

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

5055 Properties LLC

AGREED ORDER

No. DE 16300

TO: Gary Hendricks
5055 Properties LLC
5209 E. Marginal Way S.
Seattle, WA 98134-2409

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	5
VII.	WORK TO BE PERFORMED.....	8
VIII.	TERMS AND CONDITIONS.....	9
	A. Payment of Remedial Action Costs.....	9
	B. Designated Project Coordinators.....	10
	C. Performance.....	11
	D. Access.....	11
	E. Sampling, Data Submittal, and Availability.....	12
	F. Public Participation.....	13
	G. Retention of Records.....	14
	H. Resolution of Disputes.....	14
	I. Extension of Schedule.....	16
	J. Amendment of Order.....	17
	K. Endangerment.....	18
	L. Reservation of Rights.....	18
	M. Transfer of Interest in Property.....	19
	N. Compliance with Applicable Laws.....	19
	O. Indemnification.....	21
IX.	SATISFACTION OF ORDER.....	22
X.	ENFORCEMENT.....	22

EXHIBIT A	Site Location Diagram
EXHIBIT B	Scope of Work
EXHIBIT C	Schedule of Deliverables
EXHIBIT D	Draft Interim Action Work Plan

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and 5055 Properties, LLC under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires 5055 Properties LLC to implement the Scope of Work (Exhibit B). The deliverables detailed in Exhibit C (Schedule of Deliverables) must be completed prior to conducting the final cleanup action at the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. 5055 Properties LLC agrees to undertake all actions required by the terms and conditions of this Order. 5055 Properties LLC agrees to complete the Scope of Work prior to conducting the final cleanup action at the Site. No change in ownership or corporate status shall alter 5055 Properties, LLC's responsibility under this Order. 5055 Properties LLC shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D, WAC 173-204, and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Snopac Property. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to

be located. Based upon factors currently known to Ecology, the Site is generally located at 5055 East Marginal Way South, Seattle, Washington, as shown in the Site Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and 5055 Properties LLC.

C. Potentially Liable Persons (PLP(s)): Refers to 5055 Properties LLC.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by 5055 Properties LLC:

A. Based upon factors currently known to Ecology, the Site is generally located at 5055 East Marginal Way South, Seattle, Washington (Property), in the Georgetown area of Seattle as shown in the Site Location Diagram (Exhibit A). The Ecology Facility Site ID is 1523145 and the Cleanup Site ID is 12463. It is generally located at longitude -122.338845, latitude 47.556060. The Site extends into the Lower Duwamish Waterway.

B. 5055 Properties LLC is the Property owner as recorded by King County, Washington, June 2012. The title of the Property was transferred from Snopac Products Inc. to Bruce Blakely in 1990 and his family in 1993. The family transferred title to 5055 Properties LLC in June 2012.

C. 5055 Properties LLC is a registered limited liability company with the Washington Secretary of State, UBI #603209058.

D. The warehouse currently located on the Property has been used for several different businesses. The warehouse was constructed between 1919 and 1932. Western Containers Inc., a cardboard manufacturing company, operated on the Property for some time during the 1920s. In 1929, a property to the north was listed as a coal yard. A coal screen and two coal burners were located on the northwestern portion of the Property. Railroad spurs existed on the eastern and

western sides of the Property. From 1935 through 1970, Pioneer Towing Company occupied the Property. Pioneer Towing installed a 8,000-gallon diesel underground storage tank (UST) to the west of the warehouse building in 1959. Marine Leasing/Marine Logistics owned the property from 1973 through 1988. Starting around 1973, disposal of spent sandblast grit began on the western portion of the Property. Snopac Products, a fish processing company, used the Property from approximately 1992 to 2008. 5055 Properties LLC purchased the Property in June 2012 and uses the Property for storage and staging of construction equipment.

E. The Property historically contained at least three USTs: the 8,000-gallon diesel tank installed in 1959, a 1,000-gallon tank northeast of the warehouse, and a 2,500-gallon tank northwest of the warehouse. No records indicate whether the USTs were properly closed in accordance with Ecology guidance.

