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**STATE OF WASHINGTON  
SKAGIT COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
SKAGIT COUNTY,  
  
Defendant.

NO. \_\_\_\_\_  
  
PROSPECTIVE PURCHASER  
CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and Skagit County (Defendant) under this Decree is to (1) resolve the potential  
4 liability of Defendant for contamination at the Truck City Truck Stop Site (Site) arising from a  
5 release or threatened release of hazardous substances, in advance of Defendant purchasing an  
6 ownership interest in the Site, and (2) facilitate the cleanup of the Site for redevelopment or  
7 reuse. This Decree requires Defendant to finalize the Remedial Investigation (RI), Feasibility  
8 Study (FS), and complete a draft and final Cleanup Action Plan (CAP) prior to the purchase of  
9 the Truck City Truck Stop Site by Skagit County. The Decree also requires Defendant to  
10 perform a cleanup action at the Site.

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

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

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

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

25 F. This Decree shall not be construed as proof of liability or responsibility for any  
26 releases of hazardous substances or cost for remedial action nor an admission of any facts;

1 provided, however, that Defendant shall not challenge the jurisdiction of Ecology in any  
2 proceeding to enforce this Decree.

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

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

## 6 II. JURISDICTION

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

9 B. Authority is conferred upon the Washington State Attorney General by  
10 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
11 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
12 to a more expeditious cleanup of hazardous substances. In addition, under RCW  
13 70.105D.040(5), the Attorney General may agree to a settlement with a person not currently  
14 liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the  
15 facility, provided: the settlement will yield substantial new resources to facilitate cleanup; the  
16 settlement will expedite remedial action consistent with the rules adopted under MTCA; and  
17 Ecology determines based upon available information that the redevelopment or reuse of the  
18 facility is not likely to contribute to the existing release or threatened release, interfere with  
19 remedial actions that may be needed at the Site, or increase health risks to persons at or in the  
20 vicinity of the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a  
21 consent decree issued by a court of competent jurisdiction.

22 C. Ecology has determined that a release or threatened release of hazardous  
23 substances has occurred at the Site that is the subject of this Decree, and that the remedial  
24 actions required by this Decree are necessary to protect human health and the environment  
25 based on the planned future use of the Site as contemplated by the Parties under this Decree.

1 D. Defendant has not been named a PLP for the Site, and Defendant has certified  
2 under Section IX (Certification of Defendant) that it is not currently liable for the Site under  
3 MTCA. However, Defendant is currently in the process of acquiring and has entered into a  
4 purchase and sale agreement to acquire property located at 3216 Old Highway 99 S Road,  
5 Mount Vernon, Washington, from Old 99, LLC, a Washington limited liability company,  
6 current owner of the Property. The Property comprises the entire Site based on data available  
7 at this time. Defendant will incur potential liability under RCW 70.105D.040(1)(a) at the time  
8 it acquires an interest in the Site for performing remedial actions or paying remedial costs  
9 incurred by Ecology or third parties resulting from past releases or threatened releases of  
10 hazardous substances at the Site. This Decree settles Defendant's liability as described herein  
11 for this Site upon its purchase of the Property.

12 E. Ecology finds that this Decree will yield substantial new resources to facilitate  
13 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site  
14 in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and  
15 WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of  
16 the Site; and will not be likely to contribute to the existing release or threatened release at the  
17 Site, interfere with remedial actions that may be needed at the Site, or increase health risks to  
18 persons at or in the vicinity of the Site. In addition, Ecology has determined that this Decree  
19 will provide a substantial public benefit with job creation and also by providing for the  
20 development of a facility by a local governmental entity (Defendant) to address an important  
21 public purpose. Development of the new Skagit County Jail will replace the existing  
22 overcrowded Skagit County Jail. The facility is considered an Essential Public Facility and  
23 would provide infrastructure to serve the residents, cities/towns, and tribes of Skagit County.

