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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and City of Palouse (Defendant) under this Decree is to (1) resolve the potential  
4 liability of Defendant for contamination at the Palouse Producers 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 undertake the remedy set forth in the Clean-up  
8 Action Plan, attached hereto as Exhibit C.

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

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

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

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

22 E. This Decree shall not be construed as proof of liability or responsibility for any  
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
24 provided, however, that Defendant shall not challenge the jurisdiction of Ecology in any  
25 proceeding to enforce this Decree.

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

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

4 **II. JURISDICTION**

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

7 B. Authority is conferred upon the Washington State Attorney General by RCW  
8 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after  
9 public notice and any required hearing, Ecology finds the proposed settlement would lead to a  
10 more expeditious cleanup of hazardous substances. In addition, under RCW 70.105D.040(5),  
11 the Attorney General may agree to a settlement with a person not currently liable for remedial  
12 action at a facility who proposes to purchase, redevelop, or reuse the facility, provided: the  
13 settlement will yield substantial new resources to facilitate cleanup; the settlement will  
14 expedite remedial action consistent with the rules adopted under MTCA; and Ecology  
15 determines based upon available information that the redevelopment or reuse of the facility is  
16 not likely to contribute to the existing release or threatened release, interfere with remedial  
17 actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of  
18 the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent  
19 decree issued by a court of competent jurisdiction.

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

24 D. Defendant has not been named a PLP for the Site, and Defendant has certified  
25 under Section IX (Certification of Defendant) that it is not currently liable for the Site under  
26 MTCA. However, Defendant is currently in the process of acquiring the property located at

1 335 East Main St, Palouse, WA from Palouse Producers, Inc. through the United States  
2 Bankruptcy Court, Eastern District of Washington, Case No. 86-00615-114. The Property  
3 comprises the entire Site. Defendant will incur potential liability under RCW  
4 70.105D.040(1)(a) at the time it acquires an interest in the Site for performing remedial actions  
5 or paying remedial costs incurred by Ecology or third parties resulting from past releases or  
6 threatened releases of hazardous substances at the Site. This Decree settles Defendant's  
7 liability as described herein for this Site upon its purchase of the Property.

8 E. Ecology finds that this Decree will yield substantial new resources to facilitate  
9 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site  
10 in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and  
11 Chapter 173-340 WAC; will promote the public interest by facilitating the redevelopment or  
12 reuse of the Site; and will not be likely to contribute to the existing release or threatened  
13 release at the Site, interfere with remedial actions that may be needed at the Site, or increase  
14 health risks to persons at or in the vicinity of the Site. In addition, Ecology has determined that  
15 this Decree will provide a substantial public benefit in four categories: tax revenue, job  
16 creation, public access and neighborhood revitalization.

17 1. The redevelopment of the Site is forecasted to generate \$211,000 in one-  
18 time tax revenues and \$103,000 to \$135,000 per year in on-going tax revenues.

19 2. The redevelopment is projected to create approximately 20 construction  
20 jobs and up to 20 permanent jobs, which would represent a large employment increase in this  
21 small community.

22 3. The conceptual redevelopment plans for the Site include creating new  
23 public access to the Palouse River and linkages with other open spaces in the community.

24 4. The cleanup of the Site will help revitalize the downtown corridor.

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

1 G. This Decree has been subject to public notice and comment.

2 **III. PARTIES BOUND**

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

12 **IV. DEFINITIONS**

13 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and WAC 173-  
14 340-200 shall control the meanings of the terms in this Decree.

15 A. Site: The Site is referred to as Palouse Producers and is generally located at  
16 335 East Main St, Palouse, WA. The Site is more particularly described in the Site Diagram,  
17 attached hereto as Exhibit A. The Site constitutes a Facility under RCW 70.105D.020(5).

18 B. Property: Refers to the property located at 335 East Main St, Palouse, WA that  
19 Defendant intends to purchase. A legal description of the Property is attached as Exhibit B.  
20 The Property comprises the entire Site.

