

#12

Sheila Claire Strehle  
Tad Shimazu  
SPU South Park Landfill ORD  
April 11, 2012  
Version #7

**CITY OF SEATTLE**  
**ORDINANCE \_\_\_\_\_**

COUNCIL BILL 117484

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AN ORDINANCE authorizing the Director of Seattle Public Utilities to continue participating in environmental investigation and remediation of contamination of the South Park Landfill site under Washington State Department of Ecology Agreed Order 6706 and any subsequent Amendments to the Order; to enter into subsequent orders with the Washington State Department of Ecology to implement cleanup actions or tasks; to enter into interim cost-sharing agreements with other parties regarding activities related to site remediation; to enter into an agreement for another Potentially Liable Person to conduct an Interim Cleanup Action on a portion of the landfill which includes a permanent cost allocation for small portions of the site; to continue to seek and accept state remedial action grants for work related to the site; and ratifying and confirming certain prior acts.

WHEREAS, the historic South Park Landfill is generally located in the area of 8100 and 8200 Second Avenue South in Seattle's South Park neighborhood; and

WHEREAS, the City of Seattle was a historic operator and is a current owner of a portion of the South Park Landfill property; and

WHEREAS, the City of Seattle via the Director of Seattle Public Utilities, South Park Property Development LLC and the Washington State Department of Ecology (Ecology) signed an Agreed Order requiring the City of Seattle and South Park Property Development, LLC to investigate contamination, analyze cleanup alternatives and draft a Cleanup Action Plan for the South Park Landfill site; and

WHEREAS, the City of Seattle wishes to continue honoring its obligations under the Agreed Order, and

WHEREAS, Ecology awarded a Remedial Action Grant to the City of Seattle to cover up to fifty percent of the City of Seattle's grant-eligible costs related to the Agreed Order work; and

WHEREAS, the City of Seattle wishes to continue receiving Remedial Action Grant funds from Ecology; and

WHEREAS, the City of Seattle via Seattle Public Utilities and South Park Property Development, LLC, are currently sharing costs of the project on an interim basis, with final cost sharing allocations to be determined at a later time, unless otherwise specifically addressed within this Ordinance; and



1 WHEREAS, South Park Property Development LLC wishes to conduct an Interim Cleanup  
2 Action on its property and a portion of City of Seattle Right-of-Way; and

3 WHEREAS, Seattle Public Utilities, in consultation with Seattle Department of Transportation,  
4 has negotiated a proposed Interim Action agreement with South Park Property  
5 Development, LLC and King County; and

6 WHEREAS, the proposed Interim Action Agreement contains a provision for a permanent cost  
7 allocation of interim action cleanup costs in portions of City of Seattle Rights-of-Way;  
8 and

9 WHEREAS, the Agreed Order may be amended to allow an Interim Cleanup Action; NOW,  
10 THEREFORE,

11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section 1. Seattle Public Utilities is hereby authorized to continue participating in the  
13 investigation and remediation of contamination of the South Park Landfill site (the Site) under  
14 Washington State Department of Ecology (Ecology) Agreed Order 6706 effective May 4, 2009,  
15 which is attached hereto as Attachment 1, and to execute and implement any subsequent  
16 amendments to Agreed Order 6706, including amendment of the Agreed Order to allow an  
17 Interim Cleanup Action; Seattle Public Utilities is further authorized to execute additional orders  
18 with Ecology to implement cleanup actions or tasks at the Site or any portion of the Site,  
19 provided that Seattle City Council is briefed prior to or, in case of emergency cleanup, as soon as  
20 practicable after execution of such orders; Seattle Public Utilities is further authorized to execute  
21 any agreements necessary to share the costs of implementing the Agreed Order and related  
22 remedial investigations, studies or actions on an interim basis with current and future Parties,  
23 specifically but not limited to, the South Park Property Development, LLC. Final allocation of  
24 remedial action costs shall be determined at a later time except where otherwise specifically  
25 addressed in this Ordinance.



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1 Section 2. Seattle Public Utilities is further authorized to complete, finalize and enter  
2 into the proposed South Park Landfill Site Interim Action Agreement in substantially the same  
3 form as attached hereto as Attachment 2, said Agreement containing settlement of allocation of  
4 the costs of South Park Property Development, LLC's interim action cleanup in small portions of  
5 City of Seattle Rights-of-Way.

6 Section 3. Seattle Public Utilities is further authorized to execute state Remedial Action  
7 Grant Agreement No. G0900217 effective January 1, 2007 and attached hereto as Attachment 3,  
8 to execute four subsequent amendments attached hereto also in Attachment 3, and to seek and  
9 accept additional grant funds related to site remediation.

10 Section 4. This ordinance shall take effect and be in force 30 days after its approval by  
11 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
12 shall take effect as provided by Seattle Municipal Code Section 1.04.020.



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1 Section 5. Any act made consistent with the authority provided in this ordinance and  
2 prior to the effective date of this ordinance is hereby ratified and confirmed.

3 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2012, and  
4 signed by me in open session in authentication of its passage this  
5 \_\_\_\_ day of \_\_\_\_\_, 2012.

6 \_\_\_\_\_  
7  
8 President \_\_\_\_\_ of the City Council

9  
10 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

11  
12 \_\_\_\_\_  
13 Michael McGinn, Mayor

14  
15 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

16  
17 \_\_\_\_\_  
18 Monica Martinez Simmons, City Clerk

19 (Seal)

20  
21 Attachment 1, State of Washington Department of Ecology Agreed Order 6706

22 Attachment 2, South Park Landfill Site Interim Action Agreement

23 Attachment 3, Remedial Action Grant Agreement No. G0900217, with subsequent amendments

24 1-4

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**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

City of Seattle; and South Park Property  
Development, LLC

AGREED ORDER

No. 6706

TO: Chuck Clarke  
City of Seattle  
Seattle Public Utilities  
Seattle Municipal Tower  
700 5<sup>th</sup> 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 2<sup>nd</sup> 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](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](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](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 160<sup>th</sup> 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 160<sup>th</sup> 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.