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

26 G. This Decree has been subject to public notice, comment, and public hearing.

1 **III. PARTIES BOUND**

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

11 **IV. DEFINITIONS**

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

14 A. Site: The Site is referred to as Truck City Truck Stop and is generally located at  
15 3216 Old Highway 99 S Road, Mount Vernon, Washington. The Site is more particularly  
16 described in the Site Diagram (Exhibit A). The Site constitutes a facility under  
17 RCW 70.105D.020(8).

18 B. Property: Refers to the property located at 3216 Old Highway 99 S Road,  
19 Mount Vernon, Washington that the Defendant intends to purchase. A legal description of the  
20 Property is attached as Exhibit B. The Property comprises the entire Site based on current  
21 data.

22 C. Parties: Refers to the State of Washington, Department of Ecology (Ecology)  
23 and Skagit County.

24 D. Defendant: Refers to Skagit County.

25 E. Consent Decree or Decree: Refers to this Prospective Purchaser Consent  
26 Decree and each of the exhibits to the Decree. All exhibits are integral and enforceable parts

1 of this Prospective Purchaser Consent Decree. The terms “Consent Decree” or “Decree” shall  
2 include all exhibits to this Prospective Purchaser Consent Decree.

### 3 **V. FINDINGS OF FACTS**

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

6 A. The Site is located in Mount Vernon, Washington, and consists of  
7 approximately 10.4 acres. The Site is bounded by Old Highway 99 South Road to the west,  
8 Interstate-5 to the east, McFarland Lane to the north of the Site, and three parcels of  
9 undeveloped land to the south of the Site. Maddox Creek is located adjacent to and west of the  
10 Site and flows south parallel to Old Highway 99 South Road. A diagram of the Site is attached  
11 as Exhibit A.

12 B. From approximately 1953 until 2014, the Site was used for automobile and  
13 commercial truck fueling, convenience mart, commercial truck and trailer weighing, and  
14 commercial truck wash operations. Contamination at the Site is related to fueling operations  
15 conducted at the Site.

16 C. In or about 1989, a hydrocarbon assessment for the property was performed by  
17 Applied Geotechnology, Inc. In 1992, under the ownership of Mr. Ernie Olmsted, and his  
18 marital community, an Interim Action was performed at the property pursuant to a previous  
19 and separate consent decree (CD) between Ecology and Mr. Olmsted. Eight underground  
20 storage tanks (USTs) and a septic tank used as a waste oil tank were decommissioned and  
21 excavated. Also, 6,244 cubic yards of petroleum contaminated soil (PCS) was excavated  
22 (limited on the west boundary by the truck scale and scale house. Elevated levels of PCS  
23 continued beyond these western limits above MTCA Method A Cleanup Levels. Three existing  
24 groundwater monitoring wells were destroyed during excavation. Approximately 90,000  
25 gallons of petroleum contaminated groundwater was excavated from an excavation pit and  
26 disposed offsite. Some monitoring wells were installed but closed prior to sampling due to

1 financial limitations. Groundwater contamination was identified at that time. The previous CD  
2 was dismissed with prejudice by agreement of Ecology in November of 2012.

3 D. On or about February 9, 2005 an unknown volume of diesel was spilled at the  
4 Site when a truck driver filling a rig allowed an unattended fueling nozzle to fall out of the tank  
5 during fueling activities. The spill spread to Maddox Creek and flows south parallel to Old  
6 Highway 99 South to Hickox Road (approximately 0.68 mile south of the Site). This spill went  
7 unreported until Ecology Spills Team traced the source back to the Truck City parcel. Sheen  
8 was observed in Maddox Creek. Ecology retained NRC Environmental Services to clean up the  
9 spill. Absorbent booms and pads were placed in Maddox Creek. Subsequently, Materials  
10 Testing & Consulting, Inc. (MTC) conducted sediment sampling within Maddox Creek, in the  
11 vicinity of the Site, to assess whether residual contamination remains in Maddox Creek. Based  
12 on current data the sediments in Maddox Creek no longer appears to be impacted by releases at  
13 the Site.

