

15292

Attachment C

2005-394

PURCHASE AND SALE AGREEMENT

Seller: KING COUNTY, a municipal corporation of the State of Washington; and its Custodial Agent Seller, King County Solid Waste Division, Department of Natural Resources and Parks

Purchaser: SOUTH PARK PROPERTY DEVELOPMENT, LLC, a limited liability company under the laws of the State of Washington

15292

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of July 25, 2005 by and between the following parties:

Seller: KING COUNTY, a municipal corporation of the State of Washington; and its Custodial Agent Seller, King County Solid Waste Division, Department of Natural Resources and Parks

Purchaser: SOUTH PARK PROPERTY DEVELOPMENT, LLC, a limited liability company under the laws of the State of Washington.

WITNESSETH

WHEREAS, Seller is the owner of certain vacant land in Seattle, Washington that is commonly known as the South Park Custodial Landfill, which is more particularly described in Exhibit 1, attached hereto and incorporated herein by this reference (the "Real Property"); and

WHEREAS, the Real Property contains approximately 19.4 acres of land, more or less; and

WHEREAS, the Real Property was declared surplus property by Seller in accordance with King County Motion No. 9885, a copy of which is attached as Exhibit 2; and

WHEREAS, Seller has marketed the Real Property for industrial uses and received proposals from Purchaser and others; and

WHEREAS, Seller wishes to transfer all of its right, title and interest to the "Purchased Assets" (hereinafter defined) to Purchaser, and Purchaser wishes to acquire said interests upon the terms and conditions contained herein, contingent on approval by the King County Council.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE 1

PURCHASE AND TRANSFER OF ASSETS

1.1 Property to be Sold. Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell, convey, assign, transfer and deliver to Purchaser on the Closing

1

Date (as hereinafter defined) and the Purchaser shall buy and accept from Seller on the Closing Date the following assets and properties (the "Purchased Assets"):

- (a) The Seller's entire right, title and interest in the Real Property described in Exhibit 1, subject only to Permitted Exceptions (as hereinafter defined);
- (b) All of Seller's rights, title and interest in any improvements, structures and fence located on the Real Property (the "Improvements"; the Real Property and the Improvements are herein collectively called the "Property"); and
- (c) All of Seller's tenements, hereditaments, easements and rights appurtenant to the Real Property, including but not limited to, all of Seller's right, title and interest in and to streets, alleys or other public ways adjacent to the Real Property, easements for public utilities, all sewers and service drainage easements; all rights of connection to the sewers, and all rights of ingress and egress (save and except for, in each instance, such rights held by the Seller based upon its status as a public entity and which cannot be lawfully transferred to a private party), collectively, the "Miscellaneous Rights"; provided, however, that nothing in this Section 1.1 (c) shall transfer to or impose upon Purchaser any obligation to maintain sewers or utilities currently maintained by the City of Seattle or other public entity.

Notwithstanding that it may not be included in the Purchased Assets, Seller shall have no obligation to remove any personal property from the Purchased Assets. Any soil cuttings or groundwater stored in drums or other containers, and any other contaminated media collected by Seller for the purpose of sampling and analysis, shall not be deemed personal property and shall be removed by Seller prior to Closing.

ARTICLE 2

PURCHASE PRICE AND OTHER CONSIDERATION

2.1 Purchase Price. The total purchase price to be paid by the Purchaser for the Property is One Million Six Hundred Thousand and no/100 Dollars (\$1,600,000) (the "Purchase Price").

2.2 Other Consideration. In further consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets, on the Closing Date:

- (a) Purchaser shall execute a Remediation Agreement in the form attached as Exhibit 3;
- (b) Purchaser shall execute an Agreement Regarding Use of Real Property, Job Creation, and Leadership in Energy and Environmental Design in the form attached as Exhibit 4;
- (c) Purchaser shall procure, obtain and pay for Remediation Cost Cap Insurance and Pollution Legal Liability Insurance in a form, amount and for a duration as set

forth on Exhibit 7 (to be completed prior to Closing), and naming Seller as an additional named insured; and

(d) Purchaser shall execute an Agreement Regarding Claims in the form set forth in Exhibit 8.

2.3 No Reimbursement. No portion of the Purchase Price or other consideration is intended to reimburse the Seller for remedial action costs incurred by Seller.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1 Warranties and Representations of Seller. Seller represents and warrants to the best of its knowledge and belief as follows:

(a) Organization, Standing and Qualification of Seller. Seller is a Municipal Corporation and political subdivision of the State of Washington. Seller has the power to own its properties and assets.

(b) Execution, Delivery and Performance of Agreement, Authority. The execution and delivery of this Agreement by Seller is made contingent upon approval, by motion or ordinance, of this Purchase and Sale Agreement by the King County Council and approval of the same by the King County Executive. Once said approval has been obtained, Seller warrants and represents that performance of the Agreement (i) is within the municipal powers of Seller, (ii) has been duly authorized by all necessary municipal action, and (iii) does not and will not (a) require any further consent or approval of the County Council or (b) violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which Seller is a party or which is presently in effect and applicable to Seller or the charter or authorizing legislation of Seller.

(c) Full Disclosure. No representation or warranty by Seller in this Agreement or in any instrument or certificate furnished to Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact.

(d) No Broker. Except for Heartland, which has acted as agent for Seller, no other broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no other broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Seller or any action taken by Seller.

(e) Contracts. There are no contracts or other obligations outstanding for the sale, exchange, transfer, management or operation of the Purchased Assets or any portion thereof.

(f) **Future Agreements.** From and after the date hereof unless this Agreement is terminated in accordance with its terms, Seller shall not enter into any agreement, contract, commitment, lease or other transaction that affects the Purchased Assets, or modify or terminate any existing lease or contract that affects the Purchased Assets, with the exception that Seller has and may enter into service or maintenance contracts with the terms expiring on or prior to the Closing and which do not unreasonably interfere with Purchaser's right to inspect the Property.

(g) **Maintenance of the Property.** Seller shall continue to maintain the Property in compliance with all applicable laws and pay all costs of such maintenance with respect to the period prior to the Closing. Within twenty (20) days after the date hereof, Seller shall deliver to Purchaser a Certificate of Land Use and Local Assessments in form complying with Seattle City Ordinances.

(h) **Disclosure.** Seller has made available to Purchaser all material information, data, reports, and other technical information regarding environmental conditions at the Property that are known to and in the possession of Seller. The foregoing disclosure obligation shall not apply to oral discussions, communications or negotiations with the Washington State Department of Ecology or any other regulatory agency regarding proposed or contemplated remediation of the Property or to work product or other information prepared by or for Seller specifically relating to the marketing of the Property or the process of selecting or negotiating with Purchaser. A schedule of reports and other documents describing environmental conditions at the Property made available to Purchaser is attached as Exhibit 12 ("Disclosure Schedule").

(i) **Warranties and Representations.** EXCEPT FOR THE WARRANTIES, REPRESENTATIONS AND INDEMNIFICATIONS CONTAINED IN THIS AGREEMENT, SELLER DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PURCHASED ASSETS AND NO EMPLOYEE OR AGENT OF SELLER IS AUTHORIZED OTHERWISE. WITHOUT LIMITATION, THE FOREGOING SPECIFICALLY EXCLUDES, EXCEPT FOR WARRANTIES, REPRESENTATIONS AND INDEMNIFICATIONS CONTAINED IN THIS AGREEMENT, ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE STRUCTURAL CONDITION OF THE PURCHASED ASSETS, THE AREA OF LAND BEING PURCHASED, THE EXISTENCE OR NON-EXISTENCE OF ANY POLLUTANTS, CONTAMINANTS, HAZARDOUS WASTE, DANGEROUS WASTE, TOXIC WASTE, UNDERGROUND STORAGE TANKS OR CONTAMINATED SOIL, OR THE ACTUAL OR THREATENED RELEASE, DEPOSIT, SEEPAGE, MIGRATION OR ESCAPE OF SUCH SUBSTANCES AT, FROM OR INTO THE PURCHASED ASSETS, AND THE COMPLIANCE OR NONCOMPLIANCE OF THE PURCHASED ASSETS WITH APPLICABLE FEDERAL, STATE, COUNTY AND LOCAL LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS AND REGULATIONS AND SEISMIC/BUILDING CODES, LAWS AND REGULATIONS.

3.2 **Representations and Warranties of Purchaser.** Purchaser represents and warrants to the best of its knowledge and belief that:

(a) Organization. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington, and Purchaser is qualified to do business in the State of Washington. Purchaser has all requisite limited liability company power and authority to carry on its business as it is now being conducted in the place where such businesses are now conducted.

(b) Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Purchaser (i) is within the limited liability company powers of Purchaser, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary company action, and (iii) does not and will not (a) require consent or approval or (b) violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which Purchaser is a party or which is presently in effect and applicable to Purchaser or the limited liability company agreement of Purchaser.

(c) Litigation. There is no material claim or threatened lawsuit against or relating to Purchaser or its members which will impede or materially affect Purchaser's ability to perform the terms of this Agreement.

(d) Full Disclosure. No representation or warranty by Purchaser in this Agreement or in any instrument, document, certificate or statement furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact.

(e) Condition of Property. As of the Closing Date, Purchaser has inspected the Purchased Assets and approves the physical condition of the Purchased Assets and, except for Seller's express warranties, representations and indemnities contained in this Agreement, agrees to accept and purchase the same "AS IS, WHERE IS" with all defects, known and unknown. Purchaser acknowledges and agrees upon Closing, except for Seller's obligations under the Remediation Agreement attached as Exhibit 3 to this Agreement, Seller shall have no liability for and that Purchaser shall have no recourse against Seller for any defect or deficiency of any kind whatsoever in the Purchased Assets, without regard to whether such defect or deficiency was discovered or discoverable by Purchaser or Seller, including, without limitation, environmental and geologic conditions of the Real Property.

(f) Prior Uses of Property. Purchaser acknowledges the receipt of information from Seller concerning the prior use of the Real Property as a landfill, and for other uses (e.g., vehicle and equipment storage) as disclosed in information provided in, or documents provided pursuant to, the Disclosure Schedule.

(g) Purchase Price Representations. Purchaser acknowledges that the Purchase Price set forth in Article 2, Section 2.1 of this Agreement is based on Purchaser's valuation of the Purchased Assets, Purchaser's independent analysis of the actual square footage of the Real Property and the portion thereof that can be put to productive use by Purchaser, and not upon any representations by Seller. Purchaser's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Purchased Assets, shall not affect the liabilities,

obligations or duties of Purchaser under this Agreement, including but not limited to Purchaser's payment of the Purchase Price, nor serve as a basis for termination of this Agreement or for the return of any fees or earnest monies paid to Seller under this Agreement.

(h) No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Purchaser in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement, or understanding with Purchaser or any action taken by Purchaser.

ARTICLE 4

TITLE MATTERS

4.1 Title. Seller shall deliver to Purchaser good and marketable title, free and clear of all liens, defects and encumbrances except the Permitted Exceptions.

