

EXHIBIT G

LANDFILL AND ENVIRONMENTAL INDEMNIFICATION AGREEMENT

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EXHIBITS

- Exhibit A: Riverfront Property
- Exhibit B: Property Map (City Property)
- Exhibit C: Landfill Property
- Exhibit D: Landfill Pad
- Exhibit E: Consent Decree Amendment
- Exhibit F: Table 6-4 – Work to be Performed Checklist
- Exhibit G: OM Easement to City for Landfill Systems and Related Utilities

LANDFILL AND ENVIRONMENTAL INDEMNIFICATION AGREEMENT

This ENVIRONMENTAL INDEMNIFICATION AND LANDFILL AGREEMENT (the "Agreement" or "LEIA") is entered into as of the ____ day of _____, 2008 (the "Effective Date"), by and between the CITY OF EVERETT, a municipal corporation of the State of Washington (the "City"), OM EVERETT, INC. ("OME"), a Washington corporation, and OLIVERMCMILLAN, LLC, a California limited liability company ("OM LLC"). The City, OME, and OM are from time to time jointly referred to herein as the "Parties" and individually as a "Party".

RECITALS

A. The City is the owner of certain land located within the City of Everett, Snohomish County, Washington, adjacent to the Snohomish River and containing approximately 221 acres, as generally shown on the attached Exhibit A (the "Riverfront Property").

B. The City and OM entered into a Property Disposition Agreement, initially dated February 21, 2007, and thereafter amended ("PDA"), concerning the sale of a portion of the Riverfront Property to OM and its affiliates, including OME, referred to as the "City Property," as shown on the attached Exhibit B. The Riverfront Property and the City Property are also depicted on the boundary survey and property map attached as Exhibit C (the "Property Map").

C. OME is an "Affiliated Entity" under the PDA and intends to purchase and develop the City Property for a high quality planned, mixed-use development including retail uses, and related public and private amenities and open spaces. This Landfill and Environmental Indemnification Agreement is based upon and supersedes Exhibit K to the PDA, which is a term sheet titled "Environmental Indemnification and Landfill Agreement Terms".

D. The City Property includes: (1) development parcels used as a former landfill property, consisting of Lot 16 (sometimes referred to as development parcel A-2) and Lots 21-29 on the Property Map (the "Landfill Pad"); (2) adjacent development parcels to the north of 36th Street and the Landfill Pad, previously owned by Eclipse Properties LLC, Newland Construction Co. Inc, and BNSF, consisting of Lot 32 north of 36th Street (32A) and Lots 39-45 on the Property Map (the "Mill Property"); (3) a development parcel adjacent to the Landfill Site on the south formerly owned by among others the Simpson Paper Company, consisting of Lot 13 on the Property Map (the "Simpson Pad"); (4) a portion of the Former BNSF Property, consisting of Lots 15, 19, 31, 32 south of 36th Street (32B), 33 on the Property Map ("Former RR ROW"), and (5) certain parcels located between the Former RR ROW and the Snohomish River, previously owned by Eclipse Properties LLC, BNSF, and Simpson Paper Company, consisting of Lots 35 and 37-38 on the Property Map ("River Parcels"). Each of these areas is shown on the Riverfront Property Map in the attached Exhibit A, and the parcels within each of these areas are included in the legal description of the City Property in the attached Exhibit B. The City is also retaining certain properties adjacent to the Simpson Pad shown on Exhibits A. The Parties' rights and obligations relating to the Landfill Property as shown and legally described in attached Exhibit C, which consists of the Landfill Pad and a portion of the 41st St. ROW (Lot 20), are the subject of this Agreement. The Landfill Pad is shown and legally described in attached Exhibit D.

E. The Parties have entered into separate agreements at Closing on their respective environmental obligations pertaining to: (1) the Simpson Pad, referred to herein as the "Simpson Pad Environmental and Indemnification Agreement" (2) the Mill Property, referred to herein at the "Mill Property Environmental and Indemnification Agreement;" and (3) the Former RR ROW and River Parcels, referred to herein at the "Former RR ROW and River Parcels Environmental and Indemnification Agreement."

F. Prior to Closing, the City has obtained and shortly after Closing OM will have obtained various environmental insurance policies covering various portions of the Riverfront Property as required by this Agreement.

G. The Landfill Property has been the subject of environmental characterization and remedial actions under the state's Model Toxics Control Act ("MTCA"). The Landfill Property was the subject of a final court-approved Consent Decree ("Consent Decree") entered into between the City and Ecology dated April 2, 2001, which includes a Restrictive Covenant ("Restrictive Covenant") dated January 14, 2002, and a final Cleanup Action Plan ("CAP"). These documents and instruments set forth certain conditions and requirements imposed to protect public health, the environment and the integrity of the remedial actions that have been taken on portions of the City Property.

H. Pursuant to its Consent Decree with Ecology, the City has conducted a number of remedial actions relating to the Landfill Property, which include ongoing groundwater compliance monitoring and continued operation of a landfill gas monitoring system and a leachate collection system.

I. The Consent Decree contemplates future development of the Landfill Property and contains additional requirements for redevelopment as well as long-term operation, maintenance and contingency requirements for the landfill.

J. This Agreement sets forth the allocation of responsibilities agreed to between the Parties for the remaining CAP/CD requirements at the Landfill Property, including division of responsibilities for design and construction of the landfill gas management system, as well as other obligations and indemnifications related to environmental conditions at the Landfill Property.

K. Prior to Closing the Parties entered into an amendment to the Consent Decree with Ecology setting forth their allocation of responsibilities with respect to their respective obligations to Ecology and the State of Washington on the Landfill Property (the "Consent Decree Amendment," dated April 23, 2008, attached hereto as Exhibit E).

L. This Agreement, among other things, complies with and implements the CAP/CD requirement to make provision for necessary remedial actions associated with the development of the Landfill Property and is in the public interest.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.0 Definitions

CAP/CD means the Cleanup Action Plan (CAP) and other elements of the Consent Decree (CD) for the Landfill Property. CAP/CD includes any additional or different requirements that may be set forth in a CD Amendment.

CD Amendment means an amendment of the Consent Decree acceptable to OM, OME, and the City that is agreed to by the Department of Ecology and is entered in court, attached hereto as Exhibit E. The PDA also refers to this document as the "CD Assurance."

City Amenities/Buildings means City-owned and operated buildings (e.g., pump stations) and/or open space amenities (e.g., parks, public parking areas). For purposes of sections 2 and 3 of this Agreement, City Amenities/Buildings does not include areas on the Landfill Property that are dedicated to and owned by City after the Closing Date.

City-Controlled Areas means areas of the Landfill Property in which the City has an ownership interest or otherwise controls access to or use of the area; for example, areas dedicated to the City.

City Improvements means City utilities, roads, structures, monitoring wells, Leachate Collection System, and any other facility of any kind constructed by the City on the Landfill Property, including City Amenities/Buildings.

City Property means the property legally described and shown in Exhibit B to be conveyed to OME and its affiliate, OM LLC, pursuant to the PDA.

Closing or Closing Date means the date that OME takes title to any portion of the Landfill Property.

Compliance Monitoring and Contingency Plan or CMCP means the plan attached as Attachment CAP-2 to the CAP, which is Exhibit C to the CD, and which sets forth the monitoring, reporting, and contingency plan requirements of the CAP/CD.

Condensate System means the system to collect and discharge condensate from the Landfill Gas Management System to the city sewer system, which is typically in the same trench as the collection and header pipes and includes force main for condensate, power conduit and cable, and telecommunication conduit and cable. The System must include condensate "knockout" designed and installed at appropriate locations adjacent to both header pipe and collection pipes to collect and discharge condensate to the city sewer system. The Condensate System is in a location external to the Stub-Out (i.e., not under buildings).

Consent Decree or CD means the court-approved Consent Decree for the Landfill Site entered into between the City and the Department of Ecology ("Ecology"), dated April 2, 2001, and includes all exhibits to the CD.

Consent Decree Amendment means Amendment No. 1 to Consent Decree, dated April 23, 2008, attached in Exhibit E.

Contractor means a contractor retained under section 2 to perform the three main elements of work on the System: design, construction, and long-term operation and maintenance. The Contractor may be retained to perform one or more than one main element of the work. The Agreement provides for two kinds of Contractors: an "Installation Contractor" and an "O&M Contractor."

Existing Gas System means the 41st Street System and the Existing Perimeter System.

41st Street ROW means the area owned by the City on the Landfill Property at Closing, which consists of Lot 20, as shown on Exhibits A and B.

41st Street System means the Landfill Gas Collection System including all of its components for the 41st Street ROW.

Existing Perimeter System means the existing Landfill Gas Management System and all of its components as of Closing.

Hazardous Substance means (i) any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) as amended from time to time and regulations promulgated thereunder; (ii) any "hazardous substance" under the Washington Model Toxics Control Act (Ch. 70.105D RCW) as amended from time to time and regulations promulgated thereunder; (iii) any "hazardous substance" or "hazardous waste" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§ 9602 et seq.) as amended from time to time and regulations promulgated thereunder; (iv) any asbestos; (v) polychlorinated biphenyls; (vi) underground storage tanks, whether empty, filled or partially filled with any substance; (vii) any solid waste or solid waste decomposition products at the Landfill Property; (viii) any substance the presence of which is prohibited by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions; and (ix) other substances deemed hazardous, toxic, a pollutant, or contaminant, which by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions require special handling or notification in its collection, storage, treatment or disposal.

Header System means a header pipe and vacuum blower system that collects and discharges landfill gas. The Header System includes the existing header piping at the west and north perimeter of the Landfill Property; header pipe main lines installed throughout the Main Area; header piping that has control valves installed at collection line connections and where appropriate; blowers that produce adequate vacuum in the header and collection pipes for the entire Landfill Property, with provisions for backup power; discharge stacks that discharge collected landfill gas as allowed by PSCAA; header piping that must be designed and installed to collect condensate with allowance for future expected settlement; and sampling ports for the header piping as required by the CD/CAP.

Landfill Gas Collection System means the gas collection piping under and external to OME Buildings. The Landfill Gas Collection System includes: perforated pipes in gravel bedding connected to the header main lines with individual control valves for each collection line at header connections; the vacuum that is drawn on each collection pipe is individually controlled at valve to header main line; collection pipes that run below all developed areas (pavement, landscaping, and buildings); collection pipes that are on at least 100 foot centers or vertical wells as determined during design (closer spacing of collection pipes or wells could be considered under structures for redundancy, efficiency, and contingency planning); collection pipes that are above groundwater and typically above refuse and are below the low permeability barrier; collection piping that is designed and installed to collect condensate with allowance for future expected settlement (with associated condensate piping in the same trench) if any; and collection piping that includes sampling ports as required by the CD/CAP.

Landfill Gas Management System (the "System") means the methane gas collection and discharge system and all of its components for the Landfill Property and consisting more specifically of: (a) the Landfill Gas Collection System; (b) the Header System; and (c) the Condensate System.

Landfill Pad means the Landfill Property except the 41st Street ROW. The Landfill Pad is the development parcel shown and described in Exhibit D.

Landfill Property means the property shown and described in Exhibit C, including the 41st St. ROW.

Leachate Collection System means the system to be constructed and maintained by the City to collect leachate from the Landfill Property and convey the leachate to the City's wastewater treatment plant. The Leachate Collection System may collect or convey wastewater or stormwater.

Low Permeability Barriers means barriers that are designed to prevent gas migration to atmospheric air, prevent atmospheric air from intrusion into gas collection system, prevent gas intrusion into buildings and confined spaces, and prevent water infiltration into the landfill. Low Permeability Barriers must be constructed of materials and to specifications identified in the CAP/CD.

OME Development means the development activities conducted by OME on the Landfill Pad.

OME Buildings means buildings, parking garages; residential, retail, and office structures, and other substantial structures built as part of the OME Development.

Operation and Maintenance ("O&M") for the System means the compliance monitoring and contingency measures identified in section 6.2 of the CAP and section 3.0 of the CMCP, any other actions required by Ecology under the CAP/CD or otherwise necessary to maintain the System in good working order and to correct deficiencies, and any actions required by Ecology to convert the System to a passive System or to close the System when no longer needed.

Owners Entity means a Washington nonprofit corporation, its successors and assigns, composed of all record owners of fee simple title to any lot or parcel of land within the Landfill Pad, excluding, however, the City of Everett and any person or party holding such interest merely as security for the performance or satisfaction of any obligation.

Property Disposition Agreement or PDA means the agreement between the Parties regarding the disposition of the City Property, dated February 21, 2007, as may be amended from time-to-time.

Stub Out means a connection point which shall be between the OME Buildings and the adjacent street curb. The location will be outside of building pad footprints extending to within or beyond the structural sidewalk that is integral to the building, but in no event shall be located in the street. The stub outs will be located at a sufficient distance from building footprints or foundations so that connections and maintenance will not interfere with the structure or any utilities or landscaping immediately adjacent to the building. The stub outs will include isolation valves. Each Party will pay for its respective control valve at the stub out (e.g., OME to the building; the City to the external collection pipes).

Undeveloped Areas means areas of the Landfill Pad that do not contain City Improvements or OME Development.

Usage. The following terms have the following usage in this Agreement:

- a. "Contractor" includes the singular and the plural, depending on the Parties' decision in the procurement process as to whether one or more contractors will be used for different System elements.
- b. "Days" means calendar days, excluding federal holidays, unless otherwise specified.
- c. "Including" means "including but not limited to."
- d. "Section" and "Exhibit" refer to the section (and all sections, subsections or paragraphs that are preceded by a letter or number in this Agreement) and exhibit of this Agreement, unless otherwise specified. Exhibits are part of and incorporated into this Agreement.

2.0 Responsibilities for Landfill Gas Management System

2.1 Landfill Gas Management System

The components of the Landfill Gas Management System (“System”) are described in the Definitions in section 1. The Low Permeability Barrier required by the CAP/CD is integral to the System. Each Party’s responsibility for the Low Permeability Barrier is described in this section. The Parties intend for the System to be designed, installed, and operated as one comprehensive system, ensuring its compliance with CAP/CD requirements and this Agreement. The Parties also intend that the System be designed, installed and operated to meet or exceed the minimum standards of the Existing Gas System. The System may be constructed and accepted in phases, as provided by section 2.4, based on a system-wide design.

2.2 Use of Contractors

2.2.1 Contractor for System Design and Installation. OME will engage the services of a qualified contractor or contractors responsible to design and construct the Landfill Gas Collection System on the Landfill Pad (“Installation Contractor”). The City shall design and install the landfill gas collection system, condensate system, lines and any temporary header and blower system required for the 41st Street System and for any necessary integration of or connections of all elements and components of the 41st Street System to the overall System.

2.2.2 Contractor for Operation and Maintenance (“O&M”). The Parties will engage the services of a mutually-acceptable contractor or contractors responsible to operate and maintain the System (“O&M Contractor”), as contemplated by the CAP/CD. The Parties may engage the Installation Contractor or select a different contractor to be the O&M Contractor after the mandatory O&M warranty period from the Installation Contractor. This decision will be made by the OME and City Project Managers during the procurement process described in section 2.8 below, so that the Parties can evaluate efficiencies, cost, timing, and other relevant factors. The Parties shall share the cost of the O&M Contractor as provided in section 2.3 below.

2.3 Payment by the Parties for Design, Construction, and Operation and Maintenance Work

The City and OME will each contract and pay the Contractors for the following tasks, as described in Table 1 below.

With regard to O&M, the O&M Contractor will be required to account for its time and invoice the City and OME for the following tasks separately, and the party that does not enter into the contract (“non-Contracting Party”) hereby guarantees timely payment of the O&M Contractor pursuant to the terms of the contract and shall indemnify, defend, and hold harmless the party entering into the contract (“Contracting Party”) from and against any and all Claims resulting from failure to timely pay.

Table 1

City to pay for the following tasks:	OME to pay for the following tasks:
DESIGN	
All Design and Construction Documents for 41 st Street System including costs associated with connecting and integrating the 41 st Street System with the System.	Design (including Construction Documents) for the System on the Landfill Pad
CONSTRUCTION	
100% of Construction Costs for the 41 st Street System.	100% of Construction Costs for the System on the Landfill Pad.
The City will pay for 100% of the Low Permeability Barrier under any City Amenities/Bulldings and 41 st Street ROW	OM will pay for 100% of the Low Permeability Barrier on the Landfill Pad, except for under any City Amenities/Buildings on the Landfill Pad
LONG TERM MAINTENANCE (O&M) Including any conversion, retrofit or closure of the System	
O&M on entire Landfill Property, except for O&M paid for by OME	O&M underneath OME Buildings and extending to the Stub Out beyond OME building foundations to a connection point at the System, and alarm system within OME Buildings on entire Landfill Pad
O&M for any Low Permeability Barrier that the City pays to install	O&M for any Low Permeability Barrier that OME pays to install

2.4 Acceptance and Ownership of System

2.4.1 OME Acceptance. As determined by OME, the System may be completed by the Installation Contractor in total or functional portions that require an operational blower, header, condensate and collection systems but do not cover the entire Landfill Pad. After the Installation Contractor has tested the total System or functional portions of the System and calls for a final inspection by OME, OME shall perform such inspection and testing as OME deems necessary to accept the System in total or portion as meeting the performance requirements of section 2.1 above and under the terms of its contract with the Installation Contractor. The City and Ecology shall be invited to inspect the System and review and comment on the results of the testing prior to OME's acceptance of the complete or functional portion of the System from the Installation Contractor.

2.4.2 City Acceptance. After OME has accepted the System from the Installation Contractor under section 2.4.1, OME shall request the City in writing to accept those functional portions of the System to be owned by the City under section 2.4.3. The City agrees it will accept the dedication of the System pursuant to standard City procedures for acceptance of utilities dedicated to the City so long as the System conforms to plans and specifications received

and approved by City pursuant to section 2.9 and testing and inspection pursuant to section 2.4.1. OME will assign any warranties received by the Installation Contractor to the City. In the event any warranties received by OME in the Installation Contract are not assignable, OME will manage for the City those warranties and any warranty requests for the warranty period established in the Installation Contract. OME management of any warranties in no means provides a reason for the City to not accept dedication of the System or functional portions of the System.

2.4.3 Ownership. After acceptance of the dedication referenced in section 2.4.2, the City shall own all portions of the System with the exception of those portions of the System underlying OME Buildings and extending to the Stub Out beyond OME Building foundations to a connection point at the System, which portions shall be owned by OME. On the Landfill Property the City shall own the Low Permeability Barriers under City Amenities/Buildings, City Improvements, and facilities initially constructed by OME that are subsequently dedicated to the City (e.g. Main Road), and OME shall own all other Low Permeability Barriers on the Landfill Pad.

2.4.4 Operation of System Prior to Third Party Contractor. The City shall be solely responsible for all maintenance and operation of the Existing Gas System, or other activities related to the System required by the CAP/CD, at all times prior to the City and OME engaging an O&M Contractor to take over those activities, subject to OME's indemnification obligations in section 11 and to the access provisions in section 9.

2.5 Oversight of Work and Budget Process for System Design and Construction

2.5.1 Project Managers and Landfill Oversight Team. OME and the City each shall designate a Project Manager ("PM") responsible for implementation and assigning of resources through a small joint oversight team ("Landfill Oversight Team") to consult on design review, construction inspection and supervision of System design and construction. The Landfill Oversight Team shall be made up of participants selected by the PMs. The role of the Team is to provide technical assistance and consultation services to the PMs, but the Team shall not have decision-making authority.

2.5.2 City/OME Coordination. Section 7 sets forth provisions for coordination between the City and OME and among those Parties and Ecology.

2.6 Oversight of Work and Budget Process for O&M

2.6.1 O&M Budget Process. Following the design and construction of the System, the PMs, in consultation with the Landfill Oversight Team, will establish and track annual budgeting and O&M Contractor accountability to both OME and the City. The initial O&M annual budget period(s) that correspond to the warranty period will be established within the construction bids. Cost breakdown will correspond to O&M responsibilities, as established in this Agreement. The annual budgeting process will plan for regular maintenance and repairs by the O&M Contractor, including an option for OME and the City to perform a particular repair if mutually agreed and a process to handle any emergency or unplanned repairs.

2.6.2 O&M Contractor Change Orders. The Parties will establish a process for reviewing and approving change orders proposed by the O&M Contractor if the changes orders will either: (a) increase the Contract Time, as defined in the contract; or (b) increase the Contract Price, as defined in the contract, by more than \$50,000.

2.6.3 Payment of O&M Contract Administration Costs. OME and the City shall share the costs equally (50/50) of administering the O&M contract. These costs shall not include the Project Managers' or the Landfill Oversight Team's time, which shall be in-kind costs.

2.6.4 City/OME Coordination. The Landfill Oversight Team will also assist the PMs to consult on the procurement of O&M Contractor (after the mandatory warranty period), and oversight of long-term maintenance work. Section 7 sets forth provisions for coordination between the City and OME and among those Parties and Ecology.

2.7 Contractor Responsibilities

The City and OME anticipate that the contracts shall include but not be limited to the following terms and conditions, as specified below, for the benefit of both the City and OME:

2.7.1 O&M Contractor. The O&M Contractor shall:

a. be responsible for operation of the complete System, including the Header System and Collection System throughout the Landfill Property, for maintenance of the alarm system, and for performance of all other monitoring, operation and maintenance required by the CAP/CD.

b. operate the System as one comprehensive system, balancing the vacuum throughout the System, and ensuring its compliance with the CAP/CD.

c. report the results of the monitoring to the City and OME and, as and when directed by the City and OME, to Ecology on behalf of and subject to those Parties' oversight.

d. be contractually obligated to operate the System for the benefit of both the City and OME consistent with best practices and according to the standard of care in the industry; the Contractor shall be responsible for guaranteeing operations and providing routine reporting to both OME and the City as required.

e. provide warranties mutually acceptable to City and OME warranting any equipment and systems installed by the O&M Contractor to both Parties.

f. provide adequate insurance acceptable to both the City and OME according to its contractual obligations that will not be rendered ineffective due to any pollution exclusion clause.

g. provide any other financial assurances and indemnities the City and OME mutually agree are needed (performance bonds, etc.).

h. take direction from the appropriate Party for specific tasks, as specified in the contract with the O&M Contractor.

2.7.2 Installation Contractor. The contract for the Installation Contractor shall include provisions that shall be operative only in the event that OME is unavailable to perform its obligations under Paragraph 3.C of the Consent Decree Amendment, which:

a. specify the Installation Contractor will take direction from OME or any successor in interest to OME in the performance of its contract, in consultation with the City through the Landfill Oversight Team, and subject to Ecology's review of plans as required by the CAP/CD.

b. provide warranties to OME (which shall be assignable to the extent possible on a non-exclusive basis to any successor in interest to OME and to the City) warranting the design and construction of the whole System.

c. provide adequate insurance according to its contractual obligations that will not be rendered ineffective due to any pollution exclusion clause.

d. require the Installation Contractor to provide any other financial assurances and indemnities that OME requests to ensure that CAP/CD requirements are met (performance bonds, etc.); such OME requests may include such items as OME and the City deem prudent after OME consultation with the City. In the event of default or termination by OME, the contract shall provide for contingent assignment of the contract to the City, and for the City to assume the contract at its option.

2.8 O&M Contractor Procurement

2.8.1 Contracting Party. Following an initial warranty O&M period from Installation Contractor, the PMs, with advice from the Landfill Oversight Team, shall establish a Contractor procurement process for O&M of the System, consistent with section 2.2. Either OME or the City shall employ a qualified firm or firms to perform the tasks set forth in section 2.3 and such other tasks as those Parties determine are necessary to operate and maintain the System. Either OME or the City may be the Contracting Party for O&M of the System, as determined by those Parties in the O&M Contractor procurement process.

2.8.2 Contractor Selection. OME and the City shall consult with each other on the O&M Contractor selection. To the extent allowed by law and desired by the non-Contracting Party, the non-Contracting Party may participate fully in the procurement process, including any interviews, and may advise the Contracting Party as to recommendations concerning the qualifications of such firms. The non-Contracting Party shall on request be made a third-party beneficiary of the contract. The City and OME may each retain or may share the costs of retaining consultants to review the O&M Contractor's plans or specifications. The PMs will coordinate on Contractor selection to manage potential conflicts of interest as provided in section 7.

2.8.3 Contractor Oversight. The O&M Contractor will take direction from the Contracting Party, in consultation with the non-Contracting Party through the Landfill Oversight Team, and subject to Ecology's review of plans as required by the CAP/CD.

2.9 Coordination on Design and Construction

2.9.1 Civil Design. Prior to the commencing of design work for the System, OME shall provide to the City and to the Installation Contractor retained under this Agreement a Site Design and Grading Plan for grading, development layout, and preliminary civil design of the Landfill Property. OME will obtain a grading permit, as necessary, for this plan. The Parties and the Installation Contractor shall rely on this information in developing the design of the System and the surcharge and grading of the Landfill Property.

2.9.2 Review of Design and Construction. The City and OME shall coordinate on review and oversight of design and construction for the System. The PMs will determine a process for coordinated review, in accordance with the City's project review process and the CAP/CD. The Landfill Oversight Team shall provide OME with written comments within ten days of receipt of documents or within a timeframe to be mutually determined by the PMs.

2.9.3 Connection. The PMs shall coordinate the connection between 41st Street System and the System.

2.9.4 Permits and Other Authorizations. OME or its Installation Contractor will be responsible for applying for and obtaining any permits and governmental authorizations for its elements of the System. The O&M Contractor will be responsible for applying for and obtaining any permits and governmental authorizations for its elements of the System, unless the City and OME agree otherwise. The O&M Contractor shall submit draft and final permit applications and all supporting materials to the Landfill Oversight Team for review prior to submittal.

2.9.5 Permit Fees. To the extent there are any permit fees required to obtain permits for O&M for the System, the fees shall be allocated to the City and OME to the extent they can reasonably be related to the tasks for which each Party will pay the O&M Contractor under section 2.3. If such allocation is not feasible, the PMs shall decide upon an equitable allocation.

2.10 Claims By and Against Contractors

2.10.1 Assertion of Claims. With respect to design and construction, the OME PM, and their legal counsel, shall determine whether to assert a claim against the Installation Contractor and shall inform the City PM if any claim is threatened or brought that relates to the quality of work performed by the Installation Contractor. With respect to O&M, the Contracting Party's PM in consultation with the non-Contracting Party's PM, and their legal counsel, shall determine whether to assert a claim against the O&M Contractor. The Landfill Oversight Team may be consulted to provide technical assistance with respect to the prosecution of any claims by the City and OME against any third parties, such as engineering firms, designers, suppliers, construction contractors, etc., including architectural or engineering malpractice, defects or

failure of material or equipment, defective workmanship, nonconformity with plans and specifications or untimely completion by the Contractor.

2.10.2 Defense of Claims. Defense of any claims shall be by the Contracting Party, in consultation with the Non-Contracting Party. The Landfill Oversight Team may be consulted to provide technical assistance with respect to defense of the claim.

2.10.3 Stay of Parties' Claims Pending Resolution of O&M Contractor Claim. In the event of a claim by the O&M Contractor for an equitable adjustment of price or time, additional cost, or other claim, the City and OME each agree to delay asserting any allegation against the other regarding allocation of fault, contribution, or cost that could affect the defense or settlement of the claim and hereby agree to toll any applicable statute of limitations during the pendency of the claim. The statute of limitations for any cause of action between the City and OME arising from allocation of fault, contribution or cost shall begin to run when, as and if liability on the claim becomes final. A claim becomes final upon the later of: (a) a final decision from the arbitrator if the contractor claim is subject to binding arbitration; (b) the expiration time for filing a notice of appeal from a trial court's judgment, or trial court decision after remand, without the filing of an appeal therefrom; (c) the expiration of time for seeking review of an appellate court decision and the appellate court issues its mandate without remanding any part of the action for further proceedings by the trial court; or (d) the Supreme Court issues its mandate without remanding any part of the action for further proceedings by an inferior court.

2.10.4 Legal Counsel for Claims. Prior to appointment of counsel to prosecute or defend any O&M Contractor claim hereunder, the Party prosecuting or defending the claim shall: (a) consult with its counsel concerning the list of candidates; (b) to the extent time allows, interview prospective counsel jointly with counsel for the other Party; and (c) give substantial weight to the recommendation of the other Party in selection of outside counsel.

2.10.5 Cost Allocation. The City and OME shall coordinate in the assertion or defense of an O&M Contractor Claim and shall allocate costs equitably according to the cost allocation in Table 1.

2.10.6 No Prejudice. The City's and OME's responsibility for payment to the Contractor and for resolution of Contractor Claims shall be as set forth in this Agreement. The fact that one Party serves as the Contracting Party in no way prejudices or imposes different payment or other responsibilities for the design, construction or operation of the System than otherwise specified in this Agreement.

2.10.7 Use of "Contractor" in this Section 2.10. For purposes of this section 2.10, unless otherwise specified, the term "Contractor" refers to both the Installation Contractor and the O&M Contractor.

2.11 **Certificate of Occupancy.** If the Landfill Gas Management System is constructed in phases, all OME Buildings within a phase of development must be underlain with a completed and active System before those buildings can be approved for occupancy.

2.12 Animal Shelter and Public Works Yard. If the Animal Shelter and the Public Works Yard (known as “the Transfer Station” in the CAP/CD) remain on the Landfill Pad after OME takes title to the property, the City will remain responsible for all obligations under the CAP/CD concerning operation, maintenance, monitoring, reporting, and corrective actions for the System at those structures and any other areas included within the Shelter Lease or Public Works Yard Lease, for so long as the leases exist. Any ongoing or additional remedial actions required in the CAP/CD for off-site buildings or areas will remain the responsibility of the City.

2.13 Consent Decree. Recognizing that an O&M Contractor will be performing the work and will be paid by both OME and the City under the Agreement, for purposes of the scope of work in the CAP/CD, the City shall be assigned the Landfill Gas System responsibilities, except that OME shall be responsible under the CAP/CD for the expense of correcting a problem with the System that OME causes. The City shall have rights against OME as specified in section 11.5.

3.0 Responsibilities at Landfill Property Other Than Landfill Gas Management System

The City and OME agree to divide the responsibilities in the CAP/CD other than the System as follows, and as is also described in the attached Exhibit F (Table 6-4 Work to Be Performed Checklist). The City shall be responsible for all other monitoring, reporting and other obligations under the CAP/CD not otherwise assigned to OME herein.

In addition, the City will also provide stormwater and sanitary sewer transmission that will accommodate the preferred alternative identified in the environmental impact statement (EIS) for the Landfill Pad (with a 40 foot setback on the eastern boundary and assuming construction of a minimum 100 residential units. The City shall provide for collection or conveyance of wastewater and management (including collection, conveyance and any required treatment) of stormwater up to the 6-month storm event from the development on the Landfill Property in accordance with the PDA and in compliance with all local, state and federal requirements and CAP/CD.

3.1 City’s Responsibilities.

3.1.1 Low Permeability Barriers. The City shall install Low Permeability Barriers in areas of the Landfill Property where City Amenities/Buildings and in the 41st Street ROW, in accordance with the requirements of the CAP/CD, including any erosion control measures needed.

3.1.2 Leachate Collection System. The City shall continue to provide a Leachate Collection System for the Landfill Property. The City will respond to any leachate seeps, if needed, other than each Party’s responsibility to manage any seeps that might occur during and as part of its respective construction activities on the Landfill Property under sections 3 and 6.3. This system may be a continuation or modification of the existing leachate collection system.

3.1.3 Groundwater and Surface Water. The City will design, construct, and maintain deep aquifer groundwater monitoring wells as necessary or required to be in compliance with the CAP/CD. The City shall be responsible for any surface water monitoring and reporting requirements in the CAP/CD that are not part of stormwater management for OME’s

development. The City will bear the risk of changes in the groundwater regime caused by construction that is in conformance with the CAP/CD.

3.1.4 Drainage, Erosion Control, Pilings, Leakproof Connections and Stormwater. The City shall construct City Improvements in a way that installs and maintains leakproof connections, positive drainage and controls erosion per CAP/CD requirements.

a. The City shall make quarterly inspections of City-Controlled Areas in order to verify positive drainage and the integrity of the landfill cover in accordance with the CAP/CD. The City may reduce the frequency of inspections after full build-out of the OM Development and a reasonable period of quarterly inspections (not less than one year) showing no change in conditions on the City-Controlled Areas, with the concurrence of OME and Ecology.

b. For any City Improvements, the City will be responsible for meeting the CAP/CD requirements that infiltration of stormwater will not be allowed in developed areas of the site, except as allowed during construction; provided that the City will also be responsible for facilities constructed by OME that are ultimately owned or controlled by the City (e.g. roads).

c. The City shall be responsible for implementation, monitoring, and reporting under its stormwater permit(s) and any Stormwater Pollution Prevention Plan (SWPPP) required for City Improvements; provided that the City will assume responsibility for facilities initially constructed by OME at such time as such facilities are dedicated to or controlled by the City (e.g., Main Road).

d. If piling is used, the City shall follow the recommendations of the shallow aquifer study regarding piling installation. If additional compliance monitoring is required by Ecology prior to the City or OME installing piles, the City will conduct the monitoring.

3.1.5 Access Controls, Use and Related Restrictions. In City-Controlled Areas that are Undeveloped Areas, the City shall be responsible for establishing and maintaining access controls. The City shall also be responsible in City-Controlled Areas for ensuring enforcement of restrictions related to the maintenance of the integrity of the landfill cap, including limitations on penetration of the cap and any use restrictions required by the CAP/CD and Restrictive Covenant.

3.1.6 Long-term O & M. The City shall be responsible for the operation, monitoring, maintenance, reporting and any contingency measures required by the CAP/CD for all of the City's responsibilities in section 3.0.

3.2 OME's Responsibilities

3.2.1 Low Permeability Barriers, Fill, and Grading. OME shall install Low-Permeability Barriers on the Landfill Pad, except in areas where City Amenities/Buildings are located, and will perform any final grading for OME Development on top of the System without

causing damage to such system or adversely affecting positive drainage, in accordance with the requirements of the CAP/CD, including any erosion control measures needed.

3.2.3 Drainage, Erosion Control, Pilings, Leakproof Connections, and Stormwater.
OME shall construct the OME Development in a way that installs and maintains leakproof connections, positive drainage and erosion controls per the requirements of the CAP/CD.

- a. OME shall inspect the property on which it controls access in order to verify positive drainage and the integrity of the landfill cover in accordance with the CAP/CD.
- b. For any facilities OME constructs, it will be responsible for meeting the CAP/CD requirements that infiltration of stormwater will not be allowed in developed areas of the site, except as allowed during construction; provided that the City will be responsible for facilities constructed by OME that are ultimately owned or controlled by the City (e.g. roads).
- c. OME shall be responsible for implementation, monitoring, and reporting under its stormwater permit(s) and any Stormwater Pollution Prevention Plan (SWPPP) required for the OME Development; provided that the City will assume responsibility for facilities initially constructed by OME at such time as such facilities are dedicated to or controlled by the City (e.g., Main Road).
- d. If piling is used, OME will follow the recommendations of the shallow aquifer study regarding piling installation or any alternatives accepted by Ecology.
- e. If any of OME's pipes or other facilities connect to the City's pipes for the Leachate Collection System or other facilities, OME shall be responsible for making such connections fused or cemented per the requirements of the CAP/CD.
- f. OME will make quarterly inspections of the property on which it controls access on the Landfill Pad to verify positive drainage and the integrity of the landfill cover. OME may reduce the frequency of inspections after full build-out of the OME Development and a reasonable period of quarterly inspections (not less than one year) showing no change in conditions on the property with the concurrence of the City Engineer and Ecology.
- g. If OME identifies leachate seeps while conducting inspections under section 3.2.3, OME will notify the City. However, the City shall retain all obligations it has for inspection, monitoring, reporting and contingency measures related to leachate seeps under section 3.1, and nothing in this paragraph transfers any such obligations to OME. Any required City inspections for leachate seeps may be performed by the Contractor as part of its routine inspection of the System and shall be charged to and paid by the City.

3.2.4 Access Controls, Use and Related Restrictions. OME shall be responsible for establishment and maintenance of access controls in any Undeveloped Areas owned by OME. In areas of the Landfill Pad other than City-Controlled Areas, OME shall be responsible for ensuring that sale or lease agreements include provisions disclosing and requiring compliance with restrictions relating to the maintenance of the integrity of the landfill cap including limitations on penetration of the cap, notices of transfers in interest, and any use restrictions as may be required by the CAP/CD and Restrictive Covenant.

3.2.5 Long-term O & M. OME shall be responsible for the operation, monitoring, maintenance, reporting and any contingency measures required by the CAP/CD for all of OME's responsibilities in section 3.0.

4.0 Performance of the Work

4.1 **Good and Workmanlike Manner.** The City and OME and their architects, general contractors, and engineers shall perform any work that they are obligated to perform under this Agreement in a good and workmanlike manner in accordance with the Project Schedule in section 5 of this Agreement and the PDA, all applicable laws, rules, regulations, ordinances, codes, statutes, and guidelines, and with the design and construction documents.

4.2 **No Liens for City Work.** If any work performed by the City under this Agreement on the City Property owned by OME is not a public work project or if liens are filed on the City Property and the City does not cause the liens to be removed within five (5) business days, then OME shall have the right to remove such liens by posting appropriate bonds and the City shall reimburse OME for all costs reasonably incurred in removing such liens plus an administrative overhead amount of 15% of the premium cost of any such bonds obtained by OME.

4.3 **Ownership of Non-System Facilities.** The City shall retain title to and ownership of the Leachate Collection and Groundwater Monitoring System improvements on the Landfill Property, and shall have access to such improvements as provided in access agreements entered into pursuant to section 9.