21 C. Parties: Refers to the State of Washington, Department of Ecology (Ecology)  
22 and City of Palouse.

23 D. Defendant: Refers to the City of Palouse.

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

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 Palouse, Washington, and consists of approximately 2/3  
7 acre. The Site is bounded by Main Street and commercial development to the north, the  
8 Palouse River to the south, an alleyway and commercial property to the east and a commercial  
9 property to the west. A diagram of the Site is attached as Exhibit A.

10 B. Between approximately 1955 and 1977, the Site was used by Conoco as a  
11 service station. Between approximately 1977 and 1985, the Site was used by Palouse  
12 Producers to fuel vehicles and store/distribute bulk fuel. Contamination at the Site is related to  
13 fuel storage and vehicle fueling activities. Investigations in the 1990s have shown that Site soil  
14 and groundwater are contaminated with petroleum hydrocarbons, metals, and pesticides.  
15 Follow up investigations by Environmental Protection Agency (EPA) and Ecology consultants  
16 have shown soil and groundwater contamination with gasoline, diesel, benzene, arsenic, lead,  
17 and manganese. These releases represent a threat to human health and the environment and  
18 require remedial action.

19 C. Soil sampling was completed in 1989 by Sunrise Technical Services Inc. A soil,  
20 sediment, and groundwater investigation was completed in 1991 by Science Applications  
21 International Corporation, which included the installation of four monitoring wells. Ecology  
22 collected soil and groundwater samples in 1992 and 1993. An additional investigation was  
23 completed by Ecology in 1999 which included the collection of soil and groundwater samples.  
24 In 2007, Techlaw, Inc. completed an investigation for the EPA which involved the collection  
25 of surface soil, subsurface soil, groundwater, and sediment samples. In 2010, Maul Foster &  
26 Alongi, Inc. completed a Remedial Investigation and Feasibility Study which involved a

1 review and compilation of past data, and collection and analysis of new soil, groundwater,  
2 surface water, and soil gas samples.

3 D. The contaminants of concern at the Site that exceed MTCA cleanup levels are  
4 total petroleum hydrocarbons, benzene, arsenic, manganese, and lead. Ecology has assigned  
5 the Site an overall priority ranking of 1 pursuant to MTCA.

6 E. The Site has been used for commercial refueling purposes and is zoned high  
7 density by the City of Palouse.

8 F. The current owner of the property, Palouse Producers, Inc. filed for Chapter 11  
9 bankruptcy protection on March 3, 1986 in the United States Bankruptcy Court for the Eastern  
10 District of Washington. Palouse Producers, Inc. is therefore unable to make financial  
11 contributions toward cleanup of the Site.

12 G. Defendant is currently in the process of acquiring the property located at 335  
13 East Main Street from Palouse Producers, Inc. through the United States Bankruptcy Court,  
14 Eastern District of Washington, Case No. 86-00615-114. Transfer of ownership will occur  
15 prior to December 31, 2011.

16 H. Defendant proposes to clean up the Site and make it available for  
17 redevelopment for commercial or high density residential use or reuse, consistent with MTCA  
18 and its implementing regulations, Chapter 173-340 WAC, and applicable City of Palouse  
19 zoning provisions and comprehensive plan designations.

20 I. As documented in the Cleanup Action Plan (CAP) (Exhibit C), the cleanup  
21 action to be implemented at the Site includes excavation and off-site disposal of soil  
22 contaminated with total petroleum hydrocarbons and benzene exceeding remediation levels,  
23 excavation and off-site disposal of soil contaminated with metals above cleanup levels, the  
24 installation of three groundwater monitoring wells on the property, groundwater monitoring in  
25 accordance with an approved Compliance Monitoring Plan, and institutional controls including  
26 restrictions on soil and groundwater use and vapor mitigation for new construction.