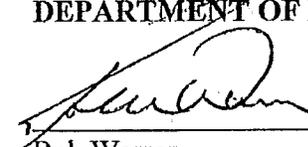
Effective date of this Order: May 4<sup>th</sup>, 2009

**CITY OF SEATTLE**

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**

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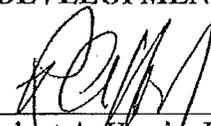
Chuck Clarke  
Director  
Seattle Public Utilities  
(206) 684-7934



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

**SOUTH PARK PROPERTY  
DEVELOPMENT, LLC**



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

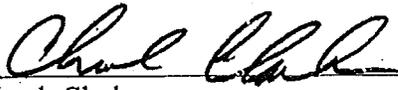


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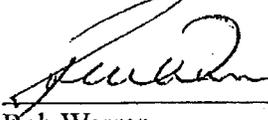
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Effective date of this Order: May 4<sup>th</sup>, 2009

**CITY OF SEATTLE**

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

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**

  
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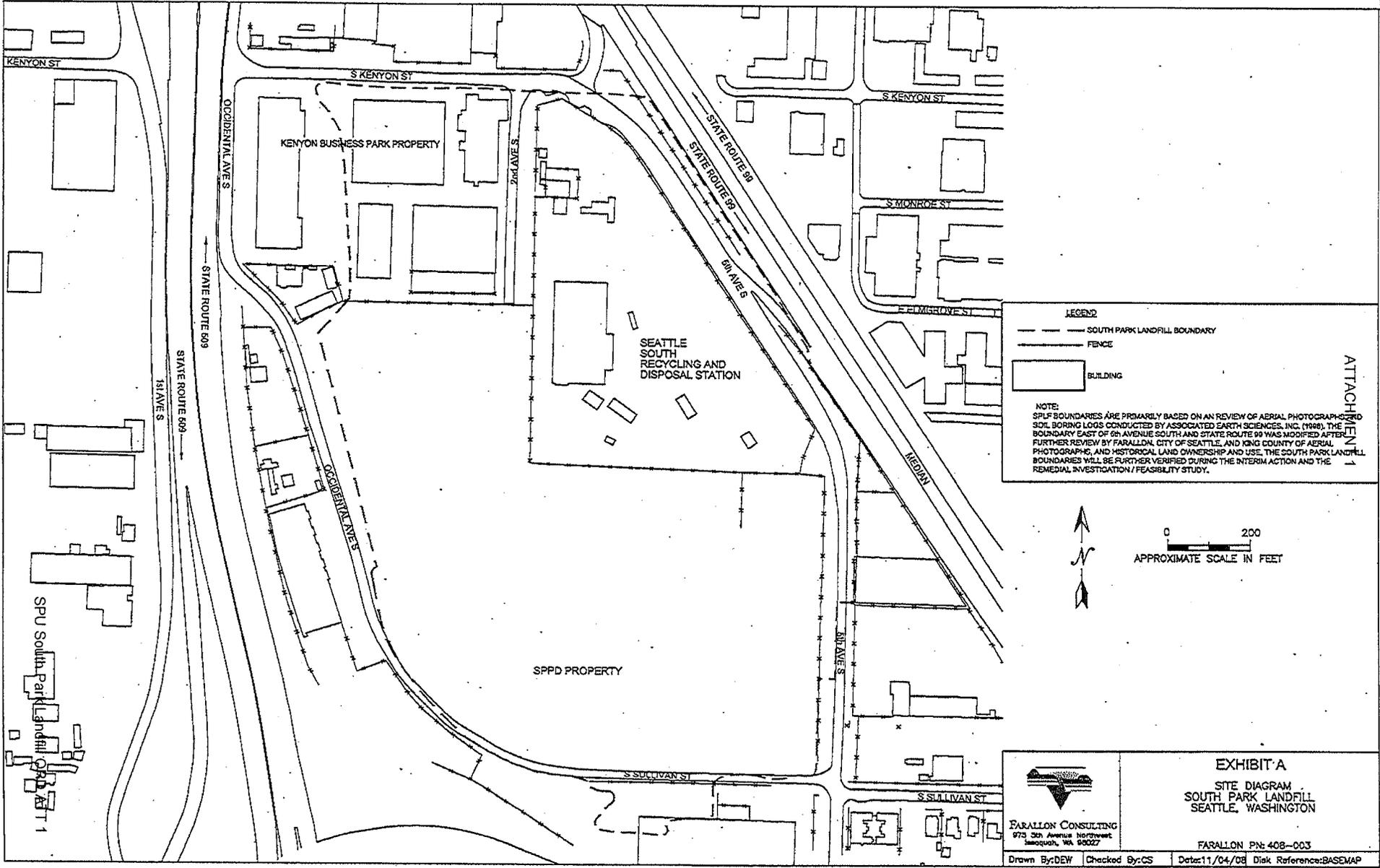


Agreed Order No. 6706  
Page 21 of 27

ATTACHMENT 1

**EXHIBIT A**  
**SITE DIAGRAM**





## 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**

<b>Work Elements. Refer to Exhibit B (Statement of Work for Key Components of Work Elements).</b>	<b>Due Dates in Calendar Days.</b>
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.



## 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**





**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**





**(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  
\_\_\_\_\_

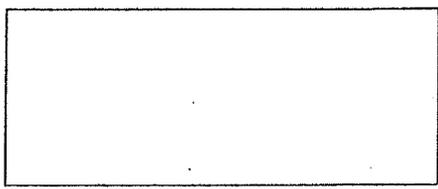
Printed Name  
By \_\_\_\_\_

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

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.

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

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



Use this space for Notary Seal

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

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

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

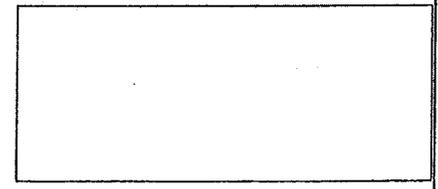
Printed Name  
By \_\_\_\_\_

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

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.

