

## **SOUTH PARK LANDFILL SITE INTERIM ACTION AGREEMENT**

This SOUTH PARK LANDFILL SITE INTERIM ACTION AGREEMENT ("Agreement") is made and entered into by and between THE CITY OF SEATTLE ("City"), SOUTH PARK PROPERTY DEVELOPMENT, LLC ("SPPD"), and KING COUNTY ("County"). The City, SPPD, and the County may be referred to collectively as the "Participants" or "Parties," and individually as a "Participant" or "Party."

### **RECITALS**

WHEREAS, the South Park Landfill ("the Site") is under a Model Toxics Control Act, ch. 70.105D RCW ("MTCA") Agreed Order for investigation and proposal of cleanup alternatives AND;

WHEREAS, the Site is made up of multiple property owners including government and private parties AND;

WHEREAS, SPPD owns a parcel of land within the Site (SPPD property) and the City owns street right of way ("City ROW" or "City property") adjacent to SPPD property AND;

WHEREAS, SPPD wishes to conduct an interim cleanup action ("IA" or "interim action") on its property and a portion of City ROW AND;

WHEREAS, SPPD intends that the IA serve as the permanent cleanup for the affected portion of the Site AND;

WHEREAS, the IA must be integrated into eventual permanent cleanup of the entire Site, THEREFORE:

In consideration of the foregoing, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the Participants, intending to be legally bound, agree as follows:

### **AGREEMENT**

1. Amendment to Agreed Order.

a. At SPPD's discretion, and following the review and comment process set out in Sections 1.b and 1.c (below), SPPD may seek approval from the Department of Ecology ("Ecology") to amend Agreed Order No. 6706 ("Agreed Order"). If it does so, SPPD shall seek to make SPPD solely responsible for conducting the interim action at the Site. Except as provided elsewhere in this Agreement, and subject to the City's payment obligations in Sections 4 and 7 below, SPPD shall carry out the interim action at its sole expense. If SPPD fails to seek or obtain an amendment to the Agreed Order prior to the approval of the final Cleanup Action Plan for the Site, this Agreement

shall terminate and the rights and obligations herein shall be null and void. Further, if an Agreed Order authorizing the IA to be conducted by SPPD is issued by Ecology as contemplated in this Agreement, and SPPD fails to complete the IA that is required by the Agreed Order, SPPD shall return the monies paid by the City to SPPD pursuant to Section 7 of this Agreement.

b. The City will not object to SPPD's efforts to amend the Agreed Order, and will sign the amended Agreed Order if so required by Ecology, PROVIDED that:

i. The City is provided the opportunity to comment on SPPD's submittal of the final draft interim action work plan to Ecology. Unless the City and SPPD mutually agree to a different timeline, the City must provide any comments on the interim action work plan to SPPD within fifteen (15) business days of receiving the work plan after the Effective Date of this agreement, or the City will be deemed to have waived its opportunity to submit comments on the work plan. SPPD shall incorporate the City's comments into the final draft work plan to be submitted to Ecology, or shall address the comments to the City's satisfaction, unless individually or collectively they are not practicable. For purposes of this Agreement, the term "practicable" is to be interpreted in accordance with its definition under the Model Toxics Control Act, WAC 173-340-200; more specifically, for these purposes "practicable" means a proposed revision that is capable of being designed, constructed, and implemented in a reliable and effective manner including consideration of cost. When considering cost under this analysis, a proposed revision to the plan shall not be considered practicable if the incremental costs of the proposal are disproportionate to the incremental degree of benefits provided by the proposal over the existing proposal or other lower cost alternatives. In the event the City and SPPD do not agree on practicability issues, the City and SPPD retain the right to submit comments to Ecology regarding such issues related to practicability. Ultimately, if the City and SPPD cannot agree, such determinations will be subject to the dispute resolution process in Section 6;

ii. SPPD provides the City copies of all interim action construction plans and specifications prior to submittal to Ecology. The City shall have the right to review and comment on any elements of the construction plans and specifications. Unless the City and SPPD mutually agree to a different timeline, the City must provide any comments on such elements to SPPD within fifteen (15) business days of receiving the interim action construction plans and specifications, or the City will be deemed to have waived its opportunity to submit comments on all such elements. SPPD shall amend the construction plans and specifications to incorporate the City's comments, or shall address the comments to the City's satisfaction, unless the comments are inconsistent with the approved work plan or unless individually or collectively the comments are

not practicable as defined above. In the event the City and SPPD do not agree on consistency with the approved work plan or practicability, the City and SPPD retain the right to submit comments to Ecology regarding issues related to practicability. Ultimately, if the City and SPPD cannot agree, such determinations will be subject to the dispute resolution process in Section 6;

iii. The interim action will not interfere with the City's use of its property at the Site;

iv. The interim action is protective of human health and the environment, as determined by Ecology;

v. The interim action complies with WAC 173-340-430 as determined by Ecology;

vi. The interim action complies with all other applicable and relevant laws and regulations as determined by the appropriate regulatory agency;

vii. Subject to Section 4 of this Agreement, relocation of the West Ditch drainage flows from a pipe underneath Kenyon Industrial Park to the adjacent right-of-way, or replacement of the current receiving pipe under the Kenyon Industrial Park shall be proposed as part of SPPD's interim action, as contemplated in the South Park Landfill Site Preliminary Drainage Relocation Conceptual Agreement executed by SPPD and SPU;

viii. The Amended Agreed Order does not impose any additional action items, costs or obligations related to design, implementation, construction or maintenance of SPPD's proposed interim action, as submitted by SPPD to Ecology through the process described in Section 1.b.i above, except as expressly agreed upon by the City in this Agreement; and

viv. The interim action as approved by Ecology is substantially the same as that submitted by SPPD through the process described in Section 1.b.i above.

c. The County will not object to SPPD's efforts to amend the Agreed Order to incorporate the IA if:

i. The County is provided the opportunity to comment on SPPD's submittal of the final draft interim action work plan to Ecology. Unless the County and SPPD mutually agree to a different timeline, the County must provide any comments on the interim action work plan to SPPD within fifteen (15) business days of receiving the work plan after the Effective Date of this Agreement, or the County will be deemed to have waived its opportunity to submit comments on the work plan. SPPD shall

consider the County's comments when developing the final draft work plan to be submitted to Ecology; and

ii. SPPD provides the County copies of all interim action construction plans and specifications prior to submittal to Ecology. The County shall have the right to review and comment on any elements of the construction plans and specifications. Unless the County and SPPD mutually agree to a different timeline, the County must provide any comments on such elements to SPPD within fifteen (15) business days of receiving the interim action construction plans and specifications, or the County will be deemed to have waived its opportunity to submit comments on all such elements. SPPD shall consider modifying the construction plans and specifications to incorporate the County's comments.

