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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	AGREED ORDER
City of Seattle; and South Park Property Development, LLC	No. _____

TO: Chuck Clarke
City of Seattle
Seattle Public Utilities
Seattle Municipal Tower
700 5th Avenue, Suite 4900
PO Box 34018
Seattle, WA 98124-4018

Robert A. Howie, Jr.
South Park Property Development, LLC
165 NE Juniper Street, Suite 100
Issaquah, WA 98027

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Seattle and South Park Property Development, LLC (SPPD) 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 of Seattle and SPPD to perform a remedial investigation/feasibility study (RI/FS) in accordance with WAC 173-340 to determine the nature and extent of contamination associated with the former South Park Landfill and evaluate any remedial actions necessary for the Site (as defined below). Ecology believes the actions required by this Order are in the public interest.

At the time of signing this Order, the Parties and King County intend to mutually amend this Order to add King County as a party and signatory, and to expand the scope of work to include implementation of an interim action that meets the requirements of WAC 173-340-430.

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 of Seattle, and SPPD agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City of Seattle's and SPPD's responsibility under this Order. The City of Seattle and SPPD shall be responsible for providing 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 South Park Landfill and is generally located at 8100 & 8200 2nd Avenue South, Seattle (County Assessor's Parcel Numbers 7328400005 & 3224049005). 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 approximate landfill boundaries are shown in Exhibit A. The Site, which is not co-extensive with the landfill boundaries, will be further identified and delineated as described in the Statement of Work (Exhibit B). The Site constitutes a Facility under RCW 70.105D.020 (5).

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

C. Potentially Liable Persons (PLPs): For the purposes of this Order, refers to the City of Seattle and SPPD.

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 of Seattle or SPPD:

A. The City of Seattle was an owner or operator of the above referenced properties during times of active land filling activities. The City of Seattle is also the current owner and operator of parcel no. 7328400005.

King County Assessor Real Property Records

http://www5.metrokc.gov/reports/property_report.asp?PIN=7328400005

B. King County was an owner or operator of the above referenced properties during times of active land filling activities.

King County Assessor Real Property Records

http://www5.metrokc.gov/reports/property_report.asp?PIN=3224049005

C. SPPD is the current owner and operator of parcel no. 3224049005.

King County Assessor Real Property Records

http://www5.metrokc.gov/reports/property_report.asp?PIN=3224049005

D. Several reports by King County Solid Waste Division document the release of hazardous substances at the Site. These documents, and other reports relating to the Site, are available at Ecology's Northwest Regional Office Central Records.

South Park Custodial Landfill
Environmental Site Investigation
Data Gaps Memorandum
King County Solid Waste Division, dated July 27, 1998

South Park Custodial Landfill
Cover Soil Investigation
King County Solid Waste Division, dated March 22, 1999

South Park Custodial Landfill
Monitoring Well and Gas Probe
Installation Technical Memorandum
King County Solid Waste Division, dated August 19, 1999

South Park Custodial Landfill
Monitoring Well and Gas Probe
Installation Technical Memorandum
King County Solid Waste Division, dated August 15, 2000

South Park Custodial Landfill
Brownfield Site Redevelopment
Site Characterization
King County Solid Waste Division, dated August 22, 2000

E. Several contaminants are currently known to exceed cleanup levels potentially applicable to the Site and pose a potential threat to human health or the environment.

VI. ECOLOGY DETERMINATIONS

A. The City of Seattle was an owner or operator of the above referenced properties during times of active land filling activities. The City of Seattle is also the current owner and operator of parcel no. 7328400005. The City of Seattle is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. King County was an owner or operator of the above referenced properties during times of active land filling activities. King County is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

C. SPPD is the current owner and operator of parcel no. 3224049005. SPPD is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

D. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site

E. Based upon credible evidence, Ecology issued a PLP status letter to the City of Seattle dated August 31, 2006, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated September 29, 2006, the City of Seattle voluntarily waived its rights to notice and comment and accepted Ecology's determination that the City of Seattle is a PLP under RCW 70.105D.040. By letter dated October 16, 2006, Ecology issued a final determination of PLP status.