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

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

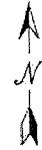
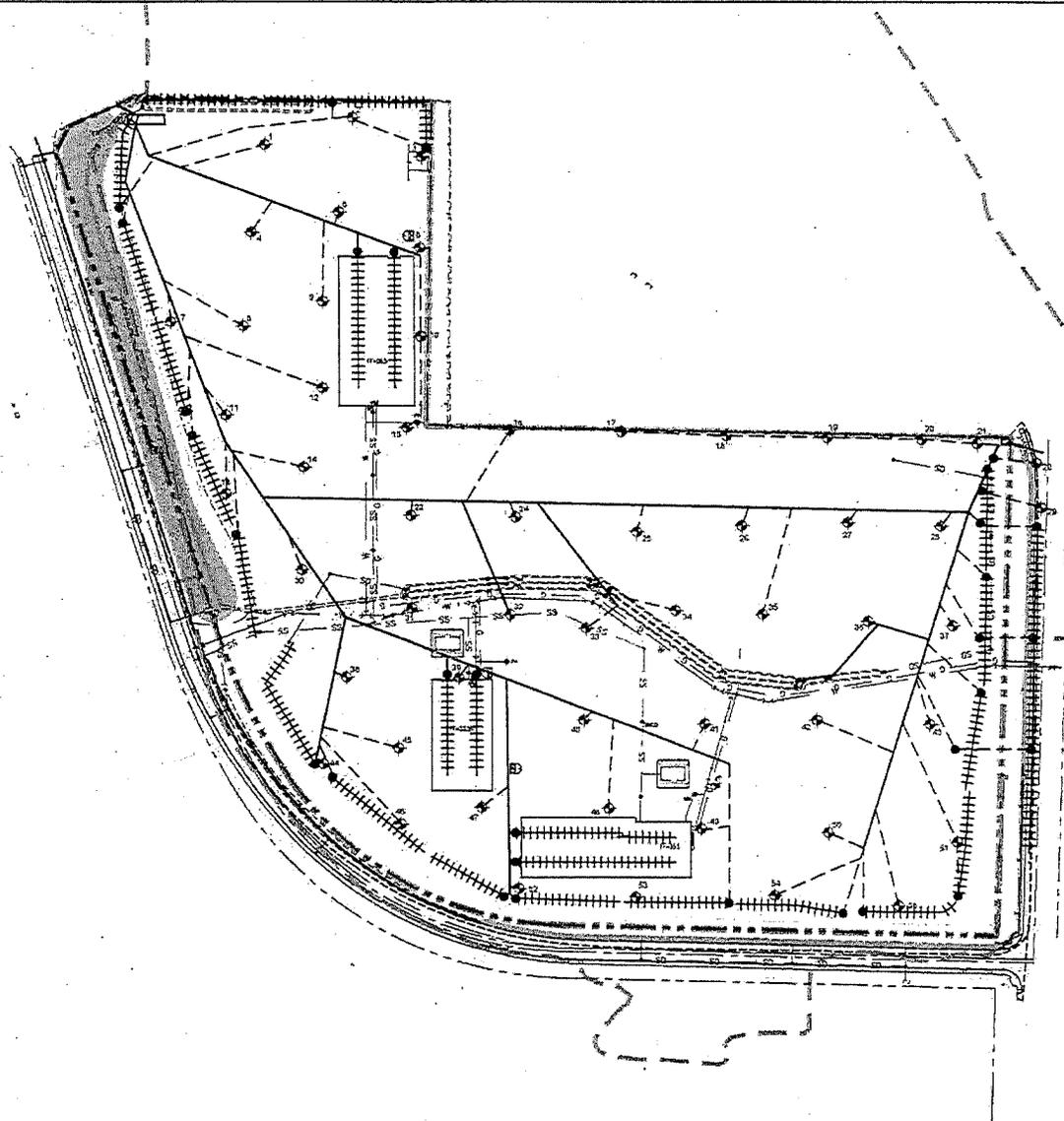


Use this space for Notary Seal



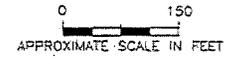
Sheila Strehle  
 SPU, South Park Landfill, ORD, ATT 2  
 March 27, 2012  
 Version #1

ATTACHMENT 2



**LEGEND**

- REFUSE BOUNDARY
- PROPERTY LINE
- EDGE OF CAP
- RETAINING WALL
- FENCE LINE
- 6"Ø SDR 21 HDPE LANDFILL GAS MAIN
- 6"Ø GAS COLLECTION TRENCH
- 4"Ø HDPE LANDFILL GAS CONNECTION PIPE
- GAS COLLECTION WELLS
- CONNECTION POINT
- WEST DITCH (TO BE REMEDIATED DURING INTERIM ACTION)



 <b>FARALLON CONSULTING</b> 975 5th Avenue, Northwest Issaquah, WA 98027	<b>FIGURE 1</b> SPPD INTERIM ACTION CAPPING AND LANDFILL GAS COLLECTION SYSTEM		
	FARALLON PN: 408-002		
Drawn By: DEW	Checked By: CS	Date: 10/5/11	Disc Reference: FIGUREX

SPU South Park Landfill ORD ATT 2



Sheila Strehle  
SPU South Park Landfill ORD ATT3  
March 27, 2012  
Version #1 Grant No. G0900217  
South Park Landfill  
Seattle Public Utilities

ATTACHMENT 3

RECEIVED

APR 07 2009

Ecology - SWFA

REMEDIAL ACTION GRANT AGREEMENT  
BETWEEN THE  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
SEATTLE PUBLIC UTILITIES

This is a binding agreement entered into by and between the state of Washington Department of Ecology, hereinafter referred to as the DEPARTMENT, and the Seattle Public Utilities, hereinafter referred to as the RECIPIENT, to carry out the activities described herein.

RECIPIENT ADDRESS	700 5 <sup>th</sup> Avenue PO Box 34018 Seattle, WA 98124-4018
RECIPIENT REPRESENTATIVE	Ray Hoffman, Acting Director
RECIPIENT PROJECT MANAGER	Sheila Strehle
RECIPIENT TELEPHONE NUMBER	206-684-5846
RECIPIENT FAX	206-684-4631
RECIPIENT ADMINISTRATION CONTACT	<i>Phil Yamamoto 684-4619</i> <del>Shirley Lacy, 206-684-5179</del>
DEPARTMENT GRANT MANAGER	Lydia Lindwall, 360-407-6067
DEPARTMENT SITE MANAGER	Ching-Pi Wang, 425-649-7134
FUNDING SOURCE	LTCA
MAXIMUM ELIGIBLE COST	\$1,000,000
STATE GRANT SHARE	\$500,000
RECIPIENT GRANT SHARE	\$500,000
MAXIMUM STATE SHARE PERCENT	50%
FEDERAL TAX IDENTIFICATION NUMBER	91-6001275
EFFECTIVE DATE OF THE AGREEMENT	January 1, 2007
EXPIRATION DATE OF THE AGREEMENT	June 30, 2013



## **PART 1: SITE HISTORY AND BACKGROUND**

The South Park Landfill is located at 8100 & 8200 2nd Avenue South, in the South Park neighborhood of Seattle, Washington (County Assessor's Parcel Numbers 7328400005 & 3224049005). The site currently includes the land on which Seattle's South Transfer Station is located and a parcel owned by South Park Property Development. The site was historically used for waste disposal beginning in the 1930's or earlier. The City of Seattle and King County owned and/or operated portions of the landfill at various times. Operations historically included refuse burial and burning. Aerial photos taken in the 1950's also indicate portions of the site were used as an automobile wrecking yard.

