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**STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

SAGAMORE SPOKANE, LLC,

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 Sagamore Spokane, LLC (Sagamore) under this Decree is to (1) resolve the  
4 potential liability of Sagamore for contamination at the Hamilton Street Bridge Site (Site) arising  
5 from a release or threatened release of hazardous substances, in advance of Sagamore purchasing  
6 an ownership interest in the Site, and (2) facilitate the cleanup of a portion of the Site for  
7 redevelopment or reuse. This Decree requires Sagamore to improve and expand the existing  
8 cleanup action by converting the existing, Ecology-approved cover to a more extensive,  
9 protective and resilient hardscape cap. The improved hardscape cap will be constructed in  
10 concert with property redevelopment. Key enhanced cap components include: buildings,  
11 hardscapes, and paved driveways, parking and paved trails. These constructed elements will  
12 reduce stormwater infiltration in the vicinity of impacted soils, improve stormwater  
13 management, and prevent direct contact with contaminated soils. An enhanced stormwater  
14 management system will collect and convey stormwater from buildings, parking lots and other  
15 developed surfaces to the existing stormwater treatment swale northeast of the Site and a swale  
16 west of the limits of contamination reducing the net infiltration in the area of impacted soils.

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

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

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

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 Sagamore shall not challenge the jurisdiction or authority of the  
8 Attorney General and Ecology in any proceeding 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 the Model Toxics Control Act (MTCA), RCW 70A.305.

15 B. Authority is conferred upon the Washington State Attorney General by  
16 RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
17 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
18 to a more expeditious cleanup of hazardous substances. In addition, under  
19 RCW 70A.305.040(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 70A.305.040(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, and that the remedial actions  
5 required by this Decree are necessary to protect human health and the environment based on the  
6 planned future use of the Site as contemplated by the Parties under this Decree.

7 D. Sagamore has not been named a PLP for the Site, and Sagamore has certified  
8 under Section IX (Certification of Defendant) that it is not currently liable for the Site under  
9 MTCA. However, Sagamore has entered into a purchase agreement to acquire property located  
10 at 111 North Erie Street, Spokane, Washington, from Brown Properties, L.L.C., and River Bend  
11 Property Owners Association, current owners of the Purchase Property. The Purchase Property  
12 contains a portion of the Site. Sagamore will incur potential liability under  
13 RCW 70A.305.040(1)(a) at the time it acquires an interest in the Site for performing remedial  
14 actions or paying remedial costs incurred by Ecology or third parties resulting from past releases  
15 or threatened releases of hazardous substances at the Site. This Decree settles Sagamore's  
16 liability as described herein for this Site upon its purchase of the Purchase Property.

17 E. Ecology finds that this Decree will yield substantial new resources to facilitate  
18 further, enhanced cleanup of the Site by improving the existing remedial actions; will lead to a  
19 more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup  
20 standards established under RCW70A.305.030(2)(e) and WAC 173-340; will promote the public  
21 interest by facilitating the redevelopment or reuse of the Site; and will not be likely to contribute  
22 to the existing release or threatened release at the Site, interfere with remedial actions that may  
23 be needed at the Site, or increase health risks to persons at or in the vicinity of the Site. In  
24 addition, Ecology has determined that this Decree will provide a substantial public benefit by  
25 facilitating reuse and redevelopment of vacant, underutilized property formerly used as a  
26 manufactured gas plant. The proposed development is expected to provide approximately 300

1 new housing units in an area of urban renewal in Spokane’s University District. The Purchase  
2 Property is located within the City of Spokane Downtown University Zone, which “encourages  
3 a wide range of uses that support the ongoing development of an urban inner city university.”  
4 SMC 17C.124.030(C). This development will enhance the protection of human health and the  
5 environment, support the expansion of a pedestrian trail and further enhance the Spokane River  
6 corridor through the downtown Spokane area. Project buildings will be oriented in a way to  
7 promote visual and physical access to the river within the confines of the built environment,  
8 which includes the Hamilton Street Bridge.

9 F. Sagamore has agreed to undertake the actions specified in this Decree and  
10 consents to the entry of this Decree under MTCA.

11 G. This Decree has been subject to public notice and comment.

### 12 III. PARTIES BOUND

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

### 21 IV. DEFINITIONS

22 Unless otherwise specified herein, all definitions in RCW 70A.305.020 and  
23 WAC 173-340-200 shall control the meanings of the terms in this Decree.

24 A. Site: The Site is referred to as the Hamilton Street Bridge Site and is generally  
25 located at 111 North Erie Street, Spokane, Washington. Ecology has assigned Cleanup Site  
26 Identification Number 3509 to the Site. The Site is more particularly described in the Site

1 Diagram (Exhibit A). The Site constitutes a facility under RCW 70A.305.020(8). The Site is  
2 defined by where a hazardous substance, other than a consumer product in consumer use, has  
3 been deposited, stored, disposed of, or placed, or otherwise come to be located.

4 B. Purchase Property: Refers to the property located at 111 North Erie Street that  
5 Sagamore intends to purchase and redevelop. A legal description of the Purchase Property is  
6 attached as Exhibit B. The Purchase Property contains a portion of the Site.

7 C. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and  
8 Sagamore Spokane, LLC.

9 D. Defendant: Refers to Sagamore Spokane, LLC.

10 E. Sagamore: Refers to Sagamore Spokane, LLC.

11 F. District on the River Project: Refers to the buildings and associated infrastructure  
12 Sagamore plans to construct on the Purchase Property for purposes of redevelopment.

13 G. Consent Decree or Decree: Refers to this Prospective Purchaser Consent Decree  
14 and each of the exhibits to the Decree. All exhibits are integral and enforceable parts of this  
15 Prospective Purchaser Consent Decree. The terms “Consent Decree” or “Decree” shall include  
16 all exhibits to this Prospective Purchaser Consent Decree.

17 H. Hamilton Street Bridge Consent Decree: Refers to the Consent Decree entered in  
18 *State of Washington, Department of Ecology v. Avista Corp. and Burlington Northern & Santa*  
19 *Fe Railway Co.*, Spokane County Superior Court No. 02-2-05445-0, filed September 12, 2002,  
20 including all amendments thereto.

21 I. The Cover: Refers to the existing soil and crushed rock cap described in the  
22 February 2006 Cleanup Action Completion Report.

## 23 V. FINDINGS OF FACT

24 Ecology makes the following findings of fact without any express or implied admissions  
25 of such facts by Sagamore.

1           A.     The Site is located in Spokane, Washington. The Site is bounded by the Spokane  
2 River to the north, railway tracks to the south and west, and Erie Street to the east. A diagram of  
3 the Site is attached as Exhibit A.

4           B.     The Site previously consisted of three adjacent properties: the Burlington  
5 Northern and Santa Fe Railway Company (BNSF) property that was formerly leased by the  
6 American Tar Company (ATC); the former Spokane Manufactured Gas Plant (SGP) property  
7 previously owned by the Avista Corporation (formerly the Washington Water Power Company);  
8 and the riverfront property previously owned by the Chicago, Milwaukee & Saint Paul Railroad  
9 (CM&SPR). The Site also includes easements and limited parcels formerly owned by SGP that  
10 were deeded to the Washington State Department of Transportation (WSDOT) for the  
11 placement of footings for the Hamilton Street Bridge.

