

ITEM No. 5b-ATTACH

DATE : MAY 11, 2010

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2010, by and between Ash Grove Cement Company, a Delaware corporation a ("Seller") and the **Port of Seattle**, a Washington municipal corporation ("Buyer"), with reference to the following facts:

A. The Buyer and City of Seattle Department of Transportation are co-leads in the East Marginal Way Grade Separation Project ("Project") to enhance freight connections that serve Harbor Island, West Seattle and the south Downtown industrial area. The Project will construct a new overpass to route traffic up and over the existing train tracks in that area. The elevated structure will connect three existing streets: South Spokane Street, Duwamish Avenue South and East Marginal Way.

B. The Project will also include minor improvements at existing street connections, realignment of a portion of South Spokane Street, and construction of a new at-grade roadway under and west of the to-be-constructed elevated structure for local access circulation. .

C. Once completed, the Project will benefit Buyer and the local economy within the Port district by improving freight mobility and access to and from local businesses, which include Buyer's tenants. The Project will also separate rail traffic from vehicle traffic by eliminating several busy crossings, to improve safety and relieve congestion.

D. Seller owns certain real property located at 3801 East Marginal Way South, Seattle, WA 981034, in King County, **Exhibit A**. A portion of Seller's property is necessary for the Project. That portion, which will hereafter be referred to as the Right-of-Way Property consists of approximately 1,832 square feet and is legally described in **Exhibit B** and depicted in **Exhibit C**.

E. Because possession of the Right-of-Way Property was immediately necessary for the Buyer to put the Project out to public bid, the Buyer and Seller executed a Possession and Use Agreement on July 7, 2009. Under the Possession and Use Agreement, the Seller granted to Buyer immediate possession and use of the Right-of-Way Property so that Buyer could proceed with the Project while questions concerning the impact of environmental issues on just compensation were being resolved.

F. Pursuant to the Possession and Use Agreement, Buyer issued a check in the amount of \$64,200.00 to Seller.

G. Since the execution of the Possession and Use Agreement and payment to Seller, the Buyer completed a Phase II Environmental Site Assessment for the Right-

of-Way Property. Low level TPH and other chemical contaminants were found in shallow soil. The Buyer's consultant deemed the detected concentration as too low to classify the soil as "Dangerous Waste" if excavated and disposed off-site. Based on the results of the Phase II ESA, Buyer determined that there was nothing out of the ordinary in the soil of the Right-of-Way Property and that the planned work for the Project could proceed with no special conditions for handling and disposal of materials removed from the Project site during the course of the Project, other than their disposal at a Subtitle D landfill.

H. In projects that involve the construction of overpasses as well as changes to the grade of existing streets, the project owner typically will have contractors excavate materials below the surface of the ground and replace those materials with crushed gravel that meet the standards for certification of soil stability. Thus, regardless of whether the soil materials contain low levels of contaminants or no contaminants, they require disposal. The Buyer has determined that the additional cost to disposal of certain materials at a Subtitle D landfill is likely to be minimal and should have little or no impact on the just compensation for the Right-of-Way Property. In making the determination, the Buyer has considered the cost of condemnation litigation in the event the parties cannot reach a negotiated agreement on just compensation and found that the potential cost of such litigation significantly outweighs any additional cost of disposal of certain materials at a Subtitle D landfill.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

1.1 Land. That certain real property located in Seattle, King County, Washington, consisting of approximately 1832 square feet of land and legally described on Exhibit A attached hereto;

1.2 Appurtenances. All rights, privileges and easements appurtenant to the Land (all of which are collectively referred to as the "Appurtenances");

1.3 Improvements. All improvements and fixtures, if any, located on the Land (all of which are hereinafter collectively referred to as the "Improvements").

All of the items described in **Paragraphs 1.1, 1.2 and 1.3** above are herein collectively referred to as the "Right-of-Way Property."

2. Purchase Price. The parties hereby acknowledge and agree that the Possession and Use Deposit in the amount of Sixty-Four Thousand Two Hundred

Dollars (\$64,200.00) previously paid by Buyer to Seller constitutes the full purchase price for the Right-of-Way Property.

3. Opening Escrow. Within five (5) business days following the execution date of this Agreement, Buyer shall open escrow with Chicago Title Insurance Company of Washington, Inc. (the "Escrow Agent"), by depositing with Escrow Agent a copy of this Agreement.

"Execution date" means the date on which the party that is the last to sign this Agreement has signed it.

4. Closing Date. The closing (the "Closing") shall be held at the offices of the Escrow Agent, on or before **June 30, 2010** (the "Closing Date") unless otherwise agreed in writing by the parties.

