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STATE OF WASHINGTON
WALLA WALLA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE CITY OF WALLA WALLA,

Defendant.

NO. _____

CONSENT DECREE

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Walla Walla (Defendant) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendant to perform the remedial actions at the Sudbury Road Landfill Site in Walla Walla, Washington in accordance with the Cleanup Action Plan attached as Exhibit B to this Decree.

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

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

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

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

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

G. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.

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B. Authority is conferred upon the Washington State Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice and any required hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

C. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree.

D. Ecology has given notice to Defendant of Ecology's determination that Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

E. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment.

F. This Decree has been subject to public notice and comment.

G. Ecology finds that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and WAC 173-340.

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

III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Defendant agrees to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter Defendant's responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

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IV. DEFINITIONS

Unless otherwise specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as the Sudbury Road Landfill and is generally located at 414 Landfill Road, Walla Walla, WA 99362, about four miles west of the City of Walla Walla and one-half mile north of Highway 12. The Site is more particularly depicted and described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

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

C. Defendant: Refers to the City of Walla Walla.

D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms “Consent Decree” or “Decree” shall include all exhibits to this Consent Decree.

V. FINDINGS OF FACTS

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

A. The Site is located in Walla Walla, Washington, and consists of approximately 125 acres. The Site is bounded by agricultural fields to the north, west, and south, and by Defendant-owned property generally to the east that is used for managing biosolids from the Defendant’s wastewater treatment plant and for growing crops. A diagram of the Site is attached as Exhibit A.

B. From approximately 1978 until now, the Site has been used by the Defendant for solid waste handling, including landfilling of municipal solid waste (MSW), medical waste, and asbestos waste, composting of organic materials such as yard waste, and collection of household hazardous waste.

C. Contamination at the Site is most likely caused by conditions in Areas 1, 2, and 5 of the Sudbury Road Landfill, all used for MSW disposal (see Exhibit A, Figure 2). These areas are unlined, have no leachate collection system, and no gas control system. The Defendant used Area 1 from

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around 1978 to 1980, Area 2 for a brief time in the late 1970s, and Area 5 from 1978 to 1990. Defendant closed Areas 1, 2, and 5 under applicable landfill regulations in place at the time.

D. The Defendant installed a groundwater monitoring system in 1976 and has monitored groundwater quality hydraulically upgradient and downgradient of the landfill since 1977 to meet its obligations under landfill regulations. In 2001, the Defendant installed monitoring well MW-15 on the western boundary of the Site and hydraulically downgradient from Area 5. Sampling of this well showed levels of volatile organic compounds and inorganic constituents at levels above background and groundwater protection standards.

E. In September 2002, the Defendant began assessment monitoring under applicable landfill regulations, which continues today. Assessment monitoring increases the number of constituents tested in groundwater to determine whether additional constituents need to be added to quarterly groundwater monitoring. Assessment monitoring resulted in one additional constituent found to be present at concentrations greater than background concentrations – Freon 12 – which was then added to the quarterly monitoring program.

F. Since 2002, the Defendant has periodically tested water from three private wells to the west-southwest of the landfill, in the direction of groundwater flow. The Washington Department of Health (DOH) examined water quality from these private wells in 2012 and found one chemical in two of the wells that warranted analysis – tetrachloroethene (PCE). In its Letter Health Consultation dated July 18, 2012, DOH concluded that the PCE level was below federal and state drinking water standards and, therefore, not at levels expected to harm people's health through drinking, showering, bathing, and cooking with this water. A fourth private well was monitored during the Remedial Investigation performed under Agreed Order No. 8456 (discussed below) and no contaminants were identified in the well water. G. The Defendant initiated an independent remedial investigation in 2004 to characterize MW-15 contamination. It prepared a work plan to guide the process and started the work in 2005. The investigation stalled in 2006 before the Defendant could complete all of the tasks.

H. In 2012 and 2013, the Defendant, through Schwyn Environmental Services, conducted a Remedial Investigation and Feasibility Study in accordance with Agreed Order No. 8456 entered into with Ecology on May 26, 2011. The Defendant installed several new groundwater and landfill gas

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monitoring wells, sampled well water from four private wells to the west/southwest of the landfill, sampled soils beneath buried waste, examined the effectiveness of stormwater controls and covers over landfill areas, examined landfill gas composition and production, and assessed existing gas control systems at the Site. The methods and findings of these investigations are detailed in the Remedial Investigation and Feasibility Study Report that Ecology approved in February 2015.

I. The contaminants and medium of concern at the Site that exceed applicable MTCA cleanup levels are tetrachloroethene (PCE) and vinyl chloride in groundwater.