d. SPPD intends to incorporate the interim action into its development of the SPPD property. The interim action work plan that will be submitted to Ecology for approval will include development and remedial action components. The Participants agree to confer in good faith to agree on the characterization of these activities in the interim action work plan prior to SPPD's submission of the document to Ecology. SPPD will submit to Ecology the interim action work plan without such characterization for any components that have not been agreed upon. Such disagreements shall not be subject to the Dispute Resolution process in Section 6; however, disagreements about Ecology's characterization of the components will be subject to Dispute Resolution provided that the process is invoked after SPPD's completion of the IA or sooner if all Participants agree to do so. Any dispute not resolved pursuant to this section shall be resolved through a final allocation process, which may be commenced at any time by any of the Parties.

## 2. City of Seattle Property Located within IA Boundary.

a. SPPD intends to propose an interim action whose primary features consist of construction of: (i) a cap, (ii) a bioswale/drainage feature, (iii) a landfill gas system at the Site, and (iv) potential relocation of the drainage from the SPPD bioswale/drainage to City owned property to avoid routing drainage to the Kenyon Industrial Park storm system, or replacement of the Kenyon Industrial Park storm system. These remedial features will be partially located on City-owned property (See attached map labeled Exhibit 1, which generally depicts the interim action).

b. The City agrees that stormwater runoff from the SPPD property and stormwater runoff from the nearby right-of-way may be commingled in the bioswale/drainage feature that SPPD proposes to construct provided that SPPD executes and records the Drainage Agreement that is attached as Exhibit 2.

c. SPPD acknowledges that it must obtain a Street Use Permit, a Term Permit or other legal instrument from Seattle Department of Transportation to locate any features or development on City property. SPPD will be

responsible for maintaining those portions of the bioswale/drainage feature, drainage features on the slope, landfill gas system and retaining wall located on City property.

d. SPPD will also maintain the proposed cap on the slope located on City property adjacent to SPPD property, including the slope behind the retaining wall to the curb edge of the sidewalk at its sole expense. The City shall be responsible for maintenance from the curb edge of the sidewalk into the rights of way.

e. SPPD will maintain the elements of the landfill gas system constructed on or in City property as part of the interim action to ensure proper, efficient and continuing operation of the landfill gas system. Any concerns regarding the adequacy of SPPD's maintenance efforts raised by Ecology or the City shall be promptly addressed and remedied by SPPD, subject to SPPD's dispute resolution rights under this Agreement or under the Agreed Order or any successor order or decree, PROVIDED that SPPD's rights to invoke dispute resolution does not relieve SPPD from taking prompt action to address any problems that pose an immediate threat to human health or the environment.

f. SPPD agrees to release, indemnify, hold harmless, and defend the City and its employees, officers, managers, representatives, agents and consultants, and successors and assigns from and against any and all claims of any nature (including liabilities, loss, demands, agency orders or requirements, including but not limited to additional requirements by Ecology that increase the costs of the final remedial action that would not have been required absent SPPD's interim action, or enforcement actions related to SPPD's interim action, costs and expenses including reasonable attorney's fees, and damages) to the extent arising from, or caused by: (i) an interim action constructed by SPPD or its agents that is inadequately or negligently designed, constructed or maintained; (ii) an interim action constructed by SPPD or its agents that is inconsistent with the final remedy required by Ecology for the Site; (iii) an interim action constructed by SPPD or its agents that must be repaired, modified or replaced to implement or meet the requirements of the final remedy required by Ecology for the Site; (iv) SPPD's failure to comply with legally applicable or relevant and appropriate requirements that Ecology determines the interim action must meet under WAC 173-340-710; or (v) failure to maintain best management practices for the interim action for which SPPD is responsible, unless such failure arises out of negligent actions of the City. However, SPPD is not agreeing to release, indemnify, hold the City harmless, or defend the City from or against claims arising from or caused by hazardous substances, pollutants, or contaminants downstream of the bioswale/drainage feature that did not pass through the bioswale/drainage feature constructed by SPPD.

g. The County affirms, and SPPD represents and warrants, that SPPD's claims for recovery of SPPD's remedial action costs incurred for remedial work occurring on City property have not been assigned to the County, except to the extent that claims for costs to remedy contamination that had

migrated off of the SPPD property as of the date of closing of SPPD's purchase and sale transaction with the County (approximately June 14, 2006) have been assigned to the County.

h. Subject to SPPD obtaining required permits and approvals for access to the ROWs, the City hereby grants SPPD reasonable access to SPU property for the purpose of and only for the period of time necessary to carry out the activities authorized or required by this Agreement as follows. Except in an emergency, SPPD shall provide to SPU a written request for specific access at least five (5) business days prior to the date on which access is needed. The request shall include: (i) specific locations on SPU property where access is needed; (ii) the type of activities to be conducted, the type of vehicles for which access is needed, and the approximate number of personnel that will be involved in such activities; and (iii) the duration of time access will be needed. SPU shall review the request for access to determine whether such access will unreasonably interfere with SPU operations. If such access will not unreasonably interfere with SPU operations, then the City shall, within three (3) business days of receiving the request from SPPD, confirm that the requested access is granted. The City shall not unreasonably withhold such access. However, if access will, in the opinion of SPU, unreasonably interfere with SPU operations, then the City and SPPD shall meet within three (3) business days of SPPD's request to negotiate alternative access plans that will allow SPPD to perform its activities in a way that will not unreasonably interfere with SPU operations. If such agreement on alternative access plans cannot be achieved, the dispute resolution process in Section 6 will be used to resolve the issue. If SPPD needs access to City property because of an emergency, SPPD shall contact Jeff Neuner or his designee or successor by phone to explain the nature of the emergency, and to provide as much of the information described in the third sentence of this section as possible. SPPD shall use its best efforts to minimize interference with City operations if it accesses City property because of an emergency.

