

**REAL ESTATE PURCHASE AND SALE AGREEMENT**

THIS AGREEMENT is made as of the date this instrument is fully executed ("Effective Date") by and between **NORTHWEST AGGREGATES CO.**, an Oregon corporation ("NWA"), and **KING COUNTY**, a political subdivision of the State of Washington ("County"), for purchase and sale of that certain property situated in King County, Washington, described on EXHIBIT A, and all rights appurtenant ("Property").

**RECITALS**

**A.** NWA is the owner of the Property which is located on Maury Island and is comprised of four parcels. The primary parcel is comprised of a sand and gravel mine, a residential zoned area and a leased area improved with cell towers ("Mine Parcel"). The other three parcels are waterfront residential lots ("Waterfront Lots"). The Mine Parcel has historically been utilized for sand and gravel mining operations, and NWA has obtained multiple permits over the last several years in anticipation of resuming its use of the Property to extract and ship high-quality sand and gravel material.

**B.** County desires to acquire the Property for open space purposes and/or for such other purposes as County may deem appropriate.

**C.** In light of NWA's current economic situation and in response to sale discussions initiated by County and other parties, NWA is presently willing to sell the Property under the terms set forth in this Agreement.

**AGREEMENTS**

**1. PURCHASE PRICE.** The total purchase price for the Property is Thirty-Six Million and No/100ths Dollars (\$36,000,000) ("Purchase Price"). The Purchase Price is payable by County to NWA at closing as follows.

**1.1 Cash.** Thirty-Three Million Six Hundred Thousand and No/100ths Dollars (\$33,600,000) of the Purchase Price shall be paid in immediately available funds at closing.

**1.2 Royalty Concessions.** At closing, County will enter into an amendment to that certain Gravel Purchase and Extraction Agreement between County and NWA's affiliate Glacier Northwest, Inc. ("Glacier") dated May 29, 2004 ("Gravel Agreement") as more particularly described in Section 7 below for the purpose of County granting Glacier royalty concessions and an extended term for mining, such amendment having an agreed value of Two Million Four Hundred Thousand and No/100ths Dollars (\$2,400,000).

**2. TITLE**

**2.1 Deed.** At closing, NWA will execute and deliver to County a Statutory Warranty Deed ("Deed") conveying and warranting good and marketable title to the Property

free and clear of all defects or encumbrances except for the lien of real estate taxes and drainage service charges not yet due and payable and those defects and/or encumbrances (if any) identified on EXHIBIT B (collectively, the "Permitted Exceptions").

**2.2 Title Insurance.** At closing, County shall receive (at County's expense) an owner's standard ALTA policy of title insurance issued by Pacific Northwest Title Company, dated as of the closing date and insuring County in the amount of the Purchase Price against loss or damage by reason of defect in County's title to the Property subject only to the printed exclusions appearing in the policy form and any Permitted Exceptions.

### 3. CONTINGENCIES.

**3.1 Due Diligence Inspection and Feasibility for the Property.** County shall satisfy itself by investigation and inspection, at its cost and expense in its sole and absolute discretion that the condition of the Property for County's contemplated use meets with its approval and that County's contemplated use is feasible ("Feasibility Contingency"). The County, its designated representatives or agents shall have the right, at County's expense to: (i) subject to the Access Agreement fully executed by the parties on May 17, 2010 ("Access Agreement"), perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the County; (ii) examine due diligence materials pertaining to the Property that County may reasonably request from NWA (a) that are not subject to attorney-client privilege, (b) that the NWA is not otherwise prohibited from disclosing by law and (c) that are in NWA's possession or control; (iii) determine to its satisfaction whether approvals, permits and variances can be obtained under applicable land use and zoning codes for County's proposed use of the Property; (iv) determine whether DNR Aquatic Lands Lease No. 20-A12778, dated December 2, 2008 ("Aquatic Lands Lease") can be assigned to and assumed by County at closing on terms and conditions acceptable to County; (v) determine whether any Mining Permits (as defined below) and any other permits held by NWA can be assigned to and assumed by County at closing on terms and conditions acceptable to County; and (vi) determine whether County can secure the funding necessary to pay the Purchase Price.

**3.2 Metropolitan King County Council Approval Contingency.** County's performance under this Agreement is contingent on all approvals and appropriations by the Metropolitan King County Council necessary to close the sale ("Financing Contingency").

**3.3 Removal of Contingencies.** County shall have until December 27, 2010 ("Due Diligence Period") to satisfy or waive its Feasibility and Financing Contingencies. County may only satisfy or waive such Contingencies by issuing written notice thereof to NWA pursuant to Section 12 herein. If both Contingencies are not removed within the Due Diligence Period, this Agreement shall be null and void.

**3.4 Factual Information.** County shall promptly supply NWA with copies of any data, test results, photographs, factual observations or other factual information obtained from County's due diligence activities (collectively, the "Factual Information"), including without limitation Factual Information contained in any consultant's report or other written report or assessment; provided, however, that County shall have no obligation to supply NWA with any analysis, advice or recommendation based on such Factual Information. The County's

obligation to provide such Factual Information resulting from due diligence activities occurring before termination of this Agreement or the date of closing shall continue even if such Factual Information is received by County following termination of this Agreement or after the date of closing.

**4. RISK OF LOSS.** NWA will bear the risk of loss of or damage to the Property prior to closing. In the event of such loss or damage to the Property, NWA shall promptly notify County thereof and County may, in its sole discretion, terminate this Agreement by giving notice of termination to the NWA.

**5. NWA'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** NWA represents, warrants and covenants to the County at the date of execution of this Agreement and the date of closing that:

**5.1 Authority.** NWA, and the person(s) signing on behalf of NWA, has full power and authority to execute this Agreement and perform NWA's obligations, and if NWA is a corporation, all necessary corporate action to authorize this transaction has been taken.

**5.2 Leases.** The Property is not subject to any leases, tenancies or rights of persons in possession other than those disclosed in EXHIBIT C hereto. Any such leases, tenancies or rights of persons in possession that benefit the Property shall, at County's election, be assigned to and assumed by County or terminated at closing. Notwithstanding the foregoing, County hereby agrees that (i) the Aquatic Lands Lease shall, subject to approval by DNR, be assigned to and assumed by County at closing, including any obligation thereunder for completion, modification or removal of the dock and related structures located within the leased area *or* such Lease shall upon County's written notice to NWA within County's Due Diligence Period, be terminated at closing, provided that County provides NWA with written assurance from DNR which is reasonably acceptable to NWA that, upon such termination, NWA shall be released from any liability or obligation under the Aquatic Lands Lease and (ii) the Option and Lease Agreement dated October 27, 1995 (providing for a cell tower site on the Property) shall also be assigned to and assumed by County at closing; provided NWA delivers at closing an estoppel certificate executed by NWA certifying (a) that a true and correct copy of the Lease is attached, (b) the amount of the monthly rent payable by the tenant as of the date of such estoppel certificate, (c) that no default exists under such Lease by NWA and that, to the best of NWA's knowledge, no default exists on the part of the lessee, and (d) that NWA has delivered to the County at closing any prepaid rent received from lessee or any sublessee.

**5.3 Litigation.** There is no pending, or to the best of NWA's knowledge, threatened lawsuit or material claim against or relating to NWA with respect to the Property, which would impede or materially affect NWA's ability to perform the terms of this Agreement. There is no pending or, to the best of NWA's knowledge, contemplated condemnation or similar proceeding with respect to the Property or any part thereof.

**5.4 Full Disclosure.** No representation or warranty by NWA in this Agreement or in any instrument, certificate or statement furnished to County pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state a material fact which is necessary to make the

statements set forth therein not false or misleading. NWA shall give County prompt written notice of any material change in any of the information contained in the representations and warranties made in this Agreement which occurs prior to closing.

**5.5 Future Agreements.** From and after the Effective Date unless this Agreement is terminated in accordance with its terms, NWA shall not without the prior written consent of County enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way; or sell, dispose of or encumber any portion of the Property.

**5.6 No Material Defect.** Except as disclosed in any materials or disclosure documents provided to County whether as hard copies or by electronic transmission or media, including those identified on the attached EXHIBIT D, NWA is unaware of any material defect in the Property.

**5.7 Reclamation and Other Permits.**

**5.7.1 Mining Permits.** NWA currently holds the following permits to operate a sand and gravel mine on the Mine Parcel:

5.7.1.1 Surface Mining Reclamation Permit ("Surface Mining Permit") issued by the Washington State Department of Natural Resources, Permit Number 70-010256.

5.7.1.2 Grading Permit issued by the King County Department of Development and Environmental Services ("Grading Permit"), for Project Number 1128-714.

5.7.1.3 National Pollution Discharge Elimination System Sand and Gravel General Permit ("NPDES Permit"), issued by the Washington State Department of Ecology on August 4, 2010.

5.7.1.4 Section 10 permit issued by the US Army Corps of Engineers on October 25, 1968.

5.7.1.5 Section 10 and Section 404 permits issued by the US Army Corps of Engineers on July 2, 2008 (Permit No. NWS-2000-1094-SO).

5.7.1.6 King County Shoreline Substantial Development Permit, dated June 16, 2005.

5.7.1.7 King County Shoreline Conditional Use Permit, dated June 16, 2005.

5.7.1.8 King County Building Permit (No. B04C0222) as renewed on February 9, 2010.

5.7.1.9 WDFW Hydraulic Project Approval (Control No. 108837-1), as renewed on May 2, 2007.

5.7.1.10 Water Quality Certification Order No. 2882, a Coastal Zone Management Consistency Determination from Washington State Department of Ecology, dated March 14, 2006.

These permits shall be collectively referenced in this Agreement as the "Mining Permits". There are no other permits material to the mining of the Property.

