

EXHIBIT H
Amended and Restated
Trust Agreement

AMENDED AND RESTATED CUSTODIAL TRUST AGREEMENT

This Custodial Trust Agreement ("Agreement") made as of July 25, 2008, by and between MURRAY PACIFIC CORPORATION, a Washington corporation ("MPC") and DANIEL J. SILVER, not individually but solely in the representative capacity of Custodial Trustee, as Trustee (the "Custodial Trustee"), is hereby amended and restated as of 12/2/13 ("Effective Date of the Amended and Restated Agreement") by the Custodial Trustee and the State of Washington. MPC, the Custodial Trustee, and the State of Washington are each a "Party" and, collectively, are the "Parties" hereto.

RECITALS

WHEREAS, the B&L Woodwaste Site (the "Site") is located in a residential and agricultural area in Milton, Washington in unincorporated Pierce County, Washington;

WHEREAS, MPC and the State of Washington Department of Ecology ("Ecology") have executed a consent decree (the "Consent Decree") to, among other things as more fully stated in the Consent Decree, settle and resolve environmental matters relating to the Site as provided therein, which Consent Decree was approved and entered by Order of the State of Washington, Superior Court for Pierce County on July 24, 2008, and which Consent Decree was amended by a First Amendment to the Consent Decree approved and entered by the Superior Court for Pierce County on _____ (date of entry of First Amendment to Consent Decree). All references to the Consent Decree in this Agreement include the provisions of the First Amendment to the Consent Decree;

WHEREAS, in accordance with the Consent Decree, this trust (the "Custodial Trust") is established for the purposes of (a) owning and taking title to funds deposited as provided below

in Section 2.1.1; and (b) managing and funding implementation of activities at the Site consistent with the Consent Decree;

WHEREAS, the Custodial Trust is created pursuant to, and to effectuate, the Consent Decree;

WHEREAS the terms of this Agreement have been provided to and approved by Ecology;

WHEREAS, the Parties intend that the Custodial Trust will qualify as a “qualified settlement fund” pursuant to section 468B of the Internal Revenue Code and Treasury Regulation §1.468B-1;

WHEREAS, Section 7.1 of the Agreement provides that “[a]ny provision of this Agreement may be amended or waived with the written approval of Ecology and with the written consent of the Custodial Trustee,” provided that no change may adversely affect the federal income tax status of the Custodial Trust as a “qualified settlement fund”;

WHEREAS, it is the desire of Ecology and the Custodial Trustee to amend certain provisions of the Agreement, including those regarding transfers to the Custodial Trust, investments by the Custodial Trust, and termination of the Custodial Trust, to achieve a more efficient and effective cleanup;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein and in the Consent Decree, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 **Definitions.** The following terms as used in this Agreement shall have the definitions given below.

“Beneficiary” has the meaning given in Section 5.1 hereof.

“CAP” refers to the Final Cleanup Action Plan for the B&L Woodwaste Site, attached to the Consent Decree as Exhibit A.

“Consent Decree” refers to the Consent Decree dated July 24, 2008, and any amendments to the Consent Decree entered into between the State of Washington, Department of Ecology, and MPC in the matter styled *State of Washington, Department of Ecology v. Murray Pacific Corporation, Louisiana Pacific Corporation, and Wasser & Winters, Inc.*, Pierce County Superior Court Cause Number 08-2-10610-7. References to the “Consent Decree” include all attachments and amendments thereto, including but not limited to the CAP and the amended Scope of Work and Schedule.

“Court” means the State of Washington Superior Court for Pierce County.

“Custodial Trust” has the meaning given in the preamble.

“Custodial Trust Assets” means (a) those funds to be transferred to the Custodial Trust pursuant to Section 2.1.1, including interest earned thereon; and (b) such other assets acquired or held by the Custodial Trust from time to time pursuant to this Agreement, the Consent Decree or an order of the Court.

“Custodial Trust Parties” means the Custodial Trustee, the Custodial Trust’s employees, officers, and directors and any of the Custodial Trustee’s or Custodial Trust’s professionals and/or representatives.

“Ecology” has the meaning given in the preamble.

“Effective Date” means the date upon which this Custodial Trust Agreement has been signed by the Parties.