12           C.     Between approximately 1905 and 1948, the Site was used by SGP to manufacture  
13 coal gas and carbureted water gas. In 1948, the plant used a propane-air system for gas mixing,  
14 storage and distribution, which was used until natural gas was available. In 1956, SGP changed  
15 its name to Spokane Natural Gas Company. In 1958, the Spokane Natural Gas Company merged  
16 with the Washington Water Power Company (WWP). WWP stored and dispersed natural gas at  
17 the Site until 1962 or 1963.

18           D.     Richard Brown leased the SGP property from 1963 to 1978 and operated Brown  
19 Building Materials at the property. He purchased the SGP property in 1978, and also purchased  
20 portions of the Site previously owned by CM&SPR. In 1982 the property was deeded to Spokane  
21 River Properties, LP, a Washington limited partnership, with Mr. Richard Brown as the general  
22 partner.

23           E.     BNSF leased their property for use as a coal tar processing operation. This  
24 operation is believed to have been started concurrently with the SGP in approximately 1905, and  
25 continued to formulate or distribute products until 1967. The C.G. Betts Company operated the  
26 coal tar processing operation until the early 1930s, when operations were taken over by ATC.



1 The operation produced a variety of hydrocarbon-based products and intermediaries including  
2 roofing tar, boat pitch, post paint and naphthalene, among others. ATC leased the property from  
3 BNSF until 1967. Mr. Richard Brown began leasing this property from BNSF in 1968.

4 F. In 1987, the United States Environmental Protection Agency (EPA) completed a  
5 preliminary assessment of both the SGP and the BNSF properties and recommended additional  
6 investigation of the BNSF property. EPA conducted a Comprehensive Environmental Response,  
7 Compensation and Liability Act (CERCLA) screening site investigation of the BNSF property  
8 in 1988 and of the SGP property in 1995. EPA referred both properties to Ecology for  
9 consideration.

10 G. An environmental investigation of the Site was conducted by WSDOT in the fall  
11 of 1997. The results of this work are presented in the report: *Focused Remedial Investigation  
12 and Feasibility Study Report — SR290 Southriver Drive Alignment Report*. The report was  
13 prepared by EMCON for WSDOT, August 28, 1998. The study showed the presence of coal tar  
14 waste covering a 2- to 3-acre area and extending to over 40 feet in depth. The study documented  
15 soil contamination by various hydrocarbons, particularly polycyclic aromatic hydrocarbons  
16 (PAHs).

17 H. On December 18, 1998, Ecology provided a letter to WSDOT summarizing  
18 previous investigations, hazardous substance releases, and recommendations for additional  
19 investigation. At that time the estimated volume of contaminated soils on the Site was over  
20 92,000 cubic yards.

21 I. Avista has performed historical studies and field investigative studies of the  
22 former SGP property. The investigation results further defined the lateral boundaries of the soil  
23 contamination and showed that the soil contamination did not adversely affect groundwater  
24 outside the limits of soil contamination. The results also showed that the Site did not adversely  
25 impact the Spokane River sediments and surface water. These studies are presented in the  
26 following documents:

- 1 • *Supplemental Investigation — Former Spokane Manufactured Gas Plant*  
2 *Report*. Prepared by Landau Associates, Inc., for the Washington Water  
3 Power Company, January 7, 1999.
- 4 • *Historical Information Study — Vicinity of Former Spokane Manufactured*  
5 *Gas Plant Property Report*. Prepared by Landau Associates Inc. for  
6 Washington Water Power Company, October 23, 1998.
- 7 • *Preliminary Site Investigation — Former Spokane Manufactured Gas Plant*.  
8 Prepared by Landau Associates, Inc., for the Washington Water Power  
9 Company, February 9, 1998.

10 J. In 1998, BNSF performed a field investigation at the BNSF property leased by  
11 ATC. Contaminants related to coal tar were found in soil samples, but were not detected in  
12 groundwater samples from property monitoring wells. The results of the study are presented in  
13 the following document:

- 14 • *Focused Site Assessment, Former American Tar Company Site, Spokane,*  
15 *Washington*. Prepared by GeoEngineers for BNSF, April 30, 1999.

16 K. Avista conducted a second supplemental investigative effort at the Site in 1999.  
17 Results showed contaminants associated with manufactured gas plant processes and/or coal tar  
18 processing were present in soil samples as deep as 80 feet below ground surface. These  
19 contaminants include volatile organic compounds (VOCs) and semi-volatile organic compounds  
20 (sVOCs), polycyclic aromatic hydrocarbons (PAHs), and metals. Relatively few of these  
21 hazardous substances were detected in groundwater samples suggesting they were undergoing  
22 degradation through physical, chemical, and biological processes. The investigation again  
23 demonstrated the Spokane River was not being adversely impacted by the Site.

24 L. In certified correspondence dated January 15, 1999, Ecology notified Avista and  
25 BNSF of Ecology's preliminary findings of potential liability and requested comment on those  
26 findings. On June 11, 1999, Ecology notified Avista and BNSF of their status as "potentially  
liable persons" under RCW 70.105D.040 (now RCW 70A.305.040).

M. In certified correspondence dated June 11, 1999, Ecology notified Spokane River  
Properties, LP of Ecology's preliminary finding of potential liability and requested comment on

1 these findings. On September 10, 1999, Ecology notified Spokane River Properties, LP, of its  
2 status as a “potentially liable person” under RCW 70.105D.040 (now RCW 70A.305.040).

3 N. Avista and BNSF entered into an Agreed Order with Ecology on March 13, 2000,  
4 to complete a Remedial Investigation (RI) and a focused Feasibility Study (FS). The RI  
5 characterized the soil and groundwater contamination. The FS examined cleanup alternatives  
6 that protect human health and the environment. Remedial alternatives for both groundwater and  
7 soils were analyzed to determine which combination of cleanup alternatives would be most  
8 appropriate for the Site. Five alternatives were evaluated based on MTCA criteria after an initial  
9 screening. Based upon the results of the RI and the FS, Ecology prepared a Draft Cleanup Action  
10 Plan (DCAP). The DCAP was made available for public review and comment and finalized on  
11 August 10, 2001.

12 O. BNSF and Avista entered into a Consent Decree with the State of Washington in  
13 2002, *State of Washington, Department of Ecology v. Avista Corp. and Burlington Northern &*  
14 *Santa Fe Railway Co.*, No. 02-2-05445-0. The Consent Decree was filed in Spokane County  
15 Superior Court and was the mechanism for BNSF and Avista to implement the CAP.

16 P. The Cleanup Action Plan (CAP) for the Site required BNSF and Avista to place  
17 a minimum 2-foot thick soil cap over the exposed, contaminated soils on the ATC property to  
18 prevent direct contact. Two structures on the ATC property were removed. The soil capped area  
19 is approximately 8,500 square feet and located on the western portion of the ATC property.

20 Q. The CAP also required BNSF and Avista to place a minimum of 6 inches of  
21 crushed rock surface fill on the SGP property as a direct contact barrier and to grade for rerouting  
22 of stormwater to swales outside of the areas of contamination, abandon dry wells, and construct  
23 streambank bioengineering on the Spokane River shoreline.

24 R. Spokane River Properties recorded a Restrictive Covenant on its property with  
25 Spokane County. The covenant was required because residual contamination in soil and  
26 groundwater remained at the Site above MTCA cleanup levels developed for the site. The

1 Restrictive Covenant prohibits groundwater to be taken from the site and any activity that would  
2 expose the residual contaminated soil or groundwater is prohibited without prior written  
3 approval of Ecology. The Restrictive Covenant requires that any buildings or other  
4 improvements be constructed in a manner that addresses and mitigates potential vapor build-up  
5 due to remaining contamination.