5.0 Landfill Gas Management System Schedule

The PMs may mutually agree to refine or revise the schedule without the need to amend this Agreement.

6.0 Contingency Planning and Response

6.1 **Landfill Gas Management System.** The City, OME and the O&M Contractor shall establish a contingency plan and protocol to address any potential System problems, including a protocol for reporting to Ecology consistent with the CAP/CD. If the results of any System monitoring indicate a potential problem, then the City and OME shall work together with the O&M Contractor to identify the source of the problem. If the problem was caused by the City or OME, the Party that caused the problem will bear the expense of correcting the problem. If the City and OME mutually agree that the problem was caused by the Contractor (including any Contractor responsible for a design or construction defect), the Parties will work together to

compel that Contractor to correct the problem, in accordance with the requirements in section 2.10. If the City and OME are unable to obtain full relief from the Contractor the City shall bear the expense of correcting the problem if the source of the problem is on the portion of the System that the City owns, and OME shall bear the expense if the source of the problem is on the portion of the System that OME owns. In any other circumstances, OME will not be responsible, and the City shall bear the expense of correcting the problem or shall otherwise manage the problem.

Any dispute regarding responsibility for a System problem shall be subject to dispute resolution under this agreement.

6.2 Other CAP/CD Obligations. If the results of the monitoring or maintenance for which the City or OME is responsible under this Agreement, other than System monitoring, indicate a potential problem in meeting the CAP/CD requirements, the responsible Party shall correct the problem and report it to Ecology. If one of the Parties believes the other Party is responsible for the problem, the Party may invoke the contingency planning and dispute resolution process.

6.3 Coordinated Contingency Planning and Response by the Parties.

6.3.1 Initiate Contingency Planning. If either the City or OME has reason to believe that the actions of the other Party may be causing or contributing to a problem as provided in sections 6.1 or 6.2, which would be expected to arise but are not limited to information obtained in that Party's compliance monitoring, the Party shall promptly inform the other Party and request a contingency planning conference. The City and OME shall consider whether early consultation with Ecology would be helpful given the nature of the specific problem. However, neither Party shall contact Ecology at this stage without the concurrence of the other Party, unless required to do so under the CMCP.

6.3.2 Identifying the Source and Remedy. The City and OME will meet and discuss the potential problem. The Party that requested the conference should be prepared to explain the reasons why it believes the other Party's actions are causing the problem. The City and OME will work in good faith to determine if they can reach agreement as to the source(s) of the problem in accordance with sections 6.1 or 6.2. The City and OME may agree to retain a mutually acceptable third party consultant to advise them on the source and/or the remedy. If the City and OME so agree, they will share the cost of such consultant equally (50-50) unless they agree on another allocation. Each Party may also choose to retain its own independent consultant. The responsibility for the remedy is set forth above in sections 6.1 and 6.2. For the System, the responsibility for the remedy is set forth in section 6.1. For all other CAP/CD obligations:

- a. If the City and OME agree the problem was caused by one of them, including that Party's contractors, agents, or representatives, the Party causing the problem will bear the expense of correcting the problem and any required reporting to Ecology, unless the City and OME agree otherwise.
- b. If the City and OME agree that they both contributed to the problem, they will seek to determine: the appropriate remedy and whether one Party or both will perform the work, an equitable allocation of the cost, and the method of any required

reporting to Ecology. The dispute resolution process may still be employed if the Parties do not agree on the remedy or cost-sharing.

c. In all other circumstances, the Party asserting that the other Party caused the problem will have the burden to support its assertion. If reporting to Ecology is required prior to the resolution of the dispute, the City and OME shall jointly make the required report, unless those Parties agree otherwise.

d. If Ecology seeks corrective action to be taken prior to the completion of any dispute resolution under the preceding paragraph (section 6.3.2), the City and OME shall work together to request Ecology to defer action for a reasonable time to enable dispute resolution to be completed. If this is not possible, those Parties will explore whether an interim action could be employed pending completion of dispute resolution. If corrective action nonetheless is required over the City and OME's objections, those Parties will share the cost of corrective action equally (50-50) without prejudice to the dispute resolution process, and the prevailing Party in the dispute resolution process shall be promptly reimbursed by the other Party in accordance with the resolution. Nothing in this section limits the ability of a Party to tender a defense or otherwise invoke the indemnification provisions in section 11 in the event of enforcement action by a regulatory agency.

6.3.3 Relationship to Indemnification. Nothing in this section 6.0 or section 2.13 shall be construed to modify the indemnification provisions in section 11 of this Agreement and the resolution of a Party's responsibility shall be consistent with the Parties' indemnification obligations. OME will not be considered to have caused or otherwise be responsible for correcting a problem under this Agreement except in those circumstances specified in section 11.5(a) through (c).

6.3.4 Process and Disputes. Unless doing so would conflict with the CAP/CD, the Parties shall attempt to resolve disputes arising under this section 6.3 using the dispute resolution process in section 7.6 below. Unless doing so would conflict with the CAP/CD, the Parties will consult with each other prior to informing Ecology or other third parties of this dispute. In order for Ecology to be involved in the dispute resolution process, both Parties must agree, and must agree upon a procedure for Ecology's involvement. To the extent Ecology seeks to require remedial action sooner than the Coordinated Contingency Planning and Response process allows, the Parties will cooperate in seeking to gain Ecology's agreement to wait until the Parties have finished their coordination under this section 6.3. If the Parties reach agreement under this process, they will cooperate in seeking to gain Ecology's acceptance of the remediation workplan they have developed and in assisting each other in defending against any enforcement action Ecology may seek to bring against either Party. If the Parties have not reached agreement within fourteen (14) days of the initial conference under section 6.3.2, either Party may invoke the dispute resolution process in section 7.6 by providing the other Party's Project Manager with written notice.

7.0 Coordination Between the Parties and with Ecology

7.1 Project Managers, Communications, and Annual Review. The PMs designated under section 2.6.1 shall be the City's and OME's lead point of contact for matters related to this Agreement and compliance with obligations in the CAP/CD. Each Party shall also designate a Senior Management Official for purposes of dispute resolution. Unless otherwise specified in this Agreement, the PMs will determine the method of communications to be used and procedures for communications with third parties regarding matters covered by this Agreement. If requested by the Authorized Representatives, the PMs may update or become members or participate in the Operating and/or Steering Committees established by the Property Disposition Agreement, or any successor coordinating bodies between the Parties or their successors-in-interest.

The Project Managers for the City and OME will convene an annual meeting with such staff or officials as they deem necessary in order to review their respective compliance with the CAP Requirements; identify possible improvements in their performance, communication and coordination; and review their respective budgets for compliance with the CAP/CD for the coming year. The City and OME may invite Ecology to this meeting or may have a subsequent meeting with Ecology if they believe annual joint consultation with Ecology would be useful.

7.2 Coordination on Contractors and Consultants. The PMs will consult on their respective plans to retain consultants and contractors in order to manage potential conflicts of interest by firms interested in working for these Parties. The PMs may develop guidelines for coordinating their contractor/consultant selection.

7.3 Coordination of Construction Activities at Landfill Property. The City and OME shall coordinate the work of their respective contractors performing construction activities at the Landfill Property under sections 2 and 3. The City and OME agree to cooperate with each other in order that the work being performed shall be completed in a timely manner, in accordance with the project schedules established in the PDA and under section 5.0.

7.4 Oversight, Permitting and Enforcement.

7.4.1 Any City permit that requires compliance with CAP/CD remedial action requirements will also state that before the City issues any order or other enforcement action to enforce a permit condition to comply with a requirement of the CAP/CD, the City will use the contingency planning process in section 6 above, including the dispute resolution process among the project managers and senior management officials set forth in section 7.6 below and the process in section 7.5 below. The City reserves the right to act in emergencies pursuant to applicable municipal powers and authority, subject to the process in section 7.6 below. The term "emergencies" as used herein shall mean an unexpected or sudden occurrence that presents a serious and imminent threat to persons or property.

7.4.2 If OM and the City have a dispute regarding OM's obligations under the CAP/CD (including City permit conditions that require compliance with the CAP/CD), and Ecology is involved in making a determination of what the CAP/CD requires, then both parties agree Ecology's view will be determinative of what remedial action is required by the CAP/CD and

what constitutes compliance with the CAP/CD, subject to the dispute resolution process set forth in the CAP/CD. With respect to emergencies: (a) the City reserves the right to act immediately, without dispute resolution, to require OM to conduct actions to comply with the CAP/CD, and (b) the City shall use its best efforts immediately to notify OM and Ecology of the specific actions it is undertaking, and (c) notwithstanding any provision in section 6 and 7 of this Agreement to the contrary, OM shall have the right, following written or verbal notice to the City, to seek Ecology's involvement in making a determination of what the CAP/CD requires upon the City's determination to take such action. The City will not seek to enforce through its permitting, code enforcement, or police power an interpretation of remedial action required under the CAP/CD that differs from Ecology's determination, or that seeks to modify or shift to OM the work the City is to perform under the CAP/CD, subject to dispute resolution under the CAP/CD.

7.4.3 Nothing in this Agreement shall be construed as a waiver by the City of its police power or a limitation on the City's authority to enforce its codes or permit conditions on a basis other than compliance with the CAP/CD.

7.5 Communications with Ecology.

7.5.1 The City, OME, and OM shall consult and provide each other with the opportunity to review plans, reports, or other communication (collectively "Regulatory Communication") reasonably in advance of any submittal to Ecology, so as to allow meaningful review and consultation, in the following circumstances and any other circumstances as the Project Managers may determine: (a) modifications to the System, the Leachate Collection System, or the groundwater monitoring system; (b) any proposal to Ecology to revise or terminate compliance monitoring; and (c) any proposal to Ecology to amend or terminate the CAP/CD, Restrictive Covenant, or any Prospective Purchaser Consent Decree or Consent Decree Amendment. If one Party objects to the other Party's Regulatory Communication, the Parties shall use the dispute resolution process in section 7.6 before its submittal to Ecology.

7.5.2 The City, OME, and OM may consult informally with Ecology at any time regarding their respective responsibilities under the CAP/CD, except that if a Party is requesting Ecology's interpretation or position with regard to any work, activity, or obligations of the other Party or that could affect the work, activity, or obligations of the other Party, the Parties through their PMs shall consult with each other prior to requesting Ecology's interpretation or position. The City Project Manager will convene an annual meeting with Ecology and OME's Project Manager to review the status of development and monitoring for so long as the CAP/CD and/or Restrictive Covenant require monitoring.

7.5.3 Each Party shall provide the other Party with a copy of any Regulatory Communication to Ecology concerning the CAP/CD.

7.5.4 Ecology's final review of each Party's plans and specifications for OME's Development and the City Improvements will occur through the local project review process, as provided by the CAP/CD.

7.6 Dispute Resolution. The Parties shall use the following dispute resolution process prior to commencement of any litigation to resolve disputes under this Agreement. Disputes subject to this process shall include disputes arising out of the City's review of OME's development for consistency with requirements of the Cleanup Action Plan.

7.6.1 In the event of a dispute under this Agreement, any Party may invoke this dispute resolution process by providing written notice to the other PM(s). The PMs will seek to resolve the dispute.

7.6.2 If the PMs have not resolved the dispute within fifteen (15) days of receipt of the written notice, either PM may refer the dispute to one Senior Management Official for each of the Parties involved in the dispute by providing them with written notice. The PMs may be asked oral or written statements to identify issues and positions, and the PMs may each retain the services of consulting engineers or other experts to assist them. If the Senior Management Officials agree, they may jointly retain consulting engineers or other experts or facilitators to make recommendations to them and any costs shall be shared equally (50%/50%) between the City and the other Parties. If they do not agree, each Party may hire their own experts or facilitators.

7.6.3 If the Senior Management Officials cannot reach agreement within fifteen (15) days of receipt of the written notice, they may initiate: (a) a ten (10) day cooling off period; and/or (b) voluntary non-binding mediation by a mutually agreed-upon mediator.

7.6.4 The Senior Management Officials will seek to resolve the dispute no later than sixty (60) days after initiating the cooling off period or mediation unless an earlier time is necessary for compliance with any other agreements among the Parties, including the CAP/CD.

7.6.5 Nothing in section 7.6 supersedes any requirement in the CAP/CD. If at any time there appears to be an irreconcilable conflict between this section and the CAP/CD, the Parties will use their best efforts to revise all affected documents to utilize the dispute resolution process in this section or such other process as they mutually agree would be preferable.

7.7 Judicial Remedies. If the Parties fail to resolve a dispute using the dispute resolution process in section 7.6, either Party may seek to enforce this Agreement in Snohomish County Superior Court under Washington law and procedure. Compliance with the dispute resolution process is a condition precedent to any lawsuit.

8.0 Responsibilities on Other Property

The Parties' responsibilities on Riverfront Property are governed by separate agreements, including the agreements identified in recital E of this Agreement. To the extent of any conflict, this Agreement shall govern all rights and obligations of the Parties' with respect to environmental matters on the Landfill Property, including any CAP/CD obligations relating to the Landfill Property.

9.0 Access

9.1 Access Agreement for City and City Contractors. Except as otherwise provided below, OME shall grant to the City and contractors performing work on the City's behalf easements on the Landfill Pad for the purposes specified in this section 9.1.

9.1.1 Upon Closing OME shall provide an easement in substantially the form attached as Exhibit G to the City for any City Property on which the Existing Perimeter System, Leachate Collection System, the groundwater monitoring wells, and related utilities are then located to allow the continued use, maintenance and repair of such facilities and reasonable rights of access thereto.

9.1.2 Upon Closing, OME shall provide a temporary construction easement for possible work related to design and construction of the expansion and/or relocation of the Existing Perimeter System, the Leachate Collection System, the groundwater monitoring wells, and related utilities that could occur during the term of OME's planned construction. This temporary construction easement may be part of any other temporary construction easement(s) provided by the Parties at Closing.

9.1.3 Once the Landfill Gas Management System for the OME Development is constructed, the City and OME shall amend or replace the easement entered into under section 9.1.1 to account for the expanded or relocated System. If the System is modified, expanded, or relocated for future phases of OME Development, the City and OME shall amend or replace the easement to account for the modified, expanded or relocated System.

9.1.4 If the City enters into a contract with a Contractor for the long-term operation and maintenance of the System, OME and the City shall either amend the existing easement or enter into a separate easement providing the City and its Contractor with access to the Landfill Pad for the purposes of long-term operation and maintenance of the System.

9.1.5 If the Leachate Collection System, groundwater wells, or related utilities are modified, expanded or relocated as part of OME's development, OME and the City shall amend or replace the easements entered into under section 9.1.1 as may be needed to account for the new location of the Leachate Collection System, the wells, or related utilities.

9.2 Access Agreement for OME's Construction and Long-Term Monitoring and Maintenance. If OME and contractors performing work on OME's behalf require access to the portions of the Landfill Property owned by the City for purposes of performing OME's construction and long-term operation and maintenance obligations under this Agreement, the City agrees to provide OME with access for said purposes under reasonable terms and conditions to be established in a written access agreement, which may take the form of a right-of-way permit or license and which shall not include a fee for access.

9.3 Access for Reopener Events. OME and the City agree that if Ecology invokes a reopener provision in the existing Consent Decree between the City and Ecology that requires the City to conduct further remediation at the Landfill Property, OME will provide prompt access to the City for the purposes of the City conducting that further remediation, under

reasonable terms and conditions to be established in a written access agreement between OME and the City. For purposes of this section, "reasonable terms and conditions" includes site restoration to pre-existing conditions unless OME and the City agree otherwise, and all commercially reasonable efforts are made to minimize disruption. OME's grant of access to the City shall not include a fee for access or a requirement to pay for consequential damages including without limitation economic damages and lost profits. However, nothing in this section shall modify or limit the City's indemnification obligations under section 11.

10.0 Environmental Insurance Requirements

The Parties shall pay the necessary premiums, take such action as is necessary including payment of the self-insured retention in the event of a claim, and take such other actions as are necessary to procure the following environmental insurance coverage with respect to the Landfill Property and their respective obligations under this Agreement, which insurance shall cover the following terms and requirements:

- a. Pollution liability insurance of not less than and Twenty million dollars per occurrence Forty million dollars in the aggregate for a term of not less than ten years commencing not later than thirty (30) day after the Closing Date; and
- b. Construction pollution liability ("CPL") insurance coverage of not less than Ten million dollars aggregate/per occurrence for any term during which a Party performs substantial construction work on the Landfill Property , which term shall commence prior to the Party performing such work.
- c. With respect to pollution liability insurance after the initial term (10) year term described above, OM LLC, OME or their successors in interest including any Landfill Owners Entity under section 13 shall use commercially reasonable efforts to: (i) obtain pollution liability insurance on terms at least comparable to the initial 10-year coverage in the City's policy or at a minimum a continuation of the policy procured by OME under section 10.a (adjusted for inflation from the Closing Date), and (ii) name the City as an additional insured. At any time in the post-ten year period, the City may agree in writing that a lower amount of pollution liability coverage is acceptable if the City determines, based on the amount of completed development and the actual performance of the landfill remedial systems and monitoring results, that there has been a demonstrated reduction in risk that justifies lower coverage (for example, Ecology approval to use a passive landfill gas management system and substantially reduced monitoring).
- d. CPL insurance shall be obtained by a Party or successor in interest in an amount not less than Ten million dollars aggregate/per occurrence (adjusted for inflation from the Closing Date) for any term during which the Party or successor in interest (which may include the Landfill Owners Entity in section 13 or a tenant of an owner) performs substantial construction work on the Landfill Property. Such work includes substantial construction work associated with development beyond the Minimum Required Development, other future development, or redevelopment of OME Development or City Work on the Landfill Property. If CPL insurance coverage is not available on commercially reasonable terms, the Party or its

contractor wishing to perform substantial construction work must provide a bond or other financial assurance acceptable to the City and OME.

e. Any O&M Contractor shall carry adequate insurance coverage, as provided by section 2.7.1.

f. Each Party subject to the above requirements shall promptly furnish a full and complete copy of its current insurance policies, including the declarations page, to the other Parties to this Agreement after procurement of its policy.

11.0 Indemnification

11.1 Indemnification by City. Except as provided in sections 11.2 and 11.6, the City shall to the fullest extent permitted by law indemnify, defend, and hold harmless OM and OME, each member, manager, partner or shareholder, as the case may be, in or of OM and OME, and their respective officers, directors, managers, members, shareholders, partners, lenders, employees, agents and consultants, successors and assigns, and the Landfill Owners Entity and each member of the Landfill Owners Entity ("OM Indemnified Parties") from and against any and all claims, liabilities, loss, demands, liens, costs and expenses including reasonable attorneys' fees, agency orders, requirements or enforcement actions, suits and causes of action, and damages including but not limited to any claim for damage to property or injury or death of any persons (collectively, "Claims") pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance as defined herein that exists on the Landfill Property as of the Closing Date or that has emanated or will emanate in the future from the Landfill Property ("Existing Contamination"). Existing Contamination includes contamination that is both known and unknown as of the Closing Date. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. With respect to the City's indemnification obligation to OM Indemnified Parties, this includes, but is not limited to, the obligation of the City to remove, remediate, or take other action pertaining to Hazardous Substances that is required by any governmental agency or that is necessary given OME's development of the Landfill Property, as contemplated in the PDA.

11.2 Indemnification Not Apply. This indemnification by the City shall not cover or apply to the extent the Claims result from: (a) a New Release as defined in section 11.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties; (c) actions or lack thereof by OM Indemnified Parties that are required by and do not conform to the requirements of the CAP/CD, (including requirements for development in Table 6-1 of the CAP, which may be incorporated into plans and specifications) and that OME has agreed to perform under this Agreement; or (d) any residential property owners within the Landfill Pad or residential owners association (as distinct from the Landfill Owners Entity in section 13). This indemnification by the City shall also not cover or apply to Claims for consequential damages arising out of the City's failure to timely perform City Work for the Leachate System Reconstruction and City's Environmental Work as and when required by the PDA.

With respect to Claims pertaining to or arising out of landfill gas, "actions or lack thereof by OM Indemnified Parties" for purposes of (c) shall be limited to payment of money to the Contractor for design, construction, and operation and maintenance, as described in section 2.3, and corrective actions on the portion of the System that OME owns if recourse against the Contractor is unsuccessful, as described in sections 2.10 and 6.1. The Parties acknowledge that OME's construction and development activities on the Landfill Property conducted in conformance with the requirements of the CAP/CD may nevertheless cause an increase in concentration, migration, or other exacerbation of a release of Existing Contamination; or may trigger a reporting obligation, corrective measures, or a reopener under the CAP/CD with Ecology. Such activities shall not in any way be considered to be within the scope of (a) through (c) of this section or to otherwise limit, repudiate or modify the City's indemnification obligations to OM Indemnified Parties.

11.3 New Release. A "New Release" is a release by OME of an amount of a Hazardous Substance that is not already located in soil, groundwater, air or other environmental media on the Landfill Property with respect to OME as of the date of this Agreement. A New Release shall not include disturbance or movement including migration of Existing Contamination, including movement or disturbance by OME of Existing Contamination that is associated with development of the Property.

11.4 City Obligations to BNSF. Without limiting the generality of the foregoing, the City acknowledges and affirms to OM and OME that the City's indemnification obligations under section 11.2 include, and the City shall retain all responsibility for "Grantee Environmental Obligations" as defined and described in that certain Quit Claim Deed dated as of August 23, 2006 and recorded under Snohomish County recording number 2006082506183, and that neither OM nor OME or any successor or assign of same shall assume liability or responsibility of any kind whatsoever to BNSF in connection with the Grantee Environmental Obligations.

11.5 Indemnification by OM. Except as provided in section 11.6, OME and OM shall to the fullest extent permitted by law indemnify, defend, and hold harmless the City and its employees, officers, managers, representatives, invitees, agents and consultants, successors and assigns ("City Indemnified Parties") from and against any and all Claims pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance, whether known or unknown, that exists on the Landfill Pad as of the Closing date or that will emanate in the future from the Landfill Pad to the extent the Claims result from: (a) a New Release as defined in section 11.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by the OM Indemnified Parties; or (c) actions or lack thereof by OM Indemnified Parties that are required by and do not conform to the requirements of the CAP/CD that OME has agreed to perform under this Agreement, under the terms and conditions specified in section 11.2. This indemnification shall expressly not include any Claims related to Hazardous Substances, if any, migrating onto the Landfill Pad from property owned by the City, provided that the negligent acts or omissions or willful misconduct of OM Indemnified Parties do not cause a release of such hazardous substances. Notwithstanding anything to the contrary herein, this indemnification shall not be or become the obligation of any residential owners association or residential property owners within the Landfill Pad.

11.6 Consequential Damages. No Party shall indemnify another Party for Claims for consequential damages arising out of the Contractor failing to timely design or construct the Landfill Gas System. Neither the City's Indemnified Parties nor OM Indemnified Parties shall indemnify the other for first party Claims for consequential damages arising out of the obligation to comply with required remedial actions on the City Property. Nothing in the Agreement authorizes or limits third party Claims for consequential damages against any Party.

11.7 Concurrent Negligence. In the event of concurrent negligence, each Party shall to the extent permitted by law be responsible to third parties for its proportional share of fault, and shall indemnify the other Party for its share of any concurrent negligence.

11.8 Waiver. The indemnification obligations contained in this section 11 shall not be limited by any workers' compensation, benefits, or disability laws, and the Parties each hereby waive any immunity they may have under any workers' compensation, benefit, or disability laws.

11.9 Survival. The provisions in this section 11 shall survive termination of this Agreement and termination of the CAP/CD and Restrictive Covenant for the Landfill Property. They shall be perpetual covenants of the City and OME and their successors and assigns.

11.10. Notice to Other Party. A Party shall promptly notify the other Party of the planned assertion of any Claim or the receipt of any Claim from a third party for which the Party seeks to be held harmless under this section 11. With respect to a Claim from a third party, this notice shall be made be not later than 30 days after the time the Party receives such Claim in writing. However, failure to provide such notice shall not modify the rights and obligations under section 11. These time periods shall not apply to any matter involved in the contingency planning process under section 6 or dispute resolution under section 7.

12.0 Termination of Consent Decree, Restrictive Covenant, and Agreement

12.1 Termination of Consent Decree and Restrictive Covenant. The Parties agree on the objective of terminating the CD (which includes any CD Amendment), including the Restrictive Covenant for the Landfill Property, at the earliest time that they mutually agree all obligations under the CAP/CD have been met. The Parties agree that in no event will the CD be terminated as long as a Restrictive Covenant is still required for the Landfill Property, except for a Restrictive Covenant that only prohibits the withdrawal of groundwater at the Site. The Parties will cooperate on consulting with Ecology and seeking Ecology's consent of the termination of the CD, CAP and Restrictive Covenant.

12.2 Termination of Agreement.

12.2.1 Failure to Close. If the Parties do not close the transaction under the PDA, then all Parties' obligations under this Agreement shall terminate.

12.2.2 Reconveyance to City. If all or any portion of the City Property is reconveyed from OME to the City or any assignee at the direction of the City, then OM LLC's and OME's obligations hereunder shall, with respect to such reconveyed parcel, terminate with the exception

of the indemnification obligations set forth herein with respect to Claims arising and asserted prior to the date of reconveyance.

12.2.3 Other Termination Events. With the exception of the indemnification provisions set forth herein, the provisions of this Agreement related to the Landfill Property will terminate when: (a) the CAP/CD has been terminated by a court; and (b) OME has, pursuant to section 9 of the Restrictive Covenant for the Landfill Pad, recorded an instrument which provides that the Restrictive Covenant shall no longer limit use of the property or be of any further force or effect.

13.0 Rights and Obligations of OM and Owners Entity

13.1 OM Rights and Obligations. OM shall have all rights and obligations of any OM Affiliated Entity (as defined in section 14 of the PDA) that owns or develops the Landfill Pad, including OME, except as limited in this section 13, and further excepting that OM shall not own any portion of the System under section 2.4. OM and all OM Affiliated Entities (including OME) will be Named Insureds for all property covered by the environmental insurance policies obtained by OME under sections 10 and 13. OM's indemnification rights and obligations for the Landfill Pad are set forth in section 11.

13.2 Transfer and Release of Obligations.

13.2.1 OM LLC. When OME has received from the City Certificates of Occupancy ("COs") and a Final Certificate of Completion for the Minimum Development Elements on the Landfill Pad (as described in Section 16.2 of the PDA), and provided that any insurance required of OM LLC, OME and/or the Landfill Owners Entity has been obtained and is in force as required herein, and as long as OM is not otherwise in breach of this Agreement or the PDA, then, upon a written request to the City describing and evidencing OM's compliance with the foregoing, OM LLC may be released of any and all obligations under this Agreement, including under section 11.5 of this Agreement with respect to any Claims relating to the Landfill Pad that arise in the future to the extent such Claims pertain to the period of time after issuance of the COs and Final Certificate of Completion for the Minimum Development Elements on the Landfill Pad (the "Landfill Release Date"). OM LLC, OME and OM Affiliated Entities may transfer their obligations to perform covenants under this Agreement and under the CAP/CD to the Landfill Owners Entity as provided in this section 13, however, OM LLC, OME and any OM Affiliated Entities shall not be released under this Agreement from such obligations until after the Landfill Release Date and then only to the extent described and permitted herein.

13.2.2 OME. If OME conveys a parcel after the Landfill Release Date, OME shall likewise be released of any obligations or Claims (including under section 11.5) relating to that parcel pertaining to the period of time after the conveyance.

13.3 Landfill Owners Entity.

13.3.1 Membership and Bylaws. OME shall, prior to its first conveyance of a fee interest in any lot or parcel of land within the Landfill Pad, form and organize a not for profit member owned corporation (the "Landfill Owners Entity") for, among other things, the purposes described herein. The organizational structure and corporate governance documents for the

Landfill Owners Entity shall contain provisions commonly found in owners associations for commercial real property, shall be acceptable to the City, and the City shall not unreasonably withhold its acceptance. Without limiting the foregoing, the parties agree that a City representative shall have the rights of a non-voting ex officio director of the Landfill Owners Entity. Membership within the Landfill Owners Entity shall run with ownership of a fee interest in a lot or parcel of land within the Landfill Pad, with the exception of any lot or parcel owned by the City or by individual residential property owners or a residential owners association, and further excepting any interest held merely as security for the performance or satisfaction of an obligation. Once approved by the City, neither the organizational nor the governing documents (including the Articles and Bylaws) of the Landfill Owners Entity, nor any of the real estate covenants pertaining to obligation of property owners to participate in and contribute to the Landfill Owners Entity, shall be modified without the prior approval of the City, which approval shall not be unreasonably withheld.

13.3.2 Rights and Obligations. Upon formation, the Landfill Owners Entity shall become a party to this Agreement, and all rights and obligations of OME hereunder shall also be rights and obligations of the Landfill Owners Entity. At any time after the Landfill Release Date, OME may convey title to any and all portions of the System owned by OME to the Landfill Owners Entity, and OME may transfer to the Landfill Owners Entity all rights and obligations of OME under this Agreement to perform all post-construction activities required of OME under this Agreement (i.e. those activities that are required after receipt of the COs and Final Certificate of Completion as set forth in section 13.2 above), including operation and maintenance of the System and post-construction inspection and maintenance as required herein and in the CAP/CD. The Landfill Owners Entity shall designate a Project Manager under this Agreement, a Project Coordinator under the CAP/CD, and take such other actions as are necessary to assume OME's obligations under this Agreement and the CAP/CD. Upon such transfer to the Landfill Owners Entity under this Agreement and under the terms of such transfer in the CAP/CD, OME shall be released from said obligations, including any indemnification obligations under section 11.5 of this Agreement with respect to Claims relating to the Landfill Pad that arise in the future, to the extent such Claims pertain to the period of time after the effective date of the transfer. Notwithstanding anything herein to the contrary, OM and OME shall not be released from any obligations or responsibilities under this Agreement based solely upon the establishment of the Landfill Owners Entity.

13.3.3 Insurance. Upon its formation and the assumption of obligations pursuant to section 13.3.2 above, the Landfill Owners Entity shall maintain the minimum levels of insurance coverage set forth in section 10 of this Agreement (the "Minimum Landfill Owners Entity Coverage"). If the Landfill Owners Entity fails, refuses or is unable to fulfill any of the following: (i) obtain or maintain the Minimum Landfill Owners Entity Coverage on a commercially reasonable basis for a brownfield property, or (ii) name the City as an additional insured if commercially reasonable, or (iii) provide financial assurances acceptable to the City and OME as provided in section 10 if CPL cannot be obtained by the Landfill Owners Entity or any of its members engaged in substantial construction work on the Landfill Property, then the City shall have the right to use commercially reasonable efforts to obtain such insurance and charge the Landfill Owners Entity for the cost of the City's procuring such insurance and to assess the property owned by the members of the Landfill Owners Entity for the cost thereof.

No later than six months before the current policy expires, the Landfill Owners Entity shall give notice to the City if it has determined that coverage is not commercially available. If the City disagrees, the Parties shall meet and attempt to resolve their dispute informally or invoke the dispute resolution process. Notwithstanding anything herein to the contrary, OM LLC and OME shall not be released from any obligations or responsibilities under this Agreement based merely upon the establishment of the Landfill Owners Entity.

13.3.4 CC&Rs. Prior to any sale of any portion of the Landfill Pad to any unaffiliated third party, OME shall execute and record covenants, conditions and restrictions pertaining to the Landfill Pad approved by the City, which approval shall not be unreasonably withheld (the "Landfill CC&Rs"). Once approved by the City, the Landfill CC&Rs provisions pertaining to the Landfill Owners Entity shall not be modified without the prior approval of the City, which approval shall not be unreasonably withheld. The Landfill CC&Rs shall be binding on all land within the Landfill Pad (with the exception of any land owned by the City) and shall provide for, among other things, compliance with the requirements of the CAP/CD and its environmental covenant and the establishment and maintenance of the Landfill Owners Entity on the terms and conditions described herein, including provisions for assessments against all members of the Landfill Owners Entity to ensure the collection of funds necessary to maintain the insurance required under section 13.3.3 and to use reasonable efforts to pursue Claims thereunder regardless of any denials of Claims by the insurer, reserve funds (including sufficient reserves to pay for any environmental insurance premiums and deductibles), and paying for and administering any other long-term obligations of OM or OME assumed by the Landfill Owners Entity. In addition, the Landfill CC&Rs shall provide that any member of the Landfill Owners Entity that is performing substantial construction on the Landfill Pad that involve substantial grading or subsurface activities subject to the CAP/CD shall obtain or require its contractor(s) to obtain its own contractor pollution liability ("CPL") insurance or financial assurance for the duration of the construction work, as required by section 10 of this Agreement, unless the City agrees the development work is sufficiently covered by an existing CPL policy, which consent shall not be unreasonably withheld. The Landfill CC&Rs shall provide for enforcement rights against any member who fails to comply with the Landfill CC&Rs, including the ability of the Landfill Owners Entity to lien the ownership interest of such non-performing member in the Landfill Pad. The City shall be a third party beneficiary with respect to those provisions relating to the obligation of the members to pay for the cost of the insurance coverage required pursuant to section 13.3.3.

14.0 Miscellaneous

14.1 Notices. Unless otherwise specified in this Agreement, any formal written notices required by this Agreement (Notice) shall be given to the Project Managers at the addresses set forth below in the following manner: (a) hand delivered with an acknowledgement of receipt noted; (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested; (c) facsimile transmission with confirmation page including receipt; or (d) sent by reputable overnight courier service, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by Notice to the other. The PMs shall update the contact information below by formal written Notice under this Agreement. Notices shall be deemed given when delivered; provided, however, that if any Notice shall also be sent by telecopy or fax machine, such Notice shall be deemed given at the

time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered Notice. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

For the City of Everett:

Project Manager – Landfill Matters
Everett Riverfront Project
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

cc:

Director of Public Works
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

City Attorney's Office
City of Everett
2930 Wetmore Ave.
Everett, WA 98201
Phone: 425.257.8700
Fax: 425.257.8729

K&L Gates
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attn: Kenneth S. Weiner
Phone: 206.623.7580
Fax: 206.623.7022

For OM and OME:

Project Manager – Landfill Matters
Everett Riverfront Project
OliverMcMillan773 8th Avenue
San Diego, CA 92101
Attn: Charlie Hickcox
Phone: 619.321.1111
Fax: 619.321.1234

cc:

Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Attn: Gil Reavis
Phone: 206.447.4400
Fax: 206.447.9700

14.2 Expenses. Unless otherwise provided in this Agreement, each Party will perform its obligations under the Agreement at its own expense.

14.3 Stand-Alone Agreement; Relationship to PDA. This Agreement exists separate and apart from the PDA, and shall survive expiration of the PDA. To the extent there are inconsistencies between this Agreement and the PDA, the terms of this Agreement govern.

14.4 Entire Agreement and Amendment. This Agreement and the exhibits hereto constitute the final and complete agreement between the Parties with respect to the subject matter hereof and, except as expressly authorized herein, may not be modified or amended except by a written agreement executed by the Parties.

14.5 Assignment. The Parties may assign their rights and obligations under this Agreement without the prior written consent of the other Party, provided, however, no such assignment shall release or limit in any way any of the obligations of any Party under this Agreement. OME may freely assign its rights hereunder without the prior consent of the City to any institutional lender for security purposes in connection with a loan, the proceeds of which shall be used in connection with development of the Landfill Pad or other portion of the City Property.

14.6 Successors. Subject to section 14.5, this Agreement shall be binding upon and inure to the benefit of each Party hereto, and its personal representatives, heirs, successors and assigns.

14.7 Legal Relationship. The Parties to this Agreement execute and implement this Agreement as separate entities. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

14.8 No Third Party Beneficiaries. This Agreement is intended for the benefit of OM and OME and the City, and except as otherwise provided with regard to surviving obligations, no other person or entity shall be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against any Party.

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

14.10 Attorneys' Fees. In the event that any of the Parties brings an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief or for an alleged breach or default, the predominantly prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

14.11 Counterparts; Facsimile Signatures. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

14.12 Captions. The captions of this Agreement are inserted solely for the convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term thereof.

14.13 Waiver. Except as otherwise provided herein, no delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any obligation under this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term or condition of this Agreement.

14.14 Time. The Parties agree that time is of the essence in the performance of the provisions of this Agreement.

Exhibits:

- Exhibit A: Riverfront Property
- Exhibit B: Property Map (City Property)
- Exhibit C: Landfill Property
- Exhibit D: Landfill Pad
- Exhibit E: Consent Decree Amendment
- Exhibit F: Table 6-4 – Work to be Performed Checklist
- Exhibit G: OM Easement to City for Existing Landfill Systems and Related Utilities

LEIA 4-28-08 .doc

CITY:

CITY OF EVERETT, a Washington municipal corporation

By: _____
Ray Stephanson, Mayor

ATTEST:

By: _____
Sharon Marks, City Clerk

APPROVED AS TO FORM:

By: _____
_____, City Attorney

OM EVERETT, INC., a Washington corporation

OLIVERMCMILLAN, LLC, a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

A PORTION OF
 SEC. 29 & 32, TWP. 29 N, RGE. 5 E, W.M.

