

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

CHEVRON TANK FARM PORT  
WASHINGTON NARROWS

AGREED ORDER for REMEDIAL  
INVESTIGATION/FEASIBILITY STUDY  
and INTERIM ACTION – Chevron Tank Farm  
Port Washington Narrows

No. DE-07TCPHQ-5024

TO: The City of Bremerton  
Public Works Department  
3027 Olympus Drive  
Bremerton, Washington 98310

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EXHIBIT - A	Site Diagram
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ATTACHMENT–1	June 2005, Due Diligence Investigation
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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Bremerton (the City) 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 the City to conduct a remedial investigation/feasibility study (RI/FS) to collect, develop and evaluate sufficient information to develop a final cleanup action plan (CAP) for the Site, and to prepare a draft CAP. In addition, the City is required by this Order to conduct an appropriate interim action to address the contaminated soils. 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. The City agrees to undertake all actions required by the terms and conditions of this Order. The City 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Chevron Tank Farm Port Washington Narrows and is generally located at 1310 Highland Avenue in Bremerton, Washington 98310. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in

Exhibit A to this Order, which includes a detailed Site diagram and the location map. The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and the City of Bremerton.

C. Potentially Liable Person (PLP): Refers to the City of Bremerton.

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. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

## V. FINDINGS OF FACT

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

A. The Chevron Tank Farm Port Washington Narrows site (the “Site”) is located at 1310 Highland Avenue, Bremerton, Washington (the “Property”) and consists of approximately 1.5-acres. The Property is bounded on the northeast by the Port Washington Narrows, on the northwest by a small inlet (Smith Cove), on the southeast by a residential area and on the southwest by a mixed residential and business area. (Exhibit-A). From approximately 1950 until 1988, Chevron operated a bulk storage and distribution center for petroleum products on the property, including a fuel distribution dock.

B. Currently the City of Bremerton owns the Property and it is a vacant piece of land. (Exhibit-A).

C. In June 2005, Parametrix conducted a Due Diligence Investigation for the City of Bremerton to evaluate the then-current conditions at the Site. The evaluation included a comprehensive summary of site investigation, previous remediation efforts, data gaps, additional investigations, a number of potential remedial alternatives and recommendations for the property’s acquisition. (Attachment-1).

D. Eighteen groundwater monitoring wells were placed on the site; sixteen remain. From October 1988 to October 2003, a total of thirty-one rounds of quarterly, semiannual and/or annual groundwater sampling have been conducted at the site. All of these groundwater samples

were analyzed for total petroleum hydrocarbons-gasoline (TPH-G), TPH-diesel (TPH-D), TPH-Oil (TPH-O), benzene, ethylbenzene, toluene, xylenes (BETX) and dissolved lead. Results of the latest round of groundwater sampling (October 2003) showed elevated concentrations of TPH-G (9,000 ug/l), TPH-D (32,000 ug/l), TPH-O (5,200 ug/l) and benzene (700 ug/l). These concentrations exceed MTCA Method-A cleanup levels of 800 ug/l (TPH-G), 500 ug/l (TPH-D and TPH-O) and 5 ug/l (benzene). (Attachment-2).

E. In March 1994, Chevron Company conducted a Supplemental Site Assessment. As a part of this investigation, nine soil borings were drilled and six borings were converted into groundwater monitoring wells. A total of thirteen soil samples were selected and sent to an off-site laboratory for TPH-G, TPH-D, TPH-O, polycyclic aromatic hydrocarbon (PAHs) and total lead analysis. Some of the soil samples showed elevated concentrations of TPH-G (1,300 mg/kg), TPH-D (11,000 mg/kg) and PAH range of 1.2 mg/kg to 24 mg/kg. These concentrations exceed MTCA Method-A cleanup levels of 100 mg/kg, 2,000 mg/kg and 0.1 mg/kg (prorated to benzo(a)pyrene with toxicity equivalent factors). (Attachment-3).

F. In November of 1991, Hart Crowser (Chevron's consultant) installed a soil vapor extraction (SVE) system to remove the volatile organic compounds (VOCs) from the soils. The system included eleven dedicated extraction wells and five groundwater monitoring wells. The SVE system was operated from November 1991 through December 1994. Because of the low VOC recovery the system was turned off in December 1994. During this period a total of approximately 195,000 pounds of VOCs were extracted and the thickness of product was reduced in some of the groundwater monitoring wells. (Attachment-4).