6 S. BNSF and Avista implemented the CAP and continue to conduct periodic  
7 monitoring to ensure the cleanup actions are functioning as intended and remain protective of  
8 human health and the environment.

9 T. The existing Hamilton Street Bridge Consent Decree, No. 02-2-05445-0, is being  
10 amended to reflect Sagamore's development and associated cleanup. Consent Decree  
11 No. 02-2-05445-0, as amended, will include the same CAP Amendment as provided in Exhibit C  
12 to this Decree.

13 U. Sagamore proposes to redevelop a portion of the Site as the District on the River  
14 Project. The Project is expected to provide approximately 300 new housing units and further  
15 enhance the Spokane River pedestrian corridor through downtown Spokane.

16 V. The Site has been used for industrial purposes and the City of Spokane  
17 Comprehensive Plan Map designates the Purchase Property and surrounding area as both  
18 General Commercial and Heavy Industrial. High density residential development is authorized  
19 in the Heavy Industrial Zone if located within 1/4 mile of the Spokane River and within the  
20 General Commercial Zone.

21 W. On April 23, 2019, Sagamore entered into a purchase and sale agreement with  
22 Brown Properties, L.L.C., and River Bend Property Owners Association, the current owners of  
23 the Purchase Property.

24 X. The Purchase Property consists of approximately 13.16 acres and contains a  
25 portion of the Site.

26

1 Y. Sagamore proposes to complete additional remedial actions at the Site and  
2 redevelop the Purchase Property for residential use, consistent with MTCA and its implementing  
3 regulations, WAC 173-340, and applicable City of Spokane zoning provisions and  
4 comprehensive plan designations.

5 Z. As documented in the Cleanup Action Plan (CAP) Amendment (Exhibit C) and  
6 in Section VI below, the cleanup action to be implemented at the Site includes hardscape  
7 capping, rock surfacing enhancement, vapor assessment and mitigation, stormwater  
8 management, and institutional controls.

## 9 VI. WORK TO BE PERFORMED

10 This Decree contains a program designed to protect human health and the environment  
11 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
12 or from the Site.

13 A. Sagamore shall implement the requirements of the CAP Amendment (Exhibit C)  
14 and the Scope of Work and Schedule (Exhibit D). The work to be performed under the CAP  
15 Amendment includes creating impervious caps over significant portions of the Site that will  
16 prevent stormwater infiltration and direct contact with impacted soils. The work will also include  
17 enhancing the existing stormwater management system by conveying stormwater to areas  
18 outside the area of contamination. Sagamore will produce construction documentation under  
19 WAC 173-340-400, in accordance with the Scope of Work and Schedule (Exhibit D). Sagamore  
20 will produce and comply with an addendum to the Operations and Maintenance Plan for the Site  
21 and an addendum to the Compliance Monitoring Plan for the Site.

22 B. Sagamore shall coordinate the work it will perform under this Decree with the  
23 work that BNSF and Avista have conducted and continue to conduct under the Hamilton Street  
24 Bridge Consent Decree. Sagamore will provide access to the Purchase Property to BNSF and  
25 Avista to facilitate BNSF's and Avista's obligations under the Hamilton Street Bridge Consent  
26

1 Decree with respect to the Compliance Monitoring Plan for the Site and the Operations and  
2 Maintenance Plan for the Site.

3 C. In the event BNSF and Avista both fail to timely and properly complete work  
4 related to ongoing compliance monitoring or operations and maintenance of the Site remedy,  
5 Ecology shall provide written notice to Sagamore that BNSF and Avista are unable to complete  
6 the work. Upon receipt of such notice, Sagamore shall meet with Ecology to determine a  
7 schedule for necessary compliance monitoring or operations and maintenance of the Site remedy.  
8 Sagamore's obligation to conduct that ongoing compliance monitoring or operations and  
9 maintenance of the Site remedy is limited to Site work necessary to protect the remedial actions  
10 Sagamore is required to perform under the CAP Amendment and Scope of Work.

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

17 E. Except in the case of an emergency, Sagamore agrees not to perform any remedial  
18 actions outside the scope of this Decree unless the Parties agree to modify the Scope of Work  
19 and Schedule (Exhibit D) to cover these actions. In the case of an emergency, Sagamore must  
20 notify Ecology of the event and remedial action(s) as soon as practical, but no later than twenty-  
21 four (24) hours after discovery of the emergency. All work conducted by Sagamore under this  
22 Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.

23 F. All plans or other deliverables submitted by Sagamore for Ecology's review and  
24 approval under the Scope of Work and Schedule (Exhibit D) shall, upon Ecology's approval,  
25 become integral and enforceable parts of this Decree.

26

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Christer Loftenius  
4 4601 N. Monroe  
5 Spokane, WA 99205-1295  
6 (509) 329-3543

7 The project coordinator for Sagamore is:

8 Dave Cook, LG, CPG  
9 Aspect Consulting  
10 710 2nd Avenue, Suite 550  
11 Seattle, WA 98104  
12 (206) 838-5837

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

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

23 **VIII. PERFORMANCE**

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

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

1 All construction work performed pursuant to this Decree shall be under the direct  
2 supervision of a professional engineer or a qualified technician under the direct supervision of a  
3 professional engineer. The professional engineer must be registered by the State of Washington,  
4 except as otherwise provided for by RCW 18.43.130.

5 Any documents submitted containing geologic, hydrogeologic, or engineering work shall  
6 be under the seal of an appropriately licensed professional as required by RCW 18.43  
7 and 18.220.

8 Sagamore shall notify Ecology in writing of the identity of any engineer(s) and  
9 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms  
10 of this Decree, in advance of their involvement at the Site.

#### 11 **IX. CERTIFICATION OF DEFENDANT**

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

16 Sagamore represents and certifies that it did not cause or contribute to a release or  
17 threatened release of hazardous substances at the Site and is not otherwise currently potentially  
18 liable for the Site under RCW 70A.305.040(1).

#### 19 **X. ACCESS**

20 Ecology or any Ecology authorized representative shall have access to enter and freely  
21 move about all property at the Site that Sagamore either owns, controls, or has access rights to  
22 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and  
23 contracts related to the work being performed pursuant to this Decree; reviewing Sagamore's  
24 progress in carrying out the terms of this Decree; conducting such tests or collecting such  
25 samples as Ecology may deem necessary; using a camera, sound recording, or other documentary  
26 type equipment to record work done pursuant to this Decree; and verifying the data submitted to



1 Ecology by Sagamore. Sagamore shall make all reasonable efforts to secure access rights for  
2 those properties within the Site not owned or controlled by Sagamore where remedial activities  
3 or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized  
4 representative shall give reasonable notice before entering any Site property owned or controlled  
5 by Sagamore unless an emergency prevents such notice. All Parties who access the Site pursuant  
6 to this section shall comply with any applicable health and safety plan(s). Ecology employees  
7 and their representatives shall not be required to sign any liability release or waiver as a condition  
8 of Site property access.

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

10 With respect to the implementation of this Decree, Sagamore shall make the results of  
11 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
12 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in  
13 both printed and electronic formats in accordance with Section XII (Progress Reports),  
14 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any  
15 subsequent procedures specified by Ecology for data submittal.