J. Ecology selected a remedy based on information in the Remedial Investigation Feasibility Study Report, and prepared a draft Cleanup Action Plan (CAP), which was finalized after public comment. As documented in the final CAP (Exhibit B), the cleanup action to be implemented at the Site includes installation of a landfill gas extraction system in Areas 1, 2, and 5; improvements to cover and grading of Areas 2 and 5; improvements to stormwater controls north and south of Area 5; monitoring of groundwater, gas, landfill cover, and stormwater control systems; and recordation of an Environmental (Restrictive) Covenant to prevent future land uses that may damage such systems.

VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect human health and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site.

A. Defendant shall perform all tasks set forth in the final CAP (Exhibit B) in accordance with the Scope of Work and Schedule in Exhibit C. Work includes, but is not limited to, the following:

1. A landfill gas (LFG) extraction and treatment system will be installed in Areas 1, 2, and 5. Two extraction wells will be installed in Area 1, one extraction well in Area 2, and seven in Area 5. Figure 4 of the CAP shows the approximate locations of the proposed landfill gas extraction wells. The extraction wells will be tied into the existing LFG extraction and treatment system in place for Area 6. The existing passive LFG vent in Area 5 will be decommissioned and filled from bottom to top with concrete.

2. A cover system consisting of a 4.8-foot-thick layer of compacted native soils will be constructed over Area 2 and Area 5. The top foot of the cover will be augmented with

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materials that promote plant growth, and dryland vegetation will be established on the cover. To promote drainage of precipitation and stormwater off Areas 2 and 5, grading will be improved, and an approximately 1,500-foot, sloped, erosion control berm will be constructed along the south and west sides of Area 5 to convey stormwater off-Site.

3. A cast-in-place concrete channel, underlain with geomembrane, will be constructed along the north side of Area 5. The channel will slope to the west, connecting to an existing culvert to carry stormwater off-Site. The channel will be designed to allow a compact rubber-tired skid steer to be driven in it. To accommodate runoff from the north side of Area 5, a strip of geomembrane and erosion control mat will be attached along the southern edge of the concrete channel.

4. The area between the Site's compost facility and Area 5 will be regraded to prevent stormwater run-on into Area 5. This will include construction of an elevated soil berm, regrading a valley east of the compost facility, raising the grade of the compost facility access road and reconstructing the road, removal of an existing culvert, and addition of a new culvert that will direct stormwater onto the compost pad, and ultimately into the compost facility lagoon.

5. Monitoring of landfill gas, groundwater, cover, and stormwater systems will be conducted. This shall include:

- Landfill gas monitoring will consist of measuring methane levels in gas wells in Areas 1 (GW-11) and 5 (GW-5, GW-6), and perimeter wells (GW-7S, GW-7D, GW-8, GW-9, GW 10, and GW-12). LFG monitoring will occur for a period of five years after completing the work described in above items A1 through A4 and for at least two years after achieving groundwater cleanup levels.
- Groundwater wells to be monitored will include MW-11, MW-12b, MW-14b, MW-15, MW-19, and MW-20. Samples will be collected quarterly for a period of five years after completing the work described in above items A1 through A4 and for at least two years after achieving groundwater cleanup levels.

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- Annual landfill cover inspection including the appearance and condition of vegetation; vegetation stress or death due to landfill gas; deposition of eroded soil at the toe of steep slopes; soil erosion; rills or cracks in the cover; changes in the surface slope and settlement of waste; intrusion by humans or animals; holes of any kind; wildlife trails created on the cover; and damage by vehicles or maintenance machines. Maintenance and repairs will be done as needed.
- Annual inspection of stormwater controls for signs of erosion, settlement, ponded stormwater, or blockage of flow. Maintenance and repairs will be done as needed.

6. Institutional controls in the form of an Environmental (Restrictive) Covenant shall be recorded on the Site. The covenant shall be recorded for Walla Walla County Assessor's Parcel Numbers 350714310002, 350715440004, 350722110001, and 350723110005 for the property described in Exhibit A. The covenant will restrict activities that may threaten the integrity of the cover, waste containment, stormwater control, gas collection and treatment, leachate control, public access control, and environmental monitoring systems; may interfere with the operation and maintenance, monitoring, or other measures necessary to ensure the integrity of the landfill and continued protection of human health and the environment; and may result in the release of solid waste constituents or otherwise exacerbate exposure to solid waste constituents.

B. Defendant agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit C) to cover these actions. All work conducted by Defendant under this Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.

C. All plans or other deliverables submitted by the Defendant for Ecology's review and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Decree.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Marni Solheim

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Department of Ecology
4601 N. Monroe, Spokane, WA 99205
509-329-3564
marni.solheim@ecy.wa.gov

The project coordinator for Defendant is:

Frank Nicholson
City of Walla Walla
55 Moore Street, Walla Walla, WA 99362
509-524-4510
fnicholson@wallawallawa.gov

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 documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree 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 required by this Decree.

