

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JYK HOLDINGS, LLC,

Defendant.

NO. _____

PROSPECTIVE PURCHASER
CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION..... 3
II. JURISDICTION..... 4
III. PARTIES BOUND 5
IV. DEFINITIONS 6
V. FINDINGS OF FACT..... 7
VI. WORK TO BE PERFORMED 9
VII. DESIGNATED PROJECT COORDINATORS 14
VIII. PERFORMANCE 15
IX. CERTIFICATION OF DEFENDANT..... 16
X. ACCESS..... 16

1	XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY	17
2	XII. ACCESS TO INFORMATION	18
3	XIII. RETENTION OF RECORDS.....	18
4	XIV. TRANSFER OF INTEREST IN PROPERTY	19
5	XV. RESOLUTION OF DISPUTES	20
6	XVI. AMENDMENT OF DECREE	22
7	XVII. EXTENSION OF SCHEDULE	22
8	XVIII. ENDANGERMENT	24
9	XIX. COVENANT NOT TO SUE.....	25
10	XX. CONTRIBUTION PROTECTION.....	26
11	XXI. INDEMNIFICATION.....	26
12	XXII. COMPLIANCE WITH APPLICABLE LAWS.....	27
13	XXIII. REMEDIAL ACTION COSTS	28
14	XXIV. IMPLEMENTATION OF REMEDIAL ACTION.....	29
15	XXV. PERIODIC REVIEW	30
16	XXVI. PUBLIC PARTICIPATION	30
17	XXVII. DURATION OF DECREE.....	31
18	XXVIII. CLAIMS AGAINST THE STATE.....	32
19	XXIX. EFFECTIVE DATE.....	32
20	XXX. WITHDRAWAL OF CONSENT	32
21		
22	EXHIBIT A	Site Location Diagram
23	EXHIBIT B	Legal Description of Property
24	EXHIBIT C	Draft Remedial Investigation/Feasibility Study
25	EXHIBIT D	Draft Cleanup Action Plan
26	EXHIBIT E	Schedule of Work and Deliverables

1 **I. INTRODUCTION**

2 1. The mutual objectives of the State of Washington, Department of Ecology
3 (Ecology) and JYK Holdings, LLC (Defendant) (collectively, the Parties) under this Prospective
4 Purchaser Consent Decree (Decree) are to: (a) resolve the potential liability of Defendant for
5 contamination at a facility where there has been a release or threatened release of hazardous
6 substances, in advance of Defendant acquiring an ownership interest in the facility; and (b)
7 facilitate cleanup of the facility for redevelopment or reuse. This Decree requires Defendant to
8 perform the remedial actions described in Exhibit D (Cleanup Action Plan) in accordance with
9 the schedule presented in Exhibit E (Schedule of Work and Deliverables).

10 2. Ecology has determined that these actions are necessary to protect human health
11 and the environment.

12 3. The Complaint in this action is being filed simultaneously with this Decree. An
13 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
14 However, the Parties wish to resolve the issues raised by Ecology’s Complaint. In addition, the
15 Parties agree that settlement of these matters without litigation is reasonable and in the public
16 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

17 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its
18 terms.

19 5. By entering into this Decree, the Parties do not intend to discharge non-settling
20 parties from any liability they may have with respect to matters alleged in the Complaint. The
21 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
22 sums expended under this Decree.

23 6. This Decree shall not be construed as proof of liability or responsibility for any
24 releases of hazardous substances or cost for remedial action nor an admission of any facts;
25 provided, however, Defendant shall not challenge the authority of the Attorney General and
26 Ecology to enforce this Decree.

1 in Section IV.1.G) from Edmund J. Wood as Chapter 7 Trustee of The Bankruptcy Estate of
2 TOC Holdings Co., formerly known as Time Oil Co. The Property comprises a portion of the
3 Site. Defendant will incur potential liability under RCW 70A.305.040(1)(a) at the time it
4 acquires the Property for performing remedial actions or paying remedial costs incurred by
5 Ecology or third parties resulting from past releases of hazardous substances at the Site. This
6 Decree settles Defendant's liability for the Site upon its acquisition of the Property.

7 6. Ecology finds that this Decree and/or the remedial actions required by this Decree
8 will yield substantial new resources to facilitate cleanup of the Site; will lead to a more
9 expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards
10 established under RCW 70A.305.030(2)(e) and WAC 173-340; will promote the public interest
11 by facilitating the redevelopment or reuse of the Site; and will not be likely to contribute to the
12 existing release or threatened release at the Site, interfere with remedial actions that may be
13 needed at the Site, or increase health risks to persons at or in the vicinity of the Site. In addition,
14 Ecology has determined that this Decree will provide a substantial public benefit by providing
15 for the reuse of a vacant or abandoned facility currently owned by an entity undergoing a
16 bankruptcy liquidation.

17 7. Defendant has agreed to undertake the actions specified in this Decree and
18 consents to the entry of this Decree under MTCA.

19 8. This Decree has been subject to public notice and comment.