5. Title and Survey Matters.

5.1 Title Binder. Buyer has obtained a preliminary commitment and supplemental report for an ALTA owner's standard coverage title insurance policy (title order no.1242283, dated May 28, 2009, as supplemented), issued by Chicago Title Insurance Company ("Title Company") describing the Right-of-Way Property, showing all matters pertaining to the Right-of-Way Property and listing Buyer as the prospective named insured. Following the mutual execution of this Agreement, Buyer may obtain from Title Company at Buyer's sole cost additional written supplemental report to such preliminary commitment, in a form acceptable to Buyer, updating the preliminary commitment to the execution date of the Agreement. Such preliminary commitment, supplemental reports and true, correct and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Right-of-Way Property are collectively referred to herein as the "Title Binder."

5.2 Title Review. During the Contingency Period (as defined below), Buyer shall finish reviewing the Title Binder and any surveys of the Right-of-Way Property, and at least five (5) days before the expiration of the Contingency Period, Buyer shall notify Seller of what exceptions, to title, if any, will not be accepted by Buyer. If Buyer fails to give Seller such notice at least five (5) days before the expiration of the Contingency Period, Buyer shall be deemed to have accepted the title as is. Seller shall have two (2) days after receipt of Buyer's notice of objections to give Buyer notice of which exceptions, if any, Seller shall cause to be removed from title.

If Seller fails to give Buyer such notice before the expiration of the two (2)-day period, ("Seller's Notice Period") Seller shall be deemed to have elected not to cause such objectionable exceptions to be removed from title. If Seller gives notice that it will not remove any objectionable exception from title or shall be deemed to have elected not to cause such objectionable exceptions to be removed from title, Buyer may terminate the Agreement by giving written notice to Seller. Failure by Buyer to so terminate this Agreement before the expiration of Contingency Period, shall be deemed as Buyer's

election to proceed with this transaction. Encumbrances to be discharged by Seller may be paid out of the Purchase Price at Closing.

"Contingency Period" means the period starting on the date of execution of this Agreement and ending at 5:00 p.m. on the day which is two (2) business days before the Closing Date.

The following shall be deemed "Permitted Exceptions":

(a) A 2008 easement granted to the City of Seattle for an aerial overhang area (2,933 sf) in the Port of Lot 28, Block 378 of Seattle Tidelands, which lies within the Right-of-Way Property. It is acknowledged by the parties that the 2008 easement agreement also includes an easement for a utilities distribution area for a steel pole (378 sf), but that the latter area lies outside the Right-of-Way Property..

(b) Covenants encumbering the Right-of-Way Property, executed in favor of the City of Seattle, which were recorded in 2007 and 2008 under recording #s 20070806000208, 20081010000149, 20080317001626 and which bind owners, heirs, successors and assigns to accept the risks, duties and indemnification obligations imposed by the City because the Right-of-Way Property lies within a liquefaction-prone area. Buyer hereby acknowledges that Buyer is informed that the Right-of-Way Property lies in a liquefaction-prone area and informed of the risks associated with the Right-of-Way Property and development on said property. Buyer further acknowledges that Buyer has obtained copies of the above-referenced covenants.

(c) Any encumbrance which Buyer accepts or is deemed to accept under the above provisions of this **Paragraph 5.2**.

(d) The Possession and Use Agreement dated and effective July 7, 2009 (the "Possession and Use Agreement").

5.3 Title Policy. At Closing, Buyer shall cause Title Company to issue an Owner's standard coverage title insurance policy ("Title Policy") to Buyer, at Buyer's sole cost. The Title Policy shall insure Buyer against loss as a result of any liens, encumbrances, or restrictions, subject to the Permitted Exceptions. The Title Policy shall insure fee simple, indefeasible title to the Right-of-Way Property in Buyer, subject only to the Permitted Exceptions and contain endorsements as Buyer may reasonably require. Buyer may elect to obtain an extended form of title insurance policy from the Title Company, in which case Buyer shall pay the extra premium for such extended coverage. Buyer's obligation to close this transaction shall be contingent on the issuance of the Title Policy required under this **Paragraph 5**.

6. Conditions to Buyer's Obligations.

6.2 Inspection of the Property. Buyer acknowledges that its employees, representatives, consultants and/or agents have inspected and completed environmental due diligence with respect to the Right-of-Way Property.

6.3 Additional Closing Conditions. Buyer's obligation to purchase the Right-of-Way Property shall also be subject to the following conditions that must be satisfied as of the Closing Date:

(i) Prior to Closing, all Contracts (as defined below), if any, with respect to the Property shall be terminated in writing.