**5.7.2 Reclamation.** NWA is in compliance with the Mining Permits and applicable law, including, but not limited to Ch. 78.44 RCW and Ch. 16.82 King County Code and covenants to remain in compliance until the date of closing.

**5.7.3 Other Permits.** NWA has provided to County copies of all permits that are material to the operation, ownership and development of the Property. Except for the Surface Mining Permit, all other Mining Permits and other development permits associated with the Property shall, at the County's election, be closed out by NWA in full compliance with the terms of any such permit, or assigned to and assumed by County. On or before December 23, 2010, County shall notify NWA which such permits it desires to have assigned to it at closing and which it desires to have NWA terminate.

**5.7.4 Assignment and Assumption of Permits.** The Surface Mining Permit as well as any other Mining Permit or other development permit that the County elects to have assigned to it at closing shall be transferred pursuant to an Assignment and Assumption Agreement in the form attached hereto as Exhibit J.

**5.8 Personal Property.** Prior to closing, NWA will remove all of its personal property on the Property (if any) at NWA's cost and expense, including, but not limited to, mining and any other equipment stored on the Property, and NWA will indemnify and hold County harmless from all claims and expenses arising from such removal. NWA shall not be obligated pursuant to this Section 5.8 to remove the conveyor or any other fixtures located within the Mining Parcel. The personal property to be removed by NWA from the Property includes, but is not limited to that set forth on the attached EXHIBIT H. The fixtures which are to remain on the Property, subject to possible removal by NWA pursuant to Section 8, are also as set forth on the attached EXHIBIT H.

**5.9 Environmental Condition of Property.** NWA has not intentionally withheld any material information concerning environmental matters with respect to the Property and has provided or made available to County all material environmental reports pertaining to the Property including those reports identified on the attached EXHIBIT D ("Environmental Reports").

Except as disclosed in the Environmental Reports or in writing to County during the Due Diligence Period and to the best of the knowledge of NWA and Glacier Northwest, Inc.: (i) the Property is not in violation of any Environmental Law (as defined below); (ii) NWA has not used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Property (or in areas beyond the boundaries of the Property that might affect the Property), or transported from the Property, any Hazardous Substance (as defined below) in violation of any Environmental Law; (iii) no Hazardous Substance has been used, generated,

manufactured, produced, stored, released, discharged or disposed of on, under or about the Property (or off-site of the Property that might affect the Property) in violation of applicable law, ordinances, rules or regulations and (iv) no underground storage tanks are currently located on the Property and no underground storage tanks have been removed from the Property. Except for NWA's representations, warranties and covenants in this Agreement, including the preceding sentence, and the Deed, NWA does not make any representations or warranties, express or implied, with respect to the physical condition of the Property, including: (a) compliance or non-compliance of the Property with any applicable Environmental Law; or (b) the presence, discharge, treatment, recycling, storage, use, transportation, generation, disposal, migration, or release on, in, under, or from the Property (including any improvement, equipment, or structure on the Property or any groundwater or soils at or under the Property) of any Hazardous Substance. Except for NWA's representations, warranties and covenants in this Agreement and the Deed and except for any fraud or deliberate misrepresentation by NWA, any Environmental Reports, information, statements, documents, or records provided by NWA to County concerning the environmental condition of the Property shall not constitute representations or warranties of NWA and County shall not rely on them. Rather, County shall rely on its own inspection of the Property and shall treat any such Environmental Reports, information, statements, documents, or records provided by NWA to County as having been made for the convenience of County to facilitate its environmental assessment process.

The term "Hazardous Substance" means any waste, pollutant, contaminant, chemical, petroleum product, pesticide, fertilizer, substance, or material that is defined, classified, or designated as hazardous, toxic, radioactive, dangerous, or other comparable term or category under any Environmental Law, including without limitation, (i) chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos, (iv) polychlorinated biphenyls, and (v) lead. The term "Environmental Law" means any federal, state or local law, ordinance, code, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning the protection of human health, the environment, safety, and natural resources, including without limitation, the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*, "CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Emergency Planning and Community Right-To-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), and any similar or comparable state or local laws, including, without limitation, the Washington State Water Pollution Control Act (RCW 90.48.010 *et seq.*), the Washington State Hazardous Waste Management Act (RCW ch. 70.105), the Washington State Model Toxics Control Act (RCW ch. 70.105D, "MTCA"), and the regulations promulgated thereunder.

**5.10 NWA's Fees and Commissions.** NWA shall pay for any broker's or other commissions or fees incurred by the NWA in connection with the sale of the Property and NWA shall indemnify and hold County harmless from all such claims for commission and/or fees.

**5.11 Assistance with Due Diligence and Approvals.** NWA shall exercise prompt and commercially reasonable efforts to cooperate with County's due diligence activities. NWA shall promptly deliver, or make available, to County all documents and materials concerning the Property which County may request during the Due Diligence Period that are in NWA's possession or control and that are not subject to attorney-client privilege or otherwise prohibited from being disclosed by law. Following County's waiver of its Feasibility and Financing Contingencies, NWA shall (i) assist County with any actions reasonably necessary or convenient to effect approvals for the remediation of the Hazardous Substances on the Property or the preparation of the Property for County's use and (ii) execute, in its capacity as owner of the Property, any and all documents within ten (10) business days after being provided those documents; provided the documents are reasonably necessary or appropriate for the County's contemplated remediation or development of the Property.

**5.12 Foreign Person.** NWA is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986 ("Code"), as amended and shall deliver to County, prior to closing, an affidavit, as set forth in EXHIBIT E, evidencing such fact, and such other documents as may be required under the Code.

**5.13 Indemnification of County.** NWA shall indemnify, defend, and hold harmless County, its employees, agents, heirs and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorneys' and other fees, arising out of or in any way connected to its breach of any representation or warranty contained herein. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all Environmental Laws, strict liability and common law.

## **6. COUNTY'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

**6.1 Authority.** County, and the person(s) signing on behalf of County, has full power and authority to execute this Agreement and perform County's obligations, and all necessary authorizations of this transaction have been obtained.

**6.2 Condition of Property.** County acknowledges that, within the Due Diligence Period, it will have conducted a physical inspection and made all investigations County deems necessary in connection with its purchase of the Property. County further acknowledges it is a sophisticated purchaser familiar with environmental risks and liabilities associated with the acquisition of contaminated real property. Upon waiver or satisfaction by County of its Feasibility and Financing Contingencies pursuant to Section 3 of this Agreement, County will be deemed to have approved the physical condition of the Property and, except for any breach by NWA of its representations, warranties and covenants in this Agreement and in the Deed and except for any fraud or deliberate misrepresentation by NWA, agrees to accept and purchase the same "AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS", including, without limitation, the existence or non-existence of any Hazardous Substance, pollutant, contaminant, hazardous waste, dangerous waste, toxic waste, underground storage tank or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of such substances at, from or on to the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, Environmental Laws. County acknowledges and agrees that, except for NWA's

representations, warranties and covenants in this Agreement and in the Deed, and except for any fraud or deliberate misrepresentation by NWA, and except for NWA's obligation to reimburse County for remediation costs pursuant to Section 9 of this Agreement, NWA shall have no liability to County, and that County shall have no recourse under this Agreement against NWA, for any defect or deficiency of any kind whatsoever in the Property, without regard to whether such defect or deficiency was discovered or discoverable by the County or NWA; more specifically, County expressly releases NWA from all liability associated with any Hazardous Substance or contamination at, under, or migrating from the Property, including but not limited to contamination related to the Tacoma Smelter Plume. Except as otherwise provided in Section 9.3 below, County hereby waives and discharges all claims, demands, losses, liabilities, damages, (including consequential, incidental and special damages), fines, costs, expenses, liens, penalties, monitoring costs, remedial action costs, response costs, and attorneys' fees, it could assert against NWA and its affiliated entities (including without limitation Glacier Northwest, Inc. and CalPortland Company), and their individual officers, directors, shareholders, members, partners, employees, agents, contractors, successors, and assigns, of any nature whatsoever, known or unknown, whether contingent or accrued, arising out of or relating to: (i) the physical condition of the Property; (ii) the environmental condition of the Property; (iii) the release from or migration to the Property of any Hazardous Substance at any time prior to, on, or after closing; (iv) the release, discharge, or disposal by any person or entity of any Hazardous Substance that is now, or has been, or may at any future time be present on or about the Property; (v) the cost of any investigation, cleanup, remediation, or other response with regard to environmental conditions existing at the Property before, on, or after closing; (vi) County's performance of any investigation, cleanup, remediation, response, or other remedial work at the Property; and (vii) any exposure to Hazardous Substances at the Property. County agrees the foregoing release includes all rights and claims of County against NWA pertaining to the condition of the Property, whether before or now existing or later arising, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which in any way arise out of or are connected with or relate to the condition of the Property.

**6.3 County's Fees and Commissions.** County shall pay for any broker's or other commissions or fees incurred by the County in connection with its purchase of the Property and County shall indemnify and hold NWA harmless from all such claims for commission and/or fees.

**6.4 Indemnification of NWA.** County shall indemnify, defend, and hold harmless NWA, its employees, agents, heirs and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees, arising out of or in any way connected to its breach of any representation or warranty contained herein. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all strict liability and common law.

**7. GRAVEL AGREEMENT AMENDMENT.** Pursuant to Section 1.2 above, as part of its payment of the Purchase Price, County shall, at closing enter into an amendment of the Gravel Agreement. The amendment shall (i) eliminate the County's ability to terminate the Gravel Agreement in August 2014, (ii) extend the latest possible date for the expiration of the Gravel Agreement to December 31, 2030, (iii) allow NWA or any successor or assign to mine up to 100,000 tons per year with no royalty payment; provided that royalties shall continue to be



owing for any amounts in excess of 100,000 mined in any year, and (iv) address such other issues as may be agreed upon by the parties. The amendment to the Gravel Agreement shall be in the form as attached hereto as EXHIBIT F.