### 3. Discovery of Contamination on City Property.

a. If SPPD discovers contaminated soils or other contaminated materials on City property when it conducts the interim action, and if Ecology prohibits the re-interment of those soils/materials on SPPD property, then SPPD shall decide whether to remove or otherwise remediate the contamination, or whether to modify the interim action work plan to avoid the contamination. SPPD shall provide the City copies of the proposal documenting its decision. The City shall have the right to review and comment on any elements of the documented proposal that either: (i) if approved by Ecology, represent modifications to the interim action work plan; or (ii) may increase the City's potential liability for remedial action costs. Unless the City and SPPD mutually agree to a different timeline, the City must provide any comments on such elements to SPPD as soon as reasonably possible, but in no event more than ten (10) business days of receiving the proposal, or it will be deemed to have waived its opportunity to

comment on such elements. If requested by SPPD, and if appropriate given the scope/significance of the proposal by SPPD, the City shall, in good faith, attempt to accelerate the timeline for the delivery of its comments. SPPD will:

i. incorporate the City's comments into its proposal to modify the interim action work plan, or address the comments to the City's satisfaction, unless individually or collectively they are not practicable as defined in Section 1.b., before seeking Ecology's approval to modify the interim action work plan to avoid the contamination, or to remove or otherwise remediate the contamination, provided that if the Participants disagree as to the practicability of the City's comments, the disagreement shall be resolved through the dispute resolution process set forth in Section 6 before the proposal is submitted to Ecology; and

ii. release, indemnify, hold harmless, and defend the City and its employees, officers, managers, representatives, agents and consultants, and successors and assigns from and against any and all claims (including liabilities, loss, demands, agency orders requirements or enforcement actions, costs and expenses including reasonable attorney's fees, and damages) for investigating, removing or remediating such contamination; provided, however, that SPPD's obligations in this Section 3.a.ii are limited to contamination that is located within the footprint (both laterally and vertically) of SPPD's remedial and development actions as determined through the permitting process and in the final draft Work Plan existing at the time the Agreed Order is executed. Under this Section 3.a.ii, SPPD is not responsible for investigating or remediating contamination outside this footprint, whether or not the existence of such contamination is initially discovered during SPPD interim action activities, provided that nothing in this section relieves SPPD of MTCA liability for any contamination outside of the SPPD footprint that SPPD's activities may cause or exacerbate.

Unless inconsistent with the interim action work plan or with the conditions in Sections 1.b.iii, iv, or v, and subject to Section 3.a.ii above, SPPD may proceed with any modified construction activities prior to receiving City comments on a documented proposal or prior to resolving any dispute regarding those comments, at its sole risk and subject to the indemnities described above. Nothing in this Section 3.a. shall apply to contamination encountered in conjunction with the relocation/replacement of the West Ditch drainage pipe. Such contamination shall be addressed in accordance with Section 4 (below).

b. The County affirms and SPPD represents and warrants that the claims described in Section 3.a. above have not been assigned to the County, except to the extent that claims for costs to remedy contamination that had migrated off the SPPD property as of the date of closing of SPPD's purchase and sale transaction with the County (approximately June 14, 2006) have been assigned to the County.

4. West Ditch Drainage Relocation/Replacement.

a. Subject to this Section 4, the Parties agree that re-routing the drainage from the SPPD bioswale away from the Kenyon Industrial Park storm drain pipe to another location, or replacing the existing Kenyon Industrial Park storm system with a new pipe in basically the same location shall be proposed as part of SPPD's interim action, as contemplated in the South Park Landfill Site Preliminary Drainage Relocation Conceptual Agreement executed by SPPD and SPU. Within thirty (30) days of the Effective Date of this Agreement, the City shall determine whether relocation or replacement is most appropriate, based on considerations of cost and risk. The selection is subject to approval by SPPD, which approval shall not be unreasonably withheld. The terms and conditions in this Agreement shall apply equally to either option.

b. The Parties concur that re-routing the West Ditch drainage flow or replacing the drainage pipe currently receiving West Ditch drainage flows to avoid the private drain line that is currently located on the Kenyon Industrial Park property may be an appropriate and reasonable remedial action as defined under MTCA insofar as such relocation or replacement will reduce the chance that stormwater drainage from the landfill will come in contact with potential contamination that may exist at the Kenyon Industrial Park, and will avoid exacerbating potential contamination pathways. The Parties further acknowledge that the drainage relocation or replacement would not be done but for the fact that Ecology is requiring that the Site be remediated pursuant to MTCA.

c. The Parties agree that, if approved as part of the interim action and subject to Section 4.f below, SPPD shall perform the drainage pipe relocation or replacement work as part of the interim action. All costs associated with relocation/replacement are remedial costs, but can be distinguished from the remainder of the interim action costs, and shall be considered "Drain Relocation/Replacement Costs" to be paid in accordance with this Section 4. Drain Relocation/Replacement Costs shall include, without limitation, the costs of investigating, handling, and disposing of any contamination encountered during the drainage pipe relocation portion of the interim action. Drain Relocation/Replacement Costs shall also include any costs associated with obtaining access to Kenyon Industrial Park property, to the extent such access is necessary for relocating or replacing the drain pipe. The Parties acknowledge that total Drain Relocation/Replacement Costs cannot be quantified at the time of execution of this Interim Action Agreement. However, the Parties agree that Drain Relocation/Replacement Costs are remedial action costs. The Parties further acknowledge that relocation of the drainage will reduce the cost of flow control requirements that SPPD will be required to construct on its property to comply with the Seattle Municipal Code. SPPD shall contribute \$342,651 toward the drainage relocation. This amount represents SPPD's flow control cost savings.



d. Subject to Section 4.e below, the City shall adjust the amount of its settlement of remedial action costs with SPPD after the drainage relocation/replacement is completed and after the associated remedial action costs of the drain relocation/replacement in excess of SPPD's contribution as set forth in Section 4.c above are known. The cost adjustment to address the remedial action costs for the drainage relocation/replacement shall be in addition to the remedial action cost settlement amount set forth in Section 7.a. This additional remedial action cost for drain relocation/replacement shall be considered part of the City's settlement payment to SPPD to resolve the City's MTCA liability to SPPD. Within 30 days after construction of the relocated drainage by SPPD is complete, SPPD shall notify the City of the total remedial action costs attributable to the drain relocation/replacement work. Subject to SPPD's compliance with Section 7.c, the City shall pay any undisputed amount of the remedial action costs of the drainage relocation/replacement to SPPD within 30 days after receipt of such notice.