14 E. On or about May 8, 2008 an unknown volume of diesel was spilled at the Site.  
15 The spill area was excavated and backfilled. It is unknown if releases in addition to those  
16 described above, have occurred since Mr. Olmsted transferred the property in 1998.

17 F. In or about February of 2014, Materials Testing & Consulting, Inc. (MTC)  
18 performed a Phase II Environmental Site Assessment (ESA) for Skagit County. According to  
19 the Phase II ESA, it appears that the nature and extent of the contamination within the Property  
20 has been fully characterized. Soil contamination was detected on the western portion of the  
21 Property in the vicinity of the existing truck scales.

22 G. In or about July of 2014, Maul Foster & Alongi, Inc. (MFA) performed  
23 additional Site investigation after Ecology approved MFA's Work Plan to complete the  
24 Remedial Investigation. Soil sampling was performed along the eastern and western sides of  
25 Old Highway 99 to determine the extent of soil and groundwater impacts along the western  
26 boundary of the Property. Soil and groundwater sampling data showed no detections of



1 gasoline/diesel or heavy-oil range petroleum hydrocarbons along, within, or beyond Old  
2 Highway 99. Groundwater samples on the Property have shown localized residual  
3 concentrations of gasoline and diesel range petroleum hydrocarbons and fuel related volatile  
4 organic compounds within the property.

5 H. The contaminants of concern at the Site that exceed MTCA cleanup levels are  
6 gasoline and diesel range petroleum hydrocarbons and fuel related volatile organic compounds  
7 in soil. Ecology has assigned the Site an overall priority ranking of 3 pursuant to MTCA.

8 I. The Site has been used for automobile fueling, commercial truck and trailer  
9 weighing, and commercial truck stop purposes. The Property is currently zoned "Public." The  
10 proposed county jail is designated as an Essential Public Facility by the City of Mt Vernon.

11 J. Defendant has entered into a purchase and sale agreement with Old 99, LLC, a  
12 Washington limited liability company, the current owner of the Property. Pursuant to said  
13 purchase and sale agreement, Defendant intends to purchase the Property on or about January  
14 15, 2015, or soon thereafter.

15 K. Defendant proposes to clean up the Site and make it available for  
16 redevelopment for a public safety facility (jail) or reuse, consistent with MTCA and its  
17 implementing regulations, WAC 173-340, and applicable City of Mount Vernon zoning  
18 provisions and comprehensive plan designations.

19 L. Defendant conducted several independent remedial actions with Ecology  
20 consultation to help facilitate the work to be performed under the Decree:

- 21 a. In or about February of 2014, Materials Testing and Consulting, Inc. (MTC)  
22 performed a Phase II Environmental Site Assessment (ESA) of the property for  
23 Skagit County.  
24 b. On July 7, 2014, 2014, a draft RI Work Plan was also submitted for Ecology's  
25 review.  
26

1 c. On September 29, 2014, Defendant submitted an Agency Review Draft  
2 Remedial Investigation/Feasibility Study for Ecology's review.

3 M. As documented in the Cleanup Action Plan (CAP) (Exhibit D), the cleanup  
4 action to be implemented at the Site includes the excavation and disposal of petroleum  
5 contaminated soil, In-Situ Bioremediation (chemical treatment to remediate residual  
6 groundwater impacts), and compliance monitoring.

7 N. The application of MTCA Method A., unrestricted land use cleanup levels is  
8 appropriate for gasoline and diesel range petroleum hydrocarbons and fuel related volatile  
9 organic compounds at the Site based on the planned future use of the Site as contemplated by  
10 the Parties under this Decree.