**8. RECLAMATION.** At closing NWA shall assign to County, and County shall assume, the Surface Mining Permit described in Section 5.7.1.1 above; provided, however, that the effectiveness of such assignment and assumption shall be subject to approval of DNR and any terms and conditions imposed by DNR in connection therewith. However, as between the parties, County will be responsible following closing for compliance with all obligations set forth in the Surface Mining Permit. Without limitation, County shall be responsible for reclaiming the mined areas of the Property as required by applicable law. Such reclamation may include the removal of the existing conveyor located within the mining area and the removal or closure of three existing equipment tunnels. Notwithstanding the foregoing, prior to or in connection with County's notice waiving its Feasibility and Financing Contingencies, County may notify NWA that it wishes to require NWA to remove the conveyor and other fixtures listed on EXHIBIT H (but not the dock or any tunnel) existing within the Property at closing. If County issues such notice, the Purchase Price shall be increased by Five Hundred Thousand Dollars (\$500,000.00) pursuant to an amendment to this Agreement mutually executed by County and NWA which amendment shall also set forth an agreed schedule and other material terms and conditions for the removal of such items. The County hereby represents to NWA that such amendment shall not require approval by the Metropolitan King County Council.

**9. ENVIRONMENTAL LIABILITY.** County represents that it currently plans to use the Property after closing as open space, a public park, or another similar, low-impact use. Based upon this intended use and subject to the conditions set forth in this Section 9, NWA shall reimburse County for certain costs incurred by the County following the date of closing to remediate environmental contamination of the Property existing at closing ("Remediation Costs"), provided that any such remediation is performed by County in coordination with the Washington State Department of Ecology ("Ecology") and in accordance with, and solely for the purpose of complying with, requirements of MTCA.

**9.1 Allocation of Remediation Costs.** The first \$250,000 of such Remediation Costs shall be the responsibility of County. The next \$500,000 of Remediation Costs shall be the responsibility of NWA. Any and all additional Remediation Costs shall be the responsibility of County. Only Remediation Costs incurred by County within six years following the date of closing shall be eligible for reimbursement by NWA hereunder.

**9.2 Other Funds.** County intends to pursue other funds from third-parties, such as donations and grants, provided to the County to pay for remediation of the Property, including funds Ecology received through the settlement it entered with ASARCO or otherwise. If any such funds are obtained by and available to County before NWA has satisfied its obligations to reimburse the County, those funds shall be deemed to be expended first and the County shall not seek reimbursement or additional reimbursement from NWA as the case may be until those funds are expended or used to reimburse the County and, also, the County has expended \$250,000 of County funds as referenced in Section 9.1 above.

**9.3 Reimbursement.** NWA's obligation hereunder shall be for the reimbursement to County of eligible Remediation Costs. Accordingly, until County has expended \$250,000 in Remediation Costs, County shall provide NWA with reports of Remediation Costs that it has incurred together with such reasonable back up documentation as NWA may request, which reports shall be issued monthly if reasonably available and in no event less often than quarterly. At such time as County has expended \$250,000 in Remediation Costs, it shall, on a monthly basis, submit to NWA a detailed invoice for Remediation Costs to NWA's Designated Representative (defined below) to be reimbursed by NWA, together with reasonable documentation pursuant to Section 9.3.2 below. NWA shall issue reimbursement within 30 days following its receipt of each such invoice. In the event that a dispute shall arise with respect to any such invoice or the requested reimbursement, the parties shall utilize the dispute resolution process contained in Section 9.3.5 herein to resolve the dispute.

**9.3.1 Remediation Costs.** Remediation Costs must be: (i) reasonable and necessary; (ii) remedial work that qualifies as "remedial action" (as that term is defined in MTCA); (iii) consistent with MTCA and in accordance with one or more work plans, agreed orders, consent decrees, or other similar document provided to NWA and approved by Ecology; (iv) consistent with and support County's anticipated end use of the Property as open space, a public park, or another similar, low-impact use; and (v) incurred following closing and but no later than six years after closing. NWA shall have no obligation to reimburse County for costs other than those that qualify as Remediation Costs.

**9.3.2 Invoices.** Remediation Costs will be documented to the satisfaction of NWA with appropriate documents and detailed invoices from third-party remedial consultants or contractors or other acceptable evidence of costs incurred by County in implementing an approved remedial program. No pre-closing expenses, internal County costs, work by County employees, or costs associated with oversight or administration by County personnel or the use of County resources for the remedial work shall qualify as reimbursable Remediation Costs.

**9.3.3 Right to Observe and Remedial Information.** NWA shall have the right to observe County's performance of the remedial work, and County shall grant NWA and its agents access to the Property after closing, at no charge, to exercise such right subject to reasonable conditions for the purpose of staff coordination and protecting public safety and the condition of the Property. County shall keep NWA periodically advised of its remediation activities and County shall promptly provide NWA with copies of all material information, such as reports, plans and memoranda relating to the remedial work, including correspondence received from or submitted to Ecology. The rights and obligations contained in this Section 9.3.3 shall expire on the later to occur of (i) four (4) years after the date of closing hereunder and (ii) the date on which NWA has fulfilled its obligation to reimburse County for Remediation Costs in accordance with Sections 9.1 and 9.3 above.

**9.3.4 Designated Representatives.** The activities of the parties contained in this Section 9 will be coordinated through the Designated Representatives identified in this Agreement. The parties each designate a representative ("Designated Representative"). The Designated Representatives shall be responsible for coordinating communications between the parties and shall act as a central point of contact for each agency in

the event disputes arise. Each party's Designated Representative is named below with the individual's contact information. Designated Representatives may be changed by written notice to the other party.

Designated Representative for County: Kevin Brown  
Director, Parks and Recreation Division  
King County Department of Natural Resources  
and Parks  
201 S. Jackson Street, Suite 700  
Seattle, WA 98104-3856  
Phone: (206) 296-8631  
E-mail: kevin.brown@kingcounty.gov

Designated Representative for NWA: Doug Anderson  
Vice President/General Manager  
Northwest Materials Division  
CalPortland  
5975 E. Marginal Way S.  
Seattle, WA 98134  
Phone: (206) 909-2549  
E-mail: danderson@CalPortland.com

**9.3.5 Dispute Resolution.** The parties will work collaboratively in accordance with the following steps to resolve disagreements arising under this Section 9. Disagreements will be resolved promptly and at the lowest level of authority. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (i) a description of the issue to be resolved; (ii) a description of the difference between the parties on the issue; and (iii) a summary of steps taken by Designated Representative to resolve the issue. The Designated Representatives shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute, NWA's Senior Vice President or his/her designee and the Director of the King County Department of Natural Resources and Parks or his/her designee shall meet within seven (7) business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

In the event the parties are unable to timely resolve the dispute utilizing the process set forth in this Section 9.3.5, and as a pre-condition to seeking relief for such dispute in a court of law, the parties shall submit the matter to a non-binding mediation with a mediator agreed upon by the parties. The cost of the mediation shall be shared equally between the parties.

The parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted; provided that this requirement shall not apply if the applicable statute of limitations will run during the time that may be required to exhaust the procedural steps set forth above.

**9.4 Post-Closing Remedial Responsibility.** Following closing and subject to NWA's obligation to reimburse the County in accordance with this Section 9, County shall assume all responsibility for any remedial obligations related to Hazardous Substances at or migrating from the Property and the cost thereof, unless the parties subsequently agree otherwise in writing. This responsibility shall include but not be limited to all remedial obligations arising under MTCA or any other Environmental Law and the implementation of any existing or future orders or directives imposing remedial obligations that are issued under MTCA or any other Environmental Law to County or to NWA by Ecology or by any other federal, state or local court or agency regarding the Property.

**9.5 Potential Agreed Order.** NWA and Ecology currently are negotiating the terms of a potential agreed order for remedial work related to the Property in accordance with MTCA. The parties will cooperate in requesting that Ecology suspend the agreed order process until after the Due Diligence Period, or, if the County's contingencies are satisfied or waived, until after the closing date. However, if the agreed order with NWA or any other directive from Ecology becomes effective before closing, NWA shall notify County and provide a copy of the order or directive. After closing, NWA and County shall work cooperatively to either amend existing orders with or directives from Ecology or negotiate appropriate replacement orders so that County may assume full responsibility for implementing such orders or directives.

**9.6 Guaranty.** At closing, NWA shall provide County with an unconditional guaranty of NWA's reimbursement obligations under this Section 9 from NWA's parent company, CalPortland Company, in the form attached hereto as EXHIBIT I.

**10. RIGHT OF FIRST REFUSAL.** At closing, NWA and County shall enter into a right of first refusal ("ROFR") which shall be recorded on title to the Property. The ROFR shall be in the form attached hereto as EXHIBIT G.

## **11. CLOSING.**

**11.1 Time for Closing.** The sale will be closed in the office of the Closing Agent not later than December 30, 2010, or as soon thereafter as the parties may agree.

**11.2 Closing.** County and NWA shall deposit in escrow with the Closing Agent all instruments, documents and moneys necessary to complete the sale in accordance with this Agreement. As used in this Agreement, "closing" and "date of closing" means the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to NWA.

**11.3 Closing Agent.** The Closing Agent shall be:

Pacific Northwest Title Company  
215 Columbia Street  
Seattle, WA 98104

**11.4 Real Property Taxes.** NWA's obligation for real property taxes and assessments applicable to the Property shall terminate and be prorated as of the date of closing. County has informed NWA that, from and after closing, the Property will be exempt from such

taxes. Accordingly, NWA shall seek a refund for any such taxes it has paid that are applicable to the period following closing. Acting solely in its capacity as the owner of the Property, County shall reasonably cooperate with NWA's efforts to seek a refund, including signing any application that may require its signature.