(a) Title Commitment. Seller shall, as soon as possible and not later than thirty (30) days from the date hereof, cause to be furnished to Purchaser a current ALTA form of commitment for an ALTA extended coverage owner's policy of title insurance (the "Title Commitment") issued by Chicago Title Insurance Company (the "Title Company"), describing the Property, listing Purchaser as the prospective named insured and showing as the policy amount the total Purchase Price for the Purchased Assets. At such time as Seller causes the Title Commitment to be furnished to Purchaser, Seller shall further cause to be furnished to Purchaser legible true copies of all instruments referred to in the Title Commitment as restrictions or exceptions to title to the Property.

(b) Survey. Seller agrees to provide to Purchaser a copy of the most recent survey of the property ("Survey") upon request by Purchaser. Purchaser shall pay for the costs and expenses reasonably required by the Title Company to make the Survey conform to the minimum standards for issuance of an ALTA extended coverage title policy.

(c) Review of Title Commitment and Survey. Purchaser shall have thirty (30) days after receipt of the latter of the Title Commitment and the updated Survey (the "Review Period") in which to notify Seller in writing of any objections Purchaser has to any matters shown or referred to in the Title Commitment or the Survey and of any title insurance endorsements required by Purchaser. Any exceptions or other items that are (i) set forth in the Title Commitment or the Survey and to which Purchaser does not object within the Review Period, (ii) objected to by Purchaser and cured by Seller, and (iii) objected to by Purchaser and such objection is subsequently waived, shall be deemed to be permitted exceptions (collectively, the "Permitted Exceptions"). With regard to items to which Purchaser objects within the Review Period, Seller shall notify Purchaser within fourteen (14) days after Seller receives Purchaser's notice of objections of any exceptions to title which Seller is not able to remove or otherwise resolve, and Purchaser may, at Purchaser's option, and within fourteen (14) days, either waive

the objections not cured or Purchaser may terminate this Agreement by notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at Closing.

4.2 Owner's Title Insurance Policy. At the Closing, Seller shall provide Purchaser at Seller's expense (except as set forth below) an ALTA extended coverage owner's policy of title insurance issued by the Title Company in the full amount of the Purchase Price, effective as of the Closing Date, insuring Purchaser that fee simple title to the Purchased Assets is vested in Purchaser, subject only to the usual printed exceptions contained in such title insurance policy, and to the Permitted Exceptions and to any other matters approved in writing by Purchaser. The obligation of Seller to provide the title policy called for herein shall be satisfied if, at the Closing, the Title Company has given a binding commitment to issue the policy in the form required by this section. Purchaser shall pay the additional premium charged for extended coverage over and above the premium charged for the issuance of a standard coverage policy.

4.3 Conveyance. Seller shall convey to Purchaser the title to the Property by statutory warranty deed in form set forth in Exhibit 13, subject only to the Permitted Exceptions and to any other matters approved in writing by Purchaser. The Agreement in the form attached as Exhibit 4 shall be attached to the deed conveying the Property to Purchaser and incorporated by reference.

ARTICLE 5

CONTINGENCIES

5.1 Contingency Period. The obligations of Purchaser under this Agreement are subject to the satisfaction of the following contingencies: (a) approval of a Cleanup Action Plan ("CAP") submitted by Purchaser to the Washington State Department of Ecology ("Ecology") detailing Purchaser's obligations for remediation of the Property; and (b) receipt of a Master Use Permit ("MUP") for the contemplated improvements on the Property. In the event any one or more of the contingencies herein set forth is not satisfied within the time limits and/or pursuant to the provisions set forth herein, Purchaser may terminate this Agreement upon written notice to Seller on or before the expiration of the applicable Contingency Period or extension thereof, and neither party shall have any further rights or obligations to the other hereunder, except as expressly provided otherwise in this Agreement. Purchaser shall be the sole judge as to whether the contingencies shall have been satisfied.

The Contingency Period shall commence upon the completion of all of the following: (a) full and complete execution of this Agreement; (b) delivery to Purchaser by Seller of all items identified in the Disclosure Schedule (with the exception of ongoing monitoring reports completed or issued after execution of the Agreement) by Purchaser; and (c) approval of the Agreement by the King County Council. Seller shall endeavor to obtain approval of the King County Council as expeditiously as possible, but Purchaser acknowledges that the requisite motion or ordinance may not be presented to the King County Council until sixty (60) to ninety (90) days after execution of this Agreement. During, and prior to, the Contingency Period,

Purchaser and its designated representatives or agents shall have the right at Purchaser's expense to obtain an environmental assessment report on the Purchased Assets, and Purchaser shall be permitted to conduct testing or sampling on the Real Property subject to the provisions of Section 5.2 below.

The Contingency Period shall continue for the period of time reasonably necessary for Purchaser to obtain an Ecology-approved CAP and a MUP, subject to the deadlines set forth below; provided however, that the Contingency Period shall not exceed three hundred sixty-five (365) days, plus, at Purchaser's election, not more than six (6) consecutive thirty (30)-day extensions; provided further that, for each thirty (30) day extension of the Contingency Period beyond three hundred sixty-five (365) days, Purchaser shall deposit into Escrow on or before the first day of each such extension, as additional earnest money, the sum of Seven Thousand Five Hundred and no/100 Dollars (\$7,500.00), such additional earnest money to be subject to the provisions of Section 14.15 of this Agreement.

Notwithstanding the foregoing, the Contingency Period shall expire if Purchaser fails to make continuing progress as described herein:

(a) The Contingency Period shall expire thirty (30) days after it commences unless, within that 30-day period, Purchaser meets with representatives of Ecology to discuss generally Purchaser's potential acquisition of the Real Property and proposed activities and agreements relating to environmental conditions at the Real Property.

(b) The Contingency Period shall expire ninety (90) days after the meeting between Purchaser and representatives of Ecology described above unless, within that 90-day period, Ecology determines that the remedial investigation/feasibility study ("RI/FS") is complete for the Real Property and any other areas to which environmental contamination from the Real Property has come to be located. In the event Ecology determines the RI/FS is incomplete for any reason other than Ecology's requirement that additional groundwater sampling be completed, the Contingency Period shall continue for up to an additional sixty (60) days to allow Purchaser to complete the RI/FS to Ecology's satisfaction. In the event Ecology determines the RI/FS is incomplete based upon the requirements for additional groundwater sampling, the Contingency Period shall continue for the period of time reasonably necessary to complete such groundwater sampling, subject to the overall limit on the Contingency Period (which, with respect to securing RI/FS approval only, may not be extended beyond 365 days). Purchaser agrees to diligently pursue Ecology's approval of the RI/FS.

(c) The Contingency Period shall expire thirty (30) days after Ecology determines that the RI/FS is complete unless, within that 30-day period, Purchaser submits to Ecology, a draft CAP for Ecology's review and approval.

(d) The Contingency Period shall expire two hundred seventy (270) days after it commences unless, within that 270-day period, a CAP is approved by Ecology; provided, that if Purchaser makes the fourth payment of \$20,000 as contemplated in Section 14.15 below, such time period will be extended to three hundred sixty-five (365) days; and provided further, that such time period may be extended beyond 365 days upon payment of additional earnest money

as provided for above.

(e) The Contingency Period shall expire ninety (90) days after it commences unless, within that 90-day period, Purchaser holds the first of the two public meetings described in Section 7.2 of this Agreement to receive feedback on its development plans (which meeting may be combined with public meeting requirements under MTCA).

(f) The Contingency Period shall expire thirty (30) days after Ecology determines that the RI/FS is complete unless, within that 30-day period, Purchaser submits a Master Use Permit ("MUP") Application for the Property to the City of Seattle.

(g) The Contingency Period shall expire sixty (60) days after Purchaser files its MUP Application unless, within that 60-day period, Purchaser holds the second of the two public meetings described in Section 7.2 of this Agreement to receive feedback on its development plans (which meeting may be combined with public meeting requirements under MTCA).

(h) The Contingency Period shall expire three hundred sixty-five (365) days after it commences unless extended as provided above, or shall terminate sooner upon the last to occur of the following: (i) a CAP has been approved by Ecology, (ii) Purchaser secures Remediation Cost Cap Insurance and Pollution Legal Liability Insurance coverage, and (iii) Purchaser receives a MUP for development of the Property as contemplated by this Agreement. In no event shall the Contingency Period exceed five hundred forty five (545) days.

Seller shall have the right to attend meetings with regulatory agencies as provided in Section 12.1 below, and Purchaser shall use its reasonable best efforts to provide prior notice to Seller of all such meetings.

Notwithstanding any other provision of this Agreement, Purchaser shall have the right to terminate this Agreement, without penalty, before the date Purchaser is required to make its initial payment of \$20,000 against the promissory note representing the Earnest Money Deposit as provided in Section 14.15 below.

5.2 Right of Entry. Purchaser and Purchaser's designated representatives or agents shall have the right, upon seventy-two (72) hours written notice to Seller and during reasonable hours, to enter the Property and conduct investigations and studies set forth in this Article 5, subject to the limitation on testing and sampling set forth herein (including Seller's prior written consent, such consent not to be unreasonably withheld), provided that (a) all such representatives or agents execute and deliver a Site Visit Release to Seller in the form attached as Exhibit 14 (provided, however, that in the event of a conflict between the Site Visit Release and this Agreement as it relates to access to or testing at or under the Property, this Agreement will control), (b) Purchaser shall be solely responsible for any injury or damage arising out of or related to the acts and omissions of its employees, contractors (of any tier), and agents who enter the Real Property as provided for in this Agreement, (c) Purchaser shall provide certification to Seller that its contractors and/or designated representatives (except as set forth below) have in place the following insurance policies (and Seller shall be named as additional insured on

policies required under (ii) and (iii)): (i) Workers' Compensation Insurance as required by federal and/or state law; (ii) Commercial General Liability Insurance in the amount of at least \$3 million, provided that only the general contractor shall have in place such coverage, and provided further that all subcontractors shall have in place Commercial General Liability Insurance in the amount of at least \$1 million; (iii) pollution liability in the amount of at least \$3 million, provided that only the general contractor shall have in place such coverage; and automobile liability in the amount of at least \$1 million (d) if required Purchaser shall secure a Special Use Permit pursuant to King County Code Section 14.46 and Seller shall provide reasonable assistance in securing the same; and (e) unless such requirement is expressly waived by Seller, the Real Property shall be returned to its prior condition in the event that any activities conducted in connection with this right of entry results in damage to or a change in condition of the Real Property.

5.3 Additional Investigation. Notwithstanding any other provision of this Agreement, the parties agree to the following allocation of certain additional investigation tasks to be performed prior to Closing: (a) County agrees to perform, at its sole cost and expense not to exceed Twenty Thousand and no/100 Dollars (\$20,000.00), additional site characterization as requested by Ecology with respect to shallow groundwater; (b) County agrees to pay fifty percent (50%) of the cost to prepare a computer model with respect to off-Property groundwater impacts due to shallow groundwater contamination at the Property, provided that the County's share of such cost shall not exceed Ten Thousand and no/100 Dollars (\$10,000.00), and (c) Purchaser shall be responsible for preparation of a Remedial Investigation report to be submitted to Ecology at Purchaser's sole cost and expense. Seller shall have the right to review and comment on all draft reports prior to submittal to Ecology, and shall have the right to participate in any discussions or meetings with Ecology with respect to the tasks defined in this Section 5.3.