## 11 VI. WORK TO BE PERFORMED

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

15 A. Defendant shall finalize the Remedial Investigation (RI) and Feasibility Study  
16 (FS) (Exhibit C), initiated as independent remedial actions with Ecology consultation, and the  
17 CAP. Defendant shall perform the remedial actions specified in detail in the CAP (Exhibit D)  
18 and the Scope of Work and Schedule of Deliverables (Exhibits E and F). These exhibits are  
19 incorporated by reference and are integral and enforceable part of this Decree. A summary of  
20 the work to be performed is as follows:

21 1. The CAP requires the Defendant to perform the remedial action in two  
22 phases:

23 a. The first phase will involve the excavation (including dewatering) of  
24 impacted soil to cleanup levels at the four residual localized impacted areas the  
25 collection of soil samples, and backfilling (with removal of the truck scale and  
26 associated concrete pad prior to excavation activities).

1           b.       The second phase will involve using enhanced aerobic biodegradation to  
2 expedite the biodegradation of contaminants in soil and groundwater by adding oxygen  
3 (as an electron acceptor), with an industry standard oxygen release compound.  
4 Baseline ground water sampling at the Property's monitoring wells will be conducted  
5 before initiating the In-Situ Bioremediation task. Up to two years of consecutive  
6 quarterly ground water monitoring events will be conducted, as necessary or until Site  
7 groundwater meets the Site cleanup levels at each point of compliance.

8           2. Defendant shall prepare and submit all necessary, documents as identified in  
9 the CAP and the Scope of Work and Schedule. All deliverables identified in the Scope  
10 of Work and Schedule are hereby incorporated by reference and are an integral and  
11 enforceable part of this Decree

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

16                           **VII.     DESIGNATED PROJECT COORDINATORS**

17           The project coordinator for Ecology is:

18                           Dale R. Myers  
19                           Washington State Department of Ecology  
20                           Northwest Regional Office  
21                           Toxics Cleanup Program  
22                           3190 160<sup>th</sup> Avenue SE  
23                           Bellevue, WA 98008  
24                           Telephone: (425) 649-4446  
25  
26

1 The project coordinator for Defendant is:

2 Skagit County C/O:  
3 Ms. Yen-Vy Van LHG  
4 Maul Foster & Alongi, Inc.  
5 411 First Avenue South, Suite 610  
6 Seattle, WA 98104  
7 Telephone: (253) 320-5378

8 Each project coordinator shall be responsible for overseeing the implementation of this  
9 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.  
10 To the maximum extent possible, communications between Ecology and Defendant and all  
11 documents, including reports, approvals, and other correspondence concerning the activities  
12 performed pursuant to the terms and conditions of this Decree shall be directed through the  
13 project coordinators. The project coordinators may designate, in writing, working level staff  
14 contacts for all or portions of the implementation of the work to be performed required by this  
15 Decree.

16 Any party may change its respective project coordinator. Written notification shall be  
17 given to the other party at least ten (10) calendar days prior to the change.

#### 18 **VIII. PERFORMANCE**

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

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

26 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.

1 Any documents submitted containing geologic, hydrologic, or engineering work shall  
2 be under the seal of an appropriately licensed professional as required by RCW 18.220 and  
3 18.43.

4 Defendant shall notify Ecology in writing of the identity of any engineer(s) and  
5 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms  
6 of this Decree, in advance of their involvement at the Site.

#### 7 **IX. CERTIFICATION OF DEFENDANT**

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

12 Defendant represents and certifies that it did not cause or contribute to a release or  
13 threatened release of hazardous substances at the Site and is not otherwise currently potentially  
14 liable for the Site under RCW 70.105D.040(1).