e. Subject to Section 4.f and except as indicated below in this Section 4.e, the City's obligation under this Agreement to pay remedial action costs for drain relocation/replacement as set forth in Section 4.d above, shall not exceed \$1.0 million. If the total remedial action cost of the drain relocation is such that the City's cost share for this remedial element will be greater than \$1.0 million ("excess costs"), and if the City believes that such excess costs are unreasonable, the City shall have the right to invoke dispute resolution to determine whether such excess costs are recoverable by SPPD under this Agreement.

f. If, within thirty (30) days of the Effective Date of this Agreement, the City determines, in its sole discretion, that construction of the new drainage system in the right of way and relocation of the drainage discharged from the downstream end of the bioswale to a new drainage system in the right of way is not feasible, or that replacement of the existing drain beneath Kenyon Industrial Park is not feasible, or that neither relocation nor replacement can be reasonably accomplished under the existing regulatory framework, then the City shall notify SPPD in writing of such determination, and upon delivery of such written notice, subsections c, d, and e of this Section 4 shall be null and void.

g. If the drainage relocation referenced in this Section 4 is constructed or if replacement of the drain line beneath Kenyon Industrial Park is completed, SPPD agrees to conduct any construction monitoring associated with the construction that may be required by Ecology or by federal, state or local law. SPPD further agrees that if hazardous substances, stained or odorous materials, or any other indications of hazardous materials are encountered during relocation/replacement of the drainage, it will stop work and immediately and contact SPU to collectively determine an appropriate course of action. SPPD further agrees to ensure that a team qualified under federal and state law to work with hazardous materials is available to promptly respond if hazardous substances, stained or odorous materials, or any other indications of hazardous

materials are encountered during relocation/replacement of the drainage. In addition, if Ecology requires the City be a responsible party for implementation of the IA in the Agreed Order amendment, SPPD agrees to meet the substantial equivalent of the City's Public Works contracting requirements for the drain relocation work. The costs associated with these requirements will be Drain Relocation Costs.

h. Upon completion of construction of the drainage relocation/replacement work, the City shall own, operate and maintain the new drainage on City right-of-way while SPPD will own, operate and maintain any new drainage on its property and in the City right-of-way portion of the bioswale. This obligation includes but is not limited to any future monitoring, inspection, or permitting obligations. The City shall negotiate ownership requirements with Kenyon Industrial Park owner(s) in the event the private drain pipe is replaced on the industrial park.

5. Access, Compliance with Work Plans, and City Remedies. SPPD grants the City reasonable access to SPPD property during the construction of the Ecology-approved interim action for the purpose of observing the construction to ensure the work is consistent with the interim action work plan and is not reasonably likely to increase costs to the City or adversely impact the City's operations and contemplated remedial actions. If the City believes that any work is inconsistent with the interim action work plan, or is reasonably likely to increase City costs or adversely impact City operations or contemplated remedial actions, the City may give notice to SPPD and request a meeting to discuss such issues. A meeting shall be held within 48 hours of such notice. If the City is not satisfied with the explanations or responses of SPPD, the City may notify Ecology, and in addition, the City may pursue any other legal remedy that may be available including seeking a cease and desist order and an injunction.

6. Dispute Resolution. With the exception of the specific issues and process referred to in Section 4 and limitations identified in Section 1.d, any dispute that may arise under this Agreement shall be resolved according to this Section. If a dispute arises, the disputing Participant shall provide written notice that it is invoking this dispute resolution process ("Written Notice") to the other Participants. Within 30 days of the service of such Written Notice, the Participants and/or their attorneys shall meet in person at a mutually agreeable date, time and location to attempt to resolve the dispute; provided that once interim action construction has begun, the Parties shall make best efforts to meet within seven (7) business days of service of the Written Notice. Any Participant that affirmatively communicates in writing (including e-mail) to one of the other Participants that it waives its right to participate in dispute resolution or any Participant that does not attend a meeting jointly scheduled by all Participants shall be deemed to waive its right to participate in the dispute resolution process, and shall be bound by the resolution reached by the other Participants. If the Participants cannot resolve the dispute within thirty (30) days of the service of Written Notice (ten (10) business days once interim action construction has

begun), the Participants shall agree on a mediator to mediate the dispute. The Parties shall share the costs of the mediator equally. A mediation session will be held no later than 60 days after the service of the Written Notice (thirty (30) days once interim action construction has begun), and except for the cost of the mediator, each Participant shall pay its own costs for mediation. In the event the mediation does not resolve the dispute, any Participant(s) may seek an Order from King County Superior Court to resolve the dispute. The substantially prevailing party in any court action shall have its attorneys' fees and costs associated with the court action paid by the non-prevailing parties. Invoking the dispute resolution process shall not prevent SPPD from implementing an Ecology-approved interim action at SPPD's own risk subject to the indemnity provisions above.

7. City Payments.

a. In consideration of the mutual covenants and agreements contained in this Agreement, within sixty (60) days of the Effective Date of this Agreement, the City will provide SPPD with a letter of intent to pay SPPD \$565,000 (five-hundred and sixty-five thousand dollars) upon full execution of the amended Agreed Order identified in Section 1. Within thirty (30) days of the Effective Date of the amended Agreed Order, the City shall deliver this amount to SPPD.

b. Subject to the terms of this Agreement, this amount represents the City's final share of the following:

i. the cost incurred by SPPD for remedial actions to be constructed on portions of City rights of way that are (1) within the footprint of the interim action contemplated by this Agreement, or (2) otherwise subject to indemnities in Sections 2.f and 3.a; and

ii. any remediation costs that may need to be incurred to remediate contamination discovered on City property during SPPD's interim action and development construction activities.

Nothing in this Section 7 modifies the City's obligations described in Section 4. Nothing in this Agreement prevents the City from seeking cost recovery of such City costs from any other potentially liable party other than SPPD.

c. For the purposes of complying with requirements for MTCA Grant Funding, SPPD shall provide to the City full documentation of SPPD IA work costs, including but not limited to a copy of the contract and scope of work for each contractor hired to perform the IA work, including consultants, construction firms and any other entities performing the IA work. SPPD shall provide quarterly invoices detailing IA work performed in the previous quarter. The invoices shall detail the work performed, the time period in which it was performed, which contract and contract task was fulfilled, the amount of time worked, who performed the work, and charges per task performed, as well as total charges.

