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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY,

Defendant.

NO. _____

PROSPECTIVE PURCHASER
CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and the Central Puget Sound Regional Transit Authority (Sound Transit) under this
4 Decree is to: (1) resolve in advance the potential liability of Sound Transit under the Model
5 Toxics Control Act (MTCA), RCW 70.105D, in acquiring an ownership interest in, and engaging
6 in construction activity within, the Midway Landfill Site (Site), which is already the subject of
7 an Ecology-selected cleanup action; and (2) facilitate the redevelopment or reuse of a portion of
8 the Site. This Decree requires Sound Transit to undertake work at the Site in conformance with,
9 and implement portions of the remedial actions specified in, an amendment to Ecology’s cleanup
10 action decision document for the Site, which is incorporated into the Decree as Exhibit C
11 (Cleanup Action Plan Amendment or CAP Amendment). The CAP Amendment specifies
12 requirements related to, among other things, overburden removal and reuse; landfill cover
13 system removal and replacement; Landfill Material removal, relocation, and disposal; landfill
14 gas extraction system disturbance and replacement; surface water management; the protection,
15 and if necessary, decommissioning and replacement, of groundwater monitoring wells; access
16 controls during and after construction; other controls during construction (including stormwater
17 controls and dust and odor control); and institutional controls.

18 B. Ecology has determined that these actions are necessary to protect human health
19 and the environment.

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

25 D. By signing this Decree, the Parties agree to its entry and agree to be bound by its
26 terms.

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

5 F. This Decree shall not be construed as proof of liability or responsibility for any
6 releases of hazardous substances or cost for remedial action nor an admission of any facts;
7 provided, however, that Defendant shall not challenge the authority of the Attorney General and
8 Ecology to enforce this Decree.

9 G. The Court is fully advised of the reasons for entry of this Decree, and good cause
10 having been shown:

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

12 **II. JURISDICTION**

13 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
14 to MTCA.

15 B. Authority is conferred upon the Washington State Attorney General by
16 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP)
17 if, after public notice and any required hearing, Ecology finds the proposed settlement would
18 lead to a more expeditious cleanup of hazardous substances. In addition, under
19 RCW 70.105D.040(5), the Attorney General may agree to a settlement with a person not
20 currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse
21 the facility, provided: the settlement will yield substantial new resources to facilitate cleanup;
22 the settlement will expedite remedial action consistent with the rules adopted under MTCA; and
23 Ecology determines based upon available information that the redevelopment or reuse of the
24 facility is not likely to contribute to the existing release or threatened release, interfere with
25 remedial actions that may be needed at the Site, or increase health risks to persons at or in the
26

1 vicinity of the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a
2 consent decree issued by a court of competent jurisdiction.

3 C. Ecology has determined that a release or threatened release of hazardous
4 substances has occurred at the Site that is the subject of this Decree; that an Ecology-selected
5 cleanup action has already been implemented at the Site; and that the actions to be taken pursuant
6 to this Decree are necessary to protect public health and the environment based on the planned
7 future use of the Site as contemplated by the Parties under this Decree.

8 D. Sound Transit has not been named a PLP for the Site, and Sound Transit has
9 certified under Section IX (Certification of Sound Transit) that it is not currently liable for the
10 Site under MTCA. However, Sound Transit is currently negotiating a purchase agreement to
11 acquire property located within the Site and adjacent to Interstate 5 (the Subject Property) from
12 the Washington State Department of Transportation (WSDOT) and the City of Seattle (Seattle),
13 current owners of the Subject Property, and Sound Transit plans to engage in construction
14 activity at the Site that will affect the selected cleanup action. The Subject Property comprises a
15 portion of the Site. At the time it acquires an interest in the Site and/or engages in construction
16 activity at the Site affecting the selected cleanup action, Sound Transit will incur potential
17 liability under RCW 70.105D.040(1)(a), including potential liability for performing remedial
18 actions or paying remedial costs incurred by Ecology or third parties resulting from releases or
19 threatened releases of hazardous substances at the Site. This Decree settles Sound Transit's
20 potential liability as described herein for this Site upon the earlier of its purchase of the Subject
21 Property or its implementation of portions of the CAP Amendment during construction activities
22 at the Site.

23 E. Ecology finds that this Decree will yield substantial new resources to facilitate
24 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site
25 in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and
26 WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of the

1 Site; and will not be likely to contribute to the existing release or threatened release at the Site,
2 interfere with remedial actions that may be needed at the Site, or increase health risks to persons
3 at or in the vicinity of the Site. In addition, Ecology has determined that this Decree will provide
4 a substantial public benefit by providing for the development of a facility by a governmental
5 entity to address an important public purpose: namely, the construction of Sound Transit's
6 Federal Way Link Extension.

7 F. This Decree has been subject to public notice and comment.

8 G. Sound Transit has agreed to undertake the actions specified in this Decree and
9 consents to the entry of this Decree under MTCA.

10 III. PARTIES BOUND

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

20 IV. DEFINITIONS

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

23 A. Site: The Site is referred to as the Midway Landfill Site, Cleanup Site ID 4729,
24 generally located at 24808 Pacific Highway South, Kent, Washington, between Interstate 5 and
25 Highway 99, as shown in the Site Location Diagram (Exhibit A). The Site constitutes a facility
26 under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a

1 consumer product in consumer use, has been deposited, stored, disposed of, or placed, or
2 otherwise come to be located.

3 B. Landfill Properties: Refers to those properties containing Landfill Material and
4 ancillary facilities owned by Seattle and the WSDOT in the vicinity of 24808 Pacific Highway
5 South, Kent, Washington, as shown on the Site Location Diagram (Exhibit A).

6 C. Subject Property: Refers to the portion of the Landfill Properties that Sound
7 Transit intends to purchase from the WSDOT and Seattle, as generally shown on Exhibit B, the
8 final boundaries of which will be determined after construction as required by the CAP
9 Amendment is complete. The Subject Property comprises a portion of the Site.

10 D. Consent Decree or Decree: Refers to this Prospective Purchaser Consent Decree
11 and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this
12 Prospective Purchaser Consent Decree.

13 E. Midway Landfill Site Consent Decree: Refers to the Consent Decree entered in
14 *State of Washington Department of Ecology v. City of Seattle*, King County Superior Court
15 No. 90-2-13283-8 SEA, signed by the Court and filed on June 29, 1990, including all
16 amendments thereto.

17 F. Project Area: Refers to the portions of the Site in which Sound Transit will be
18 conducting construction activities subject to requirements of the CAP Amendment.

19 G. Sound Transit: Refers to the Central Puget Sound Regional Transit Authority.

20 H. Parties: Refers to the Washington State Department of Ecology and Sound
21 Transit.

22 I. Municipal Solid Waste: Refers to material disposed of in the Midway Landfill,
23 excluding Landfill Soils. Municipal Solid Waste may include, but not be limited to, “solid waste”
24 as defined by RCW 70.95.030(22); “commercial solid waste,” “household waste,” “industrial
25 solid wastes,” and “solid waste” as defined by WAC 173-351-100; and “dangerous wastes” as
26 defined by WAC 173-303-040.

1 J. Landfill Soils: Refers to soils used as daily cover material during operations of
2 the Midway Landfill, or otherwise comingled with the Municipal Solid Waste.

3 K. Landfill Material: Refers inclusively to Municipal Solid Waste, Landfill Soils,
4 and comingled Municipal Solid Waste and Landfill Soils.

5 V. FINDINGS OF FACTS

6 Ecology makes the following findings of fact without any express or implied admissions
7 of such facts by Sound Transit.

8 A. The Midway Landfill is a closed municipal landfill that occupies approximately
9 60 acres in Kent, Washington. Based upon factors currently known to Ecology, the Site is
10 generally located at 24808 Pacific Highway South, Kent, Washington, between Interstate 5 and
11 Highway 99, as shown in the Site Location Diagram (Exhibit A). Municipal Solid Waste,
12 contaminated soil in contact with solid waste, and landfill gas are contained within the Landfill
13 Properties. Contaminated groundwater extends beyond the Landfill Properties boundaries to the
14 east and west, and potentially to the south.

15 B. Between approximately 1963 and 1988, Seattle placed approximately 3,000,000
16 cubic yards of refuse into an approximately 40-acre depression to depths of over 130 feet on the
17 Landfill Properties.

18 C. In October 1984, the Site was nominated for inclusion on the National Priorities
19 List (NPL) under the federal Comprehensive Environmental Response, Compensation, and
20 Liability Act (CERCLA). Ecology was designated as the lead agency for the Midway Landfill
21 action, pursuant to a Cooperative Agreement with the United States Environmental Protection
22 Agency (EPA). The Midway Landfill Site was placed on the NPL in May 1986.

23 D. In response to a release or threatened release of hazardous substances at or from
24 the Midway Landfill, Seattle commenced a Remedial Investigation and Feasibility Study (RI/FS)
25 pursuant to a Response Order by Consent for the Landfill, which was issued by Ecology on
26 October 3, 1986. The scope of that order was limited to the RI/FS phase of the cleanup process.

1 E. Investigations conducted by Seattle, Ecology, and others indicated release(s)
2 and/or potential release(s) of hazardous substances occurred at the Site, both in soil and
3 groundwater on the Landfill Properties and in the form of migration from those Properties of
4 landfill gas and hazardous substances in groundwater. The hazardous substances found in the
5 landfill gas include benzene, chlorobenzene, ethylbenzene, toluene, vinyl chloride, and xylenes.
6 The hazardous substances found in ground water and landfill leachate include: iron, manganese,
7 chlorinated ethenes and ethanes, vinyl chloride, 1,4-dioxane, trichlorofluoromethane, benzene,
8 methylene chloride, chlorobenzene, xylenes, PCB-1242, and PCB-1260.

9 F. The Midway Landfill Site Consent Decree was signed by the Court and filed on
10 June 29, 1990. The Decree is a negotiated settlement between Ecology and Seattle to resolve
11 liability under MTCA, RCW 70.105D. At the time the Midway Landfill Site Consent Decree
12 was negotiated and filed, Seattle had already undertaken some actions intended to remedy the
13 release of hazardous substances from the Site. The Midway Landfill Site Consent Decree
14 provided for the implementation of additional remedial actions aimed at remedying the release
15 of hazardous substances at the Site. Based upon Ecology's determination that the remedial
16 actions in the Midway Landfill Site Consent Decree would provide immediate protection to the
17 public health, welfare and environment, the Consent Decree was negotiated and filed before
18 Ecology had completed a Cleanup Action Plan (CAP) under MTCA, WAC 173-340-380,
19 regarding a chosen cleanup action alternative.

20 G. On September 6, 2000, the EPA issued a CERCLA Record of Decision (ROD)
21 for the Site. The ROD evaluated the status of work to be performed under the Midway Landfill
22 Site Consent Decree and identified remedial actions and components that were not expressly
23 described in that Consent Decree, including establishing groundwater cleanup levels, requiring
24 Seattle to sample groundwater in order to monitor progress toward cleanup levels, and requiring
25 Seattle to implement certain institutional controls to ensure the protection of human health until
26 groundwater cleanup levels are achieved. Ecology reviewed and recommended approval of the

1 ROD. The ROD provided that Ecology would continue as the lead agency overseeing the
2 performance of the selected remedy at the Site. The EPA and Ecology's management procedures
3 for the Site are memorialized in a February 23, 2000, agreement regarding the management of
4 NPL sites in Washington.

5 H. Pursuant to WAC 173-340-380(4), Ecology adopted the EPA's ROD as a
6 Cleanup Action Plan (CAP) for the Site under MTCA. Ecology and Seattle agreed to
7 Amendment No. 1 to the Midway Landfill Site Consent Decree, which was signed by the Court
8 on February 3, 2006, and filed on February 7, 2006. This amendment was for the purpose of
9 integrating the full remedies set forth in the EPA's ROD/Ecology's CAP for the Site into the
10 existing Consent Decree, as well as for the purpose of making changes to clarify the intent of the
11 Midway Landfill Site Consent Decree.

12 I. Sound Transit proposes to construct the Federal Way Link Extension on the
13 Subject Property, i.e., through the eastern portion of the Midway Landfill Site. Sound Transit's
14 construction would also facilitate the WSDOT's State Route 509 Corridor Project, which
15 involves eventually adding two additional lanes to Interstate 5 adjoining the Midway Landfill.
16 Both projects will impact areas that currently contain Landfill Material and that contain landfill
17 cover and other components of the remedial action. The purpose of the Federal Way Link
18 Extension is to expand mass transit capacity in the Central Puget Sound region. The purpose of
19 the State Route 509 Corridor Project is to ease Interstate 5 congestion and improve access to
20 Sea-Tac Airport.

21 J. Sound Transit is currently negotiating a purchase agreement to acquire the
22 Subject Property, located within the Site and adjacent to I-5, from the WSDOT and Seattle,
23 current owners of the Subject Property. Sound Transit intends to purchase the Subject Property
24 after the completion of construction. Seattle will acquire an additional area of the Landfill
25 Properties to the west of the Subject Property, for consolidation with its current holding(s) within
26 the Landfill Properties.

