

RESOLUTION NO. R - 3708

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY OF KIRKLAND A REMEDIATION AGREEMENT BETWEEN THE CITY, CHEVRON U S.A., INC. AND SHELL OIL COMPANY FOR PETROLEUM CONTAMINATION CLEAN UP AT HOUGHTON BEACH PARK CONSISTENT WITH THE WASHINGTON STATE MODEL TOXIC CONTROL ACT REGULATIONS

Whereas, during renovation of Houghton Beach Park petroleum contaminated soils were discovered and

Whereas, the predecessors of Chevron U S A , Inc and Shell Oil Company operated petroleum bulk storage and distribution facilities on portions of the Houghton Beach site and

Whereas, the City, Chevron and Shell believe that cooperative action is appropriate and will expedite clean up of the park site consistent with Washington State Model Toxic Control Act regulations and

Whereas, Chevron and Shell have caused to be developed a recommended corrective action plan under which Chevron and Shell agree to conduct the clean up activities as specified consistent with the Model Toxic Control Act regulations and to pay the reasonable costs thereof and

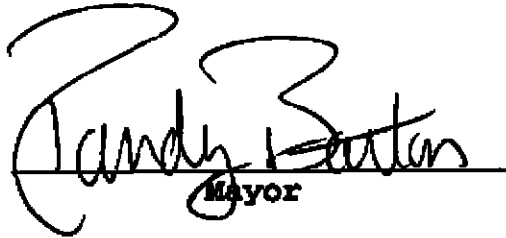
Whereas, the City has instituted a public information presentation and forum with notice thereof given to property owners adjoining the Houghton Beach Park site and to the general public with respect to the remediation work plan, now, therefore

Be it resolved by the City Council of the City of Kirkland as follows:

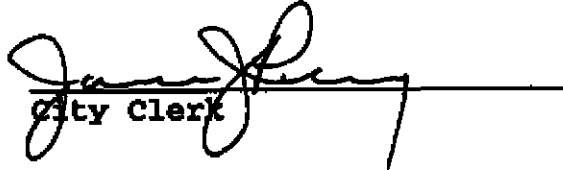
Section 1 The City Manager for the City of Kirkland is hereby authorized to sign on behalf of the City

that certain Remediation Agreement between the City of Kirkland, Chevron U.S.A., Inc. and Shell Oil Company, a copy of which is attached to the original of this Resolution and by this reference incorporated herein, provided that the work plan provides a groundwater cleanup standard consistent with the Department of Ecology letter to the City of Kirkland dated October 28, 1991, or such lesser standard as the Department of Ecology, in writing, authorizes or approves.

Passed by Majority vote of the Kirkland City Council in regular, open meeting this 19th day of November, 1991


Mayor

Attest


City Clerk

REMEDATION AGREEMENT

This Remediation Agreement, dated this ____ day of _____, 1991, is entered into by and between the City of Kirkland, a municipal corporation, organized under the laws of the State of Washington ("the City"), Chevron USA, Inc., a Pennsylvania corporation ("Chevron") and Shell Oil Company, a _____ corporation ("Shell").

R E C I T A L S

A The City operates a park at 5811 Lake Washington Boulevard, Kirkland, Washington, more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("the Site")

B The Site contains petroleum-contaminated soils

C Predecessors of Chevron and Shell operated bulk storage and distribution facilities on portions of the Site

D. The parties to this Agreement believe that cooperative action is appropriate and will expedite clean-up of the Site

E. In accordance with that belief, Applied Geotechnology, Inc ("AGI") was commissioned to determine and recommend to Chevron and Shell a remedial action plan for the cleanup of soil and ground water at the Site consistent with Washington State Model Toxics Control Act regulations ("MTCA") Chapter 173-340 WAC AGI has developed a recommended corrective action plan (the "Work Plan") dated _____, _____, 1991, a copy of which is attached hereto and incorporated herein by this reference

The parties to this Agreement wish to provide for the performance of the work contemplated by the Work Plan.

NOW THEREFORE in consideration of the mutual agreements of the parties herein contained, the parties do hereby agree as follows

1. Subject to the terms and conditions of this Agreement, Chevron and Shell hereby agree to conduct the work specified in the Work Plan and to pay the reasonable costs thereof. The City shall not be responsible for the cost of any work performed under the Work Plan.