(ii) All representations and warranties of Seller contained herein shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iii) Seller shall have performed all obligations to be performed by it hereunder on or before the Closing Date (or, if earlier, on or before the date set forth in this Agreement for such performance);

(iv) Buyer, with cooperation of Seller, shall have submitted an application to the City of Seattle for a lot boundary adjustment and obtained the City's approval of same;

(v) At Closing, title to the Right-of-Way Property shall be in the condition required by Paragraph 5 of this Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

If the conditions set forth in this **Paragraph 6** are not satisfied as of Closing and Buyer does not waive the same, Buyer may terminate this Agreement, and thereafter neither Buyer nor Seller shall have any further liability to the other under this Agreement.

7. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

7.1 Title. Seller was the sole owner of the Right-of-Way Property prior the effective date of the Possession and Use Agreement (i.e., July 7, 2009). At Closing, Buyer will acquire the entire fee simple estate and right, title and interest in and to the Right-of-Way Property via Seller's special warranty deed in substantially the same form as attached hereto.

7.2 Compliance with Law. To the best of Seller's knowledge, during the period Seller controlled the Right-of-Way Property and prior to Buyer assuming

control under the parties' Possession and Use Agreement (i.e., prior to July 7, 2009), the Right-of-Way Property complied in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Right-of-Way Property. Seller has no actual knowledge of any facts that might give rise to any violation of the foregoing matters.

7.3 Bankruptcy. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Right-of-Way Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

7.4 Taxes and Assessments. [NOT USED]

7.5 Foreign Person. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

7.6 Tax Returns. Seller has filed all local, state and federal tax forms that are required to be filed by Seller with respect to the Right-of-Way Property, has paid or made provision for payment of all taxes due and payable by Seller to date and will pay all such taxes that become due and payable by Seller prior to the Closing.

7.7 Mechanics' Liens. No labor, material or services have been furnished in, on or about the Right-of-Way Property or any part thereof as a result of which any mechanics', laborer's or materialmen's liens or claims might arise during the period of Seller's possession and control of the Right-of-Way Property.

7.8 Leases and Other Agreements. Except as specifically disclosed by Seller pursuant to this Agreement, Seller represents that there are no leases, service agreements, licenses, easements, option agreements or other contracts (whether oral or writing) (collectively, "Contracts") in effect with respect to the Right-of-Way Property. Seller further represents that there are no disputes or claims, or any set of facts known to Seller that could lead to a dispute or a claim, under any Contracts. Seller shall comply with the requirements of Section 6.3(i) with respect to any and all Contracts prior to Closing.

7.9 Assumption of Liabilities. Buyer, by virtue of the purchase of the Right-of-Way Property, will not be required to satisfy any obligations and liabilities arising out of or by virtue of the Seller's ownership, possession or use of the Right-of-Way Property prior to (a) the effective date of the parties' Possession and Use Agreement and (b) the Closing Date and Seller shall indemnify, defend and hold Buyer harmless therefrom. However, Buyer, will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of Buyer's possession, ownership or use of the Right-of-Way Property from the effective date of the parties' Possession and Use

Agreement through and after the Closing Date, and shall indemnify, defend and hold Seller harmless therefrom.

7.10 Defaults. Seller is not in default and there has occurred no uncured event which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Right-of-Way Property.

7.11 Litigation. Other than the Lower Duwamish Waterway Super Fund site matter, there is no litigation or threatened litigation which could now or in the future in any way constitute a lien, claim, or obligation of any kind on the Right-of-Way Property, affect the use, ownership or operation of the Right-of-Way Property or otherwise adversely affect the Right-of-Way Property. For purposes of this **Paragraph 7.11**, litigation includes lawsuits, actions, administrative proceedings, governmental investigations and all other proceedings before any tribunal having jurisdiction over the Right-of-Way Property.

7.12 Due Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligation hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligation enforceable against Seller in accordance with its terms. The consummation by Seller of the sale of the Right-of-Way Property is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

7.13 Finders' or Brokers' Fees. Seller has not dealt with any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement and insofar as it knows, no broker or other person is entitled to any commission, charge or finder's fee in connection with the transactions contemplated by this Agreement.

7.14 No Omissions. All representations and warranties made by Seller in this Agreement, and all information contained in any certificate furnished by Seller to Purchaser in connection with this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

8. Covenants of Seller. Seller covenants and agrees as follows:

8.1 Perform Obligations. [NOT USED]

8.2 No Liens. From the date of this Agreement to the Closing Date, Seller will not allow any lien to attach to the Right-of-Way Property, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Right-of-Way Property or any part thereof without Buyer's written consent first having been obtained.