1 K. The site work required for the Sound Transit and WSDOT projects through the
2 Midway Landfill area will be combined in one construction effort to be undertaken by
3 contractors employed by Sound Transit. This effort will require Landfill Material removal,
4 relocation of the eastern edge of the landfill cap system, and drainage improvements within the
5 area subject to the EPA ROD/Ecology CAP for the Site, as implemented through Amendment
6 No. 1 to the Midway Landfill Site Consent Decree. After this work is completed, the Subject
7 Property and parts of the remaining WSDOT property will have an underlying infiltration barrier
8 and newly placed backfill. No Municipal Solid Waste will remain on the Subject Property,
9 although Landfill Soils may be used as backfill on that Property. No Landfill Material will
10 remain on the remaining WSDOT property.

11 L. Ecology has issued an amendment to the Ecology CAP for the Site (CAP
12 Amendment) that specifies modifications to remedial action requirements necessitated by Sound
13 Transit's construction activities. These modifications are to ensure that the construction
14 activities, as well as Sound Transit's future operations, are consistent with and maintain the
15 integrity of the remedy selected in the EPA ROD/Ecology CAP. Prior to issuance of the CAP
16 Amendment, Ecology, as the lead agency for the Site under the cooperative agreement between
17 EPA and Ecology for management of NPL sites in Washington, briefed the EPA as to the
18 requirements of the proposed CAP Amendment, and their consistency with the ROD, i.e., how
19 they will protect the integrity of the remedy selected under the ROD. The EPA did not object to
20 Ecology's issuance of the CAP Amendment.

21 VI. WORK TO BE PERFORMED

22 This Decree contains a program designed to protect human health and the environment
23 from the known release, or threatened release, of hazardous substances or contaminants at, on,
24 or from the Site. All remedial action(s) conducted by Sound Transit at the Site shall be
25 undertaken in accordance with WAC 173-340.
26

1 A. Sound Transit shall undertake work at the Site in conformance with, and
2 implement the remedial actions specified in, Exhibit C (CAP Amendment), in accordance with
3 Exhibit D (Scope of Work and Schedule). The CAP Amendment specifies requirements related
4 to, among other things, overburden removal and reuse; landfill cover system removal and
5 replacement; Landfill Material removal, relocation, and disposal; segregation and reuse of
6 Landfill Soils; landfill gas extraction system disturbance and replacement; surface water
7 management; the protection, and if necessary, decommissioning and replacement, of
8 groundwater monitoring wells; access controls during and after construction; other controls
9 during construction (including stormwater controls and dust and odor control); institutional
10 controls; and preparing and implementing an Operation and Maintenance Manual for the Subject
11 Property.

12 B. To effectuate work to be performed under this Decree and Amendment No. 2 to
13 the Midway Landfill Site Consent Decree (Work) in the most efficient manner, Sound Transit
14 and Seattle have designated lead roles in performing various aspects of the Work. These roles
15 are designated in the Scope of Work and Schedule (Exhibit D). Sound Transit and Seattle may,
16 by mutual agreement and with notice to Ecology, revise the lead agency designations, provided
17 that all Work is completed as required. In the event the party identified as a lead should fail to
18 timely and properly complete performance of all or any portion of its Work as designated in
19 Exhibit D, Sound Transit and Seattle remain strictly, jointly, and severally liable for the
20 performance of any remaining Work, regardless of designations in Exhibit D; provided, that:
21 (1) in the event Sound Transit fails to timely and properly complete performance of tasks solely
22 necessary to the Sound Transit and WSDOT projects, Seattle's sole obligation under the Midway
23 Landfill Site Consent Decree will be to, under Ecology's supervision, maintain and, if necessary,
24 restore the Site to conform with the remedy selected in the ROD/CAP; (2) in the event Sound
25 Transit fails to timely and properly complete performance of tasks related to ongoing operation
26 and maintenance of the Site within the Subject Property, Seattle's sole obligation under the

1 Midway Landfill Site Consent Decree will be to comply to the extent the task is necessary to
2 maintain compliance with the approved Amended Operations and Maintenance Plan; (3) in the
3 event Seattle fails to timely and properly complete performance of tasks related to ongoing
4 compliance monitoring or operations and monitoring of the Site outside of the Subject Property,
5 Sound Transit's sole obligation under this Decree will be to comply to the extent the task is
6 applicable to the Subject Property; and (4) with respect to tasks related to recording
7 Environmental Covenants, those tasks will remain the sole obligations of Sound Transit and
8 Seattle with respect to their respective properties.

9 C. All plans or other deliverables submitted by Sound Transit for Ecology's review
10 and approval under the Scope of Work and Schedule (Exhibit D) shall, upon Ecology's approval,
11 become integral and enforceable parts of this Decree.

12 D. If Sound Transit learns of a significant change in conditions at the Site, including
13 but not limited to a statistically significant increase in contaminant and/or chemical
14 concentrations in environmental media (soil, groundwater, surface water, air), Sound Transit,
15 within seven (7) days of learning of the change in condition, shall notify Ecology in writing of
16 said change and provide Ecology with any reports or records (including laboratory analyses,
17 sampling results) relating to the change in conditions.

18 E. As detailed in the CAP Amendment, institutional controls are required at the Site.
19 An Environmental (Restrictive) Covenant will be used to implement the institutional controls.

20 1. In consultation with Ecology, Sound Transit will prepare the
21 Environmental (Restrictive) Covenant consistent with WAC 173-340-440, RCW 64.70,
22 and any policies or procedures specified by Ecology. The Environmental (Restrictive)
23 Covenant shall restrict future activities and uses of the Subject Property as required by
24 the CAP Amendment and agreed to by Ecology and Sound Transit.

25 2. After approval by Ecology, Sound Transit shall record the Environmental
26 (Restrictive) Covenant for the Subject Property with the office of the King County

1 Auditor as detailed in the Schedule (Exhibit D). Sound Transit shall provide Ecology
2 with the original recorded Environmental (Restrictive) Covenants within thirty (30) days
3 of the recording date.

4 F. Unless otherwise directed by Ecology, Sound Transit shall, on a monthly basis
5 until the final Construction Completion Report is submitted to Ecology as provided in the CAP
6 Amendment, submit to Ecology written Progress Reports that describe the actions taken during
7 the previous month to implement the requirements of this Decree. Sound Transit shall thereafter
8 submit Progress Reports as directed by Ecology following any notification to Ecology required
9 under the Environmental Covenant recorded under Section VI.E of this Decree, or as otherwise
10 directed by Ecology in writing. All Progress Reports shall be submitted by the fifteenth (15th)
11 day of the month in which they are due after the effective date of this Decree. Unless otherwise
12 specified in writing by Ecology, Progress Reports and any other documents submitted pursuant
13 to this Decree shall be sent to Ecology's project coordinator by electronic delivery with hard
14 copy to follow by United States Mail. The Progress Reports shall include the following:

- 15 1. A list of on-site activities that have taken place during the month.
- 16 2. Description of any sample results which deviate from the norm.
- 17 3. Detailed description of any deviations from required tasks not otherwise
18 documented in project plans or amendment requests.
- 19 4. Description of all deviations from the Scope of Work and Schedule
20 (Exhibit D) during the current month and any planned deviations in the upcoming month.
- 21 5. For any deviations in schedule, a plan for recovering lost time and
22 maintaining compliance with the schedule.
- 23 6. All raw environmental data (including laboratory analyses) received
24 during the previous month (if not previously submitted to Ecology), together with a
25 detailed description of the underlying samples collected.
- 26 7. A list of planned activities for the upcoming month.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Mark Adams
4 Northwest Regional Office
5 Washington Department of Ecology
6 3190 160th Avenue SE
7 Bellevue, WA 98008-5452
8 Phone: (425) 649-7107
9 Email: mark.adams@ecy.wa.gov

7 The project coordinator for Sound Transit is:

8 [Name]
9 [Address]
10 Phone: [Telephone]
11 Email: [Email]

11 Each project coordinator shall be responsible for overseeing the implementation of this
12 Decree. Ecology’s project coordinator will be Ecology’s designated representative for the Site.
13 To the maximum extent possible, communications between Ecology and Sound Transit and all
14 documents, including reports, approvals, and other correspondence concerning the activities
15 performed pursuant to the terms and conditions of this Decree shall be directed through the
16 project coordinators. The project coordinators may designate, in writing, working level staff
17 contacts for all or portions of the implementation of the work to be performed required by this
18 Decree.

19 Any party may change its respective project coordinator. Written notification shall be
20 given to the other party at least ten (10) calendar days prior to the change.

21 **VIII. PERFORMANCE**

22 Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
23 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
24 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
25 supervision of an engineer registered by the State of Washington.
26

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

4 Except as otherwise provided for by RCW 18.43.130, all construction work performed
5 pursuant to this Decree shall be under the direct supervision of a professional engineer registered
6 by the State of Washington or a qualified technician under the direct supervision of a professional
7 engineer registered by the State of Washington.

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

11 Sound Transit shall notify Ecology in writing of the identity of any supervising
12 engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying
13 out the terms of this Decree, in advance of their involvement at the Site.

14 **IX. CERTIFICATION OF SOUND TRANSIT**

15 Sound Transit represents and certifies that, to the best of its knowledge and belief, it has
16 fully and accurately disclosed to Ecology the information currently in its possession or control
17 that relates to the environmental conditions at and in the vicinity of the Site, or to Sound Transit's
18 right and title thereto.

19 Sound Transit represents and certifies that it did not cause or contribute to a release or
20 threatened release of hazardous substances at the Site and is not otherwise currently potentially
21 liable for the Site under RCW 70.105D.040(1).

22 **X. ACCESS**

23 Ecology or any Ecology authorized representative shall have access to enter and freely
24 move about all property at the Site that Sound Transit either owns, controls, or has access rights
25 to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
26 contracts related to the work being performed pursuant to this Decree; reviewing Sound Transit's

1 progress in carrying out the terms of this Decree; conducting such tests or collecting such
2 samples as Ecology may deem necessary; using a camera, sound recording, or other documentary
3 type equipment to record work done pursuant to this Decree; and verifying the data submitted to
4 Ecology by Sound Transit. Sound Transit shall also, upon reasonable notice, provide access to
5 Seattle authorized representatives to enter and freely move about property at the Site that Sound
6 Transit either owns, controls, or has access rights to, for the purpose of carrying out provisions
7 of the Midway Landfill Site Consent Decree.

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

14 Sound Transit shall make all reasonable efforts to secure access rights for those properties
15 within the Site not owned or controlled by Sound Transit where remedial activities or
16 investigations will be performed pursuant to this Decree.

17 Ecology or any Ecology authorized representative shall give reasonable notice before
18 entering any Site property owned or controlled by Sound Transit unless an emergency prevents
19 such notice. All Parties who access the Site pursuant to this section shall comply with any
20 applicable health and safety plan(s), including specifically Sound Transit's then-current track
21 safety protocols. Ecology employees and their representatives shall not be required to sign any
22 liability release or waiver as a condition of Site property access.

23 **XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

24 With respect to the implementation of this Decree, Sound Transit shall make the results
25 of all environmental sampling, laboratory reports, and/or test results generated by it or on its
26 behalf related to this Site available to Ecology by submitting data as detailed in this section.

1 Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both
2 printed and electronic formats in accordance with Section VI.F (regarding Progress Reports),
3 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
4 subsequent procedures specified by Ecology for data submittal.

5 If requested by Ecology, Sound Transit shall allow Ecology and/or its authorized
6 representative to take split or duplicate samples of any samples collected by Sound Transit
7 pursuant to the implementation of this Decree. Sound Transit shall notify Ecology seven (7) days
8 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
9 allow Sound Transit and/or its authorized representative to take split or duplicate samples of any
10 samples collected by Ecology pursuant to the implementation of this Decree, provided that doing
11 so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under
12 Section X (Access), Ecology shall strive to notify Sound Transit forty-eight (48) hours in
13 advance of any sample collection activity unless an emergency prevents such notice.

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

17 **XII. RETENTION OF RECORDS**

18 During the pendency of this Decree, and for ten (10) years from the date this Decree is
19 no longer in effect as provided in Section XXVI (Duration of Decree), Sound Transit shall
20 preserve all records, reports, documents, and underlying data in its possession relevant to the
21 implementation of this Decree and provide copies of this Decree to its contractors and
22 subcontractors and require them to retain documents as required by this Decree. Upon request
23 of Ecology, Sound Transit shall make all records available to Ecology and allow access for
24 review within a reasonable time.

25 Nothing in this Decree is intended by Sound Transit to waive any right it may have under
26 applicable law to limit disclosure of documents protected by the attorney work-product privilege

1 and/or the attorney-client privilege. If Sound Transit withholds any requested records based on
2 an assertion of privilege, Sound Transit shall provide Ecology with a privilege log specifying
3 the records withheld and the applicable privilege. No Site-related data collected pursuant to this
4 Decree shall be considered privileged.

5 **XIII. TRANSFER OF INTEREST IN PROPERTY**

6 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest
7 in any portion of the Site shall be consummated by Sound Transit without provision for
8 continued operation and maintenance of any containment system, treatment system, and/or
9 monitoring system installed or implemented pursuant to this Decree.

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

17 **XIV. RESOLUTION OF DISPUTES**

18 A. In the event that Sound Transit elects to invoke dispute resolution, Sound Transit
19 must utilize the procedure set forth below.