Invoices shall include backup documentation of purchases, sub-contractors or sub-consultants, and any other contract expenses related to the IA work. Backup documentation includes but is not limited to receipts. SPPD's failure to comply with this Section 7.c may cause damages to the City and may form the basis for related claims.

8. Denial of Liability. It is expressly understood and agreed that by executing this Agreement and complying with its terms, the Parties do not admit any violation of law or any liability to each other or any other entity. The execution and the performance of this Agreement shall not be construed in any way as an admission of liability or a waiver of any right or defense, except as expressly provided in this Agreement.

9. Entire Agreement; Amendment. This Agreement constitutes the entire understanding of the Participants with respect to its subject matter. Any amendments or extensions to this Agreement shall only be valid if made by written agreement signed by all of the Participants or, if related solely to the allocation or payment of costs under this Agreement, by the City and SPPD.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

12. Authority of Participants. Each Participant represents and warrants that it has all requisite power and authority (corporate, public, or otherwise) to enter into and be bound by the terms and conditions of this Agreement and to carry out its respective obligations hereunder and the execution and delivery of this Agreement and the performance of each Participant's obligations hereunder have been duly authorized by all necessary action (corporate, public, or otherwise).

13. Successors and Assigns. Each Participant agrees that its heirs, successors and assigns shall be bound by the terms and obligations of this agreement, and each Participant shall inform its heirs, successors or assigns that they are bound by the terms and obligations established in this Agreement. Each Participant shall provide a full copy of this Agreement to such heirs, successors or assigns.

14. Effective Date. This Interim Action Agreement shall take effect on the date last signed by any of the Participants ("Effective Date").

15. No Third Party Beneficiaries. Except as provided in Section 13 with respect to actual heirs, successors, and assigns of the Participants, nothing in this Agreement shall create any right, privilege or cause of action in any person or entity not a party to it.

SO AGREED.

**CITY OF SEATTLE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**SOUTH PARK PROPERTY  
DEVELOPMENT, LLC**

By: APM \_\_\_\_\_

Its: managing member \_\_\_\_\_

Date: 1/13/12 \_\_\_\_\_

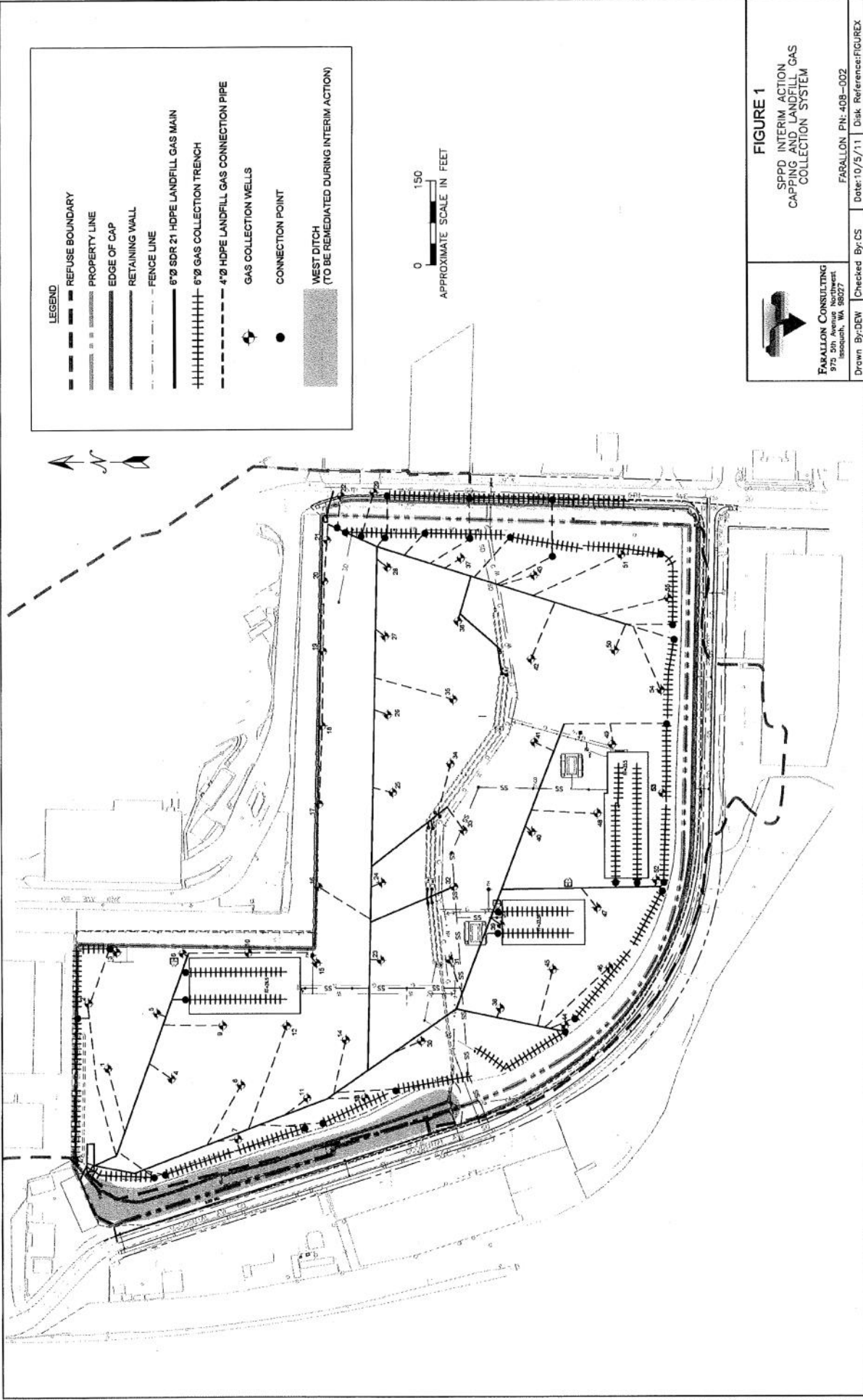
**KING COUNTY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**Exhibit 1 – Map**