“MTCA” means the Washington State Model Toxics Control Act, RCW 70.105D.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Site” is intended to have the same definition as in the Consent Decree.

“SOW” refers to the Scope of Work and Schedule and any amendments thereto, attached to the Consent Decree as Exhibit B.

ARTICLE II

THE TRUST

2.1 Creation of and Transfer of Assets to Custodial Trust.

2.1.1 The Parties hereby establish, on behalf of the Beneficiary named herein, the Custodial Trust. Within ten (10) business days of the effective date of the Consent Decree, MPC shall transfer to the Custodial Trust the sum of \$17,300,000 (Seventeen million, three hundred thousand dollars) (the “MPC Contribution”). Upon this transfer, MPC shall assign to the Custodial Trust, on behalf of the Beneficiary, all right, title and interest in the Custodial Trust Assets. MPC shall make a second and final transfer to the Custodial Trust upon completion of Phase II of the remedial action in accordance with the Consent Decree, Exhibit G, Section G. The Custodial Trust agrees to accept and hold the Custodial Trust Assets in the Custodial Trust for the Beneficiary for the purposes described in Section 2.2 below, subject to the terms of the Consent Decree, this Agreement, and any applicable orders of the Court. Assets received and held by the Custodial Trust shall be applied to the costs of managing and/or funding implementation of activities at the Site consistent with and pursuant to the Consent Decree, and for administrative expenses of the Custodial Trust as set forth under Section 3.2 and for other purposes set forth herein.

2.1.2 Contributions and accretions to the Custodial Trust shall be as follows:

(i) the MPC Contributions and (ii) any interest earned on funds held by the Custodial Trust.

2.1.3 Upon the first transfer of funds in accordance with Section 2.1.1, MPC and its officers, directors, agents, employees, shareholders, affiliates, successors or assigns, (a) shall have no interest in, or with respect to, any Custodial Trust Assets; and (b) shall have no further duties or obligations to undertake any work or perform any services under the Consent Decree and any such duties or obligations shall be extinguished. Once the final payment is paid to the Custodial Trust, MPC shall have no further obligation to provide any additional funding to the Custodial Trust. Neither the State of Washington, Ecology, nor MPC and its officers, directors, agent, employees, shareholders, affiliates, successors or assigns shall be or be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer or director of the Custodial Trust. The Custodial Trust and the Custodial Trust Parties shall not be deemed to be successors to any liabilities of MPC, ASARCO LLC, Louisiana Pacific Corporation, or Wasser & Winters, Inc. or any other person, provided that the foregoing shall not affect the Custodial Trust's obligations under Section 2.3.

2.2 **Objective and Purpose.** The Custodial Trust established by this Agreement is intended by the Parties to be a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and Treasury Regulation §1.468B-1. The purposes of the Custodial Trust are to (i) implement the provisions of the Consent Decree as described in Section 2.3 by, among other things, owning and taking title to Custodial Trust Assets, carrying out administrative functions related to the Site, and managing and/or funding implementation of activities at the Site consistent with the Consent Decree, and (ii) distribute to the State of Washington any Custodial Trust Assets remaining at termination of the Custodial Trust.

2.3 **Obligations Related to the Site.** The Custodial Trust hereby agrees to perform, to the extent of Custodial Trust Assets only, all duties and obligations relating to the Site as required by the following sections of the Consent Decree:

- VI. WORK TO BE PERFORMED
- VII. DESIGNATED PROJECT COORDINATORS
- VIII. PERFORMANCE
- IX. ACCESS
- X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY
- XI. PROGRESS REPORTS
- XII. RETENTION OF RECORDS
- XIII. RESOLUTION OF DISPUTES
- XIV. AMENDMENT OF DECREE
- XV. EXTENSION OF SCHEDULE
- XVI. ENDANGERMENT
- XX. COMPLIANCE WITH APPLICABLE LAWS
- XXI. REMEDIAL ACTION COSTS
- XXIII. IMPLEMENTATION OF REMEDIAL ACTION
- XXIV. PUBLIC PARTICIPATION