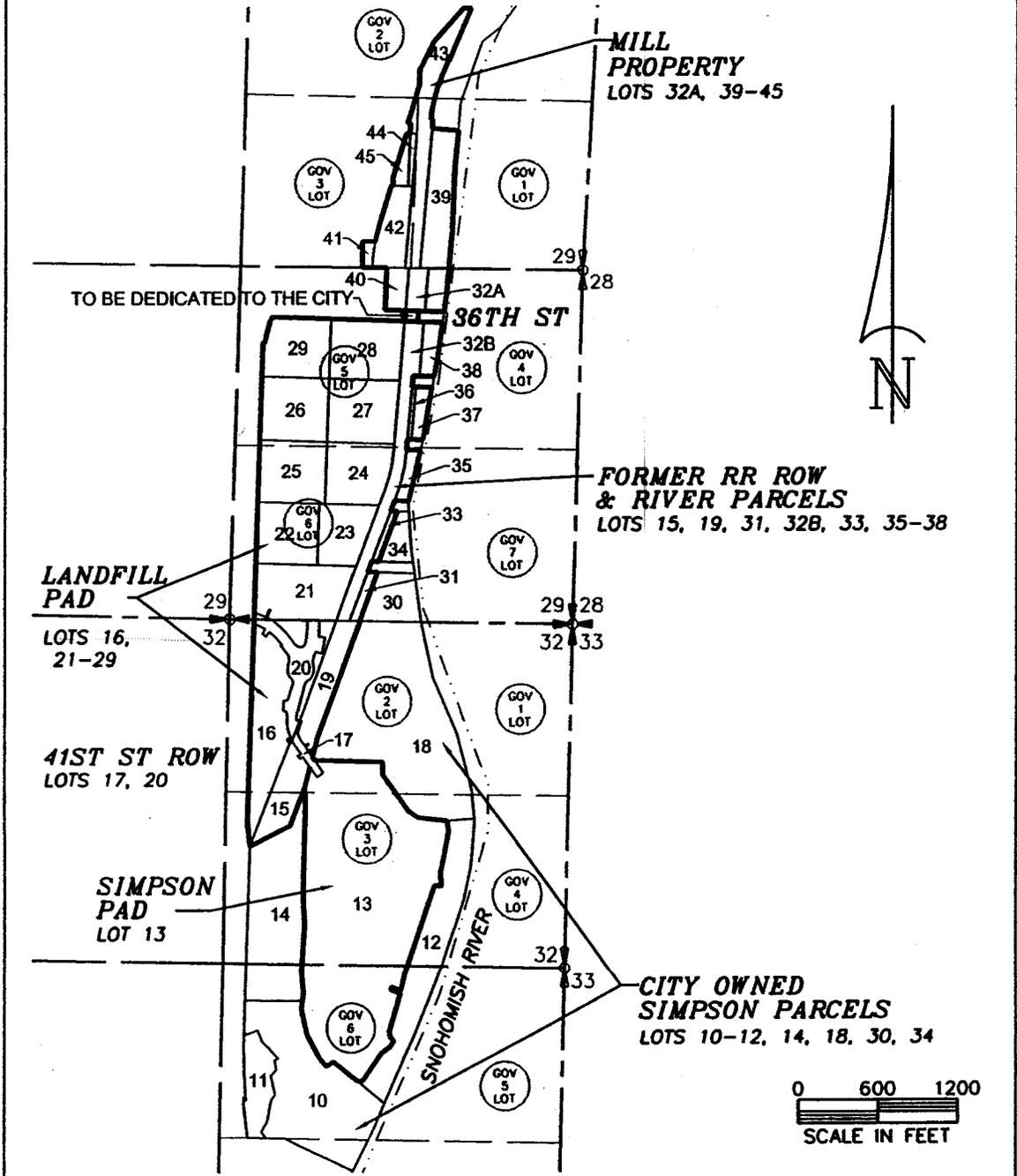


EXHIBIT A

SEE RIVERFRONT ALTA
 DATED APRIL 25, 2008

DATE: APR 25, 2008	SHEET 1 OF 1
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A PORTION OF
 SEC. 29 & 32, TWP. 29 N, RGE. 5 E, W.M.

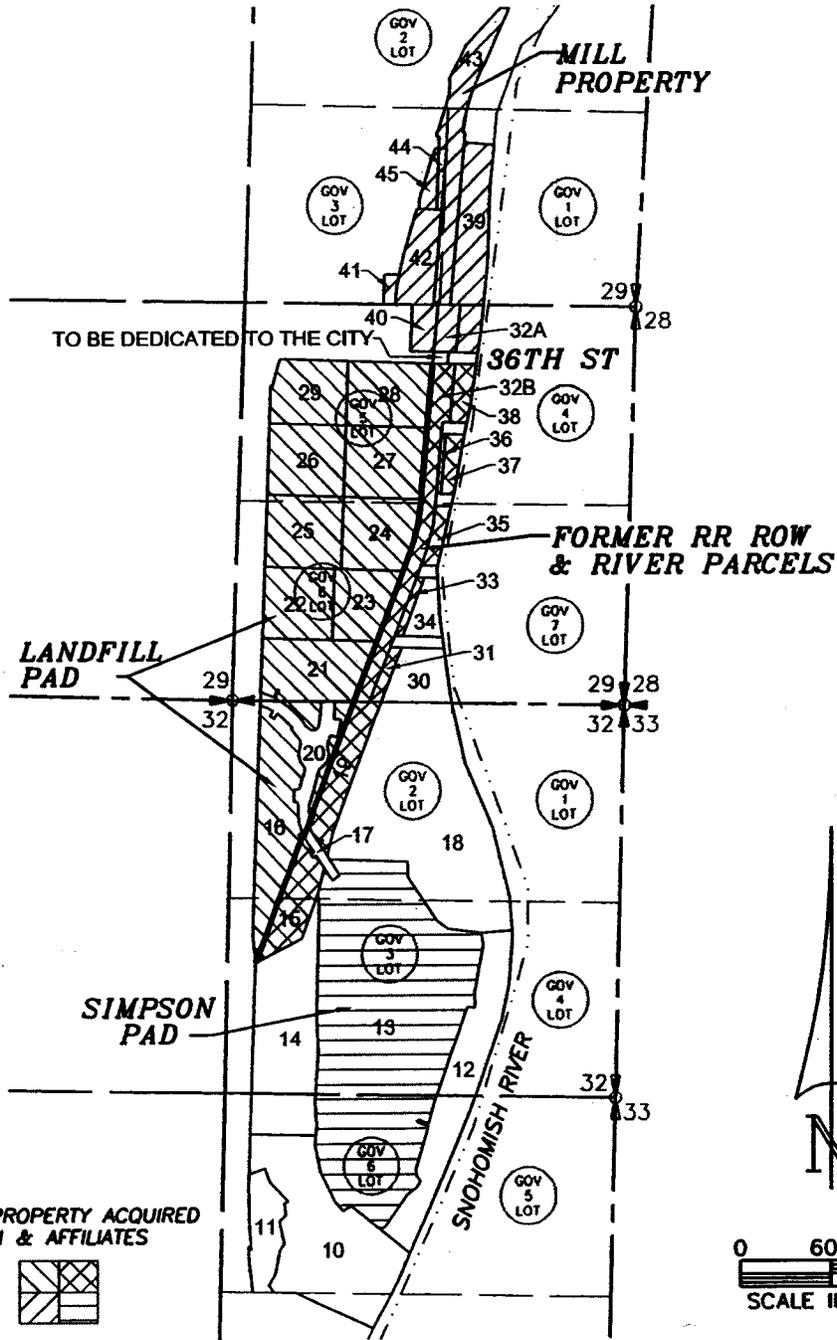


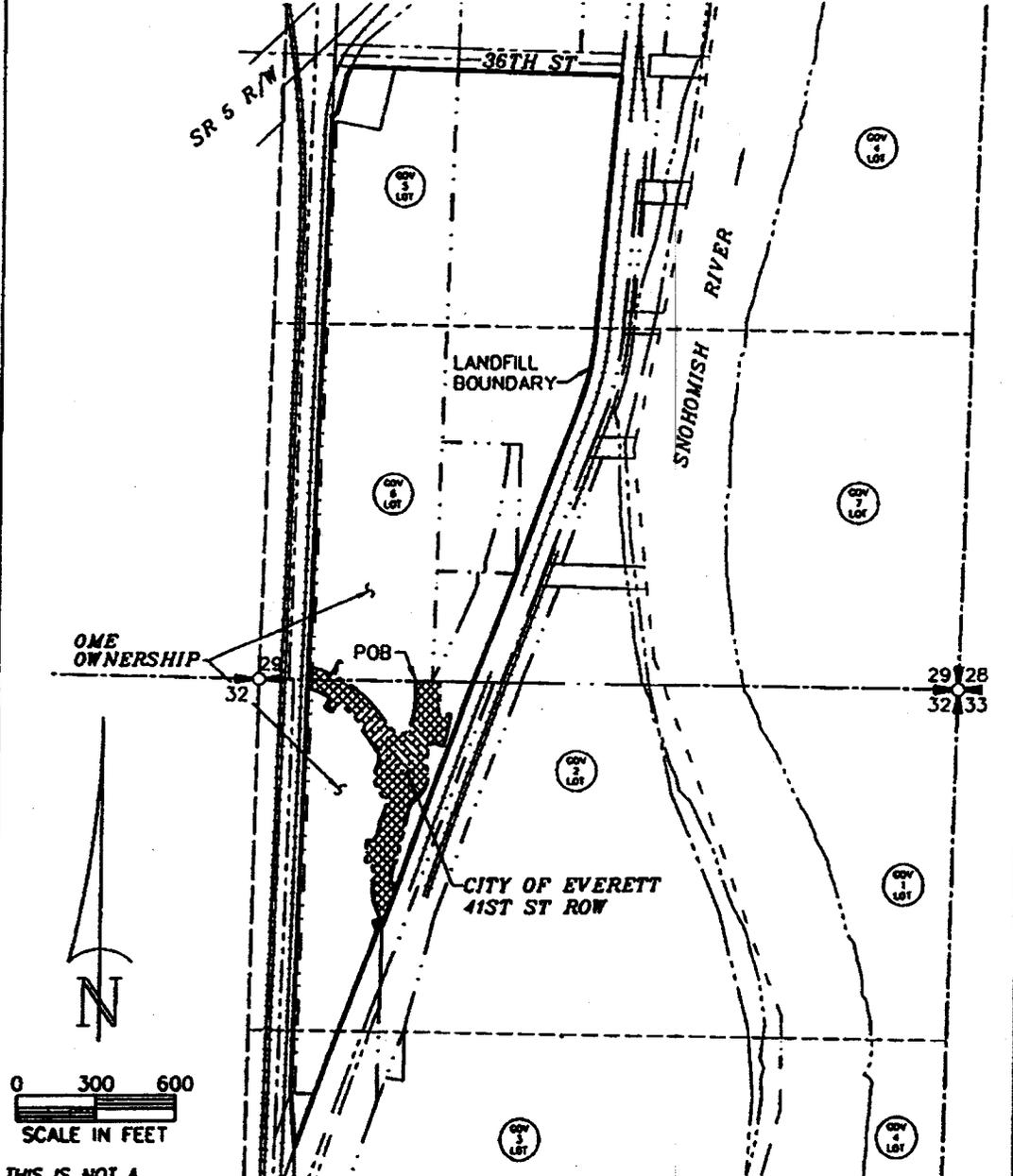
EXHIBIT B
 PROPERTY MAP

SEE RIVERFRONT ALTA
 DATED APRIL 25, 2008

DATE: APR 25, 2008

SHEET 1 OF 1

A PORTION OF
 SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



THIS IS NOT A
 BOUNDARY SURVEY MAP

CITY OF EVERETT

PARCEL EXHIBIT MAP

EXHIBIT "C"
 LANDFILL PROPERTY MAP

DATE: MAR 31, 2008

SHEET 1 OF 2



Perteet Inc.

Project No. S 3157.000

April 14, 2008

MG Yeoman, PLS

EXHIBIT C - Sheet 2 of 2

Legal Description of the Landfill Property

Lots 16 and 20 through 29, as described and shown on City of Everett Boundary Line Adjustment 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, Washington. Also described as follows:

A parcel of land located in Government Lots 5 and 6, Section 29 and Government Lots 2 and 3 Section 32, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, described as follows:

COMMENCING at the Northwest corner of said Government Lot 5 as shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 04' 42" East, a distance of 193.01 feet along the North Line of said Government Lot 5 to the east line of New Lot 8 of said BLA; thence South 01° 47' 27" West along said east line projected, 567.98 feet to the southwest corner of New Lot 7 of said BLA and the POINT OF BEGINNING:

Thence South 88° 12' 33" East, a distance of 15.00 feet to the East line of New Lot 7 of said BLA; thence along the east line of said New Lot 7; North 14° 37' 19" East, a distance of 153.16 feet; North 23° 11' 03" East, a distance of 36.84 feet to the South margin of 36th Street; thence along said south margin South 88° 04' 55" East, a distance of 1028.65 feet to the westerly boundary of Lot 17 of said BLA; thence South 04° 52' 07" West along said westerly boundary, a distance of 955.09 feet to the beginning of a 1096.28 foot radius tangent curve to the right; thence along the arc of said curve in a southwesterly direction through a central angle of 15° 51' 21" an arc distance of 303.38 feet; thence South 20° 43' 28" West, a distance of 2036.96 feet; thence North 01° 04' 37" East, a distance of 34.41 feet; thence South 20° 53' 11" West, a distance of 904.06 feet to the southerly corner of New Lot 5 of said BLA; thence along the west line of New Lot 5 of said BLA, North 05° 37' 09" West, a distance of 193.52 feet; thence continuing along said west line North 01° 47' 27" East, a distance of 3623.97 feet to the POINT OF BEGINNING.

Containing an Area of 62.039 Acres, more or less.

Exhibit E

FILED

2008 APR 23 PM 1:44

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

NO. 01-2-03640-6

Plaintiff,

AMENDMENT NO. 1 TO CONSENT
DECREE

v.

CITY OF EVERETT and
OM EVERETT, INC.,

Defendants.

I. INTRODUCTION AND STATEMENT OF CURRENT CONDITIONS

A. In April 2001 the Snohomish County Superior Court approved the Consent Decree in this matter entered into by the Plaintiff, Washington State Department of Ecology ("Ecology"), and Defendant, City of Everett (the "City" or "City of Everett").

B. The Consent Decree was a negotiated settlement between Ecology and the City under the Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW, which provided for remedial action at the Everett Landfill/Tire Fire Site ("Site"), a closed municipal landfill, where there has been a release of hazardous substances.

C. The Consent Decree, including the Cleanup Action Plan ("CAP") attached thereto, required the City to conduct cleanup actions to prevent environmental exposure to contaminants under then-existing conditions at the Site. Some of those activities are ongoing, including the City's continued operation and maintenance of a leachate collection system,

ORIGINAL

1 continued monitoring of landfill gas and groundwater at the Site, and inspection and maintenance
2 of the landfill cover.

3 D. The Consent Decree contemplated that the Property (depicted on Exhibit A and
4 legally described in Exhibit B) would be developed in the future and established criteria that
5 future development would need to meet under MTCA as well as a process for review of future
6 development plans to ensure consistency with the Consent Decree. The Consent Decree also
7 contemplated that the entity conducting the development could become a party to the Consent
8 Decree.

9 E. On February 21, 2007, the City and OM Everett, Inc.'s predecessor in interest
10 entered into a Property Disposition Agreement, which has been amended from time-to-time
11 ("PDA") that provides for the acquisition and development of the Property as well as adjacent
12 properties.

13 F. OM Everett, Inc. ("OME") and the City have agreed on a division of the
14 remaining remedial actions to be performed under the Consent Decree.

15 G. The purpose of this Amendment is to add OME as a party to the Consent Decree
16 for the limited purpose of conducting the portion of the Work to Be Performed agreed to by
17 OME, as set forth in this Consent Decree Amendment. OME will incur potential liability under
18 RCW 70.105D.040(1) at the time it acquires an interest in the Property. This Decree settles
19 OME's liability as described herein.

20 H. By signing this Amendment, OME agrees to its entry and agrees to be bound by
21 the terms of the Consent Decree, as herein amended.

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

26

1 **II. AMENDMENTS TO CONSENT DECREE**

2 Based on the foregoing, the parties stipulate and agree that the Consent Decree shall be
3 amended as follows.

4 1. **Section III. PARTIES BOUND** shall be amended in its entirety to read as
5 follows:

6 This Decree shall apply to and be binding upon the signatories to this Decree ("Parties"),
7 their successors and assigns. The undersigned representative of each Party hereby certifies that
8 he or she is fully authorized to enter into this Decree and to execute and legally bind such Party
9 to comply with the Decree. The City of Everett and OME agree to undertake all actions required
10 of each of them by the terms and conditions of this Decree, as further specified in Section VI,
11 WORK TO BE PERFORMED of this Amendment, and not to contest state jurisdiction regarding
12 this Decree. The terms and conditions of the Decree shall apply to OME only as related to, and
13 to the extent of, OME's obligations to perform work under Section VI, WORK TO BE
14 PERFORMED, as set forth in this Consent Decree Amendment. Notwithstanding the limitation
15 set forth above as to OME and subject to the provisions under paragraph 3 - Section VI. WORK
16 TO BE PERFORMED - of this amendment, the City of Everett shall continue to be liable for
17 the performance of its obligations under the Consent Decree as provided under
18 RCW 70.105D.040(2). The City of Everett and OME shall provide a summary of this Decree to
19 all agents, contractors and subcontractors retained to perform work required by this Decree and
20 shall ensure that all work undertaken by such contractors and subcontractors will be in
21 compliance with this Decree. Except as provided in paragraph 10 of this amendment, no change
22 in ownership or corporate status shall alter the responsibility of OME or the City of Everett under
23 this Decree.

24 2. **Section IV. DEFINITIONS:**

25 (a) Exhibit B to the Consent Decree, which is the legal description of
26 "Property" in Section IV.B is corrected and amended as attached.

1 (b) "Parties" in Section IV.C shall be amended to read: "Parties: Refers to
2 the Washington State Department of Ecology, the City of Everett, and OM Everett, Inc.
3 ("OME")."

4 (c) "Consent Decree or Decree" in Section IV.D shall be amended to read:
5 "Consent Decree or Decree: Refers to this Consent Decree and any Amendment to the Decree
6 and to each of the exhibits to the Decree and to any Amendments. All exhibits are integral and
7 enforceable parts of this Consent Decree and any Amendment. The terms "Consent Decree" or
8 "Decree" shall include all exhibits to the Consent Decree or Amendment."

9 (d) New subsections E through K shall be added to read as follows:

10 E. City Amenities/ Buildings: Refers to City-owned and operated buildings (e.g.
11 pump stations) and/or open space amenities (e.g. parks) and any component of the leachate or
12 groundwater monitoring systems operated by the City on land owned by OME for which OME
13 has leased, granted an easement or otherwise authorized use by the City.

14 F. City-Controlled Areas: Refers to areas of the Property in which the City has an
15 ownership interest or otherwise controls access to or use of the area; for example, areas dedicated
16 to the City.

17 G. City Improvements: Refers to City utilities, roads, structures, monitoring wells,
18 leachate collection system, and any other facility of any kind constructed by the City on the
19 Property, including City Amenities/Buildings; however, the term "City Improvements" shall not
20 include the landfill gas management system.

21 H. Low Permeability Barriers: Refers to barriers that are designed to prevent gas
22 migration to atmospheric air, prevent atmospheric air from intrusion into gas collection system,
23 prevent gas intrusion into buildings and confined spaces, and prevent water infiltration into the
24 landfill.

25 I. OME Development: Refers to the development activities conducted by OME on
26 the Property.

1 J. Undeveloped Areas: Refers to areas of the Property that do not contain
2 City Improvements or OME Development.

3 K. The terms "Project Coordinator," "Site Manager," and "Project Manager,"
4 as used in this Decree and the various exhibits hereto, refer to a Party's lead contact for the
5 Party's coordination and implementation of this Decree and CAP and are synonymous unless the
6 context clearly specifies otherwise. The term "City Engineer" shall be deemed to refer to the
7 City Project Coordinator designated under this Decree.

8 3. Section VI. **WORK TO BE PERFORMED** is amended in its entirety to read
9 as follows:

10 The Decree contains a program designed to protect public health, welfare and the
11 environment from the known release, or threatened release, of hazardous substances or
12 contaminants at, on, or from the Site. The requirements of this program are set forth in detail in
13 the Cleanup Action Plan for the Everett Landfill attached as Exhibit C to the original Decree, and
14 the Scope of Work attached as Exhibit D to the original Decree. Those exhibits, as well as any
15 other exhibit to the original decree, continue to be incorporated by reference in this Decree as
16 amended.

17 The CAP requires construction activities on the Property to follow certain construction
18 requirements in order to protect human health and the environment, which are specified in
19 Exhibits C and D of the Decree and summarized on Table 6-1 of the CAP (Exhibit C of the
20 Decree) and Article III of this Amendment. In addition, the City of Everett has certain
21 responsibilities under the CAP, including the responsibility under this Decree to operate and
22 maintain the Landfill Gas Management System ("System") and to ensure that the design and
23 installation of the System comply with the requirements of this Decree and the CAP; for
24 installing, operating and maintaining the leachate collection system and groundwater monitoring
25 system; and for reviewing, approving and inspecting any development on the Property in order to
26 ensure compliance with the CAP, as described in the CAP (as modified by paragraph 32 of this

1 Amendment). Subsections A and B below describe the respective work to be performed by the
2 City of Everett and by OME. Subsection C addresses Ecology oversight, including the
3 obligations of the City of Everett to perform remedial actions under this Decree if OME has not
4 performed the work as required.

5 A. City of Everett. The City of Everett shall comply with and perform the following
6 remedial actions selected in the original CAP and Scope of Work and Schedule, as amended by
7 this Consent Decree Amendment and its attachments, including any additional remedial actions
8 identified as actions to be performed by the City in the Work to Be Performed Checklist (CAP
9 Exhibit C, Table 6-4), attached as Exhibit C, and all other monitoring, reporting and other
10 obligations under the Consent Decree and CAP ("CAP/CD" as herein amended), not otherwise
11 assigned to OME in the following subsection (B), including responsibilities in Table 6-2. The
12 City shall perform any construction work it undertakes on the Property in accordance with
13 applicable provisions in Table 6-1, as amended by this Consent Decree Amendment, or as
14 otherwise agreed to by Ecology, pursuant to paragraph 30 of this Consent Decree Amendment. .

15 1. Low Permeability Barriers. The City shall install Low Permeability
16 Barriers in areas of the Property where City Amenities/Buildings and the 41st Street overpass are
17 located, in accordance with the requirements of the CAP/CD, including any erosion control
18 measures needed.

19 2. Leachate Collection System. The City shall continue to provide a
20 Leachate Collection System for the Landfill Site. The City will respond to any leachate seeps, if
21 needed, other than each Party's responsibility to manage any seeps that might occur during and as
22 part of its respective construction activities on the Property.

23 3. Groundwater and Surface Water. The City will design, construct, and
24 maintain deep aquifer groundwater monitoring wells as necessary or required to be in
25 compliance with the CAP/CD. The City shall be responsible for any surface water monitoring
26 and reporting requirements in the CAP/CD that are not part of stormwater management for

1 OME's development. The City will bear the risk of changes in the groundwater regime caused by
2 construction that is in conformance with the CAP/CD.

3 4. Drainage, Erosion Control, Pilings, Leak-tight Connections and
4 Stormwater. The City shall construct City Improvements in a way that installs and maintains
5 sealed connections to prevent leaks, positive drainage, and erosion controls per CAP/CD
6 requirements.

7 a. The City shall make quarterly inspections of City-Controlled
8 Areas in order to verify positive drainage and the integrity of the landfill cover in accordance
9 with the CAP/CD. The City may reduce the frequency of inspections after full build-out of the
10 OME Development and a reasonable period of quarterly inspections (not less than one year)
11 showing no change in conditions on the City-Controlled Areas, with the concurrence of OME
12 and Ecology.

13 b. For any City Improvements, the City will be responsible for
14 meeting the CAP/CD requirements that infiltration of stormwater will not be allowed in
15 developed areas of the Property, except as allowed during construction; provided that the City
16 will also be responsible for facilities constructed by OME that are ultimately owned or controlled
17 by the City (e.g. roads).

18 c. The City shall be responsible for implementation, monitoring, and
19 reporting under its stormwater permit(s) and any Stormwater Pollution Prevention Plan (SWPPP)
20 required for City Improvements; provided that the City will assume responsibility for facilities
21 initially constructed by OME at such time as such facilities are dedicated to or controlled by the
22 City (e.g., Main Road).

23 d. If piling is used, the City shall follow the recommendations of the
24 shallow aquifer study regarding piling installation. If additional compliance monitoring is
25 required by Ecology prior to the City or OME installing piles, the City will conduct the
26 monitoring.

1 5. Landfill Gas Management System. The City shall remain responsible
2 under this Decree to operate and maintain the System and to ensure that the design and
3 installation of the System comply with the requirements in the CAP/CD.

4 6. Access Controls, Use and Related Restrictions. In City-Controlled Areas
5 that are Undeveloped Areas, the City shall be responsible for establishing and maintaining access
6 controls. The City shall also be responsible in City-Controlled Areas for ensuring enforcement
7 of restrictions related to the maintenance of the integrity of the landfill cap, including limitations
8 on penetration of the cap and any use restrictions required by the CAP/CD and Restrictive
9 Covenant.

10 7. Animal Shelter and Public Works Yard. If the Animal Shelter and the
11 Public Works Yard (known as "the Transfer Station") remain on the Property after OME takes
12 title to this portion of the Property, the City will remain responsible for all obligations under the
13 CAP/CD concerning operation, maintenance, monitoring, reporting, and corrective actions for
14 the System at those structures and any other areas included within the Shelter Lease or Public
15 Works Yard Lease entered into between the City and OME, for so long as the leases exist. Any
16 ongoing or additional remedial actions required in the CAP/CD for off-site buildings or areas
17 will remain the responsibility of the City.

18 8. Long-term O & M. The City shall be responsible for the operation,
19 monitoring, maintenance, reporting and any contingency measures required by the CAP/CD for
20 all of the City's responsibilities under the CAP/CD.

21 B. OME. OME shall be required to comply with and perform only the following
22 remedial actions set forth in this paragraph 3.B.1 through 5 and any additional remedial actions
23 identified as actions to be performed by OME in the Work to Be Performed Checklist (CAP
24 Exhibit C, Table 6-4), attached as Exhibit C. Exhibit C, which updates and replaces the Work to
25 Be Performed Checklist from the Cleanup Action Plan, depicts the allocation of remedial actions
26 under the Cleanup Action Plan contractually agreed to by the Parties. Although OME is

1 identified in Exhibit C as having contractual obligations to the City concerning the System, the
2 City shall retain all obligations under this Decree for the System, except as noted in this
3 paragraph. OME shall have no responsibility, obligation or liability under this Decree for
4 remedial actions required for the System, with the exception of actions necessary to correct a
5 problem with the System to the extent caused by OME's negligent acts or omissions or by
6 OME's construction work that is not in conformance with this Decree. OME shall perform any
7 construction work it undertakes on the Property in accordance with applicable provisions in
8 Table 6-1, as amended by this Consent Decree Amendment, or as otherwise agreed to by the City
9 and Ecology, pursuant to paragraph 30 of this Consent Decree Amendment.

10 1. Low Permeability Barriers, Fill, and Grading. For facilities OME
11 constructs, OME shall install Low Permeability Barriers on the entire Property, except in areas
12 where City Amenities/Buildings and the 41st Street overpass are located, and will perform any
13 final grading for OME Development on top of the System without causing damage to such
14 system or adversely affecting positive drainage, in accordance with the requirements of the CAP,
15 including any erosion control measures needed.

16 2. Drainage, Erosion Control, Pilings, Leak-tight Connections, and
17 Stormwater. Any Development constructed by OME shall be constructed in a way that installs
18 and maintains sealed connections to prevent leaks, positive drainage, and erosion controls per the
19 requirements of the CAP.

20 a. OME shall inspect the property on which it controls access in order
21 to verify positive drainage and the integrity of the landfill cover in accordance with the CAP.

22 b. For any facilities OME constructs, it will be responsible for meeting
23 the CAP requirements that infiltration of stormwater will not be allowed in developed areas of the
24 Property, except as allowed during construction; provided that the City will be responsible for
25 facilities constructed by OME that are ultimately owned or controlled by the City (e.g. roads).

26

1 c. OME shall be responsible for implementation, monitoring, and
2 reporting under its stormwater permit(s) and any Stormwater Pollution Prevention Plan (SWPPP)
3 required for the OME Development; provided that the City will assume responsibility for
4 facilities initially constructed by OME at such time as such facilities are dedicated to or
5 controlled by the City (e.g., Main Road).

6 d. If piling is used, OME will follow the recommendations of the
7 shallow aquifer study regarding piling installation or any alternatives accepted by Ecology.

8 e. If any of OME's pipes or other facilities connect to the City's
9 pipes for the Leachate Collection System or other facilities, OME shall be responsible for
10 making such connections fused or cemented per the requirements of the CAP.

11 f. OME will make quarterly inspections of the property on which it
12 controls access on the Property to verify positive drainage and the integrity of the landfill cover.
13 OME may reduce the frequency of inspections after full build-out of the OME Development and
14 a reasonable period of quarterly inspections (not less than one year) showing no change in
15 conditions on the property with the concurrence of the City Project Coordinator and Ecology.

16 3. Access Controls, Use and Related Restrictions. OME shall be responsible
17 for establishment and maintenance of access controls in any Undeveloped Areas owned by
18 OME. In areas of the Property other than City-Controlled Areas, OME shall be responsible for
19 ensuring that sale or lease agreements include provisions disclosing and requiring compliance
20 with restrictions relating to the maintenance of the integrity of the landfill cap including
21 limitations on penetration of the cap, notices of transfers in interest, and any use restrictions as
22 may be required by the CAP and Restrictive Covenant.

23 4. Long-term O & M. OME shall be responsible for the operation,
24 monitoring, maintenance, reporting and any contingency measures required by the CAP solely
25 for the remedial actions set forth in this Section VI.B.

26

1 5. Compliance. Under this Consent Decree, if the City and Ecology review
2 and approve OME's development plans and construction work, as may be required by the
3 CAP, and OME constructs and maintains its development in accordance with those plans,
4 OME's construction work will be deemed to be in conformance with this Decree, including the
5 CAP and all exhibits to the Decree.

6 C. Ecology Oversight of Work to Be Performed.

7 1. Notice. During the course of construction and implementation of the
8 remedial actions required by this Decree, Ecology will contact the City of Everett or OME, as
9 appropriate based on the Party obligated to perform the work set forth in the description of the
10 Work to Be Performed, if Ecology believes there are deficiencies in that Party's work. In the
11 event that the work is not corrected to Ecology's satisfaction consistent with the Decree,
12 Ecology will notify both parties in writing of Ecology's determination of a deficiency before
13 taking formal action. In no event will OME be responsible under this Decree to conduct
14 actions to correct deficiencies in the City's Work to Be Performed.

15 2. Notice of Deficiency to OME. In the event OME is available to perform
16 the work (i.e. is not in bankruptcy or has otherwise abandoned the site), and is notified by
17 Ecology that Ecology believes there is a deficiency in its work, OME shall have the right to
18 invoke the dispute resolution process under Section XIV of the Decree. If OME has invoked
19 dispute resolution, Ecology and OME shall finalize the dispute resolution process prior to
20 Ecology requiring the City to implement any remedial action. If OME is available, the City shall
21 implement remedial action to correct the deficiency if OME fails to follow the results of the
22 dispute resolution process. In such event, the City shall implement one of the actions described
23 in paragraph 3.C.3 below. OME's obligations for performing remedial actions under the Decree
24 while in the dispute resolution process are governed by Section XIV.E of the Decree.

25 If OME fails to follow the results of dispute resolution, or if OME is not available (i.e. is
26 in bankruptcy or has otherwise abandoned the site) to perform the action requested by Ecology to

1 bring its work into conformance with the CAP, the City shall, upon written notice from Ecology,
2 implement one of the actions described in paragraph 3.C.3 below.

3 3. Performance by City. The City shall select and perform one of the
4 following measures to meet its obligations under paragraph 3.C.2 above:

5 a. perform the remedial action for which a notice of deficiency was
6 issued, subject to any modifications under the dispute resolution process with OME (if the City
7 has lawful access and the right to modify the development); or

8 b. perform the remedial action to enable the problem area to meet
9 CAP requirements for "Future Developed Conditions" at the Property (if the City has lawful
10 access and the right to modify the development); or

11 c. perform the remedial action to enable the problem area to meet the
12 protective requirements for "Existing Conditions" approved in the CAP, including but not limited to
13 applicable provisions of CAP Section 3 (cleanup standards) and Section 4 (cleanup actions for
14 existing conditions), Exhibit D (scope of work for existing conditions), monitoring and contingency
15 plan triggers in the CMCP (Attachment CAP-2), and limiting access if appropriate; or

16 d. perform such other remedial action approved by Ecology that will
17 meet the cleanup standards in the CAP.

18 Unless the specific remedy has already been approved by Ecology, the City of Everett
19 will provide a workplan for the remedial action to Ecology for Ecology's approval, subject to the
20 dispute resolution process. In the event the remedial action to be performed by the City is
21 deemed a substantial change from those remedial actions expressly covered by the Decree (also
22 see subparagraph D of this section), such action must meet the requirements of the MTCA rules,
23 including the public participation if applicable.

24 If the City does not have access to implement the remedy, the City will make its best
25 effort to obtain access. If the City is unable to obtain access after a reasonable period
26 (reasonableness to be determined based on the degree of danger associated with the problem

1 area), the City will notify Ecology and request Ecology's assistance in obtaining access. The
2 City obligation to perform the remedy shall be stayed pending obtaining access.

3 D. Restriction on Work. The City of Everett and OME agree not to perform any
4 remedial actions outside the scope of this Decree that are substantial unless approved in writing by
5 Ecology or the parties agree to amend the Scope of Work to cover these actions. Nonsubstantial
6 actions may occur if approved in writing by Ecology. All work conducted under this Decree shall
7 be done in accordance with WAC Chapter 173-340 unless otherwise provided herein.

8 4. Section VII. **DESIGNATED PROJECT COORDINATOR** shall have the
9 following added:

10 The project coordinator for OME is:

11 Charlie Hickcox
12 OM Everett, Inc.
13 733 8th Avenue
San Diego, CA 92101
Telephone: (619) 321-1111

14 5. Section VIII. **PERFORMANCE** shall be amended to add "and OME" after
15 reference to the City of Everett.

16 6. Section IX. **ACCESS** shall be amended to add "and OME" after all references to
17 the City of Everett.

18 7. Section X. **SAMPLING, DATA REPORTING, AND AVAILABILITY** shall
19 be amended to add "and OME" after all references to the City of Everett.

20 8. Section XI. **MONITORING REPORTS** shall be replaced in its entirety with
21 the following language:

22 OME shall submit any required monitoring reports to Ecology summarizing the results of
23 any required monitoring for the remedial actions required of OME as specified in paragraph 3
24 above and describing any issues that have arisen regarding implementation and maintenance of
25 the Cleanup Action Plan pursuant to the CMCP. Except for the Landfill Gas Management
26 System, the City of Everett shall submit any required monitoring reports to Ecology for all other

1 remedial actions required in the Cleanup Action Plan summarizing the results of required
2 monitoring and describing any issues that have arisen regarding implementation and
3 maintenance of the Cleanup Action Plan pursuant to the CMCP. With respect to monitoring of
4 the Landfill Gas Management System, the City of Everett and OME will jointly submit the
5 monitoring reports required by the CMCP or do so through a contractor.

6 9. Section XII. RETENTION OF RECORDS shall be amended to add "and
7 OME" after all references to the City of Everett.

8 10. Section XIII. TRANSFER OF INTEREST IN PROPERTY:

9 (a) Section XIII.A shall be amended to add "and OME" after all references to
10 the City of Everett and shall substitute "Property" for "Site."

11 (b) Section XIII.B shall be amended to add the following sentence: "During
12 the effective period of this Decree, as described in Section XXV, OME shall notify Ecology of
13 its intent to convey any fee interest in the Property.

14 (c) A new subsection D shall be added to read as follows:

15 D. Upon receipt of a joint letter from the City and OME notifying Ecology of the
16 effective date of the City's release to OME under their agreement, OME shall be released from
17 further liability under this Decree related to such portion of the Property conveyed under Section
18 XIII.B upon substituting the new fee owner as a Party to this Decree ("Transferee"). Any release
19 shall pertain exclusively to the period of time after the transfer and release and shall not apply to
20 the performance of obligations prior to the date of release. The Transferee may be an
21 incorporated owners association. As a condition of such release, the Transferee shall assume
22 responsibility for and accept liability for performing all of OME's continuing obligations for the
23 land acquired, such as operations, maintenance, monitoring and reporting, of any remedial action
24 systems associated with the land acquired. Except for a transfer from OME to an Affiliated
25 Entity (as defined in the PDA), or to an incorporated owners entity, any such substitution and
26 release must be approved by Ecology, which approval shall not be unreasonably withheld.

1 11. **Section XIV. RESOLUTION OF DISPUTES** shall be amended to add “and/or
2 OME” after all references to the City of Everett.

3 12. **Section XV. AMENDMENT OF CONSENT DECREE** shall be amended to
4 add “and OME” after all references to the City of Everett.

5 13. **Sections XVI. EXTENSION OF SCHEDULE** shall be amended to add “or
6 OME” after all references to the City of Everett.

7 14. **Section XVII. ENDANGERMENT** shall be amended to add “OME” after all
8 references to the City of Everett.

9 15. **Section XVIII. INDEMNIFICATION** shall be amended to add the following
10 paragraph:

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

19 16. **Section XX. COMPLIANCE WITH APPLICABLE LAWS** shall be amended
20 to add “or OME” after all references to the City of Everett.