#### 15 **X. ACCESS**

16 Ecology or any Ecology authorized representative shall have access to enter, and freely  
17 move about all property at the Site that Defendant either owns, controls, or has access rights to  
18 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and  
19 contracts related to the work being performed pursuant to this Decree; reviewing Defendant's  
20 progress in carrying out the terms of this Decree; conducting such tests or collecting such  
21 samples as Ecology may deem necessary; using a camera, sound recording, or other  
22 documentary type equipment to record work done pursuant to this Decree; and verifying the  
23 data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to secure  
24 access rights for those properties within the Site not owned or controlled by Defendant where  
25 remedial activities or investigations will be performed pursuant to this Decree. Ecology or any  
26 Ecology authorized representative shall give reasonable notice before entering any Site

1 property owned or controlled by Defendant unless an emergency prevents such notice. All  
2 Parties who access the Site pursuant to this section shall comply with any applicable Health  
3 and Safety Plan(s). Ecology employees and their representatives shall not be required to sign  
4 any liability release or waiver as a condition of Site property access.

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

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

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

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

1 **XII. PROGRESS REPORTS**

2 Defendant shall submit to Ecology written monthly Progress Reports that describe the  
3 actions taken during the previous month to implement the requirements of this Decree. The  
4 Progress Reports shall include the following:

5 A. A list of on-site activities that have taken place during the month;

6 B. Detailed description of any deviations from required tasks not otherwise  
7 documented in project plans or amendment requests;

8 C. Description of all deviations from the Scope of Work and Schedule (Exhibits E  
9 and F) during the current month and any planned deviations in the upcoming month;

10 D. For any deviations from the schedule, a plan for recovering lost time and  
11 maintaining compliance with the schedule;

12 E. All raw data (including laboratory analyses) received by Defendant during the  
13 past month and an identification of the source of the sample; and

14 F. A list of deliverables for the upcoming month if different from the schedule.

15 All Progress Reports shall be submitted by the tenth (10th) day of the month in which  
16 they are due after the effective date of this Decree. Unless otherwise specified, Progress  
17 Reports and any other documents submitted pursuant to this Decree shall be sent by certified  
18 mail, return receipt requested, to Ecology’s project coordinator.

19 **XIII. RETENTION OF RECORDS**

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

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

#### 7 **XIV. TRANSFER OF INTEREST IN PROPERTY**

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

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

#### 19 **XV. RESOLUTION OF DISPUTES**

20 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
21 other decision or action by Ecology's project coordinator, or an itemized billing statement  
22 under Section XXIII (Remedial Action Costs), the Parties shall utilize the dispute resolution  
23 procedure set forth below.

24 1. Upon receipt of Ecology's project coordinator's written decision, or the  
25 itemized billing statement, Defendant has fourteen (14) days within which to notify  
26



1 Ecology's project coordinator in writing of its objection to the decision or itemized  
2 statement.

3 2. The Parties' project coordinators shall then confer in an effort to resolve  
4 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)  
5 days, Ecology's project coordinator shall issue a written decision.

6 3. Defendant may then request regional management review of the  
7 decision. This request shall be submitted in writing to the Northwest Region Toxics  
8 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's  
9 project coordinator's decision.

10 4. Ecology's Regional Section Manager shall conduct a review of the  
11 dispute and shall endeavor to issue a written decision regarding the dispute within  
12 thirty (30) days of Defendant's request for review.

13 5. If Defendant finds Ecology's Regional Section Manager's decision  
14 unacceptable, Defendant may then request final management review of the decision.  
15 This request shall be submitted in writing to the Toxics Cleanup Program Manager  
16 within seven (7) days of receipt of the Regional Section Manager's decision.

17 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
18 the dispute and shall endeavor to issue a written decision regarding the dispute within  
19 thirty (30) days of Defendant's request for review of the Regional Section Manager's  
20 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final  
21 decision on the disputed matter.

22 B. If Ecology's final written decision is unacceptable to Defendant, Defendant has  
23 the right to submit the dispute to the Court for resolution. The Parties agree that one judge  
24 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising  
25 under this Decree. In the event Defendant presents an issue to the Court for review, the Court  
26

1 shall review the action or decision of Ecology on the basis of whether such action or decision  
2 was arbitrary and capricious and render a decision based on such standard of review.

