ORIGINAL

TOC HOLDINGS CO. TECHNICAL ASSISTANCE VCP AGREEMENT

This Technical Assistance Voluntary Cleanup Program Agreement (Agreement), dated August 9, 2012, is entered into by and between the State of Washington, Department of Ecology (Ecology) and TOC Holdings CO. (TOC). Ecology and TOC are hereinafter sometimes referred to collectively as the Parties.

The purpose of this agreement is to facilitate independent remedial action and cleanup at TOC sites included in this Agreement. Ecology agrees to provide informal site-specific technical consultations under the Voluntary Cleanup Program (VCP) for the sites identified in the TOC Technical Assistance Agreement list (the TOC list), attached hereto as **Exhibit A,** under the VCP.

This Agreement facilitates and prioritizes independent remedial action at each property or site identified in the TOC list in order to obtain from Ecology, as soon as reasonably practicable No Further Action (NFA) opinions at each of the sites.

TOC and Ecology recognize that there are unique requirements entailed in Ecology's agreement to provide advice and assistance (technical consultation) on multiple sites. As such, TOC and Ecology commit to the terms of this Agreement.

Ecology is entering into this Agreement under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC. If a term in this Agreement is defined in MTCA or Chapter 173-340 WAC, then that definition shall govern.

Now, therefore; in special consideration for Ecology providing technical advice and assistance for multiple sites and dedicating staff to work on the sites identified in the TOC list, TOC agrees to pay costs incurred by Ecology in providing such advice and assistance only as detailed in this Agreement.

Section 1. **Applicable Sites.**

a. This Agreement applies to: (1) sites listed in the TOC list, attached hereto (**Exhibit A**), and incorporated by reference into this Agreement; and (2) other sites that the Parties mutually agree to add to the TOC list.

b. For each site included in the TOC list, TOC will provide Ecology with a completed VCP Application (**Exhibit B**) according to the schedule identified on **Exhibit C (VCP Application Schedule and 90-Day Schedule)**. For sites added to the TOC list after the effective date of this Agreement, TOC will provide Ecology with a completed VCP Application at the time the Parties mutually agree to add the site to the TOC list.

c. The Parties shall mutually agree on the prioritization of the sites listed on the TOC list and any amendment thereto.

d. Any site that has not been identified as of the effective date of this Agreement, and/or has not been listed on the TOC list shall be considered a new site when added to the TOC list. The Parties will mutually agree upon the new site's priority.

e. Sites listed on the TOC list at which there has been a new or a historic but not previously documented release of hazardous substance may be given a new priority if mutually agreed upon by the Parties.

f. At its discretion, Ecology may choose to remove one or more sites from the TOC list and require remedial work be completed under an Order or Decree, and/or take any other action available under state law for the site(s).

g. TOC may remove one or more sites from the TOC list with the understanding that Ecology may, at its discretion, require remedial work be completed under an Order or Decree, or take any other action available under state law for the site(s).

Section 2. **Remedial Action Process.**

The Parties agree that MTCA and its implementing regulations, including applicable Ecology guidance documents, will govern the remediation of all sites subject to this Agreement.

Section 3. **Access to Property Not Owned by TOC or its Client.**

a. TOC is responsible for obtaining access to all properties not owned by TOC.

b. TOC shall make reasonable efforts in a timely manner to obtain and/or maintain written access for itself and its contractors to sites or other property where remedial action is necessary.

c. If, after reasonable efforts, TOC has not obtained access to property then TOC shall notify Ecology in writing regarding TOC's access issue, and Ecology shall assist TOC in obtaining the needed access. It is acknowledged that the developed schedules are dependent upon the cooperation of the property owners to grant access, and schedules may be adjusted accordingly if access issues arise.

Section 4. **Services Provided by Ecology.**

a. Project Coordinators

1. TOC and Ecology agree that to implement this Agreement, Ecology will assign a staff referred to as Site Manager, as needed to work on the sites listed on the TOC list. The cost of assigning the Site Manager will be considered reimbursable costs consistent with WAC 173-340-515(6) and 173-340-550(6), and billed under Section 5 (Reimbursement of Costs) of this Agreement.

2. Ecology will designate the Project Manager to assist in implementation of the Agreement and to resolve any technical issues associated with the Agreement. Similarly, TOC will designate one (1) TOC employee as a contact for work to be conducted under this Agreement.

