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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY,

Defendant.

NO. _____

PROSPECTIVE PURCHASER
CONSENT DECREE

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1 **I. INTRODUCTION**

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

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

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

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

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

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

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

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

12 **II. JURISDICTION**

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

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

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

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

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

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

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

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

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

10 III. PARTIES BOUND

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

20 IV. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

5 V. FINDINGS OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 VI. WORK TO BE PERFORMED

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

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

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

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

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

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

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

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

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

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

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

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

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

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

7 The project coordinator for Sound Transit is:

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

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

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

21 **VIII. PERFORMANCE**

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

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

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

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

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

14 **IX. CERTIFICATION OF SOUND TRANSIT**

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

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

22 **X. ACCESS**

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

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

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

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

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

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

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

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

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

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

17 **XII. RETENTION OF RECORDS**

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

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

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

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

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

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

17 **XIV. RESOLUTION OF DISPUTES**

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **XV. AMENDMENT OF DECREE**

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

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

1 amendment. Such amendment shall become effective upon entry by the Court. Agreement to
2 amend the Decree shall not be unreasonably withheld by any party.

3 When requesting a change to the Decree, Sound Transit shall submit a written request
4 for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in
5 writing and in a timely manner after the written request is received. If Ecology determines that
6 the change is substantial, then the Decree must be formally amended. Reasons for the
7 disapproval of a proposed change to this Decree shall be stated in writing. If Ecology does not
8 agree to the requested change, the disagreement may be addressed through the dispute resolution
9 procedures described in Section XIV (Resolution of Disputes).

10 **XVI. EXTENSION OF SCHEDULE**

11 A. Sound Transit's request for an extension of schedule shall be granted only when
12 a request for an extension is submitted in a timely fashion, generally at least thirty (30) days
13 prior to expiration of the deadline for which the extension is requested, and good cause exists
14 for granting the extension. All extensions shall be requested in writing. The request shall specify:

- 15 1. The deadline that is sought to be extended.
- 16 2. The length of the extension sought.
- 17 3. The reason(s) for the extension.
- 18 4. Any related deadline or schedule that would be affected if the extension
19 were granted.

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

- 23 1. Circumstances beyond the reasonable control and despite the due
24 diligence of Sound Transit including delays caused by unrelated third parties or Ecology,
25 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
26 documents submitted by Sound Transit.

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

3 3. Endangerment as described in Section XVII (Endangerment).

4 However, neither increased costs of performance of the terms of this Decree nor changed
5 economic circumstances shall be considered circumstances beyond the reasonable control of
6 Sound Transit.

7 C. Ecology shall act upon any written request for extension in a timely fashion.
8 Ecology shall give Sound Transit written notification of any extensions granted pursuant to this
9 Decree. A requested extension shall not be effective until approved by Ecology or, if required,
10 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend this
11 Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is granted.

12 D. Sound Transit's request for an extension shall only be granted for such period of
13 time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
14 extensions exceeding ninety (90) days only as a result of one of the following:

15 1. Delays in the issuance of a necessary permit which was applied for in a
16 timely manner.

17 2. Other circumstances deemed exceptional or extraordinary by Ecology.

18 3. Endangerment as described in Section XVII (Endangerment).

19 **XVII. ENDANGERMENT**

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

24 In the event Sound Transit determines that any activity being performed at the Site under
25 this Decree is creating or has the potential to create a danger to human health or the environment,
26 Sound Transit may cease such activities. Sound Transit shall notify Ecology's project

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

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

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

14 **XVIII. COVENANT NOT TO SUE**

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

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

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

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

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

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

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

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

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

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

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

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

1 **XIX. CONTRIBUTION PROTECTION**

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

5 **XX. INDEMNIFICATION**

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

14 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

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

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

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

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

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

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

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

10 **XXII. REMEDIAL ACTION COSTS**

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

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

4 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

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

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

19 **XXIV. PERIODIC REVIEW**

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

1 **XXV. PUBLIC PARTICIPATION**

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

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

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

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

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

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

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

5 **XXVI. DURATION OF DECREE**

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

11 **XXVII. CLAIMS AGAINST THE STATE**

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

20 **XXVIII. EFFECTIVE DATE**

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

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

3 **XXIX. WITHDRAWAL OF CONSENT**

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

7
8 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

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

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

12 Date: _____

Date: _____

13
14 CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

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

18 Date: _____

19
20 ENTERED this _____ day of _____, 2020.

21
22 _____
23 JUDGE
King County Superior Court