F. Based upon credible evidence, Ecology issued a PLP status letter to King County dated August 31, 2006, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated September 28, 2006, King County voluntarily waived its rights to notice and comment and accepted Ecology's determination that King County is a PLP under RCW 70.105D.040. By letter dated October 16, 2006, Ecology issued a final determination of PLP status.

G. Based upon credible evidence, Ecology issued a PLP status letter to SPPD dated August 31, 2006, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter

dated September 29, 2006, SPPD voluntarily waived its rights to notice and comment and accepted Ecology's determination that SPPD is a PLP under RCW 70.105D.040. By letter dated October 16, 2006, Ecology issued a final determination of PLP status.

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

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take 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 and in accordance with Exhibit B (Statement of Work) and Exhibit C (Schedule). The PLPs shall conduct a Remedial Investigation and Feasibility Study and draft the first draft of the Draft Cleanup Action Plan (DCAP) that meets the requirements of WAC 173-340-350 through -390.

A. Develop a RI/FS Work Plan that includes a schedule, sampling and analysis plan, quality assurance project plan, public participation plan, and health and safety plan for Ecology's review and approval in accordance with the attached Statement of Work (Exhibit B). Once approved by Ecology, the RI/FS Work Plan will become an integral and enforceable part of this Order.

B. Develop the first draft of a DCAP for Ecology's review and approval in accordance with the attached Statement of Work (Exhibit B).

C. Perform the work tasks set out in the Statement of Work (Exhibit B) in accordance with the Statement of Work and the Ecology approved RI/FS Work Plan.

D. Enter electronic data into Ecology's Environmental Information Management (EIM) System.

E. 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 this Section, Ecology may complete and issue the final deliverable.

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 PLPs 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 after October 16, 2006, 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 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 PLPs 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 by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines the PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, 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 PLPs' failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B (Remedial Action Costs), provided that the PLPs are 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 PLPs 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:

Ching-Pi Wang
Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452
Phone: (425) 649-7134
Email: cwan461@ecy.wa.gov

The project coordinator for the PLPs is:

Clifford T. Schmitt
Farallon Consulting, L.L.C.
975 5th Avenue Northwest
Issaquah, Washington 98027
Phone: (425) 295-0800

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 PLPs, 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 as 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 Chapters 18.220 and 18.43 RCW.

The PLPs 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 any of the PLPs either own, control, or have 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 PLPs' 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 PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs 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 PLPs 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 PLPs 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 generated after September 9, 2005 shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or the PLPs' 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 PLPs 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 PLPs.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLPs 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, RI/FS 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 PLPs 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 PLPs that do not receive prior Ecology approval, the PLPs 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. South Park Library

8604 Eighth Avenue South
Seattle, WA 98108

b. Ecology's Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

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 PLPs 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 PLPs 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 PLPs have 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 PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics 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 PLPs' 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 PLPs 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 PLPs 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 PLPs;

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 PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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 PLPs. The PLPs 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).

M. 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 PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event the PLPs determine 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 PLPs may cease such activities. The PLPs 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 PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLPs to resume such activities.

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

N. 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 PLPs 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 PLPs regarding remedial actions required by this Order, provided the PLPs comply 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.

O. 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 any of the PLPs 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 any PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs 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 PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLPs 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. At this time, no federal,

state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are 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 PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The PLPs have 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 PLPs determine 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 PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs 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 PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs 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 PLPs

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.