21 17. **Section XXI. REMEDIAL AND INVESTIGATIVE COSTS** shall be replaced
22 in its entirety as follows:

23 A. The City of Everett and OME agree to pay costs incurred by Ecology pursuant to
24 this Decree as follows. The City and OME shall share the costs provided in this paragraph
25 equally (50-50), and the City of Everett shall upon request by Ecology pay any of these costs not
26 timely paid by OME (in no event shall OME be responsible to pay costs that the City is required

1 to, and does not timely, pay); provided, however, that costs associated with a notice of deficiency
2 under Section VI, paragraph 3.C or enforcement action under this Decree, if any, shall be
3 invoiced to and paid by the Party to which the notice or enforcement action was issued. To the
4 extent the City of Everett or OME believe the costs should be allocated differently than invoiced,
5 it shall be their responsibility to pay the invoice, subject to any dispute resolution with Ecology
6 under this Decree, and resolve any differences regarding allocation under their separate
7 agreements.

8 B. Ecology shall invoice each Party its share of the costs, and each Party shall pay
9 Ecology directly for its invoice. These costs shall include work performed by Ecology or its
10 contractors for, or on, the Site under Ch. 70.105D RCW subsequent to the issuance of this
11 Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight and
12 administration. Ecology costs shall include costs of direct activities and support costs of direct
13 activities as defined in WAC 173-340-550(2). The required amount will be paid within ninety
14 (90) days of receiving from Ecology an itemized statement of costs that includes a summary of
15 costs incurred, an identification of involved staff, and the amount of time spent by involved staff
16 members on the project. Ecology shall provide to the City and OME a detailed statement of
17 Ecology staff time spent administering performance under this decree in the form of a site log.
18 Ecology will also provide to the City and OME a general statement of work performed upon
19 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within
20 ninety (90) days of receipt of the itemized statement will result in interest charges.

21 **18. Section XXII. IMPLEMENTATION OF REMEDIAL ACTION** shall be
22 replaced in its entirety with the following language:

23 If Ecology determines that the City of Everett or OME have failed without good cause to
24 implement the remedial actions that the City or OME, as the case may be, are required to conduct
25 under this Decree, Ecology may, after notice to the alleged nonperforming Party, perform any or
26 all portions of the remedial action that remain incomplete except for any remedial actions that are

1 also development activities. If Ecology performs all or portions of the remedial action because
2 of the City of Everett's or OME's failure to comply with its obligations under this Decree, the
3 alleged nonperforming Party shall reimburse Ecology for the costs of doing such work in
4 accordance with Section XXI, provided that neither the City nor OME are obligated under this
5 Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope
6 of this Decree.

7 19. Section XXIII. FIVE YEAR REVIEW shall be replaced with the following
8 language:

9 As remedial action, including groundwater monitoring, continues at the Site, the parties
10 agree to review the progress of remedial action at the Site, and to review the data accumulated as
11 a result of site monitoring as often as is necessary and appropriate under the circumstances. At
12 least every five years, the parties shall meet to discuss the status of the Site and the need, if any,
13 of further remedial action at the Site. Ecology reserves the right to require further remedial
14 action at the Site under appropriate circumstances; however, OME shall not be responsible for or
15 required to conduct any such further remedial action except as may be required of OME under
16 Paragraph 24 of this Amendment No. 1 to Consent Decree, and except for actions needed to
17 complete the Work to Be Performed by OME in Paragraph 3.B of this Amendment No. 1 to
18 Consent Decree. This provision shall remain in effect for the duration of the Decree.

19 20. Section XXIV. PUBLIC PARTICIPATION shall be amended to add "and
20 OME" after all references to the City of Everett, except for the reference in Section XXIV.D.

21 21. Section XXV. DURATION OF DECREE shall be replaced with the following
22 language:

23 This Decree shall remain in effect and the remedial program described in the Decree shall
24 be maintained and continued until the City of Everett and OME have both received written
25 notification from Ecology that the requirements of this Decree have been satisfactorily
26 completed. Ecology shall provide such written notification or notice of any deficiencies in the

1 completion of the requirements of this Decree within sixty (60) days of receiving a joint notice
2 from the City of Everett and OME that the requirements of this Decree have been satisfied.
3 Within sixty (60) days of the City of Everett and OME's joint written notice that any noted
4 deficiencies have been corrected, Ecology shall provide written notification that the requirements
5 of the Decree have been satisfied or notice of any deficiencies that still remain. The provision set
6 forth in Section XXVII (Contribution Protection); Section XXVIII (Covenant Not to Sue),
7 Section XVIII (Indemnification) and such other continuing rights of the City of Everett, OME, or
8 Ecology under this Decree shall survive termination of this Decree pursuant to this paragraph.
9 This Decree shall in no way limit the authority of Ecology to obtain all legal or equitable
10 remedies available against persons not Party to this Decree and against all persons, parties or
11 non-parties, for releases of hazardous substances at the Site not addressed by this Decree.

12 Certifications by Ecology. The Property may be redeveloped in phases. The City of
13 Everett and OME may from time to time jointly provide notice and demonstrate to Ecology that
14 cleanup levels have been attained for certain media in certain parts of the Property. In order to
15 facilitate the timely redevelopment of the Property, Ecology shall, within a reasonable time of
16 receiving such notice and adequate documentation (including, but not limited to, design reports
17 and monitoring results), certify in writing that cleanup levels have been met in portions of the
18 Property specifically requested. In addition to these certifications, Ecology shall within a
19 reasonable time of receiving notice from the City of Everett and OME that they have
20 satisfactorily completed work, certify in writing that the City of Everett and OME have
21 completed all cleanup activities that are required pursuant to the CAP, with the exception of any
22 required institutional controls and monitoring as described in the CAP as amended by this
23 Amendment.

24 **22. Section XXVI. CLAIMS AGAINST THE STATE** shall be amended to add
25 "and OME" after all references to the City of Everett.
26

1 **23. Section XXVII. CONTRIBUTION PROTECTION** shall be replaced in its
2 entirety with the following language:

3 With regard to claims for contribution against the City of Everett or OME for matters
4 addressed in this Decree, the City of Everett and OME are entitled to protection from
5 contribution actions or claims as is provided by MTCA, RCW 70.105D.040, or as otherwise
6 provided by law. Nothing in the Decree prevents either OME or the City from bringing a
7 contribution action under MTCA against the other for remedial costs incurred if the Party is
8 required by Ecology to perform the other party's Work to Be Performed under this Decree.

9 **24. Section XXVIII. COVENANT NOT TO SUE** shall be replaced in its entirety
10 with the following language:

11 A. In consideration of the City of Everett's and OME's compliance with the
12 terms and conditions of this Decree, Ecology agrees that compliance with this Decree shall stand
13 in lieu of any and all administrative, legal, and equitable remedies and enforcement actions
14 available to Ecology against the City of Everett and OME for the release or threatened release of
15 known hazardous substances addressed pursuant to this Consent Decree and the CAP. For
16 purposes of this paragraph, "known hazardous substances" shall include the hazardous
17 substances identified in the Brownfield Feasibility Study conducted at this Site (RI/FS), which
18 are described in the CAP and Paragraph V.5 of the Decree.

19 1. **REOPENER FOR THE CITY:** Ecology specifically reserves the right to
20 institute legal or administrative action against the City of Everett following twenty (20) days
21 written notice to the City requiring the City to perform additional remedial action at the facility,
22 and to pursue appropriate cost recovery in accordance with provisions set out in RCW
23 70.105D.050, under the following requirements:

24 (a) In the event that the City of Everett fails to comply with its
25 obligations under this Decree, including all exhibits.

1 (b) In the event new information becomes available regarding factors
2 not known at the time of entry of this Decree which present a previously unknown threat to
3 human health or the environment, and Ecology determines, in light of this information, that
4 further remedial action is necessary at the facility to protect human health or the environment,
5 and the City of Everett, after notice from Ecology, fails to take necessary action within a
6 reasonable time.

7 (c) In the event conditions at the facility cause an endangerment to
8 human health or the environment under Section XVII of the Decree, and the City of Everett, after
9 notice from Ecology, fails to eliminate the endangerment within a reasonable time.

10 (d) To the extent the City of Everett or OME exacerbates the known,
11 documented contamination described in this Decree and the CAP.

12 (e) In the event the City of Everett or OME interferes with any
13 remediation of the facility conducted or required by Ecology.

14 2. REOPENER FOR OME: Ecology specifically reserves the right to
15 institute legal or administrative action against OME following twenty (20) days written notice to
16 OME requiring OME to perform additional remedial action at the facility, and to pursue
17 appropriate cost recovery in accordance with provisions set out in RCW 70.105D.050, under the
18 following requirements:

19 (a) In the event that OME fails to comply with its obligations under
20 this Decree, including all exhibits.

21 (b) In the event conditions at the facility cause an endangerment to
22 human health or the environment under Section XVII of the Decree, to the extent the conditions
23 causing the endangerment result from negligent acts or omissions or willful misconduct of OME;
24 provided that construction and development activities on the Site conducted in conformance with
25 the requirements of the CAP/CD shall not in any way be considered to be actions that can be
26

1 prohibited under the Decree or reopener as an endangerment, or to be negligent acts or omissions
2 or willful misconduct.

3 (c) In the event that OME interferes with any remediation of the
4 facility conducted or required by Ecology such that the interference causes an endangerment to
5 human health or the environment under Section XVII of this Decree, to the extent conditions
6 causing the endangerment result from negligent acts or omissions or willful misconduct of OME;
7 provided that modification of the Leachate Collection System (which all Parties anticipate will
8 be modified on the east side of the Property) or modification of the Landfill Gas Management
9 System, including header pipes, shall not in any way be considered to be an action that can be
10 prohibited under the Decree or interpreted under this reopener as interference with remediation
11 of the facility.

12 3. APPLICABILITY: The Covenant Not to Sue set forth above shall have
13 no applicability whatsoever to:

- 14 (a) Criminal Liability;
15 (b) Liability for damages to natural resources; or
16 (c) Any Ecology action against potentially liable parties not a Party to
17 this Decree, including cost recovery.

18 25. Section XXIX. LAND USE RESTRICTIONS shall be replaced in its entirety
19 with the following language:

20 For the Property, upon OME taking title to any portion of the Property, OME and the
21 City shall each record with the office of the Snohomish County Assessor an amendment to the
22 existing Restrictive Covenant for the Property substantially in the form of Exhibits D and E to
23 this Amendment for those portions of the Property owned by OME and by the City, respectively.
24 OME and the City shall provide each other and Ecology with a copy of the recorded amended
25 Restrictive Covenant within thirty (30) days of the recording date.
26

1 26. **Section XXX. EFFECTIVE DATE** shall be amended by adding the following
2 language:

3 This Amendment Number 1 to the Consent Decree is effective only upon the date
4 (Effective Date) that title to any portion of the Property vests in OME following entry of this
5 Amendment by the Court. If OME does not purchase any portion of the Property or if OME
6 reconveys that property back to the City this Amendment shall be null and void, and OME shall
7 be under no obligation to perform the work required by this Decree. In such event, the Parties
8 will jointly move the Court to declare Amendment Number 1 to the Consent Decree null and
9 void.

10 27. **Section XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**
11 shall be amended by adding the following language:

12 If the Court withholds or withdraws its consent to Amendment Number 1 to the Consent
13 Decree, it shall be null and void and the accompanying Motion for Amendment shall be
14 dismissed without costs and without prejudice. In such event, no Party shall be bound by the
15 requirements of this Amendment.

16 28. A new paragraph shall be added to the Consent Decree as follows:

17 **XXXII. RELATIONSHIP TO OTHER AGREEMENTS**

18 Nothing in this Consent Decree, including but not limited to Sections VI Work to Be
19 Performed, XXVII Contribution Protection, and XXVIII Covenant Not to Sue and Reopeners,
20 modifies or shall be deemed to modify the indemnification obligations or any other contractual
21 rights and obligations of OME or the City of Everett in the Landfill and Environmental
22 Indemnification Agreement or the Property Disposition Agreement entered into between OME
23 and the City of Everett in connection with OME's acquisition of property owned by the City of
24 Everett at the Landfill Site.

1 required that will trigger evacuation notification. Methane monitoring controls for the residential
2 units shall be located externally and available for 24 hour operation and inspection. Homeowners
3 shall be required to provide access for routine monitoring as well as for emergencies. OME shall
4 include the above use restrictions and a description of the methane monitoring process in all
5 appropriate documents for each homeowner (e.g. CC&Rs and purchase documents).

6 32. The City of Everett's "oversight" responsibilities under the Consent Decree and
7 CAP are modified. The City of Everett, as the local development approval authority, will review
8 OME's development proposals as part of the City's regulatory permitting process, and ensure
9 that permits issued by the City for construction of the development are consistent with the
10 requirements of this CAP. Except as may be required under Section VI.C of this Decree, once
11 development is constructed and a certificate of occupancy is issued, the City shall have no
12 obligation under this Decree to inspect or monitor the OME Development, and each Party shall
13 be responsible directly to Ecology as provided in the Decree and in this amendment with
14 respect to their individual operation, maintenance, inspection, monitoring, and reporting
15 obligations. Without limiting the foregoing, sections 6.3.1 and 6.3.1.1 of the CAP are
16 amended as follows:

17 (a) Section 6.3.1 is revised to read: "The City of Everett, as the local
18 development approval authority, and to the extent otherwise required in the Consent Decree, as
19 amended, is responsible to ensure development is consistent with the requirements of the CAP.
20 Nothing herein is intended to modify or waive Ecology's oversight function."

21 (b) "Project Coordinators." One point of contact will be defined within the
22 City to track and coordinate environmental compliance, permitting, development, construction
23 and property management activities for the City. OME's project coordinator shall be the point of
24 contact for Ecology concerning OME's activities at the Site. Each Party's project coordinator
25 shall be responsible to ensure that Party's compliance with environmental requirements. The
26 Parties will coordinate their communications with Ecology relative to Site status and activities."

1 (c) "Compliance Monitoring Reporting. Each Party will provide timely,
2 periodic reporting of results to Ecology for the remedial actions for which it conducts
3 compliance monitoring under the CMCP."

4 (d) "Development Status and Inspection Reports. During construction of
5 development, City will provide timely, periodic reporting to Ecology detailing development
6 activities, development status, and permitting status, and inspection of the ongoing construction.
7 Reporting will accompany compliance monitoring reports to Ecology.

8 33. The Work to Be Performed Checklist in Section 6.4 is amended as attached in
9 Exhibit C.

10 34. Section 5.2 of the Compliance Monitoring and Contingency Plan (CMCP), which
11 is Attachment CAP-1 to the Cleanup Action Plan, is amended as follows:

12 (a) The inspection checklist referenced in section 5.2.1 and attached as Figure
13 5-1 shall be used by each Party as appropriate for purposes of each Party's inspection obligations
14 under the Decree. Section 3 of the checklist, concerning immediate notification of the City of
15 Everett Project Coordinator, shall be modified to require a Party to notify Ecology's Project
16 Coordinator and the other Party if they identify penetration of developed area covers in areas for
17 which that Party is responsible for inspection and reporting.

18 (b) Quarterly inspection results described in Section 5.2.3 will be submitted by
19 each Party to Ecology, and the immediate notification requirements require notification of Ecology.

20 35. Section 5.4 of the CMCP is amended as follows:

21 (a) The following second paragraph is added to Section 5.4:

22 The Party responsible in the Work to Be Performed for contingency actions for the
23 problem areas described below will implement the contingency measure. In the event OME is
24 unavailable to perform if required to do so (i.e. is in bankruptcy or has otherwise abandoned the site),
25 as specified in Section VI.C of the Decree, and City implements any of these measures on OME's
26 property, the City is not required to modify, repair, or maintain the development. In this situation, as

1 provided in the Consent Decree, the City shall select and perform one of the following measures to
2 meet its obligations: (a) perform the remedial action for which a deficiency was issued, subject to any
3 modifications under the dispute resolution process with OME (if the City has lawful access and the
4 right to modify the development); or (b) perform the remedial action to enable the problem area to
5 meet CAP requirements for "Future Developed Conditions" at the Property (if the City has lawful
6 access and the right to modify the development); or (c) perform the remedial action to enable the
7 problem area to meet the protective requirements for "Existing Conditions" approved in the CAP,
8 including but not limited to applicable provisions of CAP Section 3 (cleanup standards) and Section 4
9 (cleanup actions for existing conditions), Exhibit D (scope of work for existing conditions),
10 monitoring and contingency plan triggers in the CMCP (Attachment CAP-2), and limiting access if
11 appropriate; or (d) perform such other remedial action approved by Ecology that will meet the
12 cleanup standards in the CAP.

13 (b) A plan to correct problems with stormwater management systems that are
14 not operating or maintained as required will be developed and implemented by the Party
15 responsible for the stormwater management system.

16 (c) Areas of differential settlement identified during inspections that may
17 compromise remedial actions for other exposure pathways (such as for gas or surface water)
18 require identification and notification of Ecology's Project Manager.

19 36. All other provisions in the CAP and its attachments (Exhibit C to the Consent Decree),
20 and the Scope of Work and Schedule (Exhibit D to the Consent Decree), including any tables,
21 figures, and checklists, are hereby amended to conform to all provisions in this Consent Decree
22 Amendment.

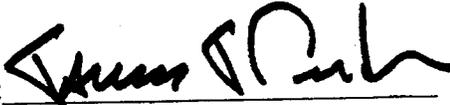
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IV. EFFECT OF AMENDMENT TO CONSENT DECREE

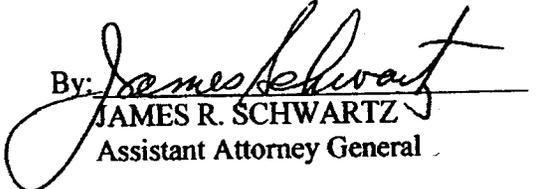
The terms and conditions of this Amendment shall supersede any prior inconsistent provisions of the Decree, including all Exhibits and Attachments to the Decree. Unless otherwise modified herein, the original terms of the Decree shall remain in full force and effect.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: 
JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program

4/22/08
Date

ROBERT M. MCKENNA
Attorney General

By: 
JAMES R. SCHWARTZ
Assistant Attorney General

4-21-08
Date

OM EVERETT, INC., a Washington corporation

By: 
Its **Richard Paul Buss, President**

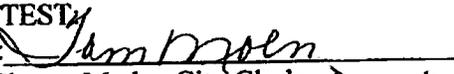
4-18-08
Date

CITY OF EVERETT, a Washington municipal corporation

By: 
RAY STEPHANSON
Mayor

4-16-08
Date

ATTEST

By: 
Sharon Marks, City Clerk - Deputy

4-16-08
Date

APPROVED AS TO FORM:

By: *Kenneth S. Weiner* 4/16/08
Kenneth S. Weiner, Special City Attorney Date

K&L GATES
Attorneys for Defendant City of Everett

Kenneth S. Weiner 4/16/08
Kenneth S. Weiner WSBA #11594 Date

EXHIBITS:

- Exhibit A Landfill Property Map
- Exhibit B Legal Description of the Property
- Exhibit C Work to Be Performed Checklist (CAP Exhibit C, Table 6-4)
- Exhibit D Environmental Covenant by OM Everett, Inc.
- Exhibit E Environmental Covenant by the City of Everett

AMENDMENT ORDER

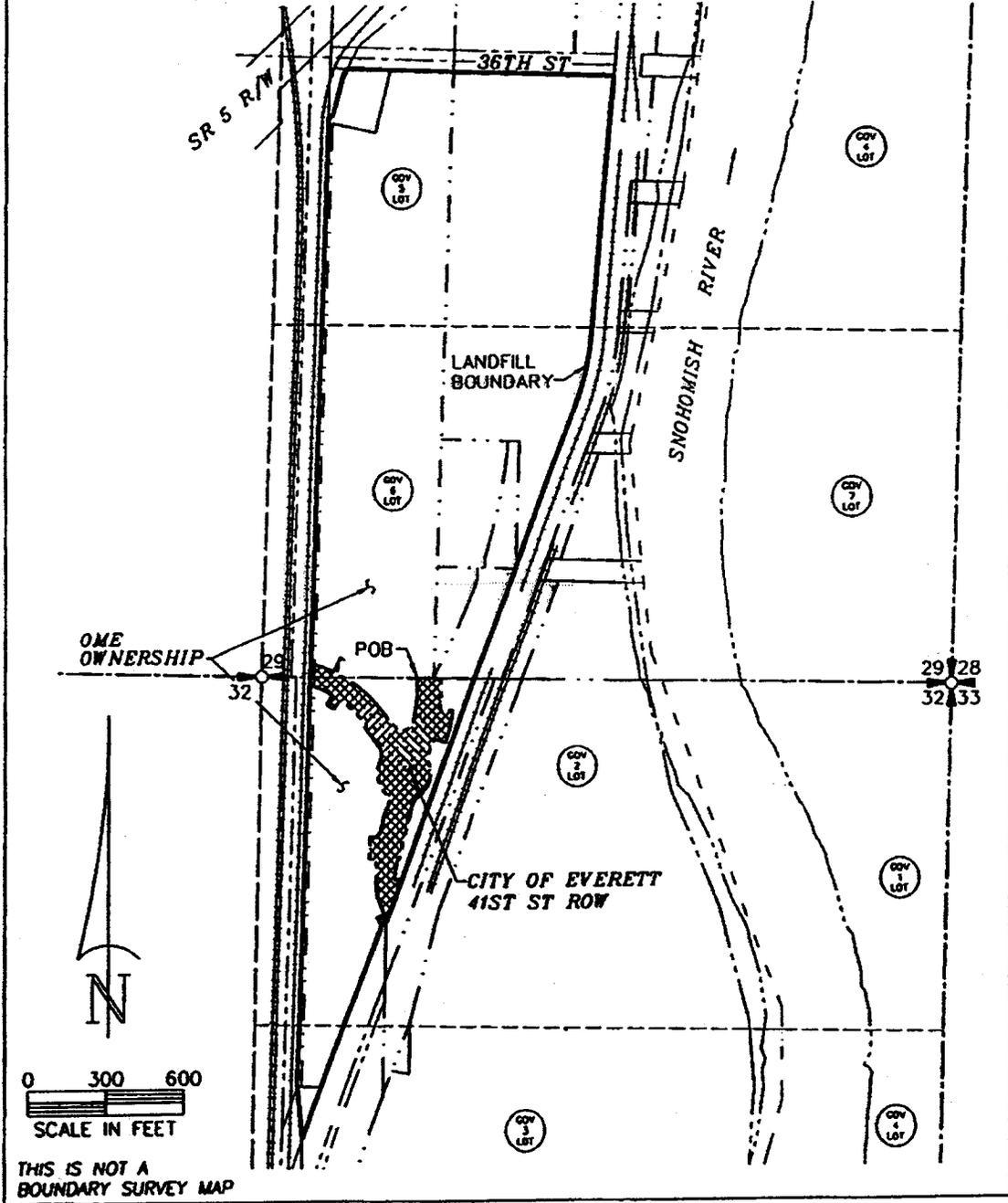
The Court hereby orders that the Decree is amended as set forth above.

DATED this 23 day of Apr, 2008.

Jacques D. Bandvik
Superior Court Judge Commissioner
Snohomish County Superior Court

EXHIBIT A

A PORTION OF
SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



THIS IS NOT A
BOUNDARY SURVEY MAP

CITY OF EVERETT

PARCEL EXHIBIT MAP

EXHIBIT "A"
LANDFILL PROPERTY MAP

DATE: MAR 31, 2008

SHEET 1 OF 1

EXHIBIT B



Perteet Inc.

Project No. S 3157.000

April 14, 2008

MG Yeoman, PLS

EXHIBIT B

Legal Description of the Landfill Property

Lots 16 and 20 through 29, as described and shown on City of Everett Boundary Line Adjustment 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, Washington. Also described as follows:

A parcel of land located in Government Lots 5 and 6, Section 29 and Government Lots 2 and 3 Section 32, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, described as follows:

COMMENCING at the Northwest corner of said Government Lot 5 as shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 04' 42" East, a distance of 193.01 feet along the North Line of said Government Lot 5 to the east line of New Lot 8 of said BLA; thence South 01° 47' 27" West along said east line projected, 567.98 feet to the southwest corner of New Lot 7 of said BLA and the POINT OF BEGINNING:

Thence South 88° 12' 33" East, a distance of 15.00 feet to the East line of New Lot 7 of said BLA; thence along the east line of said New Lot 7; North 14° 37' 19" East, a distance of 153.16 feet; North 23° 11' 03" East, a distance of 36.84 feet to the South margin of 36th Street; thence along said south margin South 88° 04' 55" East, a distance of 1028.65 feet to the westerly boundary of Lot 17 of said BLA; thence South 04° 52' 07" West along said westerly boundary, a distance of 955.09 feet to the beginning of a 1096.28 foot radius tangent curve to the right; thence along the arc of said curve in a southwesterly direction through a central angle of 15° 51' 21" an arc distance of 303.38 feet; thence South 20° 43' 28" West, a distance of 2036.96 feet; thence North 01° 04' 37" East, a distance of 34.41 feet; thence South 20° 53' 11" West, a distance of 904.06 feet to the southerly corner of New Lot 5 of said BLA; thence along the west line of New Lot 5 of said BLA, North 05° 37' 09" West, a distance of 193.52 feet; thence continuing along said west line North 01° 47' 27" East, a distance of 3623.97 feet to the POINT OF BEGINNING.

Containing an Area of 62.039 Acres, more or less.

EXHIBIT C

**TABLE 6-4
WORK TO BE PERFORMED CHECKLIST**

This table is from the Landfill Cleanup Action Plan / Consent Decree (CAP/CD) and identifies the actions needed during and after site development. Section 6.3.1.1 of the CAP contemplates that the City and the future owner/developer will agree on a split of the remaining remedial activities. The City of Everett (City) and OM Everett, Inc. (OME) have contractually agreed on this split in their Landfill and Environmental Indemnification Agreement (LEIA). In the course of development, OME and the City may modify the LEIA provided the requirements of the CAP are not changed, and this table will be considered to be updated accordingly. This table is Exhibit E to the LEIA and has been annotated to reflect the agreement of the City and OME. All text in italics below is verbatim from Table 6-4 of the CAP/CD.

Additional general background useful to understanding this Table: All responsibilities and activities listed in this Table refer to activities pertaining to the Property only and not to any other area of City Property being acquired by OME. The definitions in the LEIA apply to any terms in this Table that are defined in the LEIA. Under the Property Disposition Agreement, OME will own the entire Property, except for the 41st Street overpass and any portions dedicated to the City for right-of-way or other City facilities if any, and any City-owned areas. Consequently, this Table notes City responsibilities relating to City-Controlled Areas on the Property, however, these are expected to be a very small area of the Property, nearly all of which will be developed by OME. The City will retain the responsibility for various systems related to Property management, including the leachate collection system, groundwater monitoring, and those responsibilities for the landfill gas management system described below.

***NOTE:** With respect to the design, construction, operation and maintenance of the Landfill Gas Management System (System), the parties have contractually agreed to allocate certain remedial activities in accordance with Section 2 of the LEIA. However, the City retains the System responsibilities for purposes of the Consent Decree. A contractor(s) will operate and maintain the System for the parties. For simplicity, the table below uses the notation “*City” with respect to this System, but nothing in this table is intended to modify the agreement of the Parties in the LEIA, to be reflected as appropriate in the CD Amendment.

4/10/08

Items listed in this checklist are activities required for future conditions at the Landfill/Tire Fire Site. These items are required in addition to the items listed in Section 4.4 of the CAP – work to be performed under existing conditions. Compliance monitoring and contingency plan requirements are defined in detail in the associated CMCP for the Site.

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
Gas Exposure Pathway	
*CITY	<p><i>Design, design review, construction, operation and maintenance of phased active landfill gas control systems for buildings, pavement and open space as development occurs.</i></p> <p>Under an agreement between OME and the City, as explained in the introductory note, OME will retain a contractor to design and construct the System, providing for review of plans and construction by Ecology and the City as set forth in the LEIA. After the System is constructed to the satisfaction of Ecology as provided in the CAP/CD, OME or the City will retain a contractor(s) to operate and maintain the System, including monitoring.</p> <p><i>This includes pavement permeability testing in accordance with an approved construction quality assurance plan.</i></p> <p>OME and City will each test any pavement at its facilities that is being used as the Low Permeability Barrier:</p> <ul style="list-style-type: none"> • OME for its development on the Landfill Property, • The City for any pavement in its right-of-way (ROW) including the 41st Street overpass and at City Amenities/Buildings on the Landfill Property if any.
*CITY	<p><i>Installation of continuous monitors and controllers in all ground floor rooms of any new building. Calibration and maintenance in accordance with manufacturer's recommendations.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>
*CITY	<p><i>Confirmational monitoring of landfill gas discharge locations.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
*CITY	<p><i>Hand-held monitoring of buildings, pavement, open space areas, and enclosed spaces in accordance with the compliance monitoring plan.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>
CITY	<p><i>Permit and comply with permit requirements for regulated landfill gas discharges.</i></p>
EACH	<p><i>Institutional control prohibiting overnight camping.</i></p> <p>City: The City will prohibit overnight camping in the appropriate land use approval(s) to OME or permit approvals to any successor in interest and will prohibit overnight camping in City-Controlled Areas.</p> <p>OME: OME will prohibit overnight camping in the CCRs (Covenants, Conditions and Restrictions) for the development and leases where appropriate on property it owns that is not a City-Controlled Area.</p>
Groundwater Exposure Pathway	
CITY	<p><i>Continued operation and maintenance of the leachate collection system.</i></p> <p>The City will operate and maintain the leachate collection system, including replacement, upgrade, or other modifications, as long as it is required by Ecology. This system may be combined with other wastewater/stormwater systems operated and maintained by the City on or from the landfill site.</p>
CITY	<p><i>Compliance monitoring includes deep aquifer groundwater quality monitoring as well as monitoring of water levels in leachate collection system and shallow aquifer east of leachate collection trench.</i></p> <p>Per the City, the evaluation monitoring requirements were completed in 2004. The City will be responsible for compliance monitoring per the Ecology-approved CMCP and Sampling and Analysis Plan, as long as it is required by Ecology. The City will bear the risk of changes in the groundwater regime caused by construction or other activities that are in conformance with the requirements of the CAP/CD.</p>
EACH	<p><i>Maintenance and grading of surface topography in undeveloped areas to maintain positive drainage.</i></p> <p>City: The City will do this for Undeveloped Areas that are within City-Controlled Areas if any.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>OME: OME will do this for all other Undeveloped Areas.</p>
EACH	<p><i>Maintenance of landfill developed area covers (hydraulic barrier beneath landscaping, pavements, building slabs).</i></p> <p>City: The City will do this for the 41st Street overpass and in areas where City Amenities/Buildings are located if any, including pavement or building slabs that are used as the barrier in any City-Controlled Areas.</p> <p>OME: OME will construct and maintain the required hydraulic barrier on the entire Landfill Property, except for the areas noted above where the City will maintain the barrier.</p>
EACH	<p><i>Institutional controls to prevent groundwater withdrawal other than for leachate collection or monitoring.</i></p> <p>City: In the appropriate land use approval, the City will prohibit groundwater withdrawal other than for leachate collection or monitoring as long as this requirement is in the Restrictive Covenant.</p> <p>OME: OME will prohibit groundwater withdrawal other than for leachate collection or monitoring, as long as this requirement is in the Restrictive Covenant, in the CCRs (Covenants, Conditions and Restrictions) for the development and leases where appropriate.</p>
EACH	<p><i>Restrictions against infiltration of collected stormwater, including requiring leak-tight joint for conveyance piping.</i></p> <p>City: The City will do this for City Improvements and for maintenance of facilities constructed by OME that become owned or controlled by the City (e.g., Main Road). This will be a requirement of appropriate public works permits issued for the construction of City Improvements.</p> <p>OME: OME will do this for facilities OME constructs, except for facilities ultimately owned or controlled by the City. This will be a requirement of the appropriate City permits issued for this work.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
CITY	<p><i>Initiation of compliance monitoring prior to pile installation.</i></p> <p>Per the City this monitoring has already been performed. As noted below, the City and Ecology will be reviewing OME's piling and other construction plans to protect the groundwater regime on the site.</p>
EACH	<p><i>Shallow aquifer quality characterization sampling round and associated evaluation to establish zones for pile-type restrictions, if necessary.</i></p> <p>City: Per the City, this work has been completed, and Ecology has accepted the study. Any piling for City facilities will follow the recommendations in the study. The City will conduct any additional compliance monitoring required prior to pile installation.</p> <p>OME: Any piling for OME facilities will follow the recommendations in the study, or any alternatives accepted by Ecology.</p>
OME	<p><i>Incorporate any pile-type restrictions into deed restrictions if necessary.</i></p> <p>OME will include if necessary in the CCRs (Covenants, Conditions and Restrictions) or sale agreements for the development.</p>
Direct Contact Exposure Pathway	
EACH	<p><i>Erosion control measures.</i></p> <p>City: The City will construct City Improvements to meet erosion control requirements and will inspect City-Controlled Areas, including areas where City Amenities/Buildings are located, to verify positive drainage.</p> <p>OME: OME will construct OME Development to meet erosion control requirements and will inspect property on which it controls access to verify positive drainage.</p>
EACH	<p><i>Maintenance of landfill developed area covers (hydraulic barrier beneath landscaping, pavements, building slabs) and undeveloped area soil cap.</i></p> <p>City: The City will do this for the 41st Street overpass and in areas where City Amenities/Buildings are located if any, including pavement or building slabs that are used as the barrier in any City-Controlled Areas.</p> <p>OME:</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	OME will construct and maintain the required hydraulic barrier on the entire Landfill Property, except for the areas noted above where the City will maintain the barrier.
EACH	<p><i>Clean backfill in utility corridors with geotextile separation.</i></p> <p>City: The City will do this for the utility corridors it constructs.</p> <p>OME: OME will do this for the utility corridors it constructs.</p>
OME	<p><i>Maintenance of access controls (fencing, locked gates, signage) to undeveloped areas of the Site.</i></p> <p>City: The City will do this in Undeveloped Areas that are City-Controlled Areas.</p> <p>OME: OME will do this in Undeveloped Areas owned by OME.</p>
EACH	<p><i>Construction inspections to ensure requirements for construction are met.</i></p> <p>City: The City construction inspectors will inspect the City's public works/utilities work on the site, as well as OME's compliance with OME's building and construction permits.</p> <p>OME: OME will have construction oversight and supervision of its contractors' work.</p>
EACH	<p><i>Compliance monitoring in the form of site inspections and reporting.</i></p> <p>City: The City will inspect and report on City-Controlled Areas, including City Amenities/Buildings.</p> <p>OME: OME will inspect and report on property on which OME controls access, including OME Buildings.</p>
EACH	<p><i>Institutional controls governing health and safety requirements for developed area cover penetration.</i></p> <p>City: The City will incorporate these into its existing public works/utilities standard operating</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>procedures for utility work on contaminated properties.</p> <p>OME: OME will include in the CCRs (Covenants, Conditions and Restrictions) for the development and in leases if appropriate.</p>
OME	<p><i>Institutional controls prohibiting ground-level private residential living space on landfill property.</i></p> <p>OME will include in the CCRs (Covenants, Conditions and Restrictions) for the development and require lessees and property owners to comply with the CAP/CD and Restrictive Covenant, as may be clarified or amended by the Consent Decree.</p>
Surface Water Exposure Pathway	
CITY	<p><i>Compliance monitoring includes semi-annual sampling of surface water within the Site boundary to determine compliance with cleanup standards at the point of compliance.</i></p> <p>City: The City will continue to conduct compliance monitoring for surface water as long as it is required by Ecology and is not part of stormwater management for OME's development.</p>
EACH	<p><i>Prepare and implement a SWPPP for future conditions.</i></p> <p>City: The City will be responsible for a SWPPP if required for construction of City Improvements (see erosion control above).</p> <p>OME: OME will be responsible for the SWPPP for OME Development.</p> <p>Note: the City will assume responsibility for facilities initially constructed by OME at such time as such facilities are dedicated to or controlled by the City (e.g., Main Road), and any SWPPP that might be required for those facilities.</p>
EACH	<p><i>Site inspections for and appropriate responses to leachate seeps, on-site ponding and existing stormwater disruptions due to differential settlement.</i></p> <p>City: The City will inspect for and take action as required for leachate seeps that do not occur during and as part of OME's construction work on the entire Landfill Site. The City will inspect for and take action as required for any on-site ponding and existing stormwater disruptions for City Improvements and City-Controlled Areas.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>OME: OME will inspect for and take action as required for on-site ponding and existing stormwater disruptions for OME Development (areas where OME controls access or owns facilities).</p> <p>Note: The City has not observed any leachate seeps in several years. If leachate seeps were to occur, it is possible they may be covered by the preceding item on SWPPP.</p>
Other Requirements	
CITY	<p><i>Designation of City Site Manager who will ensure compliance of environmental requirements and coordinate communications with Ecology.</i></p> <p>City: The City expects to continue to designate a public works department official as its project manager under the CAP/CD.</p> <p>OME: OME expects to designate a company official as its project manager under the Consent Decree.</p>
EACH	<p><i>Report compliance monitoring results to Ecology as determined in the CMCP.</i></p> <p>As noted above on compliance monitoring, the City and OME will each report their respective compliance monitoring (e.g., inspection) results to Ecology and to each other. With regard to the landfill gas monitoring system, the professional contractor will conduct the monitoring and prepare reports for oversight and review by the City and OME, who will then transmit or direct the contractor to transmit the reports to Ecology.</p>
CITY	<p><i>City review and approval of development construction plans; provide opportunities for Ecology's review and approval.</i></p> <p>City: The City will provide Ecology with the opportunity to review development construction plans through the local project review process (SEPA/permits/public and agency review), as provided by the existing CAP/CD.</p>
CITY	<p><i>Report development activities (status, permitting, construction, inspection) to Ecology as determined in the Consent Decree.</i></p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>City: The City will provide Ecology with the opportunity to review development status in the local project review process (SEPA/permits/public and agency review), as provided by the existing CAP/CD. The City Project Manager will convene an annual meeting with Ecology, including OME’s Project Manager, to review status of development and monitoring as long as the CAP/CD require monitoring.</p>
EACH	<p><i>Ecology notification of intent to convey an interest in the Site.</i></p> <p>City: The City has notified Ecology of its intent to convey to OME and provided Ecology with a copy of the Property Disposition Agreement.</p> <p>OME: If OME becomes the future property owner, OME will provide notifications to Ecology of any transfer of its fee ownership interest.</p>
OME	<p><i>Sale or lease agreements include requirements for implementation of all CD and CAP requirements, permitted uses, and responsibilities between owner and lessees.</i></p> <p>OME will include the applicable requirements in any lease or sale agreements for areas of the Landfill Property owned by OME.</p> <p>Note: The City does not expect to have sale or lease agreements on the Landfill Property. If it does, it will do likewise.</p>
EACH	<p><i>Lease restrictions to uses and activities consistent with the Restrictive Covenant and notification to all lessees.</i></p> <p>OME: OME will require its lessees to comply with uses and activities consistent with the Restrictive Covenant, as may be amended or clarified by the Consent Decree. As noted above, applicable restrictions will be included in the CCRs (Covenants, Conditions and Restrictions) for the development.</p> <p>City: In the unlikely event that the City enters into any leases for areas of the Landfill Site owned by the City (e.g., City ROW), the City will ensure that lessees are notified of the Restrictive Covenant (if potentially applicable to their tenancies) and that uses and activities in leases are consistent with the Restrictive Covenant.</p>

EXHIBIT D

**Amendment No. 1 to Consent Decree
Snohomish Superior Court Cause No. 01-2-03640-6**

EXHIBIT D

Amended Environmental Covenant

After recording Return To

OM Everett, Inc.
733 8th Avenue
San Diego, CA 92101

ENVIRONMENTAL COVENANT

Grantor: OM Everett, Inc.
Grantee: State of Washington, Department of Ecology
Legal: Lots 16, 21-29 of BLA 08-004, a portion of Section 29 and Section 32,
Township 29 North, Range 5 East of the Willamette Meridian, Snohomish County,
Washington.
Full Legal Description attached as Exhibit B hereto.
Tax Parcel Nos.: 29053200101200, 29052900400500, 00576001300000, 00576001400000,
00576001700000, 00576001800000, 00576002700000, 00576002800000,
0576003100001, 00576003100002, 00576004000001, 00576004000002,
00576004200000
Cross Reference: None.