G. In July 1991, Ecology conducted a site hazard assessment investigation. As a part of this investigation groundwater, sediment and shellfish samples were collected. These samples were analyzed for TPH-G, TPH-D, BTEX, semivolatile organic compounds (SVOCs) and total lead. Groundwater results showed: total TPH (5,660 ug/l), benzene (2,420 ug/l), toluene (4,390 ug/l) and nitrobenzene (152 ug/l). Results of sediment samples (all compounds) were below their practical quantitation limits (PQL). Since PQLs were higher than the Sediment Management Standards, it does not preclude the presence of these compounds in the sediments

exceeding the marine Sediment Management Standards. In addition, total TPH (100 mg/kg – 412 mg/kg), xylene (78 ug/kg – 103 ug/kg) and lead (11.3 mg/kg – 53.3 mg/kg) were also detected in sediment samples. (Attachment-5).

H. In May 1989, Chevron conducted soil investigation and Phase-I remediation (some product removal). Nine test pits were excavated and a total of eighteen (18) soil samples were collected for TPH-G, TPH-D and total hydrocarbon identification (HCID) analysis. Elevated levels of TPH-G (25,000 mg/kg) and TPH-D (5,800 mg/kg) were detected in soil samples. In addition, measurement of free phase hydrocarbon thickness revealed the presence of approximately 3 to 4 feet of free product at certain locations on the site. A total of 47 gallons of free product was removed during a period of one year. (Attachment-6).

I. In November 1988, Chevron conducted a soil and groundwater investigation. As a part of this investigation, twelve (12) exploratory borings and seven (7) test pits were installed and a total of seventeen (17) soil samples were collected for TPH-G, TPH-D and BTEX analysis. Elevated levels of TPH-G (4,300 mg/kg), TPH-D (17,000 mg/kg), benzene (3.4 mg/kg), toluene (15 mg/kg), ethylbenzene (3.1 mg/kg) and xylenes (12.4 mg/kg) were detected exceeding their MTCA Method-A cleanup levels of respectively, 30 mg/kg, 2,000 mg/kg, 0.03 mg/kg, 7 mg/kg, 6 mg/kg and 9 mg/kg. (Attachment-7).

Nine of the above-mentioned twelve borings were converted into groundwater monitoring wells and groundwater samples were collected for total petroleum hydrocarbon (TPH) and BTEX analysis. TPH, BTEX concentrations of 1,742 ug/l, 6100 ug/l, 19,000 ug/l, 2900 ug/l and 23,000 ug/l were detected respectively. These concentrations exceed MTCA Method-A cleanup levels of 800 ug/l (TPH), 5 ug/l (benzene), 1000 ug/l (toluene and xylenes) and 700 ug/l (ethylbenzene) (Attachment-7).

## **VI. ECOLOGY DETERMINATIONS**

A. The City is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because it is the current owner of the Site.

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the City dated October 25, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated October 27, 2006, the City voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the City is a PLP under RCW 70.105D.040. Ecology notified the City of this determination by letter dated October 31, 2006.

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 that conducting the remedial investigation/feasibility study, interim action and development of a draft cleanup action plan (CAP) required by this Order is 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. The presence at the Site of significant concentrations of gasoline, diesel and oil in soil and groundwater immediately adjacent to Port of Washington Narrows presents circumstances which warrant an interim action consistent with WAC 173-340-430. The interim action will consist of removal of petroleum hydrocarbon (TPH) source(s). This includes the excavation of TPH contaminated soils and/or removal of any product presents at the site, chemical oxidation, and enhanced bioremediation. More details regarding the interim action are discussed in the RI/FS work plan (Exhibit B, Section 3)

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City conduct the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. The City shall conduct the remedial actions fully described in Exhibit B to this Agreed Order. Generally, the City shall develop a draft cleanup action plan (DCAP) for the Site and, prior to developing the DCAP, conduct a remedial investigation/feasibility study and interim action including, but not limited to, the following tasks:

- Installing two new groundwater monitoring wells;
- Collecting groundwater and soil samples to define the full nature and extent of contamination;
- Performing a chemical oxidation pilot scale study;
- Performing an interim action to remove contaminated soils and/or any product identified by the remedial investigation, chemical oxidation for the treatment/reduction of the other source areas, and enhanced bioremediation;
- Evaluating remedial alternatives;
- Identifying the preferred remedial alternative for the site;

B. Upon the approval of the final RI/FS report, the City shall prepare a draft CAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination at the site. In addition to a general description of the proposed remedial action, the DCAP shall describe the results of contaminated soils excavation, the chemical oxidation pilot scale study, the application of enhanced bioremediation technologies, and studies of natural attenuation of residual groundwater contamination. The DCAP shall also include: cleanup levels from the RI/FS together with the rationale for their selection; a schedule for implementation; description of any institutional controls proposed; and summary of applicable local, state and federal laws pertinent to the proposed cleanup action.

C. The City shall perform actions required by this Order according to the schedule included in Exhibit B.

D. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by Exhibit B, Ecology may complete and issue the final deliverable.

E. Should significant additional work be necessary based on information obtained during the remedial investigation and/or new information that was not known at the time of the preparation of this Agreed Order, a supplemental work plan shall be submitted to Ecology for review and approval according to an agreed schedule, including an agreed revised schedule for submission of the resulting RI/FS report.

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notice**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

#### **B. Remedial Action Costs**

The City 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 Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior (retroactive to October 1, 2006) 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). The City shall pay the required amount within ninety (90) 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs (direct activities and support costs) by filing a lien against real property subject to the remedial actions.

**C. Implementation of Remedial Action**

If Ecology determines that the City has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the City's failure to comply with its obligations under this Order, the City shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the City is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Panjini Balaraju  
Toxics Cleanup Program  
PO Box 47600, Olympia, WA 98504-7600  
(360) 407-6161  
E-mail: pbal461@ecy.wa.gov

The project coordinator for the City is:

Thomas Knuckey  
3027 Olympus Drive  
Bremerton, Washington 98310  
(360) 473-2376  
E-Mail: thomas.knuckey@ci.bremerton.wa.us

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 the City, 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.

**E. Performance**

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

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

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The City 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.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the City 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 the City'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 the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City 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 the City 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.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the City 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. Attached as Exhibit D is Ecology Policy 840, Data Submittal Requirements.

If requested by Ecology, the City shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City 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.F (Access), Ecology shall notify the City 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

#### **H. Public Participation**

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the City.

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

1. If agreed to by Ecology, develop appropriate mailing list, 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 major meetings with the interested public and local governments. Likewise, Ecology shall notify the City prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City that do not receive prior Ecology approval, the City 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. Bremerton Public Library  
612 5<sup>th</sup> Street North  
Bremerton, Washington 98337
  
- b. Washington Department of Ecology  
Headquarters Office  
300 Desmond Drive  
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

**I. 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, the City 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, the City shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

- a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the City has fourteen (14) days within which to notify

Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The City may then request regional management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Land & Aquatic Lands Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the City's request for review. The Section Manager's decision 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.

**K. Extension of Schedule**

1. 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; and

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the City 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 the City 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 the City;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (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 the Port.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City 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.L (Amendment of Order) when a schedule extension is granted.

4. 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:

- 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; or
- c. Endangerment as described in Section VIII.M (Endangerment).

**L. 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.N (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 the City. The City shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

**L. Endangerment**

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

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

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the City'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.K (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.

**M. Reservation of Rights**

This Order is not a settlement under Chapter 70.105D RCW. 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 the City to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City regarding remedial actions required by this Order, provided the City complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and 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.

**N. 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 the City 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 the City's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City 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, the City shall notify Ecology of said transfer. Upon transfer of any

interest, the City shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**O. Compliance with Applicable Laws**

1. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit C.

2. Pursuant to RCW 70.105D.090(1), the City is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the City shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit C.

The City 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 the City 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 the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City 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 the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not

begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 the City 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.

**P. Indemnification**

The City 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 for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City 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 the City's receipt of written notification from Ecology that the City has completed the remedial activity required by this Order, as amended by any modifications, and that the City 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. In the event the City refuses, without sufficient cause, to comply with any term of this Order, the City will be liable for:

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

b. 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: \_\_\_\_\_

**CITY OF BREMERTON**

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**

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