The DEPARTMENT negotiated with the RECIPIENT to conduct a remedial investigation/feasibility (RI/FS) to collect and analyze enough information necessary for the development of a cleanup action plan for the site. The outcome of this project will ultimately include implementation of a cleanup design and construction needed to properly close the landfill.

## **PART 2: SCOPE OF WORK**

The task(s) set forth below summarize the RECIPIENT'S activities to be performed under this agreement. Costs are limited to those approved by the DEPARTMENT in the current budget plan. All activities in the following tasks, including deliverables, must be completed by the expiration date of this agreement unless otherwise stated in this agreement or approved by the DEPARTMENT in writing.

The RECIPIENT shall submit all sampling data to the DEPARTMENT in both printed and electronic formats in accordance with WAC 173-340-840(5) and the DEPARTMENT'S Toxics Cleanup Program Policy 840: Data Submittal Requirements. Monthly/Quarterly Progress Reports must indicate if sampling data was submitted to the DEPARTMENT during that billing period. Failure to properly submit sampling data will result in the withholding of grant funding.

**Any work performed or costs incurred prior to the effective date of this agreement will be at the sole expense of the RECIPIENT.**

### **TASK 1: Remedial Investigation/Feasibility Study (RI/FS)**

This task funds the recipient staff and consultant's/contractor's work reasonable and necessary to plan and perform the Remedial Investigation/Feasibility Study (RI/FS) for the site.

The Remedial Investigation will characterize the nature and extent of contamination at the site and the RECIPIENT shall produce the deliverables set out in the scope of work of the cleanup agreement in affect at that site. Eligible costs include any scoping and final investigations, draft and final reports, and sampling and analysis costs.

The Feasibility Study will present and evaluate remedial alternatives to address the identified contamination at the site. Based on the evaluation of alternatives, the Feasibility Study will identify a preferred remedial alternative for the Site and evaluate any interim actions performed relative to the preferred remedial alternative to determine completeness of the interim actions. Eligible costs include costs of any draft and final FS related reports and the public participation process needed to evaluate and select the preferred alternative for the site. Meeting room costs and refreshments must be approved by the DEPARTMENT in advance.

**TASK 2: Cleanup Action Plan (CAP) Development**

This task funds RECIPIENT staff and consultant costs reasonable and necessary to develop a Cleanup Action Plan for the site. The DEPARTMENT approved Cleanup Action Plan will select cleanup standards for the Site. Eligible costs include the development of draft and final plans or reports, any required engineering design reports or plans, and any public involvement process required to finalize the cleanup action plan. This also includes the Construction Quality Assurance and Health and Safety Plan, the development of project construction schedules, and engineering design analyses.

**PART 3: FUND SOURCE AND BUDGET PLAN**

Costs are approved consistent with the most recently approved budget plan. To change how funds are allocated among the grant tasks, the RECIPIENT must submit a written request to the DEPARTMENT. The DEPARTMENT must approve the revised budget plan in writing. Revised and approved budget plans are incorporated into this agreement by reference.

**A. FUND SOURCE**

Total Eligible Project Cost		\$1,000,000
Fund	Fund Share (%)	Maximum Fund Amount
Local Toxics Control Account (LTCA)	50%	\$500,000
Match Requirement	Match Share (%)	Match Amount
Cash Match	50%	\$500,000



**B. BUDGET PLAN**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$1,000,000	\$500,000
2. CAP Development	\$0	\$0
TOTAL:	\$1,000,000	\$500,000

**PART 4: BUDGET CONDITIONS**

- A. Any work performed or costs incurred prior to the effective date of this agreement will be at the sole expense of the RECIPIENT.
- B. Overhead is eligible at a rate of 25 percent of staff salaries and benefits for time devoted to tasks outlined in this agreement.
- C. The DEPARTMENT'S Fiscal Office tracks expenditures at the project level. The grant manager tracks expenditures at the task level. To increase or decrease state funding or change the scope of work, the DEPARTMENT requires a formal amendment. The expiration date may be changed by letter amendment.
- D. In-kind services are not eligible for match.
- E. Payments to the RECIPIENT from the DEPARTMENT shall be made payable to Seattle Public Utilities, PO Box 4018, Seattle, WA 98124-4018.



**PART 5: SPECIAL TERMS AND CONDITIONS**

**A. BILLING**

1. Unless otherwise approved in writing by the DEPARTMENT, the RECIPIENT shall submit a payment request to the DEPARTMENT at least quarterly, but no more often than once per month.
2. Payment requests shall be submitted on State Voucher forms that include an A-19, B2, C2, and shall include a Progress Report for the billing period.
3. The final payment request shall include a Final Project Report.
4. The RECIPIENT shall provide the Progress Report and Final Project Report on DEPARTMENT provided forms unless otherwise approved by the DEPARTMENT.
5. The budget plan is organized by task; therefore, the RECIPIENT shall itemize costs by task on C2 form and summarize costs by task on the B2 form.
6. The RECIPIENT shall submit one copy of each payment request and backup documentation to the DEPARTMENT'S grant manager, and one copy to the DEPARTMENT'S regional site manager. Failure to submit copies to both the grant manager and the site manager shall constitute an incomplete submission and the payment request will not be reviewed or processed until both copies have been submitted.

**B. DOCUMENTATION**

1. The RECIPIENT shall include the supporting documentation for all expenses, including RECIPIENT salary and benefits.
2. Supporting documentation includes contractor and subcontractor invoices and receipts, accounting records, or any other form of record that establishes the appropriateness of an expense.
3. The DEPARTMENT may request additional documentation if needed to determine if a cost will be allowed.
4. Supporting documentation shall be clear and legible and organized by task in the order it was placed on the C2 by the RECIPIENT.
5. RECIPIENT accounting procedures shall include maintaining supporting documentation in a grant file. This includes cancelled checks, invoices, purchase receipts, payroll records, time and attendance records, contract award documents, and vouchers sent to the DEPARTMENT. The Recipient shall keep all supporting documentation for audit purposes for at least three years after agreement closeout.



