation of all press releases
14 and fact sheets, and before meetings related to remedial action work to be performed at the
15 Settlement Area with the interested public and/or local governments. Likewise, Ecology shall
16 notify Defendants prior to the issuance of all press releases and fact sheets related to remedial
17 action work to be performed at the Settlement Area, and before meetings related to remedial
18 action work to be performed at the Settlement Area with the interested public and/or local
19 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
20 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to its
21 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
22 or endorsed by Ecology.

23 C. When requested by Ecology, participate in public presentations on the progress
24 of the remedial action at the Settlement Area. Participation may be through attendance at public
25 meetings to assist in answering questions, or as a presenter.
26

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

- 3 i. Ecology's Northwest Regional Office
4 3190 160th Avenue SE
5 Bellevue, WA 98008

6 At a minimum, copies of all public notices, fact sheets, and documents relating to public
7 comment periods shall be promptly placed in this repository. A copy of all documents related to
8 the Settlement Area shall be maintained in the repository at Ecology's Northwest Regional
9 Office in Bellevue, Washington.

10 **XXV. DURATION OF DECREE**

11 1. The remedial program required pursuant to this Decree shall be maintained and
12 continued until Defendants have received written notification from Ecology that the
13 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
14 effect until dismissed by the Court. When dismissed, Section XI (Retention of Records), Section
15 XVII (Covenant Not to Sue) and Section XVIII (Contribution Protection) shall survive.

16 **XXVI. CLAIMS AGAINST THE STATE**

17 1. Defendants hereby agree that they will not seek to recover any costs accrued in
18 implementing the remedial action required by this Decree from the State of Washington or any
19 of its agencies; and further, that Defendants will make no claim against the State Toxics Control
20 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
21 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
22 Except as provided above, however, Defendants expressly reserve their individual and collective
23 rights to seek to recover any costs incurred in implementing this Decree from any other PLP not
24 party to this Decree. This section does not limit or address funding that may be provided under
25 WAC 173-322A.
26

XXVII. EFFECTIVE DATE

1. This Decree is effective upon the date it is entered by the Court.

XXVIII. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

/S/ James J. Pendowski

/S/ Ivy Anderson

James J. Pendowski
Program Manager
Toxics Cleanup Program
(360) 407-7177

Ivy Anderson
Assistant Attorney General
(360) 586-4619

Date: _____

Date: _____

CITY OF SEATTLE

/S/ Jenny Durkan

Jenny Durkan
Mayor
City of Seattle
(206) 684-4000

Date: _____

CITY OF SEATTLE
APPROVED AS TO FORM

/S/ Peter S. Holmes

Peter S. Holmes
Seattle City Attorney
(206) 684-8288

1 SOUTH PARK PROPERTY DEVELOPMENT, LLC

2 /S/ *Robert A. Howie, Jr.*

3 _____
4 Robert A. Howie, Jr.
5 President
6 (425) 837-9720

7 Date: _____

8 ENTERED this 26th day of March, 2019.

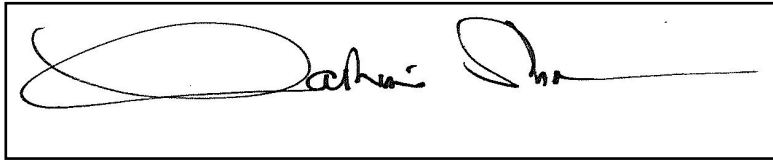
9 *"See attached for judge's signature"*

10 _____
11 JUDGE
12 King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-07304-7
Case Title: STATE OF WASHINGTON DEPT OF ECOLOGY vs CITY OF SEATTLE ET ANO
Document Title: Order

Signed By: Catherine Shaffer
Date: March 26, 2019

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Catherine Shaffer'.

Judge/Commissioner: Catherine Shaffer

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

Certificate Hash: 6C3F24F47D6286C9671F11264F89DF640F7A466A
Certificate effective date: 7/16/2018 1:49:24 PM
Certificate expiry date: 7/16/2023 1:49:24 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Catherine Shaffer:
CnkDyYr95BGVZstmHl1GsA=="