1 J. The application of MTCA Method B cleanup levels, ecological wildlife  
2 indicator concentrations, surface water screening levels, and/or natural background  
3 concentrations are appropriate for total petroleum hydrocarbons, arsenic, lead, manganese, and  
4 benzene in groundwater; and total petroleum hydrocarbons, arsenic, lead, and benzene in soil  
5 at the Site based on the planned future use of the Site as contemplated by the Parties under this  
6 Decree.

## 7 VI. WORK TO BE PERFORMED

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

11 A. Defendant shall perform the remedial actions specified in detail in the CAP  
12 (Exhibit C) and the Scope of Work and Schedule (Exhibit D). These exhibits are incorporated  
13 by reference and are an integral and enforceable part of this decree. A summary of the work to  
14 be performed is as follows:

15 1. Soil exceeding human health direct contact risk based remediation levels  
16 for total petroleum hydrocarbons and benzene, and exceeding cleanup levels (i.e., natural  
17 background concentration and/or wildlife ecological indicator concentration) for metals will be  
18 excavated and disposed off-site. Soil remaining on-site above cleanup levels may be  
19 consolidated to the extent possible on the northern portion of the Site. Clean backfill will be  
20 emplaced in excavations.

21 2. Three groundwater monitoring wells will be installed on the property.  
22 Groundwater monitoring will take place in accordance with an approved Compliance  
23 Monitoring Plan, to be developed in conjunction with engineering design plans and approved  
24 by Ecology.

25 3. Institutional controls will be required with restrictions on soil and  
26 groundwater use.



1 **VIII. PERFORMANCE**

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

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

9 All construction work performed pursuant to this Decree shall be under the direct  
10 supervision of a professional engineer or a qualified technician under the direct supervision of  
11 a professional engineer. The professional engineer must be registered in the State of  
Washington, except as otherwise provided for by RCW 18.43.130.

12 Any documents submitted containing geologic, hydrologic or engineering work shall be  
13 under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or  
14 RCW 18.43.130.

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

18 **IX. CERTIFICATION OF DEFENDANT**

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

23 Defendant represents and certifies that it did not cause or contribute to a release or  
24 threatened release of hazardous substances at the Site and is not otherwise currently potentially  
25 liable for the Site under RCW 70.105D.040(1).  
26



1 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,  
2 allow Defendant and/or its authorized representative to take split or duplicate samples of any  
3 samples collected by Ecology pursuant to the implementation of this Decree, provided that  
4 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights  
5 under Section X (Access), Ecology shall notify Defendant prior to any sample collection  
6 activity unless an emergency prevents such notice.

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

## 10 **XII. PROGRESS REPORTS**

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

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

24 All Progress Reports shall be submitted by the tenth (10<sup>th</sup>) day of the month in which  
25 they are due after the effective date of this Decree. Unless otherwise specified, Progress  
26

1 Reports and any other documents submitted pursuant to this Decree shall be sent by certified  
2 mail, return receipt requested, to Ecology's project coordinator.

### 3 **XIII. RETENTION OF RECORDS**

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

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

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

16 Prior to Defendant's transfer of any interest in all or any portion of the Site, and during  
17 the effective period of this Decree, Defendant shall provide a copy of this Decree to any  
18 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
19 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.  
20 Upon transfer of any interest, Defendant shall restrict uses and activities to those consistent  
21 with this Consent Decree and notify all transferees of the restrictions on the use of the  
22 property.

### 23 **XV. RESOLUTION OF DISPUTES**

24 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
25 other decision or action by Ecology's project coordinator, or an itemized billing statement  
26

1 under Section XXV (Remedial Action Costs), the Parties shall utilize the dispute resolution  
2 procedure set forth below.

3 1. Upon receipt of Ecology's project coordinator's written decision, or the  
4 itemized billing statement, Defendant has fourteen (14) days within which to notify  
5 Ecology's project coordinator in writing of its objection to the decision or itemized  
6 statement.