OM EVERETT, INC. hereby gives notice that the Property, which is legally described below, is the subject of the following environmental covenant ("Environmental Covenant"). This Declaration of Environmental Covenants hereby supersedes the Declaration of Restrictive Covenants recorded in Snohomish County on February 11, 2002 (Snohomish County Assessor's Office Recording No. 200202110589).

The Property, which is the subject of this Environmental Covenant ("the Property"), is a portion of the former Everett Landfill, as shown and legally described in Exhibits A and B to this Covenant, respectively.

The Property that is the subject of this Environmental Covenant has been the subject of remedial actions under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW. This Environmental Covenant is required by WAC 173-340-440 to assure the continued implementation of this remedial action and the Uniform Environmental Covenants Act,

2007 Wash. Laws ch.104. The remedial actions required to clean up the Property (hereinafter the "Cleanup Action") are described in a Consent Decree and Amendment No. 1 to the Consent Decree, filed with and approved by the Superior Court of the State of Washington in and for Snohomish County, Cause No. 01-2-03640-6.

The Remedial Action conducted at the property and described in the Consent Decree, Amendment and supporting documentation are part of an administrative record on file with the Department of Ecology at the Northwest Regional Office located at 3190 - 160th Ave. SE, Bellevue, WA 98008-5452

The purpose of this Environmental Covenant is to provide Ecology the right to ensure that the Property will not be used in a manner inconsistent with the restrictions stated herein or in a manner that would pose a threat to human health or the environment. It is further the purpose of this Environmental Covenant to provide Ecology the right to determine whether and to what extent the deed restrictions set forth below may be removed from all or any portion of the Property, consistent with the Consent Decree and Amendment No. 1 to the Consent Decree.

Subject to exceptions and reservations of record, OM Everett, Inc. is the owner of the Property. OM Everett, Inc. makes the following declarations as to limitations, restrictions and uses to which the Property may be put. OM Everett, Inc. specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on the OM Everett, Inc. and its successors or assigns:

Section 1: Uses of the ground floor in residential units on the Property, if any, shall be restricted to garage, storage, and laundry. Overnight camping shall not be permitted. The owner must notify and obtain approval from Ecology, or from a successor agency, prior to any use of the Property that is inconsistent with this Section. Ecology or its successor agency may approve such a use only after public notice and comment.

Section 2: The owner shall not consummate any conveyance of title, easement, lease or other interest in the Property without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action undertaken pursuant to the Consent Decree and Amendment No. 1 to the Consent Decree. The owner shall restrict leases to uses and activities consistent with the Consent Decree and notify all lessees of the restrictions on the use of the Property.

Section 3: During the Effective Period of the Consent Decree, the owner shall notify Ecology of its intent to convey any fee ownership interest in the Property.

Section 4: Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about the Property at all reasonable times for the purposes of evaluating compliance with the terms of this Declaration of Restrictive Covenants.

Section 5: No groundwater may be withdrawn from the Property for any purpose except groundwater monitoring or leachate collection.

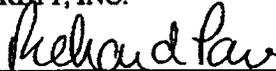
Section 6: Workers temporarily penetrating landfill cover materials on the Property must comply with OSHA and WSHA health and safety regulations. Uncontrolled penetration of landfill cover materials without notification of CAP requirements is prohibited.

Section 7: The owner of the Property reserves the right under WAC 173-330-440 to record an instrument which provides that this Environmental Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or a successor agency. Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment.

Section 8: OM Everett, Inc. reserves unto itself, its successors or assigns, all rights and privileges in and to the use of the Property that are not incompatible with the restrictions and rights granted herein.

Executed this 18th day of April, 2008.

OM EVERETT, INC.

By: 
Its: Richard Paul Buss, President

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


James J. Pendowski
Program Manager, Toxics Cleanup Program

ACKNOWLEDGMENT

State of California

County of San Diego

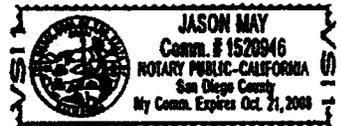
On April 18, 2008 before me, Jason May
(insert name and title of the officer)

personally appeared Richard Buss
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.

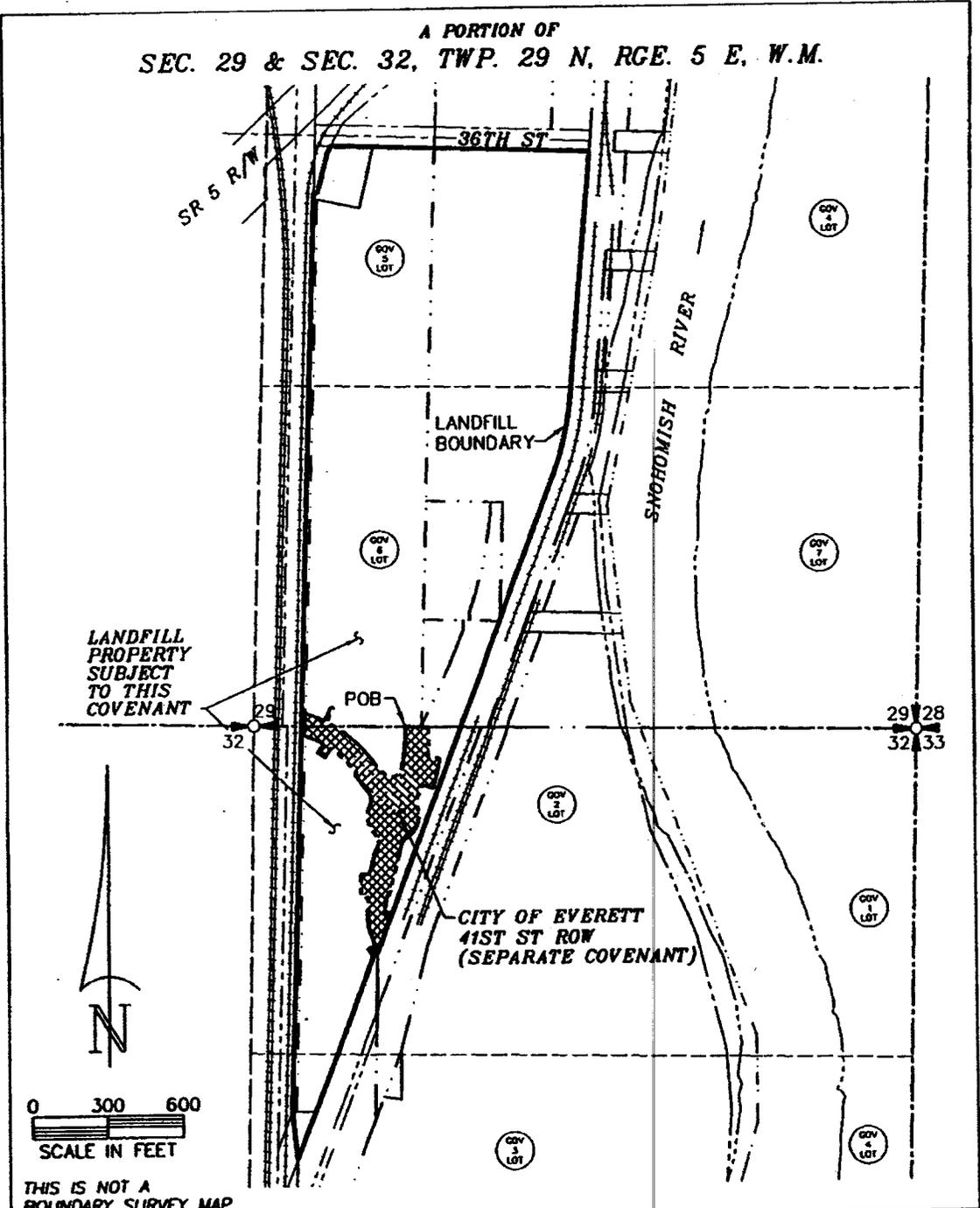
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jason May (Seal)



A PORTION OF
 SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



THIS IS NOT A
 BOUNDARY SURVEY MAP

CITY OF EVERETT

PARCEL EXHIBIT MAP

EXHIBIT "A"
 LANDFILL PROPERTY ACQUIRED BY
 OLIVER MCMILLAN EVERETT, INC.

DATE: MAR 31, 2008

SHEET 1 OF 1



Perteet Inc.

Project No. S 3157.000

April 11, 2008

MG Yeoman, PLS

EXHIBIT B

Legal Description for Landfill Property Minus 41st R/W

Lots 16 and 21 through 29, as described and shown on that certain City of Everett Boundary Line Adjustment 08-004 filed under Auditor's File Number 200804085006, Records of Snohomish County, WA. Also described as follows:

A parcel of land located in Government Lots 5 and 6, Section 29 and Government Lots 2 and 3 Section 32, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, described as follows:

Commencing at the Northwest corner of said Government Lot 5 as shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 04' 42" East, a distance of 193.01 feet along the North Line of said Government Lot 5 to the east line of New Lot 8 of said BLA; thence South 01° 47' 27" West along said east line projected, 567.98 feet to the POINT OF BEGINNING:

Thence South 88° 12' 33" East, a distance of 15.00 feet to the East line of New Lot 7 of said BLA; thence along the east line of said A lot 7; North 14° 37' 19" East, a distance of 153.16 feet; North 23° 11' 03" East, a distance of 36.84 feet to the South margin of 36th Street; thence along said south margin South 88° 04' 55" East, a distance of 1028.65 feet to the westerly boundary of Lot 17 of said BLA; thence South 04° 52' 07" West along said westerly boundary, a distance of 955.09 feet to the beginning of a 1096.28 foot radius tangent curve to the right; thence along the arc of said curve in a southwesterly direction through a central angle of 15° 51' 21" an arc distance of 303.38 feet; thence South 20° 43' 28" West, a distance of 2036.96 feet; thence North 01° 04' 37" East, a distance of 34.41 feet; thence South 20° 53' 11" West, a distance of 904.06 feet to the west line of said New Lot 5; thence along said west line, North 05° 37' 09" West a distance of 193.52 feet; thence continuing along said west line North 01° 47' 27" East, a distance of 3623.97 feet to the POINT OF BEGINNING.

EXCEPT:

New Lot 20 as described and shown on that certain City of Everett Boundary Line Adjustment No. 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, WA. Also described as follows:

A Parcel of Land situated in Government Lot 2, Section 32, and Government Lot 6, Section 29, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, Described as follows:



Peritect Inc.

Project No. S 3157.000

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MG Yeoman, PLS

COMMENCING at the Quarter corner common to said Sections 29 and 32 as described and shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South $89^{\circ} 00' 21''$ East a distance of 600.79 feet along the north line of Said Government Lot 2 to the POINT OF BEGINNING:

Thence continuing along said north line, thence South $89^{\circ} 00' 21''$ East a distance of 94.28 feet to a point of curve of an 622.28 foot radius non-tangent curve to the right, the radius point of which bears South $86^{\circ} 55' 37''$ West ; thence along the arc of said curve, through a central angle of $10^{\circ} 55' 44''$, an arc length of 118.70 feet; thence South $82^{\circ} 08' 39''$ East a distance of 49.00 feet to a point of curve of a 671.29 foot radius non-tangent curve to the right, the radius point of which bears North $82^{\circ} 08' 39''$ West; thence along the arc of said curve, through a central angle of $10^{\circ} 23' 52''$, an arc length of 121.82 feet; thence North $71^{\circ} 44' 47''$ West a distance of 47.00 feet to a point of curve of a 624.29 foot radius non-tangent curve to the right, the radius point of which bears North $71^{\circ} 44' 47''$ West ; thence along the arc of said curve, through a central angle of $04^{\circ} 47' 35''$, an arc length of 52.22 feet to a point of reverse curve of a 60.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of $42^{\circ} 41' 31''$, an arc length of 45.08 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of $77^{\circ} 57' 32''$, an arc length of 138.79 feet to a point of reverse curve of a 50.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of $45^{\circ} 31' 31''$, an arc length of 40.13 feet; thence South $12^{\circ} 47' 17''$ West a distance of 31.44 feet; thence South $14^{\circ} 28' 02''$ West a distance of 170.63 feet; thence South $49^{\circ} 06' 50''$ West a distance of 10.13 feet; thence South $12^{\circ} 47' 17''$ West a distance of 10.92 feet to a point of curve of an 265.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $11^{\circ} 59' 58''$, an arc length of 55.50 feet; thence South $89^{\circ} 12' 41''$ East a distance of 27.47 feet; thence South $20^{\circ} 43' 28''$ West a distance of 169.94 feet; thence North $01^{\circ} 04' 37''$ East a distance of 34.41 feet; thence South $20^{\circ} 53' 11''$ West a distance of 53.16 feet to a point of curve of a 359.00 foot radius non-tangent curve the radius point of which bears South $61^{\circ} 33' 55''$ West; thence along the arc of said curve, through a central angle of $06^{\circ} 19' 18''$, an arc length of 39.61 feet; thence North $67^{\circ} 53' 08''$ East a distance of 29.00 feet to a point of curve of a 330.00 foot radius non-tangent curve to the right, the radius point of which bears North $67^{\circ} 53' 08''$ East ; thence along the arc of said curve, through a central angle of $01^{\circ} 31' 43''$, an arc length of 8.80 feet; thence North $20^{\circ} 09' 45''$ West a distance of 60.15 feet to a point of curve of a 335.00 foot radius non-tangent curve to the right, the radius point of which bears North $79^{\circ} 45' 29''$ East; thence along the arc of said curve, through a central angle of $17^{\circ} 54' 33''$, an arc length of 104.71 feet; thence North $13^{\circ} 43' 00''$ West a distance of 20.27 feet to a point of curve of an 15.00



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foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $74^{\circ} 29' 33''$, an arc length of 19.50 feet; thence North $88^{\circ} 12' 33''$ West a distance of 11.72 feet; thence North $01^{\circ} 47' 27''$ East a distance of 80.00 feet; thence South $88^{\circ} 12' 33''$ East a distance of 19.19 feet to a point of curve of a 15.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $61^{\circ} 41' 34''$, an arc length of 16.15 feet; thence North $30^{\circ} 05' 53''$ East a distance of 15.00 feet; thence North $12^{\circ} 47' 17''$ East a distance of 57.04 feet to a point of curve of a 105.00 foot radius tangent curve to the right; thence along the arc of said curve, through a central angle of $18^{\circ} 35' 07''$, an arc length of 34.06 feet to a point of reverse curve of a 44.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of $76^{\circ} 42' 36''$, an arc length of 59.58 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of $71^{\circ} 39' 50''$, an arc length of 127.58 feet to a point of reverse curve of an 50.00 foot radius curve to the left; thence along the arc of said curve, through a central angle of $62^{\circ} 40' 32''$, an arc length of 54.69 feet; thence North $36^{\circ} 20' 53''$ West a distance of 85.18 feet to a point of curve of an 450.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $01^{\circ} 03' 12''$, an arc length of 8.27 feet; thence North $52^{\circ} 35' 55''$ East a distance of 9.00 feet to a point of curve of a 459.00 foot radius non-tangent curve to the left the radius point of which bears South $52^{\circ} 35' 55''$ West; thence along the arc of said curve, through a central angle of $17^{\circ} 36' 19''$, an arc length of 141.04 feet; thence South $34^{\circ} 59' 36''$ West a distance of 42.00 feet to a point of curve of a 417.00 foot radius non-tangent curve to the left the radius point of which bears South $34^{\circ} 59' 36''$ West; thence along the arc of said curve, through a central angle of $04^{\circ} 23' 13''$, an arc length of 31.93 feet; thence North $30^{\circ} 36' 23''$ East a distance of 42.00 feet to a point of curve of a 459.00 foot radius non-tangent curve to the left, the radius point of which bears South $30^{\circ} 36' 23''$ West; thence along the arc of said curve, through a central angle of $11^{\circ} 53' 01''$, an arc length of 95.20 feet to the west line of New Lot 5 of said BLA; thence North $01^{\circ} 47' 27''$ East, along said west line, a distance of 85.12 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South $16^{\circ} 05' 47''$ West; thence along the arc of said curve, through a central angle of $09^{\circ} 56' 41''$, an arc length of 93.90 feet; thence North $26^{\circ} 02' 28''$ East a distance of 61.00 feet to a point of curve of a 602.00 foot radius non-tangent curve to the right, the radius point of which bears South $26^{\circ} 02' 28''$ West; thence along the arc of said curve, through a central angle of $01^{\circ} 13' 05''$, an arc length of 12.80 feet; thence South $27^{\circ} 15' 33''$ West a distance of 61.00 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South $27^{\circ} 15' 33''$ West; thence along the arc of said curve, through a central angle of $19^{\circ} 46' 19''$, an arc length of 186.69 feet; thence South $47^{\circ} 01' 52''$ West a distance of 1.00 feet to a point of curve of a 540.00 foot radius non-tangent



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curve to the right, the radius point of which bears South $47^{\circ} 01' 52''$ West; thence along the arc of said curve, through a central angle of $06^{\circ} 37' 15''$, an arc length of 62.40 feet; thence South $36^{\circ} 20' 53''$ East a distance of 40.83 feet; thence South $50^{\circ} 02' 45''$ East a distance of 25.66 feet to a point of curve of a 40.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of $115^{\circ} 26' 04''$, an arc length of 80.59 feet to a point of compound curve of a 528.28 foot radius curve to the left; thence along the arc of said curve, through a central angle of $18^{\circ} 19' 06''$, an arc length of 168.90 feet to the POINT OF BEGINNING.

Containing an area of 58.190 acres, more or less

EXHIBIT E

**Amendment No. 1 to Consent Decree
Snohomish Superior Court Cause No. 01-2-03640-6**

EXHIBIT E

Amended Environmental Covenant

After recording Return To

City of Everett
Real Property Manager
Facilities/Property Management Dept.
3200 Cedar Street
Everett, WA 98201

ENVIRONMENTAL COVENANT

Grantor: City of Everett
Grantee: State of Washington, Department of Ecology
Legal: Lot 20 of BLA 08-004, a portion of Section 29 and Section 32, Township 29 North, Range 5 East of the Willamette Meridian, Snohomish County, Washington. Full Legal Description attached as Exhibit B hereto.
Tax Parcel No.: 29053200101200
Cross Reference: None.

THE CITY OF EVERETT hereby gives notice that the Property, which is legally described below, is the subject of the following environmental covenant ("Environmental Covenant"). This Declaration of Environmental Covenants hereby supersedes the Declaration of Restrictive Covenants recorded in Snohomish County on February 11, 2002 (Snohomish County Assessor's Office Recording No. 200202110589).

The Property, which is the subject of this Environmental Covenant ("the Property"), is a portion of the former Everett Landfill, as shown and legally described in Exhibits A and B to this Covenant, respectively.

The Property that is the subject of this Environmental Covenant has been the subject of remedial actions under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW. This Environmental Covenant is required by WAC 173-340-440 to assure the continued implementation of this remedial action and the Uniform Environmental Covenants Act,

2007 Wash. Laws ch.104. The remedial actions required to clean up the Property (hereinafter the "Cleanup Action") are described in a Consent Decree and Amendment No. 1 to the Consent Decree, filed with and approved by the Superior Court of the State of Washington in and for Snohomish County, Cause No. 01-2-03640-6.

The Remedial Action conducted at the property and described in the Consent Decree, Amendment and supporting documentation are part of an administrative record on file with the Department of Ecology at the Northwest Regional Office located at 3190 - 160th Ave. SE, Bellevue, WA 98008-5452

The purpose of this Environmental Covenant is to provide Ecology the right to ensure that the Property will not be used in a manner inconsistent with the restrictions stated herein or in a manner that would pose a threat to human health or the environment. It is further the purpose of this Environmental Covenant to provide Ecology the right to determine whether and to what extent the deed restrictions set forth below may be removed from all or any portion of the Property, consistent with the Consent Decree and Amendment No. 1 to the Consent Decree.

Subject to exceptions and reservations of record, The City of Everett is the owner of the Property. The City of Everett makes the following declarations as to limitations, restrictions and uses to which the Property may be put. The City of Everett specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on the City of Everett and its successors or assigns:

Section 1: Uses of the ground floor in residential units on the Property, if any, shall be restricted to garage, storage, and laundry. Overnight camping shall not be permitted. The owner must notify and obtain approval from Ecology, or from a successor agency, prior to any use of the Property that is inconsistent with this Section. Ecology or its successor agency may approve such a use only after public notice and comment.

Section 2: The owner shall not consummate any conveyance of title, easement, lease or other interest in the Property without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action undertaken pursuant to the Consent Decree and Amendment No. 1 to the Consent Decree. The owner shall restrict leases to uses and activities consistent with the Consent Decree and notify all lessees of the restrictions on the use of the Property.

Section 3: During the Effective Period of the Consent Decree, the owner shall notify Ecology of its intent to convey any fee ownership interest in the Property.

Section 4: Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about the Property at all reasonable times for the purposes of evaluating compliance with the terms of this Declaration of Restrictive Covenants.

Section 5: No groundwater may be withdrawn from the Property for any purpose except groundwater monitoring or leachate collection.

Section 6: Workers temporarily penetrating landfill cover materials on the Property must comply with OSHA and WSHA health and safety regulations. Uncontrolled penetration of landfill cover materials without notification of CAP requirements is prohibited.

Section 7: The owner of the Property reserves the right under WAC 173-330-440 to record an instrument which provides that this Environmental Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or a successor agency. Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment.

Section 8: The City of Everett reserves unto itself, its successors or assigns, all rights and privileges in and to the use of the Property that are not incompatible with the restrictions and rights granted herein.

Executed this 16th day of April, 2008.

CITY OF EVERETT

By: Ray Stephanson
Ray Stephanson, Mayor

Attest: Marion Marks
City Clerk

Approved as to Form:

Kenneth S. Weier
Kenneth S. Weier, Special City Attorney

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

James J. Pendowski
James J. Pendowski
Program Manager, Toxics Cleanup Program

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

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

DATED: 4-16-08



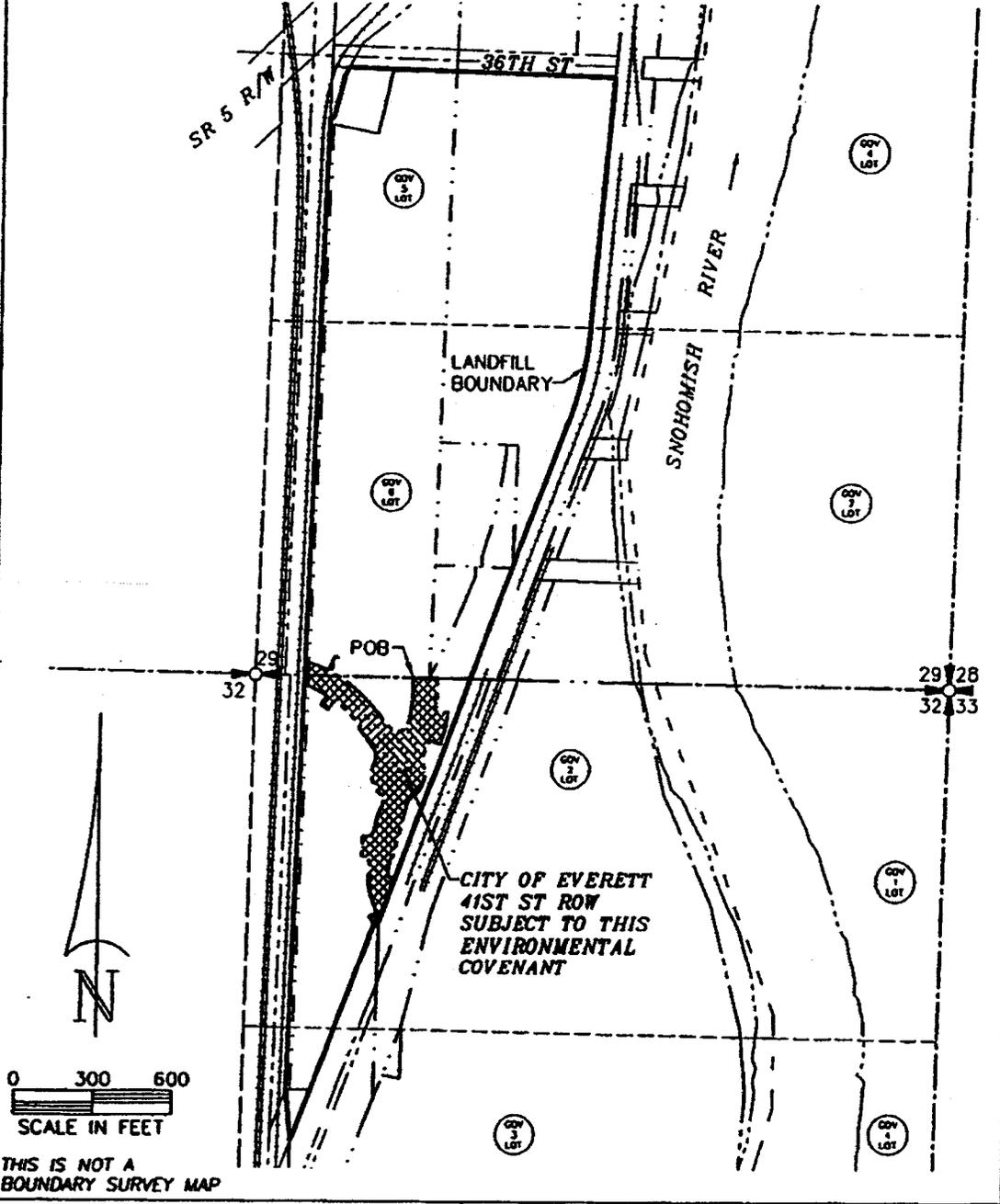
Tam Moen

TAM MOEN

Notary Public in and for the State of Washington,
residing at Everett

My Commission Expires: 7-17-2010

A PORTION OF
 SEC. 29 & SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



THIS IS NOT A
 BOUNDARY SURVEY MAP

CITY OF EVERETT

PARCEL EXHIBIT MAP

EXHIBIT "A"
 CITY OF EVERETT-41ST ST. RIGHT-OF-WAY
 ON LANDFILL PROPERTY

DATE: MAR 31, 2008

SHEET 1 OF 1



Perteet Inc.

Project No. S 3157.000

April 11, 2008

MG Yeoman, PLS

EXHIBIT B

City of Everett 41st Right-of-Way on Landfill Property Legal Description

Lot 20 as described and shown on that certain City of Everett Boundary Line Adjustment No. 08-004, filed under Auditor's File No. 200804085006, Records of Snohomish County, WA. Also described as follows:

A Parcel of Land situated in Government Lot 2, Section 32, and Government Lot 6, Section 29, Township 29 North, Range 5 East, Willamette Meridian, County of Snohomish, State of Washington, Described as follows:

COMMENCING at the Quarter corner common to said Sections 29 and 32 as described and shown on that certain City of Everett BLA 05-008 filed with Snohomish County Records under Auditor's File Number: 200608215004; thence South 89° 00' 21" East a distance of 600.79 feet along the north line of Said Government Lot 2 to the POINT OF BEGINNING:

Thence continuing along said north line, thence South 89° 00' 21" East a distance of 94.28 feet to a point of curve of an 622.28 foot radius non-tangent curve to the right, the radius point of which bears South 86° 55' 37" West ; thence along the arc of said curve, through a central angle of 10° 55' 44", an arc length of 118.70 feet; thence South 82° 08' 39" East a distance of 49.00 feet to a point of curve of a 671.29 foot radius non-tangent curve to the right, the radius point of which bears North 82° 08' 39" West; thence along the arc of said curve, through a central angle of 10° 23' 52", an arc length of 121.82 feet; thence North 71° 44' 47" West a distance of 47.00 feet to a point of curve of a 624.29 foot radius non-tangent curve to the right, the radius point of which bears North 71° 44' 47" West ; thence along the arc of said curve, through a central angle of 04° 47' 35", an arc length of 52.22 feet to a point of reverse curve of a 60.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 42° 41' 31", an arc length of 45.08 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of 77° 57' 32", an arc length of 138.79 feet to a point of reverse curve of a 50.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 45° 31' 31", an arc length of 40.13 feet; thence South 12° 47' 17" West a distance of 31.44 feet; thence South 14° 28' 02" West a distance of 170.63 feet; thence South 49° 06' 50" West a distance of 10.13 feet; thence South 12° 47' 17" West a distance of 10.92 feet to a point of curve of an 265.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 11° 59' 58", an arc length of 55.50 feet; thence South 89° 12' 41" East



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a distance of 27.47 feet; thence South 20° 43' 28" West a distance of 169.94 feet; thence North 01° 04' 37" East a distance of 34.41 feet; thence South 20° 53' 11" West a distance of 53.16 feet to a point of curve of a 359.00 foot radius non-tangent curve the radius point of which bears South 61° 33' 55" West; thence along the arc of said curve, through a central angle of 06° 19' 18", an arc length of 39.61 feet; thence North 67° 53' 08" East a distance of 29.00 feet to a point of curve of a 330.00 foot radius non-tangent curve to the right, the radius point of which bears North 67° 53' 08" East; thence along the arc of said curve, through a central angle of 01° 31' 43", an arc length of 8.80 feet; thence North 20° 09' 45" West a distance of 60.15 feet to a point of curve of a 335.00 foot radius non-tangent curve to the right, the radius point of which bears North 79° 45' 29" East; thence along the arc of said curve, through a central angle of 17° 54' 33", an arc length of 104.71 feet; thence North 13° 43' 00" West a distance of 20.27 feet to a point of curve of an 15.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 74° 29' 33", an arc length of 19.50 feet; thence North 88° 12' 33" West a distance of 11.72 feet; thence North 01° 47' 27" East a distance of 80.00 feet; thence South 88° 12' 33" East a distance of 19.19 feet to a point of curve of a 15.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 61° 41' 34", an arc length of 16.15 feet; thence North 30° 05' 53" East a distance of 15.00 feet; thence North 12° 47' 17" East a distance of 57.04 feet to a point of curve of a 105.00 foot radius tangent curve to the right; thence along the arc of said curve, through a central angle of 18° 35' 07", an arc length of 34.06 feet to a point of reverse curve of a 44.50 foot radius curve to the left; thence along the arc of said curve, through a central angle of 76° 42' 36", an arc length of 59.58 feet to a point of reverse curve of a 102.00 foot radius curve to the right; thence along the arc of said curve, through a central angle of 71° 39' 50", an arc length of 127.58 feet to a point of reverse curve of an 50.00 foot radius curve to the left; thence along the arc of said curve, through a central angle of 62° 40' 32", an arc length of 54.69 feet; thence North 36° 20' 53" West a distance of 85.18 feet to a point of curve of an 450.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 01° 03' 12", an arc length of 8.27 feet; thence North 52° 35' 55" East a distance of 9.00 feet to a point of curve of a 459.00 foot radius non-tangent curve to the left the radius point of which bears South 52° 35' 55" West; thence along the arc of said curve, through a central angle of 17° 36' 19", an arc length of 141.04 feet; thence South 34° 59' 36" West a distance of 42.00 feet to a point of curve of a 417.00 foot radius non-tangent curve to the left the radius point of which bears South 34° 59' 36" West; thence along the arc of said curve, through a central angle of 04° 23' 13", an arc length of 31.93 feet; thence North 30° 36' 23" East a distance of 42.00 feet to a point of curve of a



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459.00 foot radius non-tangent curve to the left, the radius point of which bears South 30° 36' 23" West; thence along the arc of said curve, through a central angle of 11° 53' 01", an arc length of 95.20 feet to the west line of New Lot 5 of said BLA; thence North 01° 47' 27" East, along said west line, a distance of 85.12 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South 16° 05' 47" West; thence along the arc of said curve, through a central angle of 09° 56' 41", an arc length of 93.90 feet; thence North 26° 02' 28" East a distance of 61.00 feet to a point of curve of a 602.00 foot radius non-tangent curve to the right, the radius point of which bears South 26° 02' 28" West; thence along the arc of said curve, through a central angle of 01° 13' 05", an arc length of 12.80 feet; thence South 27° 15' 33" West a distance of 61.00 feet to a point of curve of a 541.00 foot radius non-tangent curve to the right, the radius point of which bears South 27° 15' 33" West ; thence along the arc of said curve, through a central angle of 19° 46' 19", an arc length of 186.69 feet; thence South 47° 01' 52" West a distance of 1.00 feet to a point of curve of a 540.00 foot radius non-tangent curve to the right, the radius point of which bears South 47° 01' 52" West; thence along the arc of said curve, through a central angle of 06° 37' 15", an arc length of 62.40 feet; thence South 36° 20' 53" East a distance of 40.83 feet; thence South 50° 02' 45" East a distance of 25.66 feet to a point of curve of a 40.00 foot radius tangent curve to the left; thence along the arc of said curve, through a central angle of 115° 26' 04", an arc length of 80.59 feet to a point of compound curve of a 528.28 foot radius curve to the left; thence along the arc of said curve, through a central angle of 18° 19' 06", an arc length of 168.90 feet to the POINT OF BEGINNING.

Containing an area of 3.31 acres, more or less.

Exhibit F

TABLE 6-4
WORK TO BE PERFORMED CHECKLIST

This table is from the Landfill Cleanup Action Plan / Consent Decree (CAP/CD) and identifies the actions needed during and after site development. Section 6.3.1.1 of the CAP contemplates that the City and the future owner/developer will agree on a split of the remaining remedial activities. The City of Everett (City) and OM Everett, Inc. (OME) have contractually agreed on this split in their Landfill and Environmental Indemnification Agreement (LEIA). In the course of development, OME and the City may modify the LEIA provided the requirements of the CAP are not changed, and this table will be considered to be updated accordingly. This table is Exhibit E to the LEIA and has been annotated to reflect the agreement of the City and OME. All text in italics below is verbatim from Table 6-4 of the CAP/CD.

Additional general background useful to understanding this Table: All responsibilities and activities listed in this Table refer to activities pertaining to the Property only and not to any other area of City Property being acquired by OME. The definitions in the LEIA apply to any terms in this Table that are defined in the LEIA. Under the Property Disposition Agreement, OME will own the entire Property, except for the 41st Street overpass and any portions dedicated to the City for right-of-way or other City facilities if any, and any City-owned areas. Consequently, this Table notes City responsibilities relating to City-Controlled Areas on the Property, however, these are expected to be a very small area of the Property, nearly all of which will be developed by OME. The City will retain the responsibility for various systems related to Property management, including the leachate collection system, groundwater monitoring, and those responsibilities for the landfill gas management system described below.

***NOTE:** With respect to the design, construction, operation and maintenance of the Landfill Gas Management System (System), the parties have contractually agreed to allocate certain remedial activities in accordance with Section 2 of the LEIA. However, the City retains the System responsibilities for purposes of the Consent Decree. A contractor(s) will operate and maintain the System for the parties. For simplicity, the table below uses the notation “City” with respect to this System, but nothing in this table is intended to modify the agreement of the Parties in the LEIA, to be reflected as appropriate in the CD Amendment.

4/10/08

Items listed in this checklist are activities required for future conditions at the Landfill/Tire Fire Site. These items are required in addition to the items listed in Section 4.4 of the CAP – work to be performed under existing conditions. Compliance monitoring and contingency plan requirements are defined in detail in the associated CMCP for the Site.