**11.5 Closing Costs.** With regard to the conveyance of the Property, NWA will pay real estate excise taxes (if any are due) and real property taxes prorated through the date of closing. County will pay the premium for its owner's title insurance policy, and the cost of recording the Statutory Warranty Deed from the NWA. NWA and County shall pay equal shares of the Closing Agent's escrow fees.

**11.6 Possession.** County shall be entitled to possession of the Property at closing.

**12. NOTICES.** Any notices required herein shall be given to the parties by (i) personal delivery, (ii) overnight courier service, or (iii) certified mail, return receipt requested at the addresses listed below or to any such other address as that party may have given notice to the other party:

**To NWA:** Northwest Aggregates Co.  
c/o CalPortland  
Attention: Vice President &  
General Manager/Washington Division  
P.O. Box 1730  
Seattle, WA 98111

**With copy to:** Northwest Aggregates Co.  
c/o CalPortland Company  
Attention: General Counsel  
2025 E. Financial Way  
Glendora, CA 91741

**To County:** King County Water and Land Resources Division  
Open Space Acquisitions  
201 S. Jackson Street, Suite 600  
Seattle, WA 98104

**With copy to:** Office of the King County Prosecuting Attorney,  
Civil Division  
Attention: Peter G. Ramels  
W-400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**13. GENERAL.** This is the entire agreement of the County and NWA with respect to the Property and supersedes all prior or contemporaneous agreements between them, written or oral. This Agreement may be modified only in writing, signed by County and NWA. Any waivers under this agreement must be in writing. A waiver of any right or remedy in the event of

a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement is for the benefit of, and binding upon, County and NWA and their heirs, personal representatives, successors and assigns. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. Time is of the essence in this Agreement.

**14. ATTORNEYS' FEES.** If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party. For purposes of this provision, in any action or proceeding instituted pertaining to this Agreement, a party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said party or (ii) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

**15. COMMITTING WASTE; ALTERATION OF PROPERTY.** NWA shall not commit waste on the Property, nor shall NWA remove trees or other vegetation, coal, minerals or other valuable materials nor shall NWA substantially alter the surface or subsurface of the Property without the express written consent of County.

**16. SURVIVAL OF WARRANTIES.** The terms, covenants, representations and warranties of the parties shall not merge in any deed of conveyance, but shall survive closing.

**17. POST-CLOSING COOPERATION.** Following closing of the transaction described herein, NWA shall work cooperatively with County to obtain any approvals required to effectuate the assignment by NWA and the assumption by County of any permits described herein; to effectuate County's remediation of the Property or to complete any other actions reasonably necessary as a direct result of this transaction. County shall provide NWA with reasonable notice of actions it requests NWA to take and NWA shall use its commercially reasonable efforts to take such actions; provided, however, that NWA shall have no obligation to incur any commercially unreasonable cost or liability following closing as a result of its cooperation with County hereunder.

Signed in duplicate original.

[Signatures appear on following page.]

EXECUTED effective as of the dates set forth below.

NWA:

**NORTHWEST AGGREGATES CO.,**  
an Oregon corporation

COUNTY:

**KING COUNTY**, a political subdivision of  
the State of Washington

By \_\_\_\_\_  
Ronald E. Summers  
Senior Vice President

By \_\_\_\_\_  
Christie True, Director  
Department of Natural Resources and Parks

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

STATE OF CALIFORNIA

COUNTY OF

On December 3, 2010 before me, ( \_\_\_\_\_ ), personally appeared **RONALD E. SUMMERS** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

\_\_\_\_\_  
(SIGNATURE OF NOTARY)

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

| <b>CAPACITY CLAIMED BY SIGNER</b>                                    | <b>DESCRIPTION OF ATTACHED DOCUMENT</b>        |
|--|--|
| <input type="checkbox"/> INDIVIDUAL                                  | <b>Real Estate Purchase and Sale Agreement</b> |
| <input type="checkbox"/> CORPORATE OFFICER                           | TITLE OR TYPE OF DOCUMENT                      |
| _____  | NUMBER OF PAGES                                |
| <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED | <b>December 3, 2010</b>                        |
| <input type="checkbox"/> GENERAL                                     | DATE OF DOCUMENT                               |
| <input type="checkbox"/> ATTORNEY-IN-FACT                            | <b>King County</b>                             |
| <input type="checkbox"/> TRUSTEE(S)                                  | SIGNER(S) OTHER THAN NAMED ABOVE               |
| <input type="checkbox"/> GUARDIAN/CONSERVATOR                        |  |
| <input type="checkbox"/> OTHER _____                                 |  |

**SIGNER IS REPRESENTING:**

Northwest Aggregates Co.,  
an Oregon corporation



STATE OF WASHINGTON

}

SS

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of **KING COUNTY** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

Exhibit A

LEGAL DESCRIPTION

THOSE PORTIONS OF GOVERNMENT LOT 3, SECTION 28, TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE NORTH QUARTER CORNER OF SAID SECTION 28;  
THENCE SOUTH 72°30'10" WEST 137.07 FEET;  
THENCE SOUTH 1042.07 FEET TO THE GOVERNMENT MEANDER LINE;  
THENCE ALONG SAID MEANDER LINE NORTH 53°00' EAST 163.69 FEET;  
THENCE NORTH 984.77 FEET TO THE POINT OF BEGINNING;

EXCEPT THE NORTHERLY 10 FEET OF SAID PORTION;

AND EXCEPT ANY PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET AND 79TH AVENUE SOUTHWEST;

(BEING TRACT 9, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF; EXCEPT THE NORTHERLY 10 FEET);

AND BEGINNING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE NORTH QUARTER CORNER OF SAID SECTION 28;  
THENCE NORTH 72°30'10" EAST 137.07 FEET;  
THENCE SOUTH 927.47 FEET TO THE GOVERNMENT MEANDER LINE;  
THENCE SOUTH 53°00' WEST 163.69 FEET ALONG SAID MEANDER LINE;  
THENCE NORTH 984.77 FEET TO THE POINT OF BEGINNING;

(BEING TRACT 10, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF);

AND

COMMENCING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE NORTH QUARTER CORNER OF SAID SECTION 28;  
THENCE NORTH 72°30'10" EAST 137.07 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 72°30'10" EAST 137.07 FEET;  
THENCE SOUTH 870.17 FEET TO THE GOVERNMENT MEANDER LINE;  
THENCE SOUTH 53°00' WEST 163.69 FEET ALONG SAID MEANDER LINE;  
THENCE NORTH 927.47 FEET TO THE TRUE POINT OF BEGINNING;

(BEING TRACT 11, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF);

TOGETHER WITH THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 28;

EXCEPT THE NORTHEAST QUARTER THEREOF;

AND EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET AND 79TH AVENUE SOUTHWEST;

TOGETHER WITH GOVERNMENT LOT 4 OF SAID SECTION 28;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET;  
TOGETHER WITH THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER  
OF SECTION 29, TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY  
WASHINGTON;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET;  
TOGETHER WITH GOVERNMENT LOT 4 OF SAID SECTION 29;  
TOGETHER WITH THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER  
OF SECTION 29;

TOGETHER WITH ALL OF GOVERNMENT LOT 5;

EXCEPT THE WEST 672-2/7 FEET OF THE NORTH 700 FEET THEREOF IN SAID  
SECTION 29;

TOGETHER WITH ALL TIDE LANDS OF THE SECOND CLASS ADJOINING  
GOVERNMENT LOTS 3 AND 4 OF SECTION 28 AND GOVERNMENT LOTS 4 AND 5  
OF SAID SECTION 29;

ALL IN TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY,  
WASHINGTON, EXTENDING TO THE LINE OF EXTREME LOW TIDE.

**Exhibit B**  
**PERMITTED EXCEPTIONS/ TITLE REPORT**

Pacific Northwest Title Company

6 Unrecorded Lease

Lessor: Northwest Aggregates Co  
Lessee: Seattle SMSA Limited Partnership of U S West NewVector Group, Inc  
Disclosed By: Memorandum of Option and Lease Agreement  
Recorded: December 19, 1995  
Recording No.: 9513190750

Notice of Exercise of Option

Recorded: August 23, 1995  
Recording No.: 9608230653

7 Unrecorded Lease

Lessor: Northwest Aggregates Co  
Lessee: Seattle SMSA Limited Partnership  
Disclosed By: Notice of Exercise of Option  
Recorded: August 23, 1995  
Recording No.: 9608230653

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Pacific Northwest Title

Page 6 of 108 (45 117831)

Pacific Northwest Title Company

12. Exceptions and reservations contained in deed from the State of Washington whereby the Grantor excepts and reserves all oil, gas, coal, ores, minerals, metals, etc. and the right of entry for opening, developing and working the same and providing that such rights shall not be exercised until provision has been made for full payment of all damages sustained by reason of such entry recorded under Recording Number 833262 and 761291.

NOTE: No examination has been made to determine the present record owner of the above minerals or mineral lands and appurtenant rights thereon or to determine matters which may affect the lands or rights to be insured.

13. Underground Utility Easement and the terms and conditions referenced therein, including, but not limited to, the following:

|                |   |
|----------------|---|
| Grantee        | Puget Sound Power & Light Company, a Washington corporation   |
| Purpose:       | The right to construct, operate, maintain, repair, replace, and enlarge one or more electric transmission and/or distribution lines |
| Area Affected  | A portion of said premises  |
| Recorded       | October 04, 1968  |
| Recording No.: | 6116134   |

Contains covenant prohibiting structures over said easement or other activity which might endanger the underground system.