F. Early investigations conducted in 2004 as part of the Remedial Investigation for the Lower Duwamish Waterway (Data reports: *Survey and Sampling of Lower Duwamish Waterway Seeps* and *Chemical Analysis of Benthic Invertebrate and Clam Tissue Samples and Co-located Sediment Samples*) indicate impacted groundwater from the Property is likely discharging into surface water and impacting the sediments at locations immediately adjacent to the Property. A seep water sample (Seep 76) located in the southwest corner of the Property (near the southeast corner of Slip 1) contained arsenic, copper, lead, mercury, and zinc concentrations exceeding the marine chronic water quality standard (WQS). High arsenic concentrations in surface sediments (725 milligrams per kilogram (mg/kg)) were detected in Slip 1, immediately down gradient of the shore-face of the Property (sampling location B3b).

G. The presence of hazardous substances in soil and groundwater at the subject Property is reported in Subsurface Investigation Results, Snopac Property, 5055 East Marginal Way South, Seattle, Washington. Farallon Consulting October 21, 2011 (Farallon Report). The Farallon Report documented soil concentrations of gasoline, benzene, toluene, ethylbenzene, xylenes (BTEX), and carcinogenic polyaromatic hydrocarbons (cPAHs) exceeding the MTCA Method A cleanup levels. Concentrations of diesel and oil-range hydrocarbons, arsenic, and

chromium exceed the MTCA Method A groundwater cleanup levels in groundwater collected from temporary monitoring locations.

H. An electrical transformer of unknown age exists in the warehouse with adjacent oil-stained concrete, according to the Farallon Report. Farallon's wipe sample of the oil staining detected polychlorinated biphenyl (PCB) measured as Aroclors.

I. Subsequent investigations conducted in 2015–2017 confirmed the presence of spent sandblast grit across the entire shoreface. Sampling detected heavy metals, PAHs, and PCBs. The spent sandblast grit is reportedly derived from smelter slag, subsequently contaminated by waste materials. The investigations indicate that contaminants present in the spent sandblast grit-containing fill material are a source of contamination to Site groundwater, groundwater discharging via seeps to surface water, and sediments.

J. Investigations conducted in 2015–2017 indicate that concentrations of metals in seeps at the Site exceed cleanup levels protective of the groundwater to surface water pathway in the Lower Duwamish River. The presence of spent sandblast grit along the shoreface represents an ongoing potential for erosion and the discharge of hazardous substances to the Lower Duwamish Waterway. These exceedances and this erosion potential represent a threat to human health and the environment.

K. Based upon the information presented in the Farallon Report and subsequent investigations, the State of Washington Department of Ecology has determined that remedial action is required.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by 5055 Properties LLC.

A. 5055 Properties LLC is an "owner" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to 5055 Properties LLC dated February 5, 2019, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. Ecology provided notice and opportunity for comment, and considered 5055 Properties LLC’s comments. Ecology concluded that credible evidence supported a finding of potential liability. Ecology issued a determination that 5055 Properties LLC is a PLP under RCW 70.105D.040 and notified 5055 Properties LLC of this determination by letter dated March 18, 2019.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Here, recent investigations indicate that fill material containing spent sandblast grit is an ongoing source of contamination to groundwater, sediments, and surface water. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that 5055 Properties LLC take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204.

A. 5055 Properties LLC will complete and implement a Final Interim Action Work Plan; complete a Remedial Investigation for the entire Site; complete a Feasibility Study for the upland portion of the Site and a Feasibility Study for the sediments portion of the Site; complete and implement a Supplemental Remedial Investigation Work Plan (if requested by Ecology); and submit a preliminary Draft Cleanup Action Plan (DCAP) for the uplands portion of the Site. These requirements must be in accordance with the Scope of Work and Schedule of Deliverables, Exhibits B and C, and all other requirements of this Order. The following naming conventions shall be used for applicable documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the 5055 Properties LLC version of the DCAP).

B. If 5055 Properties LLC learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediments, 5055 Properties LLC, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. 5055 Properties LLC shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted according to the Schedule (Exhibit C). Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to

this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
 2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
 3. Description of all deviations from the Scope of Work and Schedule of Deliverables (Exhibit B and C) during the current month, and any planned deviations in the upcoming month.
 4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
 5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
 6. A list of deliverables for the upcoming month if different from the schedule.
- D. All plans or other deliverables submitted by 5055 Properties LLC for Ecology's review and approval under the Scope of Work and Schedule shall, upon Ecology's approval, become integral and enforceable parts of this Order.
- E. If the Parties agree an additional interim action is necessary under Section VI.E, 5055 Properties LLC shall prepare and submit to Ecology a Draft Interim Action Work Plan, including a scope of work and schedule. Ecology will provide public notice and opportunity to comment on the Draft Interim Action Work Plan in accordance with WAC 173-340-600(16). 5055 Properties LLC shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Final Interim Action Work Plan becomes an integral and enforceable part of this Order, and 5055 Properties LLC is required to conduct the interim action in accordance with the approved Final Interim Action Work Plan.
- F. If Ecology determines that 5055 Properties LLC has failed to make sufficient progress or failed to implement a remedial action, in whole or in part, Ecology may, after notice