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

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

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

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

21 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
22 the dispute and shall endeavor to issue a written decision regarding the dispute within  
23 thirty (30) days of Defendant's request for review of the Regional Section Manager's  
24 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final  
25 decision on the disputed matter.  
26

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

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

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

#### 14 **XVI. AMENDMENT OF DECREE**

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

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

23 Defendant shall submit a written request for amendment to Ecology for approval.  
24 Ecology shall indicate its approval or disapproval in writing in a timely manner after the  
25 written request for amendment is received. If the amendment to the Decree is a substantial  
26 change, Ecology will provide public notice and opportunity for comment. Reasons for the

1 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
2 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
3 resolution procedures described in Section XV (Resolution of Disputes).

#### 4 **XVII. EXTENSION OF SCHEDULE**

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

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

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

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

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

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

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

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

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

#### 14 **XVIII. ENDANGERMENT**

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

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

1 If Ecology concurs with or orders a work stoppage pursuant to this Section,  
2 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology  
3 determines the danger is abated, and the time for performance of such activities, as well as the  
4 time for any other work dependent upon such activities, shall be extended, in accordance with  
5 Section XVII (Extension of Schedule), for such period of time as Ecology determines is  
6 reasonable under the circumstances.

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

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

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

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

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

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

1 If factors not known at the time of entry of the settlement agreement are discovered and  
2 present a previously unknown threat to human health or the environment, the Court shall  
3 amend this covenant not to sue.

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

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

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

14 3. Upon the availability of new information regarding factors previously  
15 unknown to Ecology, including the nature or quantity of hazardous substances at the  
16 Site, and Ecology's determination, in light of this information, that further remedial  
17 action is necessary at the Site to protect human health or the environment; or

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

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



1 Section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if the  
2 financial test or corporate guarantee is used; and

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

### 10 **XXIII. INDEMNIFICATION**

11 Defendant agrees to indemnify and save and hold the State of Washington, its  
12 employees, and agents harmless from any and all claims or causes of action for death or  
13 injuries to persons or for loss or damage to property to the extent arising from or on account of  
14 acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into  
15 and implementing this Decree. However, Defendant shall not indemnify the State of  
16 Washington nor save nor hold its employees and agents harmless from any claims or causes of  
17 action to the extent arising out of the negligent acts or omissions of the State of Washington, or  
18 the employees or agents of the State, in entering into or implementing this Decree.

### 19 **XXIV. COMPLIANCE WITH APPLICABLE LAWS**

20 A. All actions carried out by Defendant pursuant to this Decree shall be done in  
21 accordance with all applicable federal, state, and local requirements, including requirements to  
22 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
23 federal, state or local requirements that the agency has determined are applicable and that are  
24 known at the time of entry of this Decree have been identified in the CAP (Exhibit C).

25 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural  
26 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws

1 requiring or authorizing local government permits or approvals. However, Defendant shall  
2 comply with the substantive requirements of such permits or approvals. The exempt permits or  
3 approvals and the applicable substantive requirements of those permits or approvals, as they  
4 are known at the time of entry of this Decree, have been identified in the CAP (Exhibit C).

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

20 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
21 exemption from complying with the procedural requirements of the laws referenced in RCW  
22 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for  
23 the State to administer any federal law, the exemption shall not apply and Defendant shall  
24 comply with both the procedural and substantive requirements of the laws referenced in RCW  
25 70.105D.090(1), including any requirements to obtain permits.  
26

1 **XXV. REMEDIAL ACTION COSTS**

2 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
3 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
4 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions  
5 and Decree preparation, negotiation, oversight and administration. These costs shall include  
6 work performed both prior to and subsequent to the entry of this Decree. Ecology’s costs shall  
7 include costs of direct activities and support costs of direct activities as defined in WAC  
8 173-340-550(2). For all costs incurred, Defendant shall pay the required amount within thirty  
9 (30) days of receiving from Ecology an itemized statement of costs that includes a summary of  
10 costs incurred, an identification of involved staff, and the amount of time spent by involved  
11 staff members on the project. A general statement of work performed will be provided upon  
12 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),  
13 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of  
14 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded  
15 monthly. In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
16 authority to recover unreimbursed remedial action costs by filing a lien against real property  
17 subject to the remedial actions.