3 C. The Parties agree to only utilize the dispute resolution process in good faith and  
4 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
5 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
6 the other party may seek sanctions.

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

#### 10 **XVI. AMENDMENT OF DECREE**

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

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

19 Defendant shall submit a written request for amendment to Ecology for approval.  
20 Ecology shall indicate its approval or disapproval in writing in a timely manner after the  
21 written request for amendment is received. If the amendment to the Decree is a substantial  
22 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
23 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
24 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
25 resolution procedures described in Section XV (Resolution of Disputes).

1 **XVII. EXTENSION OF SCHEDULE**

2 A. An extension of schedule shall be granted only when a request for an extension  
3 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
4 deadline for which the extension is requested, and good cause exists for granting the extension.

5 All extensions shall be requested in writing. The request shall specify:

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

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

- 14 1. Circumstances beyond the reasonable control and despite the due  
15 diligence of Defendant including delays caused by unrelated third parties or Ecology,  
16 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
17 documents submitted by Defendant; or  
18 2. Acts of God, including fire, flood, blizzard, extreme temperatures,  
19 storm, or other unavoidable casualty; or  
20 3. Endangerment as described in Section XVIII (Endangerment).

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

24 C. Ecology shall act upon any written request for extension in a timely fashion.  
25 Ecology shall give Defendant written notification of any extensions granted pursuant to this  
26 Decree. A requested extension shall not be effective until approved by Ecology or, if required,

1 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend  
2 this Decree pursuant to Section XVI (Amendment of Decree) when a schedule extension is  
3 granted.

4 D. An extension shall only be granted for such period of time as Ecology  
5 determines is reasonable under the circumstances. Ecology may grant schedule extensions  
6 exceeding ninety (90) days only as a result of:

7 1. Delays in the issuance of a necessary permit which was applied for in a  
8 timely manner;

9 2. Other circumstances deemed exceptional or extraordinary by  
10 Ecology; or

11 3. Endangerment as described in Section XVIII (Endangerment).

#### 12 **XVIII. ENDANGERMENT**

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

17 In the event Defendant determines that any activity being performed at the Site under  
18 this Decree is creating or has the potential to create a danger to human health or the  
19 environment, Defendant may cease such activities. Defendant shall notify Ecology's project  
20 coordinator as soon as possible, but no later than twenty-four (24) hours after making such  
21 determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide  
22 Ecology with documentation of the basis for the determination or cessation of such activities.  
23 If Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to  
24 resume such activities.

25 If Ecology concurs with or orders a work stoppage pursuant to this Section,  
26 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology

1 determines the danger is abated, and the time for performance of such activities, as well as the  
2 time for any other work dependent upon such activities, shall be extended, in accordance with  
3 Section XVII (Extension of Schedule), for such period of time as Ecology determines is  
4 reasonable under the circumstances.

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

### 7 **XIX. COVENANT NOT TO SUE**

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

12 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
13 and those hazardous substances that Ecology knows are located at the Site as of the date of  
14 entry of this Decree. This Decree does not cover any other hazardous substance or area.  
15 Ecology retains all of its authority relative to any substance or area not covered by this Decree.  
16 In addition, this Decree does not settle any potential liability Defendant may incur for  
17 acquiring any further interest in the Site not addressed under this Decree.

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

- 19 1. Criminal liability;
- 20 2. Liability for damages to natural resources;
- 21 3. Any Ecology action, including cost recovery, against PLPs not a party to  
22 this Decree.

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

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

5 1. Upon Defendant's failure to meet the requirements of this Decree,  
6 including, but not limited to, failure of the remedial action to meet the cleanup  
7 standards identified in the Cleanup Action Plan (CAP) (Exhibit D);

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

11 3. Upon the availability of new information regarding factors previously  
12 unknown to Ecology, including the nature or quantity of hazardous substances at the  
13 Site and/or the presence of previously undiscovered preferential pathways for hazardous  
14 substance migration, and Ecology's determination, in light of this information, that  
15 further remedial action is necessary at the Site to protect human health or the  
16 environment; or

17 4. After consultation with Defendant, Upon Ecology's determination that  
18 additional remedial actions are necessary to achieve cleanup standards within the  
19 reasonable restoration time frame set forth in the CAP.