ARTICLE 6

COVENANTS OF SELLER PENDING CLOSING

6.1 Conduct, Notice of Change. Seller covenants that, between the date hereof and the Closing, Seller shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date, and all covenants and obligations of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided for in this Agreement. Seller shall give Purchaser written notice of any material change in circumstances that would make any of the representations and warranties made in Article 3 or elsewhere in this Agreement untrue in any material respect. Such notice shall be given promptly upon the discovery of any such change in circumstances or failure to perform. Upon receipt of such notice, Purchaser shall have the right, at its sole election, to (a) proceed to Closing subject to the terms of such notice, (b) terminate this Agreement, or (c) request a delay in the Closing Date of not more than thirty (30) days to re-negotiate the specific representation, warranty, or covenant (but only such representation, warranty, or covenant) and prior to such delayed Closing, elect to proceed to Closing or terminate this Agreement.

ARTICLE 7

COVENANTS OF PURCHASER PENDING CLOSING

7.1 Conduct, Notice of Change. Purchaser covenants that, between the date hereof and the Closing, Purchaser shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date, and that all covenants of Purchaser set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided in this Agreement. Purchaser shall give Seller written notice of any material change in circumstances that would make any of the representations and warranties made in Article 3 or elsewhere in this Agreement untrue in any material respect, and notify Seller of any failure by Purchaser to perform its covenants. Such notice shall be given promptly upon the discovery of any such change in circumstances or failure to perform. Upon receipt of such notice, Seller shall have the right, at its sole election, to (a) proceed to Closing subject to the terms of such notice, (b) terminate this Agreement, or (c) request a delay in the Closing Date of not more than thirty (30) days to re-negotiate the specific representation, warranty, or covenant (but only such representation, warranty, or covenant) and prior to such delayed Closing, elect to proceed to Closing or terminate this Agreement.

7.2 Community Relations. At the request of Seller, Purchaser agrees to meet with the local community on not less than a total of two (2) occasions. The first such meeting shall occur prior to submitting an application for a Master Use Permit for the purpose of discussing the proposed remedial action and conducting a scoping meeting during the site design process and in order to obtain community input and feedback on the project and its operations, site design and aesthetics. The second such meeting shall occur after the MUP application has been submitted. Nothing in this Section 7.2 is intended to require that Purchaser hold more than two (2) meetings with the local community, nor is it intended to restrict Purchaser's ability to use any particular meeting or meetings for multiple purposes. By way of illustration and not limitation, Purchaser may choose to use one meeting both to secure community feedback as part of the Master Use Permit process, and to satisfy public participation requirements under the Model Toxics Control Act.

7.3 Purchaser's Obligation to Deliver Reports and Information to Seller. Prior to Closing Purchaser shall provide Seller with copies of all final reports (including, without limitation, geotechnical and environmental reports) at the same time as such may be delivered to Purchaser or any of its agents or representatives. The raw data including quality assurance and quality control for any tests or monitoring of conditions at or surrounding the Property that are performed by or at the request of Purchaser or anyone acting on Purchaser's behalf shall be provided by Purchaser at the earlier of sixty (60) days from the collection date or at the time the information is made available to Purchaser or Purchaser's agents or representatives. To the extent Purchaser has not previously done so, Purchaser shall deliver to Seller, within ten (10) days after the Closing or earlier termination of this Agreement, copies of all studies, reports and data relating to the Property and all correspondence between Purchaser and its representatives

and Ecology, the Seattle-King County Department of Public Health, the City of Seattle or any other governmental entity exercising or purporting to exercise regulatory authority over the Property relating to environmental conditions at the Property or the proposed remediation of the Property. This obligation shall survive closing and/or termination of this Agreement. Notwithstanding the foregoing, Purchaser shall be under no obligation to disclose to Seller any matters of a proprietary nature, such as marketing materials, financial information or documents or communications relating to Purchaser's proposed development of the Property.

7.4 Landscape Plan and Traffic Study. Purchaser's development shall provide a sidewalk along Fifth Avenue South and S. Sullivan Street which obligation shall survive Closing. Purchaser shall submit a landscape plan for the Property to Seller that will include a landscaped buffer on the perimeter of the Real Property and a riparian corridor along the "west ditch" (such riparian corridor to the extent required by the City of Seattle ordinance). The landscape plan shall be submitted to Seller for review and comment, and Seller shall provide any comments to Purchaser within ten (10) business days of receipt of such landscape plan. Purchaser agrees to engage a traffic consultant to complete a study which will make recommendations on ways to mitigate truck traffic east of SR 99 and on residential streets. Such landscape plan and study will be submitted as part of Purchasers' application for a Master Use Permit from the City of Seattle. The obligation set forth in the preceding sentence shall survive Closing.

7.5 Use of Environmental Consultants and Engineers. Purchaser agrees to provide Seller fifteen (15) business days advance notice of the names of any environmental consultants and environmental engineers who it intends to engage to design the environmental remediation systems, work with Ecology or any other regulatory agency and perform other services relating to the investigation or preparation or implementation of the CAP for the Property. Purchaser shall not engage for these purposes any environmental consultants or environmental engineers to whom Seller objects, in writing, during this fifteen (15) business day period. Seller shall not object to any environmental consultant or environmental engineer on unreasonable grounds. Notwithstanding the foregoing, neither Purchaser nor Purchaser's environmental consultants and environmental engineers shall hire R.W. Beck, Associated Earth Sciences, Incorporated, Aspect Consulting, LLC or Floyd|Snider as subconsultants or subcontractors.

7.6 Insurance. Purchaser shall procure Remediation Cost Cap Insurance and Pollution Legal Liability Insurance coverage prior to Closing. The form, amount and duration of the coverage shall be mutually acceptable to Purchaser and Seller. Purchaser shall cause Seller to be named as an additional named insured on all such policies. Purchaser agrees to provide to Seller copies of all applications for such insurance (save and except for confidential financial or other proprietary information), and shall provide regular updates on progress toward securing such insurance. Seller will, upon request by Purchaser, provide reasonable assistance to Seller in its attempts to secure insurance coverage. Information regarding the coverage secured by Purchaser shall be set forth on Exhibit 7 attached hereto prior to Closing.

ARTICLE 8

CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS

All obligations of Purchaser hereunder are subject to the fulfillment of each of the following conditions at or prior to the Closing, and Seller shall exert its reasonable best efforts to cause each such condition to be fulfilled:

8.1 Delivery of Documents. Seller shall have delivered to Escrow Agent at or prior to the Closing (or such earlier time as may be required by this Agreement) all documents required by the terms of this Agreement to be delivered to Purchaser.

8.2 Representations, Warranties and Covenants. All representations and warranties of Seller contained herein shall be true and correct in all material respects when made and as of the Closing Date, and Seller shall have fully performed all of its covenants contained herein.

8.3 Obligations. All obligations required by the terms of this Agreement to be performed by Seller at or before the Closing shall have been properly performed in all material respects.

8.4 Title. The Title Company shall be irrevocably committed to issue an owner's extended coverage policy of title insurance as described in Section 4.2 above.

ARTICLE 9

CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

All obligations of Seller to close on the Closing Date are subject to the fulfillment of each of the following conditions at or prior to the Closing, and Purchaser shall exert its best efforts to cause each such condition to be so fulfilled:

9.1 Delivery of Documents. Purchaser shall have delivered to Escrow Agent at or prior to the Closing all documents required by the terms of this Agreement to be delivered to Seller.

9.2 Representations, Warranties and Covenants. All representations and warranties of Purchaser contained herein shall be true and correct in all material respects when made and as of the Closing Date, and Purchaser shall have fully performed all of its covenants contained herein; provided, however, that the representations and warranties of Purchaser contained in Section 3.2(e) shall be true and correct in all material respects only as of the Closing Date.

9.3 Obligations. All obligations required by the terms of this Agreement to be performed by Purchaser at or before the Closing shall have been properly performed in all material respects, including without limitation the covenants set forth in Article 7.

9.4 Payment. Purchaser shall have paid the Purchase Price to Escrow Agent in immediately available funds.

9.5 Lender's Title Policy. The Title Company is irrevocably committed to issue a lender's coverage policy of title insurance containing no exceptions other than the usual printed exceptions.

ARTICLE 10

CLOSING AND ESCROW

10.1 Closing/Closing Date. The closing of the purchase and sale transaction contemplated by this Agreement (the "Closing") shall take place on the fifteenth (15th) day following expiration of the Contingency Period (the "Closing Date"). Upon execution of this Agreement, the parties agree to set up an escrow account with Chicago Title Insurance Company (the "Escrow Agent") and that the Escrow Agent shall serve as closing agent for the transaction contemplated herein. At the Closing, title, right and interest to the Purchased Assets shall pass to Purchaser and all risk of loss thereof shall be the responsibility of Purchaser. In the event the Closing does not occur on or before the Closing Date, either party may give notice of its intention to terminate this Agreement, in which event the obligation of each party to close the purchase and sale transaction contemplated hereby shall expire on the date of the giving of such notice, unless the failure to complete the Closing was caused by the default under or breach of this Agreement by such party. No such notice shall relieve either party of any liability it may have incurred, or may incur, for its default under or breach of this Agreement.

10.2 Prorations. All prorations, unless otherwise specifically provided for herein, shall be made as of the Closing Date.

(a) Seller shall pay its share of LIDs and assessments as set forth below, any real estate excise or other transfer tax due, the premium for issuance of a standard coverage policy of title insurance in the amount of the Purchase Price, one-half of the escrow fee charged by the Escrow Agent, and its own attorneys' fees. Purchaser shall pay its proportionate share of the Taxes prorated as set forth below, one-half of the escrow fee charged by the Escrow Agent, the premiums for the extended coverage portion of the owner's title insurance policy and any title insurance endorsements required by Purchaser, the recording fee for the Statutory Warranty Deed, and its own attorneys' fees. Except as otherwise provided in this Section 10.2, all other expenses hereunder shall be paid by the party incurring such expenses.

(b) Seller shall be responsible for all ad valorem taxes for any period prior to Closing and any LIDs and assessments which either exist on the Closing Date or would attach to the Property after Closing solely and exclusively by reason of the transfer of the Property to a non-municipal entity. To the extent that the amounts of such charges referred to in this subsection are unavailable at Closing or in the event of prorations made on the basis of erroneous information or clerical errors, a readjustment of these items shall be made within thirty (30) days after Closing, or as soon as practical after discovery of any erroneous information or clerical

error, but in no event more than ninety (90) days after Closing. Seller shall, on or before Closing, furnish to Purchaser and the Escrow Agent all information necessary to compute the prorations provided for in this subsection (b).