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

24 2. The Parties' project coordinators shall then confer in an effort to resolve
25 the dispute informally. The parties shall informally confer for up to fourteen (14)
26 calendar days from receipt of the Informal Dispute Notice. If the project coordinators

1 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
2 days, Ecology's project coordinator shall issue a written decision (Informal Dispute
3 Decision) stating: the nature of the dispute; the Sound Transit's position with regards to
4 the dispute; Ecology's position with regards to the dispute; and the extent of resolution
5 reached by informal discussion.

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

13 4. The Section Manager shall conduct a review of the dispute and shall issue
14 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
15 days of receipt of the Formal Dispute Notice.

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

23 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
24 the dispute and shall issue a written decision regarding the dispute (Final Decision on
25 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
26

1 Toxics Cleanup Program Manager’s decision shall be Ecology’s final decision on the
2 disputed matter.

3 B. If Ecology’s Final Decision on Dispute is unacceptable to Sound Transit, Sound
4 Transit has the right to submit the dispute to the Court for resolution. The Parties agree that one
5 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
6 under this Decree. Under RCW 70.105D.060, Ecology’s investigative and remedial decisions
7 shall be upheld unless they are arbitrary and capricious.

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

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

15 E. In case of a dispute, failure to either proceed with the work required by this
16 Decree or timely invoke dispute resolution may result in Ecology’s determination that
17 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
18 undertaking the work under Section XXIII (Implementation of Remedial Action).

19 **XV. AMENDMENT OF DECREE**

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

22 Substantial changes to the work to be performed shall require formal amendment of this
23 Decree. This Decree may only be formally amended by a written stipulation among the Parties
24 that is entered by the Court, or by order of the Court. Ecology will provide its written consent to
25 a formal amendment only after public notice and opportunity to comment on the formal
26

1 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
2 determination or ceasing such activities. Upon Ecology's direction, Sound Transit shall provide
3 Ecology with documentation of the basis for the determination or cessation of such activities. If
4 Ecology disagrees with Sound Transit's cessation of activities, it may direct Sound Transit to
5 resume such activities.

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

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

14 **XVIII. COVENANT NOT TO SUE**

15 A. Covenant Not to Sue: In consideration of Sound Transit's compliance with the
16 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
17 actions against Sound Transit regarding the release or threatened release of hazardous substances
18 at the Site, as described in Section V.A, B and E (Findings of Fact) and the studies and reports
19 referenced therein.

20 This Covenant Not to Sue does not cover any other hazardous substance(s) or area.
21 Ecology retains all of its authority relative to any hazardous substance(s) or area not covered by
22 this Decree. In addition, this Decree does not settle any potential liability Sound Transit may
23 incur for acquiring any further interest in the Site not addressed under this Decree.

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

- 25 1. Criminal liability;
- 26 2. Liability for any damages to natural resources; or

1 3. Any Ecology action, including cost recovery, against PLPs not a party to
2 this Decree.

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

6 B. Reopeners: Ecology specifically reserves the right to institute legal or
7 administrative action against Sound Transit to require it to perform additional remedial actions
8 at the Subject Property, or beyond the Subject Property as specified in Paragraph 3, second clause
9 to the parenthetical, below, and to pursue appropriate cost recovery, pursuant to
10 RCW 70.105D.050, under any of the following circumstances:

11 1. Upon Sound Transit's failure to meet the requirements of this Decree;

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

15 3. Upon the availability of information previously unknown to Ecology
16 regarding Site factors (including the nature, quantity, migration, pathway, or mobility of
17 hazardous substances; and the discovery of new releases associated with Sound Transit's
18 ownership or operations both at or beyond the Subject Property), and Ecology's
19 determination, in light of this information, that further remedial action is necessary at the
20 Site to protect human health or the environment; or

21 4. Upon Ecology's determination that additional remedial actions are
22 necessary to achieve cleanup standards within the reasonable restoration time frame set
23 forth in the CAP Amendment.

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

1 **XIX. CONTRIBUTION PROTECTION**

2 With regard to claims for contribution against Sound Transit, the Parties agree that Sound
3 Transit is entitled to protection against claims for contribution for matters addressed in this
4 Decree as provided by RCW 70.105D.040(4)(d).

5 **XX. INDEMNIFICATION**

6 Sound Transit agrees to indemnify and save and hold the State of Washington, its
7 employees, and agents harmless from any and all claims or causes of action (1) for death or
8 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
9 of acts or omissions of Sound Transit, its officers, employees, agents, or contractors in entering
10 into and implementing this Decree. However, Sound Transit shall not indemnify the State of
11 Washington nor save nor hold its employees and agents harmless from any claims or causes of
12 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
13 the employees or agents of the State, in entering into or implementing this Decree.

14 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

15 A. *Applicable Law.* All actions carried out by Sound Transit pursuant to this Decree
16 shall be done in accordance with all applicable federal, state, and local requirements, including
17 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits
18 or specific federal, state, or local requirements that the agency has determined are applicable and
19 that are known at the time of the execution of this Decree have been identified in Exhibit E.
20 Sound Transit has a continuing obligation to identify additional applicable federal, state, and
21 local requirements which apply to actions carried out pursuant to this Decree, and to comply
22 with those requirements. As additional federal, state, and local requirements are identified by
23 Ecology or Sound Transit, Ecology will document in writing if they are applicable to actions
24 carried out pursuant to this Decree, and Sound Transit must implement those requirements.

25 B. *Relevant and Appropriate Requirements.* All actions carried out by Sound Transit
26 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements

1 identified by Ecology. The relevant and appropriate requirements that Ecology has determined
2 apply have been identified in Exhibit E. If additional relevant and appropriate requirements are
3 identified by Ecology or Sound Transit, Ecology will document in writing if they are applicable
4 to actions carried out pursuant to this Decree and Sound Transit must implement those
5 requirements.

6 C. Pursuant to RCW 70.105D.090(1), Sound Transit may be exempt from the
7 procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws
8 requiring or authorizing local government permits or approvals. However, Sound Transit shall
9 comply with the substantive requirements of such permits or approvals. For permits and
10 approvals covered under RCW 70.105D.090(1) that have been issued by local government, the
11 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
12 government permits and/or approvals. The exempt permits or approvals and the applicable
13 substantive requirements of those permits or approvals, as they are known at the time of the
14 execution of this Decree, have been identified in Exhibit E.

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

1 requirements. Once established by Ecology, the additional requirements shall be enforceable
2 requirements of this Decree. Sound Transit shall not begin or continue the remedial action
3 potentially subject to the additional requirements until Ecology makes its final determination.

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

10 **XXII. REMEDIAL ACTION COSTS**

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

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

4 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

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

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

19 **XXIV. PERIODIC REVIEW**

20 Sound Transit shall cooperate with Seattle in Seattle's participation in periodic (five year)
21 reviews under the Midway Landfill Consent Decree and the EPA ROD/Ecology CAP for the
22 Site. Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to require further
23 remedial action at the Site under appropriate circumstances. This provision shall remain in effect
24 for the duration of this Decree.

1 **XXV. PUBLIC PARTICIPATION**

2 Ecology shall maintain the responsibility for public participation at the Site. However,
3 Sound Transit shall cooperate with Ecology, and shall:

4 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public
5 notices and fact sheets at important stages of the remedial action, such as the submission of work
6 plans and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute
7 such fact sheets and prepare and distribute public notices of Ecology’s presentations and
8 meetings.

9 B. Notify Ecology’s project coordinator prior to the preparation of all press releases
10 and fact sheets, and before meetings related to remedial action work to be performed at the Site
11 with the interested public and/or local governments. Likewise, Ecology shall notify Sound
12 Transit prior to the issuance of all press releases and fact sheets, and before meetings related to
13 remedial action work to be performed at the Site with the interested public and/or local
14 governments. For all press releases, fact sheets, meetings, and other outreach efforts by Sound
15 Transit that do not receive prior Ecology approval, Sound Transit shall clearly indicate to its
16 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
17 or endorsed by Ecology.

18 C. When requested by Ecology, participate in public presentations on the progress
19 of the remedial action at the Site. Participation may be through attendance at public meetings to
20 assist in answering questions, or as a presenter.

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

- 23 1. Woodmont Public Library
24 26809 Pacific Highway South
25 Des Moines, WA 98198
26 2. Ecology’s Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

1 At a minimum, copies of all public notices, fact sheets, and documents relating to public
2 comment periods shall be promptly placed in these repositories. A copy of all documents related
3 to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in
4 Bellevue, Washington.

5 **XXVI. DURATION OF DECREE**

6 The remedial program required pursuant to this Decree shall be maintained and continued
7 until Sound Transit has received written notification from Ecology that the requirements of this
8 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by
9 the Court. When dismissed, Section XII (Retention of Records), Section XVIII (Covenant Not
10 to Sue), and Section XIX (Contribution Protection) shall survive.

11 **XXVII. CLAIMS AGAINST THE STATE**

12 Sound Transit hereby agrees that it will not seek to recover any costs accrued in
13 implementing the remedial action required by this Decree from the State of Washington or any
14 of its agencies; and further, that Sound Transit will make no claim against the Model Toxics
15 Control Operating Account, Model Toxics Control Capital Account, or Model Toxics
16 Stormwater Account for any costs incurred in implementing this Decree. Except as provided
17 above, however, Sound Transit expressly reserves its right to seek to recover any costs incurred
18 in implementing this Decree from any other PLP. This section does not limit or address funding
19 that may be provided under WAC 173-322A.

20 **XXVIII. EFFECTIVE DATE**

21 This Decree is effective only upon the date (Effective Date) that is the earlier of: the date
22 title to the Subject Property vests in Sound Transit; or the date Sound Transit begins
23 implementation of portions of the CAP Amendment during construction activities at the Project
24 Area, following entry of this Decree by the Court. If Sound Transit does not purchase the Subject
25 Property or begin implementing the CAP Amendment by December 31, 2021, this Decree shall
26

1 be null and void, and Sound Transit will be under no obligation to perform the work required by
2 this Decree.

3 **XXIX. WITHDRAWAL OF CONSENT**

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

7
8 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

9
10 _____
JAMES J. PENDOWSKI
Program Manager
11 Toxics Cleanup Program
360-407-7177

ANDREW A. FITZ, WSBA #22169
Senior Counsel
360-586-6752

12 Date: _____

Date: _____

13
14 CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

15
16 _____
[NAME OF SIGNATORY]
17 [Title of signatory]
[Telephone]

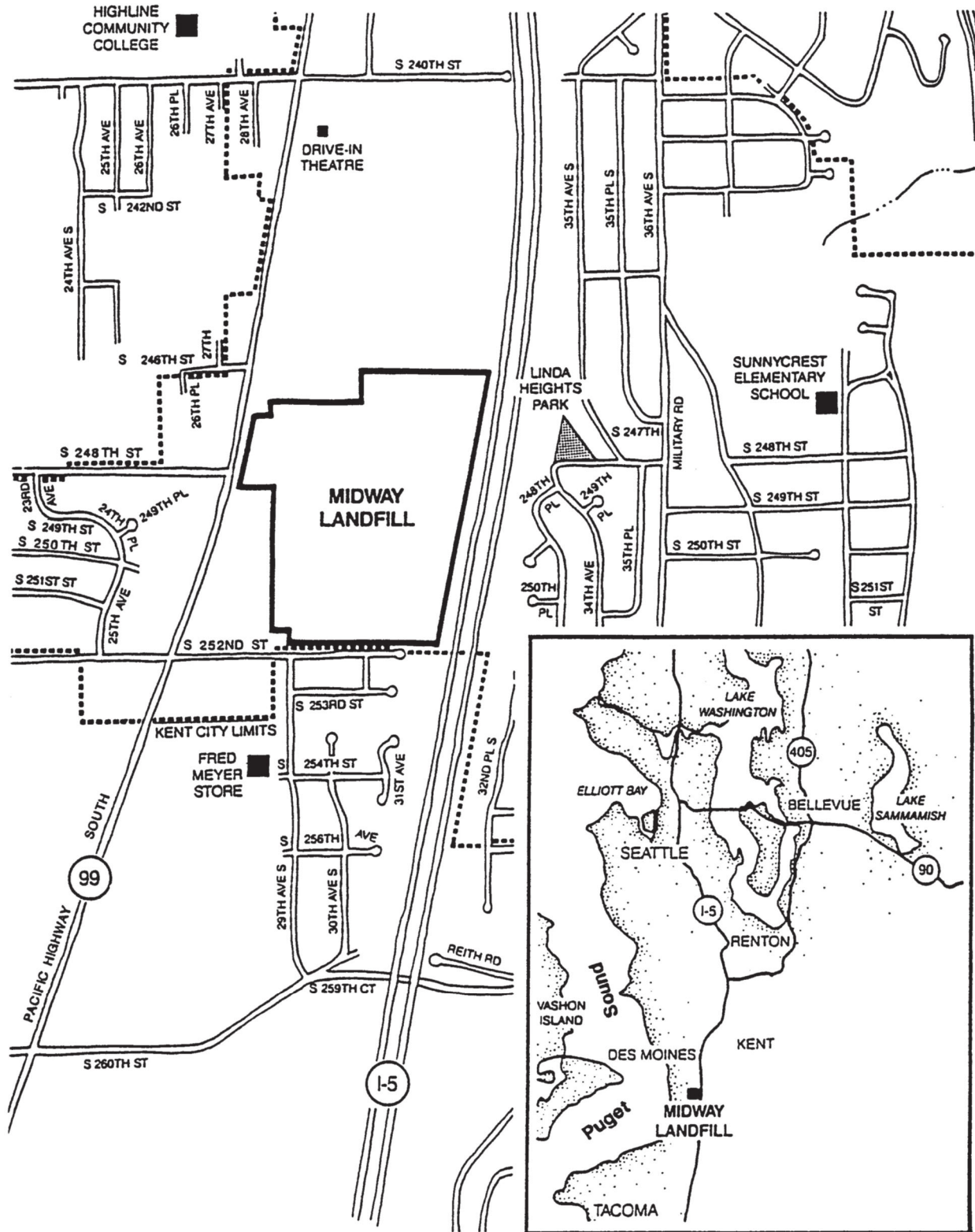
18 Date: _____

19
20 ENTERED this _____ day of _____, 2020.