16 If requested by Ecology, Sagamore shall allow Ecology and/or its authorized  
17 representative to take split or duplicate samples of any samples collected by Sagamore pursuant  
18 to the implementation of this Decree. Sagamore shall notify Ecology seven (7) days in advance  
19 of any sample collection or work activity at the Site. Ecology shall, upon request, allow  
20 Sagamore and/or its authorized representative to take split or duplicate samples of any samples  
21 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does  
22 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section X  
23 (Access), Ecology shall notify Sagamore prior to any sample collection activity unless an  
24 emergency prevents such notice.

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

## 4 XII. PROGRESS REPORTS

5 Sagamore shall submit to Ecology written monthly Progress Reports that describe the  
6 actions taken during the previous month to implement the requirements of this Decree.  
7 Following implementation of the active components of the CAP Amendment, including the  
8 redevelopment of the Purchase Property, Sagamore shall submit a final Progress Report at the  
9 conclusion of the redevelopment and implementation of the active components of the CAP  
10 Amendment. The Progress Reports shall include the following:

- 11 A. A list of on-site activities that have taken place during the month;
- 12 B. Detailed description of any deviations from required tasks not otherwise  
13 documented in project plans or amendment requests;
- 14 C. Description of all deviations from the Scope of Work and Schedule (Exhibit D)  
15 during the current month and any planned deviations in the upcoming month;
- 16 D. For any deviations from the schedule, a plan for recovering lost time and  
17 maintaining compliance with the schedule;
- 18 E. All raw data (including laboratory analyses) received by Defendant during the  
19 past month and an identification of the source of the sample; and
- 20 F. A list of deliverables for the upcoming month if different from the schedule.

21 All Progress Reports shall be submitted by the tenth (10th) day of the month in which  
22 they are due after the effective date of this Decree. Unless otherwise specified by the Site  
23 Manager, Progress Reports and any other documents submitted pursuant to this Decree shall be  
24 sent by certified mail, return receipt requested, to Ecology's project coordinator.

1 **XIII. RETENTION OF RECORDS**

2 During the pendency of this Decree, and for ten (10) years from the date this Decree is  
3 no longer in effect as provided in Section XXIX (Duration of Decree), Sagamore shall preserve  
4 all records, reports, documents, and underlying data in its possession relevant to the  
5 implementation of this Decree and shall insert a similar record retention requirement into all  
6 contracts with project contractors and subcontractors. Upon request of Ecology, Sagamore shall  
7 make all records available to Ecology and allow access for review within a reasonable time.

8 Nothing in this Decree is intended by Sagamore 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 Sagamore withholds any requested records based on an  
11 assertion of privilege, Sagamore shall provide Ecology with a privilege log specifying the  
12 records withheld and the applicable privilege. No Site-related data collected pursuant to this  
13 Decree shall be considered privileged.

14 **XIV. TRANSFER OF INTEREST IN PROPERTY**

15 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest  
16 in any portion of the Site shall be consummated by Sagamore without provision for continued  
17 operation and maintenance of any containment system, treatment system, and/or monitoring  
18 system installed or implemented pursuant to this Decree.

19 Prior to Sagamore’s transfer of any interest in all or any portion of the Site, and during  
20 the effective period of this Decree, Sagamore shall provide a copy of this Decree to any  
21 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
22 least thirty (30) days prior to any transfer, Sagamore shall notify Ecology of said transfer. Upon  
23 transfer of any interest, Sagamore shall notify all transferees of the restrictions on the activities  
24 and uses of the property under this Decree and incorporate any such use restrictions into the  
25 transfer documents.

1 **XV. RESOLUTION OF DISPUTES**

2 A. In the event that Defendant elects to invoke dispute resolution, Sagamore must  
3 utilize the procedure set forth below.

4 1. Upon the triggering event (receipt of Ecology’s project coordinator’s  
5 written decision or an itemized billing statement), Sagamore has fourteen (14) calendar  
6 days within which to notify Ecology’s project coordinator in writing of its dispute  
7 (“Informal Dispute Notice”).

8 2. The Parties’ project coordinators shall then confer in an effort to resolve  
9 the dispute informally. The Parties shall informally confer for up to fourteen (14)  
10 calendar days from receipt of the Informal Dispute Notice. If the project coordinators  
11 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar  
12 days Ecology’s project coordinator shall issue a written decision (“Informal Dispute  
13 Decision”) stating: the nature of the dispute; Sagamore’s position with regard to the  
14 dispute; Ecology’s position with regard to the dispute; and the extent of resolution  
15 reached by informal discussion.

16 3. Sagamore may then request regional management review of the dispute.  
17 This request (“Formal Dispute Notice”) must be submitted in writing to the Eastern  
18 Regional Toxics Cleanup Section Manager within seven (7) calendar days of receipt of  
19 Ecology’s Informal Dispute Decision. The Formal Dispute Notice shall include a written  
20 statement of dispute setting forth: the nature of the dispute; the disputing Party’s position  
21 with respect to the dispute; and the information relied upon to support its position.

22 4. The Section Manager shall conduct a review of the dispute and shall issue  
23 a written decision regarding the dispute (“Decision on Dispute”) within thirty (30)  
24 calendar days of receipt of the Formal Dispute Notice.

25 5. If Sagamore finds Ecology’s Eastern Regional Section Manager’s  
26 decision unacceptable, Sagamore may then request final management review of the

1 decision. This request (“Final Review Request”) shall be submitted in writing to the  
2 Toxics Cleanup Program Manager within seven (7) calendar days of Sagamore’s receipt  
3 of the Decision on Dispute. The Final Review Request shall include a written statement  
4 of dispute setting forth: the nature of the dispute; the disputing Party’s position with  
5 respect to the dispute; and the information relied upon to support its position.

6 6. Ecology’s Toxics Cleanup Program Manager shall conduct a review of  
7 the dispute and shall issue a written decision regarding the dispute (“Final Decision on  
8 Dispute”) within thirty (30) calendar days of receipt of the Final Review Request. The  
9 Toxics Cleanup Program Manager’s decision shall be Ecology’s final decision on the  
10 disputed matter.

11 B. If Ecology’s Final Decision on Dispute is unacceptable to Sagamore, Sagamore  
12 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge  
13 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under  
14 this Decree. In the event Sagamore presents an issue to the Court for review, the Court shall  
15 review the action or decision of Ecology on the basis of whether such action or decision was  
16 arbitrary and capricious and render a decision based on such standard of review, under  
17 RCW 70A.305.070.

18 C. The Parties agree to only utilize the dispute resolution process in good faith and  
19 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
20 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,  
21 the other Party may seek sanctions.

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

25 E. In case of a dispute, failure to either proceed with the work required by this  
26 Decree or timely invoke dispute resolution may result in Ecology’s determination that

1 insufficient progress is being made in preparation of a deliverable, and may result in Ecology  
2 undertaking the work under Section XXVI (Implementation of Remedial Action).

### 3 **XVI. AMENDMENT OF DECREE**

4 The project coordinators may agree to minor changes to the work to be performed  
5 without formally amending this Decree. Minor changes will be documented in writing by  
6 Ecology.

7 Substantial changes to the work to be performed shall require formal amendment of this  
8 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
9 that is entered by the Court, or by order of the Court. Ecology will provide its written consent to  
10 a formal amendment only after public notice and opportunity to comment on the formal  
11 amendment. Such amendment shall become effective upon entry by the Court. Agreement to  
12 amend the Decree shall not be unreasonably withheld by any Party.