**FIGURE 1**

**SPPD INTERIM ACTION  
CAPPING AND LANDFILL GAS  
COLLECTION SYSTEM**

**FARALLON CONSULTING**  
975 2th Avenue Northwest  
Issaquah, WA 98027

FARALLON PN: 408-002

Drawn By: DEW | Checked By: CS | Date: 10/5/11 | Disk Reference: FIGUREX

**Exhibit 2 – Drainage Agreement**



When Recorded, Return to

Seattle Public Utilities  
Real Estate Services  
Central Building  
810 Third Avenue, Suite 300  
Seattle, WA 98104

**COVENANT RUNNING WITH THE LAND WITH ACKNOWLEDGEMENT AND  
ACCEPTANCE OF RISK, DUTY TO INFORM, NEED FOR INSURANCE,  
INDEMNITY AND WAIVER  
(Right-of-Way Drainage)**

**GRANTOR: 1) South Park Property Development, Inc.**

2) \_\_\_\_\_

3) \_\_\_\_\_

Additional Owners/Grantors on page \_\_\_\_\_

**GRANTEE: THE CITY OF SEATTLE**

**LEGAL DESCRIPTION (ABBREVIATED):**

Additional legal description on Exhibit A on page 5.

**ASSESSOR'S TAX PARCEL ID NO(S).** \_\_\_\_\_

**Permit Applications:**

Type(s) of permit sought: \_\_\_\_\_

Date(s) of application: \_\_\_\_\_

Application Number(s): \_\_\_\_\_

**COVENANT RUNNING WITH THE LAND,  
WITH ACKNOWLEDGEMENT AND ACCEPTANCE OF RISK,  
DUTY TO INFORM, NEED FOR INSURANCE, INDEMNITY  
AND WAIVER  
(Right-of-Way Drainage)**

This Covenant and Indemnity Agreement (“Covenant”) is executed in favor of the City of Seattle (“City”) by the undersigned owner(s) (“Grantor”) of the real property described on Exhibit 1 (the “Property”) on behalf of Grantor and Grantor’s heirs, successors and assigns. The undersigned warrants that Grantor has bargained for and negotiated this Covenant with the City, has received good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and that all owners of the Property have executed this document.

**A. ACKNOWLEDGEMENT AND ACCEPTANCE OF RISK**

1. Grantor acknowledges that the development of the Property requires Grantor to provide certain improvements including drainage facilities in order to accommodate stormwater flows. These improvements include (a) remediation of an existing drainage ditch located on and adjacent to the Property that currently accepts stormwater flow from the Property and City rights of ways, (b) converting the existing drainage ditch into a privately owned and maintained drainage system consisting of a stormwater collection and treatment system (“Stormwater System”); that will (c) continue to accept stormwater flows from both the Property and City rights of ways; and (d) will ultimately discharge stormwater from the Stormwater System to public drainage facilities. This Stormwater System is more particularly described in Exhibit 2, attached hereto. The City is willing to accept Grantor’s proposed Stormwater System design in exchange for this Covenant, and PROVIDED that Grantor obtains all permits and approvals required by law for the installation of the Stormwater System as designed at the location indicated.

2. Grantor understands and acknowledges that there are unique risks associated with construction of the Stormwater System on and adjacent to the Property. The Stormwater System risks include without limitation property damage, loss of use, personal injury and death resulting from soil movement (such as landslides and mudslides), water movement, and water collection occurring on the Property or on other property in the vicinity, collection of pollutants contained in stormwater that flows to the Stormwater System, and releases of pollutants from the Stormwater System into the environment. Grantor acknowledges that not all risks have been eliminated by the design and engineering of the proposed Stormwater System in application # \_\_\_\_\_ on the Property.

3. Grantor understands and acknowledges that the design and capacity of the Stormwater System, and any public drainage system (existing or future) may not be sufficient to prevent system overflows, flooding, or ponding resulting from storm events and agrees on behalf of Grantor and Grantor’s heirs, successors and assigns that this Covenant creates no obligation to Grantor or Grantor’s heirs, successors or assigns for the City to update or improve the Stormwater System, the adjacent public drainage facilities, or to construct a new system. Grantor

also acknowledges and agrees on behalf of Grantor and Grantor's heirs, successors and assigns that the design and capacity of Grantor's Stormwater System (existing or future) serving the project in application # \_\_\_\_\_ may not be sufficient to prevent system overflows, flooding, or ponding resulting from storm events and that this Covenant creates no obligation or liability to Grantor or Grantor's heirs, successors or assigns for any damage to the Stormwater System and Grantor's Property that may be caused by such overflows, flooding or ponding resulting from storm events.

4. Grantor agrees and acknowledges that the portion of the Stormwater System that is located on Grantor's property shall be and remain the exclusive property of Grantor and Grantor's heirs, successors and assigns.

5. Grantor has decided to proceed with construction of the project, including the Stormwater System in application # \_\_\_\_\_. Grantor agrees on behalf of Grantor and Grantor's heirs, successors and assigns to accept any and all risks of loss, damage and injury to themselves, to the Stormwater System, or to Grantor's Property associated with (a) the design of the Stormwater System on the Property, or (b) development of the project in application # \_\_\_\_\_ on the Property; or (c) any combination thereof. Except to the extent that loss, damage, or injury directly results from the negligence of the City, Grantor also agrees on behalf of Grantor and Grantor's heirs, successors and assigns to accept any and all risks of loss, damage and injury to themselves, to the Stormwater System, or to Grantor's Property associated with the Stormwater System on the Property.

6. Grantor acknowledges and agrees that this Covenant and the contents herein touch and concern the real property as more specifically described in Exhibit 1. Grantor, on behalf of themselves and their heirs, successors and assigns, further waive any right, claim, privilege or defense to assert that this Covenant does not touch and concern the real property described in Exhibit 1.

7. Should any element of this Covenant later be declared unlawful, only that section shall be deemed void, and all of the remaining provisions in this Covenant shall remain enforceable and effective. In the event an element of this Covenant is declared unlawful, Grantor and the City shall in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

**B. WAIVER**

Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, hereby waives any right to assert any and all present and future claims against the City, whether known or unknown, for any loss or damage occurring either on or off the Property, including without limitation personal injury, death, property damage, and loss of use by reason of or arising out of (1) the operation and/or maintenance of the Stormwater System, (2) the issuance of any permit or approval by the City for the project in application # \_\_\_\_\_ on the Property, except only to the extent that such losses directly result from the negligence of the City; and (3) the risks

described in Section A above, except only to the extent that such losses directly result from the negligence of the City. Nothing in this Section B waives Grantor's rights with respect to hazardous substances, pollutants, or contaminants that do not pass through the Stormwater System.