to 5055 Properties LLC, perform any or all portions of the remedial action or at Ecology's discretion allow 5055 Properties LLC opportunity to correct. In an emergency, Ecology is not required to provide notice to 5055 Properties LLC, or an opportunity for dispute resolution. 5055 Properties LLC shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation or where required by law, 5055 Properties LLC shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, 5055 Properties LLC must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

5055 Properties LLC shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$7,102.79 in remedial action costs related to this Site as of March 31, 2019. For all Ecology costs incurred, 5055 Properties LLC shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request.

Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

Sandra Matthews
3190 160th Ave. SE
Bellevue, WA 98008
425-649-7206
smat461@ecy.wa.gov

The project coordinator for 5055 Properties LLC is:

Aaron Rugg
Project Manager
Manson Construction Co.
5029 East Marginal Way
Seattle, WA 98134-2409
206-764-8468
arugg@mansonconstruction.com

With a copy via email to:
Adam Griffin, Aspect Consulting
agriffin@aspectconsulting.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and 5055 Properties LLC, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

C. Performance

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

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

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

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

5055 Properties LLC shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that 5055 Properties LLC either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing 5055 Properties LLC's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the

data submitted to Ecology by 5055 Properties LLC. 5055 Properties LLC shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by 5055 Properties LLC where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by 5055 Properties LLC unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, 5055 Properties LLC shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, 5055 Properties LLC shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by 5055 Properties LLC pursuant to implementation of this Order. 5055 Properties LLC shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow 5055 Properties LLC and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify 5055 Properties LLC prior to any sample collection activity unless an emergency prevents such notice.

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

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, 5055 Properties LLC shall cooperate with Ecology, and shall:

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

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify 5055 Properties LLC prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by 5055 Properties LLC that do not receive prior Ecology approval, 5055 Properties LLC shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. New Holly Branch
7058 32nd Ave. S.
Seattle, WA 98118
Phone: 206-386-1905
- b. Ecology's Northwest Regional Office
3190 160th Ave. SE

Bellevue, WA 98008

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

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, 5055 Properties LLC shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, 5055 Properties LLC shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right 5055 Properties LLC may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If 5055 Properties LLC withholds any requested records based on an assertion of privilege, 5055 Properties LLC shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that 5055 Properties LLC elects to invoke dispute resolution, 5055 Properties LLC must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), 5055 Properties LLC has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days

from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the 5055 Properties LLC's position with regard to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. 5055 Properties LLC may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.F (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. 5055 Properties LLC request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on 5055 Properties LLC to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of 5055 Properties LLC including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by 5055 Properties LLC.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of 5055 Properties LLC.

3. Ecology shall act upon any 5055 Properties LLC's written request for extension in a timely fashion. Ecology shall give 5055 Properties LLC written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by

Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At 5055 Properties LLC's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner.
- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and 5055 Properties LLC. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, 5055 Properties LLC shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct 5055 Properties LLC to cease such activities for such period of time as it deems necessary to abate the danger. 5055 Properties LLC shall immediately comply with such direction.

In the event 5055 Properties LLC determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, 5055 Properties LLC may cease such activities. 5055 Properties LLC 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, 5055 Properties LLC shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with 5055 Properties LLC's cessation of activities, it may direct 5055 Properties LLC to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, 5055 Properties LLC's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against 5055 Properties LLC to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take

additional enforcement actions against 5055 Properties LLC regarding remedial actions required by this Order, provided 5055 Properties LLC complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, 5055 Properties LLC does not admit to any liability for the Site. Although 5055 Properties LLC is committing to conducting the work required by this Order under the terms of this Order, 5055 Properties LLC expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by 5055 Properties LLC without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to 5055 Properties LLC's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, 5055 Properties LLC shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, 5055 Properties LLC shall notify Ecology of said transfer. Upon transfer of any interest, 5055 Properties LLC shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by 5055 Properties LLC pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements,

including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. 5055 Properties LLC has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or 5055 Properties LLC, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and 5055 Properties LLC must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by 5055 Properties LLC pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or 5055 Properties LLC, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and 5055 Properties LLC must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), 5055 Properties LLC may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, 5055 Properties LLC shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. 5055 Properties LLC has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or 5055 Properties LLC determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be

required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or 5055 Properties LLC shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, 5055 Properties LLC shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by 5055 Properties LLC and on how 5055 Properties LLC must meet those requirements. Ecology shall inform 5055 Properties LLC in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. 5055 Properties LLC shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and 5055 Properties LLC shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