2 Chevron and Shell shall proceed with the Work Plan in an expeditious manner in accordance with the timetable attached hereto as Exhibit _____. Chevron and Shell shall implement the Work Plan based upon their own judgment and not in reliance upon any representations from the City, its employees, agents, officials, directors or other representatives. The City shall not be held out as a party to any contract entered into by or on behalf of Chevron and Shell in carrying out activities pursuant to this Agreement. Neither Chevron, Shell, nor any of their contractors, shall be considered an agent or independent contractor of the City.

3. Any material changes in the scope of the Work Plan shall be mutually discussed by the parties and will not be undertaken unless and until all of the parties to this Agreement have agreed in writing upon such changes

4. Commencing with the date of execution of this Agreement, the City agrees that Chevron and Shell shall have access at all times to the Site for the purposes of conducting any activity related to the Work Plan including, but not limited to:

- a. Performing and monitoring the work;
- b. Conducting investigations relating to contamination at the Site;
- c. Obtaining samples

5. The City shall have full access to the Site at all times for the purposes of assuring compliance with the obligations of this Agreement

6 Each of the parties to this Agreement shall keep each other notified of their respective designated project coordinators so that there is full communication at all times between and among the parties

7 Chevron and Shell hereby agree to reimburse the City for one-half of all sums paid by the City to the City's consultant, GeoEngineers, Inc , with respect to the environmental assessment and advice regarding the Site, provided, however, the total reimbursement by Chevron and Shell shall not in the aggregate exceed \$70,000 Chevron and Shell further agree to pay the City \$50,000 as reimbursement for increased costs to complete renovation and improvement of the Site due to contamination Upon payment of such sums, all claims of the City against Chevron or Shell with regard to expenses incurred with GeoEngineers,

Inc., and increased costs of renovation and improvement of the Site, shall be deemed fully released, waived or discharged. Such payments shall not be deemed an admission of liability by Chevron or Shell. Chevron and Shell further agree to repair any damage to concrete and other permanent park improvements and structures caused by their remediation activities.

8. The work performed pursuant to the Work Plan shall achieve the cleanup standards stated in the Work Plan, or such less stringent standards established or provided in writing by the Department of Ecology for the Site. Within 90 days after the work undertaken pursuant to the Work Plan has been completed, Chevron and Shell shall comply with WAC 173-340-300(4) and shall provide both the City and the Department of Ecology with a report summarizing the remedial action. The report by Chevron and Shell shall show any as-built drawings or any onsite monitoring equipment constructed and installed.

9. Except as expressly provided in this Agreement, no party to this Agreement assumes any liability by entering into this Agreement, including any liability for remediation of the Site. Nothing in this Agreement shall be construed to be an admission of liability or responsibility by any party hereto for contamination of the Site. Except as expressly provided in this Agreement, nothing in this Agreement shall be construed as a waiver or release of any claim or potential claim of liability or responsibility of any party hereto for contamination of the Site.

10. Chevron and Shell shall indemnify and hold harmless the City, its officials, officers, directors, agents, employees, and other representatives from and against all claims and actions including all expenses incidental to such claims and actions, based on or arising out of damages or injuries to persons or property to the extent such claims and actions arise out of any activities conducted pursuant to this Agreement, or which are caused by the sole negligence and/or fault of Chevron and/or Shell. The City shall indemnify and hold harmless Chevron and Shell from and against all claims and actions including all expenses incidental to such claims and actions, based on or arising out of damages or injuries to persons or property to the extent such claims and actions arise out of any activities of the City or its representatives pursuant to this Agreement or which are caused by the sole negligence or fault of the City. In the event that a claim or action arises from the joint or concurrent negligence or fault of the parties, the resulting loss, damage, liability, claims, demands or costs shall be borne by the parties in proportion to their degree of fault.

11. Subject to the terms and conditions of this Agreement, Chevron and Shell shall proceed with reasonable diligence to complete the work of the Work Plan in a timely manner. Chevron and Shell shall not be liable for delay in performance of their obligations under this Agreement if such performance is hindered by any event which is not solely within the control of Chevron, Shell, or their contractor(s) implementing the Work Plan,

including, without limitation, fire, flood, earthquakes, abnormal weather, lightning, strikes or other labor disputes or any other matter not reasonably contemplated by the parties. Chevron and Shell shall exercise reasonable diligence to remove or remedy any condition or event causing a delay. Upon the removal of such condition or event, Chevron and Shell shall diligently proceed to complete the Work Plan. The City shall exercise reasonable diligence to remove or remedy any circumstance or condition causing a delay which is within the control of the City.