3. To the maximum extent possible, communications between Ecology and TOC and all technical documents, including reports and other

correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through Ecology's Site Manager. All contractual related communications and approvals, to the maximum extent possible, will be directed through Ecology's Northwest Region Toxics Cleanup Program Section Manager and the designated TOC management contact. Ecology's Northwest Region Toxics Cleanup Section Manager and TOC management contact may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed under this Agreement. Any party may change its respective identified staff. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

4. The designated management contact for each party is set forth below:

Robert W. Warren
NWRO Section Manager
Toxics Cleanup Program
Ecology Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA 98008-5452
(425) 649-7054
bob.warren@ecy.wa.gov

The designated TOC management contact is:

Mark A. Chandler, L.G.
Vice President Environmental Services
TOC Holdings CO.
2737 West Commodore Way
Seattle, WA 98199
(206) 285-2400
markchandler@tocholdings.com

The designated coordinator contact for each Party is set forth below:

The Project Manager for Ecology is:

Russ Olsen
NWRO Unit Supervisor
Toxics Cleanup Program
Ecology Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA 98008-5452
(425) 649-7038
russ.olsen@ecy.wa.gov

The designated TOC primary consultant contact is:

Ryan K. Bixby, L.G.
President - Environmental Division
SoundEarth Strategies, Inc.
2811 Fairview Ave East, Suite 2000
Seattle, Washington 98102
(206) 306-1900
rkbixby@soundearthinc.com

b. Upon request, Ecology agrees to provide TOC with informal, site-specific technical consultations on the independent remedial actions proposed for, or performed at, the sites consistent with WAC 173-340-515(5). Ecology may use any appropriate resource to provide TOC with the requested technical assistance for site(s) on the TOC list. Those resources may include, but shall not be limited to, those of Ecology and the Office of the Attorney General (AGO).

c. Upon receipt of a request from the designated TOC contacts for technical advice, assistance or a written opinion, Ecology's Site Manager will respond promptly and provide written opinions within ninety (90) days. If Ecology is unable to respond within the time period outlined herein, Ecology's Project Manager will inform TOC in writing.

d. In accordance with RCW 70.105D.030(1)(i), any opinions provided by Ecology under this Agreement are advisory only and not binding upon Ecology. Ecology, the state, and officers and employees of the state are immune from all liability. Furthermore, no cause of action of any nature may arise from any act or omission

in providing, or failing to provide, informal advice and assistance under this Agreement.

Section 5. **Reimbursement of Costs.**

a. TOC agrees to pay certain costs incurred by Ecology in providing the informal site-specific technical advice and assistance requested by TOC under this Agreement, consistent with WAC 173-340-515(6) and 173-340-550(6), including the cost of the Site Manager assigned to work on TOC sites as identified in this Agreement. TOC acknowledges that the cost incurred by Ecology in providing such advice and assistance may include administrative and general activities related to Ecology's employment of the Site Manager (e.g., Ecology meetings, creation of site logs, preparation of written analysis that supports the opinion letters (referred to by Ecology as a Decision Document). The costs incurred by Ecology may also include the costs incurred by assigning any other additional used by Ecology to provide the requested technical advice and assistance.

b. Ecology's costs shall be determined based on the method in WAC 173-340-550(2) and may include administrative and general activities related to the employment of the Site Manager. Ecology shall mail TOC invoices by the next business day after the fifteenth (15th) day of each month (invoice date) that there is a balance on the account. The invoice shall include a reasonably detailed description of the costs incurred, payments received, identity of staff involved and the amount of time staff spent on each site identified in the TOC list.

c. TOC shall pay the required amount by the due date, which shall be thirty (30) calendar days after the invoice date. If payment has not been received within (30) days of the invoice date, Ecology will notify TOC that the debt is past due. If payment has not been received within thirty (30) calendar days of the invoice date, then Ecology shall withhold any requested opinions and notify TOC that the debt is past due. If payment has not been received within sixty (60) calendar days

of the invoice date, then Ecology shall stop all work under this Agreement and may as appropriate, assign the debt to a collection agency under Chapter 19.16 RCW. TOC agrees to pay the collection agency fee incurred by Ecology in the course of debt collection.

d. Upon termination of the Agreement, Ecology shall reconcile billing and provide TOC with a final invoice. TOC shall pay the required amount by the due date, which shall be thirty (30) calendar days after the final invoice date. If the outstanding invoice amount is not paid Ecology may, as appropriate, assign the debt to a collection agency under Chapter 19.16 RCW. TOC agrees to pay the collection agency fee incurred by Ecology in the course of debt collection.