14. Underground Utility Easement and the terms and conditions referenced therein, including, but not limited to, the following:

|               |   |
|---------------|---|
| Grantee       | Puget Sound Power & Light Company, a Washington corporation   |
| Purpose:      | The right to construct, operate, maintain, repair, replace, and enlarge one or more electric transmission and/or distribution lines |
| Area Affected | The South 30 feet of the West 450 feet of the Southeast 1/4 of Section 29 Township 22 North, Range 1 East                           |
| Recorded      | November 08, 1971   |
| Recording No. | 711483593   |

Contains covenant prohibiting structures over said easement or other activity which might endanger the underground system.

15. Declaration of Covenants Regarding Property Utilization and the terms and conditions thereof:

|                |               |
|----------------|---------------|
| Recorded:      | June 11, 1997 |
| Recording No.: | 5706110432    |

16. Memorandum of Agreement and the terms and conditions thereof:

|                |                   |
|----------------|-------------------|
| Recorded:      | November 18, 2002 |
| Recording No.: | 2002118000336     |

Pacific Northwest Title

PL2277-0001-50-110213

## **Exhibit C**

### **LEASES**

NWA has advised County that the Property is subject to the following leases, tenancies or rights of persons in possession:

- DNR Aquatic Lands Lease No. 20-A12778, dated December 2, 2008
- Option and Lease Agreement dated October 27, 1995  
(providing for a cell tower site on the Property)

## Exhibit D

### ENVIRONMENTAL REPORTS

Material information concerning environmental matters with respect to the Property provided to County by NWA includes, without limitation, the following:

#### 1998:

- 98-04-27 Geology Geologic Hazards and Groundwater Report - AESI  
(Associated Earth Sciences, Inc. 1998. Soils, Geology, Geologic Hazards and Groundwater Report, Existing Conditions, Impacts and Mitigation, Maury Island Pit, King County, Washington, Prepared for Lone Star Northwest, Inc )

#### 1999:

- 99-06-03 Groundwater Discipline Report -Terra Ass  
(Terra Associates 1999 Groundwater Discipline Report, Geology and Groundwater Sections, Lone Star Pit/Maury Island, King County, Washington, June 3, 1999)
- 99-01-19 Final Sampling Results -Landau Associates  
(Landau Associates. 1999. Letter to Vashon-Maury Island Community Council Re: Final Sampling Results NW Aggregates Maury Island Gravel Mine January 19, 1999)
- 99-03-23 Soil Sample Tech memorandum -Terra Assoc.  
(Terra Associates, Inc 1999 Technical Memorandum, Environmental Soil Sampling, Arsenic, Cadmium and Lead, Lone Star Maury Island Site, King County, Washington March 23, 1999)
- 99-06-00 Focused Feasibility Study for Contamination-  
(Foster Wheeler 1999 Mitigation Report for Contaminated Soils, Northwest Aggregates, Maury Island Sand and Gravel Mining Operation, Foster Wheeler Environmental, Attachment A to Mitigation Plan. June 1999)
- 99-06-00 Mitigation Report for Contaminated Soils-Foster W  
Foster Wheeler 1999. Mitigation Report for Contaminated Soils, Northwest Aggregates, Maury Island Sand and Gravel Mining Operation, Foster Wheeler Environmental. June 1999)
- 99-10-04 Summary of Documents PGG  
(Pacific Groundwater Group, 1999 Document Summaries and Areas for Further Investigation, Maury Island Gravel Mining Impact Studies, Department of Ecology, October 1999 Ecology Publication #99-29)

#### 2000:

- 00-08-00 Soil Sample Report for June 2000 Foster Wheeler  
(Foster Wheeler. 2000 Soil Sampling Report for June 2000. Prepared for Glacier Northwest, Inc August 2000)
- 00-05-00 Maury Island Hydrologic Impact Assessment- Ecology  
(Pacific Groundwater Group, 2000 Maury Island gravel Mine Hydrogeologic impact Assessment, prepared for Department of Ecology, May 2000 Ecology Publication 00-10026)

**2001:**

- 01-10-15 Soil Sampling Rpt for East Road Restoration - Foster  
(Foster Wheeler. 2001 Soil Sampling Report for Road Restoration, Glacier Northwest, Inc. October 15, 2001)

**2004:**

- Fill Source Environmental Assessment  
(Aspect Consulting, LLC. 2004. Fill Source Environmental Assessment for Maury Island for STIA Third Runway Project Prepared for Glacier Northwest March 2004)

**Other files:**

- 01\_Soil\_Samples\_Less than 6in  
(map showing compiled soil sampling data in the 0 to 6-inches)
- 02\_Soil\_Samples\_6in\_to1ft  
(map showing compiled soil sampling data in the 6-inches to 1 foot)
- 03\_Soil\_Samples\_1ft\_to2ft  
(map showing compiled soil sampling data in the 1 ft to 2 ft range)
- 04\_Soil\_Samples\_Deepertan2ft  
(map showing compiled soil sampling data in the 1 ft to 2 ft range)
- 2008 Groundwater Monitoring Plan
- Maury Island Mine Groundwater Quality Summary Table
- Soil Data Compilation Table 2010

**Other documents:**

- King County Department of Development and Environmental Services 2000. Final Environmental Impact Statement, Maury Island, Glacier Northwest Gravel Mine.
- King County Department of Development and Environmental Services. 2004. Addendum to Final Environmental Impact Statement, Maury Island, Glacier Northwest Gravel Mine.
- Technical Memorandum. Maury Island Lone Star Gravel Mine Evaluation of Spring Water Quality, Proposed Stormwater Management Measures, and Potential Sediment Runoff Impacts. Prepared for Washington State Department of Ecology and Pacific Groundwater Group February 2000
- Supplemental Evaluation prepared by GeoEngineers. Geotechnical and Engineering Geology Services Access Road Stability Evaluation. Glacier Northwest Property, Maury Island, Washington. December 12, 2001
- Trace Metals Levels in Puget Sound Glacier Deposits Prepared for 5th Washington Hydrogeology Symposium, by Lori J. Herman and Ingrid L. Ekstrom, Aspect Consulting. April 12, 2005.



Exhibit E

**TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS**

To inform **KING COUNTY** ("*Transferee*"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("*Code*"), will not be required upon the transfer of certain real property to the Transferee by **NORTHWEST AGGREGATES CO.**, an Oregon corporation ("*Transferor*"), Transferor hereby certifies as follows:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated there under);
2. Transferor's U.S. employer or tax (social security) identification number is \_\_\_\_\_

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Transferor understands that Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

Transferor hereby agrees to indemnify, defend and hold harmless Transferee from and against any and all obligations, liabilities, claims, losses, actions, causes of action, rights, demands, damages, costs and expenses of every kind, nature or character whatsoever (including, without limitation, reasonable attorneys' fees and court costs) incurred by Transferee as a result of: (i) Transferor's failure to pay U.S. federal income tax which Transferor is required to pay under applicable U.S. law; or (ii) any false or misleading statement contained herein.

DATE: \_\_\_\_\_, 2010.

**TRANSFEROR:**

**NORTHWEST AGGREGATES CO.,**  
an Oregon corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit F**

**FORM OF GRAVEL AGREEMENT AMENDMENT**

**AMENDMENT #1  
TO  
GRAVEL PURCHASE AND EXTRACTION AGREEMENT**

THIS AMENDMENT TO GRAVEL PURCHASE AND EXTRACTION AGREEMENT is made and entered into as of \_\_\_\_\_, 2010, by and between KING COUNTY, a political subdivision of the State of Washington (the "Seller") and GLACIER NORTHWEST, INC., a Washington corporation, d/b/a CalPortland (the "Buyer").

**RECITALS**

A. Seller previously entered into a Gravel Purchase and Extraction Agreement with Vashon Sand & Gravel, Inc., a Washington corporation ("VSG"), executed as of March 29, 2004 (the "Gravel Agreement") that authorized VSG to "utilize the Gravel extracted from the Mine Property only for re-sale in the ordinary course of its business," and stated that VSG "shall not market the Gravel for use off of Vashon-Maury Island."

B. VSG assigned its rights and obligations under the Gravel Agreement to the Buyer, through an Assignment and Assumption Agreement dated March 1, 2005 that the Seller consented to on April 18, 2005.

C. Seller has entered into a Purchase and Sale Agreement with Northwest Aggregates Co. an Oregon corporation ("NWA") concurrent with this Amendment that sets forth the terms and conditions for transferring certain real property on Maury Island from NWA to Seller.

D. As partial consideration for the transfer of NWA's Maury Island property, NWA and Seller agreed to amend the Gravel Agreement to extend the time in which the Buyer may remove the Gravel from 2020 to 2030, remove the ability of Seller to terminate the Gravel Agreement in 2014 and to eliminate the obligation to make royalty payments to the Seller for the first 100,000 tons of Gravel removed from the Mine Property each year.

E. Unless otherwise defined in this Amendment to Gravel Agreement (this "Amendment"), all terms in this Amendment shall have the meanings attributed to them in the Gravel Agreement.

NOW, THEREFORE, the parties agree to amend the Gravel Agreement as follows:

1. Section 1(a) of the Gravel Agreement shall be replaced with the following:

The purchase price ("Purchase Price") for the Gravel is the Royalty Rate (defined below) multiplied by the number of tons of Gravel extracted and removed from the Mine Property each month during the Term; provided however that the Purchase Price shall not be due and owing on the first one hundred thousand (100,000) tons of Gravel extracted and removed from the Mine Property in a calendar year, i.e. from January 1 to December 31. The

Purchase Price shall be paid monthly on the twentieth (20th) day of the month based on the previous month's removals.

2. Section 2(a) of the Gravel Agreement shall be amended to change the date of August 31, 2020 referenced therein to August 31, 2030.

3. Section 2(b) of the Gravel Agreement shall be deleted.

4. No other modification to the Gravel Agreement is made or intended to be made hereby and, as amended herein, the Gravel Agreement is hereby confirmed and reaffirmed by Seller and Buyer and shall remain in full force and effect, as amended herein.