**C. INDEMNITY**

1. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to indemnify and defend the City and its officers, agents and employees from and against all claims, losses, costs and damages, including without limitation personal injury, death, property damage, loss of use, and attorneys' fees (but not environmental contamination or remedial action costs), to the extent arising out of or relating to (1) stormwater from City rights of way entering the Stormwater System and/or the Property; and (2) the approval and issuance of permit application # \_\_\_\_\_ for the development or alteration of the Property, including inspections, or arising out of or relating to development of the Property pursuant to permit application # \_\_\_\_\_.

2. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to indemnify and defend the City and its officers, agents and employees from and against all claims, losses, costs and damages, including without limitation personal injury, death, property damage, loss of use, environmental contamination, remedial action costs and attorneys' fees, to the extent arising out of or relating to pollutants and contaminants entering the Stormwater System from the Property (but not pollutants or contaminants from the City right of way that enter the Stormwater System, even if such pollutants or contaminants enter the Property before entering the Stormwater System).

3. Nothing in this Section is intended to require indemnification of the City for damages or other losses to the extent caused by or resulting from the negligence of the City, its agents or employees. In addition, nothing in this Section requires indemnification of the City for damages or other losses arising from hazardous substances, pollutants, or contaminants that do not pass through the Stormwater System.

4. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, specifically and expressly agrees to waive Grantor's and Grantor's heirs', successors' and assigns' immunity under industrial insurance, Title 51 of the Revised Code of Washington, to the extent necessary to provide the City with a full and complete indemnity from claims made by employees of Grantor or Grantor's heirs, successors and assigns with respect to (1) the Stormwater System, and (2) application # \_\_\_\_\_. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, specifically and expressly agrees that such waiver of immunity was mutually negotiated by the parties.

**D. DUTY TO INFORM**

1. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to inform all subsequent heirs, successors and assigns of the Property that: (a) any and all heirs,

successors and assigns of the Property shall remain completely and solely responsible for maintaining the Stormwater System, and (b) there are risks associated with the Stormwater System and construction of the project pursuant to application # \_\_\_\_\_ thereon, as described above in Section A.

2. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to provide a copy of this Covenant to any prospective purchaser or assignee of the Property prior to closing or assignment.

**E. INSURANCE**

Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to further inform all subsequent heirs, successors and assigns of the advisability of obtaining insurance *in addition to* standard building owner's insurance to specifically cover the risks posed by the Stormwater System, including without limitation those risks described above in Section A.

**F. RECORDING**

This Covenant shall be recorded in the real estate records of the Office of Records and Elections of King County, Washington.

**G. RUNNING COVENANT**

The parties intend that this Covenant shall run with the land and be binding on Grantor and on Grantor's heirs, successors and assigns, but only those heirs, successors and assigns who acquire fee title to some part of the Property. Neither Grantor nor any of its heirs, successors or assigns shall be liable for a breach of this Covenant that occurred before the Effective Date of this Covenant or before such person acquired fee title to some part of the Property, or that occurs after such person has parted with such title or ceased to enjoy its benefits, PROVIDED that the obligations imposed under Section C shall continue even after such person has parted with such title or ceased to enjoy its benefits to the extent that the triggering event that gives rise to the Grantor's duty to indemnify and defend the City occurred during Grantor's ownership.

**H. TERMINATION**

This Covenant shall terminate (a) if the City and Grantor or any of its heirs, successors and assigns mutually agree in writing to such termination, (b) if, within five years of the Effective Date of this Covenant, Grantor does not begin construction of the project approved pursuant to application # \_\_\_\_\_, or (c) if Grantor, or its heirs, successors and assigns, modify or replace the Stormwater System, with proper permits and all applicable authorizations, such that stormwater from City rights of way no longer drains to the Stormwater System, and if the City and Grantor, or its heirs, successors and assigns, reach an agreement regarding drainage of stormwater flows from City rights of way following such modification or replacement, such agreement not to be unreasonably withheld. After termination, either party may give the other

party five (5) business days notice of its intent to record with the real estate records of the Office of Records and Elections of King County, Washington an instrument providing that this Covenant is no longer of any force or effect, and if the other party does not object within five (5) business days of receiving such notice, such instrument may be recorded; provided, however, that any obligations created under this Covenant with respect to loss, damage, or injury that occurs prior to termination of the Covenant shall survive such termination.

**I. EFFECTIVE DATE**

The Effective Date of this Covenant shall be the date it is recorded in the real estate records of the Office of Records and Elections of King County, Washington.

**EXHIBIT 1  
TO COVENANT RUNNING WITH THE LAND WITH ACKNOWLEDGEMENT AND  
ACCEPTANCE OF RISK, DUTY TO INFORM, NEED FOR INSURANCE, INDEMNITY AND  
WAIVER**

**COMPLETE LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT 2**  
**TO COVENANT RUNNING WITH THE LAND WITH ACKNOWLEDGEMENT AND**  
**ACCEPTANCE OF RISK, DUTY TO INFORM, NEED FOR INSURANCE, INDEMNITY AND**  
**WAIVER**

**STORMWATER SYSTEM DESIGN**



**SIGNATURES, ACKNOWLEDGEMENTS AND NOTARY**

**(INDIVIDUAL—attach more pages if needed)**

Dated: \_\_\_\_\_

State of Washington            )  
  ) ss  
County of \_\_\_\_\_            )

Owner/Grantor \_\_\_\_\_

Printed Name \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is  
the person who appeared before me, and said person acknowledged that he/she signed this  
instrument and acknowledged it to be his/her free and voluntary act for the uses and  
purposes mentioned in the instrument.

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

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_



Use this space for Notary Seal

Dated: \_\_\_\_\_

State of Washington            )  
  ) ss  
County of \_\_\_\_\_            )

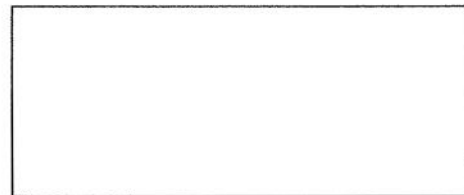
Owner/Grantor \_\_\_\_\_

Printed Name \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is  
the person who appeared before me, and said person acknowledged that he/she signed this  
instrument and acknowledged it to be his/her free and voluntary act for the uses and  
purposes mentioned in the instrument.