The Custodial Trustee will endeavor to accomplish this work in the most cost-effective manner that is feasible. Upon the first transfer of funds in accordance with Section 2.1.1., all references to MPC in the Consent Decree Sections listed above shall thereafter be deemed to refer to the Custodial Trust, and MPC shall have no further obligations under such Sections. In the event of any disagreement between the Custodial Trust and Ecology regarding performance of the duties and obligations specified in this Section 2.3, the Dispute Resolution provisions contained in Section XIII of the Consent Decree shall be utilized to resolve such dispute. In the event that the Court or Ecology finds that the Custodial Trustee has violated the provisions of this Agreement or the Consent Decree, Ecology may terminate the Custodial Trustee and appoint a successor Custodial Trustee in accordance with Section 4.12 of this Agreement.

2.4 **Retention of Consultant.** Within fifteen (15) business days of the Effective Date of this Agreement, and again within fifteen (15) business days of the Effective Date of the

Amended and Restated Agreement, the Custodial Trustee shall execute or amend a contract for environmental consulting services with Floyd/Snider, Inc. the general terms of which are in the form attached hereto as Attachment II, and shall provide copies of such contract to Ecology and MPC, pursuant to which (i) Floyd/Snider, Inc. agrees to undertake those services necessary to manage performance of the work required by the CAP and the SOW; (ii) the Custodial Trustee will approve the scope and budgets for such work; and (iii) the Custodial Trustee agrees to pay for the services of Floyd/Snider, Inc. using the Custodial Trust Assets.

2.5 Investment and Safekeeping of Custodial Trust Assets. The Custodial Trustee shall invest and reinvest the principal and income of the Custodial Trust Assets and keep the Custodial Trust Assets invested as a single fund, without distinction between principal and income, subject to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Custodial Trust Assets, the Custodial Trustee shall discharge his duties with respect to the Custodial Trust Assets solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, and in accordance with the Uniform Prudent Investor Act as enacted by the State of Washington, ch. 11.100 RCW, except that:

- (a) The Custodial Trustee shall not invest more than fifty (50) percent of the Custodial Trust Assets in stock equity shares listed on a national exchange, including but not limited to shares of any mutual funds or "money market funds" which have their assets invested in such equity shares.
- (b) The Custodial Trustee shall not invest the Custodial Trust Assets in government, municipal, or corporate bonds with a rating lower than "A" by Standard & Poor's

Corporation or with an equivalent rating from an equivalent investment rating service;

- (c) The Custodial Trustee is authorized to invest the Custodial Trust Assets in time or demand deposits of the Custodial Trustee, to the extent insured by an agency of the Federal or State government; and
- (d) The Custodial Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

2.6 **Accounting.** The Custodial Trustee shall maintain, in respect of the Custodial Trust, books and records relating to the assets and income of the Custodial Trust and the payment of expenses of, and liabilities of and claims against, the Custodial Trust in such detail and for such period of time as may be necessary to enable the Custodial Trustee to make full and proper accounting in respect thereof in accordance with Article VI hereof and to comply with applicable provisions of law, including payment of any and all taxes owed by the Custodial Trust. Except as otherwise provided herein, the Custodial Trustee is not required to file any accounting or seek approval of any court either with respect to the administration of the Custodial Trust, or as a condition for making any payment or distribution out of the Custodial Trust Assets. The Beneficiary shall have the right upon thirty (30) days' prior written notice delivered to the Custodial Trust to inspect the Custodial Trust's books and records.

2.7 **Termination.** To the extent consistent with its duties and obligations under this Agreement, the Custodial Trustee shall not unduly prolong the duration of the Custodial Trust and shall at all times endeavor to effect the distribution of the Custodial Trust Proceeds and other receipts relating to the Custodial Trust Assets for the benefit of the Beneficiary hereunder in accordance with the terms hereof. The Custodial Trustee or Ecology may propose in writing termination of the Custodial Trust either (1) at any time after completion of Phase 3 Operation,

Maintenance and Monitoring, referred to in amended Exhibit B of Section VI of the First Amendment to the Consent Decree, or (2) upon exhaustion of all trust funds. After any such proposal, and following consultation with the Custodial Trustee, Ecology shall determine whether to terminate the Custodial Trust subject to Section 7.1 below. Should the Custodial Trust maintain a balance of Custodial Trust Assets at termination, any excess funds will be distributed according to Section 3.2 (Excess Funds Distribution.)