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.

VIII. PERFORMANCE

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

All engineering work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Decree 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 by the State of Washington, except as otherwise provided for by RCW 18.43.130.

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Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Defendant 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 Decree, in advance of their involvement at the Site.

IX. ACCESS

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Defendant either owns, controls, or has 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 Decree; reviewing Defendant's progress in carrying out the terms of this Decree; 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 Decree; and verifying the data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Defendant where remedial activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Defendant unless an emergency prevents such notice. All Parties 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.

X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

With respect to the implementation of this Decree, Defendant 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 shall be submitted to Ecology in both printed and electronic formats in accordance with Section XI (Progress Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

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If requested by Ecology, Defendant shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Defendant pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Defendant and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Decree, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX (Access), Ecology shall notify Defendant 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

XI. PROGRESS REPORTS

Defendant shall submit to Ecology, in accordance with the Schedule in Exhibit C, written Progress Reports that describe the actions taken to implement the requirements of this Decree. The Progress Reports shall include the following:

- A. A list of on-site activities that have taken place during the reporting period;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the reporting period and any planned deviations in the upcoming period;
- D. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- E. All raw data (including laboratory analyses) received by Defendant during the past reporting period and an identification of the source of the sample; and
- F. A list of deliverables for the upcoming period if different from the schedule.

All Progress Reports shall be prepared in accordance with the following schedule (detailed in Exhibit C): For tasks leading up to Implementation of the Cleanup Action (Construction/ Field Work), on a quarterly basis; during Construction/Field Work, on a monthly basis, the last of which shall be

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submitted after completing Construction/ Field Work. Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports and any other documents submitted pursuant to this Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

XII. RETENTION OF RECORDS

During the pendency of this Decree, and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVIII (Duration of Decree), Defendant shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Defendant shall make all records available to Ecology and allow access for review within a reasonable time.

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

XIII. 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 Defendant without provision for continued operation and maintenance of any containment system, treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

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

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XIV. RESOLUTION OF DISPUTES

A. In the event that Defendant elects to invoke dispute resolution, Defendant must utilize the procedure set forth below.

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

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

3. Defendant may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Eastern Region Waste 2 Resources Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

5. If Defendant finds Ecology's Regional Section Manager's decision unacceptable, Defendant may then request final management review of the decision. This request ("Final Review Request") shall be submitted in writing to the Waste 2 Resources Program Manager within seven (7) calendar days of Defendant's receipt of the Decision on Dispute. The Final Review Request shall include a written statement of dispute setting forth:

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the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

6. Ecology's Waste 2 Resources Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Final Decision on Dispute") within thirty (30) calendar days of receipt of the Final Review Request. The Waste 2 Resources Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Defendant presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

C. 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. Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may seek sanctions.

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

E. In case of a dispute, failure to either proceed with the work required by this Decree or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section XXV (Implementation of Remedial Action).

XV. AMENDMENT OF DECREE

The project coordinators may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology.

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Substantial changes to the work to be performed shall require formal amendment of this Decree. This Decree may only be formally amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any party.

Defendant 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 the Decree is a substantial change, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval of a proposed amendment to the Decree 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 XIV (Resolution of Disputes).

XVI. EXTENSION OF SCHEDULE

A. 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:

1. The deadline that is sought to be extended;
2. The length of the extension sought;
3. The reason(s) for the extension; and
4. Any related deadline or schedule that would be affected if the extension were granted.

B. The burden shall be on Defendant 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:

1. Circumstances beyond the reasonable control and despite the due diligence of Defendant 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 Defendant;

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2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

3. Endangerment as described in Section XVII (Endangerment).

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

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

D. 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:

1. Delays in the issuance of a necessary permit which was applied for in a timely manner;
2. Other circumstances deemed exceptional or extraordinary by Ecology; or
3. Endangerment as described in Section XVII (Endangerment).

XVII. ENDANGERMENT

In the event Ecology determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Ecology may direct Defendant to cease such activities for such period of time as it deems necessary to abate the danger. Defendant shall immediately comply with such direction.

In the event Defendant determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Defendant may cease such activities. Defendant 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, Defendant shall provide Ecology with documentation of the

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basis for the determination or cessation of such activities. If Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant'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 XVI (Extension of Schedule), for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

XVIII. COVENANT NOT TO SUE

A. Covenant Not to Sue: In consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendant regarding the release or threatened release of hazardous substances covered by this Decree.

This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A) and those hazardous substances that Ecology knows are located at the Site as of the date of entry of this Decree. This Decree does not cover any other hazardous substance or area, nor does it cover any further actual or threatened releases from the landfill of the hazardous substances addressed in this Decree. Ecology retains all of its authority relative to any substance or area not covered by this Decree.