Q. Indemnification

The PLPs agree 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 PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs 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 PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have 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 PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs 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 SEATTLE

Chuck Clarke
Director
Seattle Public Utilities
(206) 684-7934

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

Bob Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
Telephone: (425) 649-7054

SOUTH PARK PROPERTY DEVELOPMENT, LLC

Robert A. Howie, Jr.
President
(425)837-9720

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 SEATTLE

_____
Chuck Clarke
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STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

_____
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Northwest Regional Office
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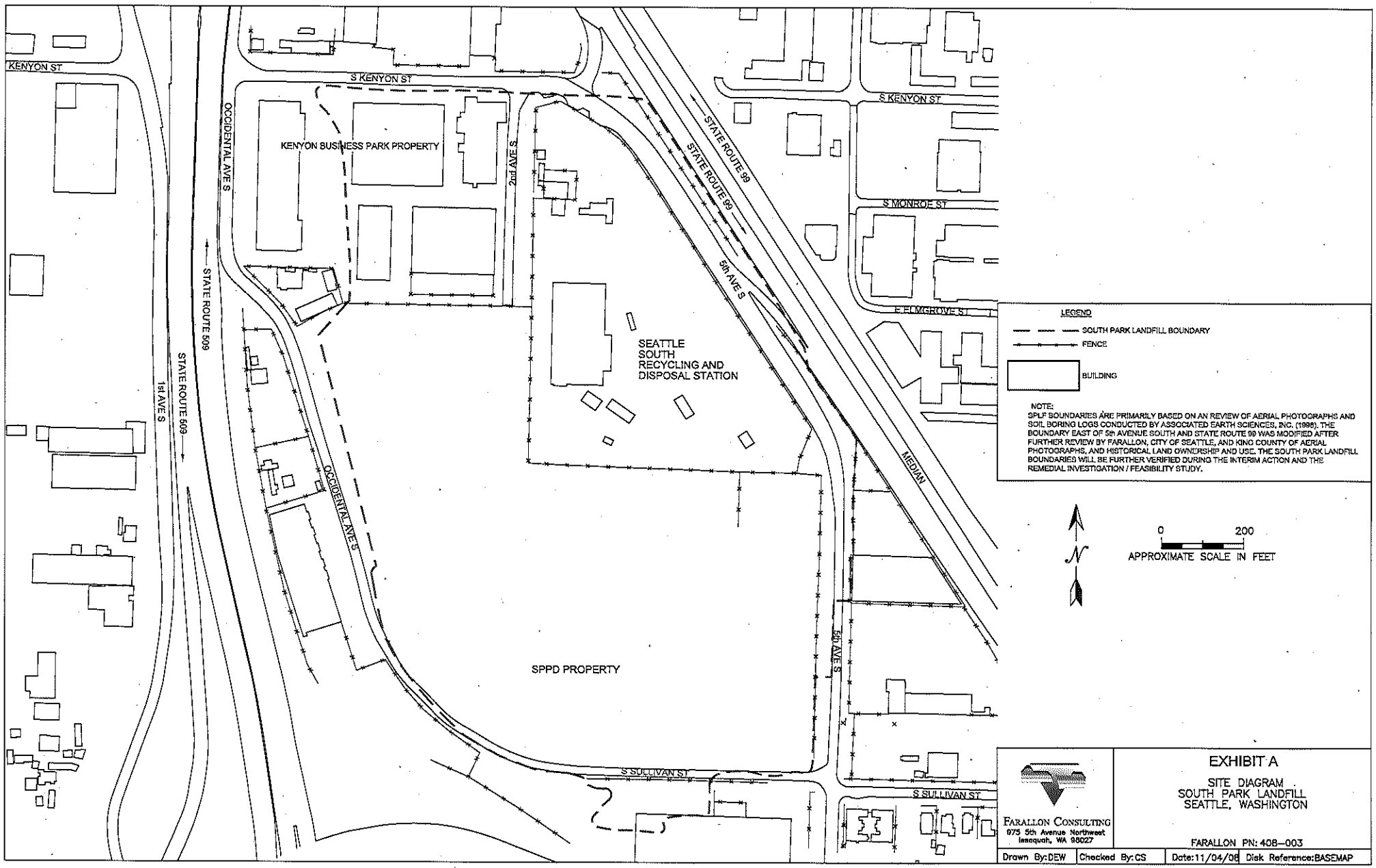
SOUTH PARK PROPERTY DEVELOPMENT, LLC