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
Gas Exposure Pathway	
*CITY	<p><i>Design, design review, construction, operation and maintenance of phased active landfill gas control systems for buildings, pavement and open space as development occurs.</i></p> <p>Under an agreement between OME and the City, as explained in the introductory note, OME will retain a contractor to design and construct the System, providing for review of plans and construction by Ecology and the City as set forth in the LEIA. After the System is constructed to the satisfaction of Ecology as provided in the CAP/CD, OME or the City will retain a contractor(s) to operate and maintain the System, including monitoring.</p> <p><i>This includes pavement permeability testing in accordance with an approved construction quality assurance plan.</i></p> <p>OME and City will each test any pavement at its facilities that is being used as the Low Permeability Barrier:</p> <ul style="list-style-type: none"> • OME for its development on the Landfill Property, • The City for any pavement in its right-of-way (ROW) including the 41st Street overpass and at City Amenities/Buildings on the Landfill Property if any.
*CITY	<p><i>Installation of continuous monitors and controllers in all ground floor rooms of any new building. Calibration and maintenance in accordance with manufacturer's recommendations.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>
*CITY	<p><i>Confirmational monitoring of landfill gas discharge locations.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
*CITY	<p><i>Hand-held monitoring of buildings, pavement, open space areas, and enclosed spaces in accordance with the compliance monitoring plan.</i></p> <p>As explained in the introductory note and in Section 6.0 of the existing CAP, the parties will retain a licensed professional contractor(s) to perform this work.</p>
CITY	<p><i>Permit and comply with permit requirements for regulated landfill gas discharges.</i></p>
EACH	<p><i>Institutional control prohibiting overnight camping.</i></p> <p>City: The City will prohibit overnight camping in the appropriate land use approval(s) to OME or permit approvals to any successor in interest and will prohibit overnight camping in City-Controlled Areas.</p> <p>OME: OME will prohibit overnight camping in the CCRs (Covenants, Conditions and Restrictions) for the development and leases where appropriate on property it owns that is not a City-Controlled Area.</p>
Groundwater Exposure Pathway	
CITY	<p><i>Continued operation and maintenance of the leachate collection system.</i></p> <p>The City will operate and maintain the leachate collection system, including replacement, upgrade, or other modifications, as long as it is required by Ecology. This system may be combined with other wastewater/stormwater systems operated and maintained by the City on or from the landfill site.</p>
CITY	<p><i>Compliance monitoring includes deep aquifer groundwater quality monitoring as well as monitoring of water levels in leachate collection system and shallow aquifer east of leachate collection trench.</i></p> <p>Per the City, the evaluation monitoring requirements were completed in 2004. The City will be responsible for compliance monitoring per the Ecology-approved CMCP and Sampling and Analysis Plan, as long as it is required by Ecology. The City will bear the risk of changes in the groundwater regime caused by construction or other activities that are in conformance with the requirements of the CAP/CD.</p>
EACH	<p><i>Maintenance and grading of surface topography in undeveloped areas to maintain positive drainage.</i></p> <p>City: The City will do this for Undeveloped Areas that are within City-Controlled Areas if any.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>OME: OME will do this for all other Undeveloped Areas.</p>
EACH	<p><i>Maintenance of landfill developed area covers (hydraulic barrier beneath landscaping, pavements, building slabs).</i></p> <p>City: The City will do this for the 41st Street overpass and in areas where City Amenities/Buildings are located if any, including pavement or building slabs that are used as the barrier in any City-Controlled Areas.</p> <p>OME: OME will construct and maintain the required hydraulic barrier on the entire Landfill Property, except for the areas noted above where the City will maintain the barrier.</p>
EACH	<p><i>Institutional controls to prevent groundwater withdrawal other than for leachate collection or monitoring.</i></p> <p>City: In the appropriate land use approval, the City will prohibit groundwater withdrawal other than for leachate collection or monitoring as long as this requirement is in the Restrictive Covenant.</p> <p>OME: OME will prohibit groundwater withdrawal other than for leachate collection or monitoring, as long as this requirement is in the Restrictive Covenant, in the CCRs (Covenants, Conditions and Restrictions) for the development and leases where appropriate.</p>
EACH	<p><i>Restrictions against infiltration of collected stormwater, including requiring leak-tight joint for conveyance piping.</i></p> <p>City: The City will do this for City Improvements and for maintenance of facilities constructed by OME that become owned or controlled by the City (e.g., Main Road). This will be a requirement of appropriate public works permits issued for the construction of City Improvements.</p> <p>OME: OME will do this for facilities OME constructs, except for facilities ultimately owned or controlled by the City. This will be a requirement of the appropriate City permits issued for this work.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
CITY	<p><i>Initiation of compliance monitoring prior to pile installation.</i></p> <p>Per the City this monitoring has already been performed. As noted below, the City and Ecology will be reviewing OME's piling and other construction plans to protect the groundwater regime on the site.</p>
EACH	<p><i>Shallow aquifer quality characterization sampling round and associated evaluation to establish zones for pile-type restrictions, if necessary.</i></p> <p>City: Per the City, this work has been completed, and Ecology has accepted the study. Any piling for City facilities will follow the recommendations in the study. The City will conduct any additional compliance monitoring required prior to pile installation.</p> <p>OME: Any piling for OME facilities will follow the recommendations in the study, or any alternatives accepted by Ecology.</p>
OME	<p><i>Incorporate any pile-type restrictions into deed restrictions if necessary.</i></p> <p>OME will include if necessary in the CCRs (Covenants, Conditions and Restrictions) or sale agreements for the development.</p>
Direct Contact Exposure Pathway	
EACH	<p><i>Erosion control measures.</i></p> <p>City: The City will construct City Improvements to meet erosion control requirements and will inspect City-Controlled Areas, including areas where City Amenities/Buildings are located, to verify positive drainage.</p> <p>OME: OME will construct OME Development to meet erosion control requirements and will inspect property on which it controls access to verify positive drainage.</p>
EACH	<p><i>Maintenance of landfill developed area covers (hydraulic barrier beneath landscaping, pavements, building slabs) and undeveloped area soil cap.</i></p> <p>City: The City will do this for the 41st Street overpass and in areas where City Amenities/Buildings are located if any, including pavement or building slabs that are used as the barrier in any City-Controlled Areas.</p> <p>OME:</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	OME will construct and maintain the required hydraulic barrier on the entire Landfill Property, except for the areas noted above where the City will maintain the barrier.
EACH	<p><i>Clean backfill in utility corridors with geotextile separation.</i></p> <p>City: The City will do this for the utility corridors it constructs.</p> <p>OME: OME will do this for the utility corridors it constructs.</p>
OME	<p><i>Maintenance of access controls (fencing, locked gates, signage) to undeveloped areas of the Site.</i></p> <p>City: The City will do this in Undeveloped Areas that are City-Controlled Areas.</p> <p>OME: OME will do this in Undeveloped Areas owned by OME.</p>
EACH	<p><i>Construction inspections to ensure requirements for construction are met.</i></p> <p>City: The City construction inspectors will inspect the City's public works/utilities work on the site, as well as OME's compliance with OME's building and construction permits.</p> <p>OME: OME will have construction oversight and supervision of its contractors' work.</p>
EACH	<p><i>Compliance monitoring in the form of site inspections and reporting.</i></p> <p>City: The City will inspect and report on City-Controlled Areas, including City Amenities/Buildings.</p> <p>OME: OME will inspect and report on property on which OME controls access, including OME Buildings.</p>
EACH	<p><i>Institutional controls governing health and safety requirements for developed area cover penetration.</i></p> <p>City: The City will incorporate these into its existing public works/utilities standard operating</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>procedures for utility work on contaminated properties.</p> <p>OME: OME will include in the CCRs (Covenants, Conditions and Restrictions) for the development and in leases if appropriate.</p>
OME	<p><i>Institutional controls prohibiting ground-level private residential living space on landfill property.</i></p> <p>OME will include in the CCRs (Covenants, Conditions and Restrictions) for the development and require lessees and property owners to comply with the CAP/CD and Restrictive Covenant, as may be clarified or amended by the Consent Decree.</p>
Surface Water Exposure Pathway	
CITY	<p><i>Compliance monitoring includes semi-annual sampling of surface water within the Site boundary to determine compliance with cleanup standards at the point of compliance.</i></p> <p>City: The City will continue to conduct compliance monitoring for surface water as long as it is required by Ecology and is not part of stormwater management for OME's development.</p>
EACH	<p><i>Prepare and implement a SWPPP for future conditions.</i></p> <p>City: The City will be responsible for a SWPPP if required for construction of City Improvements (see erosion control above).</p> <p>OME: OME will be responsible for the SWPPP for OME Development.</p> <p>Note: the City will assume responsibility for facilities initially constructed by OME at such time as such facilities are dedicated to or controlled by the City (e.g., Main Road), and any SWPPP that might be required for those facilities.</p>
EACH	<p><i>Site inspections for and appropriate responses to leachate seeps, on-site ponding and existing stormwater disruptions due to differential settlement.</i></p> <p>City: The City will inspect for and take action as required for leachate seeps that do not occur during and as part of OME's construction work on the entire Landfill Site. The City will inspect for and take action as required for any on-site ponding and existing stormwater disruptions for City Improvements and City-Controlled Areas.</p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>OME: OME will inspect for and take action as required for on-site ponding and existing stormwater disruptions for OME Development (areas where OME controls access or owns facilities).</p> <p>Note: The City has not observed any leachate seeps in several years. If leachate seeps were to occur, it is possible they may be covered by the preceding item on SWPPP.</p>
Other Requirements	
CITY	<p><i>Designation of City Site Manager who will ensure compliance of environmental requirements and coordinate communications with Ecology.</i></p> <p>City: The City expects to continue to designate a public works department official as its project manager under the CAP/CD.</p> <p>OME: OME expects to designate a company official as its project manager under the Consent Decree.</p>
EACH	<p><i>Report compliance monitoring results to Ecology as determined in the CMCP.</i></p> <p>As noted above on compliance monitoring, the City and OME will each report their respective compliance monitoring (e.g., inspection) results to Ecology and to each other. With regard to the landfill gas monitoring system, the professional contractor will conduct the monitoring and prepare reports for oversight and review by the City and OME, who will then transmit or direct the contractor to transmit the reports to Ecology.</p>
CITY	<p><i>City review and approval of development construction plans; provide opportunities for Ecology's review and approval.</i></p> <p>City: The City will provide Ecology with the opportunity to review development construction plans through the local project review process (SEPA/permits/public and agency review), as provided by the existing CAP/CD.</p>
CITY	<p><i>Report development activities (status, permitting, construction, inspection) to Ecology as determined in the Consent Decree.</i></p>

Work To Be Performed Checklist for the Cleanup Actions for Future Conditions	
	<p>City: The City will provide Ecology with the opportunity to review development status in the local project review process (SEPA/permits/public and agency review), as provided by the existing CAP/CD. The City Project Manager will convene an annual meeting with Ecology, including OME’s Project Manager, to review status of development and monitoring as long as the CAP/CD require monitoring.</p>
EACH	<p><i>Ecology notification of intent to convey an interest in the Site.</i></p> <p>City: The City has notified Ecology of its intent to convey to OME and provided Ecology with a copy of the Property Disposition Agreement.</p> <p>OME: If OME becomes the future property owner, OME will provide notifications to Ecology of any transfer of its fee ownership interest.</p>
OME	<p><i>Sale or lease agreements include requirements for implementation of all CD and CAP requirements, permitted uses, and responsibilities between owner and lessees.</i></p> <p>OME will include the applicable requirements in any lease or sale agreements for areas of the Landfill Property owned by OME.</p> <p>Note: The City does not expect to have sale or lease agreements on the Landfill Property. If it does, it will do likewise.</p>
EACH	<p><i>Lease restrictions to uses and activities consistent with the Restrictive Covenant and notification to all lessees.</i></p> <p>OME: OME will require its lessees to comply with uses and activities consistent with the Restrictive Covenant, as may be amended or clarified by the Consent Decree. As noted above, applicable restrictions will be included in the CCRs (Covenants, Conditions and Restrictions) for the development.</p> <p>City: In the unlikely event that the City enters into any leases for areas of the Landfill Site owned by the City (e.g., City ROW), the City will ensure that lessees are notified of the Restrictive Covenant (if potentially applicable to their tenancies) and that uses and activities in leases are consistent with the Restrictive Covenant.</p>

**GRANT OF EASEMENT FOR EXISTING LANDFILL SYSTEMS
AND RELATED UTILITIES**

Reference No. (if applicable): _____

Grantor: OM EVERETT, INC., a Washington corporation
OMH TRANSFER AGENT, LLC, a Delaware limited liability company

Additional on Pg. N/A

Grantee: CITY OF EVERETT, a Washington municipal corporation

Additional on Pg. N/A

Legal Description (abbreviated): A portion of the SE quarter of Section 29, Township 29N, Range 5 East of the Willamette Meridian and NE quarter of Section 32, Township 29N, Range 5 East of the Willamette Meridian, Snohomish County, Washington

Additional legal(s) on Pg. EXHIBIT "A" HERETO
EXHIBIT "B" HERETO
EXHIBIT "C" HERETO
EXHIBIT "D" HERETO
EXHIBIT "E" HERETO
EXHIBIT "F" HERETO
EXHIBIT "G" HERETO

Assessor's Tax Parcel ID Nos.

GRANT OF EASEMENT FOR
EXISTING LANDFILL SYSTEMS AND RELATED UTILITIES

THIS EASEMENT AGREEMENT (the "**Agreement**") is made this ____ day of _____, 2008, by and between OM EVERETT, INC., a Washington corporation ("**OME**") and OMH TRANSFER AGENT, LLC, a Delaware limited liability company ("**OMH**") (hereinafter collectively referred to as "**Grantor**" or "**OM**") and CITY OF EVERETT, a municipal corporation of the State of Washington (the "**City**") (hereinafter referred to as "**Grantee**"), and their respective successors and assigns (collectively, the "**Parties**"), with reference to the following facts:

RECITALS

A. Grantor is the owner of certain real property located in the City of Everett, Snohomish County, Washington, and legally described in attached Exhibit A and shown on attached Exhibit B incorporated herein by reference ("**Grantor's Property**" or "**City Property**"). The Parties previously entered into a Property Disposition Agreement dated February 21, 2007, and thereafter amended, ("**PDA**") providing for Grantor's acquisition and development of the City Property as a high quality mixed use development (the "**Project**").

B. A portion of the Grantor's Property (the "**Landfill Pad**") was formerly a municipal landfill that is in the long-term operation and maintenance phase of remediation and is subject to a consent decree and cleanup action plan entered into between the Grantee and the Washington Department of Ecology ("**Ecology**") dated April 2, 2001, as amended by agreement among OME, Grantee and Ecology dated April 23, 2008 ("**Consent Decree Amendment**"). The original Consent Decree and Cleanup Action Plan as modified by the Consent Decree Amendment are hereafter referred to as the "**CAP/CD**." The property subject to the CAP/CD ("**Landfill Property**") and the Landfill Pad are legally described in attached Exhibits C and D, respectively, incorporated herein by reference.

C. The CAP/CD requires the construction, operation and maintenance of a system to manage landfill gas. Under the CAP/CD, Grantee constructed facilities to collect and discharge landfill gas ("**Existing Landfill Gas Management System**"). The Existing Landfill Gas Management System is located on that certain real property legally described depicted on the drawings in attached Exhibit E.

D. Grantee also constructed a system to collect leachate and certain stormwater ("**Existing Leachate Collection System**") which is located on that certain real property depicted on the survey attached hereto as Exhibit F.

E. Pursuant to the CAP/CD, Grantee has installed 11 active groundwater monitoring wells east of the Landfill Property on a portion of the City Property owned by Grantor, which

wells are used to monitor potential contamination in groundwater. In addition, Grantee has installed 3 active groundwater monitoring wells on a certain portion of the Grantor's Property owned by OMH and commonly known as the "Mill Property." The foregoing 14 monitoring wells are collectively referred to herein as the "Existing Groundwater Monitoring System" and are depicted on the survey attached as **Exhibit G**, incorporated herein by reference.

F. Grantee also has installed certain electrical, water and sanitary sewer utility improvements on the Landfill Property and ancillary to the Existing Landfill Gas Management System and the Existing Leachate Collection System ("**Related Utilities**") as depicted on the survey attached **Exhibit F**, incorporated herein by reference.

G. The areas within the City Property where the Existing Landfill Gas Management System, the Existing Leachate Collection System, the Existing Groundwater Monitoring System and the Related Utilities are located are collectively referred to as the "**Easement Area**." The Easement Area shall include such reasonable access as is necessary for the Grantee's use and enjoyment of the easement rights herein granted without interference with or disturbance of Grantor's use or operations on the remainder of the Grantor's Property or the businesses conducted thereon.

H. OliverMcMillan, LLC, a California limited liability company, and its affiliate OME entered into an agreement titled the "Landfill and Environmental Indemnification Agreement" ("**Environmental Agreement**" or "**LEIA**") providing for their respective obligations for the design, construction, use, operation and maintenance, and ownership of the existing and future expanded Landfill Gas Management System, and for the Leachate Collection System, Groundwater Monitoring System and Related Utilities. The Environmental Agreement also provides that Grantee will be solely responsible for the construction, use, operation and maintenance of the existing and future Leachate Collection System, the existing and future Groundwater Monitoring System, and the Related Utilities and will retain ownership of these systems.

I. In order to continue to operate and to maintain the Existing Landfill Gas Management System, Existing Leachate Collection System, Existing Groundwater Monitoring System, and Related Utilities, existing as of the date of this Agreement (collectively, the "**Easement Improvements**"), until such time as the Easement Improvements may be expanded, modified or replaced under the terms of the Environmental Agreement, Grantee desires to acquire from Grantor a non-exclusive easement for the existing Easement Improvements within the Easement Area, and Grantor is willing to grant such easement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

GRANT OF EASEMENTS

OM hereby BARGAINS, SELLS, AND CONVEYS to the City and the City's contractors, agents and employees (hereafter "**Representatives**"), the following easements (collectively, the "**Easements**"):

1. Easement for Existing Landfill Gas Management System. A permanent, non-exclusive easement over, under, across, and through the Easement Area depicted in Exhibit E as the location of the Existing Landfill Gas Management System ("Landfill Gas Management System Easement"). The portion of the Landfill Gas Management System Easement generally located in the center of the Landfill Property is twenty (20) feet in width (10 feet on each side) of the centerline of the pipe), as depicted on Exhibit E. The portion of the Landfill Gas Management System Easement lying on the westerly and northerly portions of the Landfill Property is an area legally described and shown in Exhibit E. The Landfill Gas Management System Easement is for the purpose of use, operation, maintenance, inspection, and repair (including replacement of pipe in the same location) of the Existing Landfill Gas Management System, as required by Ecology under the CAP/CD, together with rights of ingress and egress over and across that real property depicted in Exhibit D for access to the Existing Landfill Gas Management System until such time as the easement in this paragraph is terminated under Paragraph 12, and for no other purposes under this Agreement without Grantor's prior written consent. This Landfill Gas Management System Easement shall terminate in accordance with the provisions in Paragraph 12.

2. Easement for Existing Leachate Collection System. A permanent, non-exclusive easement over, under, across, and through the Easement Area as depicted and legally described in Exhibit F ("Leachate Easement"), including twenty (20) feet in width (10 feet on each side) of the centerline legally described in Exhibit F, for the purpose of use, operation, maintenance, inspection, and repair (including replacement of pipe in the same location) of the Existing Leachate Collection System, together with rights of ingress and egress over and across Grantor's Property for reasonable access to the Existing Leachate Collection System, until such time as the Leachate Easement is terminated under Paragraph 12, and for no other purposes under this Agreement without Grantor's prior written consent.

3. Easement for Related Utilities. A non-exclusive easement over, under, across and through the Easement Area as depicted and legally described in Exhibit F as the location of the Related Utilities, including twenty (20) feet in width (10 feet on each side) of the centerline legally described in Exhibit F, for the purpose of use, operation, maintenance, inspection, and repair of the Related Utilities, together with rights of ingress and egress over and across Grantor's Property for reasonable access to the Related Utilities until such time as the easement in this paragraph is terminated under Paragraph 12 and for no other purpose under this Agreement without Grantor's prior written consent. The easement for Related Utilities shall terminate in accordance with the provisions in Paragraph 12.

4. Easement for Existing Groundwater Monitoring System. A non-exclusive easement over, under, across, and through the Easement Area depicted in Exhibit G as the locations of the Existing Groundwater Monitoring System for the purpose of use, operation, maintenance, inspection, and repair (including replacement of a well in the same location) of the Existing Groundwater Monitoring System, as required by Ecology under the CAP/CD, together with rights of ingress and egress over and across Grantor's Property for reasonable access to the Existing Groundwater Monitoring System, until such time as the easement in this paragraph is terminated under Paragraph 12, and for no other purposes under this Agreement without Grantor's prior written consent. The easement for the Existing Groundwater Monitoring System shall terminate in accordance with the provisions in Paragraph 12.

TERMS AND CONDITIONS OF EASEMENTS

The grants set forth above (the "Easements") are made and accepted subject to the terms and conditions set forth herein.

5. Grantee's Use of Easement Area. Grantee and its Representatives shall at all times maintain the Easement Improvements in compliance with all applicable federal, state and local laws, regulations, ordinances, codes, court and administrative orders and consent decrees and permit conditions in the exercise of Grantee's rights and obligations under the Easements, including the CAP/CD. Grantee and its Representatives shall exercise Grantee's rights and obligations under the Easements so as to use all commercially reasonable efforts to minimize interference with the use and enjoyment of Grantor's property by Grantor, or any lessees, licensees, agents, employees, tenants, customers, or invitees of Grantor or the business operations of such parties.

6. Relocation of Easement Improvements. Grantor reserves the right to relocate the Easement Improvements or Easement Area or portions thereof from time to time if, in the opinion of the Grantor, it unreasonably interferes with the use by Grantor of Grantor's Property, as provided in this paragraph. Except as set forth herein or agreed to otherwise by the Parties, Grantor shall bear the cost of relocating any affected Easement Improvements, Grantor shall provide the City with a substitute easement location reasonably suited to the City's needs at no additional cost to the City, and such relocation does not impair the functionality of the utilities and shall otherwise be reasonably acceptable to the City. Promptly upon the completion of such relocation, the Parties shall amend this Agreement to reflect the modified Easement Improvements and Easement Area.

Except as may be subsequently agreed in writing by the Parties, Grantor's obligations under this paragraph to bear relocation costs are not intended to apply, and shall not apply, to relocation of the existing Easement Improvements that the Parties have agreed to modify or replace in order to construct the Minimum Development Element on the Landfill Property as defined in the PDA or as may be necessary for the City to perform the City Work as defined in the PDA, including (a) the modification or expansion of the Landfill Gas Management System as

provided in the Environmental Agreement; (b) City maintenance or repairs to the Leachate Collection System; and (c) any modification of the Existing Groundwater Monitoring System required Ecology or requested by the Grantor as being reasonably necessary for Grantor's development of the Project; or (e) demolition and removal of that portion of the Landfill Gas Management System described in Paragraph 1 lying generally within the center of the Landfill Property which shall be done by the City in connection with the City's initial grading activities.. Any relocation of the Easement Improvements after OM has obtained a Partial Certificate of Completion from the City under the PDA shall be at the sole cost and expense of the Party requesting the relocation.

7. Restoration of Grantor's Property Due to Easement Activities and Removal of Easement Improvements. Upon use, operation, maintenance, inspection, and repair activities under the Easements (collectively the "**Easement Activities**"), or upon removal or abandonment of the Easement Improvements under Paragraph 12 (the "**Termination Activities**"), Grantee or its Representatives shall promptly remove all equipment and debris or materials from the Easement Area, repair any other damage to the Grantor's Property caused by Grantee or its Representatives to the reasonable satisfaction of Grantor, and leave the Grantor's Property in the same condition it was found prior to the commencement of the Easement Activities or Termination Activities, and/or at such elevations and condition as the Parties have agreed under the grading plan for the Landfill Property or as otherwise agreed by the Parties in writing. All costs, fees and expenses relating to restoration of the Grantor's Property with respect to the Easement Activities or Termination Activities, including the proper removal or abandonment of the Easement Improvements, and all fees, costs, labor, materials and expenses, shall be the sole responsibility of Grantee except as may otherwise be agreed by the Parties in writing. Grantee is not authorized under this Agreement to use, conduct activities on, or otherwise access, property outside the Easement Area. If Grantee or its Representatives damage property outside the Easement Area, Grantee shall repair such damage consistent with the terms and conditions of this Paragraph 7. Grantor retains all additional remedies or causes of action for activities of Grantee or its Representatives taken in violation of this Agreement.

8. Grantor's Use of Easement Area. The Easements granted to Grantee herein shall be non-exclusive, and Grantor shall retain all rights in the Easement Area not inconsistent with the performance of Grantor's obligations hereunder or the rights granted to Grantee under the Easements. Grantor may use the Easement Area for any lawful purpose permitted under applicable law, including, but not limited to, ingress and egress that does not unreasonably interfere with the easement rights granted Grantee under this Agreement; provided, however, that except as authorized under paragraph 7 above or an approved in any permit issued in connection with the Project, Grantor shall not engage in any excavation, tunneling, digging construction, alteration or other development of the Easement Area that would (a) interfere with, disturb or damage the Existing Landfill Gas Management, Existing Leachate Collection, Existing Groundwater Monitoring Systems, or Related Utilities in any way, (b) unearth, puncture, obstruct or interfere with the efficient use and operation of those Systems, (c) endanger the lateral support to those Systems, or (d) otherwise unreasonably hinder or interfere with Grantee's use, operation, maintenance or repair of those Systems, without the prior written consent of Grantee,

which consent shall not be unreasonably withheld or delayed. Grantor shall submit plans and specifications of any such proposed excavation, tunneling, digging, construction, alteration or other development located within the Easement Area in sufficient detail to permit Grantee to determine whether such proposed excavation, tunneling, digging, construction, alteration or other development would interfere with, disturb or damage the Existing Landfill Gas Management, Existing Leachate Collection, Existing Groundwater Monitoring Systems, or Related Utilities in any way or otherwise hinder or interfere with Grantee's rights under this Agreement or Grantee's use, operation, maintenance or repair of those Systems. **Grantor may fulfill its obligation to consult with and obtain the approval of Grantee under this section by the submittal and approval of permit applications to the City.** Any approval by Grantee pursuant to this Paragraph 9 shall be strictly limited to the facilities and/or excavation shown on the plans and specifications submitted by Grantor and shall in no event constitute or be construed as a certification of the accuracy, sufficiency or engineering adequacy of said plans and specifications. Any dispute under this section, including disputes concerning Grantee's failure to provide consent, shall be subject to the dispute resolution process set forth in Sections 7.6 and 7.7 of the Environmental Agreement.

9. Coordination of Activities. Grantee shall give at least fifteen (15) days' advance written notice of the proposed dates of any groundwater sampling or other Easement Activities in the Easement Area to Grantor at the address in Paragraph 16, or at such address or office as Grantor may from time to time designate. Grantee shall cooperate in the revision of such dates and/or the coordination of its and its Representatives' activities with those of Grantor if deemed necessary by Grantor to minimize conflicts, insure protection to each party's facilities, prevent hazardous conditions, or minimize interruption of Grantor's operations. Provided, however, that in the event of an emergency requiring immediate action by Grantee for the protection of its Easement Improvements or other persons or property, Grantee may take such action upon notice to Grantor as is reasonable under the circumstances.

10. Refuse, Waste and Hazardous Substances.

A. Refuse and Waste. Grantee and its Representatives shall not make, or suffer to be made, any filling in of the Easement Area or any deposit of refuse, garbage, hydrocarbons, pollutants, hazardous, toxic or harmful substances, or other waste matter (including chemical, biological, or toxic wastes) within or upon the Easement Area, except as approved in writing by the Grantor. At all times during the term of the easements granted under this Agreement, Grantee and its Representatives shall not commit or suffer waste to be committed to the Easement Area or, with respect to Easement Activities or Termination Activities, any other portion of the Grantor's Property.

B. Grantee to Take Corrective Action. If Grantee fails to remove all non-approved fill material, refuse, garbage, or other wastes from the Easement Area and restore the Easement Area to its condition immediately prior to the deposit of the unauthorized material within sixty (60) days following written notice from Grantor, or if such removal and restoration cannot reasonably be accomplished within sixty (60) days, if Grantee fails to commence such removal or

restoration within sixty (60) days or having commenced such removal or restoration, fails to diligently and continually prosecute such removal or restoration to completion, Grantee agrees that the Grantor may remove such materials and charge Grantee for the cost of removal and disposal.

C. Not Include Existing Contamination. For purposes of this section, reference to waste shall not include Existing Contamination, as that term is defined in the Environmental Agreement, that is located on the Landfill Pad in accordance with the CAP/CD. If Existing Contamination is removed or disturbed on the Landfill Pad as a result of Grantee's or its Representatives' Easement Activities or Termination Activities, Grantee shall, at its sole cost and expense, place the Existing Contamination on-site if agreed in writing by Grantor and, if necessary, by Ecology or, if agreement is not reached, dispose of the Existing Contamination off of Grantor's Property in accordance with all applicable laws, regulations, ordinances and other legal requirements, including the CAP/CD.

11. Liens and Encumbrances. If any Easement Activities or Termination Activities performed by the Grantee or its Representatives under this Agreement on the Easement Area results in a lien or other encumbrance being filed on Grantor's Property and the Grantee does not cause such lien or encumbrance to be removed within five (5) business days, then Grantor shall have the right to remove such liens by posting appropriate bonds and Grantee shall reimburse Grantor for all costs reasonably incurred in removing such liens plus an administrative overhead amount of 15% of the premium cost of any such bonds obtained by Grantor.

12. Termination of Easement.

A. Existing Groundwater Monitoring System and Existing Landfill Gas Management System. The Easements for the Existing Groundwater Monitoring System and the Existing Landfill Gas Management System shall each terminate when all of the following have occurred for the particular easement: (1) upon receipt by Grantee of written notice from Ecology or the Snohomish County Superior Court retaining jurisdiction under the Consent Decree that the Existing Groundwater Monitoring System or the Existing Landfill Gas Management System is no longer necessary and may be removed, (2) the period of time to challenge such decision and all appeal periods have passed, and (3) Grantee has properly removed or abandoned all groundwater monitoring wells in the Easement Area or the Existing Landfill Gas Management System in accordance with this Paragraph 12 and received written notice from Grantor of Grantor's acceptance of Grantee's removal or abandonment actions and of termination of the Easement. Grantee shall provide Grantor with a copy of written notice from Ecology or the Court within five (5) business days of receipt by Grantee. Upon receipt of said notice, Grantee shall promptly and in compliance with all laws and regulations and with the approval of all applicable environmental agencies, remove or abandon (based upon Grantor's request) all wells that were installed in the Easement Area or the Existing Landfill Gas Management System, and Grantor's property shall be restored as provided in Paragraph 7.

B. Modification of Existing Easement Improvements. Notwithstanding paragraph 12.A above, this Easement as it pertains to any of the existing Easement Improvements shall terminate at such time as the Parties have entered into one or more easements for expanded, modified, or replacement improvements which, by its express terms, supersede one or more of the Easements in this Agreement.

13. Liability of Grantee. Grantee will be responsible for its and its Representatives' compliance with all of the terms, covenants, conditions and provisions of this Agreement. In the event of any breach of the obligations of this Agreement, Grantee shall be responsible for all damages, liabilities and costs of corrective or remediation action measures resulting from its action or non-action (or action or non-action of its Representatives) as provided in Paragraph 15.

14. Insurance. Prior to commencement of Easement Activities or other activities authorized or required under this Easement Agreement by Grantee or its Representatives on Grantor's Property, Grantee shall submit to Grantor a certificate of insurance in a form reasonably acceptable to Grantor confirming that Grantee or its general contractors performing such activities have obtained customary commercial general liability and "builders risk" insurance in the amount of three million dollars (\$3,000,000.00) provided, however, coverage of only one million dollars (\$1,000,000.00) shall be required for minor contractors and exceptions otherwise granted upon approval of Grantor, not to be unreasonably withheld. The commercial general liability policy shall name the Grantor and OliverMcMillan, LCC, a California limited liability company, as additional insureds. Additional insured status shall be accomplished by endorsement to said commercial liability policy(ies).

Said coverage shall be maintained by Grantee or its contractors at all times while any of the Easements granted under this Agreement remain in effect. Nothing in this Easement Agreement limits or reduces Grantee's insurance obligations under the PDA or the Environmental Agreement.

15. Indemnification. Grantee hereby agrees to defend (with counsel reasonably satisfactory to Grantor), protect, hold harmless and indemnify the Grantor from any and all liability for damages, losses, liens, costs, expenses, penalties, actions, causes of action or claims ("Claims") including Claims for injury to any person or damage to any property arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by such Grantee or its Representatives relating to this Agreement, except to the extent any Claims arise out of the negligence or willful misconduct of Grantor; provided, however, that to the extent any Claims are subject to indemnification under Section 11 of the Environmental Agreement, the Environmental Agreement shall govern such Claims. The provisions of this Paragraph 15 shall survive termination of any Easement under this Agreement.

16. Notices. Unless otherwise specified in this Agreement, any formal written notices required by this Agreement ("Notice") shall be given at the addresses set forth below in the following manner: (a) hand delivered with an acknowledgement of receipt noted; (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested; (c) facsimile transmission

with confirmation page including receipt; (d) sent by reputable overnight courier service, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by Notice to the other; or (e) email or other electronic communication with confirmation sent by one of the above methods specified in this Paragraph 16. The Parties shall update the contact information below by formal written Notice under this Agreement; however, failure to update contact information by this method shall not render notice to the addressee below invalid. Notices shall be deemed given when delivered; provided, however, that if any Notice shall also be sent by telecopy or fax machine, such Notice shall be deemed given at the time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered Notice. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

If to Grantor:

OME and OMH
(as well as to OliverMcMillan, LLC)
733 8th Avenue
San Diego, CA 92101
Attn: Charlie Hickcox

With a copy to:

Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Attn: Gillis E. Reavis

If to Grantee:

CITY OF EVERETT
Attn: City Property Manager
3200 Cedar Street
Everett, WA 98201

With a copy to:

CITY OF EVERETT
Attn: City Attorney
2930 Wetmore Ave.
Everett, WA 98201

K&L Gates
925 Fourth Ave. – Suite 2900
Seattle, WA 98104-1158
Attn: Kenneth S. Weiner

17. Successors; Runs with the Land. The rights and obligations of the parties shall run with the land and with the title to the Easement Area, and inure to the benefit of and be binding upon the Parties' Representatives, successors, assigns, lessees and sublessees, and successors in

interest, including successors-in-title as owners of any right, title or interest in all or a portion of the Easement Area. This Agreement is enforceable by the Parties hereto. This Agreement may be enforced by the Grantee notwithstanding that the Grantee does not own property to which this easement is appurtenant.

18. Governing Law; Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. It is agreed that venue for any lawsuit arising out of this Agreement shall be Snohomish County. In the event of any litigation to enforce or interpret the right, duties and obligations of the parties set forth herein, the prevailing party shall be entitled to an award of reasonable costs, expenses and attorneys' fees in connection therewith, at trial and on appeal.

19. Non-Waiver. The failure of a party to insist upon a strict performance of any of the terms, conditions and covenants herein or to exercise any remedy available to it will not be deemed a waiver of any rights or remedies that said party may have and will not be deemed a waiver of any subsequent breach or default in terms, conditions and covenants herein contained.

20. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances will to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby, and each remaining term of this Agreement will be valid and be enforced to the extent permitted by law.

21. Entire Agreement; Modification. This Agreement sets forth the entire agreement of the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them. Any amendment or modification of this Agreement must be in writing and signed by the parties.

22. Captions. The captions and paragraph headings contained in this Agreement are for convenience of reference only and in no way define, describe, extend or define the scope or intent of this Agreement, nor the intent of any of the provisions hereof.

23. Incorporation of Recitals. Each of the recitals set forth above are by this reference incorporated into this Agreement as though fully set forth herein.

24. Other Easements. Grantor shall not grant any person any easement or easements within the Easement Area which would unreasonably interfere with Grantee's exercise of its rights under this Agreement without the prior written consent of Grantee.

EXHIBITS

Exhibit A	Grantor's Property
Exhibit B	Property Map (City Property)
Exhibit C	Landfill Property
Exhibit D	Landfill Pad
Exhibit E	Existing Landfill Gas Management System
Exhibit F	Existing Leachate Collection System and Related Utilities
Exhibit G	Existing Groundwater Monitoring System

Existing landfill systems and related utilities easement 4-28-08.doc

STATE OF _____)
) SS.
COUNTY OF _____)

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

Dated: _____, 2008.

(S E A L)

[Signature]

[Print Name]
PUBLIC in and for the State of

NOTARY

My commission expires: _____

EXHIBIT TITLE PAGES TO BE ADDED PER FINAL EXHIBITS

PDA Amendment No. 3 – Exhibit G

SIMPSON PAD ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT

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EXHIBITS

- Exhibit A: Riverside Property Map**
- Exhibit B: Property Map (City Property)**
- Exhibit C: Simpson Pad**
- Exhibit D: City Owned Simpson Parcels**

SIMPSON PAD ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT

This SIMPSON PAD ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT (the "Agreement") is entered into as of the ____ day of _____, 2008 (the "Effective Date"), by and among the CITY OF EVERETT, a municipal corporation of the State of Washington (the "City"), OMH TRANSFER AGENT, LLC ("OMH"), a Delaware limited liability corporation, and OLIVERMCMILLAN, LLC, a California limited liability company ("OM LLC"). The City, OMH, and OM LLC are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. The City is the owner of certain land located within the City of Everett, Snohomish County, Washington, adjacent to the Snohomish River and containing approximately 221 acres ("Riverfront Site"), as generally shown on the Riverfront Property Map in Exhibit A.