10.3 Seller's Delivery of Documents at Closing. At the Closing, Seller will deliver to Purchaser the following properly executed documents:

- (a) Statutory Warranty Deed conveying the Purchased Assets, delivered through recordation in King County, Washington;
- (b) A Bill of Sale duly executed by Seller in the form of Exhibit 16, attached hereto for any personal property;
- (c) Seller's Certificate of Non-Foreign status substantially in the form of Exhibit 17, attached hereto;
- (d) ALTA extended coverage owner's title insurance policy for the Real Property naming Purchaser as insured as required by Section 8.5;
- (e) Remediation Agreement (Exhibit 3); and
- (f) Agreement Regarding Claims (Exhibit 8).

10.4 Purchaser's Delivery of Documents and Purchase Price at Closing. At the Closing, Purchaser will pay to Seller cash or immediately available funds in the amount of the Purchaser Price, and will deliver to Seller the following properly executed documents:

- (a) Remediation Agreement (Exhibit 3);
- (b) Agreement Regarding Use of Real Property, Job Creation, and Leadership in Energy and Environmental Design (Exhibit 4);
- (c) Insurance Policies in a form consistent with the terms set forth in Exhibit 7; and
- (d) Agreement Regarding Claims (Exhibit 8).

ARTICLE 11

CONDEMNATION

11.1 Condemnation. As used herein, the term "condemnation" refers to a full or partial taking by any public, governmental, or private authority other than Seller under power of

eminent domain or a transfer in lieu thereof. If, subsequent to the date hereof and prior to the Closing, any portion of the Purchased Assets becomes the subject of any actual or threatened action or proceeding in the nature of or related to condemnation, Seller shall immediately notify Purchaser upon learning of any possible condemnation proceeding. Upon receipt thereof, the parties shall have the following termination rights: (a) in the event the condemnation proceedings seek to condemn seventy-five percent (75%) or more of the total Real Property area, then either Seller or Purchaser shall have sixty (60) days to determine whether it wishes to (i) proceed to close; or (ii) terminate this Agreement, and (b) in the event the condemnation proceedings seek to condemn less than seventy-five percent (75%) of the total Real Property area, then only Purchaser shall have sixty (60) days to determine whether it wishes to (i) proceed to close; or (ii) terminate this Agreement. If either party elects to terminate this Agreement as permitted by the preceding sentence, all condemnation proceeds shall be paid to Seller and Seller shall reimburse Purchaser for (a) all of its actual and reasonable out of pocket costs incurred after the date of this Agreement through the date on which the acquiring authority gives written notice of its intent to acquire the Real Property under threat of condemnation in obtaining the CAP or the MUP pursuant to Article V of this Agreement, (b) all other reasonable and necessary out of pocket costs incurred by Purchaser in development of the Real Property after the date of this Agreement through the date on which the acquiring authority gives written notice of its intent to acquire the Real Property under threat of condemnation, and (c) an amount equal to ten percent (10%) of the total amount of items (a) and (b). If Purchaser elects to proceed to close, Purchaser, as Seller's agent and at Purchaser's cost, shall handle all pre-closing condemnation proceedings, and both pre-closing condemnation proceeds and post-closing condemnation proceeds shall be paid to Seller and Purchaser as provided for in Section 11.2 below. In the event Purchaser elects to proceed to close as provided for in this Section 11.1, the Closing Date shall, at the option of Purchaser and at no cost to Purchaser, be extended an additional sixty (60) days. Seller covenants with Purchaser that Seller will not initiate any condemnation action affecting any portion of the Real Property or other Purchased Assets prior to the Closing Date.

11.2 Condemnation After Closing. In the event that condemnation proceedings are initiated with respect to any portion of the Purchased Assets within forty-two (42) months after the Closing Date, then the terms and conditions of this Section 11.2 shall apply; provided, however, that in the event Purchaser fails to complete remedial construction as provided for in Exhibit 3 to the Purchase Agreement (Remediation Agreement, Section 2), then the preceding time period shall be extended a like period of time not to exceed an additional six (6) months, or a total of forty-eight (48) months. The proceeds of any such condemnation proceeding, whether paid pursuant to judgment or settlement, shall be paid (a) first to reimburse Purchaser for all unreimbursed costs of defense (including attorneys' fees, expert witness fees, costs and expenses) relating solely to the defense of any condemnation proceeding, (b) next to Purchaser in the amount of the Purchase Price, (c) next to Purchaser in the amount of all remedial action costs (as defined by the Model Toxics Control Act and applicable regulations and case law, including Purchaser's reasonable internal project management costs for remedial actions, which project management costs shall in no event exceed ten percent (10%) of the remaining remedial action costs) paid by Purchaser, (d) next to Purchaser to reimburse Purchaser for the actual and reasonable cost of any improvements constructed by Purchaser on the Purchased Assets, less applicable depreciation. Purchaser shall also be entitled to an additional ten percent (10%) profit for entrepreneurial risk on the amounts payable under this subsection 11.2.(d), (e) next to Seller

in an amount not to exceed (to the extent proceeds are available) Ten and 531/1000 Dollars (\$10.531) per square foot of the condemned area of the Real Property less the amount of any Claims collected by Seller pursuant to the Agreement Regarding Claims between Seller and Buyer (attached as Exhibit 8 to this Agreement) prior to the date such condemnation proceedings are initiated and (f) next to Purchaser all remaining condemnation proceeds, including but not limited to any damages to the portion of the Real Property not condemned and improvements thereon. In the event the condemnation proceedings impact only a portion of the Real Property or Purchased Assets, then Purchaser's reimbursement under the terms of this section shall be pro rated based upon the area of the Real Property so condemned. If Purchaser (as defined in this Agreement) transfers all or any portion of its interest in the Real Property within forty-two (42) months of the Closing Date (as such period of time may be extended pursuant to the first sentence of this Section 11.2), Purchaser shall require the transferee to comply with the terms of this Section 11.2. Purchaser shall give written notice to Seller thirty (30) days prior to any transfer of all or part of its interest in the Real Property within such forty-two months (or longer, as provided for herein) period. The provisions of this Article 11 shall survive Closing and the transfer of the Purchased Assets and shall constitute a covenant running with the land, and shall be binding upon Purchaser and its successors and assigns.

ARTICLE 12

SELLER'S ASSISTANCE

12.1 Seller's Assistance. Seller hereby agrees to cooperate with Purchaser in its efforts to obtain permits, variances, and approvals for Purchaser's intended development of the Property. Seller also agrees to cooperate with Purchaser in its efforts to secure any permits, variances, or approvals as Purchaser shall deem useful or convenient, provided that the same are consistent with the Remediation Agreement and Purchaser's commitments regarding development of the Property as set forth herein. Seller may, at its own discretion, attend any meetings with the regulatory agencies including but not limited to the Washington State Department of Ecology ("Ecology") or any other regulatory agency. Seller will be permitted to comment on Purchaser's remediation plan for the Contamination existing at, on, or under the Property as of the Effective Date of this Agreement (including any long term site monitoring and operations plan), provided however, that Seller agrees that it will not propose any remedy that materially differs from the presumptive remedies previously outlined by Seller to Ecology. In the event Purchaser elects to pursue remediation of the Real Property via a consent decree, Seller may participate in the process and may elect in its sole discretion to become a party to such a consent decree consistent with the terms and intent of this Agreement. If Seller elects to participate in and become a party to a consent decree, Seller agrees that the Purchase Price will be adjusted, if necessary, in a manner that is consistent with the incremental costs that are attributable to Seller's specific requirements associated with said consent decree that are not otherwise established in the Remediation Agreement or required by Ecology or other regulatory agency. Notwithstanding the foregoing sentence, Seller shall not be responsible for any increase in Purchaser's costs for requirements that may be imposed by a division or department of Seller

in its capacity as a regulatory agency with oversight of the remediation of the Real Property to be conducted by Purchaser.

ARTICLE 13

TERMINATION

13.1 Termination by Either Party. Either party may terminate this Agreement if a condition to its obligation to consummate the transactions contemplated by this Agreement as set forth in Articles 8 and 9 has not been satisfied by the Closing Date. In that event, if neither party is in default under this Agreement, the parties shall have no further obligations or liabilities to one another and all documents delivered into escrow shall be returned to the appropriate party.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Nature and Survival of Representations and Warranties. Each statement, representation, warranty, indemnity, covenant, and agreement made by Seller and Purchaser in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Purchaser pursuant to this Agreement or in connection herewith shall survive the Closing Date unless a different time period is expressly provided for in this Agreement and all such statements are made only to and for the benefit of the parties hereto, and shall not create any rights in other persons.

14.2 Knowledge of Seller and Purchaser. As used herein, the expressions "knowledge," "known to us" or "actual knowledge" with reference to matters of fact refers in the case of Seller to Anne Holmes, Sr. Engineer, Department of Natural Resources and Parks, and in the case of Purchaser to Robert Howie, Managing Member, South Park Property Development, LLC, without a duty to investigate or inquire further.

14.3 Payment of Brokers. Seller and Purchaser shall each pay the fee owed to their respective broker, finder, agent, or similar intermediary. Seller and Purchaser shall each defend, indemnify and hold the other harmless from any and all claims for compensation made by any broker, finder, agent, or similar intermediary claiming to have acted on behalf or at the request of Seller or Purchaser, as the case may be.

14.4 Default and Attorneys Fees. In the event of default by either party to this Agreement, the non-defaulting party shall have the right to bring an action for the remedies available to such party pursuant to this Agreement. In the event of any litigation hereunder, the Superior Court of any county adjoining King County, Washington shall have the exclusive jurisdiction and venue. In the event either party brings an action to enforce this Agreement, the prevailing party of such action shall be entitled to recover from the other party all costs incurred in connection therewith, including reasonable attorneys' fees.

14.5 Time is of the Essence. Time is of the essence in the performance of this Agreement.

14.6 Notices. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered, sent by overnight courier or by facsimile utilizing a facsimile machine which electronically confirms delivery thereof. All notices shall be addressed to the parties at the addresses set forth below or at such other addresses as any parties may specify by notice to all other parties and given as provided herein:

If to Purchaser: Robert Howie
 165 N.E. Juniper Street, Suite 100
 Issaquah, Washington 98027

With copies to: Rodney L. Brown, Jr.
 Cascadia Law Group PLLC
 1201 Third Avenue, Suite 320
 Seattle, Washington 98101

If to Seller: King County Property Services Division
 King County Administration Building
 500 Fourth Avenue, Room 500
 Seattle, WA 98104

 King County Solid Waste Division
 Attn: Kevin Kiernan, Engineering Services Manager
 201 South Jackson Street, Suite 701
 Seattle, WA 98104

With copies to: King County Prosecuting Attorney
 Civil Division – Attn: Kathryn Killinger
 King County Administration Building
 500 Fourth Avenue, Room 900
 Seattle, WA 98104

 King County Department of Natural Resources and Parks
 Attn: Anne Holmes, Sr. Engineer
 201 South Jackson, Suite 701
 Seattle, WA 98104

14.7 Integration; Amendment. This writing constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto.

14.8 Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

14.9 Binding Effect. The Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and permitted assigns.

14.10 Captions. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections.

14.11 Cooperation. Prior to and after the Closing, the parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

14.12 Governing Law. This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions.

14.13 Non-Merger. The terms and provisions of this Agreement will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

14.14 Assignment. Purchaser shall not assign this Agreement without Seller's prior written consent. Seller is relying upon Purchaser's experience and contacts in assisting in the development of a remediation budget and in completing a remediation plan. Seller shall not be required to consent to any assignment unless in its sole discretion Seller is satisfied that Purchaser will remain involved in completing the remediation or that the persons responsible for completing the remediation are acceptable to Seller.