18 If Defendant satisfactorily fulfills all of its obligations under this Decree, Ecology will  
19 not seek to recover any of its costs under this Section, including work performed both prior to  
20 and subsequent to the entry of this Decree.

21 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

22 If Ecology determines that Defendant has failed without good cause to implement the  
23 remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all  
24 portions of the remedial action that remain incomplete. If Ecology performs all or portions of  
25 the remedial action because of Defendant's failure to comply with the obligations under this  
26 Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance

1 with Section XXV (Remedial Action Costs), provided that Defendant is not obligated under  
2 this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
3 scope of this Decree.

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

8 **XXVII. PERIODIC REVIEW**

9 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
10 agree to review the progress of remedial action at the Site, and to review the data accumulated  
11 as a result of monitoring the Site as often as is necessary and appropriate under the  
12 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
13 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial  
14 action at the Site. At least ninety (90) days prior to each periodic review, Defendant shall  
15 submit information to Ecology that documents whether human health and the environment are  
16 being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the  
17 right to require further remedial action at the Site under appropriate circumstances. This  
18 provision shall remain in effect for the duration of this Decree.

19 **XXVIII. PUBLIC PARTICIPATION**

20 A Public Participation Plan is required for this Site, and is attached as Exhibit E.  
21 Ecology developed the Public Participation Plan in conjunction with the Defendant. Ecology  
22 shall maintain the responsibility for public participation at the Site. However, Defendant shall  
23 cooperate with Ecology, and shall:

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

1 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
2 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

3 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
4 and fact sheets, and before major meetings with the interested public and local governments.  
5 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact  
6 sheets, and before major meetings with the interested public and local governments. For all  
7 press releases, fact sheets, meetings, and other outreach efforts by Defendant that do not  
8 receive prior Ecology approval, Defendant shall clearly indicate to its audience that the press  
9 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by  
10 Ecology.

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

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

- 16 1. Whitman County Library – Palouse Branch  
17 120 East Main Street  
Palouse, WA 99161
- 18 2. Ecology's Eastern Regional Office  
19 N.4601 Monroe  
Spokane, WA 99205-1295

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

## 24 **XXIX. DURATION OF DECREE**

25 The remedial program required pursuant to this Decree shall be maintained and  
26 continued until Defendant has received written notification from Ecology that the requirements

1 of this Decree have been satisfactorily completed. This Decree shall remain in effect until  
2 dismissed by the Court. When dismissed, Section XIX (Covenant Not to Sue) and Section XX  
3 (Contribution Protection) shall survive.

4 **XXX. CLAIMS AGAINST THE STATE**

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

12 **XXXI. EFFECTIVE DATE**

13 This Decree is effective only upon the date (Effective Date) that title to the Property  
14 vests in Defendant, following entry of this Decree by the Court. If Defendant does not  
15 purchase the Property by January 1, 2012, this Decree shall be null and void, and Defendant  
16 will be under no obligation to perform the work required by this Decree.

17 **XXXII. WITHDRAWAL OF CONSENT**

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

22  
23 ///

24 ///

1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

ROBERT M. McKENNA  
Attorney General

3 \_\_\_\_\_  
4 JAMES J. PENDOWSKI  
5 Program Manager  
6 Toxics Cleanup Program  
7 360-407-7177

\_\_\_\_\_ DOROTHY H. JAFFE, WSBA# 34148  
Assistant Attorney General  
360-586-4637

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

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

9  
10 CITY OF PALOUSE

11 \_\_\_\_\_  
12 MAYOR MICHAEL ECHANOVE  
13 City of Palouse  
14 509-878-1811

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

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

17  
18 \_\_\_\_\_  
19 JUDGE  
20 Whitman County Superior Court