2.8 **Review of Custodial Trust Status.** Ecology and the Custodial Trustee will conduct formal, in-depth reviews of Custodial Trust operations, budget, and available funds every five (5) years until the trust is terminated.

ARTICLE III

DISTRIBUTIONS

3.1 **Manner of Payment.** Cash payments made by the Custodial Trust pursuant to this Agreement shall be in United States dollars by checks drawn on a domestic bank selected by the Custodial Trustee, or by wire transfer or automatic clearing house transaction from a domestic bank, at the option of the Custodial Trustee. Notwithstanding anything to the contrary in this Agreement, the Custodial Trust hereby grants to Ecology a first-priority lien on and security interest in the Custodial Trust Assets to secure the liabilities of the Custodial Trust in accordance with the Consent Decree.

3.2 **Excess Funds Distribution.** Upon certification in writing by Ecology that all of the Custodial Trust's duties and obligations as described in Section 2.3 have been completed and approved, if there are funds remaining in the Custodial Trust in excess of the amount required to make full payment or all obligations of the Custodial Trust, such excess funds shall be paid to the State following a remittance guide provided by Ecology.

3.3 **Compliance with Laws.** Any and all distributions of Custodial Trust Assets shall be in compliance with applicable laws.

ARTICLE IV

TRUST ADMINISTRATOR

4.1 **Appointment.** The Court, in connection with approval of the Consent Decree, shall have approved the creation of this Custodial Trust and the appointment of the Custodial Trustee to serve as the initial trust administrator of the Custodial Trust under the Consent Decree and this Agreement. The Custodial Trustee hereby accepts such appointment and agrees to serve in such fiduciary capacity, upon the Effective Date. Successor trust administrator(s) may be proposed to the Court by Ecology.

4.2 **Generally; Fiduciary Responsibilities.** The Custodial Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Custodial Trust, as set forth in this Agreement and the Consent Decree, and not otherwise. The Custodial Trustee shall seek to manage the Custodial Trust with that degree of judgment, skill and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs. Without limiting the foregoing, the Custodial Trustee shall take all reasonable and prudent steps to minimize the costs of performing its obligations and duties under this Agreement. The Custodial Trustee shall have the authority to bind the Custodial Trust, and any successor trustee, or successor or assign of the Custodial Trust, but shall for all purposes hereunder be acting in its fiduciary capacity as Custodial Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Custodial Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Custodial Trustee believes such action or omission is not consistent with the Custodial Trustee's fiduciary duties.

4.3 **Powers.** In connection with the administration of the Custodial Trust, except as otherwise set forth in this Agreement or the Consent Decree, the Custodial Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the Custodial Trust. The powers of the Custodial Trustee, without any further Court approval or order, shall include, without limitation, each of the following: (i) to receive, manage, invest, supervise and protect Custodial Trust Assets as provided in this Agreement; (ii) to withdraw, make distributions and pay taxes and other obligations owed by the Custodial Trust from funds held by the Custodial Trust in accordance with the Consent Decree; (iii) to engage and compensate employees and professional Persons to assist the Custodial Trust and/or the Custodial Trustee with respect to the responsibilities described herein; (iv) to make distributions of the Custodial Trust Assets from the Custodial Trust Account(s) for the purposes contemplated in the Consent Decree and this Agreement; (v) to purchase such insurance as the Custodial Trustee may determine to be prudent to protect the Custodial Trust and its assets and to protect the Custodial Trustee from any claims that might be asserted against it, and (vi) to effect all actions and execute all agreements, instruments and other documents necessary to implement the Consent Decree and this Agreement, including to exercise such other powers as may be vested in or assumed by the Custodial Trust or the Custodial Trustee pursuant to this Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of the Consent Decree. No Person dealing with the Custodial Trust shall be obligated to inquire into the authority of the Custodial Trustee in connection with the protection, conservation or disposition of Custodial Trust Assets. The Custodial Trustee is authorized to execute and deliver all documents on behalf of the Custodial Trust to accomplish the purposes of this Agreement and the Consent Decree.