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

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_



Use this space for Notary Seal

**(CORPORATE OWNER, PARTNERSHIP OWNER, LIMITED LIABILITY COMPANY  
OWNER/OTHER LEGAL ENTITY OWNER—attach more pages if needed)**

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

State of Washington            )  
  )ss  
County of \_\_\_\_\_        )

Owner/Grantor \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ (type of authority, e.g., partner, trustee, title of officer, personal representative, guardian, attorney in fact for a principal, etc.) of \_\_\_\_\_ (name of owner/entity on behalf of whom instrument was executed), to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Printed Name \_\_\_\_\_

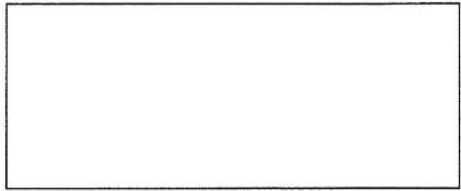
By \_\_\_\_\_

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

NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Printed Name \_\_\_\_\_

Its \_\_\_\_\_



Use this space for Notary Seal

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

State of Washington            )  
  )ss  
County of \_\_\_\_\_        )

Owner/Grantor \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ type of authority, e.g., partner, trustee, title of officer, personal representative, guardian, attorney in fact for a principal, etc.) of \_\_\_\_\_ (name of owner/entity on behalf of whom instrument was executed), to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Printed Name \_\_\_\_\_

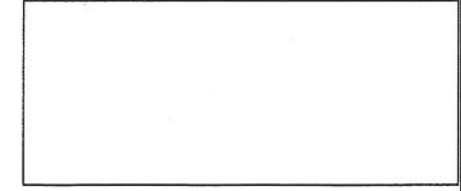
By \_\_\_\_\_

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

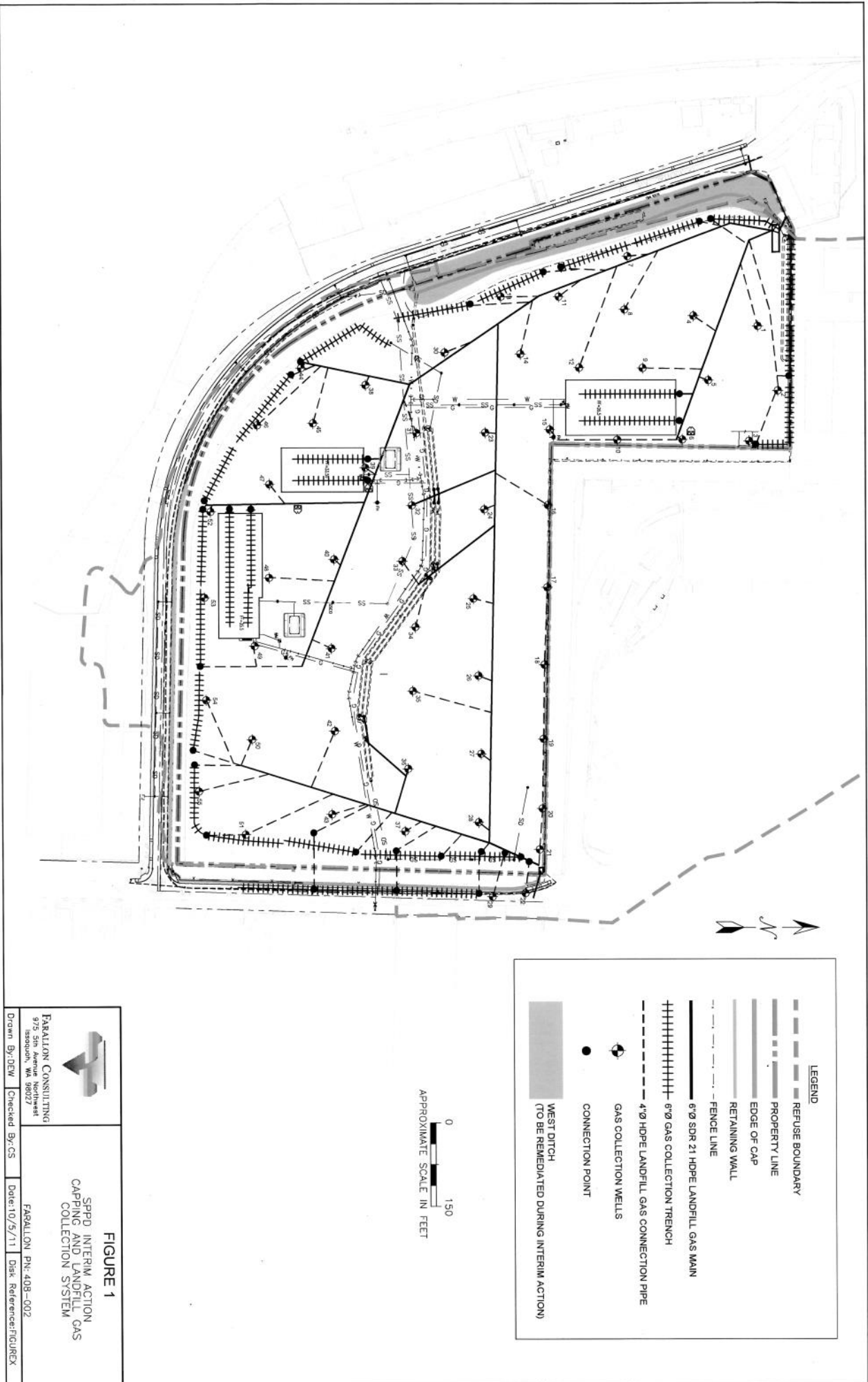
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Printed Name \_\_\_\_\_

Its \_\_\_\_\_



Use this space for Notary Seal



 <p><b>PARALLON CONSULTING</b>                  975 Massachusetts Ave. Suite 200                  Boston, MA 02027</p>	<p><b>FIGURE 1</b></p> <p>SPPD INTERIM ACTION                  CAPING AND LANDFILL GAS                  COLLECTION SYSTEM</p>