This Covenant Not to Sue shall have no applicability whatsoever to:

1. Criminal liability;
2. Liability for damages to natural resources; and
3. Any Ecology action, including cost recovery, against PLPs not a party to this

Decree.

If factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment, the Court shall amend this Covenant Not to Sue.

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B. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against Defendant to require it to perform additional remedial actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the following circumstances:

1. Upon Defendant's failure to meet the requirements of this Decree;
2. Failure of the remedial action to meet the cleanup standards identified in the Cleanup Action Plan (CAP) (Exhibit C);
3. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment;
4. Upon the availability of new information regarding factors previously unknown to Ecology, including the nature or quantity of hazardous substances at the Site, and Ecology's determination, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment; or
5. Upon Ecology's determination that additional remedial actions are necessary to achieve cleanup standards within the reasonable restoration time frame set forth in the CAP.

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

XIX. CONTRIBUTION PROTECTION

With regard to claims for contribution against Defendant, the Parties agree that Defendant is entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

XX. LAND USE RESTRICTIONS

In consultation with Defendant, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and RCW 64.70. Defendant shall record the Environmental (Restrictive) Covenant (Exhibit E) with the office of the Walla Walla County Auditor within ten (10) days of Ecology's approval of the Final Cleanup Action Report (detailed in Exhibit C). The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by

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Ecology and Defendant. Defendant shall provide Ecology with the original recorded Environmental Covenant within thirty (30) days of the recording date.

XXI. FINANCIAL ASSURANCES

Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Decree, Defendant shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Decree, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendant shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

Defendant shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Decree; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if the financial test or corporate guarantee is used.

B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the CAP that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

XXII. INDEMNIFICATION

Defendant agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into and implementing this

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Decree. However, Defendant 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 Decree.

XXIII. COMPLIANCE WITH APPLICABLE LAWS

A. All actions carried out by Defendant pursuant to this Decree 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. The permits or other federal, state, or local requirements that the agency has determined are applicable and that are known at the time of entry of this Decree have been identified in the CAP (Exhibit C).

B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Defendant shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Decree, have been identified in the CAP (Exhibit C).

Defendant has 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 Decree. In the event either Ecology or Defendant determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or Defendant shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant 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 Defendant and on how Defendant must meet those requirements. Ecology shall inform Defendant in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable

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requirements of this Decree. Defendant shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

C. 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 Defendant 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.

XXIV. REMEDIAL ACTION COSTS

Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Decree preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Costs through March 31, 2015 have been paid by Defendant. Ecology has accumulated [\$ amount reflected in latest AFRS report] in remedial action costs related to this facility as of April 1, 2015. For all costs incurred subsequent to April 1, 2015, Defendant shall pay the required amount within thirty (30) 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.

In addition to other available relief, 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.

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XXV. IMPLEMENTATION OF REMEDIAL ACTION

If Ecology determines that the Defendant has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow the Defendant opportunity to correct. The Defendant shall reimburse Ecology for the costs of doing such work in accordance with Section XXIV (Remedial Action Costs).

Except where necessary to abate an emergency situation, Defendant shall not perform any remedial actions at the Site outside those remedial actions required by this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV (Amendment of Decree).

XXVI. PERIODIC REVIEW

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, Defendant shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

XXVII. PUBLIC PARTICIPATION

A Public Participation Plan (Exhibit D) 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 Defendant.

Ecology shall maintain the responsibility for public participation at the Site. However, Defendant shall cooperate with Ecology, and shall:

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A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study 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.

B. 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 Defendant 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 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

C. 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.

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

1. Walla Walla Public Library
238 E. Alder, Walla Walla, WA 99362
2. Ecology's Eastern Regional Office
4601 N. Monroe, Spokane, WA 99205

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Eastern Regional Office in Spokane, Washington.

XXVIII. DURATION OF DECREE

The remedial program required pursuant to this Decree shall be maintained and continued until Defendant has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When

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dismissed, Section XVIII (Covenant Not to Sue) and Section XIX (Contribution Protection) shall survive.

XXIX. CLAIMS AGAINST THE STATE

Defendant hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that Defendant will make no claim against the State Toxics Control Account or any local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendant expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322.

XXX. EFFECTIVE DATE

This Decree is effective upon the date it is entered by the Court.

XXXI. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

LAURIE DAVIES
Program Manager
Waste 2 Resources Program
360-407-6103

LEE OVERTON, WSBA #38055
Assistant Attorney General
[Telephone]

Date: _____

Date: _____

CITY OF WALLA WALLA

NABIEL SHAWA
City Manager
City of Walla Walla
509-527-4522

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Date: _____

ENTERED this _____ day of _____ 20____.

JUDGE
Walla Walla County Superior Court