O. Indemnification

5055 Properties LLC agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of 5055 Properties LLC, its officers, employees, agents, or contractors in entering into and implementing this Order. However, 5055 Properties LLC shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon 5055 Properties LLC's receipt of written notification from Ecology that 5055 Properties LLC has completed the remedial activity required by this Order, as amended by any modifications, and that 5055 Properties LLC has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 7/15/19

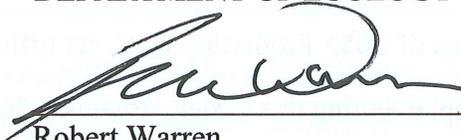
5055 PROPERTIES LLC



Gary Hendricks
Governor

206-762-0850

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Robert Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
425-649-7054



Slip 1

East Marginal Way South

Seattle

West Seattle



DEPARTMENT OF
ECOLOGY
State of Washington

Exhibit A
5055 East Marginal Way S.
Lower Duwamish Waterway
Seattle, WA

 5055 Property LLC



0 20 40 80 Feet


EXHIBIT B – SCOPE OF WORK (SOW)

PURPOSE

The work under this Agreed Order (AO) involves conducting a Remedial Investigation (RI), Feasibility Study (FS), and an interim action; and preparing a Preliminary Draft Cleanup Action Plan (DCAP). The purpose of the RI and FS for the Site is to provide sufficient data, analysis, and evaluation to enable Ecology to select a cleanup alternative for the Site.

5055 Properties LLC shall coordinate with Ecology throughout the development of the Interim Action, RI/FS and Preliminary DCAP and shall keep Ecology informed of changes to any Work Plan or other project plans, and any issues or problems as they develop.

Data and figure submissions: For all deliverables, 5055 Properties LLC shall submit AutoCad or GIS files used to compose any figures. In addition, 5055 Properties LLC will submit Excel files of the data used to compose any tables.

The SOW is divided into seven major tasks as follows:

- Task 1. Interim Action(s)
- Task 2. Remedial Investigation Report
- Task 3. Supplemental RI Work Plan (if requested)
- Task 4. Feasibility Study
- Task 5. SEPA Compliance
- Task 6. Public Participation
- Task 7. DCAP

TASK 1. INTERIM ACTION(S)

Remedial actions implemented prior to completion of the RI/FS, including those that:

- are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

As detailed in the AO, 5055 Properties will implement an interim action. Interim action(s) are needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

5055 Properties LLC will submit a Summary Technical Memo according to the Schedule contained in Exhibit C. This memo will address the subsurface characterization performed after the removal of the warehouse on the property. The memo will address media above the shoring wall that were not previously characterized in Aspect Consulting's remedial studies.

5055 Properties has prepared an Agency Review Draft Interim Action Work Plan. The Final Interim Action Work Plan will include:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI/FS information, including at a minimum existing Site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- Sampling and Analysis Plan (SAP)/Quality Assurance Project Plan (QAPP);
- Permits required.

5055 Properties LLC will also submit a copy of the Health and Safety Plan for the project. 5055 Properties LLC will be responsible for complying with the State Environmental Policy Act (SEPA) rules including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan. 5055 Properties LLC submitted a SEPA checklist as part of its application to the City of Seattle.

The Final Interim Action Work Plan will require as a deliverable a Sampling and Analysis Plan (SAP). Refer to Task 3 for a description of the requirements governing SAPs. The SAP may provide sampling procedures for the entire project. If this SAP does not govern the scope of the entire project, Ecology may require addenda to address the remaining work.