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

## 23 **XX. CONTRIBUTION PROTECTION**

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

1 **XXI. INDEMNIFICATION**

2 Defendant agrees, to the extent permitted by law, to indemnify and save and hold the  
3 State of Washington, its employees, and agents harmless from any and all claims or causes of  
4 action for death or injuries to persons, or for loss or damage to property to the extent arising  
5 from or on account of acts or omissions of Defendant, its officers, employees, agents, or  
6 contractors in entering into and implementing this Decree. However, Defendant shall not  
7 indemnify the State of Washington nor save nor hold its employees and agents harmless from  
8 any claims or causes of action to the extent arising out of the negligent acts or omissions of the  
9 State of Washington, or the employees or agents of the State, in entering into or implementing  
10 this Decree.

11 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

12 A. All actions carried out by Defendant pursuant to this Decree shall be done in  
13 accordance with all applicable federal, state, and local requirements, including requirements to  
14 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
15 federal, state, or local requirements that the agency has determined are applicable and that are  
16 known at the time of entry of this Decree have been identified in the CAP and List of Required  
17 Permits (Exhibits D & G).

18 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural  
19 requirements of RCWs 70.94, 70.95, 70.105, 77.55, 90.48, and of any laws requiring or  
20 authorizing local government permits or approvals. However, Defendant shall comply with the  
21 substantive requirements of such permits or approvals. The exempt permits or approvals and  
22 the applicable substantive requirements of those permits or approvals, as they are known at the  
23 time of entry of this Decree, have been identified in the CAP and Applicable Substantive  
24 Requirements (Exhibit D & H).

25 Defendant has a continuing obligation to determine whether additional permits or  
26 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial

1 action under this Decree. In the event either Defendant or Ecology determines that additional  
2 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
3 remedial action under this Decree, it shall promptly notify the other party of this determination.  
4 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
5 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly  
6 consult with the appropriate state and/or local agencies and provide Ecology with written  
7 documentation from those agencies of the substantive requirements those agencies believe are  
8 applicable to the remedial action. Ecology shall make the final determination on the additional  
9 substantive requirements that must be met by Defendant and on how Defendant must meet  
10 those requirements. Ecology shall inform Defendant in writing of these requirements. Once  
11 established by Ecology, the additional requirements shall be enforceable requirements of this  
12 Decree. Defendant shall not begin or continue the remedial action potentially subject to the  
13 additional requirements until Ecology makes its final determination.

14 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
15 exemption from complying with the procedural requirements of the laws referenced in  
16 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is  
17 necessary for the state to administer any federal law, the exemption shall not apply and  
18 Defendant shall comply with both the procedural and substantive requirements of the laws  
19 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

### 20 **XXIII. REMEDIAL ACTION COSTS**

21 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
22 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
23 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and  
24 Decree preparation, negotiation, oversight, and administration. These costs shall include work  
25 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall  
26 include costs of direct activities and support costs of direct activities as defined in



1 WAC 173-340-550(2). For all costs incurred, Defendant shall pay the required amount within  
2 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a  
3 summary of costs incurred, an identification of involved staff, and the amount of time spent by  
4 involved staff members on the project. A general statement of work performed will be  
5 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to  
6 WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the  
7 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)  
8 per annum, compounded monthly.

9 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
10 authority to recover unreimbursed remedial action costs by filing a lien against real property  
11 subject to the remedial actions.