13 When requesting a change to the Decree, Sagamore shall submit a written request for  
14 amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing  
15 in a timely manner after the written request for amendment is received. If the amendment to the  
16 Decree is a substantial change, Ecology will provide public notice and opportunity for comment.  
17 Reasons for the disapproval of a proposed amendment to the Decree shall be stated in writing.  
18 If Ecology does not agree to a proposed amendment, the disagreement may be addressed through  
19 the dispute resolution procedures described in Section XV (Resolution of Disputes).

### 20 **XVII. EXTENSION OF SCHEDULE**

21 A. An extension of schedule shall be granted only when a request for an extension  
22 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
23 deadline for which the extension is requested, and good cause exists for granting the extension.

24 All extensions shall be requested in writing. The request shall specify:

- 25 1. The deadline that is sought to be extended;
- 26 2. The length of the extension sought;

1           3.     The reason(s) for the extension; and

2           4.     Any related deadline or schedule that would be affected if the extension  
3     were granted.

4           B.     The burden shall be on Sagamore to demonstrate to the satisfaction of Ecology  
5     that the request for such extension has been submitted in a timely fashion and that good cause  
6     exists for granting the extension. Good cause may include, but may not be limited to:

7           1.     Circumstances beyond the reasonable control and despite the due  
8     diligence of Sagamore including delays caused by unrelated third parties or Ecology,  
9     such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
10    documents submitted by Sagamore; or

11          2.     Acts of God, including fire, flood, blizzard, extreme temperatures, storm,  
12    or other unavoidable casualty; or

13          3.     Endangerment as described in Section XVIII (Endangerment).

14          However, neither increased costs of performance of the terms of this Decree nor changed  
15    economic circumstances shall be considered circumstances beyond the reasonable control of  
16    Sagamore.

17          C.     Ecology shall act upon any written request for extension in a timely fashion.  
18    Ecology shall give Sagamore written notification of any extensions granted pursuant to this  
19    Decree. A requested extension shall not be effective until approved by Ecology or, if required,  
20    by the Court. Unless the extension is a substantial change, it shall not be necessary to amend this  
21    Decree pursuant to Section XVI (Amendment of Decree) when a schedule extension is granted.

22          D.     An extension shall only be granted for such period of time as Ecology determines  
23    is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety  
24    (90) days only as a result of:

25          1.     Delays in the issuance of a necessary permit which was applied for in a  
26    timely manner;

2. Other circumstances deemed exceptional or extraordinary by Ecology; or
3. Endangerment as described in Section XVIII (Endangerment).

### **XVIII. ENDANGERMENT**

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

In the event Sagamore determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Sagamore may cease such activities. Sagamore shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Sagamore shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Sagamore's cessation of activities, it may direct Sagamore to resume such activities.

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

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

### **XIX. COVENANT NOT TO SUE**

A. Covenant Not to Sue: In consideration of Sagamore's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions



1 against Sagamore regarding the release or threatened release of hazardous substances covered  
2 by this Decree.

3 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
4 and those hazardous substances that Ecology knows are located at the Site as of the date of entry  
5 of this Decree. This Decree does not cover any other hazardous substance or area. Ecology  
6 retains all of its authority relative to any substance or area not covered by this Decree. In addition,  
7 this Decree does not settle any potential liability Sagamore may incur for acquiring any further  
8 interest in the Site not addressed under this Decree.

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

- 10 1. Criminal liability;
- 11 2. Liability for damages to natural resources;
- 12 3. Any Ecology action, including cost recovery, against PLPs not a party to  
13 this Decree.

14 If factors not known at the time of entry of this Decree are discovered and present a  
15 previously unknown threat to human health or the environment, the Court shall amend this  
16 Covenant Not to Sue.

17 B. Reopeners: Ecology specifically reserves the right to institute legal or  
18 administrative action against Defendant to require it to perform additional remedial actions at  
19 the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050 under any of  
20 the following circumstances:

- 21 1. Upon Sagamore's failure to meet the requirements of this Decree;
- 22 2. Failure of the remedial action to meet the cleanup standards identified in  
23 the CAP Amendment (Exhibit C);
- 24 3. Upon Ecology's determination that remedial action beyond the terms of  
25 this Decree is necessary to abate an imminent and substantial endangerment to human  
26 health or the environment;



1 (Restrictive) Covenant with the office of the Spokane County Auditor as detailed in the Scope  
2 of Work and Schedule (Exhibit D). The Environmental (Restrictive) Covenant shall replace the  
3 existing Restrictive Convent recorded in 2004. The Environmental (Restrictive) Covenant shall  
4 restrict future activities and uses of the Site as required by the CAP Amendment and agreed to  
5 by Ecology and Sagamore. Sagamore shall provide Ecology with the original recorded  
6 Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

## 7 **XXII. FINANCIAL ASSURANCES**

8 Sagamore proposes to purchase the Purchase Property, which contains a portion of the  
9 Site, redevelop the Purchase Property as the District on the River Project, and enhance the current  
10 remedial action by providing a hardscape cap and implementing an enhanced stormwater  
11 management system as further described in the CAP Amendment. To ensure that the existing  
12 remedy is not adversely impacted, Sagamore will provide financial assurance in the form of a  
13 Letter of Credit for the cost of replacing the Cover on the Site. Sagamore shall provide a cost  
14 estimate for the cost of replacing the Cover on the Site for Ecology review within thirty (30)  
15 days of the effective date of this Decree. The Letter of Credit shall be in a form acceptable to  
16 Ecology and shall be in the amount of the Ecology-approved cost estimate. Proof of Financial  
17 Assurance for the Cover shall be provided to Ecology within thirty (30) days of the agency's  
18 approval of the cost estimate.

19 Should Sagamore not complete construction of the District on the River Project after  
20 impacting the Cover, Ecology may demand that Sagamore restore the Cover to pre-construction  
21 state. Should Sagamore fail to complete restoration of the Cover within sixty (60) days of  
22 Ecology's demand or should Sagamore fail to immediately abate a threat of release to the  
23 environment, the Letter of Credit may be drawn on and the funds utilized to restore the Cover.

24 Sagamore shall notify Ecology, BNSF, and Avista upon completion of construction of  
25 the District on the River Project. Upon Ecology's determination that the construction of the  
26

1 District on the River Project has been completed, the Letter of Credit for the Cover shall be  
2 canceled.

3 Pursuant to WAC 173-340-440(11), Sagamore shall maintain sufficient and adequate  
4 financial assurance mechanisms to cover all costs associated with Sagamore's requirements and  
5 obligations in Exhibits C (CAP Amendment) and D (Scope of Work and Schedule), as well as  
6 operation and maintenance of the remedial action, including institutional controls, compliance  
7 monitoring, and corrective measures. Within sixty (60) days of the effective date of this Decree,  
8 Sagamore shall submit to Ecology for review and approval an estimate of the costs that it will  
9 incur in carrying out the terms of this Decree, including operation and maintenance, and  
10 compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost  
11 estimate, Sagamore shall provide proof of financial assurances sufficient to cover all such costs  
12 in a form acceptable to Ecology.

13 Sagamore shall adjust the financial assurance coverage and provide Ecology's project  
14 coordinator with documentation of the updated financial assurance for:

15 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of  
16 this Decree; or if applicable, the modified anniversary date established in accordance with this  
17 section.