20 **III. PARTIES BOUND**

21 This Decree shall apply to and be binding upon the Parties to this Decree, their successors
22 and assigns. The undersigned representative of each Party hereby certifies that they are fully
23 authorized to enter into this Decree and to execute and legally bind such Party to comply with
24 this Decree. Defendant agrees to undertake all actions required by the terms and conditions of
25 this Decree. No change in ownership or corporate status shall alter Defendant's responsibility
26 under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and

1 subcontractors retained to perform work required by this Decree and shall ensure that all work
2 undertaken by such agents, contractors, and subcontractors complies with this Decree.

3 IV. DEFINITIONS

4 1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and
5 WAC 173-340 shall control the meanings of the terms in this Decree.

6 A. Site: The Site is referred to as TOC Facility No. 01-176 and is identified
7 by Facility Site ID 93355524 and Cleanup Site ID 6885. The Site encompasses a portion of the
8 parcel of real property located at 24205 56th Avenue, Mountlake Terrace, Snohomish County,
9 Washington, which is identified by Snohomish County as Parcel No. 00489300003501 (Source
10 Property), a portion of the adjoining parcel of real property to the south located at 24225 56th
11 Avenue West, which is identified by Snohomish County as Parcel No. 00489300003400
12 (Adjoining Property), a portion of the parcel of real property that adjoins the Adjoining Property
13 to the south located at 24309 56th Avenue West, which is identified by Snohomish County as
14 Parcel No. 00489300003300 (Drake Parcel), and a portion of the 56th Avenue West right-of-way
15 located to the west of the Source Property, Adjoining Property, and Drake Parcel. The Site
16 constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous
17 substance, other than a consumer product in consumer use, has been deposited, stored, disposed
18 of, or otherwise come to be located. A figure depicting the Site is attached hereto as Exhibit A.

19 B. Adjoining Property: has the meaning given in Section IV.1.A.

20 C. Consent Decree or Decree: Refers to this Prospective Purchaser Consent
21 Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of
22 this Consent Decree.

23 D. Defendant: Refers to JYK Holdings, LLC.

24 E. Drake Parcel: has the meaning given in Section IV.1.A.

25 F. Parties: Refers to the State of Washington, Department of Ecology and
26 Defendant.

1 G. Property: Collectively refers to the Source Property and the Adjoining
2 Property. The legal description of the Property is attached hereto as Exhibit B.

3 H. Source Property: has the meaning given in Section IV.1.A.

4 I. TOC: Refers to TOC Holdings Co., formerly known as Time Oil Co.

5 **V. FINDINGS OF FACT**

6 Ecology makes the following findings of fact without any express or implied admissions
7 of such facts by Defendant.

8 1. The Site is located in a mixed commercial and residential area in Mountlake
9 Terrace, Snohomish County, Washington. The Site is defined in Section IV.A and depicted on
10 Exhibit A.

11 2. TOC Holdings Co., formerly known as Time Oil Co. (TOC) operated a retail
12 gasoline fueling facility on the Source Property from 1968 to 1990. The fueling facility included
13 a small building and was equipped with underground storage tanks (USTs) ranging in capacity
14 from 4,000 to 8,000 gallons, fuel dispensers, and associated product delivery lines. In 1991, the
15 USTs, fuel dispensers, and associated product lines were decommissioned by removal.

16 3. In 1995, TOC leased the Source Property to B&B Cable, a telecommunications
17 cabling contractor. In 2008, B&B Cable vacated the Source Property and the building on the
18 Source Property was demolished. The Source Property has remained vacant since that time.

19 4. Petroleum hydrocarbons were identified in soil surrounding the USTs when they
20 were removed in 1991. TOC performed remedial actions between 1991 and 2017 to determine
21 the extent of contamination at the Site and to remediate the contamination. The remedial actions
22 were performed both independently and pursuant to Agreed Order No. DE 8661 entered into
23 between Ecology and TOC on October 28, 2011 (Agreed Order). The Agreed Order required
24 TOC to prepare a remedial investigation report, complete a feasibility study, perform interim
25 actions, and develop a cleanup action plan for the Site.

1 5. To characterize the contamination at the Site, TOC advanced borings, installed
2 groundwater monitoring wells, installed vapor probes, collected and analyzed soil samples,
3 collected and analyzed groundwater samples, and collected and analyzed soil gas samples on
4 and off the Property in multiple phases of investigation. The investigations identified gasoline-
5 range organics (GRO) and benzene, toluene, ethylbenzene, and xylene (BTEX) in soil and
6 groundwater at concentrations exceeding MTCA Method A cleanup levels in portions of the
7 Property, Drake Parcel, and 56th Avenue West right-of-way.

8 6. TOC performed interim actions between 1994 and 2017 to remediate
9 contaminated soil, groundwater, and soil gas. TOC installed and operated a dual-phase extraction
10 system on the Source Property between 1996 and 2005, and installed and operated three separate
11 multiphase extraction systems on the Property and the Drake Parcel between 2011 and 2017.
12 TOC also installed and used extraction wells to remove light non-aqueous phase liquid from the
13 Source Property and the 56th Avenue West right-of-way between 2005 and 2013.