6. The RECIPIENT shall use the DEPARTMENT provided Form E, or an equivalent time sheet approved by the DEPARTMENT, to record staff hours being billed to the grant. Upon request, these records must be made available to the DEPARTMENT.

### C. OTHER SPECIAL TERMS

#### 1. ON-LINE CONTRACTS AND GRANTS MANAGEMENT

Washington State's Office of Financial Management is developing an on-line contracts and grants management system. When the system becomes available, all new or active contract and grant agreements in the state must be managed in the system. The RECIPIENT agrees to register in the state vendor registration program and to use the on-line system.

#### 2. TRAINING

The RECIPIENT agrees to participate in any DEPARTMENT recommended trainings to manage agreements and prepare, process, and receive payments

#### 3. MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. MBE/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

- a) Include qualified minority and women's businesses on solicitation lists.
- b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
- c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT should report payments made to qualified firms to the DEPARTMENT at the time of submitting each invoice. Please include the following information on the DEPARTMENT provided form (Form D):



- f) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- g) The total dollar amount paid to qualified firms under this invoice.

4. PROCUREMENT AND CONTRACTS

- a) The RECIPIENT shall provide written certification that it will follow its standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must certify that they have complied with the "Standards for Competitive Solicitation," found in the *Administrative Requirements for Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005).
- b) Upon issuance, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to the DEPARTMENT'S site manager.
- c) Prior to contract execution, the RECIPIENT shall submit all draft documents and a copy of the draft proposed contract to the DEPARTMENT'S site manager for review and approval. Following the contract execution, the RECIPIENT shall submit a copy of the final contract to the DEPARTMENT'S site manager and grant manager.

5. USE OF EXISTING CONTRACTS

The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall notify the DEPARTMENT if it used contracts entered into prior to the execution of the grant agreement for performance of grant-funded activities. The RECIPIENT shall submit a copy of the contract to the DEPARTMENT'S site manager and grant manager. The grant eligibility of products or services secured by the RECIPIENT under existing contracts used to perform the scope of work in this agreement must be deemed allowable and reasonable by the DEPARTMENT prior to cost reimbursement.

6. FAILURE TO COMMENCE AND SUSTAIN WORK

In the event the RECIPIENT fails to commence work on the project funded herein within six (6) months after the effective date of this grant, or fails to sustain work in accordance with the work schedule established in the order or decree, the DEPARTMENT reserves the right to terminate this grant.



7. GRANT PROJECT REPORTING

- a) Progress Reports: Progress reports are due at least quarterly. The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request, and no less frequently than quarterly, even if a payment request is not submitted. These reports shall be in accordance with the DEPARTMENT-approved reporting format as indicated in the *Remedial Action Grant Guidelines, Publication #07-07-032 (Revised 2007), Appendix 3*. The DEPARTMENT shall not approve payments without the required progress reports.
- b) Spending Plans: The RECIPIENT shall complete and submit to the DEPARTMENT a spending plan projecting monthly expenditures for the project time period. The RECIPIENT shall update the spending plan as needed throughout the term of the agreement.
- c) Ten-Year Project Forecast: The RECIPIENT shall submit a 10-year budget forecast to the DEPARTMENT for the project and provide updates as appropriate or requested by the DEPARTMENT.
- d) Final Project Report: In addition to the progress report that identifies the work performed during the last billing period, the final payment request shall include a copy of the final project report. This report summarizes the project goals, purpose of the actions conducted, and outcomes of the project.
- e) Progress report, final project report, and spending plan forms can be found on the DEPARTMENT'S website at <http://www.ecy.wa.gov/programs/swfa/grants/rag.html>, and in the Remedial Action Grant Guidelines, Ecology Publication #07-07-032 (Revised 2007).

8. INDEMNIFICATION

- a) The DEPARTMENT shall in no way be held responsible for direct payment of salaries, consultant's fees, or any other costs related to the project described herein.
- b) To the extent that the Constitution and laws of the state of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property, arising from the negligent act or omissions of the party or that party's agents or employees, while performing under this agreement.



9. ALL WRITINGS CONTAINED HEREIN

This agreement, including the appended "General Terms and Conditions," the latest approved budget plan, and the DEPARTMENT'S *Administrative Requirements for Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005), contain the entire understanding between the parties, and there are no other understandings or representations except as those set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this grant agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT and made part of this agreement; **EXCEPT** a letter of amendment will suffice to extend the period of performance as set forth in the grant agreement. The DEPARTMENT'S grant manager may approve, by date stamp and signature, a revised budget plan.

10. ARCHEOLOGICAL AND CULTURAL RESOURCES

The RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to the archeological or cultural resources. RECIPIENT shall immediately cease work and notify the DEPARTMENT if any archeological or cultural resources are found while conducting work under this agreement. In the event that historical or cultural artifacts are discovered at the project site, the RECIPIENT shall also notify the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. Applicability of the National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact historic properties (such as invasive sampling, dredging, or cleanup actions).

11. PRECEDENCE

In the event of inconsistency in this agreement, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) Scope of Work and most current approved budget plan; (c) Special Terms and Conditions; (d) Remedial Action Grant Program Guidelines (e) any terms incorporated herein by reference including the *Administrative Requirements for Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005); and (f) the General Terms and Conditions (SS-010 Rev. 05/02).



**GENERAL TERMS AND CONDITIONS**  
Pertaining to Grant and Loan Agreements of  
The Department of Ecology

**A. RECIPIENT PERFORMANCE**

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT'S employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

**C. THIRD PARTY BENEFICIARY**

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

**D. CONTRACTING FOR SERVICES (BIDDING)**

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

**E. ASSIGNMENTS**

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

**F. COMPLIANCE WITH ALL LAWS**

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide



assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. **Discrimination.** The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. **Wages And Job Safety.** The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. **Industrial Insurance.** The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

#### **G. KICKBACKS**

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

#### **H. AUDITS AND INSPECTIONS**

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.  

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections. Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.
2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$300,000 or more in a year in Federal funds. The



\$300,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

#### **I. PERFORMANCE REPORTING**

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

#### **J. COMPENSATION**

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and certified as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Budget deviation. Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT'S request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.
3. Period of Compensation. Payments shall only be made for action of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
4. Final Request(s) for Payment. The RECIPIENT must submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15)



days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

5. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT'S performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT'S sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.
6. Unauthorized Expenditures. All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
8. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

#### K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.



When this agreement crosses the RECIPIENT'S fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT'S governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

#### L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

#### M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT'S current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT'S possession, the



DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
  - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
  - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

**N. RECYCLED/RECYCLABLE PAPER**

All documents and materials published under this agreement shall be produced on recycled paper containing the highest level of post consumer and recycled content that is available. At a minimum, paper with 10 percent post consumer content and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite.