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

### 24 **XXIII. INDEMNIFICATION**

25 Sagamore agrees to indemnify and save and hold the State of Washington, its employees,  
26 and agents harmless from any and all claims or causes of action (1) for death or injuries to

1 persons, or (2) for loss or damage to property to the extent arising from or on account of acts or  
2 omissions of Sagamore, its officers, employees, agents, or contractors in entering into and  
3 implementing this Decree. However, Sagamore shall not indemnify the State of Washington nor  
4 save nor hold its employees and agents harmless from any claims or causes of action to the extent  
5 arising out of the negligent acts or omissions of the State of Washington, or the employees or  
6 agents of the State, in entering into or implementing this Decree.

#### 7 **XXIV. COMPLIANCE WITH APPLICABLE LAWS**

8 A. *Applicable Law.* All actions carried out by Sagamore pursuant to this Decree shall  
9 be done in accordance with all applicable federal, state, and local requirements, including  
10 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. The permits  
11 or other federal, state, or local requirements that the agency has determined are applicable and  
12 that are known at the time of entry of this Decree have been identified in the CAP Amendment  
13 (Exhibit C). Sagamore has a continuing obligation to identify additional applicable federal, state,  
14 and local requirements which apply to actions carried out pursuant to this Decree, and to comply  
15 with those requirements. As additional federal, state, and local requirements are identified by  
16 Ecology or Sagamore, Ecology will document in writing if they are applicable to actions carried  
17 out pursuant to this Decree, and the Defendant(s) must implement those requirements.

18 B. *Relevant and Appropriate Requirements.* All actions carried out by Sagamore  
19 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements  
20 identified by Ecology. The relevant and appropriate requirements that Ecology has determined  
21 apply have been identified in the CAP Amendment (Exhibit C). If additional relevant and  
22 appropriate requirements are identified by Ecology or Sagamore, Ecology will document in  
23 writing if they are applicable to actions carried out pursuant to this Decree and Sagamore must  
24 implement those requirements.

25 C. Pursuant to RCW 70A.305.090(1), Sagamore may be exempt from the procedural  
26 requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws

1 requiring or authorizing local government permits or approvals. However, Sagamore shall  
2 comply with the substantive requirements of such permits or approvals. For permits and  
3 approvals covered under RCW 70A.305.090(1) that have been issued by local government, the  
4 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local  
5 government permits and/or approvals. The exempt permits or approvals and the applicable  
6 substantive requirements of those permits or approvals, as they are known at the time of entry of  
7 this Decree, have been identified in the CAP Amendment (Exhibit C).

8 D. Sagamore has a continuing obligation to determine whether additional permits or  
9 approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial  
10 action under this Decree. In the event either Sagamore or Ecology determines that additional  
11 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the  
12 remedial action under this Decree, it shall promptly notify the other Party of this determination.  
13 Ecology shall determine whether Ecology or Sagamore shall be responsible to contact the  
14 appropriate state and/or local agencies. If Ecology so requires, Sagamore shall promptly consult  
15 with the appropriate state and/or local agencies and provide Ecology with written documentation  
16 from those agencies of the substantive requirements those agencies believe are applicable to the  
17 remedial action. Ecology shall make the final determination on the additional substantive  
18 requirements that must be met by Sagamore and on how Sagamore must meet those  
19 requirements. Ecology shall inform Sagamore in writing of these requirements. Once established  
20 by Ecology, the additional requirements shall be enforceable requirements of this Decree.  
21 Sagamore shall not begin or continue the remedial action potentially subject to the additional  
22 requirements until Ecology makes its final determination.

23 E. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the  
24 exemption from complying with the procedural requirements of the laws referenced in  
25 RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary  
26 for the state to administer any federal law, the exemption shall not apply and Sagamore shall

1 comply with both the procedural and substantive requirements of the laws referenced in  
2 RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

### 3 **XXV. REMEDIAL ACTION COSTS**

4 Sagamore shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
5 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or  
6 its contractors for, or on, the Site under RCW 70A.305 pursuant to this Decree, including  
7 remedial actions and Decree preparation, negotiation, oversight, and administration. These costs  
8 shall include work performed both prior to and subsequent to the entry of this Decree. Ecology's  
9 costs shall include costs of direct activities and support costs of direct activities as defined in  
10 WAC 173-340-550(2). Ecology has accumulated \$37,052.78 in remedial action costs related to  
11 this Decree as of July 31, 2020. Payment for this amount shall be submitted within thirty (30)  
12 days of the effective date of this Decree. For all costs incurred subsequent to July 31, 2020,  
13 incurred pursuant to this Decree, Sagamore shall pay the required amount within thirty (30) days  
14 of receiving from Ecology an itemized statement of costs that includes a summary of costs  
15 incurred, an identification of involved staff, and the amount of time spent by involved staff  
16 members on the project. A general statement of work performed will be provided upon request.  
17 Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to  
18 pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will  
19 result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

20 In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a  
21 collection agency and/or, pursuant to RCW 70A.305.060, Ecology has authority to recover  
22 unreimbursed remedial action costs by filing a lien against real property subject to the remedial  
23 actions.

### 24 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

25 If Ecology determines that Sagamore has failed to make sufficient progress or failed to  
26 implement the remedial action, in whole or in part, Ecology may, after notice to Sagamore,

1 perform any or all portions of the remedial action or at Ecology's discretion allow Sagamore  
2 opportunity to correct. In an emergency, Ecology is not required to provide notice to Sagamore,  
3 or an opportunity for dispute resolution. Sagamore shall reimburse Ecology for the costs of doing  
4 such work in accordance with Section XXV (Remedial Action Costs).

5 Except where necessary to abate an emergency situation or where required by law,  
6 Sagamore shall not perform any remedial actions at the Site outside those remedial actions  
7 required by this Decree, unless Ecology concurs, in writing, with such additional remedial  
8 actions pursuant to Section XVI (Amendment of Decree). In the event of an emergency, or where  
9 actions are taken as required by law, Sagamore must notify Ecology in writing of the event and  
10 remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24)  
11 hours of the discovery of the event.

#### 12 **XXVII. PERIODIC REVIEW**

13 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
14 agree to review the progress of remedial action at the Site, and to review the data accumulated  
15 as a result of monitoring the Site as often as is necessary and appropriate under the  
16 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
17 Parties shall confer regarding the status of the Site and the need, if any, for further remedial  
18 actions under this Decree. Sagamore shall coordinate with BNSF and Avista to submit a report  
19 to Ecology that documents whether human health and the environment are being protected based  
20 on the factors set forth in WAC 173-340-420(4). Under Section XIX (Covenant Not to Sue),  
21 Ecology reserves the right to require further remedial action at the Site under appropriate  
22 circumstances, consistent with this Decree. This provision shall remain in effect for the duration  
23 of this Decree.

#### 24 **XXVIII. PUBLIC PARTICIPATION**

25 Ecology shall maintain the responsibility for public participation at the Site. However,  
26 Defendant shall cooperate with Ecology, and shall:



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

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

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

18           D.     When requested by Ecology, arrange and/or continue an information repository  
19 at the following location:

20                               Ecology's Eastern Regional Office  
21                               4601 North Monroe  
                                      Spokane, WA 99205

22 A copy of all documents related to this Site shall be maintained in the repository at Ecology's  
23 Eastern Regional Office in Spokane, Washington.

24   **XXIX. DURATION OF DECREE**

25           The remedial program required pursuant to this Decree shall be maintained and continued  
26 until Sagamore has received written notification from Ecology that the requirements of this

1 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed  
2 by the Court. When dismissed, Section XIII (Retention of Records), Section XIX (Covenant Not  
3 to Sue) and Section XX (Contribution Protection) shall survive.