After incorporating Ecology's comments on the Agency Review Draft Interim Action Work Plan, 5055 Properties shall prepare and submit three (3) hard copies of a Public Review Draft Interim Action Work Plan, as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The Interim Action Work Plan will be considered final only after a public notice and comment period, SEPA determination, and Ecology approval, if appropriate. 5055 Properties LLC shall prepare and submit one (1) hard copy of the Final Interim Action Work Plan as well as electronic copies in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, 5055

Properties LLC will implement the interim action according to the approved Schedule contained in Exhibit C.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. 5055 Properties LLC shall submit the Agency Review Draft Interim Action Report electronically in Word (.doc) and Adobe (.pdf) formats to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, 5055 Properties LLC shall prepare and submit one (1) hard copy of the Final Interim Action Report, as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 2. REMEDIAL INVESTIGATION REPORT

5055 Properties shall complete an RI Report that meets the requirements of WAC 173-340-350(7) and WAC 173-204-550(6). The RI Report will document the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, and other regulatory requirements. The RI must provide sufficient data and information to document the nature and extent of contamination. If such information is not sufficient to define the nature and extent of contamination, and additional data gaps are identified, Ecology may determine that supplemental Site investigations are necessary at the Site and will require the submission of a Supplemental RI Work Plan (Task 3). Ecology will make the final determination as to whether supplemental Site investigations are necessary.

5055 Properties shall provide interim data reports and updates to Ecology as new Site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held. Ecology and 5055 Properties will review available data and an updated conceptual Site model and discuss the content and organization of the Draft RI Report.

5055 Properties shall compile the results of all Site investigation(s) into an Agency Review Draft RI Report. The scope of the Draft RI Report will be the entire Site, including the uplands and sediment. 5055 Properties shall submit the Agency Review Draft RI Report electronically in Word (.doc) and Adobe (.pdf) formats to Ecology for review and comment.

After incorporating Ecology's comments on the Agency Review Draft RI Report, 5055 Properties shall prepare and submit three (3) hard copies of a Public Review Draft RI Report, as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Report either in the

report or as attachments. The RI Report will not be considered Final until after a public review and comment period.

TASK 3. SUPPLEMENTAL RI WORK PLAN (IF REQUESTED)

5055 Properties LLC shall prepare a Draft Supplemental Remedial Investigation Work Plan (Work Plan), if requested by Ecology. Any data gaps identified in the Remedial Investigation Report will be used as the basis for conducting additional Site investigations. The Work Plan will propose methods to resolve these data gaps and will identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. 5055 Properties LLC will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and sediment samples, approximate depths, and includes a QAPP. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection, and handling; data and records management; and schedule.

The QAPP will be prepared in accordance with the Guidance for Quality Assurance Project Plans, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (Revised December 2016)¹ and Sediment Cleanup User's Manual (Revised December 2017).² Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the Site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

5055 Properties LLC or their contractors shall submit any new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal

¹ <https://fortress.wa.gov/ecy/publications/summarypages/0403030.html>

² <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

Requirements. Only validated data will be entered into the EIM database within 30 (thirty) days of submittal.

Ecology may direct the focus of the SAP and RI Work Plan, including but not limited to:

- Sampling and analysis of soil, groundwater, and seeps;
- Sampling and analysis of surface and subsurface sediments;
- Sampling and analysis of stormwater and catch basin solids to determine whether the stormwater system is a source of contamination to sediments;
- Evaluate the potential to contaminate or recontaminate sediments, including analysis of the following pathways:
 - Direct discharges
 - Stormwater discharges
 - Overland flow
 - Groundwater discharges and seeps
 - Soil erosion
 - Site operations
 - Spills, dumping, leaks, housekeeping, and management practices;

Once Ecology reviews and approves the Draft Supplemental RI Work Plan, it will be considered the Final Supplemental RI Work Plan. The Supplemental RI Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, 5055 Properties LLC will implement the Final Supplemental RI Work Plan according to the Schedule contained in Exhibit C.

5055 Properties LLC shall prepare and submit electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology's comments on the Draft Supplemental RI Work Plan and after Ecology approval, 5055 Properties LLC shall prepare and submit one (1) hard copy of the Final Supplemental RI Work Plan, as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 4. FEASIBILITY STUDY

5055 Properties LLC shall use the information obtained in the RI to prepare two (2) Agency Review Draft Feasibility Studies (FS) that meet the applicable requirements of WAC 173-340-350(8) and WAC 173-204-550(7) according to the Schedule in Exhibit C. One FS will cover the entire upland portion of the Site, defined as the portion of the Site above the mean higher high water (MHHW) level. This upland FS will include the work completed during the implementation of the Interim Action (Task 1, above). The other FS will cover the sediment portion of the Site, defined as the portion of the Site below the MHHW level. Each Agency Review Draft FS will evaluate remedial alternatives for Site cleanup, consistent with MTCA, SMS, and the Lower Duwamish Waterway Record of Decision requirements to ensure protection of human health and the environment by eliminating,

reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review ARARs, potential remedial alternatives, and establish points of compliance.