21
22 _____
23 JUDGE
King County Superior Court

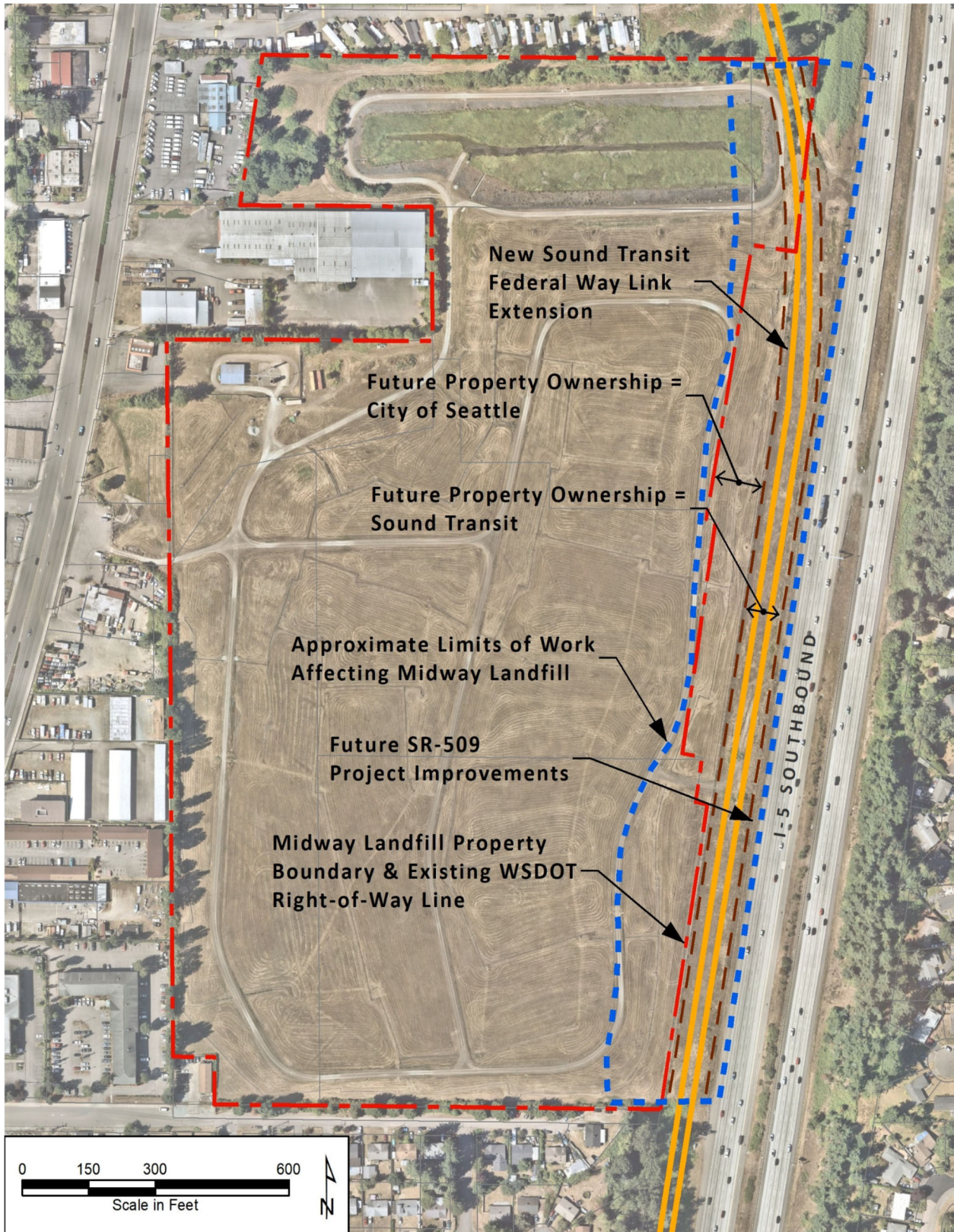
EXHIBIT A
to Sound Transit
Prospective Purchaser Consent Decree

(Site Location Diagram)



MIDWAY LANDFILL LOCATION MAP

EXHIBIT B
to Sound Transit
Prospective Purchaser Consent Decree
(Subject Property Location)



FWLE/SR-509 Midway Project Components

EXHIBIT E
to Amendment No. 2 to
Midway Landfill Site Consent Decree

EXHIBIT C
to Sound Transit
Prospective Purchaser Consent Decree
(Cleanup Action Plan Amendment No. 1)

Midway Landfill Site

DRAFT Cleanup Action Plan Amendment No. 1

DRAFT

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List of Acronyms and Abbreviations

Acronym/ Abbreviation	Definition
CAP	Cleanup Action Plan
CD	Consent Decree
Ecology	Washington State Department of Ecology
FWLE	Federal Way Link Extension
HAZWOPER	Hazardous Waste Operations and Emergency Response
I-5	Interstate-5
MTCA	Model Toxics Control Act
NPL	National Priorities List
OMF	Operations and Maintenance Facilities
ROD	Record of Decision
ROW	Right of way
Site	Midway Landfill Site
ST	Sound Transit
ST3	Sound Transit 3
USEPA	U.S. Environmental Agency
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation

1.0 Introduction

This document is the first amendment to the Cleanup Action Plan (CAP) for the Midway Landfill site (Site), a closed municipal landfill (landfill) that occupies an approximately 60-acre property in Kent, Washington, between Interstate-5 (I-5) and Highway 99 (Figure 1).

This CAP Amendment has been prepared because updates are required for major design changes or field work orders that modify landfill remedial elements.

The landfill is currently operated by the City of Seattle under the terms of a consent decree between the City and the Washington State Department of Ecology (Ecology) entered in King County Superior Court to resolve liability under the Model Toxics Control Act (MTCA). Portions of the landfill are owned by the City of Seattle, and portions are on Washington State Department of Transportation (WSDOT) right-of-way (ROW). The Site is included in the federal National Priorities List (NPL) as a Superfund Site under the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), but, through agreement between the United States Environmental Protection Agency (EPA) and Ecology, is being addressed by Ecology under MTCA. The EPA has been briefed on the proposed CAP amendment and has not objected.

1.1 PURPOSE OF CAP AMENDMENT

This CAP Amendment describes the actions required by Ecology to maintain the integrity of remedial elements during and after a proposed development at the Site. The amendment's purpose is to allow for the implementation of development actions in a manner that continues to protect human health and the environment from releases of hazardous substances into the environment.

The development actions addressed by this CAP Amendment include construction of Sound Transit (ST) light rail facilities and WSDOT highway widening located adjacent to I-5 on the eastern boundary of the landfill. These development actions will require waste removal and replacement with structural fill, relocation of the eastern edge of the landfill cap and gas control systems, drainage improvements, and other ancillary actions.

2.0 Site Description and History

2.1 PHYSICAL SETTING

The landfill is located between I-5 and Highway 99, and between S. 252nd Street and S. 246th Street in Kent, Washington, as shown on Figure 1. The landfill, containing approximately 3,000,000 million cubic yards of refuse placed between 1966 and 1983, is approximately 40 acres in size and a maximum of about 130 feet deep. USEPA files indicate that a broad range of industrial wastes were deposited in the landfill up to 1980, when a state-mandated screening process administered by the Seattle-King County Department of Public Health was put in place. The landfill is currently maintained by the City of Seattle – Seattle Public Utilities.

Materials deposited within the landfill are defined in Amendment 2 to the City’s Consent Decree (CD) and the Prospective Purchaser Consent Decree (PPCD) with Sound Transit (see Section 3.1). These definitions are reproduced here for clarity and continuity:

- “Landfill Soils” refers to soils used as daily cover material during the placement of MSW (see below), or otherwise co-mingled with MSW.
- “Municipal Solid Waste” (MSW) refers to material disposed of in the Midway Landfill, excluding Landfill Soils, which may include but are not limited to, “solid waste” as defined by RCW 70.95.030(22); “commercial solid waste”, “household waste”, “industrial solid wastes”, and “solid waste” as defined by WAC 173-351-100; and “dangerous waste” as defined by WAC 173-303-040.
- “Landfill Material” refers inclusively to MSW, Landfill Soils, and comingled MSW and Landfill Soils.

The landfill has a multilayered engineered impermeable cap, with a grass cover. The landfill is fenced, and access is limited. A gas extraction system is in place and operating throughout the landfill. Stormwater from the landfill surface and adjacent areas, including portions of I-5, drains to a detention pond on City of Seattle-owned property north of the landfill (the North Pond).

Land use in the Site vicinity includes commercial operations and residential housing. Commercial establishments, light industry, and manufacturing facilities border both sides of Highway 99, with residential housing typically located behind the commercial strip. Two elementary schools, Sunnycrest Elementary School and Parkside Elementary School, and a city park, Linda Heights Park, are within a half-mile radius of the landfill. Most of the nearby residences are detached single-family dwellings, with some multi-unit residential developments. Several mobile home parks are also in the vicinity. A 6-acre wetland, the Parkside Wetland, located to the east of Parkside Elementary School and west of the landfill, is a naturally occurring detention basin for local surface water runoff, primarily from the west side of Highway 99.

2.2 REGULATORY HISTORY

In October 1984, the Site was nominated for inclusion on the federal NPL based on potential groundwater contamination. Following that nomination, Ecology was designated as the lead agency for the Midway Landfill Superfund action, pursuant to a Cooperative Agreement with the U.S. Environmental Protection Agency (USEPA). In May 1986, Midway Landfill was placed on the NPL. In September 1988, the City of Seattle, which owns and had operated Midway Landfill, entered a Response Order on Consent with Ecology. This Response Order governed the preparation of a Remedial Investigation and Feasibility Study (RI/FS) for the Site. Prior to the completion of the RI/FS, the City of Seattle and Ecology entered into a consent decree pursuant to MTCA and entered in King County Superior Court, No. 90-2-13283 (1990 CD). The 1990 CD outlined requirements for a number of interim remedial actions, as described in the following section. In September 2000, the USEPA signed a Record of Decision under CERCLA choosing a selected remedy for the Site, which Ecology utilized as a CAP for the Site pursuant to the MTCA regulations (former Washington Administrative Code [WAC] 173-340-360(13), currently codified at WAC 173-340-380(4)). The ROD established site cleanup levels and the required cleanup actions and remedial elements described in the following section. In February 2006, Ecology and the City of Seattle amended the 1990 CD to require implementation of the final cleanup action selected in the ROD and adopted by Ecology (2006 CD Amendment).

This CAP Amendment is consistent with, supplements, and maintains the integrity of the remedy selected in the ROD. All requirements for site cleanup, monitoring, and maintenance defined in the 1990 CD, the 2006 CD Amendment, and the 2000 ROD remain in effect, except as specifically modified by this CAP Amendment.

2.3 MIDWAY LANDFILL CLEANUP ACTIONS AND REMEDIAL ELEMENTS

Cleanup actions by the City of Seattle have been performed since 1985, when Ecology began investigating the Site. Beginning in September 1985, the City of Seattle constructed gas migration control wells within the landfill property and gas extraction wells beyond the landfill property to control the subsurface migration of landfill gas.

In addition, the City of Seattle constructed a surface water management system in accordance with a Surface Water Management Plan. This system consisted of filling and grading to control surface water drainage to prevent surface water from infiltrating the landfill, construction of a 10-million-gallon stormwater detention pond with permanent dewatering system (the North Pond), a controlled discharge structure, and rerouting of stormwater from surrounding areas to prevent it from entering the landfill. This rerouting was done by diverting the Linda Heights Park drain and surface water runoff from I-5 to the North Pond. All elements of the surface water management system were completed by April 1990.

The 1990 CD memorialized the remedial actions already completed, and detailed additional cleanup work that the City of Seattle agreed to finance and perform. This additional cleanup work, or remedial action, was completed by December, 1992 and had four elements:

1. **Construction of a multi-layered landfill cover system or “cap.”** The cap comprised layers (from bottom to top) of low permeability clayey silt/silty clay, a 50-mil synthetic membrane, a geonet drainage layer, 1 foot of sand, and 1 foot of topsoil planted with shallow-rooted grasses. The landfill cover was designed to greatly reduce the amount of stormwater infiltration and control post-closure escape of hazardous emissions from the landfill. Placement of the low permeability clayey silt/silty clay was not required on the steeper sideslope areas of the landfill.
2. **Completion of a landfill gas extraction system.** This system included a final gas manifold system to link onsite extraction wells to an enhanced motor blower and flare system. The purpose of the onsite extraction wells was to create a “vacuum curtain” around the closed landfill to prevent offsite migration of landfill gas, and to help draw previously migrated gas back to the landfill. The enhanced flares were installed to burn the extracted gas before discharge to the atmosphere. The gas extraction system also included numerous offsite gas monitoring probes to provide data on the extent of landfill gas migration and the effectiveness of the extraction system.
3. **Completion of final project reports.** A final project report was prepared for each remedial action project constructed at the landfill. These reports included record drawings documenting the work as constructed, and a narrative report identifying deviations from the approved plans and specifications.
4. **Preparation of a comprehensive Operations and Maintenance Manual.** This manual incorporated both short-term and long-term operation and maintenance requirements for all remedial actions implemented at the landfill as part of the CD.