IN WITNESS WHEREOF, this Amendment is executed by the parties as of the date(s) written below.

**SELLER:**

**KING COUNTY,**  
a municipal corporation and political  
subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2010

**BUYER:**

**GLACIER NORTHWEST, INC.,**  
a Washington corporation,  
d/b/a CalPortland

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2010

Approved as to Form:

By \_\_\_\_\_  
Senior Deputy Prosecuting Attorney  
Date: \_\_\_\_\_, 2010

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that he/she signed this  
instrument, on oath stated that he/she is authorized to execute the instrument, and acknowledged  
it as the \_\_\_\_\_ of **KING COUNTY** to be the free and voluntary  
act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF WASHINGTON }  
COUNTY OF \_\_\_\_\_ } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that he/she signed this  
instrument, on oath stated that he/she is authorized to execute the instrument, and acknowledged  
it as the \_\_\_\_\_ of **GLACIER NORTHWEST, INC.**, to be the  
free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**Exhibit G**

**FORM OF RIGHT OF FIRST REFUSAL**

When Recorded, Return to:

**KING COUNTY**

Attention: \_\_\_\_\_  
201 S. Jackson Street, Suite 600  
Seattle, WA 98104

---

**RIGHT OF FIRST REFUSAL**

|  |   |
|--|---|
| <b>Grantor:</b>  | <u>    <b>KING COUNTY</b>    </u>   |
| <b>Grantee:</b>  | <u>    <b>NORTHWEST AGGREGATES CO.</b>    </u>  |
| <b>Legal Description</b><br>(abbreviated):               | <u>    <b>SECTION 28, TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M.</b>    </u>                       |
|  | <input checked="" type="checkbox"/> Complete legal on <u>    <b>Exhibit A</b>    </u>         |
| <b>Assessor's Tax Parcel Identification No(s):</b>       | <u>    <b>282203-9023; 282203-9024; 282203-9025;</b></u><br><u>    <b>282203-9057</b>    </u> |
| <b>Reference Nos. of Documents Released or Assigned:</b> | <u>    <b>N/A</b>    </u>   |

THIS RIGHT OF FIRST REFUSAL ("Agreement") is made by and between **KING COUNTY**, a political subdivision of the State of Washington ("County"), and **NORTHWEST AGGREGATES CO.**, an Oregon corporation ("NWA").

**RECITALS**

**A.** County is the owner of that certain real property located on Maury Island, King County, Washington and legally described in attached EXHIBIT A ("Property"). County acquired the Property from NWA pursuant to that certain Real Estate Purchase and Sale Agreement dated December \_\_\_\_, 2010, in which NWA is the seller and County is the buyer.

**B.** The Property has historically been used for sand and gravel mining operations. Prior to the date of this Agreement, NWA had obtained multiple permits in anticipation of resuming its use of the Property for sand and gravel mining purposes.

C. County has purchased the Property to use for open space purposes or for such other purposes as it deems appropriate.

D. A condition to NWA's willingness to sell the Property was that it be granted a right of first refusal to enter into a mining lease, gravel purchase and extraction agreement or other similar agreement ("Mining Agreement") with the County if the County or its successors or assigns should, in the future, decide to resume use of the Property for the mining of sand and gravel.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and NWA agree as follows.

## AGREEMENTS

### 1. RIGHT OF FIRST REFUSAL—THIRD PARTY MINING AGREEMENTS.

County hereby grants NWA a right of first refusal to enter into a Mining Agreement for the Property, on the following terms and conditions:

1.1 If County intends to enter into a Mining Agreement with a third party for the purpose of mining sand and gravel on all or a portion of the Property, County shall first issue a written offer to NWA to enter into a Mining Agreement ("Mining Notice") on the same terms and conditions that are proposed for the Mining Agreement with such third party. The County's Mining Notice shall set forth the essential business terms and conditions that County desires to enter into including, without limitation, the form of Mining Agreement, the duration of such Mining Agreement, the royalty and/or rent provisions, the area within the Property available for mining, and all other terms and conditions material to NWA's decision whether to enter into the Mining Agreement.

1.2 NWA shall have a period of sixty (60) days following its receipt of the County's Mining Notice within which to accept or reject the Mining Notice by giving County written notice thereof. If NWA fails to respond within such 60-day period, it shall be deemed to have rejected the Mining Notice. If NWA accepts the Mining Notice, the parties shall, within thirty (30) days thereafter, enter into a Mining Agreement on the terms and conditions set forth in the Mining Notice.

1.3 If NWA does not accept the County's Mining Notice, County may enter into the Mining Agreement with the third-party, provided that such Mining Agreement must be (a) executed by the parties within ninety (90) days following the earlier of the expiration of NWA's acceptance period for the Mining Notice or the date of NWA's written rejection of the County's Mining Notice and (b) on the same terms and conditions as those specified in the County's Mining Notice or upon terms and conditions more favorable to County such as a higher royalty rate.

1.4 Whether or not County and any such third party enter into a Mining Agreement in accordance with the requirements of Section 1.3, NWA's right of first refusal



hereunder shall apply to any subsequent Mining Agreement that County desires to enter into for all or a portion of the Property, but shall not apply to any extensions of such Mining Agreement.

**2. RIGHT OF FIRST REFUSAL—PROPOSED MINING BY COUNTY.**

County hereby grants to NWA a right of first refusal to enter into a Mining Agreement for the Property if County itself intends to mine the Property or otherwise extract sand and gravel for purposes of transporting it offsite, rather than entering into a Mining Agreement with a third party, on the following terms and conditions:

**2.1** County shall issue a written Mining Notice to NWA setting forth (a) the anticipated duration of the County's proposed mining or extraction operation, (b) the estimated amount of sand and gravel to be extracted by County from the Property, and (c) the form of Mining Agreement that County proposes should NWA exercise its right of first refusal. Upon receipt of the Mining Notice, NWA shall have the right to enter into negotiations for a Mining Agreement with County for the duration and to supply to County the amount of sand and gravel specified in the Mining Notice, with compensation at fair market value, and on other commercially reasonable terms and conditions applicable to comparable sand and gravel mining operations in the greater Puget Sound area. The parties anticipate that such Mining Agreement would provide for the sale or lease of the sand and gravel to NWA for resale solely to the County at the fair market retail value discounted by the fair market value royalty rate that would be due to the County. NWA shall have a period of sixty (60) days following its receipt of the Mining Notice within which to exercise its right of first refusal pursuant to this Section 2 ("ROFR Notice"). If NWA fails to respond within such 60-day period, it shall be deemed to have elected not to enter into such negotiations.

**2.2** Following NWA's issuance of a ROFR Notice, County and NWA shall in good faith attempt to agree upon the terms and conditions of such Mining Agreement.

**2.3** If the parties are unable to agree upon the terms and conditions to be included in the Mining Agreement within ninety (90) days following the ROFR Notice, then NWA may invoke the Alternative Dispute Resolution process set forth in Section 3 of this Agreement in order to determine the economic terms and other commercially reasonable terms and conditions that shall be included in the Mining Agreement. NWA shall have fifteen (15) days following resolution of the matter through the Alternative Dispute Resolution process or a final decision of a court in any lawsuit filed to enforce this Agreement to provide written notice to County of NWA's election whether or not to enter into the Mining Agreement for the Property on such terms and conditions.

**2.4** Upon the earlier of (a) NWA failure to provide a ROFR Notice within sixty (60) days following its receipt of the Mining Notice from the County under Section 2.1, (b) NWA's failure to invoke the Alternative Dispute Resolution process within one hundred twenty (120) days following the initiation of negotiations through issuance of the ROFR Notice under Section 2.1, (c) NWA's failure to commence a lawsuit within thirty (30) days following completion of the Alternative Dispute Resolution Process; or (d) NWA's failure to provide written notice of its election to enter into a Mining Agreement within fifteen (15) days of

resolution of a dispute regarding terms and conditions under Section 2.3; or (e) County's receipt of NWA's written statement at any time that it will not enter into a Mining Agreement ("Refusal Date"), County may immediately thereafter begin mining operations on the Property for the duration and for the estimated amount of sand and gravel specified in County's Mining Notice. If County then fails to initiate mining operations by filing a complete application for the required permits and thereafter diligently pursuing approval within one (1) year of the Refusal Date, County may not begin mining without again providing NWA with a Mining Notice and otherwise complying with the requirements of this Section 2. In addition, NWA's right of first refusal hereunder shall apply to any subsequent mining of the Property that County intends to undertake itself beyond the mining identified in the Mining Notice.

### **3. COUNCIL APPROVAL.**

**3.1** If approval of a Mining Agreement by the Metropolitan King County Council is required prior to the County's execution of the Mining Agreement, any such approval shall not be required within the timelines set forth in Section 1 or Section 2, but may instead occur following agreement between the County Executive and NWA or a third party, as the case may be, on the terms and conditions of the Mining Agreement.

**3.2** If a County ordinance prevents the parties from carrying out the terms of this Agreement as specified herein, then the County may not enter into a Mining Agreement with a third party or mine the Property itself until such ordinance is amended to allow the terms of this Agreement to be implemented.

**4. ALTERNATIVE DISPUTE RESOLUTION.** The parties will work collaboratively in accordance with the following steps to resolve disagreements arising under this Agreement.

**4.1** Disagreements will be resolved promptly and at the lowest level of authority. The Designated Representatives (as defined below) shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (a) a description of the issue to be resolved; (b) a description of the difference between the parties on the issue; and (c) a summary of steps taken by Designated Representative to resolve the issue. The Designated Representatives shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute.