4.4 **Third Parties.** The Custodial Trust shall have the authority to retain and pay such third parties as the Custodial Trust, in accordance with a budget approved by Ecology, may deem necessary or appropriate to assist the Custodial Trust in carrying out its powers and duties under this Agreement and the Consent Decree, including, without limitation, (i) counsel to the Custodial Trustee and Custodial Trust, (ii) a public accounting firm to perform such reviews and/or audits of the financial books and records of the Custodial Trust as may be appropriate in the Custodial Trustee's sole discretion and to prepare and file any tax returns or informational returns for the Custodial Trust as may be required, (iii) such environmental consultants as the Custodial Trustee may deem necessary, and (iv) other professional persons necessary to carry out the Custodial Trust's responsibilities under the Consent Decree and this Agreement. The Custodial Trustee may commit the Custodial Trust to pay all such Persons compensation for services rendered and expenses incurred.

4.5 **Other Activities.** The Custodial Trustee shall be entitled to perform services for and be employed by third parties; provided, however, that such performance or employment affords the Custodial Trustee sufficient time to carry out its responsibilities as Custodial Trustee. The Custodial Trustee may delegate the performance of services and the fulfillment of responsibilities to other Persons. Such Persons shall be entitled to be compensated and to be reimbursed for out-of-pocket disbursements in the same manner as the Custodial Trustee.

4.6 **Limitation of Custodial Trustee's Authority.** The Custodial Trustee shall not and is not authorized to engage in any trade or business with respect to the Custodial Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the Consent Decree.

4.7 Liability of Custodial Trust Parties. In no event shall the Custodial Trust Parties be held personally liable for any claim asserted against one or more of the Custodial Trust Parties or the Custodial Trust except for actions or omissions to act to the extent such actions or omissions to act are determined by a final order of the Court to be due to their own respective negligence, willful misconduct, or fraud in relation to the Custodial Trustee's duties after the Effective Date. It shall be an irrebuttable presumption that any action taken or omitted to be taken with the approval of the Court or with the approval of Ecology shall not constitute negligence, willful misconduct, or fraud.

4.8 Reliance by Custodial Trustee. Except as may otherwise be provided herein: (a) the Custodial Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties; and (b) the Custodial Trustee may consult with legal counsel, financial or accounting advisors and other professionals to be selected by it, and the Custodial Trustee shall not be personally liable for any action taken or omitted to be taken by it in accordance with the advice thereof.

4.9 Compensation of the Custodial Trustee.

(a) The Custodial Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Custodial Trustee for the actual out-of-pocket fees and expenses to the extent incurred by the Custodial Trustee in connection with the Custodial Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Custodial Trust), postage, personal computer and printer, photo copying, telephone and facsimile charges upon receipt of periodic billings. The Custodial

Trustee and employees of the Custodial Trust and the Custodial Trustee who perform services for the Custodial Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Custodial Trust. Such reasonable compensation shall be approved by Ecology as part of the annual project budget, and such rates shall be subject to annual increases not to exceed 3%, or the rate of inflation as calculated by the Consumer Price Index, whichever is higher. In addition, the Trustee shall receive as compensation 0.111% of his monthly rental costs.

(b) The Custodial Trustee shall be entitled to reimburse itself out of any available cash in the Trust Account(s), and the Custodial Trust shall be obligated to pay for actual out-of-pocket expenses.

(c) All compensation and other amounts payable to the Custodial Trustee shall be paid from the assets of the Custodial Trust Assets.

4.10 **Exculpation.** The Custodial Trust Parties shall be and hereby are exculpated by all Persons, including, without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of the Custodial Trust Assets and the discharge of the powers and duties conferred upon such Custodial Trustee and the Custodial Trust by the Consent Decree, this Agreement, or any order of the Court entered pursuant to or in furtherance the Consent Decree or this Agreement, or applicable law or otherwise, other than actions or omissions to act to the extent determined by a final order of the Court to be due to their own respective negligence, willful misconduct, or fraud after the Effective Date. No holder of a claim or other party in interest will have or be permitted to pursue any claim or cause of action against any Custodial Trust Party for making payments in accordance with the Consent Decree, this Agreement, or any order of the