8.3 Provide Further Information. From the date of this Agreement to the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware which materially affects the Right-of-Way Property or any part thereof promptly upon learning of the occurrence of such event.

9. Closing.

9.1 Time and Place. Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in **Paragraph 4** of this Agreement.

9.2 Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to, the payment to Seller of any of the Purchase Price, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Special Warranty Deed.** A special warranty deed ("Deed") in recordable form and otherwise substantially in form as the sample attached hereto as Exhibit D as will convey to Buyer fee simple title at Closing.

(ii) **Title Documents.** Such other documents, including, without limitation, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by the Title Company as a condition to its insuring Buyer's good and marketable fee simple title to the Right-of-Way Property free of any exceptions, other than the Permitted Exceptions.

(iii) **Authority.** Such evidence as the Title Company shall require as to authority of Seller to convey the Right-of-Way Property to Buyer.

9.3 Documents to be Delivered by Buyer. For and in consideration of, and as a condition precedent to, Seller's conveyance of the Property, Buyer shall deliver to Seller at Closing the following documents:

(i) **Authority.** Such evidence as the Title Company shall require as to authority of Buyer to purchase the Right-of-Way Property from Seller.

9.5 Payment of Costs by Buyer. At Closing, Buyer shall pay the premium for the Owner's Title Policy to be issued by Title Company to Buyer, the fee to record the Deed, and closing costs, including the escrow fee. With respect to any and all other costs incurred with respect to the consummation of the purchase and sale of the Right-of-Way Property, Seller and Buyer shall pay their own respective costs. Seller acknowledges that this transaction is subject to real estate excise tax from which the Seller does not appear to be exempt under Chapter 82.45 RCW and Chapter 458-61A WAC.

9.6 Assessments. Seller shall pay in full any assessments due or to become due with respect to the Right-of-Way Property for the period up to July 7, 2009.

9.7 Monetary Liens. Seller shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to the Right-of-Way Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements to the extent arising out of Seller's acts prior to Closing but not due to Buyer's acts from July 7, 2009 through Closing.

9.8 Possession. The parties acknowledge the Seller previously granted to Buyer possession of the Right-of-Way Property. If any personal property remains on the Right-of-Way Property at Closing, then Buyer may remove all such personal property, except as otherwise permitted under the Lease.

10. Buyer's Representations and Warranties. Buyer hereby makes the following representations and warranties, which representations and warranties shall be deemed made by Buyer to Seller also as of the Closing Date:

10.1 Due Authority. Buyer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligation hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Buyer and constitute Buyer's legal, valid and binding obligation enforceable against Buyer in accordance with its terms. The consummation by Buyer of the purchase of the Right-of-Way Property is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Buyer is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental

authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

10.2 Finders' or Brokers' Fees. Buyer has not dealt with any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement and insofar as it knows, no broker or other person is entitled to any commission, charge or finder's fee in connection with the transactions contemplated by this Agreement.

11. Sale of Property "As Is." Having fully inspected the Right-of-Way Property, and having had the opportunity to obtain the report of professionals, Buyer agrees to accept the Right-of-Way Property "As Is" with any and all defects, and assumes the risk of any and all defects in the condition of the Right-of-Way Property. Buyer acknowledges and agrees that Seller makes no representations or warranties of any kind concerning the Right-of-Way Property (including the Right-of-Way Property's condition or suitability for Buyer's intended use), except as specifically set forth in Section 7.

12. Conditions to Seller's Obligations.

12.1 Seller's obligation to sell the Right-of-Way Property to Buyer shall be subject to the following conditions that must be satisfied by the end of the Contingency Period:

(v) Buyer and Seller have agreed on the form of the Deed (see Exhibit D).

12.2 Seller's obligation to sell the Right-of-Way Property to Buyer shall be subject to further conditions that must be satisfied at Closing:

(i) Buyer pays the fee to record the Deed, and the escrow fee.

(ii) Buyer delivers any other costs required by the terms of this Agreement to be paid by or delivered by Buyer.

(iii) Seller shall have performed all obligations to be performed by it hereunder on or before the Closing Date (or, if earlier, on or before the date set forth in this Agreement for such performance)

If any of the conditions set forth in this **Paragraph 12.2** are not satisfied as of Closing and Seller does not waive the same, Seller may terminate this Agreement, and

thereafter neither Buyer nor Seller shall have any further liability to the other under this Agreement.