14.15 Earnest Money Deposit. Within three (3) business days after Purchaser has executed this Agreement, an Earnest Money Deposit in the form of a promissory note in the amount of Eighty Thousand and no/100 Dollars (\$80,000) in favor of Seller shall be delivered by Purchaser to the Escrow Agent at Chicago Title Insurance Company. All interest accruing in the account from the date of deposit until termination of the Contingency Period shall remain the property of Purchaser. Within thirty (30) days after the start of the Contingency Period, Purchaser shall pay to the Escrow Agent the sum of Twenty Thousand and no/100 Dollars (\$20,000) against the promissory note representing the Earnest Money Deposit, and shall pay an additional Twenty Thousand and no/100 Dollars (\$20,000) ninety (90) days, one hundred eighty days (180) days, and two hundred seventy (270) days after the start of the Contingency Period, unless this Agreement has been earlier terminated as provided for herein. All such payments shall be in immediately available funds, and paid into an account opened by Escrow Agent in the name of Seller. Escrow Agent shall immediately pay over such funds to Seller, which shall be (a) non-refundable, and (b) applicable to the Purchase Price. In the event Purchaser terminates this Agreement prior to expiration of the Contingency Period, the promissory note shall be returned to Seller marked "paid in full." Any additional earnest money deposited by Purchaser as provided in Section 5.1 of this Agreement shall be in immediately available funds, and paid

into the account opened by Escrow Agent in the name of Seller. Escrow Agent shall immediately pay over such additional earnest money to Seller, which shall be (a) non-refundable, and (b) applicable to the Purchase Price. In the event the Closing fails to occur when specified herein because of a default under or breach of this Agreement by Purchaser, if Seller terminates this Agreement any amounts due and owing under the promissory note representing the original Earnest Money Deposit shall immediately be paid to Escrow Agent and shall be forfeited to Seller as liquidated damages and Seller's sole and exclusive remedy. In such event, the Escrow Agent shall promptly transfer the Earnest Money Deposit and all interest accrued thereon to Seller. PURCHASER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT, IN THE EVENT OF A DEFAULT UNDER OR BREACH OF THIS AGREEMENT BY PURCHASER, SELLER WILL SUFFER DAMAGES IN AN AMOUNT WHICH WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN; AND THAT, AFTER NEGOTIATION, THE EARNEST MONEY DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF SUCH DAMAGES, AND RETENTION OF THE EARNEST MONEY DEPOSIT BY SELLER UNDER THOSE CIRCUMSTANCES CONSTITUTES A LIQUIDATED DAMAGES REMEDY AND SELLER'S SOLE AND EXCLUSIVE REMEDY.

14.16 Remedies of Purchaser. In the event the Closing fails to occur because of a default by Seller, Purchaser's remedy shall be limited to either (a) return of all earnest money paid to Seller and all earnest money still on deposit with Escrow Agent, or (b) specific performance.

14.17 Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

14.18 Disclosures. The disclosure of information by Seller or Purchaser pursuant to any provision of this Agreement shall constitute disclosure for all provisions hereof.

14.19 Saturday, Sunday, and Legal Holidays. If the time for performance of any of the terms, conditions and provisions hereof shall fall on a Saturday, Sunday or legal holiday (State of Washington or federal holiday), then the time of such performance shall be extended to the next business day thereafter.

14.20 Exhibits. The following exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference.

- Exhibit 1: Legal Description
- Exhibit 2: King County Motion/Ordinance
- Exhibit 3: Remediation Agreement
- Exhibit 4: Agreement Regarding Use of Real Property, Job Creation, and Leadership in Energy and Environmental Design
- Exhibit 5: [Reserved]
- Exhibit 6: [Reserved]
- Exhibit 7: Schedule of Insurance Coverages

15292

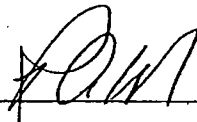
- Exhibit 8: Agreement Regarding Claims
- Exhibit 9: [Reserved]
- Exhibit 10: [Reserved]
- Exhibit 11: [Reserved]
- Exhibit 12: Disclosure Schedule
- Exhibit 13: Statutory Warranty Deed
- Exhibit 14: Site Visit Release
- Exhibit 15: List of Approved Environmental Consultants and Environmental Engineers
- Exhibit 16: Bill of Sale/Personal Property
- Exhibit 17: FRPTA Certificate

14.21 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement on the last date written above:

PURCHASER:
South Park Property Development LLC

SELLER:
King County, a Municipal Corporation of the
State of Washington

By: 
Title: Managing Member

By: _____
Title: _____

Exhibit 1

Legal Description

15292

PARCEL A:

Portion of Government Lots 2 through 4, inclusive, and of the southwest quarter of the northwest quarter of Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of George Holts Donation Claim No. 51, as established by Superior Court Case No. 14450, 400 feet north of the southwesterly corner thereof;

thence south along said west line 400 feet to the south line of said Donation Claim; thence east along said south line to the west line of A. Hograve's Donation Claim No. 37;

thence south along the last described west line to the production west of the centerline of Sullivan Street;

thence west along said produced line to the east line of 1st Avenue South, as established by Ordinance No. 21498;

thence north along said east line 39.56 feet;

thence north $66^{\circ}52'24''$ east 562.14 feet;

thence north $16^{\circ}56'6''$ west 861.57 feet;

thence north $24^{\circ}43'54''$ east 35.17 feet;

thence north $64^{\circ}14'54''$ east 98 feet;

thence easterly along a straight line to the point of beginning;

EXCEPT portion thereof described as follows:

Beginning at the intersection of a line 794 feet west of and parallel with the west line of A. Hograve's Donation Claim No. 37 and the production west of the centerline of Sullivan Street;

thence west along said produced line to the east line of 1st Avenue South, as established by Ordinance No. 21498;

thence north along said east line 39.56 feet;

thence north $66^{\circ}52'24''$ east 562.14 feet;

thence southeasterly along a straight line to the beginning;

AND EXCEPT that portion conveyed to the City of Seattle by Quit Claim Deeds recorded as Recording Numbers 5947050 and 6240807;

AND EXCEPT that portion lying southwesterly of the northeasterly line of Occidental Avenue South (Road No. 51);

AND EXCEPT that portion thereof described as follows:

15292

That portion of Government Lot 4, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of Geo. Holt Donation Claim No. 51, 516.36 feet south of the north line of Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington;
thence south 2°3'26" west along said line 400 feet;
thence north 89°53'36" east along south line of said Donation Claim 73.16 feet;
thence south 0°35'49" west along a line parallel to and 794 feet west of the west line of A. Hograve Donation Claim No. 37, 350 feet;
thence westerly to a concrete monument on the east line of Chas. Prentice Tract;
thence north 16°56'06" west 705.57 feet;
thence north 24°43'54" east 35.17 feet;
thence north 64°14'54" east 98 feet;
thence easterly to the point of beginning.

PARCEL B:

That portion of Government Lot 4, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of Geo. Holt Donation Claim No. 51, 516.36 feet south of the north line of Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington;
thence south 2°3'26" west along said line 400 feet;
thence north 89°53'36" east along south line of said Donation Claim 73.16 feet;
thence south 0°35'49" west along a line parallel to and 794 feet west of the west line of A. Hograve Donation Claim No. 37, 350 feet;
thence westerly to a concrete monument on the east line of Chas. Prentice Tract;
thence north 16°56'06" west 705.57 feet;
thence north 24°43'54" east 35.17 feet;
thence north 64°14'54" east 98 feet;
thence easterly to the point of beginning;
EXCEPT any portion thereof lying within Occidental Avenue;
AND EXCEPT that portion conveyed to the City of Seattle by Quit Claim Deed recorded as Recording Number 5947050.

END OF LEGAL DESCRIPTION

15292

Exhibit 2

King County Motion/Ordinance

[to be attached by the parties]

June 27, 1996
ECODEV.DOC (VN:clt)

Introduced By: Ron Sims

Proposed No.: 96 - 535

MOTION NO. 9885

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

A MOTION relating to economic development, supporting the county executive's development of a Request for Proposal on 19.6 acres (Tax Lot 322404-9005) site owned by King County as part of a public/private partnership project.

WHEREAS, King County owns a 19.6 acre site (Tax Lot 322404-9005) located adjacent to Seattle's South Transfer Station, and

WHEREAS, the property was purchased out of tax title status by King County in 1957 and leased to Seattle for a fire dump site from 1958-1978, and

WHEREAS, approximately two and one half acres of the nineteen acre site has been and is currently rented on a month to month basis, and

WHEREAS, the majority of the site is currently under-utilized, and yearly revenue generated from month to month rent is \$31,219.92, and

WHEREAS, the executive is responsible for the management of all real property owned or leased by the county, except as provided in K.C.C. 4.56.080 ensuring, where applicable, that properties generate revenues, closely approximating fair market value, and

WHEREAS, the existing uses on the site does not generate revenue closely approximating fair market value, and

1 WHEREAS, offering the surplus property for joint -
2 development and/or sale, as being proposed by the executive
3 and the economic development and regional governance
4 committee will minimize under-utilization of this publicly
5 owned property, and

6 WHEREAS, King County's comprehensive plan policy ED 501
7 encourages King County government to foster the development
8 and use of private/public partnerships to implement economic
9 development policies, programs and projects, and

10 WHEREAS, on June 13, 1996, the budget and strategic
11 planning division, economic development section presented to
12 the council's economic development and regional governance
13 committee a timeline for the RFP for its consideration and no
14 objections were expressed by the members;

15 NOW, THEREFORE BE IT MOVED by the Council of King
16 County:

17 The economic development and regional governance
18 committee supports the county executive in the development of
19 a Request for Proposal (RFP) for the subject property. The
20 RFP shall encourage the development of family wage jobs
21 through the participation by private and public development
22 communities to create alternatives to the under-utilization

1 of the site. The RFP should be developed so as to prioritize
 2 family wage employers in the manufacturing and industrial
 3 sectors who are being displaced by governmental actions.