12 Ecology hereby incorporates into the Decree the previous remedial actions described in  
13 Section V (Findings of Fact). Reimbursement for specific project tasks under a grant  
14 agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup  
15 Program that the work performed complies with the substantive requirements of WAC 173-340  
16 and is consistent with the remedial action required under this Decree. The costs associated with  
17 Ecology's determinations on the past independent remedial actions (since in or about January  
18 of 2014) described in Section V (Findings of Fact) are recoverable under this Decree.

#### 19 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

20 If Ecology determines that Defendant has failed without good cause to implement the  
21 remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all  
22 portions of the remedial action that remain incomplete. If Ecology performs all or portions of  
23 the remedial action because of Defendant's failure to comply with the obligations under this  
24 Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance  
25 with Section XXIII (Remedial Action Costs), provided that Defendant is not obligated under  
26

1 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
2 scope of this Decree.

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

7 **XXV. PUBLIC PARTICIPATION**

8 A Public Participation Plan is required for this Site. Ecology developed the Public  
9 Participation Plan in conjunction with the Defendant.

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

12 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of  
13 public notices and fact sheets at important stages of the remedial action, such as the submission  
14 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and  
15 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
16 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

17 B. Notify Ecology's project coordinator prior to the preparation of all press  
18 releases and fact sheets, and before major meetings with the interested public and local  
19 governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press  
20 releases and fact sheets, and before major meetings with the interested public and local  
21 governments. For all press releases, fact sheets, meetings, and other outreach efforts by  
22 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to its  
23 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored  
24 or endorsed by Ecology.

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

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

- 6 1. City of Mount Vernon - City Hall  
7 910 Cleveland Avenue  
8 Mount Vernon, WA 98273
- 9 2. Skagit County Administration Building  
10 1800 Continental Place  
11 Mount Vernon, WA 98273
- 12 3. Mount Vernon Public Library  
13 315 Snoqualmie Street  
14 Mount Vernon, WA 98273
- 15 4. Ecology's Northwest Regional Office  
16 3190 160<sup>th</sup> Avenue SE  
17 Bellevue, WA 98008

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

#### 22 **XXVI. DURATION OF DECREE**

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

#### 27 **XXVII. CLAIMS AGAINST THE STATE**

28 Defendant hereby agrees that it will not seek to recover any costs accrued in  
29 implementing the remedial action required by this Decree from the State of Washington or any

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

6 **XXVIII. EFFECTIVE DATE**

7 This Decree is effective only upon the date (Effective Date) that title to the Property  
8 vests in Defendant, following entry of this Decree by the Court. The Defendant intends to  
9 purchase the Property by January 15, 2015 (or soon thereafter), and if Defendant does not  
10 purchase the Property by March 31, 2015, this Decree shall be null and void, and Defendant  
11 will be under no obligation to perform the work required by this Decree.

12 **XXIX. WITHDRAWAL OF CONSENT**

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

17 STATE OF WASHINGTON  
18 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

19 \_\_\_\_\_  
20 Jim Pendowski  
21 Program Manager  
22 Toxics Cleanup Program  
23 (360) 407-7177

\_\_\_\_\_  
Anne Powell, WSBA #42934  
Assistant Attorney General  
Ecology Division  
(360) 586-4607

24 Date: \_\_\_\_\_

Date: \_\_\_\_\_

25 SKAGIT COUNTY

26 DATED this \_\_\_\_ day of \_\_\_\_\_ 2014.

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

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Ron Wesen, Chair

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Kenneth A. Dahlstedt, Commissioner

Attest: \_\_\_\_\_  
Sharon D. Dillon, Commissioner

\_\_\_\_\_  
Clerk of the Board

Recommended:

Recommended: \_\_\_\_\_  
County Administrator

\_\_\_\_\_  
Department Head

Approved as to form:

\_\_\_\_\_  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

\_\_\_\_\_  
Risk Manager

Approved as to budget:

\_\_\_\_\_  
Budget & Finance Director

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
JUDGE  
Skagit County Superior Court