14 7. TOC stopped performing remedial actions at the Site when it filed for bankruptcy
15 in 2017. Because of the bankruptcy, TOC did not complete the remedial investigation report or
16 other deliverables required by the Agreed Order.

17 8. On November 22, 2020, Defendant entered into a purchase and sale agreement
18 with Edmund J. Wood as Chapter 7 Trustee of The Bankruptcy Estate of TOC, the current owner
19 of the Property. The agreement has been amended multiple times to extend the feasibility period.
20 Pursuant to the agreement, as amended, Defendant intends to acquire the Property on the
21 effective date of this Decree.

22 9. Defendant has completed remedial actions at its expense during the feasibility
23 period of the purchase and sale agreement, including development of a Remedial Investigation
24 Report and Feasibility Study prepared by Farallon Consulting L.L.C. (Farallon) dated December
25 13, 2024 (RI/FS Report), and development of a Cleanup Action Plan (CAP) prepared by Farallon
26

1 dated December 13, 2024. Ecology has reviewed and approved the RI/FS Report and CAP. The
2 RI/FS Report is attached hereto as Exhibit C. The CAP is attached hereto as Exhibit D.

3 10. Defendant proposes to implement the CAP, which will remediate the remaining
4 contamination at the Site and make the Property available for redevelopment for commercial and
5 residential uses consistent with MTCA and its implementing regulations, WAC 173-340, and
6 applicable regulations of the City of Mountlake Terrace.

7 **VI. WORK TO BE PERFORMED**

8 1. This Decree contains a program designed to protect human health and the
9 environment from the known release, or threatened release, of hazardous substances at, on, or
10 from the Site. All remedial action conducted by Defendant at the Site shall be done in accordance
11 with WAC 173-340.

12 2. Defendant shall implement the CAP (Exhibit D) in accordance with the Schedule
13 of Work and Deliverables (Exhibit E). A summary of the work to be performed, which is
14 described more specifically in the CAP, is as follows:

15 A. Two of the three existing multiphase extraction (MPE) systems will be
16 rehabilitated, expanded, and put back into operation to remediate the remaining areas of
17 contaminated soil and groundwater at the Site. The mechanical equipment in the existing MPE
18 systems will be inspected to ascertain whether it can be rehabilitated. Mechanical equipment that
19 is missing or unrepairable will be replaced. After the inspection is complete, Defendant will
20 prepare an Engineering Design Report and submit it to Ecology for review and approval. The
21 Engineering Design Report will describe how the existing MPE systems will be rehabilitated,
22 expanded, and put into operation.

23 B. After Ecology approves the Engineering Design Report, Defendant will
24 rehabilitate and expand the existing MPE systems in accordance with the approved Engineering
25 Design Report and prepare an MPE Operation and Maintenance Plan and submit it to Ecology
26

1 for review and approval. The MPE Operation and Maintenance Plan will describe how the
2 rehabilitated and expanded MPE systems will be operated and maintained.

3 C. Defendant will operate and maintain the rehabilitated and expanded MPE
4 systems in accordance with the approved MPE Operation and Maintenance Plan for no more
5 than three years after which they will be decommissioned and removed.

6 D. The effectiveness of the MPE systems will be evaluated through
7 performance monitoring. Performance monitoring of the MPE systems will include the
8 collection and analysis of vapor and groundwater discharge samples to ensure compliance with
9 discharge permits and to determine if additional or modified treatment is required for the vapor
10 or groundwater discharge streams. Defendant will use the results of performance monitoring to
11 make modifications to the MPE systems as necessary to maximize the efficiency and
12 effectiveness of the MPE systems. Performance monitoring of groundwater conditions at the Site
13 will consist of the periodic collection and analysis of groundwater samples from eight (8) to
14 twelve (12) monitoring wells that will serve as a monitoring well network.

15 E. Operation of the MPE systems will be terminated before three years if the
16 analytical results of groundwater samples collected from the monitoring well network indicate
17 the concentrations of GRO and BTEX are below MTCA Method A cleanup levels in all of the
18 monitoring wells. After three years of operation, the MPE systems will be shut down irrespective
19 of the concentrations of GRO and BTEX in the groundwater samples collected from the
20 monitoring well network.

21 F. After the MPE systems are shut down, groundwater samples will be
22 collected from the monitoring well network to evaluate whether cleanup levels for groundwater
23 have been achieved. If cleanup levels are not achieved within one year after the MPE systems
24 are shut down, then groundwater monitoring will continue for one more year unless cleanup
25 levels are achieved sooner. If cleanup levels are not achieved after the additional one-year period,
26

1 then an environmental covenant in a form approved by Ecology will be executed and recorded
2 against the portions of the Site where contaminated groundwater remains.