4 PASSED by a vote of 13 to 0 this 1st day of
 5 July, 1996.

6 KING COUNTY COUNCIL
 7 KING COUNTY, WASHINGTON

8 Louise Miller
 9 Vice Chair

10 ATTEST:

11 Gerald A. Peterson
 12 Clerk of the Council

13 Attachments: Timeline

14

Exhibit 3

Remediation Agreement

This Remediation Agreement is entered into this ___ day of _____, 2005, by and between King County, a municipal corporation of the State of Washington, and its Custodial Agent, King County Solid Waste Division, Department of Natural Resources and Parks (collectively, "County") and South Park Property Development, LLC ("Purchaser"). Capitalized terms not defined in this Remediation Agreement shall have the meaning ascribed to them in that certain Real Estate Purchase and Sale Agreement ("Purchase Agreement") of even date entered into by and between County (as Seller) and Purchaser (as Buyer).

A. Purchaser has agreed to purchase the Real Property and other improvements pursuant to the terms of the Purchase Agreement. The Real Property was formerly operated as a landfill by the City of Seattle, and environmental contamination has been documented at the Real Property.

B. County has agreed to sell the Real Property to Purchaser based in part upon Purchaser's agreement to take reasonable and necessary actions at the Real Property to remediate contamination consistent with MTCA.

Now, therefore, based upon the terms and conditions set forth below and for good and valuable consideration, it is hereby agreed:

1. Remediation. Purchaser shall remediate the Property consistent with the requirements of a Cleanup Action Plan ("CAP") to be approved by the Washington State Department of Ecology ("Ecology") under the Model Toxics Control Act ("MTCA"), RCW 70.105D et seq. and WAC 173-340 et seq. In formulating the CAP, Purchaser shall consider the applicable regulatory requirements of MTCA, the Washington Administrative Code (WAC) Sections 173-340, et seq. and WAC 173-304, et seq., the Resource Conservation Recovery Act (RCRA) 42 USC Section 6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 USC Section 9601 et seq., and all other applicable federal, state and local laws and regulations. Notwithstanding the foregoing, after approval of the CAP by Ecology, the County shall not bring or cause any other agency to bring an enforcement action pursuant to RCRA, CERCLA or like federal, state or local laws or regulations with respect to remediation of the Property.

2. Best Efforts. Purchaser shall use commercially reasonable best efforts to complete design and construction of the cleanup action as required by the CAP, within two (2) years of Closing; provided, however, that any unreasonable delays caused by any federal, state, county or local agency shall correspondingly extend the completion date.

3. County Participation. County may, at its own discretion, attend any meetings with the regulatory agencies including but not limited to Ecology or any other regulatory agency. County will be permitted to comment on Purchaser's remediation plan for the Contamination

existing at, on, or under the Property as of the Effective Date of this Agreement (including any long term site monitoring and operations plan), provided however, that County agrees that it will not propose any remedy that materially differs from the presumptive remedies previously outlined by County to Ecology. In the event Purchaser elects to pursue remediation of the Real Property via a consent decree, County may participate in the process and may elect in its sole discretion to become a party to such a consent decree consistent with the terms and intent of this Agreement. If County elects to participate in and become a party to a consent decree, County agrees that the Purchase Price will be adjusted, if necessary, in a manner that is consistent with the incremental costs that are attributable to County's specific requirements associated with said consent decree that are not otherwise established in the Remediation Agreement or required by Ecology or other regulatory agency. Notwithstanding the foregoing sentence, County shall not be responsible for any increase in Purchaser's costs for requirements that may be imposed by a division or department of County in its capacity as a regulatory agency with oversight of the remediation of the Real Property to be conducted by Purchaser.

4. Purchaser's Assets at Closing. At Closing, Purchaser shall have net assets of no less than Two Million and no/100 Dollars (\$2,000,000.00). Purchaser shall, to the extent practicable using Purchaser's commercially reasonable best efforts, use so much of its invested capital and borrowed funds to diligently pursue remediation of the Property. Purchaser shall also, as a condition to any transfer of the Property within five (5) years of Closing, secure all subsequent purchasers' agreement to assume the Purchaser's obligations under this Agreement, and to take such steps as are reasonable and necessary to ensure that the obligations under this Agreement are deemed to touch and concern, and to run with, the Property.

5. Long Term Monitoring. Purchaser shall provide County with results of all monitoring required pursuant to the CAP.

6. Reports. Purchaser shall provide County with copies of all final reports at the same time as such may be delivered to Purchaser or any of its agents or representatives. The raw data including quality assurance and quality control for any tests or monitoring of conditions at or surrounding the Property that are performed by or at the request of Purchaser or anyone acting on Purchaser's behalf shall be provided to County at the earlier of sixty (60) days from the collection date or at the time the information is made available to Purchaser or Purchaser's agents or representatives.

7. Liability. Purchaser and its successors and assigns shall have no claim against County for first party property damage or for first party injuries to persons from or arising out of the condition of the Purchased Assets at Closing. Purchaser and its successors and assigns shall defend, hold harmless, and indemnify Seller from and against all costs and expenses arising out of or related to investigation, remediation, or monitoring at the Property (whether or not required by the CAP) and all claims that arise out of Purchaser's actions following Closing related to remediation, development, and subsequent use and enjoyment of the Property, including any exacerbation of Contamination existing at, on, or under the Property as of the Closing Date or any change in the condition of the Property; provided however, that Purchaser shall not defend, hold harmless, or indemnify County from or against any claims that arise out of contribution or cost recovery actions that are pursued by County pursuant to rights reserved by

County in the Purchase Agreement and assigned to County in the Assignment of Claims; and provided further, that the County shall have the burden of proving that Purchaser has exacerbated any Contamination existing at, on or under the Property as of the Closing Date but shall not have any prior duty to defend Purchaser against any claims. County shall retain liability for claims for any third party property damage or for third party injuries to person (including costs and expenses arising out of or related to investigation, remediation, or monitoring required by any third party, including Ecology or other regulatory agency, with respect to groundwater that migrates or has migrated from the Property, except that Purchaser shall be liable for any on-Property remedial actions and any off-Property groundwater monitoring that Ecology requires in the CAP as originally approved by Ecology or as amended within one year after commencement of groundwater monitoring under the CAP) that arise out of County's ownership and use of the Property; provided, however, that County shall not be liable if it proves that such claims arise out of groundwater that has migrated from the Property as a result of remediation, development, or subsequent use and enjoyment of the Property, including any exacerbation of Contamination existing at, on, or under the Property as of the Closing Date or any change in the condition of the Property following Closing. In addition, County shall retain liability for any and all claims that arise out of contribution or cost recovery actions ~~reserved by Seller in the Purchase Agreement and assigned to County pursuant to rights reserved by Seller in the Purchase Agreement~~ in the Agreement

8. Release. Subject only to the express requirements of this Remediation Agreement, Seller and Purchaser hereby release each other from any and all claims (including but not limited to suits for contribution or cost recovery under CERCLA or MTCA) arising out of or related to investigation, remediation, or monitoring of environmental contamination at the Property (whether or not required by the CAP) existing as of the date of Closing under the Purchase Agreement. In addition, County hereby releases Purchaser from any and all claims for third party property damage or for third party injuries to person (including, but not limited to, costs and expenses arising out of or related to investigation, remediation, or monitoring required by any third party, including Ecology or other regulatory agency, with respect to groundwater that migrates or has migrated from the Property, except that County does not release Purchaser from liability for any on-Property investigation, remediation, or monitoring or any off-Property groundwater monitoring that Ecology requires in the CAP as originally approved by Ecology or as amended within one year after commencement of groundwater monitoring under the CAP) that arise out of County's ownership and use of the Property; provided, however, County does not release Purchaser to the extent that such claims arise out of or are the result of Purchaser's actions following Closing, and County shall have the burden of proving the same. Nothing in this Section 8 shall be deemed a release or waiver of County's rights under Section 5.2 of the Purchase Agreement.

9. Miscellaneous.

9.1 Binding Obligation. This Agreement shall be binding upon the parties and their respective successors and assigns. Purchaser shall not transfer the Property without the express assumption of all rights and obligations under this Agreement by the transferee, and any purported transfer of the Property without such written assumption by the transferee shall be null

and void. The obligations of Purchaser under this agreement shall touch and concern the Property and run with the Property.

9.2 Attorneys' Fees. In any action or proceeding arising out of or relating to this Agreement, the substantially prevailing party shall be entitled to recover all costs of suit and of appeal, including reasonable attorneys' fees, costs and expenses.

9.3 Further Assurances. Each of the parties hereto agrees to execute and deliver any and all documents and to take such other steps as may be reasonably necessary or appropriate to accomplish the results intended by the parties herein.

9.4 Entire Understanding. This Agreement, the Purchase and Sale Agreement and all exhibits thereto represent the entire understanding of the parties with respect to the subject matter hereof and supersede all correspondence, memoranda, conversations or other communications with respect thereto.

9.5 Headings. The section headings in this Agreement are intended solely for convenience and should not have any effect in the construction and interpretation thereof.

Representation by Counsel. Each of the parties hereto has engaged counsel, and each participated in the negotiation and drafting of this Agreement. Neither party shall be entitled to the benefit of any presumptions in interpreting the terms of this Agreement based upon its drafting.

9.7 Severability. The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Agreement, on its face or as applied to any party, person or circumstance, is or becomes unenforceable to any extent, such provision shall be enforced to the greatest extent permitted by applicable law, and the remainder of this Agreement and the application of that provision to other persons, circumstances, or extent, will not be impaired.

9.8 Choice of Law. This Agreement shall be governed by and interpreted under the laws of the State of Washington without regard to conflict of law principles.

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

PURCHASER:
South Park Property Development LLC

SELLER:
King County, a Municipal Corporation of the State of Washington

By: [Signature]

By: _____

Title: Managing Member

Title: _____

15292

Exhibit 4

**Agreement Regarding Use of Real Property, Job Creation,
and Leadership in Energy and Environmental Design**

This Agreement Regarding Use of Real Property, Job Creation, and Leadership in Energy and Environmental Design ("Agreement") is entered into this ___ day of _____, 2005, by and between King County, a municipal corporation of the State of Washington, and its Custodial Agent, King County Solid Waste Division, Department of Natural Resources and Parks (collectively, "County") and South Park Property Development, LLC ("Purchaser"). Capitalized terms not defined in this Agreement shall have the meaning ascribed to them in that certain Real Estate Purchase and Sale Agreement ("Purchase Agreement") of even date entered into by and between County (as Seller) and Purchaser (as Buyer).

Now, therefore, based upon the terms and conditions set forth below and for good and valuable consideration, it is hereby agreed:

1. Property Use.

1.1 Purchaser shall use commercially reasonable best efforts to lease the Real Property for use as a casting facility intended to facilitate concrete needs for, among other things, significant public projects in the Seattle/King County area. If leased for use as a casting facility, the Real Property would include 30,000 feet (more or less) of building space for covered casting areas, offices, and support facilities.