Section 6. **Schedule of Work.**

a. TOC agrees to follow commitments set forth in the VCP Application Schedule and 90-Day Schedule, attached hereto as **Exhibit C**, and the remedial work and deadlines set forth in the Cleanup Timelines, to be attached hereto as **Exhibit D** within 90 days, as described below.

b. TOC shall draft Cleanup Timelines for all sites on the TOC list within ninety (90) days of the effective date of this Agreement. The Cleanup Timelines shall be submitted to Ecology for review, comment, and approval. TOC shall incorporate Ecology's comments on all drafts of the Cleanup Timelines and submit a final draft of the Cleanup Timelines to Ecology within thirty (30) days of receiving comments. Upon mutual acceptance of the Cleanup Timelines, the deliverable will become an integral part of this Agreement, as **Exhibit D** (Cleanup Timelines).

c. Notwithstanding **Exhibit C** or **Exhibit D**, the Schedules and Cleanup Timelines are dynamic and subject to change for good cause. Ecology may choose at its sole discretion to defer action under this Agreement on one or more sites, or may

require remedial work be completed under an Order or Decree, or take any other action available under state law for the site(s).

d. If TOC fails to make a good faith effort to meet the requirements of **Exhibit C** and/or **Exhibit D**, Ecology may terminate this Agreement in accordance with Section 11 (Project Term and Agreement Termination).

Section 7. **Meetings & Summary Reports.**

a. TOC and Ecology agree to meet quarterly at the Ecology Northwest Regional Office in Bellevue, Washington, to discuss progress made at the sites and to set goals for the sites. The term "deadlines" as referenced within this agreement refers to the date that TOC agrees to request an NFA for each TOC site. The term "milestones", as referenced within this agreement, refers to those project phases identified in **Exhibit D** (Cleanup Timelines) and includes, but is not limited to, the following phases: file review; site characterization; pilot test/ feasibility study/CAP; system installation; active remediation; groundwater monitoring; and confirmation borings.

b. An agenda for the quarterly meeting will be sent by Ecology to TOC two (2) weeks prior to the meeting date. No later than five (5) days before the quarterly meeting, TOC will provide Ecology with any changes to the meeting agenda.

c. The agenda shall include, but not be limited to the following items:

1. Discussion of Progress Report as defined in Section 7.d below;
2. Proposed extension to deadlines described in **Exhibit D**; and
3. Discussion of Ecology's information and data supporting the Decision Documents and Opinion Letters.

d. No later than five (5) days prior to the quarterly meeting, TOC shall submit to Ecology a Progress Report that describes TOC's progress towards meeting milestones listed in **Exhibit D**. Unless otherwise specified, the Progress Report and any other documents submitted pursuant to this Agreement shall be sent by

certified mail, return receipt requested, to Ecology's Regional Section Manager with a copy to Ecology's Site Manager.

e. The Parties will mutually agree to any extension to deadlines described in **Exhibit D**. If the Parties are unable to agree to the extensions to deadlines for one or more site(s), the Parties agree that the Dispute Resolution provisions of Section 10 will apply.

f. The burden shall be on TOC to demonstrate to the satisfaction of Ecology that good cause exists for requests for extension to deadlines described in **Exhibit D** (Cleanup Timelines). Good cause may include, but may not be limited to:

1. Additional site data that significantly changes conditions and requires modification of the technical approach for the property or site;
2. Circumstances beyond the reasonable control and despite the due diligence of TOC, including delays or new releases caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by TOC; or
3. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

g. Neither increased costs of performance of the terms of this Agreement nor changed economic circumstances shall be considered "circumstances beyond the reasonable control of TOC Holding CO. as that phrase is used in Section 7.f.2 of this Agreement.

h. At the request of either Party, Ecology and TOC shall meet as necessary to discuss issues that arise during the course of this Agreement regarding remedial action at any site.

Section 8. **Notice.**

a. Unless otherwise agreed or provided herein, all notices and other communications required or permitted under this Agreement shall be in writing and will be deemed to have been properly given:

1. if delivered by hand, effective upon receipt;
2. if sent by certified or registered mail, postage prepaid, return receipt requested, effective three (3) days after mailing; or
3. if sent by a nationally recognized overnight delivery service, effective upon receipt, in each case to Ecology's Regional Section Manager and Ecology's Project Manager or the Designated TOC Primary Contact at the appropriate addresses noted in Section 4.a.4 (Services Provided by Ecology). For technical communications the designated staff for each Party will mutually agree on the method of communication.

b. Notice provided in accordance with this section does not take the place of any other reporting requirements under Chapter 173-360 WAC, Chapter 173-340 WAC, or under any other permit, regulation, rule or law.