13. Indemnification. Seller shall protect, and pay the defense costs of, indemnify and hold Buyer and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty, covenant or other agreement of Seller set forth in this Agreement; or (b) the failure of Seller to perform any obligation required by this Agreement to be performed by Seller.

Buyer shall pay, protect, and pay the defense costs of, indemnify and hold Seller and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty, covenant or other agreement of Buyer set forth in this Agreement; or (b) the failure of Buyer to perform any obligation required by this Agreement to be performed by Buyer.

14. Condemnation. In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively "Condemnation") respecting the Right-of-Way Property or any portion thereof, on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Right-of-Way Property. If Buyer terminates this Agreement neither Buyer nor Seller shall have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Seller shall, at the Closing,, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to any Condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such Condemnation respecting the Right-of-Way Property.

15. Casualty. If any fire, windstorm or casualty occurs and materially affects all or any portion of the Right-of-Way Property on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement under this **Paragraph 15**, neither Buyer nor Seller have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, the Purchase Price shall be reduced by the amount of loss or damage occasioned by such casualty not covered by insurance, and Seller shall, at the Closing, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to all insurance claims and proceeds to which Seller

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

17. Event of Default. In the event of a default under this Agreement by either party (including a breach of any representation, warranty or covenant set forth herein), the injured party shall be entitled, in addition to all other remedies at law or equity, to seek monetary damages and specific performance of the defaulting party's obligations hereunder.

18. Miscellaneous.

18.1 Applicable Law. This Agreement shall in all respects, be governed by the laws of the State of Washington.

18.2 Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the parties hereto.

18.3 Modification or Amendment, Waivers. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

18.4 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

18.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

18.6 Attorneys' Fees. Should either party bring suit to enforce this Agreement, each party will pay its own attorneys' fees, costs and expenses.

18.7 Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of

this Agreement is not a business day, the action shall be taken on the next succeeding business day.

18.8 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or 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 held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.9 Survival. The covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

18.10 Time. Time is of the essence of every provision of this Agreement.

18.11 Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

18.12 Waiver; Succession. The waiver by Seller or Buyer of any covenant, condition or agreement herein contained shall not vitiate the same or any other covenant, condition or agreement contained herein and the terms, conditions, covenants and agreements contained herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

18.13 Recording. The parties hereto agree that the Deed and all other documents necessary to convey title to the Right-of-Way Property from Seller to Buyer shall be recorded in the records of King County by the Escrow Agent on the Closing Date.

SELLER:

Ash Grove Cement Company, a
Delaware corporation

By *Eileen Fleish*

Vice President

Date: 1-15, 2010

BUYER:

PORT OF SEATTLE, a Washington
municipal corporation

By ~~Charles Sheldon~~ *Linda Styrk*
Managing Director, Seaport

Date: _____, 2010

STATE OF WASHINGTON)

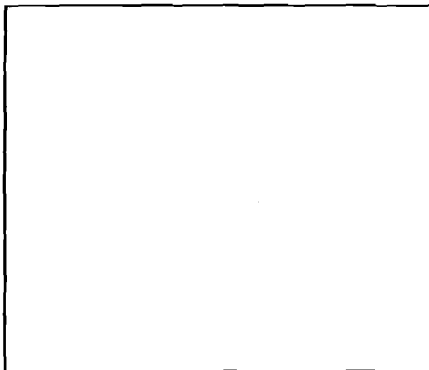
) ss.

COUNTY OF KING)

Linda Styrk

I certify that I know or have satisfactory evidence that ~~Charles Sheldon~~ 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 Managing Director, Seaport Division of the Port of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name _____

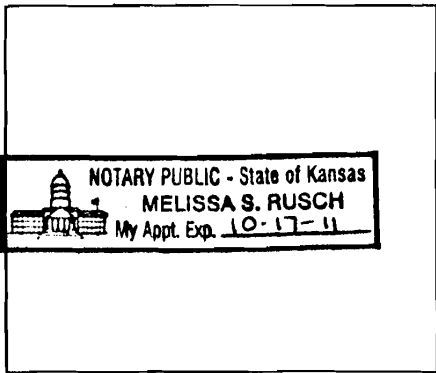
My commission expires _____

(Use this space for notary stamp/seal)

STATE OF WASHINGTON)
Kansas) ss.
COUNTY OF KING)
Johnson

I certify that I know or have satisfactory evidence that Eileen Flink is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a Vice President of Ash Grove Cement Company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Jan. 15, 2010



(Use this space for notary stamp/seal)

Melissa S Rusch
Notary Public
Print Name MELISSA S RUSCH
My commission expires 10-17-11

EXHIBIT A

Legal Description of Ash Grove Cement Company Property

[See attached]