**4.2** In the event the Designated Representatives cannot resolve the dispute, NWA's Senior Vice President or his/her designee and the Director of the King County Department of Natural Resources and Parks or his/her designee shall meet within seven (7) business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute. In the event the parties are unable to timely resolve the dispute utilizing the process set forth in this Section 4, and as a pre-condition to seeking relief for such dispute in a court of law, the parties shall submit the matter to a non-binding mediation with

a mediator agreed upon by the parties. The cost of the mediation shall be shared equally between the parties.

**4.3** This dispute resolution process shall be fully completed within sixty (60) days of the initial written notice called for in Section 4.1, and the parties shall make all reasonable efforts to resolve the dispute in within this sixty (60) day period.

**4.4** The parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted. This dispute resolution process shall be deemed complete if the parties have not resolved their dispute within sixty (60) days of the initial written notice called for in Section 4.1.

**4.5** The parties shall each designate a representative ("Designated Representative"). The Designated Representatives shall be responsible for coordinating communications between the parties and shall act as a central point of contact for each agency in the event disputes arise. Each party's Designated Representative is named below with the individual's contact information. Designated Representatives may be changed by written notice to the other party.

Designated Representative for County: Kevin Brown  
Director, Parks and Recreation Division  
King County Department of Natural Resources  
and Parks  
201 S. Jackson Street, Suite 700  
Seattle, WA 98104-3856  
Phone: (206) 296-8631  
E-mail: kevin.brown@kingcounty.gov

Designated Representative for NWA: Doug Anderson  
Vice President/General Manager  
Northwest Materials Division  
CalPortland  
5975 E. Marginal Way S.  
Seattle, WA 98134  
Phone: (206) 909-2549  
Fax: (206) 764-3054  
E-mail: danderson@CalPortland.com

**5. TERMINATION.** This Agreement shall terminate ninety-nine (99) years following the date of recording of this Agreement.

**6. BINDING.** This Agreement shall be binding on the parties hereto and on each of their successors, assigns, administrators, and legal representatives for the duration of this Agreement. The provisions of this Agreement touch and concern interests in real property, i.e., the Property, and all rights, title, privileges, benefits, and burdens granted by this Agreement

shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and each of their successors, assigns, administrators, and legal representatives.

7. **ASSIGNMENT.** This Agreement shall not be assigned without the written consent of County.

8. **NOTICES.** Any notices required herein shall be given to the parties by (i) personal delivery, (ii) overnight courier service or (iii) certified mail, return receipt requested. Notice shall be deemed given (i) at the time of delivery, whether personally or by overnight courier service or (ii) three (3) days after mailing. Notice shall be effective and deemed given only if made to the addresses listed below or to any such other address as that party may have given notice to the other party.

*To County:* Director, Parks and Recreation Division  
King County Department of Natural Resources and Parks  
201 S. Jackson Street, Suite 700  
Seattle, WA 98104

*With copy to:* Office of the King County Prosecuting Attorney,  
Civil Division  
Attn: Chief Civil Deputy  
W-400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

*To NWA:* Northwest Aggregates Co.  
c/o CalPortland  
Attn: Vice President & General Manager  
Northwest Materials Division  
P.O. Box 1730  
Seattle, WA 98111  
or  
5975 E. Marginal Way S.  
Seattle, WA 98134

*With copy to:* Northwest Aggregates Co.  
c/o CalPortland Company  
Attn: General Counsel  
2025 E. Financial Way  
Glendora, CA 91741

9. **GENERAL.** This is the entire agreement of the County and NWA with respect to the matters set forth herein and supersedes all prior or contemporaneous agreements between them, written or oral. This Agreement may be modified only in writing, signed by County and NWA. Any waivers under this agreement must be in writing. A waiver of any right or remedy

in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. Time is of the essence in this Agreement.

**10. GOVERNING LAW, JURISDICTION AND VENUE.** The laws of the State of Washington shall govern the interpretation and enforcement of this Agreement. The parties agree that the Superior Court in King County, Washington, shall be the sole and exclusive venue for any action or legal proceeding for an alleged breach of any of the terms and conditions set forth herein, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either party; and the parties hereby agree to submit to the personal jurisdiction of said court.

**11. ATTORNEYS' FEES.** If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party. For purposes of this provision, in any action or proceeding instituted pertaining to this Agreement, a party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said party or (ii) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

EXECUTED as of the dates set forth below.

NWA:

COUNTY:

**NORTHWEST AGGREGATES CO.,**  
an Oregon corporation

**KING COUNTY,** a political subdivision of  
the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

**EXHIBIT**

**EXHIBIT**

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of **KING COUNTY** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF WASHINGTON }  
COUNTY OF KING } ss

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of **NORTHWEST AGGREGATES CO.**, the Oregon corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

THOSE PORTIONS OF GOVERNMENT LOT 3, SECTION 28, TOWNSHIP 22 NORTH,  
RANGE 3 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE  
NORTH QUARTER CORNER OF SAID SECTION 28;

THENCE SOUTH 72°30'10" WEST 137.07 FEET;

THENCE SOUTH 1042.07 FEET TO THE GOVERNMENT MEANDER LINE;

THENCE ALONG SAID MEANDER LINE NORTH 53°00' EAST 163.69 FEET;

THENCE NORTH 984.77 FEET TO THE POINT OF BEGINNING;

EXCEPT THE NORTHERLY 10 FEET OF SAID PORTION;

AND EXCEPT ANY PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET  
AND 79TH AVENUE SOUTHWEST;

(BEING TRACT 9, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT  
THEREOF; EXCEPT THE NORTHERLY 10 FEET);

AND BEGINNING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE  
NORTH QUARTER CORNER OF SAID SECTION 28;

THENCE NORTH 72°30'10" EAST 137.07 FEET;

THENCE SOUTH 927.47 FEET TO THE GOVERNMENT MEANDER LINE;

THENCE SOUTH 53°00' WEST 163.69 FEET ALONG SAID MEANDER LINE;

THENCE NORTH 984.77 FEET TO THE POINT OF BEGINNING;

(BEING TRACT 10, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED  
PLAT THEREOF);

AND

COMMENCING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE  
NORTH QUARTER CORNER OF SAID SECTION 28;

THENCE NORTH 72°30'10" EAST 137.07 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 72°30'10" EAST 137.07 FEET;

THENCE SOUTH 870.17 FEET TO THE GOVERNMENT MEANDER LINE;

THENCE SOUTH 53°00' WEST 163.69 FEET ALONG SAID MEANDER LINE;

THENCE NORTH 927.47 FEET TO THE TRUE POINT OF BEGINNING;

(BEING TRACT 11, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED  
PLAT THEREOF);

TOGETHER WITH THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF  
SAID SECTION 28;

EXCEPT THE NORTHEAST QUARTER THEREOF;

AND EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST  
260TH STREET AND 79TH AVENUE SOUTHWEST;

TOGETHER WITH GOVERNMENT LOT 4 OF SAID SECTION 28;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET;  
TOGETHER WITH THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF  
SECTION 29, TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY  
WASHINGTON;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET;  
TOGETHER WITH GOVERNMENT LOT 4 OF SAID SECTION 29;

TOGETHER WITH THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF  
SECTION 29;

TOGETHER WITH ALL OF GOVERNMENT LOT 5;

EXCEPT THE WEST 672-2/7 FEET OF THE NORTH 700 FEET THEREOF IN SAID  
SECTION 29;

TOGETHER WITH ALL TIDE LANDS OF THE SECOND CLASS ADJOINING  
GOVERNMENT LOTS 3 AND 4 OF SECTION 28 AND GOVERNMENT LOTS 4 AND 5 OF  
SAID SECTION 29;

ALL IN TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY,  
WASHINGTON, EXTENDING TO THE LINE OF EXTREME LOW TIDE.



## Exhibit H

### SCHEDULE OF PERSONAL PROPERTY AND FIXTURES

**Personal Property of NWA to Be Removed From Property includes but is not limited to the following:**

1. Scrap steel removed from lower pit during construction. This is a pile located on the top of the mine in the northwest corner.
2. Office/job trailer located at the bottom of the mine.
3. 20' shipping container located at the bottom of the mine near the shoreline.
4. Various concrete forms and supplies used for concrete forming. These are located at the bottom of the mine near the job trailer.
5. Steel beams located next to the concrete foundations near the shoreline.
6. All abandoned vehicles on the Property.

**Fixtures to Remain on the Property, Subject to Possible Removal of Conveyors Pursuant to Section 8:**

1. Three buried feed tunnels, each approximately 75 feet long.
2. One conveyor, approximately 100 feet long.
3. One conveyor, approximately 250 feet.
4. One conveyor, approximately 300 feet long.
5. Concrete footings and structures associated with dock construction.

**Note:** The location of such fixtures is indicated on the attached aerial photograph.



75' Buried Feed Tunnel, 100' Conveyor

250' Elevated Stacking Conveyor

75' Buried Feed Tunnel

300' Conveyor

75' Buried Feed Tunnel

Concrete Footings and sump (new construction)

**Exhibit I**

**GUARANTY FROM CALPORTLAND**

## GUARANTY

THIS GUARANTY is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by CALPORTLAND COMPANY, a California corporation ("Guarantor"), for the benefit of KING COUNTY, a political subdivision of the State of Washington ("County").

## RECITALS

A. Pursuant to that certain Real Estate Purchase and Sale Agreement with an Effective Date of \_\_\_\_\_, 2010 ("Purchase Agreement"), Northwest Aggregates Co., an Oregon corporation ("NWA"), agreed to sell to County certain real property located on Maury Island, Washington and more particularly described on the attached EXHIBIT A ("Property"). In connection with such sale, Guarantor has agreed to guarantee payment of certain Guaranteed Obligations (as defined below) of NWA under the Purchase Agreement.