B. The City and OM LLC entered into a Property Disposition Agreement, initially dated February 21, 2007, and thereafter amended ("PDA"), concerning the sale of a portion of the Riverfront Site to OM LLC and its affiliates including OMH, referred to as the "City Property" shown on the attached Exhibit B.

C. The City Property includes: (1) development parcels used as a former landfill property, consisting of Lot 16 (sometimes referred to as development parcel A-2) and Lots 21-29 on the Property Map (the "Landfill Pad"); (2) adjacent development parcels to the north of 36th Street and the Landfill Property, previously owned by Eclipse Properties LLC, Newland Construction Co. Inc., and BNSF, consisting of Lot 32 north of 36th Street (32A) and Lots 39-45 on the Property Map (the "Mill Property"); (3) a development parcel adjacent to the Landfill Site on the south formerly owned by among others the Simpson Paper Company, consisting of Lot 13 on the Property Map (the "Simpson Pad"); (4) a portion of the Former BNSF Property, consisting of Lots 15, 19, 31, 32 south of 36th Street (32B), 33 on the Property Map ("Former RR ROW"), and (5) certain parcels located between the Former RR ROW and the Snohomish River, previously owned by Eclipse Properties LLC, BNSF, and Simpson Paper Company, consisting of Lots 35 and 37-38 on the Property Map ("River Parcels"). Each of these areas is shown on the Riverfront Property Map in the attached Exhibit A, and the parcels within each of these areas are included in the legal description of the City Property in the attached Exhibit B. The Simpson Pad is described in attached Exhibit C. In addition, the City owns certain property next to the Simpson Pad, namely Lots 10, 11, 12, 14, 18, 30, and 34 shown on Exhibit D, herein referred to as the "City Owned Simpson Parcels." The Simpson Pad and the City Owned Simpson Parcels are the subject of this Agreement.

D. OMH is an Affiliated Entity under the PDA and intends to purchase and develop the Simpson Pad.

E. The development concept described in the PDA, and further described in the environmental impact statement on the Everett Riverfront Redevelopment ("Riverfront EIS"), the City's comprehensive plan and zoning code, and development agreement and permits on the development contemplated by the PDA, allows for a range of uses at the Simpson Pad, including

but not limited to commercial, residential and mixed use development, utilities, public trails and amenities, habitat restoration and wetlands enhancement, and public shoreline access.

F. The Parties have entered into separate agreements at Closing on their respective environmental obligations pertaining to: (1) the Landfill Property, referred to herein as the "Landfill and Environmental Indemnification Agreement" or "LEIA;" (2) the Mill Property, referred to herein at the "Mill Property Environmental and Indemnification Agreement;" and (3) the Former RR ROW and River Parcels, referred to herein at the "Former RR ROW and River Parcels Environmental and Indemnification Agreement."

G. The Parties have amended the PDA and entered into certain easements at Closing pertaining to the Simpson Pad and City Owned Simpson Parcels. This Agreement sets forth the allocation of responsibilities agreed to between the Parties for environmental obligations with respect to the Simpson Pad and City Owned Simpson Parcels not addressed by other agreements or easements.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.0 Notice, Environmental Testing and Coordination

1.1 Simpson Pad. If OMH is required to conduct environmental testing to meet requirements of law, or if OMH encounters soil or other materials while on site that require environmental testing, OMH shall conduct such testing, and shall promptly notify the City of such sampling, and provide the City with copies of the test results at the City's request. If OMH determines that environmental testing is necessary for purposes of its development, or if a party other than OMH (e.g. lenders, contractors, equity partners) requests or requires environmental testing, then OMH shall provide prior notice to the City and will if practicable consult with the City in advance in formulating any sampling plan and shall provide a complete copy of the sampling plan prior to commencing sampling. OMH shall also provide the City with copies of the test results at the City's request. If OMH otherwise desires to perform environmental testing, it will obtain the City's prior approval.

1.2 City Owned Simpson Parcels including Wetlands. OMH shall obtain the City's prior approval of any sampling or sampling and analysis plan on any City Owned Simpson Parcels after Closing, except to the extent OMH is directed by a court or governmental authority with jurisdiction and is unable to consult with and obtain the City's prior approval. In addition, OMH shall consult and coordinate with the City prior to consulting with or submitting any results to the Washington State Department of Ecology (Ecology) or other governmental agency with respect to any City Owned Simpson Parcels after Closing. The City shall consult and coordinate with OMH prior to consulting with or submitting any results to the Washington State Department of Ecology (Ecology) or other governmental agency with respect to the Simpson Pad.

2.0 [this section intentionally left blank]

3.0 Bigelow Creek and Drainage Course Covenant

Each Party agrees that the work it performs at the Simpson Pad and City Owned Simpson Parcels shall be in compliance with the restrictive covenant dated September 29, 1995 and recorded under Snohomish County recording number 9509290128 (the "Drainage Course/Bigelow Creek Covenant"), located within Lots 14 and Lot 18 on Exhibit A, to the extent such covenant applies to the work.

4.0 Dispute Resolution

The Parties shall use the following dispute resolution process prior to commencement of any litigation to resolve disputes under this Agreement.

4.1 Project Managers (PMs). Each Party will designate a Project Manager ("PM") for purposes of this Agreement. The PM may be the same person designated as a PM under section 2 of EILA or the Party's representative on the Operating Committee established under section 19.11 of the PDA. In the event of a dispute under this Agreement, any Party may invoke this dispute resolution process by providing written notice to the other PM. The PMs will seek to resolve the dispute.

4.2 Senior Management Officials. If the PMs have not resolved the dispute within fifteen (15) days of receipt of the written notice, either PM may refer the dispute to one Senior Management Official for each of the Parties involved in the dispute by providing them with written notice. The PMs may be asked oral or written statements to identify issues and positions, and the PMs may each retain the services of consulting engineers or other experts to assist them. If the Senior Management Officials agree, they may jointly retain consulting engineers or other experts or facilitators to make recommendations to them and any costs shall be shared equally (50%/50%) between the City and the other Parties. If they do not agree, each Party may hire their own experts or facilitators.

4.3 Non-Binding Mediation Option. If the Senior Management Officials cannot reach agreement within fifteen (15) days of receipt of the written notice, they may initiate: (a) a ten (10) day cooling off period; and/or (b) voluntary non-binding mediation by a mutually agreed-upon mediator.

4.4 Decision Period. The Senior Management Officials will seek to resolve the dispute no later than sixty (60) days after initiating the cooling off period or mediation unless an earlier time is necessary for compliance with any other agreements among the Parties.

4.5 Actions relating to Landfill Remedial Actions. OM LLC, OMH or any OM Affiliated Entity shall not be obligated to design, construct, operate or maintain any remediation systems or take any other remedial action on the Simpson Pad with respect to the Landfill Property without the express agreement of the Parties. Nothing in this Agreement shall impose

on OM LLC, OMH or any Affiliated Entity any obligations with respect to the Simpson Pad beyond those expressly required of such entities, if any, in the CAP/CD and LEIA.

4.6 Judicial Remedies. If the Parties fail to resolve a dispute using the dispute resolution process in section 4, any Party to the dispute may seek to enforce this Agreement in Snohomish County Superior Court under Washington law and procedure. Compliance with the dispute resolution process is a condition precedent to any lawsuit.

5.0 Insurance Requirements

5.1 OM Insurance. OM LLC and OMH hereby agree to obtain and maintain:

(a) Pollution liability insurance of not less than Twenty Million dollars per occurrence and Forty Million dollars in the aggregate for a 10-year term commencing not later than thirty (30) days after the Closing date with coverage for the Simpson Pad. After 10 years, OMH or its successor in interest (but not a homeowners association on the Simpson Pad) shall use commercially reasonable efforts to: (i) obtain not less than Ten Million dollars per occurrence/aggregate for a 5-year term for the Simpson Pad on terms at least comparable to the initial 10-year coverage, and (ii) name the City as an additional insured; and

(b) Contractor's pollution liability ("CPL") insurance of not less than Ten Million dollars aggregate/per occurrence for any period of substantial subsurface construction work on the Simpson Pad, e.g. installation of plat utilities or road grading. This insurance requirement is not intended to apply to an owner's association or to construction activities involving construction, maintenance, or repair of individual single family residences or accessory structures.

(c) The City shall at all times be provided with current copies of the above insurance policies, including the declarations page.

5.2 City Insurance. The City shall obtain and maintain pollution liability insurance of not less than Twenty Million dollars per occurrence and Forty Million dollars in the aggregate for a 10-year term commencing not later than thirty (30) days after the Closing date with coverage for the Simpson Pad.

6.0 Indemnification

6.1 Indemnification by City. Except as provided in sections 6.2, 6.6, and 6.10, the City shall to the fullest extent permitted by law indemnify, defend, and hold harmless OM LLC and OMH, each member, manager, partner or shareholder, as the case may be, in or of OM LLC and OMH, and their respective officers, directors, managers, members, shareholders, partners, lenders, employees, agents and consultants, successors and assigns ("OM Indemnified Parties") from and against any and all claims, liabilities, loss, demands, liens, costs and expenses including reasonable attorneys' fees, agency orders, requirements or enforcement actions, suits

and causes of action, and damages including but not limited to any claim for damage to property or injury or death of any persons against OM Indemnified Parties (collectively, "Claims") pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance as defined herein that exists on the Simpson Pad or City Owned Simpson Parcels as of the Closing Date or that has emanated or will emanate in the future from the Simpson Pad or City Owned Simpson Parcels ("Existing Contamination"). Existing Contamination includes contamination that is both known and unknown as of the Closing Date. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. With respect to the City's indemnification obligation to OM Indemnified Parties, this includes, but is not limited to, the obligation of the City to remove, remediate, or take other action pertaining to Hazardous Substances that is required by any governmental agency or that is necessary given OMH's development of the Simpson Pad, as contemplated in the PDA.

6.2 Indemnification Not Apply. This indemnification by the City shall not cover or apply to the extent the Claims result from: (a) a New Release as defined in section 6.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties; or (c) actions or lack thereof by OM Indemnified Parties that are required by and do not conform to the requirements of any applicable environmental covenants.

6.3 New Release. A "New Release" is a release by OM Indemnified Parties on the Simpson Site of an amount of a Hazardous Substance that is not already located in soil, groundwater, air or other environmental media on the Simpson Site as of the date of this Agreement. A New Release shall not include disturbance or movement including migration of Existing Contamination if any that is associated with the development of the Simpson Pad; provided such disturbance does not cause a release that results from negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties.

6.4 City Obligations to BNSF. Without limiting the generality of the foregoing, the City acknowledges and affirms to OM LLC and OMH that the City's indemnification obligations under section 6.2 include, and the City shall retain all responsibility for "Grantee Environmental Obligations" as defined and described in that certain Quit Claim Deed dated as of August 23, 2006 and recorded under Snohomish County recording number 2006082506183, and that OMH shall assume no liability or responsibility of any kind whatsoever to BNSF in connection with the Grantee Environmental Obligations.

6.5 Indemnification by OM. Except as provided in section 6.6, OM LLC and OMH, with respect to the Simpson Site shall to the fullest extent permitted by law indemnify, defend, and hold harmless the City and its employees, officers, managers, representatives, invitees, agents and consultants, successors and assigns ("City Indemnified Parties") from and against any and all Claims pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance, whether known or unknown, that exists on the Simpson Pad as of the Closing date or that will emanate in the future from the Simpson Pad to the extent the Claims result from: (a) a New Release as defined in section 6.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by the OM Indemnified Parties; or (c) actions or lack thereof by OM Indemnified Parties that are required by and do not conform to

the requirements of any applicable environmental covenant. This indemnification shall expressly not include any Claims related to Hazardous Substances, if any, migrating onto the Simpson Pad from City Owned Simpson Parcels. Notwithstanding anything to the contrary herein, this indemnification shall not be or become the obligation of any residential owners association or residential property owners within the Simpson Pad.

6.6 Consequential Damages. Neither the City's Indemnified Parties nor OM Indemnified Parties shall indemnify the other for first party Claims for consequential damages arising out of the obligation to comply with required remedial actions on the City Property or City Owned Simpson Parcels. Nothing in the Agreement authorizes or limits third party Claims for consequential damages against any Party.

6.7 Concurrent Negligence. In the event of concurrent negligence, each Party shall to the extent permitted by law be responsible to third parties for its proportional share of fault, and shall indemnify the other Party for its share of any concurrent negligence.

6.8 Waiver. The indemnification obligations contained in this section 6 shall not be limited by any workers' compensation, benefits, or disability laws, and the Parties each hereby waive any immunity they may have under any workers' compensation, benefit, or disability laws.

6.9 Notice to Other Party. A Party shall promptly notify the other Party of the planned assertion of any Claim or the receipt of any Claim from a third party for which the Party seeks to be held harmless under this section 6. With respect to a Claim from a third party, this notice shall be made be not later than 30 days after the time the Party receives such Claim in writing. However, failure to provide such notice shall not modify the rights and obligations under sections 6.1-10. These time periods shall not apply to any matter involved in the dispute resolution under section 4.

6.10 OM Indemnified Parties. As used in this section 6, the term "OM Indemnified Parties" shall also extend to and include subsequent fee owners/developers/builders/contractors who acquire all or a material portion (not less than five acres) of the property described in attached Exhibit C; provided that such successor owners initially acquired their interest in the property for the purpose of developing or completing the development of such property. Successor owners who qualify as OM Indemnified Parties under this section shall indemnify the City under section 6.5 with respect to the property owned by such successors in interest. Except as provided above, such additional OM Indemnified Parties shall NOT include tenants, residential homeowners, homeowner associations, construction contractors or subcontractors, or other persons to whom OM LLC or its Affiliates convey any portion of the property described in attached Exhibit C.

7.0 Assignment and Release.

7.1 Assignment. Each Party may assign its rights and obligations under this Agreement pertaining to the Simpson Pad or City Owned Simpson Parcels without the prior written consent of the other Party. The assignment shall not be effective until the City receives a written certificate of insurance documenting that the insurance meets the requirements of

5. OMH may freely assign its rights hereunder without the prior consent of the City to any institutional lender for security purposes in connection with a loan, the proceeds of which shall be used in connection with development of the Simpson Pad or City Owned Simpson Parcels.

7.2 Release. OM LLC and OMH shall be released from any and all obligations under this Agreement at such time as: (1) OM LLC or OMH shall have received a Certificate of Partial Completion for the Simpson Pad under section 16.2.3 of the PDA; (2) an assignee or successor-in-interest provides written notice to the City by a representative authorized to do so that such assignee or successor assumes all rights and obligations under this Agreement, except as set forth herein; and (3) the City has received the insurance certificate required by section 5.1(c).

8.0 Miscellaneous

8.1 Expenses. Unless otherwise provided in this Agreement, each Party will perform its obligations under the Agreement at its own expense.

8.2 Stand-Alone Agreement; Relationship to PDA. This Agreement exists separate and apart from the PDA, and shall survive expiration of the PDA. To the extent there are inconsistencies between this Agreement and the PDA, the terms of this Agreement govern.

8.3 Entire Agreement and Amendment. This Agreement and the exhibits hereto constitute the final and complete agreement between the Parties with respect to the subject matter hereof and, except as expressly authorized herein, may not be modified or amended except by a written agreement executed by the Parties.

8.4 Captions. The captions of this Agreement are inserted solely for the convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term thereof.

8.5 Definitions and Usage. In this Agreement:

8.5.1 CAP/CD means the court-approved Consent Decree for the Landfill Site ("CD") entered into between the City and the Department of Ecology ("Ecology"), dated April 2, 2001, and includes all exhibits to the CD, including the the Cleanup Action Plan ("CAP"), as may be amended from time-to-time.

8.5.2 Hazardous Substance means (i) any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) as amended from time to time and regulations promulgated thereunder; (ii) any "hazardous substance" under the Washington Model Toxics Control Act (Ch. 70.105D RCW) as amended from time to time and regulations promulgated thereunder; (iii) any "hazardous substance" or "hazardous waste" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§ 9602 et seq.) as amended from time to time and regulations promulgated thereunder; (iv) any asbestos; (v) polychlorinated biphenyls; (vi) underground storage tanks, whether empty, filled or partially filled with any substance; (vii) any solid waste or solid waste decomposition products at the Landfill site; (viii) any substance the presence of which is prohibited by any federal, state, county, municipal or other local governmental statutes,

regulations, ordinances or resolutions; and (ix) other substances deemed hazardous, toxic, a pollutant, or contaminant, which by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions require special handling or notification in its collection, storage, treatment or disposal.

8.5.4 Usage. The following terms have the following usage in this Agreement:

- a. "Days" means calendar days, excluding federal holidays, unless otherwise specified.
- b. "Including" means "including but not limited to."
- c. "Section" and "Exhibit" refer to the section (and all sections, subsections or paragraphs that are preceded by a letter or number in this Agreement) and exhibit of this Agreement, unless otherwise specified. Exhibits are part of and incorporated into this Agreement.

8.6 Successors. This Agreement shall be binding upon and inure to the benefit of each Party hereto, and its personal representatives, heirs, successors and assigns.

8.7 Legal Relationship. The Parties to this Agreement execute and implement this Agreement as separate entities. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

8.8 No Third Party Beneficiaries. This Agreement is intended for the benefit of OM, OMH, and the City, and except as otherwise provided with regard to surviving obligations, no other person or entity shall be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against any Party.

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

8.10 Attorneys' Fees. In the event that any of the Parties brings an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief or for an alleged breach or default, the predominantly prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

8.11 Termination of Agreement. If the Parties do not close the transaction under the PDA, then all Parties' obligations under this Agreement shall terminate. If the City Property is reconveyed from OMH back to the City pursuant to the PDA, then OMH's obligations hereunder shall terminate with the exception of any indemnification obligations for Claims arising and asserted prior to the date of reconveyance only. This Agreement shall terminate on the fifteenth (15th) anniversary of its execution.

8.12 Waiver. Except as otherwise provided herein, no delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any

obligation under this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term or condition of this Agreement.

8.13 Notices. Unless otherwise specified in this Agreement, any formal written notices required by this Agreement (“Notice”) shall be given to the Project Managers at the addresses set forth below in the following manner: (a) hand delivered with an acknowledgement of receipt noted; (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested; (c) facsimile transmission with confirmation page including receipt; or (d) sent by reputable overnight courier service, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by Notice to the other. The PMs shall update the contact information below by formal written Notice under this Agreement. Notices shall be deemed given when delivered; provided, however, that if any Notice shall also be sent by telecopy or fax machine, such Notice shall be deemed given at the time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered Notice. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

For the City of Everett:

Project Manager
Everett Riverfront Project
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

cc:
Director of Public Works
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

City Attorney’s Office
City of Everett
2930 Wetmore Ave.
Everett, WA 98201
Phone: 425.257.8700
Fax: 425.257.8729

K&L Gates
925 Fourth Avenue, Suite 2900

For OM LLC and OMH:

Project Manager
Everett Riverfront Project
OliverMcMillan773 8th Avenue
San Diego, CA 92101
Attn: Charlie Hickcox
Phone: 619.321.1111
Fax: 619.321.1234

cc:
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Attn: Gillis E. Reavis
Phone: 206.447.4400
Fax: 206.447.9700

Seattle, WA 98104
Attn: Kenneth S. Weiner
Phone: 206.623.7580
Fax: 206.623.7022

8.14 Time. The Parties agree that time is of the essence in the performance of the provisions of this Agreement.

8.15 Counterparts; Facsimile Signatures. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

BY THE CITY:

CITY OF EVERETT, a Washington municipal corporation

By: _____
Ray Stephanson, Mayor

ATTEST:

By: _____
Sharon Marks, City Clerk

APPROVED AS TO FORM:

By: _____
_____, City Attorney

BY OLIVER MCMILLAN

OMH TRANSFER AGENT, LLC, a Delaware limited liability corporation

OLIVERMCMILLAN, LLC, a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBITS

- Exhibit A: Riverside Property Map
- Exhibit B: Property Map (City Property)
- Exhibit C: Simpson Pad
- Exhibit D: City Owned Simpson Parcels

A PORTION OF
 SEC. 29 & 32, TWP. 29 N, RGE. 5 E, W.M.

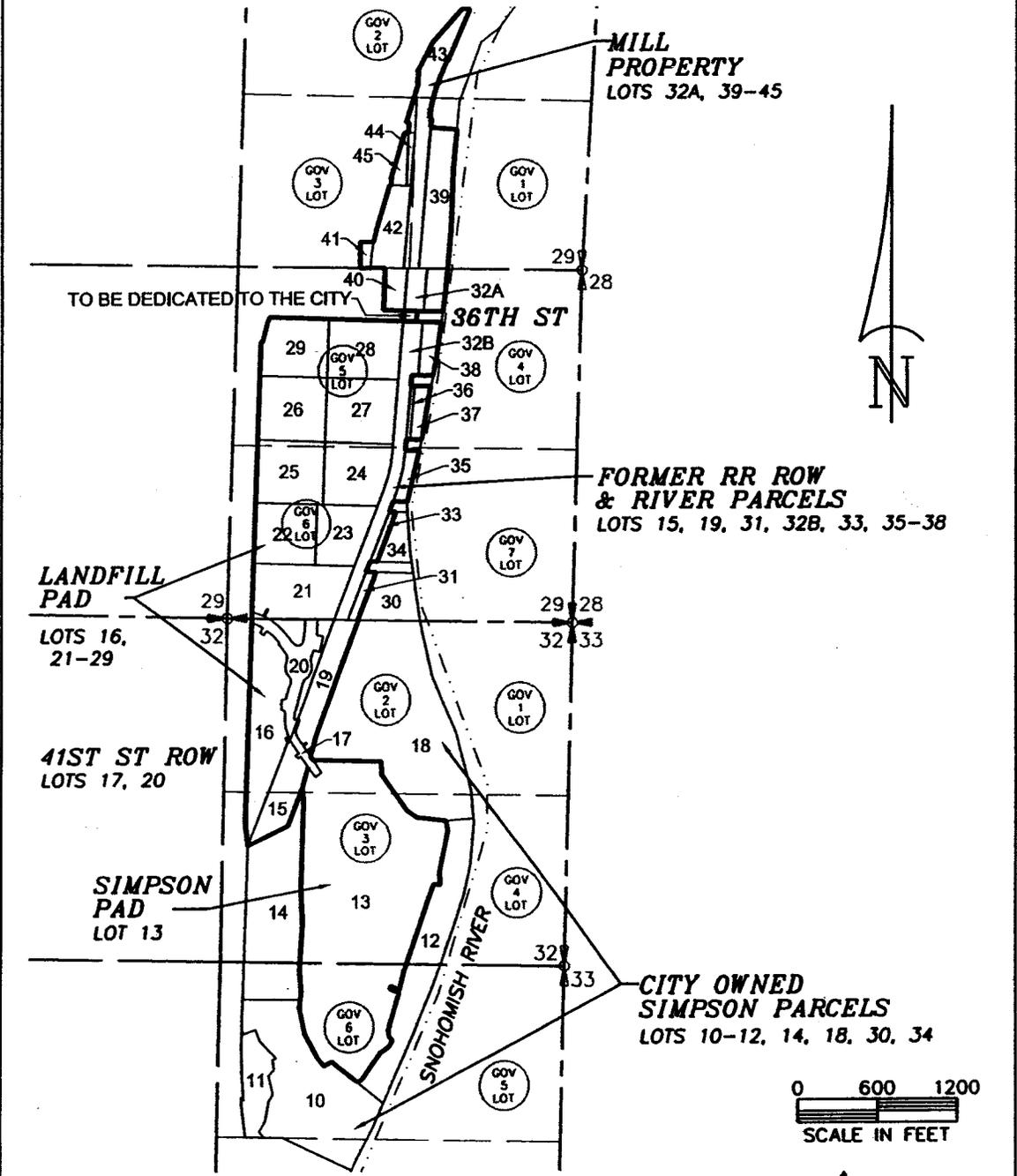
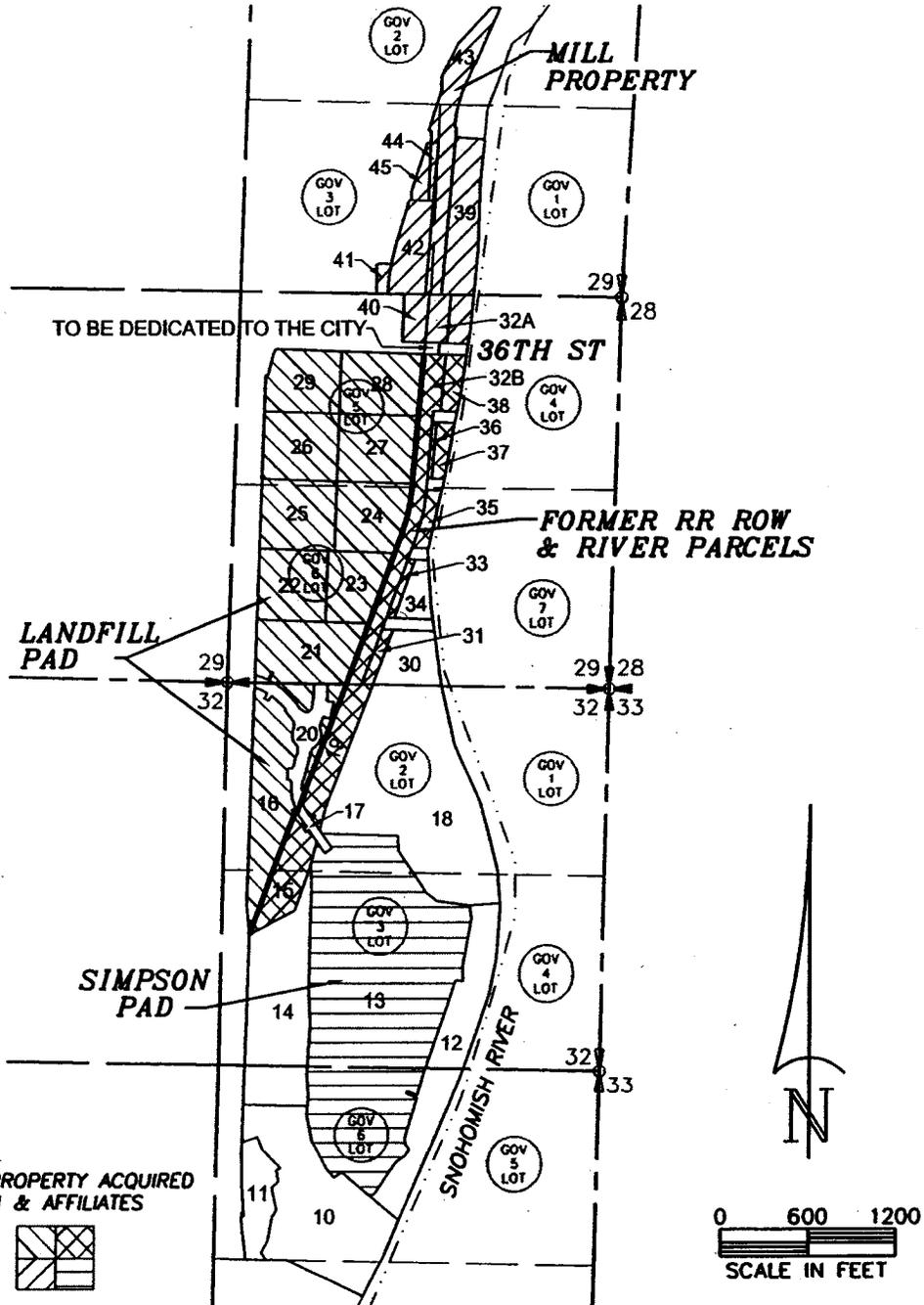


EXHIBIT A

SEE RIVERFRONT ALTA
 DATED APRIL 25, 2008

DATE: APR 25, 2008	SHEET 1 OF 1
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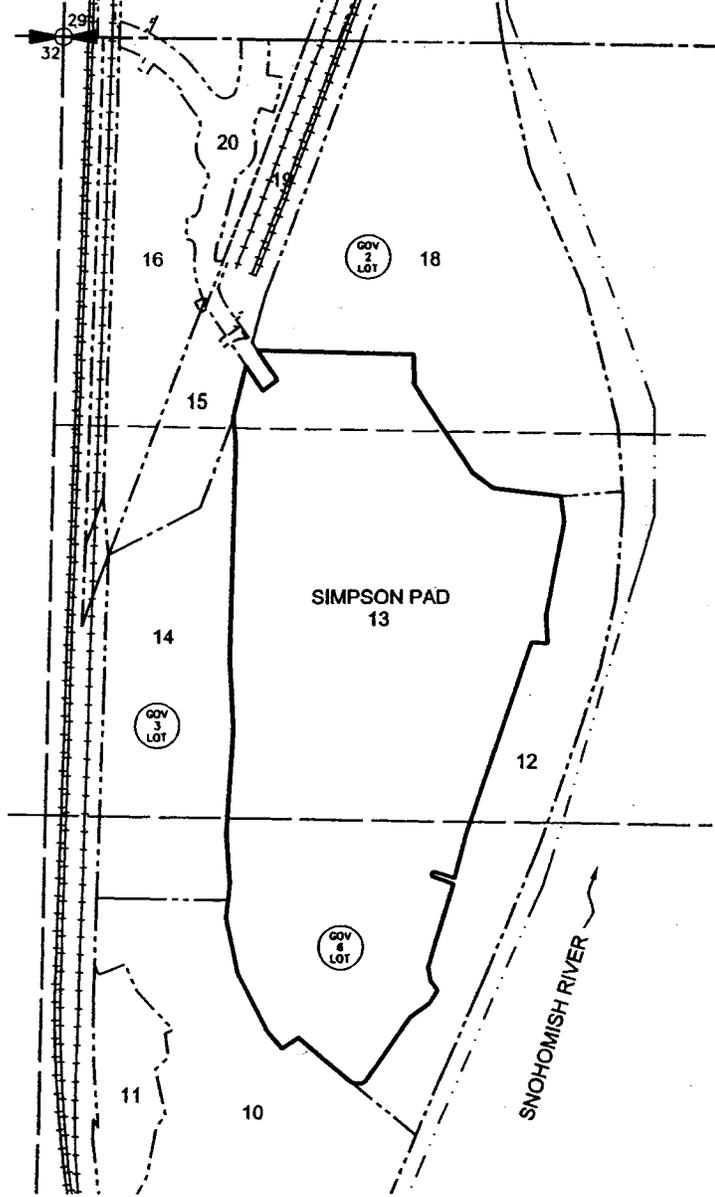
A PORTION OF
 SEC. 29 & 32, TWP. 29 N, RGE. 5 E, W.M.



SEE RIVERFRONT ALTA
 DATED APRIL 25, 2008

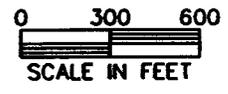
EXHIBIT B	
PROPERTY MAP	
DATE: APR 25, 2008	SHEET 1 OF 1

A PORTION OF
 SEC. 32, TWP. 29 N, RGE. 5 E, W.M.



LEGAL DESCRIPTION:

LOT 13 AS DESCRIBED
 AND SHOWN ON CITY OF
 EVERETT BOUNDARY LINE
 ADJUSTMENT 08-004,
 FILED UNDER AUDITOR'S
 FILE NO. 200804085006,
 RECORDS OF SNOHOMISH
 COUNTY, WASHINGTON.



	SIMPSON PAD BOUNDARY
	SECTION LINE
	QUARTER SECTION
	GOV'T LOT
	HARBOR LINE
	PROPERTY LINE
	RAILROAD

BOUNDARY SURVEY PER BLA
 08-004, AFN 200804085006.

EXHIBIT "C"	
SIMPSON PAD	
DATE: APR 15, 2008	SHEET 1 OF 1

PDA Amendment No. 3 – Exhibit G

**MILL PROPERTY ENVIRONMENTAL AND INDEMNIFICATION
AGREEMENT**

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EXHIBITS

- Exhibit A: Riverside Property Map
- Exhibit B: Property Map (City Property)
- Exhibit C: Mill Property
- Exhibit D: Sections 1.1 and 1.2 of the Former RR ROW and River Parcels agreement

MILL PROPERTY ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT

This MILL PROPERTY ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT (the "Agreement") is entered into as of the ___ day of _____, 2008 (the "Effective Date"), by and among the CITY OF EVERETT, a municipal corporation of the State of Washington (the "City"), OMH TRANSFER AGENT, LLC ("OMH"), a Delaware limited liability corporation, and OLIVERMCMILLAN, LLC, a California limited liability company ("OM LLC"). The City, OMH, and OM LLC are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. The City is the owner of certain land located within the City of Everett, Snohomish County, Washington, adjacent to the Snohomish River and containing approximately 221 acres ("Riverfront Site"), as generally shown on the Riverfront Property Map in Exhibit A.

B. The City and OM LLC entered into a Property Disposition Agreement, initially dated February 21, 2007, and thereafter amended ("PDA"), concerning the sale of a portion of the Riverfront Site to OM LLC and its affiliates including OMH, referred to as the "City Property" shown on the attached Exhibit B.

C. The City Property includes: (1) development parcels used as a former landfill property, consisting of Lot 16 (sometimes referred to as development parcel A-2) and Lots 21-29 on the Property Map (the "Landfill Pad"); (2) adjacent development parcels to the north of 36th Street and the Landfill Property, previously owned by Eclipse Properties LLC, Newland Construction Co. Inc., and BNSF, consisting of Lot 32 north of 36th Street (32A) and Lots 39-45 on the Property Map (the "Mill Property"); (3) a development parcel adjacent to the Landfill Site on the south formerly owned by among others the Simpson Paper Company, consisting of Lot 13 on the Property Map (the "Simpson Pad"); (4) a portion of the Former BNSF Property, consisting of Lots 15, 19, 31, 32 south of 36th Street (32B), 33, and 36 on the Property Map ("Former RR ROW"), and (5) certain parcels located between the Former RR ROW and the Snohomish River, previously owned by Eclipse Properties LLC, BNSF, and Simpson Paper Company, consisting of Lots 35 and 37-38 on the Property Map ("River Parcels"). Each of these areas is shown on the Riverfront Property Map in the attached Exhibit A, and the parcels within each of these areas are included in the legal description of the City Property in the attached Exhibit B. The Mill Property is described in attached Exhibit C, and is the subject of this Agreement.

D. OMH is an Affiliated Entity under the PDA and intends to purchase and develop the Mill Property.

E. The development concept described in the PDA, and further described in the environmental impact statement on the Everett Riverfront Redevelopment ("Riverfront EIS"), the City's comprehensive plan and zoning code, and development agreement and permits on the development contemplated by the PDA, allows for a range of uses on the Mill Property, including but not limited to commercial, residential and mixed use development, utilities, parks, public trails and amenities, and public shoreline access and commercial waterfront uses.

F. The Parties have entered into separate agreements at Closing on their respective environmental obligations pertaining to: (1) the Landfill Property, referred to herein as the “Landfill and Environmental Indemnification Agreement” or “LEIA;” (2) the Simpson Pad, referred to herein at the “Simpson Pad Environmental and Indemnification Agreement;” and (3) the Former RR ROW and River Parcels, referred to herein at the “Former RR ROW and River Parcels Environmental and Indemnification Agreement.”

G. This Agreement sets forth the allocation of responsibilities agreed to between the Parties for environmental obligations with respect to the Mill Property.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.0 Notice and Environmental Testing on Mill Property

If OMH is required to conduct environmental testing to meet requirements of law, or if OMH encounters soil or other materials while on site that require environmental testing on the Mill Property, OMH shall conduct such testing, and shall promptly notify the City of such sampling, and provide the City with copies of the test results at the City’s request. If OMH determines that environmental testing is necessary for purposes of its development, or if a party other than OMH (e.g. lenders, contractors, equity partners) requests or requires environmental testing, then OMH shall provide prior notice to the City and will if practicable consult with the City in advance in formulating any sampling plan and provide a complete copy of the sampling plan prior to commencing sampling. OMH shall also provide the City with copies of the test results at the City’s request. If OMH otherwise desires to perform environmental testing, it will obtain the City’s prior approval.

2.0 Mill Property Subsurface Construction

OMH may conduct limited subsurface excavation and related work on the Eclipse Mill Property (“Mill Property”) as may be necessary and customary to trench for and construct utilities, footings and foundations in connection with OMH’s planned development of the Mill Property (“Limited Subsurface Work”) and shall consult with the City prior to submitting permit applications for the same. OMH’s performance of Limited Subsurface Work shall not affect the City’s Indemnification to OM in section 6.1. If OMH elects in its sole discretion to engage in additional subsurface work (“Expanded Subsurface Work”), OMH may do so and shall be responsible and indemnify and hold the City harmless for any such additional costs related to Hazardous Substances encountered in the course of any Expanded Subsurface Work.

3.0 Former BNSF Parcels within Mill Property and Wells

3.1 Management of Ballast on Former BNSF Property. To the extent the Parties have any obligations with respect to the management of Hazardous Substances on lots formerly

owned by BNSF but now encompassed within the Mill Property, such obligations shall be governed by Sections 1.1 and 1.2 of the "Former RR ROW and River Parcels Environmental Agreement," attached hereto as Exhibit D.

3.2 Groundwater Wells. Absent express agreement by the Parties, OMH and any OM Affiliated Entity shall not be obligated to design, construct, operate, or maintain any remediation systems pertaining to the Landfill Property on the Mill Property. The Parties will cooperate to request approval by the Washington Department of Ecology ("Ecology") to abandon existing background groundwater monitoring wells from the Mill Property, which will be at the City's cost. If Ecology seeks to locate new groundwater wells relating to the Landfill Property on the Mill Property, the Parties will cooperate to locate such wells, if needed, on a location other than the Mill Property, and the City will be responsible for such wells and their cost as provided in the LEIA.