1.2 If Purchaser is unable through the use of commercially reasonable best efforts to lease the Real Property for use as a casting facility, then Purchaser shall lease the Real Property for a use that:

1.2.1 complies with all institutional controls described in a restrictive covenant required by Ecology;

1.2.2 is not inconsistent with the Greater Duwamish Manufacturing and Industrial Center Plan; and

1.2.3 conforms with the uses described in this Section 1.2.3 as allowed by Seattle Municipal Code ("SMC") 23.50.012 Chart A for Industrial Uses ("Code") as follows:

1.2.3.1 Not less than sixty percent (60%) of the total developable area of the Real Property shall be dedicated to the following uses as defined in the Code:

I = Manufacturing

II = High - Impact Uses

III - A = Retail, personal and household sales and services

III - C = Nonhousehold sales and services

III - D = Office

1.2.3.2 No greater than forty percent (40%) of the total developable area of the Real Property shall be dedicated to the following uses as defined in the Code:

Equal or less than 40%

III - E -2 = Participant sports

VI - A = Institute for advanced study

VI - I = Vocational or fine arts school

VI - K = Religious facility

XI = Open Space

2. Job Creation.

2.1 Purchaser acknowledges that Seller has a goal of achieving fifteen percent (15%) apprentice labor on construction projects. Purchaser supports this goal and agrees to use reasonable efforts to achieve this goal and to encourage its contractors working on the Real Property to achieve this goal, not only in connection with the construction of improvements on the Real Property, but also in connection with any remediation work required at the Real Property under the CAP.

2.2 Purchaser agrees to include in any initial (but not subsequent) lease a provision that during the first three hundred and sixty (360) days of the tenant's occupancy, if the tenant hires new entry level positions, the tenant will use the King County Office of Business Relations and Economic Development (KCOBRED) as its first source of employee referral and to give the KCOED seven (7) business days notice of any such openings to enable KCOBRED to provide the tenant with resumes of potentially qualified applicants. Notwithstanding the foregoing, all hiring decisions shall be in the sole discretion of the tenants. This obligation shall survive Closing. In addition to the foregoing, Purchaser shall provide each initial tenant with an informational packet supplied by the KCOBRED describing its various job programs and the potential benefits to employers.

2.3 Purchaser agrees to use commercially reasonable best efforts, in connection with the King County Office of Business Relations and Economic Development, to place displaced businesses as tenants on the Real Property.

3. LEED Commitment. Purchaser will use commercially reasonable best efforts to certify the project using the US Green Building Council LEED ("Leadership in Energy and Environmental Design") Rating System 2.0, et seq.

4. Covenant Running with the Real Property. The obligations set forth in this Agreement touch and concern the land and shall be deemed to run with the Real Property. The Seller may record this Agreement as a covenant; provided, however, that the provisions of this Agreement shall expire on the 10th (tenth) anniversary of the Effective Date of this Agreement.

5. Miscellaneous.

5.1 Binding Obligation. This Agreement shall be binding upon the parties and their respective successors and assigns. Purchaser shall not transfer the Property without the express assumption of all rights and obligations under this Agreement by the transferee, and any purported transfer of the Property without such written assumption by the transferee shall be null and void. The obligations of Purchaser under this agreement shall touch and concern the Property and run with the Property, as more fully set forth in Section 4 above.

5.2 Attorneys' Fees. In any action or proceeding arising out of or relating to this Agreement, the substantially prevailing party shall be entitled to recover all costs of suit and of appeal, including reasonable attorneys' fees, costs and expenses.

5.3 Further Assurances. Each of the parties hereto agrees to execute and deliver any and all documents and to take such other steps as may be reasonably necessary or appropriate to accomplish the results intended by the parties herein.

5.4 Entire Understanding. This Agreement, the Purchase and Sale Agreement and all exhibits thereto represent the entire understanding of the parties with respect to the subject matter hereof and supersede all correspondence, memoranda, conversations or other communications with respect thereto.

5.5 Headings. The section headings in this Agreement are intended solely for convenience and should be given no effect in the construction and interpretation thereof.

5.6 Representation by Counsel. Each of the parties hereto has engaged counsel, and has participated in the negotiation and drafting of this Agreement. Neither party shall be entitled to the benefit of any presumptions in interpreting the terms of this Agreement based upon its drafting.

5.7 Severability. The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Agreement, on its face or as applied to any party, person or circumstance, is or becomes unenforceable to any extent, such provision shall be enforced to the greatest extent permitted by applicable law, and the remainder of this Agreement and the application of that provision to other persons, circumstances, or extent, will not be impaired.

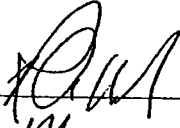
5.8 Choice of Law. This Agreement shall be governed by and interpreted under the laws of the State of Washington without regard to conflict of law principles.

15292

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

PURCHASER:
South Park Property Development LLC

COUNTY:
King County, a Municipal Corporation of the State of Washington

By: 

By: _____

Title: Managing Member

Title: _____

15292

Exhibit 5

[RESERVED]

15292

Exhibit 6

[RESERVED]

15292

Exhibit 7

Schedule of Insurance Coverages
[TO BE COMPLETED PRIOR TO CLOSING]

Exhibit 8

Agreement Regarding Claims

This Agreement Regarding Claims ("Agreement") is made and entered into this ___ day of _____, 2005, by and between King County, a municipal corporation of the State of Washington, and its Custodial Agent, King County Solid Waste Division, Department of Natural Resources (collectively, "County") and South Park Property Development, LLC ("Purchaser").

RECITALS:

A. County and Purchaser have entered into a Purchase and Sale Agreement dated _____ ("Purchase Agreement") with respect to that certain real property commonly known as the South Park Custodial Landfill (the "Property"), as more fully described in the Purchase Agreement. The Property was formerly operated as a landfill by the City of Seattle, and environmental impacts and the presence of Hazardous Substances (as defined below), including but not limited to soil and groundwater contamination and methane gas, have been documented at the Property as of the Effective Date (as defined below) ("Contamination").

B. Purchaser will incur remedial action costs associated with the investigation, remediation, monitoring, reporting and other activities arising out of Contamination at, under, on and near the Property (collectively, together with all other costs recoverable under Environmental Laws (as defined below), common law and equity, "Remedial Action Costs"). In consideration for the sale of the Property, Purchaser desires to assign to County all of its rights to recover Remedial Action Costs incurred in connection with the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Purchaser hereby agree as follows:

1. Assignment.

1.1 Assignment of Claims. Purchaser hereby sells, assigns, and conveys to County, and County hereby purchases and assumes from Purchaser, all of Purchaser's right, title and interest in and to (a) all claims, causes of action, and rights to recover Remedial Action Costs (including attorneys' fees, costs and expenses), obtain declaratory relief, and enforce and secure all other rights and remedies that Purchaser has or may have arising out of or related to Contamination at Property pursuant to the Model Toxics Control Act ("MTCA"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and all other applicable federal, state and local environmental laws and regulations ("Environmental Laws"), and (b) all claims, causes of action, and rights to recover Remedial Action Costs (including attorneys' fees, costs and expenses), obtain declaratory relief, and enforce and secure all other rights and remedies that Purchaser has or may have arising out of or related to Contamination at Property pursuant to common law and equity (such claims, causes of action

and rights as set forth in subparts (a) and (b), collectively, the "Claims"). Purchaser further assigns to County all proceeds from any and all settlements, judgments, payments and other funds arising out of or resulting from Claims, subject to the limitations set forth in this Agreement. The Claims shall be limited to costs incurred to remedy Contamination at, under, and migrating from the Property as of the date of the closing of the purchase and sale transaction contemplated by the Purchase Agreement.

1.2 Effective Date. This Agreement shall become effective without further action by either party immediately after the lawful transfer of title to the Property from County to Purchaser ("Effective Date").

2. Attorney-in-Fact.

2.1 Appointment. Purchaser hereby appoints County as its attorney-in-fact for the limited purpose of bringing any or all of the Claims. Solely in connection with the Claims, County shall have the right to bring any court proceeding or other action in the name of Purchaser, settle the Claims, and do and perform each and every act and thing whatsoever which may be necessary or proper to be done only with respect to the exercise of the powers and authority granted hereby to County as fully to all intents and purposes as Purchaser might or could do, in all cases subject to the terms and conditions of this Agreement.

2.2 Independent of Assignment. In the event that, for any reason, all or a portion of the assignment provided for in Section 1 above is held to be invalid or unenforceable, then the appointment of County as attorney-in-fact shall serve as an independent and severable basis for County to prosecute the claims in the name of Purchaser. Purchaser agrees to pay to County all proceeds from any and all judgments, settlements, payments and other funds arising out of or resulting from Claims, subject to the limitations, reimbursement, and other terms and conditions set forth in this Agreement.

3. Indemnification and Hold Harmless. County shall indemnify Purchaser against and hold harmless Purchaser from all out-of-pocket expenses and damages incurred as a result of County's actions to prosecute the Claims. County shall pay such out-of-pocket expenses within thirty (30) days of receipt by County of reasonable supporting documentation; provided, however, that in connection with the filing of any court proceedings or other actions to prosecute the Claims, County shall be primarily responsible for all attorneys' fees, costs, and expenses (including expert witness fees) incurred in connection with the prosecution, appeal, settlement and enforcement of such Claims or any judgment thereon.

4. Cooperation and Information Sharing. Purchaser agrees that in connection with all Remedial Action Costs, it will provide an accounting, reasonable supporting documentation, and proof of payment for such Remedial Action Costs to County in a form reasonably satisfactory to County. Purchaser's costs to prepare such documentation, over and above its ordinary and customary recordkeeping practices, shall be reimbursed by County pursuant to Section 3 above. Purchaser shall cooperate in good faith with the prosecution of the Claims by County, and provide reasonable assistance in connection with such Claims, including but not

limited, taking such actions as are requested by County and required by the Environmental Laws to perfect and preserve the Claims.

5. Sharing of Net Proceeds. In the event the total net recovery of Remedial Action Costs (i.e., after payment of all attorneys' fees, expert witness fee, and other costs and expenses) exceeds Nine Million Four Hundred Thousand and no/100 Dollars (\$9,400,000), then all amounts in excess of such amount shall be retained by or paid over to Purchaser.

6. Prosecution and Settlement of Claim. County shall have the sole and exclusive right to determine to file suit, appeal, and settle the Claims, and otherwise exercise the rights and powers granted pursuant to this Agreement; provided, however, that in no case shall County have the right to obligate Purchaser to enter into any settlement agreement or decree pursuant to which Purchaser is obligated to take any material action without the prior written consent of Purchaser, which consent shall be granted or withheld in Purchaser's sole discretion.

7. Representations and Warranties of County.

7.1 Ability to Carry Out Terms of Agreement. The execution and delivery of this Agreement by County will not conflict with, or result in any breach or violation of, any of the provisions of, or constitute a default under, any other agreement or instrument to which County is a party or may be bound.

8. Representations and Warranties of Purchaser.

8.1 Ownership of Claim. Purchaser represents and warrants that there are no charging orders, liens or encumbrances with respect to the Claims, and that is the sole owner of the Claims.