12 Nothing in this Agreement shall be construed to create any rights in or grant any cause of action to any person not a party to this Agreement.

13 The parties to this Agreement shall cooperate in dealing with the Washington Department of Ecology ("WDOE") to request approval of the remediation plan described in the Work Plan and to request any appropriate consent decree or agreed orders which appear to all of the parties appropriate to seek when the Work Plan has been completed

13 Chevron and Shell agree to cooperate with the City and participate in informational meetings and public meetings and provide necessary technical experts to explain the proposed remedial action plan

14 Any notice, demand or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

To City:

Terrence L. Ellis
City Manager
123 Fifth Avenue
Kirkland, WA 98033

with a copy to:

Dennis D Reynolds
Williams, Kastner & Gibbs
P.O. Box 21926
Seattle, WA 98111-3926

To Chevron USA, Inc.:

P.O. Box 220
Seattle, WA 98111
Attn: Mel Knutson

with a copy to:

Helsell, Fetterman, Martin,
Todd & Hokanson
1500 Puget Sound Plaza
P O Box 21846
Seattle, WA 98111
Attn Gary F. Linden

To Shell Oil Company

with a copy to

15. Except to enforce the terms of this Agreement, no party to this Agreement shall initiate an Action against another party to this Agreement during the time period commencing with the effective date of this Agreement and ending 90 days after the earlier of

- a. Completion of all work provided in the Work Plan,
- b The giving of notice of termination of this Agreement not to sue, by one party hereunder to the other parties, but such notice of termination may only be given if a party is not in compliance with the Work Plan

Such period of time is hereafter called "the Tolling Period."

For purposes of this Agreement, Action means any lawsuit, administrative proceeding, or other form of proceeding that relates to the subject matter of this Agreement. No period of limitation (whether contractual, statutory, common law or otherwise) on an Action shall run between the parties during the Tolling Period nor shall either party put forward or rely upon such Tolling Period as a waiver or estoppel or as a time bar in order to preclude or defeat an Action by the other party, provided, however, that nothing in this Agreement modifies or otherwise alters any time bar existing prior to the effective date of this Agreement. No claim, suits, Actions or rights for which a limitation period or time requirement expired as of the effective date of this Agreement are revived or in any way affected by this Agreement

16. The City covenants and agrees not to sue or to take administrative or other action against Chevron or Shell for any claim or matter regarding this Site. The following covenant and agreement shall become effective only upon completion of the remedial action and attainment of clean-up standards required by the Work Plan. The covenant and agreement shall relate only to the environmental contamination of the Site and past or future costs or damages related thereto or any matter related to the Work Plan. This covenant not to sue extends only to Chevron and Shell and does not extend to any other persons

Notwithstanding the foregoing covenant not to sue, the City shall have the right to assert claims against Chevron and Shell as follows:

a. If WDOE or any other governmental agency requires further remedial or response actions relating to the Site, the City shall be entitled to assert claims against Chevron and/or Shell relating to such further response actions,

b. If a claim which is related in any way to contamination of the Site is asserted by a third party against the City, its officers, directors, officials, agents or representatives, in any lawsuit or other proceeding, the City shall be entitled to tender the defense of such claims and/or assert claims over against Chevron and Shell to obtain payment and reimbursement for the City's legal defense costs and for such amounts the City shall pay such third party.

18 In any dispute or claim between the parties to this Agreement arising out of or relating to this Agreement, breach thereof, actions or omissions under the Work Plan, or any other matter regarding this site, the substantially prevailing party shall be entitled to recover all reasonable costs and attorneys' fees in connection therewith

19 This Agreement embodies the entire agreement between the parties with respect to the matters set forth herein and is intended to be a complete expression of the agreement of the parties. No changes, amendments or modifications of any of the

terms and conditions of this Agreement shall be valid unless reduced to writing and signed by all parties.

20. This Agreement shall be construed in accordance with and governed by the laws of the State of Washington.

21. The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

22. The covenants and agreements contained in this Agreement shall inure to the benefit of and be binding upon the parties hereto and to their respective assigns and successors in interest

23. The obligations of Chevron and Shell hereunder are joint and several.

24. The individuals signing below warrant that they are authorized representatives with authority to sign on behalf of the entities they represent

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year above set forth.

CITY OF KIRKLAND

By

Terrence L. Ellis
City Manager

CHEVRON USA, INC

By _____
Attorney in Fact

SHELL OIL COMPANY

By _____
Its _____