The 1990 CD also required the City of Seattle to place a notice on title to properties owned by the City, in the records of real property kept by the King County auditor, stating that the landfill was on the NPL. The CD also required the City of Seattle to serve a copy of the CD upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest to the property prior to the transfer of any legal or equitable interest in all or any portion of the landfill.

Additional remedial elements included in the September 2000 ROD were negotiated and agreed upon by the City of Seattle and Ecology in the 2006 CD Amendment. These additional elements include the following:

1. Monitoring to:
 - A. Ensure the remedial systems are working as designed
 - B. Ensure progress is being made toward meeting groundwater cleanup standards and containing landfill gas
 - C. Ensure adequate containment is maintained when and if major changes are approved by Ecology in the operation of the Site, such as turning off or scaling down the gas collection system
 - D. Demonstrate that the cleanup levels have been achieved

2. An Institutional Control to give notices to appropriate agencies, water districts, and locally active well drillers that no water supply wells should be constructed and used in areas with groundwater contamination emanating from the landfill.

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3.0 Proposed Development Actions

3.1 FEDERAL WAY LINK EXTENSION AND I-5 WIDENING PROJECTS

WSDOT and ST have transportation projects planned along the I-5 Corridor, portions of which are located within the Midway Landfill Site. The WSDOT SR 509 Completion Project will add additional lanes to I-5, and the ST Federal Way Link Extension (FWLE) will extend light rail from the existing Angle Lake Station at S 200th Street to the Federal Way Transit Center. At the Site, the two projects are adjacent and the FWLE will be constructed in the WSDOT I-5 right of way (ROW) along the east edge of the landfill, as shown on Figure 2.

Municipal solid waste is present in the WSDOT ROW, and the City of Seattle has an obligation to remove it as necessary to accommodate the WSDOT project. The three agencies have decided that there are advantages to implementing a combined project that meets the needs of all three agencies and provides best value to the public.

ST's contractor (Contractor) will remove Landfill Material sufficient to accommodate both the WSDOT lane widening and the construction of an at-grade alignment for the FWLE, as shown in plan view on Figure 2 and conceptually in cross section on Figure 3. Removing the Landfill Material will create an excavation that will be backfilled with structural fill. Remedial elements associated with the Midway Landfill Site will then be re-constructed. At the completion of construction, no MSW will remain on the property to be acquired by Sound Transit or on the WSDOT property to the east. As described below, screened Landfill Soils will remain on the Sound Transit property. This scope of work is referred to in this CAP Amendment as the "FWLE/SR 509 Midway Project."

The excavation backfill will be imported from a WSDOT or Sound Transit source and from soils obtained on the Midway Landfill property (see Section 4.3). The WSDOT source is located within WSDOT right-of-way in areas of Federal Way, Des Moines, and Sea Tac that are currently under Sound Transit control according to agreements between WSDOT and Sound Transit.

WSDOT will specify backfill requirements for their SR 509 project, and ST will establish its own backfill requirements for the FWLE project. This construction will remove waste that the City of Seattle is obligated to remove, and allow for an FWLE alignment that will provide greater schedule certainty during construction and result in lower long-term maintenance costs than an elevated guideway.

At some point during or after the completion of the FWLE/SR 509 Midway Project, the City of Seattle, ST, and WSDOT will engage in property ownership transfers. Through the transfers, ST will become owner of the rail alignment property currently held by WSDOT, and the City of Seattle will take ownership of all "orphaned" property currently owned by WSDOT that lies to the west of the FWLE alignment (subject to City Council approval).

FWLE/SR 509 Midway Project construction will impact landfill remedial infrastructure within the limits of work on the eastern border of the landfill. It will impact the landfill cap, gas collection

infrastructure, surface water management system, and monitoring network (gas probes and groundwater monitoring wells).

3.2 POTENTIAL FUTURE OPERATIONS AND MAINTENANCE FACILITY

ST is currently implementing a system-wide expansion of its Link light rail system throughout its service area in the Puget Sound Region. This expansion is part of the Sound Transit 3 (ST3) Plan for transit investments approved by the voters in 2016. To accommodate the ST3 light rail fleet expansion, two new Operations and Maintenance Facilities (OMF) are required—one in the north service area and one in the south service area.

The Midway Landfill property is one of three potential OMF locations currently under consideration in the south service area. OMF South sites are being evaluated through a State Environmental Policy Act (SEPA) Environmental Impact Statement (EIS) process. A preferred OMF South location is expected to be identified by the ST Board in late 2020. As part of the EIS process, multiple subsurface design construction methods for the Midway Landfill property are also being considered that would require substantial removal and replacement of the landfill cap system, and could likely include installation of pile-supported structures. If the ST Board were to select the Midway Landfill property as the project to construct, an additional CD and CAP Amendment would be required to define remedial requirements for the work.

4.0 Remedial Requirements for Development Actions

4.1 SPECIAL INSPECTION ENVIRONMENTAL PROFESSIONAL

An independent, special inspection environmental professional (Environmental Professional) must be present during all excavation activities at the Site. The Environmental Professional shall be knowledgeable in environmental sampling and waste classification. The Environmental Professional shall have the authority to identify potential waste material as described in Section 4, shall observe all excavation activities, and shall document all waste classification and relocation activities.

4.2 HEALTH AND SAFETY

All work that is conducted with a potential for worker direct contact with waste material must be conducted by workers that have current Hazardous Waste Operations and Emergency Response (HAZWOPER) health and safety training certification. This includes all work conducted below the existing landfill cap, for waste removal and landfill cap repair. Following HAZWOPER requirements, all work areas in which there is the potential to contact waste materials must be defined and marked as managed exclusion zones, with specific decontamination areas for personnel and equipment at the exit from exclusion zones. All companies working on the project must have a site-specific Health and Safety Plan defining requirements for personnel protection.

4.3 OVERBURDEN SOIL, SOIL WITHIN REFUSE, AND NATIVE SOIL REUSE

Three sources of soil within the FWLE Midway Project excavation are potentially usable as backfill:

Overburden Soil: Clean soil overburden, ranging from 2 to 14 feet thick, is present below the multi-layer landfill cover system and above the Landfill Material. The overburden soil was placed as part of re-grading the landfill surface in 1988 and 1989.

Landfill Soils: Zones of suitable soil, defined previously in Section 2.1, are present within the Landfill Material, based on exploratory borings drilled at the Site. It may be necessary to physically screen excavated Landfill Material to removed intermixed waste prior to use of Landfill Soils as backfill.

Native Soil: Undisturbed native soil may be encountered, and may need to be excavated, in some portions of the ST/WSDOT alignment. Excavated native soils would be available for use as backfill.

Overburden soils, Landfill Soils, and native soils may be visually identified, temporarily stockpiled onsite, and reused within the Sound Transit portion of the FWLE/SR 509 Midway Project limits provided it meets ST geotechnical requirements for structural fill and is materially free of landfill waste. Overburden soils and native soils, but not Landfill Soils, may be similarly used within the WSDOT portion of the FWLE/SR 509 Midway Project. The Environmental Professional shall

determine whether the excavated overburden and Landfill Soils are either materially free of MSW, and thus suitable for reuse as backfill, or is Landfill Material.

If excess Landfill Soils are not used as backfill on the Site, and it is determined that they must be disposed offsite, they must be disposed in accordance with the Waste and Soil Removal Plan (see below, Section 4.4.2).

Offsite disposal or beneficial use of excess overburden soils or undisturbed native soils will require that these materials be chemically characterized to determine suitability for reuse or disposal. For purposes of offsite reuse, chemical testing will be completed in accordance with the Waste and Soil removal Plan (see below, Section 4.4.2). For offsite disposal at a permitted Subtitle D landfill, the receiving facility will determine whether and what type of chemical testing is required.

4.4 WASTE AND SOILS REMOVAL AND RELOCATION

The FWLE/SR 509 Midway Project is anticipated to include the removal of MSW, Landfill Soils, and other soils (Section 4.3) from beneath the I-5 widening area and the planned ST alignment.

4.4.1 Onsite Disposal Requirements

Any wastes relocated within the Midway Landfill are exempt from landfill permit requirements in accordance with RCW 70.105D.090. However, any relocated waste must meet the substantive requirements of applicable or relevant and appropriate requirements (ARARs) for waste disposal. Municipal solid waste landfill closure criteria in WAC 173-351-500 has been determined to be relevant and appropriate, with the understanding that the requirements of this CAP Amendment – to replace the landfill cover system above relocated wastes, address landfill gas and surface water management – will meet the requirements of WAC 173-351 that are relevant and appropriate to this closed landfill. Other requirements of WAC 173-351 are not applicable to this Site.

4.4.2 Waste and Soil Removal Plan

A Waste and Soils Removal Plan (WSRP) shall be developed for the FWLE/SR 509 Midway Project for approval by Ecology. The WSRP will provide for the excavation and disposition of all overburden soil, native soil, and Landfill Material from the property to be acquired by ST and the WSDOT ROW to the east. The WSRP must specify detailed procedures for excavation, inspection, physical screening, relocation and disposal, stormwater controls, dust and odor control, chemical characterization, and loading, transportation, and disposal. The WSRP must identify acceptable disposal facilities and chemical characterization requirements for disposal.

MSW is anticipated to be visually identifiable by the presence of plastic bags, plastic, metal, wood, paper, organic debris, and other municipal waste materials. Once excavation of overburden soils reaches the top of waste, all material below the top of waste must be

considered Landfill Material, including MSW and Landfill Soils. The Environmental Professional will determine when the top of waste has been reached.

The FWLE/SR 509 Midway Project involves excavating waste to the bottom of waste in most project areas. The bottom of waste contact between Landfill Material and underlying non-Landfill Soils should be readily identifiable visually. The Environmental Professional will make the determination of when this contact has been reached.

It should be noted that in some areas native soil or imported clean fill placed for construction of I-5 will be encountered at land surface or shallow depth. The Midway Landfill was originally a gravel pit that was partially backfilled from the east during construction of I-5. A compacted backfill slope thus extends from I-5 westward beneath landfill waste.

The WSRP should include a sequencing approach for waste and soils removal. The sequencing approach should strive to minimize the amount of area open at any one time to air and rainfall.

Waste screening or segregation may be evaluated to separate intermixed Landfill Soils from MSW. If waste screening or segregation is proposed, the screening or segregation procedures should be described in the WSRP, and separated Landfill Soils that are designated to remain onsite must be managed in the same manner as Landfill Material, with final placement below the landfill cover system.

Excavated Landfill Material shall not be mixed with clean overburden and any inadvertently mixed soil shall be handled as Landfill Material.

Excavated Landfill Material is anticipated to be municipal, non-hazardous waste. However, there is a potential that hazardous waste could be present. If inspection by the Environmental Professional identifies the presence of free product, sealed or ruptured drums containing possible chemical waste, or other indicators of potential hazardous waste, excavation in the area shall be stopped, and the material in question stabilized, isolated, and moved to a location for chemical characterization. The Environmental Professional will determine the volume of suspect hazardous waste material to be moved for chemical characterization, based on visual observation or other relevant field monitoring methods.

The waste generator will be responsible to determine whether the material in question has the characteristics of hazardous waste in accordance with the Washington State Dangerous Waste Regulations (WAC 173-303). Any waste designating as a Dangerous or Extremely Hazardous Waste shall be manifested and treated or disposed at a permitted Treatment, Storage and Disposal Facility (e.g., RCRA Subtitle C disposal facility).

A Potential Hazardous Material Response Plan for all handling and chemical characterization of potentially dangerous waste will be developed for Ecology review and approval.

4.4.3 Stormwater Controls

The construction stormwater pollution prevention plan (SWPPP) shall require that open waste excavation areas be covered at the end of each workday, and when waste excavation is complete in each area of work. Excavation areas shall remain covered until backfilled. Covers shall be low permeability tarps, plastic sheeting, or equivalent, held in place by sandbags or similar weights, in accordance with best management practices identified in the Stormwater Management Manual for Western Washington.

4.4.4 Dust and Odor Control

During grading or excavation, dust and odor control procedures shall be implemented to ensure no visible dust is generated, air emissions do not exceed applicable air quality criteria, and noxious odors are limited to the work area. Dust and odor control procedures must include engineering controls to meet the substantive restrictions on offsite transport of airborne particulates by the local regulatory agency, the Puget Sound Clean Air Agency (PSCAA). Further, regardless of whether any asbestos is identified, an Asbestos/Demolition Notification and filing fee must be submitted to PSCAA electronically before waste removal begins.