3 G. After the MPE systems are shut down, soil samples will be collected to
4 evaluate whether cleanup levels for soil have been achieved. Eight borings will be advanced on
5 the Source Property to a maximum depth of 15 feet below ground surface and soil samples will
6 be collected at five-foot intervals from each boring. If the analytical results of the samples
7 indicate cleanup levels are not achieved, then the remaining contaminated soil will be covered
8 with an engineered cap and an environmental covenant in a form approved by Ecology will be
9 executed and recorded against the portions of the Site where the contaminated soil remains.

10 H. After Defendant completes the remedial actions described in the CAP,
11 Defendant will prepare a Cleanup Action Report and submit it to Ecology for review and
12 approval. The Cleanup Action Report will describe the remedial actions implemented at the Site
13 in accordance with the CAP and this Decree.

14 3. All plans or other deliverables submitted by Defendant for Ecology's review and
15 approval under the CAP (Exhibit D) and Schedule of Work and Deliverables (Exhibit E) shall,
16 upon Ecology's approval, become integral and enforceable parts of this Decree.

17 4. If Defendant learns of a significant change in conditions at the Site, including but
18 not limited to a statistically significant increase in contaminant and/or chemical concentrations
19 in soil or groundwater, Defendant, within seven (7) days after learning of the change in condition,
20 shall notify Ecology in writing of said change and provide Ecology with any reports or records
21 (including laboratory analyses, sampling results) relating to the change in conditions.

22 5. As detailed in the CAP, if institutional controls and/or engineered controls will
23 be implemented at the Site after the MPE systems are shut down, then pursuant to WAC 173-
24 340-440(11), Defendant shall maintain sufficient and adequate financial assurance mechanisms
25 to cover all costs associated with the operation and maintenance of the institutional controls and
26 engineered controls.

1 A. As detailed in the CAP, if institutional controls and/or engineered controls
2 will be implemented at the Site after the MPE systems are shut down, then within ninety (90)
3 days after the MPE systems are shut down Defendant shall submit to Ecology for review and
4 approval an estimate of the costs associated with operation and maintenance of the institutional
5 controls and engineered controls for five (5) years. Within sixty (60) days after Ecology approves
6 the aforementioned cost estimate, Defendant shall provide proof of financial assurances
7 sufficient to cover those costs in a form acceptable to Ecology.

8 B. Defendant shall submit a financial assurance report to Ecology on an
9 annual basis until financial assurance is no longer required by Ecology or applicable law
10 identifying the costs incurred for the preceding calendar year to operate and maintain the
11 institutional controls and engineered controls and estimating the costs to operate and maintain
12 the institutional controls and engineered controls for the next five (5) years. The Financial
13 Assurance Officer for Ecology shall work with the project coordinators to review and approve
14 financial assurance coverage pursuant to this Decree and make determinations on any
15 adjustments necessary based on the annual reporting. As of the execution date of this Decree,
16 Ecology's Financial Assurance Officer is Joanna Seymour, 360-485-5992 or
17 joar461@ecy.wa.gov.

18 6. As detailed in the CAP, institutional controls consisting of Environmental
19 (Restrictive) Covenants may be required at the Site.

20 A. In consultation with Defendant, Ecology will prepare the Environmental
21 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or
22 procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict
23 future activities and uses of the Site as agreed to by Ecology and Defendant.

24 B. After approval by Ecology, Defendant shall record the Environmental
25 (Restrictive) Covenants for affected properties it owns with the office of the Snohomish County
26 Auditor as detailed in the Schedule of Work and Deliverables (Exhibit E). Defendant shall

1 provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty
2 (30) days after the recording date.

3 C. As detailed in the CAP, as part of the remedial action for the Site, an
4 institutional control consisting of Environmental (Restrictive) Covenants may be required at
5 properties not owned by Defendant. Defendant will ensure that the owner of each affected
6 property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the
7 Schedule of Work and Deliverables (Exhibit E). Upon a showing that Defendant has made a
8 good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and
9 failed to do so, Ecology may provide assistance to Defendant. Unless Ecology determines
10 otherwise, affected properties include the parcel of real property located at 24309 56th Avenue
11 West, which is identified by Snohomish County as Parcel No. 00489300003300. Defendant shall
12 provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty
13 (30) days after the recording date.

14 7. Defendant shall submit to Ecology written monthly progress reports for the first
15 calendar year after the effective date of this Decree that describe the actions taken during the
16 previous month to implement the requirements of this Decree. After the first calendar year, upon
17 request and Ecology approval, the progress report frequency may be reduced. All progress
18 reports shall be submitted by the tenth (10th) day of the month in which they are due until
19 Ecology approves less frequent progress reports. Unless otherwise specified in writing by
20 Ecology, progress reports and any other documents submitted pursuant to this Decree shall be
21 sent by email to Ecology's project coordinator. The progress reports shall include the following:

- 22 A. A list of on-site activities that have taken place during the quarter.
23 B. Description of any sample results which deviate from the norm.
24 C. Detailed description of any deviations from required tasks not otherwise
25 documented in project plans or amendment requests.
26

1 D. Description of all deviations from the Schedule of Work and Deliverables
2 (Exhibit E) during the current month and any planned deviations in the upcoming month.