LAND DESCRIPTION - EXISTING

KING COUNTY PARCEL NO. 766670-0350

(PER TITLE REPORT BY CHICAGO TITLE INSURANCE COMPANY, ORDER NO. 1242283, DATED JUNE 27, 2007)

CREATED LOT B IN CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 8806165, ACCORDING TO THE SURVEY UNDER RECORDING NO. 8903130351 IN KING COUNTY, WASHINGTON

MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING ON THE SOUTH LINE OF LOT 19, BLOCK 378, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, AT A POINT 30.00 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT, SAID POINT BEING ON THE WESTERLY LINE OF EAST MARGINAL WAY AS ESTABLISHED UNDER CITY OF SEATTLE ORDINANCE NO. 32881, THENCE WESTERLY ALONG THE NORTH LINE OF VACATED WEST DAKOTA STREET TO THE SOUTHWEST CORNER OF LOT 24, BLOCK 387, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON; THENCE NORTHEASTERLY ALONG THE WESTERLY LINE OF SAID BLOCK 387 TO THE NORTHWEST CORNER OF LOT 15, SAID BLOCK 387, THENCE EAST 1376.477 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF LOT 28, BLOCK 378, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 28, A DISTANCE OF 57.586 FEET, MORE OR LESS, TO THE WEST LINE OF EAST MARGINAL WAY AS ESTABLISHED UNDER ORDINANCE NO. 32881; THENCE SOUTH ON SAID WEST LINE 546.56 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TOGETHER WITH THE NORTH ONE-HALF OF THAT PORTION OF WEST DAKOTA STREET BOUNDED ON THE EAST BY THE WESTERLY LINE OF EAST MARGINAL WAY AS ESTABLISHED UNDER ORDINANCE NO. 32881, AND ON THE WEST BY THE CENTERLINE OF 8TH AVENUE SOUTHWEST (HERETOFORE VACATED) AND ALL OF THE PORTION OF WEST DAKOTA STREET BOUNDED ON THE EAST BY THE CENTERLINE OF 8TH AVENUE SOUTHWEST (HERETOFORE VACATED) AND ON THE WEST BY THE WEST LINE OF LOT 24, BLOCK 387, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, PRODUCED SOUTH TO THE NORTHWEST CORNER OF LOT 1, CALHOUN, DENNY & EWING'S REPLAT OF BLOCK 388, SEATTLE TIDE LANDS, ACCORDING TO THE PLAT RECORDED IN VOLUME 12 OF PLATS, PAGE 92, IN KING COUNTY, WASHINGTON; SAID DESCRIBED PORTIONS OF WEST DAKOTA STREET HAVING HERETOFORE BEEN VACATED BY ORDINANCE NO. 80964 OF THE CITY OF SEATTLE.

TOGETHER WITH LOTS 1, 2, 47 AND 48, CALHOUN, DENNY & EWING'S REPLAT OF BLOCK 388, SEATTLE TIDE LANDS, ACCORDING TO THE PLAT RECORDED IN VOLUME 12 OF PLATS, PAGE 92, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THE WEST HALF OF 8TH AVENUE SOUTHWEST ADJOINING SAID LOT 47 AND 48 AND THAT PORTION OF 9TH AVENUE SOUTHWEST BOUNDED ON THE NORTH BY SOUTH LINE OF WEST DAKOTA STREET AND ON THE SOUTH BY THE SOUTH LINE OF SAID LOT 2 PRODUCED EAST TO THE SOUTHWEST CORNER OF SAID LOT 47, SAID DESCRIBED PORTIONS OF 8TH AVENUE SOUTHWEST AND 9TH AVENUE SOUTHWEST, HAVING HERETOFORE BEEN VACATED BY ORDINANCE NO. 76243 OF THE CITY OF SEATTLE.

TOGETHER WITH THOSE PORTIONS OF LOTS 3, 4, AND 46, CALHOUN, DENNY & EWING'S REPLAT OF BLOCK 388 SEATTLE TIDE LANDS AND VACATED 9TH AVENUE SOUTHWEST DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 46 DISTANT 34.35 FEET WEST FROM THE EAST LINE THEREOF, AS ESTABLISHED BY SAID REPLAT; PROCEED WEST ALONG SAID NORTH LINE AND AS PRODUCED WEST A DISTANCE OF 330.25 FEET TO THE EAST LINE OF THE EAST WATERWAY, THENCE SOUTH 8°23'41" WEST ALONG SAID EAST LINE A DISTANCE OF 62.50 FEET TO A POINT DISTANT 1.83 FEET SOUTH OF THE NORTH LINE OF SAID LOT 4, MEASURED AT RIGHT ANGLES THEREFROM, THENCE EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 117.50 FEET; THENCE NORTH 74°25'42" EAST A DISTANCE OF 230.33 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1 BY DEED RECORDED UNDER AUDITOR'S FILE NO. 4861150