Dust and odor control procedures could include water misting or equivalent, wetting or covering exposed soils and stockpiles. Odor management foam, its application equipment and water source must be present on-site and ready to be implemented at any time during waste excavation.

4.4.5 Waste Loading, Transportation, and Disposal

All non-hazardous waste removed from the Site shall be disposed of offsite at a permitted Subtitle D landfill, which must be identified in the WSRP. Waste shall be direct loaded to trucks or containers whenever possible. Waste material shall be transported by a contractor licensed and insured/bonded for waste transportation, with a site-specific Waste Clearance acquired from the Seattle-King County Department Public Health.

Temporarily stockpiled soils of any type must be covered in accordance with the SWPPP.

Any material that is characterized as Dangerous or Extremely Hazardous waste shall be segregated, containerized, transported, and disposed of offsite at a permitted Subtitle C landfill or Treatment, Storage, and Disposal Facility, utilizing the specific manifesting, characterization, containerization, transportation, and disposal requirements of the receiving facility. If hazardous waste is identified, the waste generator shall comply with EPA's Hazardous Waste Manifest System including obtaining a RCRA Identification Number. Adherence to EPA's Off-Site Rule (40 CFR 300.440), which specifies advance coordination for determining whether facilities are acceptable for the receipt of any waste, will also be required.

4.5 INFILTRATION BARRIER

A low-permeability infiltration barrier must be constructed above any areas of the planned WSDOT and ST properties that contain landfill waste or Landfill Soils (Section 4.4.2.) or where surface water infiltration must be controlled as part of the landfill remedy. Essentially the infiltration barrier must replicate the current area of coverage, extending from the eastern edge of the proposed excavation area to the western edge of the existing shoulder of I-5. An effective infiltration barrier shall be designed that is consistent with backfill specifications for the road and rail projects, including one or more of the following elements - pavement, low permeability soil, and/or geomembrane - as approved by Ecology.

4.6 LANDFILL COVER SYSTEM

The landfill cover system shall be protected, or removed and replaced, in a manner that meets the original objectives of the landfill cover system to prevent infiltration, prevent direct contact with waste, enable gas collection, and manage surface water runoff in areas that will contain Landfill Material after the FWLE/SR 509 Project is complete. Where the landfill cover is removed and replaced, the replacement cover system shall match the existing cover system construction details or be constructed of substitute materials and details to provide equivalent protection.

Where the existing landfill cover system is cut, the areas to remain shall be protected in a manner to prevent damage and allow overlap and secure connection with the new replacement materials. As part of the FWLE/SR 509 Midway Project, a landfill cover system shall be replaced on the new easterly landfill slope, constructed to match the original cover design (Section 2.3) or equivalent system, with Ecology approval. There must be a two-year guarantee for plant establishment.

The new membrane shall be connected to the existing membrane with a welded connection, and with overlap, welding specifications, and welding construction quality assurance that meet geomembrane manufacturer requirements.

If the slope of the landfill cover is increased from the maximum slope allowed by the original construction details, documentation shall be provided that demonstrates that the proposed slope and construction detail will be acceptable for membrane tension, plant establishment, and operations and maintenance.

The final cover design shall be approved by Ecology.

4.7 LANDFILL GAS EXTRACTION SYSTEM AND GAS MONITORING PROBES

The FWLE/SR 509 Midway Project shall be designed and constructed in a manner that maintains or improves the current ability to capture and monitor gas within the project area. The project shall avoid disturbance of gas collection infrastructure where possible and replace gas collection infrastructure in kind where disturbance is unavoidable. At the completion of construction, all

landfill gas collection infrastructure will be located on property currently owned by or to be acquired by the City of Seattle.

In addition, the FWLE/SR 509 Midway Project shall install a north-south perimeter gas collection pipe at the edge of waste, below the landfill cover system to minimize the potential for gas migration past the landfill boundary. This gas collection pipe shall be equipped with laterals to connect to the existing extraction system at west edge of FWLE/SR 509 Project limits. Other gas system elements may need to be constructed to achieve the same level of gas control as currently exists. Replacement and new gas collection infrastructure shall address management of condensate, utilizing details compatible with the existing landfill systems.

During construction, the FWLE/SR 509 Midway Project Contractor shall coordinate closely with the City of Seattle landfill operations staff to provide detailed project schedule and sequencing information. During all periods in which the landfill cover is removed, waste is being excavated, and there is the potential for increase in oxygen within landfill waste, existing landfill gas systems will be monitored to ensure against potentially dangerous levels of air flow through waste that could lead to spontaneous combustion.

All electrical infrastructure constructed as part of the FWLE/SR 509 Midway Project shall include protection details and code compliance appropriate to the presence of flammable landfill gas.

4.8 SURFACE WATER MANAGEMENT

All construction will be conducted under the requirements of an Ecology NPDES construction stormwater general permit (CSWGP). A site-specific Temporary Erosion and Sediment and Erosion Control Plan (TESC) must be developed for the FWLE/SR 509 Midway Project area. This plan shall specify stormwater controls that minimize entry of stormwater run-on into waste handling areas, and areas where the landfill cap has been removed. Stormwater that contacts waste must be collected, treated, and discharged in accordance with requirements of permits applicable to the discharge location.

The FWLE/SR 509 Midway Project shall be designed and constructed to prevent stormwater from the Project area infiltrating into the landfill following construction completion. Stormwater from the Project area shall not accumulate on the infiltration barrier described in Section 4.5, or be allowed to infiltrate.

Surface water management improvements shall be constructed as part of the FWLE/SR 509 Midway Project to collect all surface runoff from the eastern portion of the landfill, and the property between the landfill and I-5, for discharge away from the Project area in accordance with all applicable regulations regarding water quality and quantity. Subsurface drainage from above the landfill cap and low permeability barriers will be similarly collected and conveyed.

In addition, the FWLE/SR 509 Midway Project is anticipated to demolish two existing 24-inch-diameter pipes that drain across the project area into the North Pond. The FWLE/SR 509 Midway

Project shall replace these pipes with a system that meets or exceeds current conveyance, and are capable of conveying the new peak design flow.

4.9 GROUNDWATER MONITORING WELLS

The FWLE/SR 509 Midway Project shall avoid disturbance of groundwater monitoring wells where possible. Where disturbance of groundwater monitoring wells is unavoidable, groundwater monitoring wells shall be protected, with modified surface completion performed by a licensed well driller.

If it is not possible to protect a groundwater monitoring well, it must be formally decommissioned by a licensed well driller, in accordance with WAC 173-160-381. The need for monitoring well abandonment must be communicated to Ecology's project manager. Ecology will determine whether a replacement monitoring well must be installed, and if so, provide details for its construction. Any new monitoring well must be installed by a licensed well driller in accordance with WAC 173-160.

4.10 ACCESS CONTROL

Public access to the landfill property must be prevented at all times, unless entry has been authorized. During construction, it is particularly important that public access to waste excavation and support activity areas be restricted.

Design for the FWLE/SR 509 Midway Project shall include replacement of the perimeter fence, in kind or equivalent, as approved by Ecology.

4.11 CONSTRUCTION QUALITY ASSURANCE

Construction quality assurance must be provided to ensure construction is completed in accordance with the requirements of this CAP Amendment and construction plans and specifications. Construction quality assurance shall include materials testing, construction inspections, and documentation. A Construction Quality Assurance Plan shall be provided for Ecology approval as described in Section 5.0.

5.0 Required Pre-Construction Submittals for Ecology Approval

The items listed below must be completed and any applicable documentation provided to Ecology for review and approval. A minimum of two calendar weeks should be assumed for review and approval of each item. Comments received on the Engineering Design Report may be addressed in development of the 90/100% Construction Documents and Related Plans. The 90/100% Construction Documents and Related Plans must be approved by Ecology prior to construction notice to proceed.

1. Engineering Design Report for Remedial Requirements. The Engineering Design Report shall include the following components:
 - A. Narrative description of construction approach and conceptual design details for each remedial requirement defined in Section 4.0 of this CAP Amendment. The narrative shall clearly describe how performance conditions for each remedial requirement will be met.
 - B. Conceptual plan and work area cross sections.
 - C. Identification of disposal facilities.
 - D. Schedule.
2. Stake out on the property the following lines for onsite review with Ecology and the City of Seattle: compatibility limit with WSDOT; ST guideway edges; location of edge of waste barrier; and limit of FWLE/SR 509 Midway Project construction limits. Flag and identify all landfill infrastructure within and adjacent to construction limits.
3. 90/100% Construction Documents (Permit Set) and Related Plans, including:
 - A. Temporary Erosion and Sediment Control Plan
 - B. SWPPP
 - C. WSRP
 - D. Potential Hazardous Material Response Plan
 - E. Construction Quality Assurance Plan
 - F. Contractor Health and Safety Plan
4. Materials submittals for primary material and equipment to be utilized to fulfil remedial requirements.

6.0 Construction Completion Report

Following completion of construction, draft and final versions of a formal Construction Completion Report must be prepared and submitted to Ecology for review and approval. The Construction Completion Report must comply with WAC 173-340-400(6)(b) and include:

- A narrative description of construction for all remedial elements.
- A description of all modifications from the approved 90/100% Construction Documents.
- Representative photographs of the landfill cap system and perimeter barrier.
- Documentation of waste quantities and disposal locations.
- Chemical characterization data if applicable.
- Documentation of soil acceptance and compaction testing and geomembrane and geotextile conformance and installation testing for the landfill.
- Record drawings showing final construction details for the landfill cover, stormwater system, gas collection system, and monitoring well network.
- Record drawings showing where each type of soil or material has been placed (Landfill Material, Landfill Soils, overburden soil, native soil, and imported backfill).
- Topographic survey of the entire landfill and Project area that depicts the surface and slope of the landfill; structures, streets, and the rail alignment; and drainage infrastructure, pathways, and surface water features.
- Boundary survey of current and proposed or revised property boundaries associated with the FWLE/SR 509 Midway Project. The boundary survey must be approved by a licensed land surveyor.
- Monitoring well and gas probe decommissioning or installation logs and records

7.0 Environmental Covenant and Financial Assurance

New environmental covenants shall be prepared for the City's landfill property and the Sound Transit FWLE property that may contain residual waste, Landfill Material, or remedial action elements (e.g., infiltration barrier) in accordance with Uniform Environmental Covenants Act in RCW 64.70. WAC 173-340-440(8)(b), and applicable guidance from Ecology. Similarly, an environmental covenant alternative shall be prepared for WSDOT properties that will contain remedial action elements in accordance with the October 2016 Implementing Agreement between Ecology and WSDOT Regarding the Use of Environmental Covenant Alternatives at WSDOT Sites (2016 Agreement).

The protective provisions required in the environmental covenant(s) will be established by Ecology and include the requirements in WAC 173-351-500(1)(h) and other restrictions. The environmental covenant(s) will:

- State that the document is an environmental covenant executed pursuant to chapter 64.70 RC
- Contain a legally sufficient description of the real property subject to the covenant
- Designate Ecology, or other person approved by Ecology, as the holder of the covenant
- Be signed by Ecology, and, unless waived by the department, every owner of a fee simple interest in the real property subject to the covenant
- Identify the name and location of the administrative record for the property subject to the environmental covenant
- Provide notice to Ecology of any proposed property transfer
- Allow no property transfer without provision for continued operation and maintenance of the landfill remedial elements, unless approved by Ecology
- Identify the property, in perpetuity, as having been on the National Properties List (NPL) site
- Provide notice that no water supply well may be installed on the property
- Describe with specificity the activity or use limitations on the real property subject to the covenant. At a minimum, this shall prohibit uses and activities that:
 - Threaten the integrity of any cover, waste containment, stormwater control, gas, leachate, public access control, or environmental monitoring systems;
 - May interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the MSWLF unit and continued protection of human health and the environment; and
 - May result in the release of solid waste constituents or otherwise exacerbate exposures.

Ecology may also require new provisions based on the FWLE construction/operation or other environmental factors. All environmental covenants shall be filed with the King County Recorder.

Any environmental covenant alternative established with WSDOT will be incorporated into WSDOT's Parcel Restriction System as described in the 2016 Agreement, and will include applicable elements of the restrictions and requirements noted above.

In accordance with WAC 173-340-440(11), financial assurance is required at the Site in a sufficient amount to cover all costs associated with the operation and maintenance of the cleanup action, including institutional controls, compliance monitoring, and corrective measures.

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8.0 Amended Operations and Maintenance Plan and Compliance Monitoring Plan

Following completion of the FWLE/SR 509 Midway Project construction, a revised or new Operations and Maintenance Plan (OMP) and a revised Compliance Monitoring Plan (CMP) will be submitted for Ecology review and approval. The revised or new plans will include all relevant elements in the existing plans, and any new element associated with ST or WSDOT operations or with construction changes.

In the event that future construction and/or operations and maintenance activities are performed by either ST or WSDOT within the FWLE/SR 509 Midway Project area, the remedial elements of the landfill designed and installed in accordance with the CAP and this CAP Amendment shall remain protected or replaced in kind. These elements include any portions or components of the landfill cover system, gas extraction system, surface water management system, and monitoring network. Any modification or replacement of these elements shall be proposed to, reviewed, and approved by Ecology.

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9.0 References

U.S. Environmental Protection Agency (USEPA), 2000, Record of Decision (ROD) for Midway Landfill Site, September 6, 2000.