_____
Robert A. Howie, Jr.
~~President~~ Managing member
(425)837-9720

EXHIBIT A

SITE DIAGRAM


KENYON ST
S KENYON ST
KENYON BUSINESS PARK PROPERTY
OCCIDENTAL AVE S
2nd AVE S
STATE ROUTE 99
STATE ROUTE 509
1st AVE S
5th AVE S
S MONROE ST
E ELMGROVE ST
SEATTLE SOUTH RECYCLING AND DISPOSAL STATION
MEDIAN
SPPD PROPERTY
S SULLIVAN ST
LEGEND
SOUTH PARK LANDFILL BOUNDARY
FENCE
BUILDING
NOTE:
SPLF BOUNDARIES ARE PRIMARILY BASED ON AN REVIEW OF AERIAL PHOTOGRAPHS AND SOIL BORING LOGS CONDUCTED BY ASSOCIATED EARTH SCIENCES, INC. (1996). THE BOUNDARY EAST OF 5th AVENUE SOUTH AND STATE ROUTE 99 WAS MODIFIED AFTER FURTHER REVIEW BY FARALLON, CITY OF SEATTLE, AND KING COUNTY OF AERIAL PHOTOGRAPHS, AND HISTORICAL LAND OWNERSHIP AND USE. THE SOUTH PARK LANDFILL BOUNDARIES WILL BE FURTHER VERIFIED DURING THE INTERIM ACTION AND THE REMEDIAL INVESTIGATION / FEASIBILITY STUDY.
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APPROXIMATE SCALE IN FEET
FARALLON CONSULTING
975 5th Avenue Northwest
Issaquah, WA 98027
EXHIBIT A
SITE DIAGRAM
SOUTH PARK LANDFILL
SEATTLE, WASHINGTON
FARALLON PN: 408-003
Drawn By: DEW
Checked By: CS
Date: 11/04/08
Disk Reference: BASEMAP

EXHIBIT B
STATEMENT OF WORK

The work to be conducted under the Agreed Order will involve the work elements identified below for conducting a Remedial Investigation and Feasibility Study (RI/FS) and preparing a Draft Cleanup Action Plan (DCAP). The Potentially Liable Persons (PLPs) will work cooperatively with Ecology to support public participation in the scoping and implementation of the work performed under the Agreed Order in accordance with Section VIII.H of the Agreed Order. All work identified below shall be performed in accordance with the schedule in Exhibit C. All reports and documents provided to Ecology for review and approval will adhere to Ecology Executive Policy 1-81 (Establishing Plain Talk at Ecology).

Work Element 1: Submit Draft RI/FS Work Plan

A RI/FS Work Plan will be prepared to compile and analyze past investigation results, reports, and remedial actions undertaken at the South Park Landfill Site. The RI/FS Work Plan will also identify data gaps and specify a scope of work necessary to complete the RI/FS. The purpose of the RI/FS is to collect, develop, and evaluate sufficient information regarding the South Park Landfill Site to select a cleanup action under Chapters 173-340-350 through 173-340-390 of the Washington Administrative Code. The RI/FS Work Plan will include a Sampling and Analysis Plan, Quality Assurance Plan, and Health and Safety Plan.

The RI/FS Work Plan will include the following:

- Defining the geometry (lateral extent and thickness) of the South Park Landfill from historical information, including the review of aerial photographs and observations during subsurface assessments in the South Park Landfill area. Previous subsurface work has included drilling of boreholes, installation of monitoring wells, test pit excavations, and collection of surface soil samples. Additional subsurface exploration may be necessary to identify the extent of refuse deposition and the location of hazardous substances.
- Periodically assessing surface water in the West Ditch, when present, for the presence and distribution of the contaminants of potential concern.