AND EXCEPT THOSE PORTIONS OF LOTS 19 AND 20, BLOCK 3/9, SEATTLE TIDE LANDS AND THE NORTH HALF OF VACATED SOUTH DAKOTA STREET DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF VACATED SOUTH DAKOTA STREET AND THE WEST MARGIN OF WEST MARGINAL WAY SOUTH, BEING THE WESTERLY LINE OF THAT CERTAIN PARCEL OF REAL PROPERTY CONVEYED TO THE STATE OF WASHINGTON UNDER RECORDER FILE NO. 4861150, RECORDS OF KING COUNTY, FOR STATE HIGHWAY NO. 1; PROCEED NORTH 6°36'17" WEST ALONG SAID WEST MARGIN A DISTANCE OF 151.53 FEET; THENCE SOUTH 28°23'23" WEST A DISTANCE OF 42.97 FEET; THENCE NORTH 63°36'37" WEST A DISTANCE OF 3.5 FEET TO THE SOUTHEASTERLY EDGE OF A CONCRETE WALL FOOTING; THENCE ALONG SAID FOOTING EDGE AND EDGE OF CONCRETE ENTRY ROAD THE FOLLOWING FOUR COURSES AND DISTANCES, SOUTH 26°23'23" WEST 30.73 FEET, SOUTH 39°39'56" WEST 56.82 FEET, SOUTH 56°31'11" WEST 55.36 FEET AND SOUTH 72°52'08" WEST 39.93 FEET TO AN INTERSECTION WITH THE CENTER LINE OF SAID DAKOTA STREET; THENCE EAST TO AN INTERSECTION WITH THE CENTER LINE OF SAID DAKOTA STREET; THENCE EAST ALONG SAID CENTER LINE A DISTANCE OF 173.92 FEET TO THE POINT OF BEGINNING.

ALL BEARINGS ARE PER PLAT OF SEATTLE TIDE LANDS.

EXHIBIT B

Legal Description of Right-of-Way Property/Fee Acquisition

[See attached]

FEE ACQUISITION DESCRIPTION

THAT PORTION OF CREATED LOT B IN CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO 8806165, ACCORDING TO THE SURVEY UNDER RECORDING NO 8903130351 IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHEAST CORNER OF SAID CREATED LOT B, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 28, BLOCK 378, SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, SAID CORNER ALSO SITUATED ON THE SOUTHWESTERLY MARGIN OF DUWAMISH AVE S. HAVING A HALF WIDTH OF 45 FEET;

THENCE SOUTH 39°53'59" EAST, ALONG SAID MARGIN 24.22 FEET TO THE WESTERLY MARGIN OF EAST MARGINAL WAY S AS ESTABLISHED FOR PRIMARY STATE HIGHWAY NO 1, BY DEED FILED UNDER AUDITOR'S FILE NO 4861150, RECORDS OF KING COUNTY, WASHINGTON;

THENCE SOUTH 01°08'43" WEST, ALONG SAID WESTERLY MARGIN 120.38 FEET;

THENCE NORTH 88°50'05" WEST, 0.43 FEET;

THENCE NORTH 01°08'36" EAST, 29.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 192.50 FEET, WHOSE CENTER BEARS NORTH 87°00'12" EAST, THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°00'54", A DISTANCE OF 13.49 FEET;

THENCE SOUTH 83°17'10" WEST, 2.42 FEET;

THENCE NORTH 08°47'05" WEST, 4.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 190.00 FEET, WHOSE CENTER BEARS NORTH 81°46'42" EAST; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°48'39" A DISTANCE OF 102.17 FEET TO THE NORTH LINE OF SAID CREATED LOT B;