Washington State Department of Ecology (Ecology), 1990, Consent Decree (CD) No. 90-2-13283-8 between Ecology and City of Seattle, May 29, 1990.

Washington State Department of Ecology (Ecology), 2006, Amendment No. 1 to Consent Decree No. 90-2-13283-8 between Ecology and City of Seattle, February 3, 2006.

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List of Figures

Figure 1: Midway Landfill Location Map

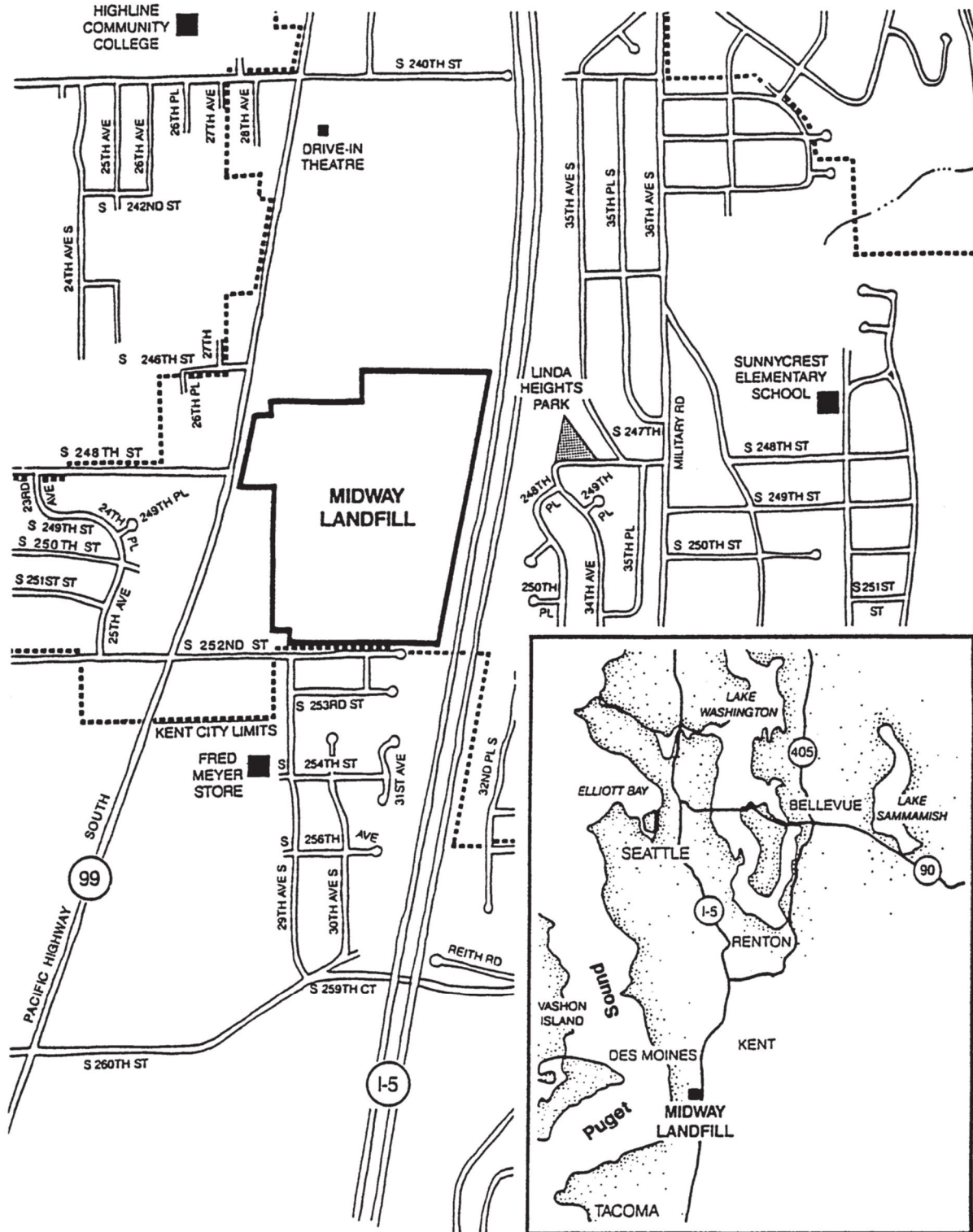


Figure 2: FWLE/SR-509 Midway Project Components



Figure 3: Conceptual Waste Removal and Backfill Cross Section

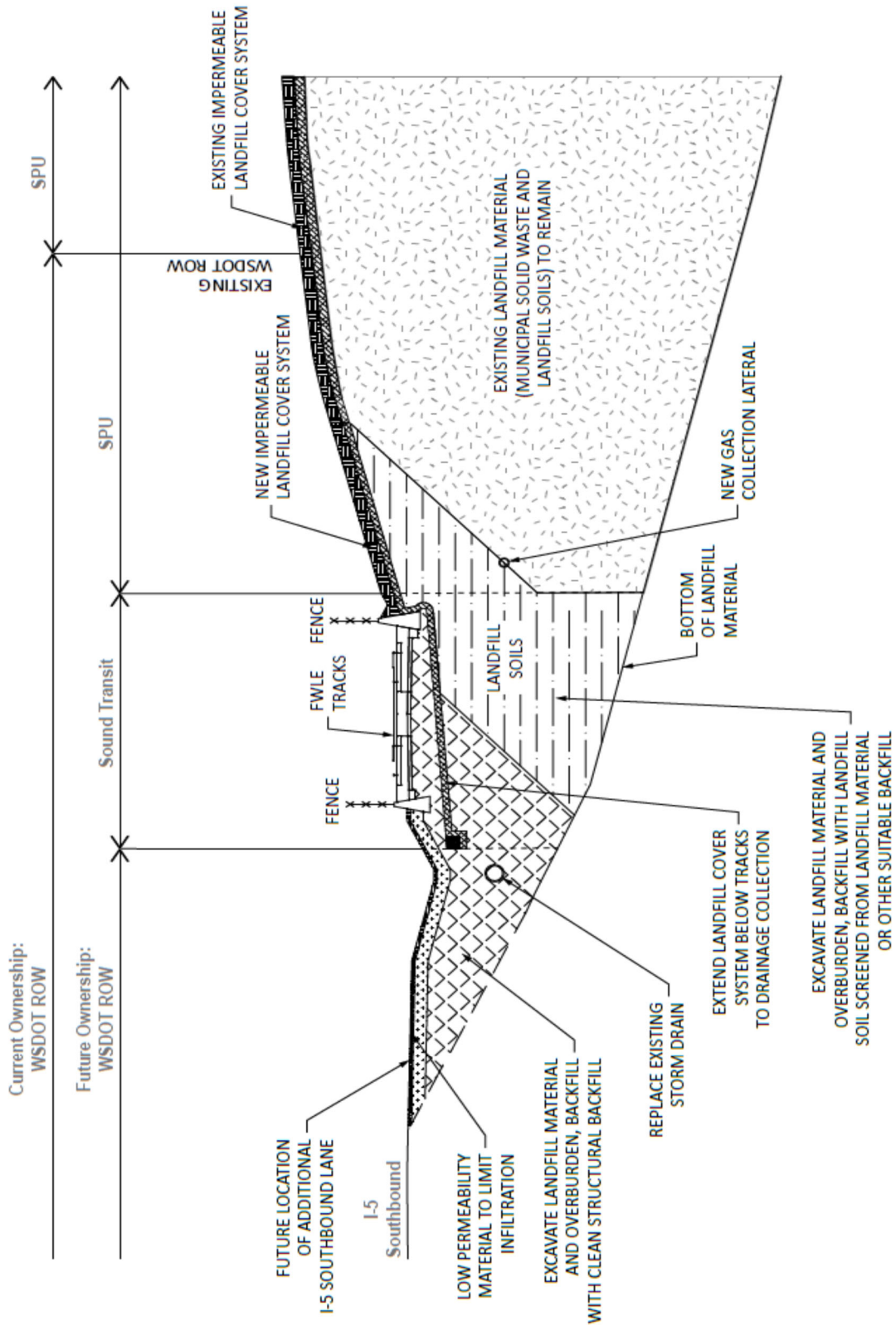


EXHIBIT F
to Amendment No. 2 to
Midway Landfill Site Consent Decree

EXHIBIT D
to Sound Transit
Prospective Purchaser Consent Decree

(Scope of Work and Schedule)

**EXHIBIT F to Amendment No. 2 to Midway Landfill Site
Consent Decree
EXHIBIT D to Sound Transit Prospective Purchaser
Consent Decree**

**SCOPE OF WORK AND SCHEDULE
FOR IMPLEMENTATION OF CLEANUP ACTION PLAN AMENDMENT NO. 1
MIDWAY LANDFILL – FWLE/SR 509 MIDWAY PROJECT**

This Scope of Work establishes the deliverables necessary to implement the requirements of the Cleanup Action Plan Amendment No. 1 (CAP Amendment) for the Midway Landfill Site – FWLE/SR 509 Midway Project. Deliverables shall be prepared in accordance with WAC 173-340-840, General Submittal Requirements, for approval by Ecology. The Schedule of Deliverables is attached. Also attached is a table designating the lead role, as between the City of Seattle and Sound Transit, in performing the tasks described in the CAP Amendment and this Scope of Work.

Task I. Engineering Design Report

Contents of the Engineering Design Report shall be as specified in CAP Amendment Section 5.0. This report shall include sufficient information for the development and review of construction plans and specifications in general accordance with WAC 173-340-400(4)(a). It shall document engineering concepts and design criteria used for the design of the cleanup action.

Deliverables: Engineering Design Report – Draft and Final

Task II. 90/100% Construction Plans and Specifications (Permit Set)

The 90/100% Construction Documents shall be submitted for review by Ecology. These shall be prepared in conformance with currently accepted engineering practices and techniques and shall include the requirements under WAC 173-340-400(4)(b). A response to comments document shall be provided for approval by Ecology, describing how comments received will be addressed in the final Issued for Construction (IFC) Set. The final IFC Set will be provided to Ecology.

Deliverables: 90/100% Construction Plans and Specifications
Response to Ecology Comments
Issued for Construction Plans and Specifications

Task III. Construction Work Plans

Construction Work Plans for the FWLE/SR 509 Midway Project shall be as defined in CAP Amendment Section 5.0. These plans, except for the Health and Safety Plan, shall be approved by Ecology prior to construction notice to proceed. Required Work Plans include the following:

1. Stormwater Pollution Prevention Plan (SWPPP), in compliance with requirements for the Construction Stormwater General Permit.
2. Temporary Erosion and Sediment Control Plan, in accordance with the requirements of the CAP Amendment.
3. Waste and Soils Removal Plan describing detailed waste removal and segregation procedures, screening of suspect material, transportation and disposal details, in accordance with the requirements of the CAP Amendment.
4. Potential Hazardous Material Response Plan for characterization of potentially characteristic hazardous waste, in accordance with CAP Amendment requirements, WAC 173-303.
5. Construction Quality Assurance Plan, defining testing and documentation requirements to ensure construction quality in accordance with CAP Amendment
6. Health and Safety Plan - This plan is required for remedial actions as specified in WAC 173-340-810.

Deliverables: Temporary Erosion and Sediment Control Plan – Draft and Final
Stormwater Pollution Prevention Plan – Draft and Final
Waste and Soils Removal Plan – Draft and Final
Potential Hazardous Material Response Plan – Draft and Final
Construction Quality Assurance Plan – Draft and Final
Health and Safety Plan

Task IV. Implementation of the Cleanup Action

Construction shall be conducted in accordance with the plans and specifications prepared under this Scope of Work (the Issued for Construction – IFC- set).

Material submittals shall be submitted for approval per CAP Amendment Section 5.0.

Detailed records shall be kept of all aspects of the work performed during the operation and construction including materials used, items installed, test and measurements performed.

Status reports shall be submitted monthly throughout the construction duration. The status reports shall provide a description of work completed

during the month; work to be completed the next month; approved change orders; potential future difficulties potentially requiring changes to the approved plans and specifications; contacts with the public or other regulatory agencies; and any other information required under Section VI.F of the Prospective Purchaser Consent Decree or relevant to completion of the project per the CAP Amendment.

Deliverables: Material Submittals
Status Reports

Task V. Construction Completion Report

At the completion of construction, a Construction Completion Report is required to document all work performed in accordance with the CAP Amendment. The Construction Completion Report shall meet the requirements of Section 6.0 of the CAP Amendment and documentation shall be in accordance with WAC 173-340-400(6)(b).

Deliverables: Construction Completion Report – Draft and Final

Task VI. Amended Operations and Maintenance Plan (O&M Plan)

This document will be an update of the current plan incorporating the modifications required to maintain effective remedial operations under WAC 173-340-400(4)(c)(xii). This document will also outline roles and responsibilities of the City of Seattle, Sound Transit, and WSDOT with respect to their properties. A primary focus of the Amended Operations and Maintenance Plan will be requirements for inspection and maintenance of the remedial elements within the FWLE/SR 509 Midway Project limits.

Deliverables: Amended Operations and Maintenance Plan – Draft and Final

Task VII. Amended Midway Landfill Compliance Monitoring Plan

This document will be an update of the current Midway Landfill Monitoring Plan, incorporating modifications necessitated by the removal, replacement, or re-location of monitoring stations under the FWLE/SR 509 Midway Project. Additional changes may be made in response to recommendations in the periodic review to be issued by the USEPA in 2020.