As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

**O. RECOVERY OF PAYMENTS TO RECIPIENT**

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT'S sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the



RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

**P. PROJECT APPROVAL**

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

**Q. DISPUTES**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**R. CONFLICT OF INTEREST**

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

**S. INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.



2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

**T. GOVERNING LAW**

This agreement shall be governed by the laws of the State of Washington.

**U. SEVERABILITY**

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

**V. PRECEDENCE**

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions. SS-010 Rev. 05/02

IN WITNESS WHEREOF, the parties hereby execute this Grant:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

<i>Laurie G. Davies</i>	<i>4/14/09</i>	<i>Ray Hoffman</i>	<i>4/2/04</i>
_____ Laurie G. Davies Program Manager Solid Waste and Financial Assistance	Date	_____ Ray Hoffman Acting Director	Date

Approved as to form only Assistant Attorney General



Sheila Strehle  
SPU South Park Landfill ORD ATT3  
March 27, 2012  
Version #1

ATTACHMENT 3



AMENDMENT NUMBER 1  
TO GRANT NUMBER G0900217  
REMEDIAL ACTION GRANT BETWEEN THE  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
SEATTLE PUBLIC UTILITIES

Purpose: The purpose of this amendment is to add funds to continue the investigation and cleanup of the South Park Landfill

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$1,000,000 from \$1,000,000 to \$2,000,000.
2. The total state share of this grant increases by \$500,000 from \$500,000 to \$1,000,000.
3. The Fund Source and Budget Plan are replaced as follows.

A. Fund Source

Total Eligible Project Cost		\$2,000,000
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	50%	\$1,000,000
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$1,000,000



**B. Budget Plan**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$2,000,000	\$1,000,000
2. Cleanup Action Plan	\$	\$
TOTAL:	\$2,000,000	\$1,000,000

The scope of work of this agreement is not changed. All other terms and conditions of the original grant agreement, and any amendments thereto, remain in effect.

The effective date of this amendment is April 1, 2009.  
 The effective date of this agreement is January 1, 2007.  
 The agreement expiration date is June 30, 2013.

IN WITNESS WHEREOF, the parties hereby sign this Agreement:

STATE OF WASHINGTON  
 DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

Laurie G. Davies 4/1/09  
 Laurie G. Davies Date  
 Program Manager  
 Solid Waste and Financial Assistance

Ray Hoffman 5/15/09  
 Ray Hoffman Date  
 Acting Director

Approved as to form only  
 Assistant Attorney General



Amendment No. 2  
Ecology Grant No. G0900217  
With Seattle Public Utilities  
South Park Landfill

AMENDMENT NUMBER 2  
TO GRANT NUMBER G0900217  
REMEDIAL ACTION GRANT BETWEEN THE  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND  
SEATTLE PUBLIC UTILITIES

The purpose of this amendment is to add funds to continue remedial actions at the South Park Landfill. All other terms and conditions of the original agreement, and any amendments thereto, remain in effect.

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$1,125,172 from \$2,000,000 to \$3,125,172.
2. The total state share of this grant increases by \$562,586 from \$1,000,000 to \$1,562,586.
3. The Fund Source and Budget Plan are replaced as follows.

A. Fund Source

Total Eligible Project Cost		\$3,125,172
Fund	Fund Share (%)	Maximum Fund Amount
State Building Construction Account (SBCA)	50%	\$1,562,586
Match Requirement	Match Share (%)	Match Amount
Cash Match	50%	\$1,562,586



Amendment No. 2  
Ecology Grant No. G0900217  
With Seattle Public Utilities  
South Park Landfill

**B. Budget Plan**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$3,125,172	\$1,562,586
2. Cleanup Action Plan	\$	\$
TOTAL:	\$3,125,172	\$1,562,586

The effective date of this amendment is July 1, 2009.

IN WITNESS WHEREOF, the parties hereby sign this Agreement:

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

Laurie G. Davies 2/11/10 Ray Hoffman 7/21/10  
Date Date  
Laurie G. Davies Program Manager  
Waste 2 Resources Program Director

Approved as to form only  
Assistant Attorney General



AMENDMENT NUMBER 3  
TO GRANT NUMBER G0900217  
REMEDIAL ACTION GRANT BETWEEN  
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
AND SEATTLE PUBLIC UTILITIES

The purpose of this amendment is to add funds. All other terms and conditions of the original grant agreement, and any amendments thereto, remain in effect. The effective date of this amendment is July 1, 2010.

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$600,000 from \$3,125,172 to \$3,725,172.
2. The total state share of this grant increases by \$300,000 from \$1,562,586 to \$1,862,586.
3. The Fund Source and Budget Plan are replaced as follows.

**A. Fund Source**

**LTCA 174-J37**

<hr/>		
Total Eligible Project Cost		\$600,000
<hr/>		
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	50%	\$300,000
<hr/>		
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$300,000
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RECEIVED  
 ATTACHMENT 3

JUL 06 2010

SBCA 057-J19

Ecology W2R

Total Eligible Project Cost		\$3,125,172
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
State Building Construction Account (SBCA)	50%	\$1,562,586
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$1,562,586

**B. Budget Plan**

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. RI/FS	\$3,725,172	\$1,862,586
2. Cleanup Action Plan	\$0	\$0
TOTAL:	\$3,725,172	\$1,862,586

IN WITNESS WHEREOF, the parties hereby sign this Agreement:

STATE OF WASHINGTON  
 DEPARTMENT OF ECOLOGY

SEATTLE PUBLIC UTILITIES

*Laurie G. Davies*  
 Laurie G. Davies  
 Program Manager  
 Waste 2 Resources Program  
 Date 7/7/10

*Ray Hoffman*  
 Ray Hoffman  
 Director  
 Date 6/30/10

Approved as to form only Assistant Attorney General



Amendment No. 4  
 Ecology Grant No. G0900217  
 With Seattle Public Utilities

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OCT 31 2011

Ecology W2R

AMENDMENT NUMBER 4  
 TO GRANT NUMBER G0900217  
 REMEDIAL ACTION GRANT BETWEEN  
 STATE OF WASHINGTON DEPARTMENT OF ECOLOGY  
 AND SEATTLE PUBLIC UTILITIES

The purpose of this amendment is to increase funding. All other terms and conditions of the original grant agreement, and any amendments thereto, remain in effect. The effective date of this amendment is 7/1/2011.