Section 9. **Press Release.**

TOC shall notify and receive content approval from Ecology's Site Manager prior to the preparation of all press releases and fact sheets. TOC shall also notify Ecology's Site Manager before major meetings with the interested public related to the work under this Agreement. Likewise, Ecology shall notify and receive content approval from TOC prior to the issuance of all press releases and fact sheets. Ecology shall also notify TOC before major meetings with the interested public related to the work under this Agreement. For all press releases, fact sheets, meetings, and other outreach efforts by TOC that do not receive prior Ecology approval, TOC shall clearly indicate to its audience that the press release, fact sheet, meeting, or outreach effort was not sponsored or endorsed by Ecology. For all press releases, fact sheets, meetings, and other outreach efforts by Ecology that do not receive prior TOC approval, Ecology shall clearly

indicate to its audience that the press release, fact sheet, meeting, or outreach effort was not sponsored or endorsed by TOC.

Section 10. <u>Project Term and Agreement Termination</u>.

a. TOC and Ecology recognize that there are unique requirements entailed in Ecology's agreement to provide advice and assistances (technical consultation) on multiple sites. As such, TOC and Ecology commit to the terms of this Agreement for the Project Term, from execution of this Agreement until terminated by either Party.

b. The Parties may terminate this Agreement at any time for any reason by providing thirty (30) days written notice to the other Party.

c. Section 5 (Reimbursement of Cost) and Section 10 (Project Term and Agreement Termination) will survive termination of this Agreement.

d. Upon either Parties termination of the Agreement under Section 10, unless otherwise notified by Ecology in writing, TOC agrees to pay the costs Ecology will incur, in having the Site Manager prepare a final report regarding the status of each site on the TOC list. The final report for each site may include, but is not limited to, analysis of the data submitted to date, drafting site summaries, and selecting the next necessary steps under MTCA.

e. This Agreement shall be terminated automatically if any law or regulation shall become operative which renders illegal or prohibits any obligations entered into hereunder. This includes, but is not limited to, any action by the Washington State Legislature which discontinues funding, repeals or in any way ceases its support for this Agreement under applicable law.

Section 11. <u>Reservation of Rights</u>.

a. Ecology and TOC have entered into this Agreement to facilitate the cleanup of TOC's sites without the use of litigation, enforcement actions, or other adversarial proceedings. Ecology's signature on this Agreement in no way

constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. This Agreement also does not protect a liable person from contribution claims by third parties for matters addressed by this Agreement. This Agreement does not constitute a settlement of liability to the state under MTCA. The state does not have the authority to settle with any person potentially liable under MTCA except in accordance with RCW 70.105D.040(4).

b. Ecology reserves its rights under Chapter 70.105D RCW and all other applicable laws, including the right to require additional or different remedial actions at any or all sites should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Nothing in this Agreement will prevent Ecology from seeking to recover its costs for such actions under applicable laws. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at a site. Ecology reserves the right to proceed with enforcement action against TOC under all applicable statutes and regulations. Ecology reserves the right to proceed under any lawful authority to ensure compliance at all sites with all applicable laws and orders and decrees. TOC, by execution here does not waive, all rights and defenses associated with this matter.

Section 12. <u>Entire Agreement</u>.

This Agreement, including any exhibits or attachments, constitutes the entire agreement of TOC and Ecology and shall supersede and replace all prior and contemporaneous agreements and understanding, written or oral, regarding the discussions concerning the Agreement.

Section 13. <u>Modification; Waiver</u>.

No modification of any of the provisions of this Agreement shall be binding unless made in writing and signed by TOC and Ecology. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not

similar, nor shall any waiver constitute a continuing waiver unless expressly so stated in writing. No waiver shall be implied from a conduct or a failure to enforce rights or a delay in enforcing rights. No waiver shall be binding unless executed in writing by the Party making the waiver.

Section 14. Amendment to the Agreement.

Ecology's Site Manager may agree to minor changes to the Cleanup Timeline without formally amending this Agreement. Minor changes will be documented in writing by Ecology. Substantial changes to the Cleanup Timeline shall require formal amendment of this Agreement. This Agreement may only be formally amended by a written stipulation between TOC and Ecology. An agreement to amend the Agreement shall not be unreasonably withheld by any party.

Section 15. Severability.

The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision hereof, and the remainder of this Agreement, disregarding such invalid portion, shall continue in full force and effect as though such void provision had not been contained herein.

Section 16. Representations.

The undersigned representative of TOC hereby certifies that he or she is fully authorized to enter into this agreement and to execute and legally bind TOC to comply with the Agreement.

TOC Holdings CO.

Mark A. Chandler 8/1/12

Mark A. Chandler, L.G.
Vice President Environmental Services
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2737 West Commodore Way
Seattle, WA 98199
(206) 285-2400
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STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

8/9/12

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