

OFF-SITE (OIL COMPANY ENVIRONMENTAL AGREEMENT) NON-RISK BASED

THIS AGREEMENT is dated for reference the ____ day of _____, 200__

BETWEEN:

(the "Oil Company")

AND:

CITY OF VANCOUVER, a municipal corporation
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

(the "City")

WHEREAS:

- A. The Oil Company is the registered owner of property located at _____, Vancouver, British Columbia legally described as follows:

Parcel Identifier: _____

(the "Lands");
- B. The Oil Company operates or has operated, whether through an agent or itself, a gasoline station on the Lands;
- C. The Oil Company has caused to be carried out an investigation of the soil and groundwater of, *inter alia*, the Lands and the Roads and consequently has identified soil and groundwater contamination beneath the Roads (which contamination as more particularly described herein, is the "Road Contamination");
- D. The Oil Company has, as a result of the Road Contamination, applied for and received an Approval in Principle (as herein defined);
- E. The Roads are owned by the City;
- F. The Oil Company acknowledges that the Oil Company is responsible for the Remediation (as herein defined) of the Road Contamination; and
- G. The City requires the Oil Company to Remediate the Road Contamination and the Oil Company has agreed to do so on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the matters referred to in the foregoing recitals, the premises, covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed to by the parties, and in consideration for the City allowing the Oil Company until the Remediation Date to Remediate (as herein defined) the Road Contamination, the Oil Company and the City covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms defined in this Section 1.1 of this Agreement for all purposes of this Agreement, unless otherwise specifically provided, have the following meaning:

- (a) “Act” means the *Environmental Management Act* of British Columbia including the regulations to the Act and schedules forming a part thereof;
- (b) “this Agreement” means this agreement and includes all recitals to this agreement and all schedules attached to this agreement;
- (c) “Applicable Standards”:
 - (i) means with respect to soil contamination in the top three (3) metres in depth of the soil, the contamination levels, criteria, standards or concentration applicable for residential land use as provided for in the Act and for soils that are more than three (3) metres in depth beneath the surface of the lands, the commercial land use standards, as provided for in the Act, as such criteria may be amended;
 - (ii) means with respect to groundwater, contamination levels applicable to the most restrictive standard for freshwater or marine aquatic life, if applicable, as prescribed in the Act or such standard as otherwise approved under the Act based upon the assessment of the groundwater contamination; and
 - (iii) includes any and all applicable standards imposed by federal authorities or federal legislation;
- (d) “Approval in Principle” means an approval in principle described in section 53(1) of the Act, a copy of which is attached as Schedule “A”, and all amendments, revisions, substitutions, replacements and additions to such approval;
- (e) “Certificate of Compliance” means a Certificate of Compliance as described in section 53(3) of the Act confirming that the Road Contamination has been Remediated to Applicable Standards;
- (f) “City Personnel” means any and all of the elected and appointed officials, and officers (including the City Personnel), employees, agents, permittees,

contractors and subcontractors of the City;

- (g) “Claims” means any and all losses (including economic loss), damages (including special, exemplary or consequential damages), compensation, claims, demands, penalties, fines, causes of action, suits, orders, judgments, penalties (including those imposed pursuant to any federal, provincial or municipal legislation), expenses (including legal expenses), costs (including costs of preparing any environmental assessment reports or other such reports), legal obligations and compensation of whatsoever kind, incurred, suffered or paid as a result of, relating to or as a consequence of injuries to persons, including death, damage to property, including City property;
- (h) “Contaminants”, “Contamination” or “Contaminated” means those substances which are described in the Approval in Principle and are:
 - (i) “waste”, as that term is defined in the Act;
 - (ii) any substance which is not waste (as that term is defined in the Act) but which exceeds or fails to comply with the Applicable Standards;
- (i) “Lands” has the meaning set-out in Recital A of this Agreement;
- (j) “Letter of Credit” has the meaning described in Article 5 of this Agreement;
- (k) “Private Utilities” means all utilities and associated infrastructure incidental thereto owned or operated by Telus Communications Inc., BC Hydro, Terasen Gas, Rogers Communications Inc. or Shaw Communications Inc. or such other private utility provider(s) which the City permits, from time to time, to locate their utilities in or under City Roads;
- (l) “Public Utilities” means all utilities owned or operated by the City, the Greater Vancouver Regional District or the Greater Vancouver Transit Authority, from time to time, including all sewer mains, water mains, electrical utilities, transit utilities, street light and traffic signals, including connections and appurtenances thereto and all pipes, cables, valves and all facilities and associated equipment incidental thereto located in the Roads;
- (m) “Remediation” or “Remediate” or “Remediating” means any action to eliminate Road Contamination as set out in the Approval in Principle including excavation, treatment or disposal or monitoring of soils and groundwater on the Roads;
- (n) “Remediation Date” means the date **[ADD SPECIFIC DATE]**;
- (o) “Remediation Plan” means the remediation plan submitted (pursuant to Section 53(1) of the Act) with the application for an Approval in Principle;
- (p) “Remediation Report” means a report on Remediating Road Contamination submitted with the application for a Certificate of Compliance;