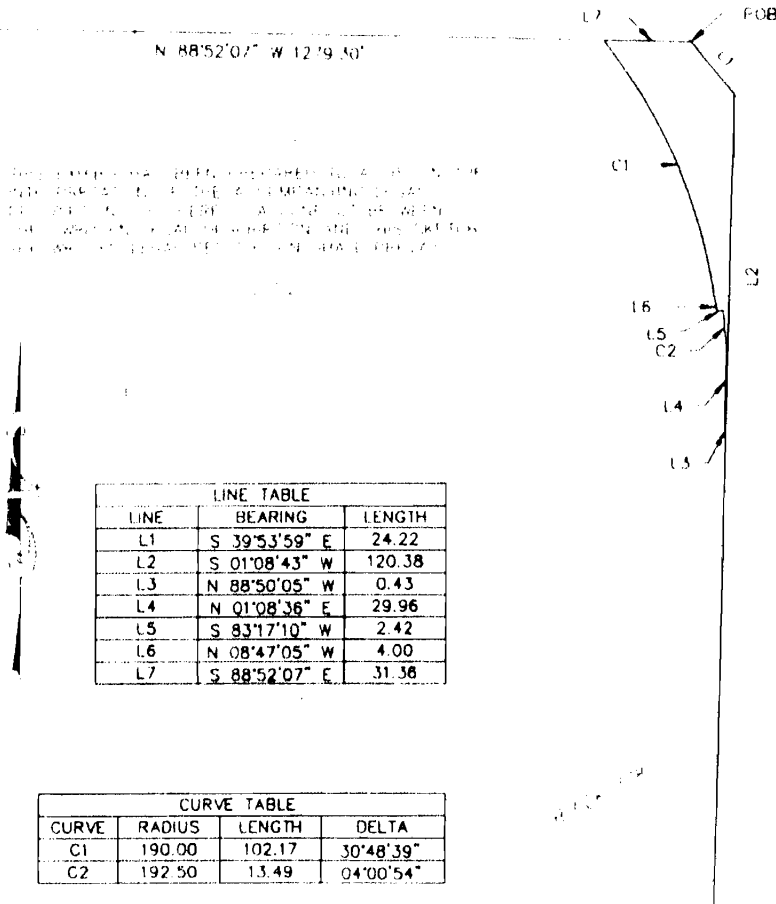
THENCE SOUTH 88°52'07" EAST ALONG SAID NORTH LINE 31.36 FEET TO THE POINT OF BEGINNING.

SAID DESCRIPTION CONTAINS 1,831.57 SQ. FT +/-, 0.04 AC.



EXHIBIT C

NE1/4, NW1/4, SE1/4, SW1/4 SECT 18, T 24 N, R 4 E, WM



LINE TABLE		
LINE	BEARING	LENGTH
L1	S 39°53'59" E	24.22
L2	S 01°08'43" W	120.38
L3	N 88°50'05" W	0.43
L4	N 01°08'36" E	29.96
L5	S 83°17'10" W	2.42
L6	N 08°47'05" W	4.00
L7	S 88°52'07" E	31.38

CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	190.00	102.17	30°48'39"
C2	192.50	13.49	04°00'54"



Engineers
PACIFIC PAPER
1412 117TH AVENUE NE, STE 100
WILSON, WASHINGTON 98094
425.486.7122

SEATTLE DEPT. OF TRANS.

KING COUNTY, WASHINGTON

FEE ACQUISITION EXHIBIT

WA06.033 MOI 22

DATE 05 05 08

SHEET NO

1

INSERT EX. D

SPECIAL WARRANTY DEED

EXHIBIT D

[This space reserved for recorder's use:

When recorded return to: Name _____
Address _____ City, State, _____
Zip _____

Special Warranty Deed

The Grantor _____ for and
in consideration of _____ dollars
(\$ _____), in hand paid, grant, bargain, sell, convey, and confirm to

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

Grantor for _____ and for _____
successors in interest do by these presents expressly limit the covenants of the deed to those
herein expressed, and exclude all covenants arising or to arise by statutory or other implication,
and do hereby covenant that against all persons whomsoever lawfully claiming or to claim by,
through or under said Grantor and not otherwise, _____ will
forever warrant and defend the said described real estate. Dated

_____, 19 _____

(Individual)
By _____
(Individual) (President) By _____ (Secretary)

State of Washington State of Washington
County of _____ County of _____

On this day personally appeared before me On this _____ day of

_____, 19 _____ before me, the
to me known to be the individual described undersigned, a Notary Public in and for
in and who executed the within and fore- the State of Washington, duly commission-
going instrument, and acknowledged that ed and sworn, personally appeared

signed the same as _____
and

free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal _____
to me know to be the _____ President
and _____ Secretary, respectively, of

this _____ day of _____,
19 _____
_____ the corporation that executed the foregoing

EXHIBIT D

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

instrument, and acknowledged the said
instrument to be the free and voluntary act
and deed of said corporation, for the uses
and purposes therein mentioned, and on
oath stated that

authorized to execute the said instrument and that
the seal affixed is the corporate seal of
said corporation.

Witness my hand and official seal
hereto affixed the day and year first
above written.

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