Deliverables: Amended Compliance Monitoring Plan – Draft and Final

Task VIII. Environmental Covenant

New Environmental Covenants will be placed on City of Seattle and Sound Transit properties within the Midway Landfill Site as specified in CAP Amendment Section 7.0, Section XIX of the Consent Decree, and Section VI.E of the Prospective Purchaser Consent Decree. The Environmental Covenants shall be recorded according to the Schedule of Deliverables. A copy of the recorded Environmental Covenants shall be provided to Ecology within (30) days of the recording dates.

Deliverables: Recorded Environmental Covenant – City of Seattle
Recorded Environmental Covenant – Sound Transit

Task IX. Financial Assurance

Financial assurance will be provided for the Site as described in the CAP Amendment and Section C of the Second Amendment to the Midway Landfill Site Consent Decree.

Deliverables: Financial Assurance Cost Estimate
Financial Assurance Mechanism

SCHEDULE OF DELIVERABLES

A minimum of 2 weeks shall be provided for Ecology review of all required deliverables

Effective Date of Consent Decree	Start
Task I	
Engineering Design Report - Draft	60 days from Start
Engineering Design Report - Final	60 days following receipt of Ecology comments
Task II	
90/100% Construction Documents	Per FWLE/SR 509 Schedule
Response to Comments Document	30 days following receipt of Ecology comments
IFC Construction Documents	Per FWLE/SR 509 Schedule
Task III	
Construction Work Plans – Draft	Per FWLE/SR 509 Schedule
Construction Work Plans - Final	30 days following receipt of Ecology comments
Note: Ecology approval must be received on Task II Response to Comments Document and Task III Final Construction Work Plans prior to Construction NTP at the Midway Landfill Site.	
Tasks IV and V	
Construction Status Reports	By the 15 th day of each month during construction
Construction Completion Report – Draft	Within 60 days of completing construction for the FWLE/SR 509 Midway Project
Construction Completion Report - Final	Within 60 days following receipt of Ecology comments
Tasks VI and VII	
Amended O&M Plan – Draft Amended ML Monitoring Plan - Draft	Concurrent with Final Construction Completion Report
Amended O&M Plan – Final Amended ML Monitoring Plan - Final	Within 60 days following receipt of Ecology comments
Task VIII	
Environmental Covenants – Draft	Concurrent with Final Construction Completion Report
Environmental Covenants Recorded	Within 60 days following receipt of Ecology comments, or within 30 days of property transfer following construction completion, whichever is later.
Task IX	
Financial Assurance Cost Estimate	60 days from Start
Financial Assurance Mechanism	60 days after Ecology approval of cost estimate

**SR 509 / FWLE Project Lead Parties
for Implementation of CAP Amendment No. 1**

Activity / Deliverable	Citation	Lead Party
Capital construction of SR 509 / FWLE Project within the Project Area consistent with CAP Amendment, including: <ul style="list-style-type: none"> • Overburden soil, landfill soil and native soil reuse; • Waste and soil removal, disposal and relocation; • Infiltration barrier; • Landfill cover system; • Landfill gas extraction system; • Surface water management; • Groundwater monitoring wells; • Health and safety; • Access control; and • Construction quality assurance. 	CAP Amendment Section 4.0	Sound Transit
Retaining Environmental Professional	CAP Amendment Section 4.0	City of Seattle
Waste and Soils Removal Plan	CAP Amendment Section 4.4.2	Sound Transit (Kiewit)
Characterization of any potential hazardous waste for purposes of disposal	CAP Amendment Section 4.4.2	City of Seattle
Potential Hazardous Material Response Plan for handling and characterization of potentially dangerous waste	CAP Amendment Section 4.4.2	City of Seattle
Manifesting, containerization, transportation and disposal of any Dangerous or Extremely Hazardous Waste	CAP Amendment Section 4.4.5	Sound Transit (with City of Seattle as generator)
Construction Stormwater Pollution Prevention Plan	CAP Amendment Section 4.4.5	Sound Transit (Kiewit)
Temporary Erosion and Sediment and Erosion Control Plan	CAP Amendment Section 4.8	Sound Transit (Kiewit)

Activity / Deliverable	Citation	Lead Party
Construction Quality Assurance Plan	CAP Amendment Section 4.11	Sound Transit (Kiewit)
Engineering Design Report for Remedial Requirements	CAP Amendment Section 5.0	Sound Transit (Kiewit)
90/100% Construction Documents (Permit Set) and Related Construction Work Plans	CAP Amendment Section 5.0	Sound Transit (Kiewit)
Materials submittals for primary material and equipment to be used	CAP Amendment Section 5.0	Sound Transit (Kiewit)
Construction Completion Report	CAP Amendment Section 6.0	Sound Transit (Kiewit)
Environmental Covenant for property to be acquired by Sound Transit	CAP Amendment Section 7.0 / PPCD Section VI.E	Sound Transit
Environmental Covenant for property to be acquired by City of Seattle	CAP Amendment Section 7.0 / CD Amendment Section XIX	City of Seattle
<i>(Listed for informational purposes*)</i> Environmental covenant alternative for remaining WSDOT property	<i>(Listed for informational purposes*)</i> CAP Amendment Section 7.0	<i>(Listed for informational purposes*)</i> WSDOT (*WSDOT is not subject to Exhibit C; Ecology will oversee implementation outside of CD Amendment/PPCD)
Financial Assurance	CAP Amendment Section 7.0	City of Seattle
Amended Operations and Maintenance Plan (OMP)	CAP Amendment Section 8.0	City of Seattle
Amended Compliance Monitoring Plan (CMP)	CAP Amendment Section 8.0	City of Seattle
Ongoing O&M of remedial action elements, e.g., landfill cover, landfill gas collection system, surface water management system outside of Subject Property (as defined in Sound Transit PPCD)	As provided in CMP/OMP	City of Seattle

Ongoing O&M of remedial action elements, e.g., landfill cover, surface water management system within Subject Property (as defined in Sound Transit PPCD)	As provided in OMP	Sound Transit
Ongoing Compliance Monitoring	As provided in CMP	City of Seattle

EXHIBIT E
to Sound Transit
Prospective Purchaser Consent Decree

**(Permits and Applicable or Relevant
and Appropriate Requirements (ARARs))**

EXHIBIT E

PERMITS AND APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARs) FWLE/SR 509 MIDWAY PROJECT MIDWAY LANDFILL

The cleanup action to be performed at the Site requires the following permits and environmental review processes. This Exhibit identifies regulations that must be considered. These elements are identified as of the date of this Prospective Purchaser Consent Decree. Additional elements may be identified in the future during project design and construction phases.

PERMITS

NPDES Construction Stormwater General Permit

The cleanup action requires coverage under the National Pollution Discharge Elimination System (NPDES) Construction Stormwater General Permit. Construction projects that disturb more than 1 acre must obtain coverage under the NPDES construction stormwater permit. The NPDES permit program is delegated to Washington State by the federal Environmental Protection Agency under the federal Clean Water Act, §1251 et seq. Ecology administers the federal NPDES regulation in Washington State. Pursuant to RCW 70.105D.090(2), Ecology has determined that MTCA actions are not exempt from the procedural requirements of an NPDES permit. The cleanup action will be conducted under the requirements of the NPDES Construction Stormwater General Permit No. WAR307947, which has already been issued by Ecology for the overall Sound Transit Federal Way Link Extension project, with companion Administrative Order Docket Number 16630.

Puget Sound Clean Air Agency

Puget Sound Clean Air Agency (PSCAA) is the lead agency for regulation of air emissions, pursuant to PSCAA Regulations I, II, and III. Under PSCAA Regulation I, A Notice of Construction is required to evaluate new sources, including landfill gas systems. PSCAA issued Order of Approval No. 11400 for operation of the landfill gas system at Midway Landfill. The Order of Approval defines minimum operating requirements for the landfill gas flare, minimum destruction requirements for non-methane organic compounds, notification requirements, and an operation and maintenance plan. Modified operation of the landfill gas system is anticipated during the cleanup action to limit the intrusion of ambient air, while maintaining the control and recovery of explosive gases. The landfill gas collection system will be modified during the cleanup action. The operations and maintenance manual for the landfill gas system should be amended as warranted for construction activities, and revised following completion of construction activities.

ARARS

Criteria for Municipal Solid Waste Landfills

Midway Landfill operated from 1966 to 1983. The landfill began operations before the implementation of Chapter 173-301 (Regulations Relating to Minimum Functional Standards for Solid Waste Handling) of the Washington Administrative Code (WAC) in 1972, and stopped accepting waste before the enactment of the federal Hazardous and Solid Waste Amendments Act in 1984. As the jurisdictional health department, Public Health – Seattle & King County (PHSKC), or its predecessor, was responsible for permitting the landfill in accordance with WAC 173-301. PHSKC no longer permits Midway Landfill.

The final landfill cover for Midway Landfill was constructed between October 1989 and May 1991, after the implementation of Chapter 173-304 WAC (Minimum Functional Standards for Solid Waste Handling) on November 27, 1985 and the repeal of Chapter 173-301 WAC in 1985. Chapter 173-304 WAC was last updated on October 4, 1988, and has been superseded by Chapter 173-351 WAC (Criteria for Municipal Solid Waste Landfills) and Chapter 173-350 WAC (Solid Waste Handling Standards).

Chapter 173-351 WAC (Criteria for Municipal Solid Waste Landfills) was implemented on April 9, 1994, following enactment of the federal Hazardous and Solid Waste Amendments Act in 1984 and the subsequent development of federal Subtitle D municipal solid waste landfill standards in October 1991. The closure criteria in WAC 173-351-500(1)(a) are relevant and appropriate requirements for all landfill disturbing activities during the cleanup action.

Operating, groundwater monitoring, post-closure care, and financial assurance requirements in WAC 173-351 are not specifically applicable as ARARs following disturbance of the landfill cover during the FWLE/SR 509 Midway project.

Dangerous Waste Regulations

Seattle Public Utilities reported that the Site was used primarily for disposal of demolition debris, wood waste and yard waste, although there was also the disposal of some industrial wastes at the site. Some hazardous wastes and industrial wastes, including approximately 2,000,000 gallons of bulk industrial liquids from a single source were placed in the landfill. After the enactment of the Resource Conservation and Recovery Act (RCRA) in 1976, PHKSC administrated a state-mandated screening process to eliminate the disposal of hazardous waste into the landfill in 1980.

Ecology has primacy for implementation of the federal Resource Conservation and Recovery Act (RCRA) in accordance with Chapter 173-303 WAC (Dangerous Waste Regulations). Any excavated waste that is potentially hazardous, based on the presence of free product, sealed or ruptured drums containing possible chemical waste, or other indicators of potential hazardous waste, shall be stabilized, isolated, and moved to a location for chemical characterization in accordance with WAC 173-303. Any waste designating as a Dangerous or Extremely Hazardous Waste shall be manifested and treated or disposed at a permitted Treatment, Storage and Disposal Facility (e.g., RCRA Subtitle C disposal facility).

Construction and Maintenance of Wells and Geotechnical Borings

Groundwater monitoring wells shall be decommissioned and constructed in accordance with Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Wells). WAC 173-160, Part Two addresses general requirements for resource protection wells and geotechnical soil borings.

Occupational Safety and Health Standards

Contractors shall develop site safety and health plans in accordance with WAC 296-62 and 29 CFR 1910.120 that address occupational safety for all pertinent work elements performed.

ARARs CHECKLIST

Potential Chemical-Specific Applicable or Appropriate and Relevant Regulations (ARARs)

- National Ambient Air Quality Standards [40 Code of Federal Regulations (CFR) 50]
- Federal Regulations Implementing the Toxic Substance Control Act (TSCA) (40 CFR 700-799, as applicable)
- State Dangerous Waste Regulations [Washington Administrative Code (WAC) 173-303]
- Washington State Minimal Functional Standards for Landfills (WAC 173-304-460)
- Puget Sound Clean Air Agency (PSCAA) Notice of Construction (Regulation I)
- PSCAA Emission Standards for Toxic Air Pollutants (Regulation II)
- King County Board of Health Regulations (Title 10)

Potential Action-Specific ARARs

- Federal Occupational Safety and Health Standards (29 CFR 1910.120)
- State Occupational Health Standards (WAC 296-62)
- Well Construction and Decommissioning Standards (WAC 173-160, Part Two)
- State Particulate Matter Standards (WAC 173-470)
- PSCAA Fugitive Dust Standards (Regulation I)
- National Pollution Discharge Elimination System (NPDES) Permit (WAC 173-220)
- State Waste Discharge General Permit Program (WAC 173-226)
- Industrial Waste Discharge to King County Sewer System [King County Code (KCC) 28.84.060]
- Highway Access Management Permit (WAC 468-51)

Potential City of Kent-Specific ARARs

- Grading permit
- Water Connection (Kent City Code 7.02)
- Sanitary Sewer Connection (Kent City Code 7.04)
- Electrical Service Connection (Kent City Code 7.10)
- Building Codes (Kent City Code Title 14, as applicable)
- Environmental Management (Kent City Code Title 11, as applicable)
- Noise Control (Kent City Code 8.05)