It is mutually agreed that the agreement is amended as follows:

1. The total maximum eligible cost for this grant increases by \$5,100,000 from \$3,725,172 to \$8,825,172.
2. The total state share of this grant increases by \$2,550,000 from \$1,862,586 to \$4,412,586.
3. The Fund Source and Budget Plan are replaced as follows.

**A. Fund Source**

**LTCA**

Total Eligible Project Cost		\$5,700,000
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	50%	\$2,850,000
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$2,850,000

**SBCA**

Total Eligible Project Cost		\$3,125,172
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
State Building Construction Account (SBCA)	50%	\$1,562,586
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	50%	\$1,562,586





**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Public Utilities	Sheila Strehle/684-5846	Karl Stickel/684-8085

**Legislation Title:**

AN ORDINANCE authorizing the Director of Seattle Public Utilities to continue participating in environmental investigation and remediation of contamination of the South Park Landfill site under Washington State Department of Ecology Agreed Order 6706 and any subsequent Amendments to the Order; to enter into subsequent orders with the Washington State Department of Ecology to implement cleanup actions or tasks; to enter into interim cost-sharing agreements with other parties regarding activities related to site remediation; to enter into an agreement for another Potentially Liable Person to conduct an Interim Cleanup Action on a portion of the landfill which includes a permanent cost allocation for small portions of the site; to continue to seek and accept state remedial action grants for work related to the site; and ratifying and confirming certain prior acts.

**Summary and background of the Legislation:**

This legislation:

1. Authorizes the Director of Seattle Public Utilities (SPU) to continue participating in the investigation of contamination and development of cleanup alternatives and a cleanup action plan under the direction of the Washington State Department of Ecology (Ecology) via an Agreed Order.
2. Authorizes SPU to enter into amendments to the order including an amendment to allow an Interim Cleanup Action.
3. Authorizes SPU to enter into additional subsequent orders with Ecology related to the site cleanup, provided that City Council is briefed prior to or, in cases of emergency cleanup, as soon as practicable after execution of such orders.
4. Authorizes SPU to continue sharing costs on an interim basis with other Potentially Liable Persons (PLPs) and would authorize future interim cost-sharing agreements.
5. Authorizes SPU to enter into an agreement with another PLP to allow that PLP to conduct an interim cleanup on his portion of the landfill site and small areas of Seattle Department of Transportation (SDOT) rights-of-way. Under the agreement, SPU would pay South Park Property Development, LLC (SPPD) up to \$1,565,000 to cover interim cleanup costs in the City's right-of-way. SPU would also be subject to legitimate unanticipated cleanup costs above this amount that are associated with managing drainage flows. The timing of the SPU payment is uncertain, however if payment were to occur in 2012 this would trigger the allocation threshold specified by Council in Ord. 123442, and SPU would return to Council to request necessary approval, otherwise costs will be included in the development of the 2013-2018 Proposed CIP. The agreement indemnifies SPU for increased future remedial action costs resulting from the interim cleanup.



6. Authorizes SPU to continue accepting remedial action grant funds from the Washington Department of Ecology (Ecology) and to seek and accept new grant funds.

The historic South Park landfill is located in South Park between State Routes 99 and 509. The site is roughly bounded by 5<sup>th</sup> Avenue South, South Sullivan Street, Occidental Avenue South and South Kenyon Street. It primarily includes three parcels – SPU’s South Transfer Station property, Kenyon Industrial Park and a vacant parcel owned by a developer, South Park Property Development, LLC. See site map attached hereto as Exhibit A.

The City operated the landfill from the 1940’s to 1966. Refuse was buried and burned there. The City leased part of the land from King County. SPPD purchased its parcel from King County in 2006.

In 2007, the City Council authorized appropriations for the cleanup project. Subsequently, SPU signed Agreed Order 6706 on May 4, 2009. The order requires the City of Seattle (via SPU) and SPPD to investigate site contamination, develop cleanup alternatives, and create a draft Cleanup Action Plan for the landfill.

SPU is sharing costs on an interim basis with SPPD for this phase of the cleanup project. SPU pays 80 percent and SPPD pays 20 percent. These percentages are interim; final cost allocation will occur later.

<b>Project Name:</b>	<b>Project I.D.:</b>	<b>Project Location:</b>	<b>Start Date:</b>	<b>End Date:</b>
South Park Development	C2304	8100 & 8200 2 <sup>nd</sup> Avenue South (approximate)	01-23-2007	12-31-2016

Please check any of the following that apply:

**This legislation creates, funds, or anticipates a new CIP Project.**

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

**Appropriations and Spending Plan:**

No additional appropriations are required for this Project as a result of the proposed Council Bill. The allocations depicted in the Adopted 2012-2017 CIP for the South Park Development Project (C2304) in the Solid Waste Fund New Facilities BCL (C230B) include adequate funding for this project. However, \$1,565,000 of the funding could be accelerated into 2012 or 2013 to cover a negotiated settlement of the City’s share of a portion of right-of-way cleanup costs. These costs would be incurred in 2012 or 2013 if another Potentially Liable Person, South Park Property



Development, LLC, proceeds with conducting an interim clean up on its property and some rights-of-way. Therefore, the current 2012 adopted allocation of \$468,000 could need to be increased to cover this additional settlement cost. If the work occurs in 2012, SPU would return to Council to seek authority to exceed by more than \$1 million the adopted allocation. Otherwise, this payment will be considered in the development of the 2013-2018 Proposed CIP.

**Revenues:**

In 2009, Ecology awarded a \$500,000 Remedial Action Grant to SPU to pay up to 50 percent of eligible cleanup costs. Ecology has since amended the grant four times, adding \$500,000, \$562,586, \$300,000, and \$2,550,000, respectively. The total value of the grant is now \$4,412,586.

The current grant covers the state biennial period ending June 30, 2013. At that time, Ecology might roll any unspent funds into a new biennial grant, or reduce or eliminate the grant funds at its discretion.

**Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

The project cleans up a contaminated site. Long-term maintenance and monitoring will be required.