8.2 No Conflict. Purchaser represents and warrants that the execution, delivery and performance by it of the terms and provisions of this Agreement will not conflict with or result in the breach of any terms, conditions or provisions of any judgment, order, injunction, decree, regulation or ruling of any court or other governmental authority, or the terms of any agreement or instrument to which Purchaser is a party.

9. Limitation of Purchaser Warranties. Except for the representations and warranties set forth in Section 8 above, Purchaser makes no warranties whatsoever with respect to the validity of the Claims, the likelihood of any recovery pursuant to the Claims, or any other aspect of the Claims.

10. Miscellaneous

10.1 Hazardous Substance Defined. For the purposes of this Agreement, "Hazardous Substance" shall mean any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial waste, petroleum or petroleum-derived substance or waste, methane and other landfill-related gases, and any toxic or hazardous constituent of any such substance or waste, including without limitation any substance regulated under or defined as

"hazardous", "dangerous", "toxic" or as "waste" under any Environmental Law or other federal, state or local law or regulation.

10.2 Binding Obligation. This Agreement shall be binding upon the parties and their respective successors and assigns. Purchaser shall not transfer the Property without the express assumption of all rights and obligations under this Agreement by the transferee, and any purported transfer of the Property without such written assumption by the transferee shall be null and void. The obligations of Purchaser under this agreement shall touch and concern the Property and run with the Property.

10.3 Attorneys' Fees. In any action or proceeding arising out of or relating to this Agreement, the substantially prevailing party shall be entitled to recover all costs of suit and of appeal, including reasonable attorneys' fees, costs and expenses.

10.4 Further Assurances. Each of the parties hereto agrees to execute and deliver any and all documents and to take such other steps as may be reasonably necessary or appropriate to accomplish the results intended by the parties herein.

10.5 Entire Understanding. This Agreement, the Purchase and Sale Agreement and all exhibits thereto represent the entire understanding of the parties with respect to the subject matter hereof and supersede all correspondence, memoranda, conversations or other communications with respect thereto.

10.6 Headings. The section headings in this Agreement are intended solely for convenience and should be given no effect in the construction and interpretation thereof.

10.7 Representation by Counsel. Each of the parties hereto has engaged counsel, and has participated in the negotiation and drafting of this Agreement. Neither party shall be entitled to the benefit of any presumptions in interpreting the terms of this Agreement based upon its drafting.

10.8 Severability. The parties intend that this Agreement be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Agreement, on its face or as applied to any party, person or circumstance, is or becomes unenforceable to any extent, such provision shall be enforced to the greatest extent permitted by applicable law, and the remainder of this Agreement and the application of that provision to other persons, circumstances, or extent, will not be impaired.

10.9 Choice of Law. This Agreement shall be governed by and interpreted under the laws of the State of Washington without regard to conflict of law principles.

[Remainder of page intentionally left blank; signature page follows]

15292

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

PURCHASER:
South Park Property Development LLC

COUNTY:
King County, a Municipal Corporation of the
State of Washington

By: *RAM*

By: _____

Title: *Managing Partner*

Title: _____

Exhibit 9

[Reserved]

15292

Exhibit 10

[Reserved]

15292

15292

Exhibit 11

[Reserved]

15292

Exhibit 12

Disclosure Schedule

Purchaser acknowledges receipt of a complete copy of the "South Park Landfill Due Diligence, Seattle, Washington, July 2000", the Table of Contents of which is attached hereto.

In addition, Seller has or will deliver to Purchaser technical reports as follows: (1) South Park Custodial Landfill Monitoring Well and Gas Probe Installation Technical Memorandum, August 1999 (2) Status Report to the Citizens and Technical Advisory Committee – Development of the Duwamish Corridor South Park Custodial Landfill, August 1997; (3) South Park Custodial Landfill, Landfill Case Studies, September 2000; (4) monthly gas monitoring data; (5) South Park Custodial Landfill Monitoring Well and Gas Probe Installation Technical Memorandum, August 15, 2000; and (6) quarterly groundwater and surface water sampling data which will be delivered within fifteen (15) days of entering into the Agreement. All ongoing monitoring reports will be delivered by Seller to Purchaser on a quarterly basis until Closing. Seller makes no warranties or representations regarding the foregoing reports and studies and Purchaser agrees that it is relying solely on its own investigation of the Property.

Seller advises Purchaser that it is aware of contamination at properties adjacent to the Real Property which may or may not be associated with prior activities at the Real Property. See disclosures regarding other uses of the Property on the following page.

South Park Landfill Chronology

Date	Party	Event
1958-1966	City of Seattle	Lease with the city signed 3/24/58. The City used the site for landfill purposes from 1958-1966, under lease from the County.
1968-1978	City of Seattle	The City's lease changed the lease to disposal of clean fill and earthen materials. Lease started 4/1/68 for 10 years.
01/01/84-10/31/87	United Motor Freight, Inc.	Leased 22,500 square feet of South Park property for vehicle/equipment storage.
10/85-?	Tacoma Seattle Trailer Repair	Leases South Park property from King County for vehicle/equipment storage.
02/01/86	Razore Enterprises	Lease begins 2/1/86 on a month to month basis for vehicle/equipment storage. Tract 3?
11/01/93	Bainbridge Auto Freight	Lease begins 11/1/93 on a month to month basis for vehicle/equipment storage. 20,000 sq ft on Tract 4.
08/09/94	Joe Alexander	Lease begins 8/9/94 on a month to month basis for vehicle/equipment storage. 41,400 sq ft on Tract 4.

15292

Date	Party	Event
02/01/96	Ryder Truck Rental	Lease begins 2/1/96 on a month to month basis for vehicle/equipment storage. 10,000 sq ft on Tract 3.
06/02/97	Herb Young Trucking, Inc.	Lease between Herb Young Trucking, Inc. and King County of approximately 4,500 square feet of the South Park property. Term of lease was for one month for equipment parking.
04/15/97		All leases to the South Park Landfill property were terminated in a letter dated 4/15/97, and sent to all tenants from King County. City of Seattle recycling contractors continue to operate on City-owned property directly adjacent to County's northern portion.

15292

Exhibit 13

Statutory Warranty Deed

WHEN RECORDED RETURN TO:

Name:
Address:
City, State, Zip:

 **Chicago Title Insurance Company**

701 5th Avenue, Suite 1700, Seattle, Washington 98104

STATUTORY WARRANTY DEED

THE GRANTOR

for and in consideration of

in hand paid, conveys and warrants to

the following described real estate, situated in the County of King, State of Washington:

[Add Legal Description]

Tax Account No.:

DATED: _____, 20__

[Add Appropriate Notary Acknowledgement]

15292

Exhibit 14

Site Visit Release

SITE VISIT RELEASE AND HOLD HARMLESS AGREEMENT

Name _____ Age _____
Address _____
City _____ State _____ Zip _____
Phone (____) _____ Affiliation _____

On _____ [date], I will participate in a site visit to _____
(location description), which is property owned by King County, Washington.

I understand that at all times I must follow the directions of the King County representatives/agents who will accompany me on the site visit. I fully understand that photographs may only be taken with the prior approval of a duly authorized King County representative.

The purpose of my site visit is as follows: _____

_____. In the event soil, water, vegetation and/or any other samples are taken at the site, I agree to obtain such samples only with the prior permission of a duly authorized King County representative. If samples are taken, I agree to provide King County with a written inventory of the nature and type of each sample taken and, if a report is produced, a copy of the report.

I hereby assume all risks arising from my participation in visiting the King County Solid Waste Division's facility identified above. I agree to hold King County, its employees, agents, officers and/or representatives, harmless from and against any and all claims, demands or causes of action of any kind or nature whatsoever, known or unknown, which may arise in connection with my participation in the site visit to King County's facility. The terms of this Release and Hold Harmless Agreement shall be binding upon my heirs, assigns, personal representatives and all members of my family. If the participant is a minor under the age of eighteen years, execution of this Release and Hold Harmless Agreement shall be binding upon such minor as well as his/her guardian(s), heirs, assigns and personal representatives.

I have read this Site Visit Release and know the contents thereof, and agree to the Special Terms and Conditions set out below which are by this reference expressly incorporated into and made a part of this Site Visit Release. I am aware that safety regulations are applicable to this site visit and agree to comply with such regulations and all directions of the King County representative accompanying me on the site visit.

15292

Signed: _____
Participant, parent, or guardian*

Date: _____

Print Name: _____

(*Parent or guardian must sign if participant is 18 years of age or younger.)

South Park Custodial Landfill

SPECIAL TERMS AND CONDITIONS:

The participant's activities on this site shall be limited to reconnaissance only. This includes access to the property by 5th Ave. South, walking the County's property area to locate and survey the location of existing site and proposed development features, use of survey equipment to locate such features related to the proposed development, other areas proposed to be disturbed and marking locations with survey tape and stakes. This work shall not unreasonably disturb the existing surface area or vegetation of the property.

The participant shall remain outside of the City of Seattle property limits located within the County's fenced area.

Any and all of the participant's activities shall not in any way disrupt the activities of the Solid Waste Division.

The participant shall be responsible to perform all activities in a manner that is protective of human health and the environment and that meets all applicable regulations. This includes, but is not limited to the preparation of a health and safety plan that will be used for completing this site visit.

The participant shall restore all roads and any other areas damaged as a result of their site visit to its original or better condition.

The participant understands that this site visit release is for reconnaissance only, and does not constitute approval of further site visits or investigations, the design or construction of any structures, nor the execution of any contractual agreements beyond the scope of this agreement. In the event the participant would like an additional site visit, the participant agrees that it will immediately contact the designated King County representative to seek permission which shall be at the sole discretion of King County.

15292

The County reserves the right to amend, modify or revoke this Agreement at its sole discretion, which amendment, modification or revocation shall become effective when received by the participant and shall bind the participant for its activities after the receipt of the amendment, modification or revocation.

15292

Exhibit 15

**List of Approved Environmental Consultants
and Environmental Engineers**

15292

Exhibit 16

Bill of Sale/Personal Property

None.

15292

Exhibit 17

FRPTA Certificate

NON-FOREIGN CERTIFICATION—TRANSFEREE AND TRANSFEROR

This form is provided so that the buyer and/or seller in this transaction can certify compliance with the Foreign Investment in Real Property Tax Act to the escrow agent and/or buyer. Transferee/Buyer must retain a copy of this document until after the fifth taxable year following the transfer.

I. Certification of Non-Foreign Status by Corporation

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign corporation. To inform the transferee (buyer) and escrow agent that withholding of tax is not required upon its disposition of a U.S. real property interest, the undersigned Seller hereby certifies the following:

- 1. King County is not a nonresident alien for purposes of U.S. income taxation.
- 2. King County's employer identification number is: _____.
- 3. King County's business address is:
500 Fourth Avenue, Room 500
Seattle, Washington 98104.

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee (buyer) and that any false statement made here could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete.

Date: _____

KING COUNTY

By: _____

Title: _____

15292

II. Certification of Buyer

I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete.

Date: _____

SOUTH PARK PROPERTY DEVELOPMENT, LLC

By: _____

Title: _____