4 **XXX. CLAIMS AGAINST THE STATE**

5 Sagamore hereby agrees that it will not seek to recover any costs accrued in  
6 implementing the remedial action required by this Decree from the State of Washington or any  
7 of its agencies; and further, that Sagamore will make no claim against the Model Toxics Control  
8 Operating Account, Model Toxics Control Capital Account, or Model Toxics Control  
9 Stormwater Account for any costs incurred in implementing this Decree. Except as provided  
10 above, however, Sagamore expressly reserves its right to seek to recover any costs incurred in  
11 implementing this Decree from any other PLP.

12 **XXXI. EFFECTIVE DATE**

13 This Decree is effective only upon the date (Effective Date) that title to the Purchase  
14 Property vests in Sagamore, following entry of this Decree by the Court. If Sagamore does not  
15 purchase the Purchase Property by December 1, 2020, this Decree shall be null and void, and  
16 Sagamore will be under no obligation to perform the work required by this Decree.

17 **XXXII. WITHDRAWAL OF CONSENT**

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

21 STATE OF WASHINGTON  
22 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General


23 \_\_\_\_\_  
24 Rebecca Lawson  
25 Program Manager  
26 Toxics Cleanup Program  
(360) 407-7177

\_\_\_\_\_  
Kara J. Tebeau, WSBA #49923  
Assistant Attorney General  
(360) 586-3633

Date: \_\_\_\_\_

Date: \_\_\_\_\_

1 SAGAMORE SPOKANE, LLC

2  
3 By:   
4 Charles Dubroff  
5 President  
6 (480) 575-1277

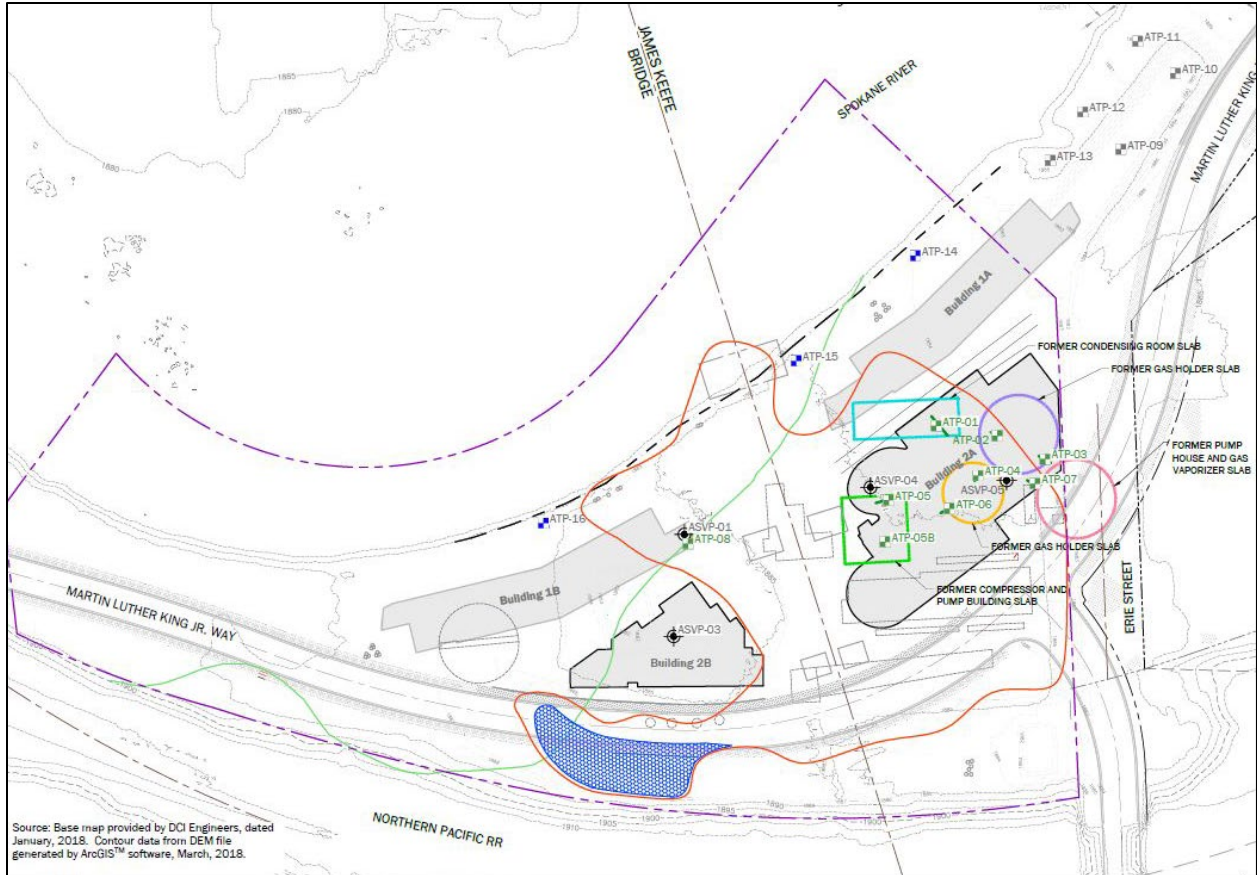
7 Date: 9/23/20

8 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

9  
10 \_\_\_\_\_  
11 JUDGE  
12 Spokane County Superior Court  
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# **EXHIBIT A**

Site Diagram



Source: Base map provided by DCI Engineers, dated January, 2018. Contour data from DEM file generated by ArcGIS™ software, March, 2018.

Legend	
	Existing Bridge Footings
	Historic Foundations
	Limits of Contamination
	Limited Soil Cap
	Hamilton Street Bridge Site
	Preliminary Proposed Building Footprints
	MLK Jr. Way
	Sanitary Sewer Pipe
	Right-of-Way
	Easement
	Existing Contours
	Historic Contour Data
	Historic Riverbank (1910)
	Existing Riverbank
	Aspect Test Pit, Former MGP Slab, 2020
	Aspect Test Pit, Stormwater Infrastructure, 2020
	Aspect Test Pit for River Bank Stability, 2020
	Soil Vapor Point, Aspect, 2020

## **EXHIBIT B**

Legal Description of the Purchase Property



June 4, 2019

Job No. 19-2668

## LEGAL DESCRIPTION FOR PURCHASE AND SALE AGREEMENT

All that certain real property situate in the City of Spokane, County of Spokane, State of Washington, being described as follows:

### PARCEL 1:

Lots 1, 2, 3, and 4 as said Lots are shown upon that certain map entitled "Binding Site Plan of Spokane River Properties, Z2006-30-FBSP" filed for record on October 17, 2012 in Book 3 of Binding Site Plans, at Pages 57 and 58, Spokane County Records.

### PARCEL 2:

Lot 5 as said Lot is shown upon that certain map entitled "Binding Site Plan of Spokane River Properties, Z2006-30-FBSP" filed for record on October 17, 2012 in Book 3 of Binding Site Plans, at Pages 57 and 58, Spokane County Records.

### **EXCEPTING THEREFROM:**

That portion of said Lot 5, being hereinabove described, designated "Exhibit A-4" in that certain Right-of-Way Dedication Deed recorded February 16, 2016 under Auditors File Number 6474484.

### PARCEL 3:

Tract A as said Tract is shown upon that certain map entitled "Binding Site Plan of Spokane River Properties, Z2006-30-FBSP" filed for record on October 17, 2012 in Book 3 of Binding Site Plans, at Pages 57 and 58, Spokane County Records.