4.0 Dispute Resolution

The Parties shall use the following dispute resolution process prior to commencement of any litigation to resolve disputes under this Agreement.

4.1 Project Managers (PMs). Each Party will designate a Project Manager ("PM") for purposes of this Agreement. The PM may be the same person designated as a PM under section 2 of EILA or the Party's representative on the Operating Committee established under section 19.11 of the PDA. In the event of a dispute under this Agreement, any Party may invoke this dispute resolution process by providing written notice to the other PM. The PMs will seek to resolve the dispute.

4.2 Senior Management Officials. If the PMs have not resolved the dispute within fifteen (15) days of receipt of the written notice, either PM may refer the dispute to one Senior Management Official for each of the Parties involved in the dispute by providing them with written notice. The PMs may be asked oral or written statements to identify issues and positions, and the PMs may each retain the services of consulting engineers or other experts to assist them. If the Senior Management Officials agree, they may jointly retain consulting engineers or other experts or facilitators to make recommendations to them and any costs shall be shared equally (50%/50%) between the City and the other Parties. If they do not agree, each Party may hire their own experts or facilitators.

4.3 Non-Binding Mediation Option. If the Senior Management Officials cannot reach agreement within fifteen (15) days of receipt of the written notice, they may initiate: (a) a ten (10) day cooling off period; and/or (b) voluntary non-binding mediation by a mutually agreed-upon mediator.

4.4 Decision Period. The Senior Management Officials will seek to resolve the dispute no later than sixty (60) days after initiating the cooling off period or mediation unless an earlier time is necessary for compliance with any other agreements among the Parties.

4.5 Judicial Remedies. If the Parties fail to resolve a dispute using the dispute resolution process in section 4, any Party to the dispute may seek to enforce this Agreement in

Snohomish County Superior Court under Washington law and procedure. Compliance with the dispute resolution process is a condition precedent to any lawsuit.

5.0 Insurance Requirements

5.1 OM Insurance. OM LLC and OMH hereby agree to obtain and maintain:

(a) Pollution liability insurance of not less than Twenty Million dollars per occurrence and Forty Million dollars in the aggregate for a 10-year term commencing not later than thirty (30) days after the Closing date with coverage for the Mill. After 10 years, OM LLC or its successor in interest (but not a homeowners association on the Mill Property) shall use commercially reasonable efforts to: (i) obtain not less than Ten Million dollars per occurrence/aggregate for a 5-year term for the Mill Property on terms at least comparable to the initial 10-year coverage, and (ii) name the City as an additional insured; and

(b) Construction pollution liability (“CPL”) insurance of not less than Ten Million dollars aggregate/per occurrence for any period of substantial subsurface construction work on the Mill Property, e.g. installation of plat utilities or road grading. This insurance requirement is not intended to apply to an owner’s association or to construction activities involving construction, maintenance, or repair of individual single family residences or accessory structures.

(c) The City shall at all times be provided with current copies of the above insurance policies, including the declarations page.

5.2 City Insurance. The City agrees to obtain and maintain:

(a) Pollution liability insurance of not less than Twenty Million dollars per occurrence and Forty Million dollars in the aggregate for a 10-year term commencing not later than thirty (30) days after the Closing date with coverage for the Mill Property; and

(b) Construction pollution liability (“CPL”) insurance of not less than Ten Million dollars aggregate/per occurrence for any period of substantial subsurface construction work on the Mill Property, e.g. installation of plat utilities or road grading. The City shall provide OM LLC and OMH with current copies of such CPL policies including the declarations page.

6.0 Indemnification

6.1 Indemnification by City. Except as provided in sections 6.2, 6.6, and 6.10, the City shall to the fullest extent permitted by law indemnify, defend, and hold harmless OM LLC and OMH, each member, manager, partner or shareholder, as the case may be, in or of OM LLC and OMH, and their respective officers, directors, managers, members, shareholders, partners, lenders, employees, agents and consultants, successors and assigns (“OM Indemnified Parties”) from and against any and all claims, liabilities, loss, demands, liens, costs and expenses including reasonable attorneys’ fees, agency orders, requirements or enforcement actions, suits and causes of action, and damages including but not limited to any claim for damage to property

or injury or death of any persons against OM Indemnified Parties (collectively, "Claims") pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance as defined herein that exists on the Mill Property as of the Closing Date or that has emanated or will emanate in the future from the Mill Property ("Existing Contamination"). Existing Contamination includes contamination that is both known and unknown as of the Closing Date. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. With respect to the City's indemnification obligation to OM Indemnified Parties, this includes, but is not limited to, the obligation of the City to remove, remediate, or take other action pertaining to Hazardous Substances that is required by any governmental agency or that is necessary given OMH's development of the Mill Property, as contemplated in the PDA.

6.2 Indemnification Not Apply. This indemnification by the City shall not cover or apply to the extent the Claims result from: (a) a New Release as defined in section 6.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties; or (c) discovery of Existing Contamination, if any, from Expanded Subsurface Work on the Mill Property as described in section 2.0 above.

6.3 New Release. A "New Release" is a release by OM Indemnified Parties on the Mill Property of an amount of a Hazardous Substance that is not already located in soil, groundwater, air or other environmental media on the Mill Property as of the date of this Agreement. A New Release shall not include disturbance or movement including migration of Existing Contamination if any that is associated with the development of the Mill Property; provided such disturbance does not cause a release that results from negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties.

6.4 City Obligations to BNSF. Without limiting the generality of the foregoing, the City acknowledges and affirms to OM LLC and OMH that the City's indemnification obligations under section 6.2 include, and the City shall retain all responsibility for "Grantee Environmental Obligations" as defined and described in that certain Quit Claim Deed dated as of August 23, 2006 and recorded under Snohomish County recording number 2006082506183, and that OMH shall assume no liability or responsibility of any kind whatsoever to BNSF in connection with the Grantee Environmental Obligations.

6.5 Indemnification by OM. Except as provided in section 6.6, OM LLC and OMH, with respect to the Mill Property shall to the fullest extent permitted by law indemnify, defend, and hold harmless the City and its employees, officers, managers, representatives, invitees, agents and consultants, successors and assigns ("City Indemnified Parties") from and against any and all Claims pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance, whether known or unknown, that exists on the Mill Property as of the Closing date or that will emanate in the future from the Mill Property to the extent the Claims result from: (a) a New Release as defined in section 6.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by the OM Indemnified Parties.

6.6 Consequential Damages. Neither the City's Indemnified Parties nor OM Indemnified Parties shall indemnify the other for first party Claims for consequential damages arising out of the obligation to comply with required remedial actions on the City Property. Nothing in the Agreement authorizes or limits third party Claims for consequential damages against any Party.

6.7 Concurrent Negligence. In the event of concurrent negligence, each Party shall to the extent permitted by law be responsible to third parties for its proportional share of fault, and shall indemnify the other Party for its share of any concurrent negligence.

6.8 Waiver. The indemnification obligations contained in this section 6 shall not be limited by any workers' compensation, benefits, or disability laws, and the Parties each hereby waive any immunity they may have under any workers' compensation, benefit, or disability laws.

6.9 Notice to Other Party. A Party shall promptly notify the other Party of the planned assertion of any Claim or the receipt of any Claim from a third party for which the Party seeks to be held harmless under this section 6. With respect to a Claim from a third party, this notice shall be made be not later than 30 days after the time the Party receives such Claim in writing. However, failure to provide such notice shall not modify the rights and obligations under sections 6.1-10. These time periods shall not apply to any matter involved in the dispute resolution under section 4.

6.10 OM Indemnified Parties. As used in this section 6, the term "OM Indemnified Parties" shall also extend to and include subsequent fee owners/developer/builders/contractors who acquire all or a material portion (not less than one acre) of the property described in attached Exhibit C; provided that such successor owners initially acquired their interest in the property for the purpose of developing or completing the development of such property. Successor owners who qualify as OM Indemnified Parties under this section shall indemnify the City under section 6.5 with respect to the property owned by such successors in interest. Except as provided above, such additional OM Indemnified Parties shall NOT include tenants, residential homeowners, homeowner associations, construction contractors or subcontractors, or other persons to whom OM LLC or its Affiliates convey any portion of the property described in attached Exhibit C.

7.0 Assignment and Release.

7.1 Assignment. Each Party may assign its rights and obligations under this Agreement pertaining to the Mill Property without the prior written consent of the other Party. The assignment shall not be effective until the City receives a written certificate of insurance documenting that the insurance meets the requirements of section 5. OMH may freely assign its rights hereunder without the prior consent of the City to any institutional lender for security purposes in connection with a loan, the proceeds of which shall be used in connection with development of the Mill Property or the City Property.

7.2 Release. OM LLC and OMH shall be released from any and all obligations under this Agreement at such time as: (1) OM LLC or OMH shall have received a Certificate of Partial

Completion for the Mill Property section 16.2.3 of the PDA; (2) an assignee or successor-in-interest provides written notice to the City by a representative authorized to do so that such assignee or successor assumes all rights and obligations under this Agreement, except as set forth herein; and (3) the City has received the insurance certificate required by section 5.1(c).

8.0 Miscellaneous

8.1 Expenses. Unless otherwise provided in this Agreement, each Party will perform its obligations under the Agreement at its own expense.

8.2 Stand-Alone Agreement; Relationship to PDA. This Agreement exists separate and apart from the PDA, and shall survive expiration of the PDA. To the extent there are inconsistencies between this Agreement and the PDA, the terms of this Agreement govern.

8.3 Entire Agreement and Amendment. This Agreement and the exhibits hereto constitute the final and complete agreement between the Parties with respect to the subject matter hereof and, except as expressly authorized herein, may not be modified or amended except by a written agreement executed by the Parties.

8.4 Captions. The captions of this Agreement are inserted solely for the convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term thereof.

8.5 Definitions and Usage. In this Agreement:

8.5.1 CAP/CD means the court-approved Consent Decree for the Landfill Site ("CD") entered into between the City and the Department of Ecology ("Ecology"), dated April 2, 2001, and includes all exhibits to the CD, including the the Cleanup Action Plan ("CAP"), as may be amended from time-to-time.

8.5.2 Hazardous Substance means (i) any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) as amended from time to time and regulations promulgated thereunder; (ii) any "hazardous substance" under the Washington Model Toxics Control Act (Ch. 70.105D RCW) as amended from time to time and regulations promulgated thereunder; (iii) any "hazardous substance" or "hazardous waste" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§ 9602 et seq.) as amended from time to time and regulations promulgated thereunder; (iv) any asbestos; (v) polychlorinated biphenyls; (vi) underground storage tanks, whether empty, filled or partially filled with any substance; (vii) any solid waste or solid waste decomposition products at the Landfill site; (viii) any substance the presence of which is prohibited by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions; and (ix) other substances deemed hazardous, toxic, a pollutant, or contaminant, which by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions require special handling or notification in its collection, storage, treatment or disposal.

8.5.4 Usage. The following terms have the following usage in this Agreement:

- a. "Days" means calendar days, excluding federal holidays, unless otherwise specified.
- b. "Including" means "including but not limited to."
- c. "Section" and "Exhibit" refer to the section (and all sections, subsections or paragraphs that are preceded by a letter or number in this Agreement) and exhibit of this Agreement, unless otherwise specified. Exhibits are part of and incorporated into this Agreement.

8.6 Successors. This Agreement shall be binding upon and inure to the benefit of each Party hereto, and its personal representatives, heirs, successors and assigns.

8.7 Legal Relationship. The Parties to this Agreement execute and implement this Agreement as separate entities. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

8.8 No Third Party Beneficiaries. This Agreement is intended for the benefit of OM LLC, OMH, and the City, and except as otherwise provided with regard to surviving obligations, no other person or entity shall be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against any Party.

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

8.10 Attorneys' Fees. In the event that any of the Parties brings an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief or for an alleged breach or default, the predominantly prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

8.11 Termination of Agreement. If the Parties do not close the transaction under the PDA, then all Parties' obligations under this Agreement shall terminate. If the City Property is reconveyed from OMH back to the City pursuant to the PDA, then OMH's obligations hereunder shall terminate with the exception of any indemnification obligations for Claims arising and asserted prior to the date of reconveyance only. This Agreement shall terminate on the fifteenth (15th) anniversary of its execution.

8.12 Waiver. Except as otherwise provided herein, no delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any obligation under this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term or condition of this Agreement.

8.13 Notices. Unless otherwise specified in this Agreement, any formal written notices required by this Agreement ("Notice") shall be given to the Project Managers at the addresses set forth below in the following manner: (a) hand delivered with an acknowledgement

of receipt noted; (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested; (c) facsimile transmission with confirmation page including receipt; or (d) sent by reputable overnight courier service, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by Notice to the other. The PMs shall update the contact information below by formal written Notice under this Agreement. Notices shall be deemed given when delivered; provided, however, that if any Notice shall also be sent by telecopy or fax machine, such Notice shall be deemed given at the time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered Notice. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

For the City of Everett:

Project Manager
Everett Riverfront Project
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

cc:

Director of Public Works
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

City Attorney's Office
City of Everett
2930 Wetmore Ave.
Everett, WA 98201
Phone: 425.257.8700
Fax: 425.257.8729

K&L Gates
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attn: Kenneth S. Weiner
Phone: 206.623.7580
Fax: 206.623.7022

For OM LLC and OMH:

Project Manager
Everett Riverfront Project
OliverMcMillan773 8th Avenue
San Diego, CA 92101
Attn: Charlie Hickcox
Phone: 619.321.1111
Fax: 619.321.1234

cc:

Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Attn: Gillis E. Reavis
Phone: 206.447.4400
Fax: 206.447.9700

8.14 Time. The Parties agree that time is of the essence in the performance of the provisions of this Agreement.

8.15 Counterparts; Facsimile Signatures. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

BY THE CITY:

CITY OF EVERETT, a Washington municipal corporation

By: _____
Ray Stephanson, Mayor

ATTEST:

By: _____
Sharon Marks, City Clerk

APPROVED AS TO FORM:

By: _____
_____, City Attorney

BY OLIVER MCMILLAN

OMH TRANSFER AGENT, LLC, a Delaware limited liability corporation

OLIVERMCMILLAN, LLC, a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBITS

- Exhibit A: Riverside Property Map
- Exhibit B: Property Map (City Property)
- Exhibit C: Mill Property
- Exhibit D: Sections 1.1 and 1.2 of the Former RR ROW and River Parcels agreement

PDA Amendment No. 3 – Exhibit G

**FORMER RR ROW AND RIVER PARCELS ENVIRONMENTAL AND
INDEMNIFICATION AGREEMENT**

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EXHIBITS

- Exhibit A: Riverside Property Map
- Exhibit B: Property Map (City Property)
- Exhibit C: Former RR ROW and River Parcels

FORMER RR ROW AND RIVER PARCELS ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT

This FORMER RR ROW AND RIVER PARCELS ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT (the "Agreement") is entered into as of the ____ day of _____, 2008 (the "Effective Date"), by and among the CITY OF EVERETT, a municipal corporation of the State of Washington (the "City"), OM EVERETT, INC. ("OME"), a Washington corporation, OMH TRANSFER AGENT, LLC, a Delaware limited liability company ("OMH"), and OLIVERMCMILLAN, LLC, a California limited liability company ("OM LLC"). The City, OME, and OMH are collectively referred to herein as the "Parties" and individually as a "Party".

RECITALS

A. The City is the owner of certain land located within the City of Everett, Snohomish County, Washington, adjacent to the Snohomish River and containing approximately 221 acres ("Riverfront Site"), as generally shown on the Riverfront Property Map in Exhibit A.

B. The City and Burlington Northern Santa Fe Railway Company ("BNSF") entered into a Property Exchange and Track Construction Agreement, dated August 15, 2006 ("City-BNSF Agreement"), whereby the City acquired certain property from BNSF ("Former BNSF Property"). OME and OMH are acquiring certain parcels of the Former BNSF Property from the City, as described herein.

C. The City BNSF Agreement includes certain obligations by the City and BNSF with respect to the Former BNSF Property. The Former BNSF Property is generally depicted and legally described in Exhibit A of the City-BNSF Agreement. Related mitigation and access easements are in Exhibits C and D of the City-BNSF Agreement.

D. The City and OM LLC entered into a Property Disposition Agreement, initially dated February 21, 2007, and thereafter amended ("PDA"), concerning the sale of a portion of the Riverfront Property to OM LLC and/or its affiliates including OME and OMH, referred to as the "City Property" shown on the attached Exhibit B.

E. The City Property includes: (1) development parcels used as a former landfill property, consisting of Lot 16 (sometimes referred to as development parcel A-2) and Lots 21-29 on the Property Map (the "Landfill Pad"); (2) adjacent development parcels to the north of 36th Street and the Landfill Property, previously owned by Eclipse Properties LLC, Newland Construction Co. Inc., and BNSF, consisting of Lot 32 north of 36th Street (32A) and Lots 39-45 on the Property Map (the "Mill Property"); (3) a development parcel adjacent to the Landfill Site on the south formerly owned by among others the Simpson Paper Company, consisting of Lot 13 on the Property Map (the "Simpson Pad"); (4) a portion of the Former BNSF Property, consisting of Lots 15, 19, 31, 32 south of 36th Street (32B), 33, and 36 on the Property Map ("Former RR ROW"), and (5) certain parcels located between the Former RR ROW and the Snohomish River, previously owned by Eclipse Properties LLC, BNSF, and Simpson Paper Company, consisting of Lots 35 and 37-38 on the Property Map ("River Parcels"). Each of these

areas is shown on the Riverfront Property Map in the attached Exhibit A, and the parcels within each of these areas are included in the legal description of the City Property in the attached Exhibit B. The Former RR ROW and River Parcels are described in attached Exhibit C and are the subject of this Agreement.

F. OME is an Affiliated Entity under the PDA and intends to purchase and develop the Landfill Property and the adjacent the Former RR ROW and the River Parcels. OMH is an Affiliated Entity under the PDA and intends to purchase and develop the Simpson Pad and the Mill Property and certain portions of the Former RR ROW and River Parcels. The term OM, as used herein shall mean OM Everett, Inc. with respect to any portion of the Former RR ROW that it owns or hereafter owns and shall mean OMH Transfer Agent, LLC with respect to any portion of the Former RR ROW that it owns or hereafter owns.

G. The development concept described in the PDA, and further described in the environmental impact statement on the Everett Riverfront Redevelopment (“Riverfront EIS”), the City’s comprehensive plan and zoning code, and development agreement and permits on the development contemplated by the PDA, allows for a range of uses within the Former RR ROW and River Parcels, including but not limited to utilities, monitoring wells and other environmental systems relating to the Landfill Property, public trails and amenities, and public shoreline access and commercial waterfront uses.

H. The Parties have entered into a separate agreement at Closing on their respective obligations pertaining to the Landfill Property, referred to herein as the “Landfill Environmental Indemnification and Agreement” or “LEIA.”

I. This Agreement sets forth the allocation of responsibilities agreed to between the Parties for environmental obligations with respect to the Former RR ROW and River Parcels.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.0 Responsibilities with regard to Former RR ROW Materials

1.1 City Obligation for BNSF Railroad Tracks. This section is the sole and exclusive section of this Agreement governing the City’s and OM’s management of the ballast on the former BNSF property (“former BNSF Ballast”) and rails, ties, soils or other materials on the former BNSF property not otherwise removed by BNSF (“former BNSF materials”).

a. If any former BNSF Ballast cannot legally or technically be reused on the City Property and cannot be disposed of at a facility within 20 miles of the property at the same cost as unrestricted soil or materials, the City shall at its option either remove and dispose of, or pay OM costs of managing, removing or disposing of, the Ballast.

b. If any former BNSF materials cannot legally or technically be reused on the City Property and cannot be disposed of at a facility within 20 miles of the property at the

same cost as unrestricted soil or materials, the City shall at its option either remove and dispose of, or pay OM incremental costs of managing, removing or disposing of, such material.

c. For purposes of this section 1.1, "incremental costs" includes all reasonable costs incurred and documented by OM that are in addition to the costs OM would have incurred had the soil or other materials not been contaminated with Hazardous Substances.

d. If the City chooses to perform the work under this section 1.1 rather than pay OM out-of-pocket costs plus a 15% administrative fee, the City shall complete such work so as not to delay OM construction activities on the City Property. The City and OM Project Managers designated under section 4 of this Agreement will identify the schedule needed to meet this requirement, which shall include start and completion dates, and key milestones. If the work is not timely performed, OM shall, in its sole discretion, have the option to perform all necessary remaining work and the City shall be obligated to pay OM costs including administrative fee as described in this section 1.1.d.

e. If the Parties agree the material can be used on the City Property and agree on its location, and if OM later decides to dig into the material, the City will not be obligated to indemnify OM for Claims under section 6.1 arising out of OM disturbance of the material, but the City's indemnity would apply to Claims pertaining to or arising out of the migration of the material not resulting from OM actions. With the exception of the foregoing sentence, nothing in this section 1.1 alters or affects any third party Claims under the indemnification provisions set forth in section 6.

f. Nothing in this section 1.1 modifies the City's commitment to OME, OMH and OM LLC to retain all responsibility for Grantee Environmental Obligations as defined and described in the Quit Claim Deed from BNSF to the City. OM LLC, OME and OMH do not assume any liability or responsibility of any kind in connection with the Grantee Environmental Obligations.

1.2 City Obligations to BNSF. The City acknowledges and affirms to OME, OMH, and OM LLC that the City's indemnification obligations under PDA section 11.2 include, and the City shall retain all responsibility for "Grantee Environmental Obligations" as defined and described in that certain Quit Claim Deed dated as of August 23, 2006 and recorded under Snohomish County recording number 2006082506183. OME, OMH and OM LLC shall not assume liability or responsibility of any kind whatsoever to BNSF in connection with the Grantee Environmental Obligations.

2.0 Bigelow Creek Covenant

Each Party agrees that the work it performs on the Former RR ROW or River Parcels shall be in compliance with the restrictive covenant dated September 29, 1995 and recorded under Snohomish County recording number 9509290128 (the "Drainage Course/Bigelow Creek Covenant"), located within Lots 14 and Lot 18 on Exhibit A, to the extent such covenant applies to the work.

3.0 Activities relating to the Landfill Property and CAP/CD

3.1 Groundwater wells. It is the Parties' intent that the existing compliance wells east of the Landfill Pad will not be relocated. However, if groundwater wells need to be modified or relocated for any reason, the City shall do so at its cost in a manner that is functionally and aesthetically compatible with OM's development.

3.2 Remedial Actions. To the extent the CAP/CD or LEIA require – or the Parties otherwise mutually agree – that any remedial action pertaining to the Landfill Property be performed in the Former RR ROW or River Parcels (including locating, operating or maintaining any remedial facilities on such property including groundwater monitoring wells), the Parties agree that section 3.1 above, the CAP/CD, and LEIA shall govern their rights and obligations solely for the performance of such remedial action. These rights and obligations include any easements for the operation and maintenance of landfill gas, leachate and groundwater monitoring systems (Exhibit G of LEIA and any superseding easements for such systems), other access to any such facilities (consistent with section 9 of LEIA), communications with Ecology (section 7 of LEIA), and oversight and dispute resolution with respect to such remedial actions (section 7 of LEIA). Each Party agrees that any work it performs shall be in compliance with its respective environment covenant recorded pursuant to the CAP/CD, to the extent such covenant applies to the work. Nothing in this Agreement shall impose on OM LLC or any Affiliated Entity any obligations with respect to the Landfill Property beyond those expressly stated in the CAP/CD and LEIA.

4.0 Dispute Resolution

The Parties shall use the following dispute resolution process prior to commencement of any litigation to resolve disputes under this Agreement.

4.1 Project Managers (PMs). Each Party will designate a Project Manager ("PM") for purposes of this Agreement. The PM may be the same person designated as a PM under section 2 of LEIA or the Party's representative on the Operating Committee established under section 19.11 of the PDA. In the event of a dispute under this Agreement, any Party may invoke this dispute resolution process by providing written notice to the other PM. The PMs will seek to resolve the dispute.

4.2 Senior Management Officials. If the PMs have not resolved the dispute within fifteen (15) days of receipt of the written notice, either PM may refer the dispute to one Senior Management Official for each of the Parties involved in the dispute by providing them with written notice. The PMs may be asked oral or written statements to identify issues and positions, and the PMs may each retain the services of consulting engineers or other experts to assist them. If the Senior Management Officials agree, they may jointly retain consulting engineers or other experts or facilitators to make recommendations to them and any costs shall be shared equally (50%/50%) between the City and the other Parties. If they do not agree, each Party may hire their own experts or facilitators.

4.3 Non-Binding Mediation Option. If the Senior Management Officials cannot reach agreement within fifteen (15) days of receipt of the written notice, they may initiate: (a) a

ten (10) day cooling off period; and/or (b) voluntary non-binding mediation by a mutually agreed-upon mediator.

4.4 Decision Period. The Senior Management Officials will seek to resolve the dispute no later than sixty (60) days after initiating the cooling off period or mediation unless an earlier time is necessary for compliance with any other agreements among the Parties, including the CAP/CD.

4.5 Relationship to CAP/CD. Nothing in section 4 supersedes any requirement in the CAP/CD. If at any time there appears to be an irreconcilable conflict between this section and the CAP/CD, the Parties will use their best efforts to revise all affected documents to utilize the dispute resolution process in this section or such other process as they mutually agree would be preferable.

4.6 Judicial Remedies. If the Parties fail to resolve a dispute using the dispute resolution process in section 4, any Party to the dispute may seek to enforce this Agreement in Snohomish County Superior Court under Washington law and procedure. Compliance with the dispute resolution process is a condition precedent to any lawsuit.

5.0 Insurance

The Parties hereby agree to obtain and maintain:

(a) Pollution liability insurance of not less than Twenty Million dollars per occurrence and Forty Million dollars in the aggregate for a 10-year term only commencing not later than thirty (30) days after the Closing date with coverage for the Former RR ROW and River Parcels; and

(b) Construction pollution liability ("CPL") insurance of not less than Ten Million dollars aggregate/per occurrence for any period of substantial construction work on the Former RR ROW and River Parcels. This insurance requirement is not intended to apply to an owner's association or to construction activities involving construction, maintenance, or repair of individual single family residences or accessory structures.

6.0 Indemnification

6.1 Indemnification by City. Except as provided in sections 6.2, 6.6, and 6.9, the City shall to the fullest extent permitted by law indemnify, defend, and hold harmless OME and OMH, each member, manager, partner or shareholder, as the case may be, in or of OME and OMH, and their respective officers, directors, managers, members, shareholders, partners, affiliates including but not limited to OM LLC, lenders, employees, agents and consultants, successors and assigns ("OM Indemnified Parties") from and against any and all claims, liabilities, loss, demands, liens, costs and expenses including reasonable attorneys' fees, agency orders, requirements or enforcement actions, suits and causes of action, and damages including but not limited to any claim for damage to property or injury or death of any persons against OM Indemnified Parties (collectively, "Claims") pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance as defined herein that exists on the Former RR ROW and River Parcels as of the Closing Date or that has emanated or will emanate

in the future from the Former RR ROW and River Parcels ("Existing Contamination"). Existing Contamination includes contamination that is both known and unknown as of the Closing Date. Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by the Parties. With respect to the City's indemnification obligation to OM Indemnified Parties, this includes, but is not limited to, the obligation of the City to remove, remediate, or take other action pertaining to Hazardous Substances that is required by any governmental agency or that is necessary given OME LLC's development of the Former RR ROW and River Parcels, as contemplated in the PDA.

6.2 Indemnification Not Apply. This indemnification by the City shall not cover or apply to the extent the Claims result from: (a) a New Release as defined in section 6.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties; or (c) actions or lack thereof by OM Indemnified Parties that are required (if any) or that do not conform to the requirements of the CAP/CD and environmental covenants thereunder; or (d) the presence, management, or disposal of Ballast or BNSF Materials to the extent covered by the provisions of section 1.1 above.

6.3 New Release. A "New Release" is a release by OM Indemnified Parties on the Former RR ROW and River Parcels of an amount of a Hazardous Substance that is not already located in soil, groundwater, air or other environmental media on the Former RR ROW and River Parcels as of the date of this Agreement. A New Release shall not include disturbance or movement including migration of Existing Contamination if any that is associated with the development of the Former RR ROW or River Parcels; provided such disturbance does not cause a release that results from negligent acts or omissions or willful misconduct after the Closing Date by OM Indemnified Parties.

6.4 Indemnification by OM. Except as provided in section 6.6, OM and OM LLC, with respect to the Former RR ROW and River Parcels shall to the fullest extent permitted by law indemnify, defend, and hold harmless the City and its employees, officers, managers, representatives, invitees, agents and consultants, successors and assigns ("City Indemnified Parties") from and against any and all Claims pertaining to or arising out of the past, present, or future release or potential release of any Hazardous Substance, whether known or unknown, that exists on the Former RR ROW and River Parcels as of the Closing date or that will emanate in the future from the Former RR ROW and River Parcels the extent the Claims result from: (a) a New Release as defined in section 6.3 of this Agreement; (b) negligent acts or omissions or willful misconduct after the Closing Date by the OM Indemnified Parties; or (c) actions or lack thereof by OM Indemnified Parties that are required by (if any) and do not conform to the requirements of any environmental covenant that may apply to the Former RR ROW and River Parcels; or (d) the presence, management or disposal of Ballast or BNSF Materials to the extent covered by the provisions of section 1.1.e above. This indemnification shall expressly not include Claims related to Hazardous Substances, if any, migrating onto the Former RR ROW and River Parcels from land owned by the City. This indemnification obligation shall not be or become the obligation of any residential homeowners or homeowner associations within the Former RR ROW or River Parcels.

6.5 Consequential Damages. Neither the City's Indemnified Parties nor OM Indemnified Parties shall indemnify the other for first party Claims for consequential damages arising out of the obligation to comply with required remedial actions on the City Property. Nothing in the Agreement authorizes or limits third party Claims for consequential damages against any Party.

6.6 Concurrent Negligence. In the event of concurrent negligence, each Party shall to the extent permitted by law be responsible to third parties for its proportional share of fault, and shall indemnify the other Party for its share of any concurrent negligence.

6.7 Waiver. The indemnification obligations contained in this section 6 shall not be limited by any workers' compensation, benefits, or disability laws, and the Parties each hereby waive any immunity they may have under any workers' compensation, benefit, or disability laws.

6.8 Notice to Other Party. A Party shall promptly notify the other Party of the planned assertion of any Claim or the receipt of any Claim from a third party for which the Party seeks to be held harmless under this section 6. With respect to a Claim from a third party, this notice shall be made be not later than 30 days after the time the Party receives such Claim in writing. However, failure to provide such notice shall not modify the rights and obligations under sections 6.1-9. These time periods shall not apply to any matter involved in the dispute resolution under section 4.

6.9 OM Indemnified Parties. As used in this section 6, the term "OM Indemnified Parties" shall also extend to and include subsequent fee owners/developers/builders/contractors who acquire all or a material portion (not less than one acre) of the property described in attached Exhibit C; provided that such successor owners initially acquired their interest in the property for the purpose of developing or completing the development of such property. Successor owners who qualify as OM Indemnified Parties under this section shall indemnify the City under section 6.4 with respect to the property owned by such successors in interest. Except as provided above, such additional OM Indemnified Parties shall NOT include tenants, residential homeowners, homeowner associations, construction contractors or subcontractors, or other persons to whom OM conveys any portion of the property described in attached Exhibit C.

7.0 Miscellaneous

7.1 Expenses. Unless otherwise provided in this Agreement, each Party will perform its obligations under the Agreement at its own expense.

7.2 Stand-Alone Agreement; Relationship to PDA. This Agreement exists separate and apart from the PDA, and shall survive expiration of the PDA. To the extent there are inconsistencies between this Agreement and the PDA, the terms of this Agreement govern.

7.3 Entire Agreement and Amendment. This Agreement and the exhibits hereto constitute the final and complete agreement between the Parties with respect to the subject matter hereof and, except as expressly authorized herein, may not be modified or amended except by a written agreement executed by the Parties.

7.4 Captions. The captions of this Agreement are inserted solely for the convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term thereof.

7.5 Definitions and Usage. In this Agreement:

7.5.1 CAP/CD means the court-approved Consent Decree for the Landfill Site (“CD”) entered into between the City and the Department of Ecology (“Ecology”), dated April 2, 2001, and includes all exhibits to the CD, including the Cleanup Action Plan (“CAP”), as modified by Amendment No. 1 to Consent Decree, dated April 23, 2008, by OME and the City.

7.5.2 Hazardous Substance means (i) any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) as amended from time to time and regulations promulgated thereunder; (ii) any “hazardous substance” under the Washington Model Toxics Control Act (Ch. 70.105D RCW) as amended from time to time and regulations promulgated thereunder; (iii) any “hazardous substance” or “hazardous waste” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§ 9602 et seq.) as amended from time to time and regulations promulgated thereunder; (iv) any asbestos; (v) polychlorinated biphenyls; (vi) underground storage tanks, whether empty, filled or partially filled with any substance; (vii) any solid waste or solid waste decomposition products at the Landfill site; (viii) any substance the presence of which is prohibited by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions; and (ix) other substances deemed hazardous, toxic, a pollutant, or contaminant, which by any federal, state, county, municipal or other local governmental statutes, regulations, ordinances or resolutions require special handling or notification in its collection, storage, treatment or disposal.

7.5.3 Usage. The following terms have the following usage in this Agreement:

a. “Days” means calendar days, excluding federal holidays, unless otherwise specified.

b. “Including” means “including but not limited to.”

c. “Section” and “Exhibit” refer to the section (and all sections, subsections or paragraphs that are preceded by a letter or number in this Agreement) and exhibit of this Agreement, unless otherwise specified. Exhibits are part of and incorporated into this Agreement.

7.6 Successors. This Agreement shall be binding upon and inure to the benefit of each Party hereto, and its personal representatives, heirs, successors and assigns, except as otherwise set forth herein.

7.7 Assignment. Any Party may assign its rights and obligations under this Agreement pertaining to the Former RR ROW and River Parcels without the prior written consent of the other Party, subject to reasonable advance written notification by the assigned Party to the other Parties with respect to transfers of interest for the portion of the property upon which the City’s wells or other remediation systems or remedial institutional controls are located.

OME and OMH may freely assign their rights hereunder without prior notification to or consent of the City to any institutional lender for security purposes in connection with a loan, the proceeds of which shall be used in connection with development of the Former RR ROW Parcels, River Parcels, or City Property.

7.8 Legal Relationship. The Parties to this Agreement execute and implement this Agreement as separate entities. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

7.9 No Third Party Beneficiaries. This Agreement is intended for the benefit of OME, OMH, OM LLC, and the City, and their respective successors and assigns as provided herein. Except as otherwise provided with regard to surviving obligations, no other person or entity shall be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against any Party.

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

7.11 Attorneys' Fees. In the event that any of the Parties brings an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief or for an alleged breach or default, the predominantly prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

7.12 Termination of Agreement. If the Parties do not close the transaction under the PDA, then all Parties' obligations under this Agreement shall terminate. If the City Property is reconveyed from OME back to the City pursuant to the PDA, then OME's obligations hereunder shall terminate with the exception of any indemnification obligations from Claims arising and asserted prior to the date of reconveyance. This Agreement shall terminate on the tenth anniversary of its execution.

7.13 Waiver. Except as otherwise provided herein, no delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any obligation under this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term or condition of this Agreement.

7.14 Notices. Unless otherwise specified in this Agreement, any formal written notices required by this Agreement ("Notice") shall be given to the Project Managers at the addresses set forth below in the following manner: (a) hand delivered with an acknowledgement of receipt noted; (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested; (c) facsimile transmission with confirmation page including receipt; or (d) sent by reputable overnight courier service, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by Notice to the other. The PMs shall update the contact information below by formal written Notice under this Agreement. Notices shall be deemed given when delivered; provided, however, that if any

Notice shall also be sent by telecopy or fax machine, such Notice shall be deemed given at the time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered Notice. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

For the City of Everett:

Project Manager
Everett Riverfront Project
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

cc:

Director of Public Works
City of Everett
3200 Cedar Street
Everett, WA 98201
Phone: 425.257.8800
Fax: 425.257.8882

City Attorney's Office
City of Everett
2930 Wetmore Ave.
Everett, WA 98201
Phone: 425.257.8700
Fax: 425.257.8729

K&L Gates
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attn: Kenneth S. Weiner
Phone: 206.623.7580
Fax: 206.623.7022

For OME, OMH, and OM LLC:

Project Manager
Everett Riverfront Project
OliverMcMillan773 8th Avenue
San Diego, CA 92101
Attn: Charlie Hickcox
Phone: 619.321.1111
Fax: 619.321.1234

cc:

Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Attn: Gillis E. Reavis
Phone: 206.447.4400
Fax: 206.447.9700

7.15 Counterparts; Facsimile Signatures. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

BY THE CITY:

CITY OF EVERETT, a Washington municipal corporation

By: _____
Ray Stephanson, Mayor

ATTEST:

By: _____
Sharon Marks, City Clerk

APPROVED AS TO FORM:

By: _____
_____, City Attorney

BY OLIVER MCMILLAN

OM EVERETT, INC., a Washington corporation

OLIVERMCMILLAN, LLC, a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

OM EVERETT, INC., a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Exhibits:

Exhibit A: Property Map

Exhibit B: City Property Map and Legal Description

Exhibit C: Former RR ROW and River Parcels Map and Legal Description