3 E. For any deviations in schedule, a plan for recovering lost time and
4 maintaining compliance with the schedule.

5 F. All raw data (including laboratory analyses) received during the previous
6 quarter (if not previously submitted to Ecology), together with a detailed description of the
7 underlying samples collected.

8 G. A list of planned activities for the upcoming quarter.

9 8. Except in the case of an emergency, Defendant shall not perform any remedial
10 actions at the Site outside the scope of this Decree without prior written approval of Ecology. In
11 the case of an emergency, Defendant must notify Ecology of the event and remedial action(s) as
12 soon as practical, but no later than twenty-four (24) hours after discovery of the emergency.

13 VII. DESIGNATED PROJECT COORDINATORS

14 1. The project coordinator for Ecology is:

15 Vance Atkins
16 Department of Ecology
17 Northwest Regional Office
18 15700 Dayton Avenue North
19 Shoreline, WA 98133
20 (425) 324-1438
21 vatk461@ecy.wa.gov

22 2. The project coordinator for Defendant is:

23 Pete Kingston, L.G.
24 Farallon Consulting, L.L.C.
25 13555 SE 36th Street, Suite 320
26 Bellevue, WA 98006
(206) 200-2346
pkingston@farallonconsulting.com

3 Each project coordinator shall be responsible for overseeing the implementation
of this Decree. Ecology's project coordinator will be Ecology's designated representative for the
Site. To the maximum extent possible, communications between Ecology and Defendant and all

1 documents, including reports, approvals, and other correspondence concerning the activities
2 performed pursuant to the terms and conditions of this Decree shall be directed through the
3 project coordinators. The project coordinators may designate, in writing, working level staff
4 contacts for all or portions of the implementation of the work to be performed required by this
5 Decree.

6 4. Any Party may change its respective project coordinator. Written notification
7 shall be given to the other Party at least ten (10) calendar days prior to the change.

8 **VIII. PERFORMANCE**

9 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
10 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
11 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
12 supervision of an engineer registered by the State of Washington.

13 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
14 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
15 registered by the State of Washington.

16 3. Except as otherwise provided for by RCW 18.43.130, all construction work
17 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
18 registered by the State of Washington or a qualified technician under the direct supervision of a
19 professional engineer registered by the State of Washington.

20 4. As required by RCW 18.43 and 18.220, any documents submitted containing
21 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
22 professional.

23 5. Defendant shall notify Ecology in writing of the identity of any engineer(s) and
24 geologist(s), contractor(s) and subcontractor(s), and other key personnel to be used in carrying
25 out the terms of this Decree, in advance of their involvement at the Site.

1 **IX. CERTIFICATION OF DEFENDANT**

2 1. Defendant represents and certifies that, to the best of its knowledge and belief, it
3 has fully and accurately disclosed to Ecology the information currently in its possession or
4 control that relates to the environmental conditions at and in the vicinity of the Site, or to
5 Defendant's right and title thereto.

6 2. Defendant represents and certifies that it did not cause or contribute to a release
7 or threatened release of hazardous substances at the Site and is not otherwise currently
8 potentially liable for the Site under RCW 70A.305.040(1).

9 **X. ACCESS**

10 1. Ecology or any Ecology authorized representative shall, after notice to
11 Defendant, have access to enter and freely move about all property at the Site that Defendant
12 either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia:
13 inspecting records, operation logs, and contracts related to the work being performed pursuant
14 to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree;
15 conducting such tests or collecting such samples as Ecology may deem necessary; using a
16 camera, sound recording, or other documentary type equipment to record work done pursuant to
17 this Decree; and verifying the data submitted to Ecology by Defendant.

18 2. Nothing in this Decree is intended by Defendant to waive any right it may have
19 under applicable law to limit disclosure of documents protected by the attorney work-product
20 privilege and/or the attorney-client privilege. If Defendant withholds any requested records
21 based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the
22 records withheld and the applicable privilege. No Site-related data collected pursuant to this
23 Decree shall be considered privileged.

24 3. Defendant shall make all reasonable efforts to secure access rights for those
25 properties within the Site not owned or controlled by Defendant where remedial activities or
26 investigations will be performed pursuant to this Decree.

1 4. Ecology or any Ecology authorized representative shall give reasonable notice
2 before entering any Site property owned or controlled by Defendant unless an emergency
3 prevents such notice. All Parties who access the Site pursuant to this section shall comply with
4 any applicable health and safety plan(s). Ecology employees and their representatives shall not
5 be required to sign any liability release or waiver as a condition of Site property access.

6 **XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

7 1. With respect to the implementation of this Decree, Defendant shall make the
8 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
9 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
10 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
11 accordance with paragraph 5 of Section VI (Work to be Performed), Ecology's Toxics Cleanup
12 Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified
13 by Ecology for data submittal.