The Agency Review Draft FS Reports will provide detailed analyses of each remedial alternative. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, and WAC 173-204-570, including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed.

5055 Properties LLC shall submit electronic copies in Word (.doc) and Adobe (.pdf) formats of each Agency Review Draft FS to Ecology for review. After addressing Ecology's comments on each Agency Review Draft FS, 5055 Properties LLC shall prepare and submit three (3) hard copies of each Public Review Draft FS, as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The FS Reports will not be considered Final until after a public review and comment period.

TASK 5. SEPA COMPLIANCE

5055 Properties LLC shall be responsible for complying with the State Environmental Policy Act (SEPA) rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), 5055 Properties LLC shall be responsible for the preparation of Draft and Final environmental impact statements. 5055 Properties LLC shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever

possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 6. PUBLIC PARTICIPATION

5055 Properties LLC shall support Ecology in presenting the Public Review Draft RI Report, Public Review Draft FS Reports, and SEPA evaluations at a public meeting or hearing. 5055 Properties LLC will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, Ecology may require that 5055 Properties LLC prepare a Responsiveness Summary that addresses public comments. If requested, 5055 Properties LLC shall prepare and submit electronic copies in Word (.doc) and Adobe (.pdf) formats of the Agency Review Draft Responsiveness Summary to Ecology for review.

TASK 7. PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft RI Report and Public Review Draft FS Reports, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the Preliminary DCAP.

5055 Properties LLC shall prepare a Preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the upland portion of the Site, defined as the portion of the Site above the MHHW level. The Preliminary DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

5055 Properties LLC will submit a Preliminary DCAP for Ecology's review. The Preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. 5055 Properties LLC shall submit electronic copies in Word (.doc) and Adobe (.pdf) formats to Ecology for review.

After receiving Ecology's comments on the Agency Review Preliminary DCAP, if any, 5055 Properties LLC shall revise the Preliminary DCAP to address Ecology's comments and submit electronic copies in Word (.doc) and Adobe (.pdf) formats.

EXHIBIT C – Schedule of Deliverables

Deliverable/Milestone	Completion/Due Date
Progress Reports	15th of every month, beginning after the first full month after the effective date of this Agreed Order
Final Interim Action Work Plan (including summary of planned additional characterization work)	15 calendar days after Ecology’s written request to finalize
Summary Technical Memo and Validated Data for additional characterization	15 calendar days following completion of data collection activities
Implement Interim Action	Begin work within 10 calendar days of Ecology’s approval of the Final Interim Action Work Plan
Draft Interim Action Report	90 calendar days after the Interim Action construction is complete
Final Interim Action Report	30 calendar days after receipt of Ecology’s comments on the Agency Review Draft Interim Action Report
Agency Review Draft RI Report (sediments and uplands combined)	90 calendar days following the effective date of this Agreed Order
Draft Supplemental RI Work Plan (If requested by Ecology)	45 calendar days following receipt of Ecology’s comments on the Agency Review Draft RI Report
Final Supplemental RI Work Plan (If requested by Ecology)	15 calendar days after Ecology’s written request to finalize
Implement Supplemental RI Work Plan	Begin work within 10 calendar days of Ecology’s approval of Supplemental RI Work Plan
Public Review Draft RI Report	90 calendar days after receipt of Ecology’s comments on completion of Final Supplemental RI Work Plan (if requested) or 90 calendar days after receipt of Ecology’s comments on Agency Review Draft RI Report (if Supplemental RI Work Plan not requested)
Agency Review Draft Upland FS Report	90 calendar days following Ecology’s request for the Public Review Draft RI Report
Public Review Draft Upland FS Report	45 calendar days following approval of Agency Review Draft Upland FS Report
Agency Review Draft Sediment FS Report	90 calendar days following Ecology’s request for the Public Review Draft RI Report
Public Review Draft Sediment FS Report	45 calendar days following approval of Agency Review Draft Sediment FS Report
Final RI and FS Reports	30 calendar days following Ecology’s request for Final Reports
Draft Preliminary Cleanup Action Plan (dCAP) for Uplands	90 calendar days following Ecology’s approval of Public Review Draft Upland FS Report