**b) What is the financial cost of not implementing the legislation?**

If SPU fails to comply with the Agreed Order, SPU would potentially be subject to Ecology penalties and litigation and also potential civil litigation by the PLP with whom SPU is sharing cleanup investigation costs on an interim basis. Failure to comply would also prevent SPU from accepting existing Ecology grant funds to cover up to 50 percent of grant eligible cleanup costs and would prevent SPU from seeking and accepting additional grant funds for cleanup.

Failure to approve the legislation would prevent SPU from entering into an agreement with the other PLP to allow that PLP to construct an interim cleanup action on its private parcel and a portion of fee-owned SDOT right-of-way; and would prevent SPU from agreeing to a final allocation of cleanup costs in that portion of SDOT right-of-way.

**c) Does this legislation affect any departments besides the originating department?**

This legislation affects SDOT fee-owned rights-of-way that are part of the South Park Landfill cleanup site.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

There are no alternatives that could achieve the same or similar objectives.

**e) Is a public hearing required for this legislation?**

No.

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**g) Does this legislation affect a piece of property?**

This legislation affects the South Park Landfill and any areas where Ecology determines contamination from the landfill has come to be. Please see the attached map for approximate refuse boundaries and location.

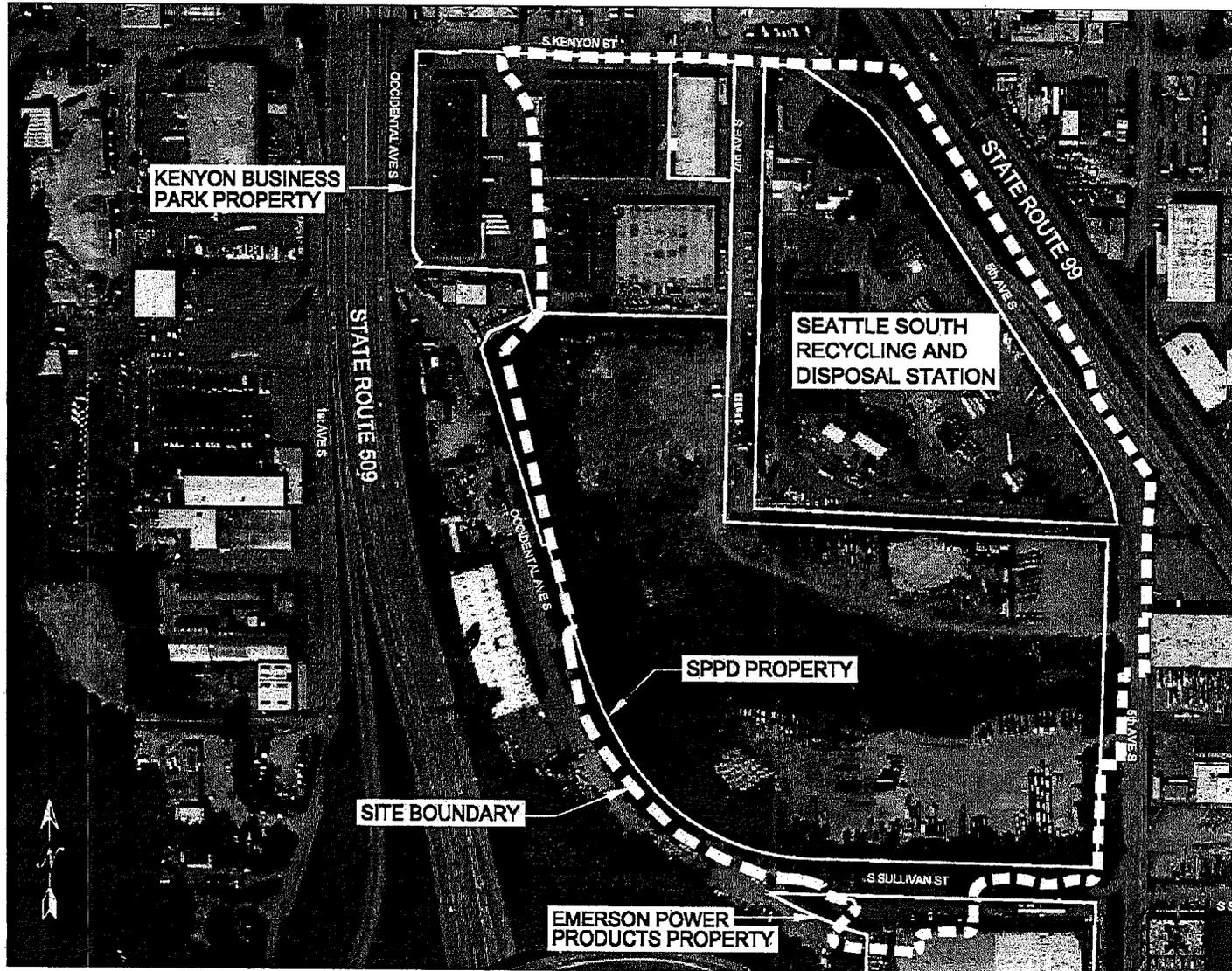
**h) Other Issues:**

None.

**List attachments to the fiscal note below:**

Exhibit A – Site Map

# Exhibit A





**City of Seattle**  
Office of the Mayor

April 24, 2012

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which would authorize the Director of Seattle Public Utilities to: 1) continue environmental studies and remediation of the historic South Park Landfill; 2) enter into cleanup agreements with the Washington Department of Ecology; and 3) accept grant funds to implement the cleanup.

The landfill is in South Park between State Routes 99 and 509 and primarily includes three parcels – SPU's South Transfer Station property, Kenyon Industrial Park and a vacant parcel owned by a private developer, South Park Property Development, LLC (SPPD). Seattle operated the landfill from the 1940s to 1966, leasing part of the land from King County. The City acquired one of the parcels to build the South Transfer Station in 1966. South Park Property Development, LLC bought its parcel from King County in 2006.

In 2007, the City Council authorized appropriations for the cleanup project. Subsequently, SPU signed an Agreed Order with Ecology requiring the City and SPPD to investigate site contamination, develop cleanup alternatives and create a draft Cleanup Action Plan for the landfill. This legislation provides authority for SPU to continue this important work. Thank you for your consideration of this measure. Should you have questions, please contact Sheila Strehle at 684-5846.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McGinn".

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor  
Office of the Mayor  
600 Fourth Avenue, 7<sup>th</sup> Floor  
PO Box 94749  
Seattle, WA 98124-4749

Tel (206) 684-4000  
Fax (206) 684-5360  
TDD (206) 615-0476  
mike.mcgin@seattle.gov