14 2. If requested by Ecology, Defendant shall allow Ecology and/or its authorized
15 representative to take split or duplicate samples of any samples collected by Defendant pursuant
16 to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance
17 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
18 Defendant and/or its authorized representative to take split or duplicate samples of any samples
19 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does
20 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section X
21 (Access), Ecology shall notify Defendant prior to any sample collection activity unless an
22 emergency prevents such notice.

23 3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses
24 shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
25 conducted, unless otherwise approved by Ecology.
26

1 **XII. ACCESS TO INFORMATION**

2 1. Defendant shall provide to Ecology, upon request, copies of all records, reports,
3 documents, and other information (including records, reports, documents, and other information)
4 in written or electronic form (Records) within its possession or control or that of its contractors
5 or agents relating to activities at the Site or to the implementation of this Decree, including, but
6 not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
7 reports, sample traffic routing, correspondence, or other documents or information regarding the
8 work. Defendant shall also make available to Ecology, for purposes of investigation, information
9 gathering, or testimony, their employees, agents, or representatives with knowledge of relevant
10 facts concerning the performance of the work.

11 2. Nothing in this Decree is intended to waive any right Defendant may have under
12 applicable law to limit disclosure of Records protected by the attorney work-product privilege
13 and/or the attorney-client privilege. If Defendant withholds any requested Records based on an
14 assertion of privilege, it shall provide Ecology with a privilege log specifying the Records
15 withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall
16 be considered privileged, including: (a) any data regarding the Site, including, but not limited to,
17 all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological,
18 biological, or engineering data, or the portion of any other record that evidences conditions at or
19 around the Site; or (b) the portion of any Record that Defendant is required to create or generate
20 pursuant to this Order.

21 3. Notwithstanding any provision of this Order, Ecology retains all of its
22 information gathering and inspection authorities and rights, including enforcement actions
23 related thereto, under any other applicable statutes or regulations.

24 **XIII. RETENTION OF RECORDS**

25 During the pendency of this Decree, and for ten (10) years from the date this Decree is
26 no longer in effect as provided in Section XXVI (Duration of Decree), Defendant shall preserve

1 all records, reports, documents, and underlying data in its possession relevant to the
2 implementation of this Decree and shall insert a similar record retention requirement into all
3 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant shall
4 make all records available to Ecology and allow access for review within a reasonable time.

5 **XIV. TRANSFER OF INTEREST IN PROPERTY**

6 1. Defendant may at any time transfer all or a portion of its fee simple title interest
7 in the Property.

8 2. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
9 interest in any portion of the Property shall be consummated by Defendant without provision for
10 continued operation and maintenance of any containment system, treatment system, and/or
11 monitoring system installed or implemented pursuant to this Decree.

12 3. Prior to Defendant's transfer of any interest in all or any portion of the Property,
13 and during the effective period of this Decree, Defendant shall provide a copy of this Decree to
14 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and,
15 at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.
16 Upon its transfer of any interest, Defendant shall notify all transferees of the restrictions on the
17 activities and uses of the Property under this Decree and incorporate any such use restrictions
18 into the transfer documents.

19 4. Defendant may assign its rights and obligations under this Decree to a third party
20 that acquires a fee simple title interest in all or a portion of the Property upon the following
21 conditions: (a) Defendant provides Ecology with no less than sixty (60) days advance written
22 notice of the proposed assignment, which notice shall identify the acquiring entity; (b) the
23 acquiring entity is not a PLP at the Site; (c) the acquiring entity assumes, in writing, all rights
24 and obligations under this Decree; (d) the same or comparable public benefits afforded by this
25 Decree will be maintained by the acquiring entity after its acquisition of all or a portion of the
26 Property; and (e) redevelopment of the Property by the acquiring entity will not interfere with

1 any remedial actions, contribute to the existing contamination at the Site, or unsafely expose
2 humans to the existing contamination. Ecology and any acquiring entity that Ecology determines
3 meets the preceding conditions shall enter an amendment to this Decree to substitute the
4 acquiring entity as the Defendant and to bind it to this Decree.

5 **XV. RESOLUTION OF DISPUTES**

6 1. In the event Defendant elects to invoke dispute resolution, Defendant must utilize
7 the procedure set forth below.

8 A. Upon the triggering event (receipt of Ecology's project coordinator's
9 written decision or an itemized billing statement), Defendant has fourteen (14) calendar days
10 within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute
11 Notice).

12 B. The Parties' project coordinators shall then confer in an effort to resolve
13 the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days
14 from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute
15 within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator
16 shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute;
17 Defendant's position with regards to the dispute; Ecology's position with regards to the dispute;
18 and the extent of resolution reached by informal discussion.

19 C. Defendant may then request regional management review of the dispute.
20 Defendant must submit this request (Formal Dispute Notice) in writing to the Northwest Region
21 Toxics Cleanup Section Manager within seven (7) calendar days after receipt of Ecology's
22 Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of
23 dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the
24 dispute; and the information relied upon to support its position.

1 D. The Section Manager shall conduct a review of the dispute and shall issue
2 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days
3 after receipt of the Formal Dispute Notice.