B. The County's willingness to enter into the Purchase Agreement with NWA was conditioned on Guarantor agreeing to guarantee the payment of the Guaranteed Obligations of NWA under the Purchase Agreement. NWA is controlled by Guarantor. Therefore, the Purchase Agreement provides a direct economic benefit to Guarantor.

## AGREEMENTS

In order to induce County to enter into the Purchase Agreement, Guarantor hereby agrees as follows:

1. **Guaranty.** Pursuant to Section 9.6 of the Purchase Agreement, Guarantor hereby guarantees the full and prompt payment of all Remediation Costs for which NWA is obligated to reimburse the County in accordance with the terms and conditions of the Purchase Agreement ("Guaranteed Obligations"). If NWA fails to timely and fully pay the Guaranteed Obligations, Guarantor shall, upon notice to Guarantor from County, promptly undertake payment of the Guaranteed Obligations.

2. **Guarantor's Obligations.** This Guaranty is an absolute, unconditional guarantee of payment by NWA of the Guaranteed Obligations. It shall be enforceable against Guarantor without the necessity of any suit or proceeding on the part of County against NWA or any other party.

3. **Waivers.** Except for the right to receive notice to pay the Guaranteed Obligations upon any default by NWA, Guarantor waives any necessity of notice of nonpayment or non-observance by NWA of any other term or provision of the Purchase Agreement. This Guaranty shall not be discharged by reason of any modification of the Purchase Agreement or waiver or forbearance by County of any of its terms, notices of which Guarantor hereby waives.

4. **Exercise of Remedies.** No forbearance or delay on the part of County in the exercise of any power, right, or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any such power, right, or privilege preclude any other or further

exercise of such power, right or privilege. All powers, rights and privileges hereunder are cumulative with and not exclusive of any powers, rights or privileges otherwise available to County at law or under any other documents.

5. **Costs and Fees of Enforcement.** Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses that may be incurred by County in the enforcement of this Guaranty, whether or not litigation is commenced. Until paid to County, such sums shall bear interest at 12% per annum.

6. **Miscellaneous.** This Guaranty shall be governed by and construed in accordance with the laws (without regard to the choice of law rules) of the State of Washington. This Guaranty shall inure to the benefit of County and its successors and assigns, and shall be binding upon the successors and assigns of Guarantor.

7. **Term of Guaranty.** This Guaranty shall become effective upon the recording of the deed from NWA conveying the Property to County and shall continue in effect until full performance of the Guaranteed Obligations by NWA or Guarantor.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

DATED as of the day and year first above written.

**Guarantor:**

**CALPORTLAND COMPANY,**  
a California corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT**

**Exhibit A**

**LEGAL DESCRIPTION OF PROPERTY**

THOSE PORTIONS OF GOVERNMENT LOT 3, SECTION 28, TOWNSHIP 22 NORTH, RANGE 3 EAST, W M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE NORTH QUARTER CORNER OF SAID SECTION 28;  
THENCE SOUTH 72°30'10" WEST 137.07 FEET;  
THENCE SOUTH 1042.07 FEET TO THE GOVERNMENT MEANDER LINE;  
THENCE ALONG SAID MEANDER LINE NORTH 53°00' EAST 163.69 FEET;  
THENCE NORTH 984.77 FEET TO THE POINT OF BEGINNING;

EXCEPT THE NORTHERLY 10 FEET OF SAID PORTION;

AND EXCEPT ANY PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET AND 79TH AVENUE SOUTHWEST;

(BEING TRACT 9, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF; EXCEPT THE NORTHERLY 10 FEET);

AND BEGINNING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE NORTH QUARTER CORNER OF SAID SECTION 28;  
THENCE NORTH 72°30'10" EAST 137.07 FEET;  
THENCE SOUTH 927.47 FEET TO THE GOVERNMENT MEANDER LINE;  
THENCE SOUTH 53°00' WEST 163.69 FEET ALONG SAID MEANDER LINE;  
THENCE NORTH 984.77 FEET TO THE POINT OF BEGINNING;

(BEING TRACT 10, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF);

AND

COMMENCING AT A POINT 1201.57 FEET WEST AND 1287.79 FEET SOUTH OF THE NORTH QUARTER CORNER OF SAID SECTION 28;  
THENCE NORTH 72°30'10" EAST 137.07 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 72°30'10" EAST 137.07 FEET;  
THENCE SOUTH 870.17 FEET TO THE GOVERNMENT MEANDER LINE;  
THENCE SOUTH 53°00' WEST 163.69 FEET ALONG SAID MEANDER LINE;  
THENCE NORTH 927.47 FEET TO THE TRUE POINT OF BEGINNING;

(BEING TRACT 11, BEACH VIEW TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF);

TOGETHER WITH THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 28;

EXCEPT THE NORTHEAST QUARTER THEREOF;

AND EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET AND 79TH AVENUE SOUTHWEST;

TOGETHER WITH GOVERNMENT LOT 4 OF SAID SECTION 28;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET;

TOGETHER WITH THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY WASHINGTON;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTHWEST 260TH STREET;

TOGETHER WITH GOVERNMENT LOT 4 OF SAID SECTION 29;

TOGETHER WITH THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29;

TOGETHER WITH ALL OF GOVERNMENT LOT 5;

EXCEPT THE WEST 672-2/7 FEET OF THE NORTH 700 FEET THEREOF IN SAID SECTION 29;

TOGETHER WITH ALL TIDE LANDS OF THE SECOND CLASS ADJOINING GOVERNMENT LOTS 3 AND 4 OF SECTION 28 AND GOVERNMENT LOTS 4 AND 5 OF SAID SECTION 29;

ALL IN TOWNSHIP 22 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY, WASHINGTON, EXTENDING TO THE LINE OF EXTREME LOW TIDE.

**Exhibit J**

**ASSIGNMENT AND ASSUMPTION OF PERMITS**



## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is dated for reference purposes December \_\_\_\_, 2010 and is made by and between **NORTHWEST AGGREGATES CO.**, an Oregon corporation ("NWA"), and **KING COUNTY**, a political subdivision of the State of Washington ("County").

### RECITALS

**A.** NWA is the seller and County is the Buyer under that certain Real Estate Purchase and Sale Agreement ("Purchase Agreement") dated as of December \_\_\_\_, 2010 with regard to certain real property located on Maury Island, Washington, as more particularly described in the Purchase Agreement.

**B.** Pursuant to Section 8 of the Purchase Agreement, at closing, NWA is to assign and County is to assume that certain Surface Mining Permit more particularly described in Section 5.7.1.1 of the Purchase Agreement. In addition, pursuant to Section 5.7.3 of the Purchase Agreement, County has elected to assume certain other permits at closing. The Surface Mining Permit and the other permits which the County has elected to assume are described on the attached SCHEDULE 1 and are collectively referred to herein as the "Permits".

**C.** Capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

For good and valuable consideration, NWA and County hereby agree as follows:

### AGREEMENTS

**1. Assignment.** Effective as of the date of closing under the Purchase Agreement ("Effective Date"), and subject to necessary approvals being obtained following closing pursuant to Section 3 below, NWA hereby assigns to County all of NWA's right, title and interest in the Permits, to the extent such assignment is permitted under applicable law.

**2. Assumption.** Subject to necessary approvals being obtained following closing pursuant to Section 3 below, County hereby assumes the Permits and all obligations thereunder arising on or after the Effective Date, and shall indemnify and hold NWA harmless with respect to any such obligations.

**3. Post-Closing Cooperation.** Following the Effective Date, NWA shall work cooperatively with County to obtain any approvals required to effectuate the assignment by NWA and the assumption by County of the Permits, including without limitation obtaining necessary approvals from the Washington State Department of Natural Resources as to the Surface Mining Permit and any agency granting any of the other Permits, as applicable. County shall provide NWA with reasonable notice of actions it requests NWA to take and NWA shall use its commercially reasonable efforts to take such actions; provided, however, that NWA shall

have no obligation to incur any commercially unreasonable cost or liability following closing as a result of its cooperation with County hereunder.

4. **Binding Effect.** This Assignment and Assumption shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5. **Governing Law.** This Assignment and Assumption shall be governed by and interpreted in accordance with the laws of the State of Washington.

6. **Conflicts.** To the extent there is a conflict between the terms and provisions of this Agreement and the Purchase Agreement, the terms and provisions of the Purchase Agreement will govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

NWA:

NORTHWEST AGGREGATES CO.,  
an Oregon corporation

By \_\_\_\_\_  
Ronald F. Summers  
Senior Vice President

Date: \_\_\_\_\_, 2010

COUNTY:

KING COUNTY, a political subdivision of  
the State of Washington

By \_\_\_\_\_  
Christie Tule, Director  
Department of Natural Resources  
and Parks

Date: \_\_\_\_\_, 2010

## SCHEDULE I

### ASSUMED PERMITS

- Surface Mining Reclamation Permit issued by the Washington State Department of Natural Resources, Permit No. 70-010256

Permits also include any of the following permits marked below:

- Grading Permit issued by the King County Department of Development and Environmental Services ("Grading Permit") for Project Number 1128-714.
- National Pollution Discharge Elimination System Sand and Gravel General Permit ("NPDES Permit") issued by the Washington State Department of Ecology on August 4, 2010
- Section 10 permit issued by the US Army Corps of Engineers on October 25, 1968
- Section 10 and Section 404 permits issued by the US Army Corps of Engineers on July 2, 2008 (Permit No. NWS-2000-1094-SO).
- King County Shoreline Substantial Development Permit dated June 16, 2005
- King County Shoreline Conditional Use Permit dated June 16, 2005
- King County Building Permit (No. B04C0222) as renewed on February 9, 2010
- WDFW Hydraulic Project Approval (Control No. 108837-1) as renewed on May 2, 2007
- Water Quality Certification Order No. 2882, a Coastal Zone Management Consistency Determination from Washington State Department of Ecology, dated March 14, 2006