- (q) “Restoration Costs” means all reasonable costs and expenses which, in the sole opinion of the City, would be directly or indirectly incurred by the City in order to excavate, replace, repair or reconstruct the Roads, curbs, gutters, sidewalks and road surfaces, Public Utilities and all City property affected by the Remediation, plus an overhead charge which will not exceed twenty percent (20%) of such costs;
- (r) “Road Contamination” means all Contaminants whatsoever, identified in the Approval in Principle, which have, prior to the issuance of the Certificate of Compliance, migrated from the Lands, to, in or under Roads and all Contaminants whatsoever, identified in the Approval in Principle, which have migrated from the Roads to any other property; and
- (s) “Roads” means all those highways, roads, streets, sidewalks and lanes adjacent to or in the vicinity of the Lands.

1.2 References

References in this Agreement:

- (a) to the singular includes a reference to the plural and *vice versa*; and
- (b) will be read with the necessary grammatical changes required to make this Agreement apply to corporations, associations, partnerships, or individuals, males or females, as though in each case fully expressed.

ARTICLE 2 ACKNOWLEDGEMENT

2.1 Responsibility for Remediation

The Oil Company acknowledges and agrees that it is, at its sole cost and expense, responsible for the Remediation of the Road Contamination.

2.2 Acknowledgment

The Oil Company acknowledges and agrees that:

- (a) the Road Contamination has resulted from the Oil Company’s gas station operations on the Lands; and/or
- (b) even if the Road Contamination is Contamination which did not result from the Oil Company’s gas station operations on the Lands, *vis-à-vis* the City, the Oil Company nevertheless hereby assumes full responsibility for the Remediation of such Road Contamination.

2.3 Survival of Agreement and Acknowledgment

The acknowledgments and agreements of the Oil Company in sections 2.1 and 2.2 of this Agreement shall remain effective and shall survive any modification, release or partial release of this Agreement and shall survive any termination of this Agreement.

2.4 No Prejudice

Except for the City and the City Personnel (in which case, pursuant to this Agreement, the Oil Company waives and releases all Claims), nothing in sections 2.1 or 2.2 (b) of this Agreement shall prejudice or release any Claims that the Oil Company may have against third parties.

2.5 Approval in Principle

The Oil Company acknowledges that it has received an Approval in Principle for the Remediation of the Roads and represents and warrants to the City that a true and complete copy of the Approval in Principle is attached to this Agreement as Schedule "A".

ARTICLE 3 REMEDIATION

3.1 Remediation

The Oil Company shall, at its sole cost, on or before the Remediation Date, Remediate the Road Contamination to Applicable Standards and upon completion of such Remediation, the Oil Company shall:

- (a) obtain the Certificate of Compliance and deliver a certified copy of the Certificate of Compliance to the City to the attention of the City Clerk and Manager of Environmental Protection; and
- (b) restore the Roads and all Public Utilities to the full satisfaction of the City and to the standards of the City and other Public Utility providers, as the case may be.

3.2 Commencement of Remediation

Before commencing the Remediation, the Oil Company shall:

- (a) obtain and submit to the City copies of the Approval in Principle and all construction and excavation plans and timetables;
- (b) obtain and maintain all necessary permits and approvals for the Remediation and all work in connection thereto and, without limitation, provide to the City all required insurance and traffic management plans;
- (c) obtain the City's written consent to commence the Remediation;
- (d) provide to the Public Utilities and Private Utilities which may be affected by the Remediation, notice of the Remediation together with the Remediation Plan, construction and excavation plans and time tables;
- (e) provide to the City copies of requests for approvals and responses, if any, from the Private Utilities; and

- (f) deliver the Letter of Credit to the City.

3.3 Remediation in the Event of Emergency

Notwithstanding any other term of this Agreement, in the event of an emergency or reasonably perceived (by the City) imminent risk to human health or the environment caused by the Road Contamination which, in the opinion of the City, necessitates Remediation of the Road Contamination prior to the Remediation Date, the Oil Company will Remediate the Road Contamination as directed by the City and will use its reasonable commercial efforts to do so by such date specified by the City.

3.4 City May Remediate in the Event of Emergency

In the event of an emergency or reasonably perceived (by the City) emergency and if the Oil Company does not Remediate the Road Contamination in the manner set out in section 3.3 of this Agreement, the City may, but without obligation to do so, at the Oil Company's sole expense, Remediate the Road Contamination and in such case, the City may charge the Oil Company the cost incurred by the City plus the City's standard overhead charge which will not exceed twenty percent (20%) of such costs; provided, however, that nothing in this section 3.4 of this Agreement obligates the City to perform any Remediation.

3.5 Discovery of Road Contamination (at any time)

If any Contaminants are discovered in the Roads by the City during regular maintenance of the Roads and/or the Public Utilities (before or after a Certificate of Compliance), then the Oil Company shall, at its sole cost, forthwith carry out all Remediation as may then be necessary to Remediate such Contaminants from the Roads and in such event the terms and conditions of this Agreement shall, *mutatis mutandis*, apply (with the exception that the time period for Remediation shall be that reasonably required by the City).