4 E. If Defendant finds Ecology's Regional Section Manager's decision of the
5 disputed matter unacceptable, Defendant may then request final management review of that
6 decision. Defendant must submit this request (Final Review Request) in writing to the Toxics
7 Cleanup Program Manager within seven (7) calendar days after Defendant's receipt of the
8 Decision on Dispute. The Final Review Request shall include a written statement of dispute
9 setting forth: the nature of the dispute; the disputing Defendant's position with respect to the
10 dispute; and the information relied upon to support its position.

11 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
12 the dispute and shall issue a written decision regarding the dispute (Final Decision on Dispute)
13 within thirty (30) calendar days after receipt of the Final Review Request. The Toxics Cleanup
14 Program Manager's decision shall be Ecology's final decision on the disputed matter.

15 2. If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant
16 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge
17 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
18 this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial decisions shall be
19 upheld unless they are arbitrary and capricious.

20 3. The Parties agree to only utilize the dispute resolution process in good faith and
21 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
22 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
23 the other Party may seek sanctions.

24 4. Implementation of these dispute resolution procedures shall not provide a basis
25 for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
26 extension or the Court so orders.

- 1 A. The deadline that is sought to be extended.
- 2 B. The length of the extension sought.
- 3 C. The reason(s) for the extension.
- 4 D. Any related deadline or schedule that would be affected if the extension
- 5 were granted.

6 2. The burden shall be on Defendant to demonstrate to the satisfaction of Ecology
7 that the request for such extension has been submitted in a timely fashion and that good cause
8 exists for granting the extension. Good cause may include, but may not be limited to:

9 A. Circumstances beyond the reasonable control and despite the due
10 diligence of Defendant including delays caused by unrelated third parties or Ecology, such as
11 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents
12 submitted by Defendant.

13 B. A shelter in place or work stoppage mandated by state or local
14 government order due to public health and safety emergencies.

15 C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
16 or other unavoidable casualty.

17 D. Endangerment as described in Section XVIII (Endangerment).

18 3. However, neither increased costs of performance of the terms of this Decree nor
19 changed economic circumstances shall be considered circumstances beyond the reasonable
20 control of Defendant.

21 4. Ecology shall act upon Defendant's written request for extension in a timely
22 fashion. Ecology shall give Defendant written notification of any extensions granted pursuant to
23 this Decree. A requested extension shall not be effective until approved by Ecology or, if
24 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
25 amend this Decree pursuant to Section XVI (Amendment of Decree) when a schedule extension
26 is granted.

1 C. Upon Ecology's determination that remedial action beyond the terms of
2 this Decree is necessary to abate an imminent and substantial endangerment to human health or
3 the environment.

4 D. Upon the availability of information previously unknown to Ecology
5 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
6 hazardous substances, and Ecology's determination, in light of this information, that further
7 remedial action is necessary at the Site to protect human health or the environment.

8 E. Upon Ecology's determination that additional remedial actions are
9 necessary to achieve cleanup standards within the reasonable restoration time frame set forth in
10 the CAP.

11 4. Except in the case of an emergency, prior to instituting legal or administrative
12 action against Defendant pursuant to this section, Ecology shall provide Defendant with fifteen
13 (15) calendar days' notice of such action.

14 **XX. CONTRIBUTION PROTECTION**

15 With regard to claims for contribution against Defendant, the Parties agree that
16 Defendant is entitled to protection against claims for contribution for matters addressed in this
17 Decree as provided by RCW 70A.305.040(4)(d).

18 **XXI. INDEMNIFICATION**

19 Defendant shall indemnify and save and hold the State of Washington, its employees,
20 and agents harmless from any and all claims or causes of action (a) for death or injuries to
21 persons, or (b) for loss or damage to property to the extent arising from or on account of acts or
22 omissions of Defendant, its officers, employees, agents, or contractors in entering into and
23 implementing this Decree. However, Defendant shall not indemnify the State of Washington nor
24 save nor hold its employees and agents harmless from any claims or causes of action to the extent
25 arising out of the negligent acts or omissions of the State of Washington, or the employees or
26 agents of the State, in entering into or implementing this Decree.

1 substantive requirements of those permits or approvals, as they are known at the time of the
2 execution of this Decree, have been identified in the CAP (Exhibit D).

3 4. Defendant has a continuing obligation to determine whether additional permits or
4 approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
5 action under this Decree. In the event either Ecology or Defendant determines that additional
6 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
7 remedial action under this Decree, it shall promptly notify the other Party of its determination.
8 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
9 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult
10 with the appropriate state and/or local agencies and provide Ecology with written documentation
11 from those agencies of the substantive requirements those agencies believe are applicable to the
12 remedial action. Ecology shall make the final determination on the additional substantive
13 requirements that must be met by Defendant and on how Defendant must meet those
14 requirements. Ecology shall inform Defendant in writing of these requirements. Once established
15 by Ecology, the additional requirements shall be enforceable requirements of this Decree.
16 Defendant shall not begin or continue the remedial action potentially subject to the additional
17 requirements until Ecology makes its final determination.