Court, or for implementing the provisions of the Consent Decree, this Agreement, or any order of the Court. The Custodial Trust shall indemnify, defend and hold harmless (without the Custodial Trust Parties having to first pay from their own funds) the Custodial Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorneys' fees) (other than actions or omissions to act to the extent determined by a final order of the Court to be due to their own respective gross negligence, willful misconduct, or fraud after the Effective Date) to the fullest extent permitted by applicable law, provided that such indemnification shall be limited to funds in the Custodial Trust Assets. It shall be an irrebuttable presumption that any action taken or omitted to be taken with the approval of the Court or with the approval of Ecology shall not constitute negligence, willful misconduct or fraud. Notwithstanding any other provision of this Agreement, the terms and conditions of Section 4.10 shall survive the termination of the Trust and this Agreement and may not be altered, amended, or revoked.

4.11 **Termination; Resignation.** The duties, responsibilities and powers of the Custodial Trustee will terminate on the date the Custodial Trust is dissolved under applicable law in accordance with any order, direction or approval of Ecology. The Custodial Trustee may resign by giving not less than ninety (90) days prior written notice thereof to Ecology. The Custodial Trustee may be terminated by Ecology as provided in Section 2.3 of this Agreement or by order of the Court for (i) negligence, fraud, or willful misconduct immediately upon notice and the appointment of a temporary or permanent successor, and (ii) other cause upon sixty (60) days prior written notice and the appointment of a temporary or permanent successor.

4.12 **Acceptance of Appointment by Successor Trustees.** Any successor Custodial Trustee shall be proposed by Ecology and shall be appointed by the Court. Any successor

Custodial Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Custodial Trust records. Thereupon, such successor Custodial Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Custodial Trust with like effect as if originally named herein; provided, however, that a removed or resigning Custodial Trustee shall, nevertheless, when requested in writing by the successor Custodial Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Custodial Trustee under the Custodial Trust all the estates, properties, rights, powers, and trusts of such predecessor Custodial Trustee.

4.13 **No Bond.** The Custodial Trustee shall serve without bond.

ARTICLE V

BENEFICIARY

5.1 **Beneficiary.** Beneficial interest in the Custodial Trust shall be held exclusively by the State of Washington (the “Beneficiary”).

5.2 **Identification of Beneficiary.** In order to determine the authorized representatives of the Beneficiary, and their names and addresses, the Custodial Trustee shall be entitled to conclusively rely on the names, address and authorized representatives identified in Paragraph VII of the Consent Decree or in any written notice provided to the Custodial Trustee by an authorized representative of the Beneficiary.

5.3 **Transfer of Beneficial Interests.** The interest of the Beneficiary in the Custodial Trust may not be transferred.

ARTICLE VI

REPORTING

6.1 **Reports.** As soon as practicable after the end of each quarter, and as soon as practicable upon termination of the Custodial Trust, the Custodial Trustee shall submit to Ecology and to MPC a written report, including: (a) financial statements of the Custodial Trust at the end of such quarter or period and the receipts and disbursements of the Custodial Trust for such period; (b) a description of any action taken by the Custodial Trust in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Custodial Trust and of which notice has not previously been given to the Beneficiary; and (c) an accounting of all costs and expenses incurred by the Custodial Trust during the prior quarter, and in the aggregate since the commencement of the Custodial Trust, which qualify as MPC Implementation Costs under the Consent Decree. The financial statements shall be prepared to the level of detail requested by Ecology. The Custodial Trustee shall promptly submit additional reports to Ecology whenever, as determined by outside counsel, accountants or other professional advisors, an adverse material event or change occurs which affects the Custodial Trust or the rights of the Beneficiary hereunder. In addition, the Custodial Trust shall upon the reasonable request of Ecology provide documentation to Ecology to substantiate compliance with and application of Custodial Trust Assets consistently with the terms of the Consent Decree and this Agreement.

6.2 **Qualified Settlement Fund Status.** The Parties to this Agreement intend for this Agreement to be a Qualified Settlement Fund for federal tax purposes as described in Treasury Regulation 1.468B-1. The Custodial Trustee shall comply with all requirements applicable to Qualified Settlement Funds, including, without limitation all tax filings, payment and reporting

requirement imposed by Treasury Regulations issued under Section 468B of the Code, and successor provisions thereto, any comparable provisions of state or local tax laws, or otherwise, except to the extent there has been a final determination, binding on the applicable tax authority and the Parties to this Agreement, that other requirements apply to the Custodial Trustee.