3.6 Groundwater or Dewatering

If during the Remediation any groundwater or dewatering discharges are intended to be discharged into, or are in fact discharged into, a City sewer system, the Oil Company shall:

- (a) ensure that it obtains and maintains all necessary permits and approvals, pays all fees, and meets all standards pursuant to any applicable municipal or regional bylaw or provincial or federal statutes; and
- (b) monitor Contaminant levels in discharges during any dewatering to ensure compliance with all applicable standards.

ARTICLE 4 RELEASE

4.1 Release

The Oil Company, for itself and its successors and assigns, hereby releases and forever discharges the City and the City Personnel from any and all Claims or liability for any Claims suffered or incurred by the Oil Company in connection with this Agreement or the subject matter hereof.

4.2 Release to Survive

The release created by section 4.1 of this Agreement shall remain effective, and survive any modification, partial release, or release of the covenants created by this Agreement and any termination of this Agreement whether by fulfillment of the covenants contained in this Agreement or otherwise.

ARTICLE 5 LETTER OF CREDIT AND WARRANTY PERIOD

5.1 Delivery of Letter of Credit

Pursuant to section 3.2(f) of this Agreement, the Oil Company shall post, in the amount of the Restoration Costs, an unconditional, irrevocable and self-renewing letter of credit (the "Letter of Credit") as security for the performance of the obligations of the Oil Company contained in section 3.1(b) of this Agreement. The Letter of Credit shall be issued in favour of the City, by a chartered bank and on terms satisfactory to the City.

5.2 Return of Letter of Credit

Once the conditions set out in sections 3.1(a) and 3.1(b) of this Agreement have been satisfied, the City will return to the Oil Company the Letter of Credit, or if the City has called upon the Letter of Credit, any unused balance of the proceeds of the Letter of Credit, after the City has deducted the costs and expenses for which the Oil Company is responsible under this Agreement.

5.3 Warranty

The Oil Company warrants to the City the restoration of the Roads and Public Utilities as described in section 3.1(b) of this Agreement for a period of two (2) years following completion of such restoration. As security during the warranty period, the Oil Company shall lodge with the City a letter of credit (having a duration of not less than twenty-seven (27) months) in the amount of ten (10%) percent of the cost of such restoration (the letter of credit shall otherwise, *mutatis mutandis*, be on the same terms and conditions as set out in section 5.1 of this Agreement).

ARTICLE 6 GENERAL

6.1 Notice

Any notice, approval or request required or permitted to be given under this Agreement shall be in writing and may be given by delivering such notice, approval or request to a representative of the party for whom it is intended or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia to the Oil Company:

- (a) in the case of the Oil Company addressed to it at:

 _____,
 _____, British Columbia

Attention: _____
 Fax No.: _____

- (b) in the case of the City addressed to it at:

City of Vancouver
 453 West 12th Avenue
 Vancouver, British Columbia
 V5Y 1V4

Attention: City Clerk

with a copy to the General Manager of Engineering Services and Manager of Environmental Protection,

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request shall be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request shall only be effective if actually delivered.

6.2 Specific Performance

The Oil Company acknowledges that damages may be an inadequate remedy for the City for any breach by the Oil Company of its obligations under this Agreement, and that the City is entitled to seek and obtain an order for specific performance, or a prohibitory or mandatory injunction, in order to compel performance by the Oil Company of its obligations under this Agreement.

6.3 Remedies Generally

Mention in this Agreement of any particular right or remedy of the City does not preclude the City from any other right or remedy, whether at law, in equity, by statute or as expressly provided in this Agreement. No right or remedy is exclusive or dependent upon the City exercising or enforcing any one or more rights or remedies independently or in combination, such remedies and rights being cumulative and not alternative.

6.4 Severance of Provisions

If any term of this Agreement is held invalid, illegal or unenforceable by a court having jurisdiction, that term is considered severed from this Agreement and the remainder of this Agreement shall remain in force and unaffected.

6.5 No Waiver

No alleged waiver of any breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by the City or the Oil Company of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

6.6 Entire Agreement

This is the entire agreement between the City and the Oil Company concerning its subject and it may be changed only in a document executed by the City and the Oil Company.

6.7 Time of the Essence

Time is of the essence.

6.8 Non-Derogation

Nothing contained or implied in this Agreement will derogate from the obligations of the Oil Company under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised as if this Agreement had not been executed and delivered by the Oil Company and the City.

6.9 Governing Laws

This Agreement is governed by the laws of British Columbia and Canada and the parties irrevocably attorn to the jurisdiction of the Courts of British Columbia.

6.10 Assignment

The Oil Company shall not assign this Agreement or any of its rights or obligations hereunder.

6.11 Continuing Force and Effect

This Agreement shall enure to the benefit of and is binding upon the parties, their respective successors and permitted assigns. Without limiting the generality of the foregoing, the Oil Company's obligations under this Agreement shall remain in full force and effect even if the Oil Company may have no legal or beneficial interest in the Lands.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER,
by its authorized signatory:

OIL COMPANY,
by its authorized signatories:

SCHEDULE "A"
APPROVAL IN PRINCIPLE