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## EXHIBIT E ENVIRONMENTAL COVENANT

After Recording Return  
Original Signed Covenant to:

Marni Solheim  
Waste 2 Resources Program  
Department of Ecology  
4601 N. Monroe St.  
Spokane, WA 99205

### Environmental Covenant

**Grantor:** City of Walla Walla

**Grantee:** State of Washington, Department of Ecology

**Brief Legal Description:** Portions of the south half of the southwest quarter of Section 14, portions of the southeast quarter of the southeast quarter of Section 15, the northeast quarter of the northeast quarter of Section 22, and portions of the north half of the northwest quarter of Section 23; all in Township 7 North, Range 35 East of the Willamette Meridian, Walla Walla County, Washington.

**Tax Parcel Nos.:** 350722110001, 350715440004, and portions of 350714310002 and 350723110005.

### RECITALS

**a.** This document is an environmental (restrictive) covenant (hereafter “Covenant”) executed pursuant to the Model Toxics Control Act (“MTCA”), RCW 70.105D, Uniform Environmental Covenants Act (“UECA”), RCW 64.70, and Solid Waste Management – Reduction and Recycling, RCW 70.95.

**b.** The property that is the subject of this Covenant is part or all of a site commonly known as Sudbury Road Landfill, Cleanup Site No. 2485, Facility Site No. 4446540 (the “Property”). The Property is legally described and depicted in Exhibit A. Figures 1 and 2 depict the general location and landfill boundary. If there are differences between the depictions and legal description, the legal description shall prevail.

**c.** The Property is the subject of remedial action under MTCA and post-closure requirements under RCW 70.95. This Covenant is required because a conditional point of compliance has been established for groundwater and because municipal solid waste remains on the Property. Containment of municipal solid waste is part of the remedial action. This covenant is also required because municipal solid waste is contained on the Property beneath a final cover system that is designed to minimize infiltration and erosion and to prevent exposing waste. In addition, during the post-closure care period, the owner or operator is required, under the terms of its permit from the jurisdictional health department, to maintain and operate leachate, gas, and groundwater monitoring systems on the Property.

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**d.** It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment, the integrity of remedial actions conducted at the site, and the landfill unit/s. Records describing the extent of residual contamination and remedial actions conducted, and landfill closure and post-closure activities are available through the Washington State Department of Ecology.

**e.** This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, RCW 70.105D, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 USC Chapter 103, or Solid Waste Management – Reduction and Recycling, RCW 70.95.

## COVENANT

The City of Walla Walla, as Grantor and owner of the Property, hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter “Ecology”) the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### **Section 1. General Restrictions and Requirements.**

The following general restrictions and requirements shall apply to the Property:

**a. Interference with Remedial Action and the Landfill Unit/s.** The Grantor shall not engage in any activities on the Property that may impact or interfere with the remedial action or landfill unit/s and any operation, maintenance, inspection or monitoring of that remedial action or landfill unit/s without prior written approval from Ecology. The Grantor shall not engage in or allow uses or activities on the Property that may:

- i. Threaten the integrity of any cover, waste containment, storm water control, gas, leachate, public access control, or environmental monitoring system.
- ii. Interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the landfill unit/s and continued protection of human health and the environment.
- iii. Result in release of solid waste constituents or otherwise exacerbate exposure to solid waste constituents.

**b. Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or landfill closure, or that exacerbates or creates a new exposure to residual contamination or municipal solid waste remaining on the Property.

**c. Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation,

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maintenance and monitoring of remedial actions and the landfill unit/s post-closure permit requirements, and continued compliance with this Covenant.

**d. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

**e. Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

## **Section 2. Specific Prohibitions and Requirements.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. The Grantor shall maintain a suitable barrier that restricts unauthorized access to the Property.

b. Any activity on the Property that may disturb the integrity of landfill caps are prohibited without prior written approval from Ecology. Such activities include, but are not limited to, the following: drilling; digging; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity.

c. To minimize the potential for mobilization of contaminants remaining in the soil, municipal solid waste, and groundwater on the Property, no stormwater infiltration facilities or ponds shall be constructed on the Property. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall receive written approval by Ecology and shall be constructed in a way that minimizes infiltration into soil or waste.

d. The residual contamination on the Property includes volatile chemicals that may generate harmful vapors and biodegradable municipal solid wastes that may generate methane, a combustible gas. As such, the following restrictions shall apply to minimize the potential for exposure to these vapors:

1. No building or other enclosed structure shall be constructed within Areas 1, 2, 5, 6, and 7 without suitable engineering controls and prior written approval by Ecology.

f. Groundwater and landfill gas monitoring wells are located on the Property to monitor the performance of the remedial action and landfill unit/s. The Owner shall protect these devices from damage.

g. Drilling of a well on the Property for any water supply purpose is prohibited without prior written approval from Ecology. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

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## Section 3. Access.

- a. The Grantor shall maintain clear access to all components necessary to construct, operate, inspect, monitor, and maintain the remedial action and landfill unit/s.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions and landfill post-closure activities, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, inspect any structures or systems on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

## Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:

- i. Notify Ecology at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE WALLA WALLA COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.
- c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.
- d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

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Frank Nicholson City of Walla Walla 55 Moore Street Walla Walla, WA 99362 509-524-4510 fnicholson@wallawallawa.gov	Marni Solheim Washington State Department of Ecology Waste 2 Resources Program 4601 N. Monroe Spokane, WA 99205 509-329-3564 Marni.solheim@ecy.wa.gov
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

## **Section 5. Modification or Termination.**

**a.** If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW, Chapter 70.105D RCW, Chapter 70.95 RCW, and any rules promulgated under these chapters.

## **Section 6. Enforcement and Construction.**

- a.** This Covenant is being freely and voluntarily granted by the Grantor.
- b.** Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c.** Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW, Chapter 70.95 RCW, and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d.** The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e.** This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW, Solid Waste Management – Reduction and Recycling, chapter 70.95 RCW, and Uniform Environmental Covenants Act, chapter 64.70 RCW.
- f.** The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

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**g.** A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF WALLA WALLA

**[SIGNATURE]**

NABIEL SHAWA  
CITY MANAGER, CITY OF WALLA WALLA

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**[SIGNATURE]**

LAURIE DAVIES  
PROGRAM MANAGER, WASTE 2 RESOURCES PROGRAM

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

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## GRANTOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires\_\_\_\_\_.

## GRANTOR CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.  
My appointment expires\_\_\_\_\_.

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## **Exhibit A**

Separate attachment