6.3 **Other.** The Custodial Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Custodial Trust, that are required by any governmental unit.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 **Amendment; Waiver.** Any provision of this Agreement may be amended or waived with the written approval of Ecology and with the written consent of the Custodial Trustee; provided, however, that no change shall be made to this Agreement that would adversely affect the federal income tax status of the Custodial Trust as a “qualified settlement fund” (in accordance with Section 7.2 hereof), or, unless agreed to in writing by the affected Custodial Trustee, the rights of the Custodial Trustee; and provided further that Section 2.7 of this Agreement cannot be amended without the written consent of MPC. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Custodial Trust to effectuate the terms of this Agreement, with the written consent of the Custodial Trustee and Ecology.

7.2 **Intention of Parties to Establish Qualified Settlement Fund.** This Agreement is intended to create a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and Treasury Regulation §1.468B-1 for United States federal income tax purposes and, to

the extent provided by law, shall be governed and construed in all respects as a qualified settlement fund.

7.3 **Cooperation.** MPC shall provide the Custodial Trust with copies of all non-privileged books and records in its possession that are material to conditions at the Site (consistent with Exhibit C to the Consent Decree) within sixty (60) days after the Effective Date.

7.4 **Prevailing Party.** If the Custodial Trustee or the Custodial Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Agreement or the enforcement thereof, the Custodial Trustee or the Custodial Trust, as the case may be, shall be entitled to collect any and all costs, expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. This Section 7.4 shall not apply to Ecology.

7.5 **Laws as to Construction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the United States, without giving effect to rules governing the conflict of law that would require the application of the law of another jurisdiction.

7.6 **Severability.** If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.7 **Sufficient Notice.** Except as provided otherwise below, any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if sent by electronic mail to the following:

As to Ecology:

drea461@ecy.wa.gov

As to MPC:

doug@murraypacific.com

As to the Custodial Trust or Custodial Trustee:

danieljsilver@msn.com

Any notice or communication regarding Section 2.7 (Termination), Section 2.8 (Review of Custodial Trust Status), or Section 4.11 (Termination; Resignation) of this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the following:

As to Ecology:

Dom Reale, P.E.
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6266

As to MPC:

Doug Krueger
Murray Pacific Corporation
1201 Pacific Avenue #1750
Tacoma, WA 98402
(253) 591-9896

As to the Custodial Trust or Custodial Trustee:

Daniel J. Silver
606 Columbia St. NW
Suite 212
Olympia, WA 98501
(360) 754-9343

7.8 **Headings.** The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

7.9 **Actions Taken on Other Than Business Day.** If any payment or act under this Agreement or the Consent Decree is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date.

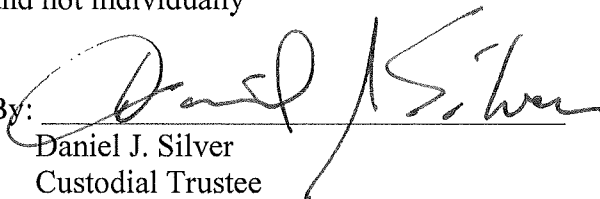
7.10 **Consistency of Agreements; Construction.** To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Consent Decree. Where the provisions of this Agreement are irreconcilable with the provisions of the Consent Decree, the provisions of the Consent Decree shall prevail.

7.11 **Jurisdiction of Court.** The Custodial Trust and the Custodial Trustee shall each be subject to the jurisdiction of the Court for the purposes of enforcing this Agreement, including the obligations of the Custodial Trustee to perform its obligations hereunder.

[Signatures on Next Page]


IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Amended Custodial Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers as the latest date set forth below.

DANIEL J. SILVER,
solely in the fiduciary capacity of Custodial Trustee
and not individually

By: 
Daniel J. Silver
Custodial Trustee

Date: November 19, 2013

STATE OF WASHINGTON

By: 
James Pendowski
Program Manager
Toxics Cleanup Program

Date: 12/2/13