- Periodically assessing surface water, when present, from landfill perimeter ditches for the presence and distribution of contaminants of potential concern.
- Assessing soil and sediments in the West Ditch that are in contact with surface water during the wet season, for the presence and distribution of contaminants of potential concern.
- Assessing ground water in the South Park Landfill vicinity using the existing monitoring well network of 20 wells (12 wells installed by King County and 8 wells at the Kenyon Business Park property) to define the groundwater flow regime characteristics and to assess distribution of contaminants of potential concern. Other existing monitoring wells in the vicinity will be utilized if accessible.
- Conducting research of the subsurface conditions to identify the source of halogenated volatile organic compounds present in ground water at monitoring well MW-12 located upgradient of the landfill and at monitoring wells MW-10 and MW-25 located downgradient of the landfill.
- Utilize existing environmental data to develop a conceptual ground-water flow and contaminant transport model. Then identify any data needs for assessment of extent of off-property migration of contaminants, and investigate to meet those data needs. For example:
    - Identify the extent of ground-water and soil contamination on the downgradient side of the landfill. Install an adequate number of appropriately placed monitoring wells to identify the extent of contaminants from the landfill in ground water and soil.
    - Identify the extent of ground-water and soil contamination on the upgradient side of the landfill. Install an adequate number of appropriately placed monitoring wells to identify the impact of any upgradient contaminant sources on the landfill.
- The PLPs will identify any other sources of contaminants that may be intermingling with any contaminants from the landfill.

- The PLPs may provide for Ecology's review any evidence of other parties that may have contributed contaminants that may be intermingling with any contaminants from the landfill.
- Numerical modeling may be proposed to predict the future migration of contaminants in the ground water. The model results may be useful for the RI/FS by indicating future time-concentration conditions. The PLPs may propose a modeling plan for Ecology review and approval. The modeling plan should include, but not be limited to:
    - An explanation of the purpose of numerical modeling.
    - Identification of the numerical models proposed to predict ground water flow and contaminant transport (e.g. MODFLOW, MT3D99, BIOCHLOR).
    - Model input parameter sensitivity analyses.
    - Model calibration and verification tests.
    - Model simulation scenarios.
- Prepare a Feasibility Study to develop and evaluate cleanup action alternatives that will be used to support the selection of a cleanup action for the South Park Landfill site.

Work Element 2: Submit Final RI/FS Work Plan

The final RI/FS Work Plan shall incorporate Ecology's comments on the draft Work Plan.

Work Element 3: Implement Approved RI/FS Work Plan

Work Element 4: Submit Draft RI/FS Report.

The PLPs will submit a draft RI/FS report for Ecology's review and approval. The RI/FS report will include, but not be limited to, the information listed under WAC 173-340-350(7)(c) and (8)(b).

Work Element 5: Public Review Draft RI/FS Report.

After receiving Ecology's comments on the draft RI/FS report, the PLPs shall revise the report to address Ecology's comments and resubmit the report, creating the Public Review Draft RI/FS Report.

Work Element 6: Submit Final RI/FS Report.

Upon completion of public comment on the Public Review Draft RI/FS Report, the PLPs' final Report shall incorporate Ecology's comments on the Public Review Draft RI/FS Report.

Work Element 7: Submit First Draft of Draft Cleanup Action Plan

The PLPs will submit the first draft of the draft Cleanup Action Plan (DCAP) to Ecology. The DCAP will include, but not be limited to, the information listed under WAC 173-340-380.

EXHIBIT C
Schedule for Implementation of Statement of Work

Work Elements. Refer to Exhibit B (Statement of Work for Key Components of Work Elements).	**Due Dates in Calendar Days.**
1. Draft RI/FS work plan for Ecology review and approval.	60 days after effective date of Agreed Order.
2. Final RI/FS work plan.	60 days after receipt of Ecology comments.
3. Implement Final RI/FS work plan.	10 days after Ecology approval of Final RI/FS work plan.
4. Draft RI/FS report for Ecology review and approval.	120 days after completion of RI/FS work plan.
5. Revise RI/FS report to include Ecology's comments (creating Public Review Draft RI/FS report)	60 days after receipt of Ecology comments
6. Final RI/FS report	60 days after receipt of Ecology comments (post public comment).
7. Submit first draft of Draft Cleanup Action Plan to Ecology.	60 days after submission of Public Review Draft RI/FS report to Ecology.