18 5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the
19 exemption from complying with the procedural requirements of the laws referenced in
20 RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary
21 for the state to administer any federal law, the exemption shall not apply and Defendant shall
22 comply with both the procedural and substantive requirements of the laws referenced in
23 RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

24 **XXIII. REMEDIAL ACTION COSTS**

25 1. Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree
26 and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology

1 or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Decree
2 preparation, negotiation, oversight, and administration. These costs shall include work
3 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include
4 costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).
5 For all costs incurred, Defendant shall pay the required amount within thirty (30) days after
6 receiving from Ecology an itemized statement of costs that includes a summary of costs incurred,
7 an identification of involved staff, and the amount of time spent by involved staff members on
8 the project. A general statement of work performed will be provided upon request. Itemized
9 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
10 Ecology's costs within ninety (90) days after receipt of the itemized statement of costs will result
11 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly. Before
12 the start of the public comment period for this Decree, Ecology will send Defendant a summary
13 of remedial action costs accumulated for the Site to date, as provided by Ecology's Fiscal Office
14 (Revenue and Receivables Unit). This amount will be included in the first billing statement sent
15 after this Decree becomes effective.

16 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may
17 utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property
18 subject to the remedial actions to recover unreimbursed remedial action costs.

19 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

20 1. If Ecology determines that Defendant has failed to make sufficient progress or
21 failed to implement the remedial action, in whole or in part, Ecology may, after notice to
22 Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow
23 Defendant an opportunity to correct. In an emergency, Ecology is not required to provide notice
24 to Defendant, or an opportunity for dispute resolution. Defendant shall reimburse Ecology for
25 the costs of doing such work in accordance with Section XXII (Remedial Action Costs).
26

1 2. Notify Ecology’s project coordinator prior to the preparation of all press releases
2 and fact sheets, and before meetings related to remedial action work to be performed at the Site
3 with the interested public and local governments. Likewise, Ecology shall notify Defendant prior
4 to the issuance of all press releases and fact sheets related to remedial action work to be performed
5 at the Site, and before meetings related to remedial action work to be performed at the Site with
6 the interested public and/or local governments. For all press releases, fact sheets, meetings, and
7 other outreach efforts by Defendant that do not receive prior Ecology approval, Defendant shall
8 clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort
9 was not sponsored or endorsed by Ecology.

10 3. When requested by Ecology, participate in public presentations on the progress
11 of the remedial action at the Site. Participation may be through attendance at public meetings to
12 assist in answering questions, or as a presenter.

13 4. When requested by Ecology, arrange and/or continue information repositories at
14 the following locations:

15 Washington State Department of Ecology
16 Northwest Regional Office
17 15700 Dayton Avenue North
18 Shoreline, WA 98133

19 At a minimum, copies of all public notices, fact sheets, and documents relating to public
20 comment periods shall be promptly placed in this repository. A copy of all documents related to
21 this Site shall be maintained at Ecology’s Northwest Region Office in Shoreline, Washington.

22 **XXVII. DURATION OF DECREE**

23 The remedial program required pursuant to this Decree shall be maintained and continued
24 until Defendant has received written notification from Ecology that the requirements of this
25 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by
26 the Court. When dismissed, Section XIII (Retention of Records), Section XIX (Covenant Not to

1 Sue), Section XX (Contribution Protection), Section XXI (Indemnification), and Section XXVII
2 (Claims Against the State) shall survive.

3 **XXVIII. CLAIMS AGAINST THE STATE**

4 Defendant hereby agrees that it will not seek to recover any costs accrued in
5 implementing the remedial action required by this Decree from the State of Washington or any
6 of its agencies; and further, that Defendant will make no claim against the State Toxics Control
7 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
8 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
9 Except as provided above, however, Defendant expressly reserves its right to seek to recover
10 any costs incurred in implementing this Decree from any other PLP. This section does not limit
11 or address funding that may be provided under WAC 173-322A.

12 **XXIX. EFFECTIVE DATE**

13 This Decree becomes effective upon the date that title to the Property vests in Defendant,
14 following entry of this Decree by the Court. If Defendant does not acquire fee simple title to the
15 Property on or before March 31, 2026, this Decree shall be null and void, and Defendant shall
16 be under no obligation to perform the work required by this Decree.

17 **XXX. WITHDRAWAL OF CONSENT**

18 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at
19 the option of any Party and the accompanying Complaint shall be dismissed without costs and
20 without prejudice. In such an event, no Party shall be bound by the requirements of this Decree.

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

NICHOLAS W. BROWN
Attorney General

3 _____
4 Barry Rogowski
5 Program Manager
6 Toxics Cleanup Program

Derek Threet, WSBA #45808
Assistant Attorney General

7 Date: _____

Date: _____

8
9 JYK HOLDINGS, LLC

10 _____
11 By: Steve Cho
12 Managing Member

13 Date: _____

14 ENTERED this _____ day of _____ 2025.

15
16 _____
17 JUDGE
18 Snohomish County Superior Court