### **EXCEPTING THEREFROM:**

Those portions of said Tract A, being hereinabove described, designated "Exhibit A-1" in that certain Right-of-Way Dedication Deed recorded February 16, 2016 under Auditors File Number 6474484.

### **ALSO EXCEPTING THEREFROM:**

BEGINNING at the North corner of said Tract A, being hereinabove described; thence along the

Northwest line of said Tract A, South 7229'33" West 147.38 feet to the TRUE POINT OF BEGINNING of this description; thence continuing along said Northwest line and the Southwesterly lines of said Tract A, the following six (6) courses and distances

South 7229'33" West 130.61 feet,

South 2032'40" East 46.71 feet,

Southeasterly along a curve to the right, from a point with a radial bearing of North 2745'59" East, having a radius of 557.96 feet, through a central angle of 1053'06", an arc distance of 106.00 feet,

South 4851'24" West 98.42 feet,

South 4632'04" East 102.60 feet, and

South 4833'46" East 44.11 feet; thence leaving said Southwesterly line of Tract A, North 4126'14" East 58.58 feet to the High Water Line as said High Water Line was located by the Washington State Department of Ecology on February 23, 2006; thence along said High Water Line, Northwesterly 330 feet to the said TRUE POINT OF BEGINNING of this description, containing 0.8 acres of land, more or less.

**PARCEL 4:**

Tract B as said Tract is shown upon that certain map entitled "Binding Site Plan of Spokane River Properties, Z2006-30-FBSP" filed for record on October 17, 2012 in Book 3 of Binding Site Plans, at Pages 57 and 58, Spokane County Records.

**EXCEPTING THEREFROM:**

Those portions of said Tract B, being hereinabove described, designated "Exhibit A-4" in that certain Right-of-Way Dedication Deed recorded February 16, 2016 under Auditors File Number 6474484.

**ALSO EXCEPTING THEREFROM:**

Parcels A, B, and C as said Parcels are described in that certain Agreement entitled "Quit Claim Deed, Grant of Easement and Construction Permit" between Spokane River Properties and the State of Washington, recorded June 9, 1982 under Auditor's File Number 8206090066, Spokane County Records.

**PARCEL 5**

Tract C as said Tract is shown upon that certain map entitled "Binding Site Plan of Spokane River Properties, Z2006-30-FBSP" filed for record on October 17, 2012 in Book 3 of Binding Site Plans, at Pages 57 and 58, Spokane County Records.

**EXCEPTING THEREFROM:**

That portion of said Tract C, being hereinabove described, designated "Exhibit A-3" in that certain Right-of-Way Dedication Deed recorded February 16, 2016 under Auditors File Number 6474484.



**ALSO EXCEPTING THEREFROM:**

That portion of said Tract C, being hereinabove described, conveyed to the City of Spokane by that certain Statutory Warranty Deed recorded March 6, 2019 under Auditor's File Number 6786268.

**PARCEL 6**

A Tract of land situate in the Southeast Quarter of Section 17, Township 25 North, Range 43 East of the Willamette Meridian in Spokane County, Washington, being more particularly described as follows:

**BEGINNING** at a point on the centerline of Trent Avenue from which the southeasterly corner of Block 12, Dennis and Bradley's Addition, according to the plat thereof recorded in Book "A" of plats, page 160, bears South 89°27'37" West, 465.00 feet and North 0°32'23" West, 37.5 feet; thence from said point of beginning South 40°05'37" West, 328.58 feet to the northeasterly Right of Way line of the Spokane and Inland Railway Company; thence southeasterly along said right of way and along a curve the center of which bears South 49°52'04" west, through a central angle of 14°13'10" and an arc distance of 162.26 feet to the northwesterly line of Block 19 said Dennis and Bradley's Addition; thence northeasterly along said northwesterly line 540 feet, more or less, to the Northwesterly corner of Lot 1 said Block 19; thence North 29°24'16" East on a straight line between said northwesterly corner of Lot 1 and the southwesterly corner of Lot 7, Block 10, Dennis and Bradley's addition, 43.28 feet to said centerline of Trent Avenue; thence South 89°27'37" West, 219.00 feet to the point of beginning.

Except Trent Avenue.

Also known as Parcel "B" as said Parcel is shown upon that certain Record of Survey filed November 21, 1977 in Volume 12 of Surveys, Pages 7 and 8, Spokane County Records.

**PARCEL 7**

All that certain real property situate in the Southeast One-Quarter of Section 17, Township 25 North, Range 43 East of the Willamette Meridian in Spokane County, Washington, being more particularly described as follows:

**BEGINNING** at the West corner of Tract A as said Tract is shown upon that certain map entitled "Binding Site Plan of Spokane River Properties, Z2006-30-FBSP" filed for record on October 17, 2012 in Book 3 of Binding Site Plans, at Pages 57 and 58, Spokane County Records; thence along the northwest line of said Tract A, North 72°29'33" East feet, 151.92 to the mean high water line of the Spokane River, said point being the **TRUE POINT OF BEGINNING** of this description; thence northwesterly along said mean highwater line 340 feet more or less to the westerly line of the said Southeast One-Quarter of Section 17 from which the southwesterly corner of said Southeast One-Quarter bears South 00°00'56" East 1335.5 feet, more or less; thence North 00°00'56" West along said westerly line, 254.5 feet more or less to a point which bears

North 0000'56" West 1590.00 feet from said southwesterly corner; thence leaving said line, South 3757'23" East 568.24 feet to the North corner of said Tract A; thence along said northwest line of Tract A, South 7229'33" West 126.07 feet to the said **TRUE POINT OF BEGINNING** of this description.

(Being a portion of Parcel "A" as said Parcel is shown upon that certain Record of Survey filed November 21, 1977 in Volume 12 of Surveys, Pages 7 and 8, Spokane County Records)

## PARCEL 8

That portion of the right-of-way of Erie Street as shown on the Plat of Dennis & Bradley's Addition, as Recorded in Volume "A" of Plats, Pages 160 and 161, City of Spokane, Spokane County, Washington, described as follows;

**BEGINNING** at the Northeast corner of Lot 5 of the Binding Site Plan of Spokane River Properties A2006-30-FBSP, according to the plat recorded in Volume 3 of Binding Site Plans, Pages 57 and 58, said point lying on the West Right-of-Way line of Erie Street; thence along the boundary of said Binding Site Plan the following two (2) courses:

1. Along the west line of said right-of-way, North 02°12'22" West 75.00 feet;
2. Along the northwest line of said right-of-way, North 35°55'33" East 163.54 feet to a point on a 101.00 foot radius non-tangent curve, concave southeasterly, the center of circle of which bears South 59°46'40" East;

thence leaving said boundary and said right-of-way line, southwesterly along the arc of said curve through a central angle of 70°5'53", 12.51 feet to a point of compound curve of a 637.50 foot radius curve to the left, concave southeasterly, the center of circle of which bears South 66°52'33" East; thence southwesterly along the arc of said curve through a central angle of 14°18'35", 159.22 feet to the point of tangent; thence South 08°48'52" West 45.04 feet to the point of curve of a 348.50 foot radius to the right; thence southwesterly along the arc of said curve through a central angle of 17°49'08", 108.38 feet to a point on said boundary and on said West Right-of-Way line of Erie Street; thence along said boundary and said West Right-of-Way line, North 02°12'22" West 103.88 feet to the point of beginning