

Agreement Transferring Port's Right to Reduced-Cost Street Vacation

This **Transfer Agreement** is made this ___ day of _____, 2011, between the **Port of Seattle**, a Washington municipal corporation (the "Port") and **General Recycling of Washington, LLC**, a Delaware limited liability company ("GRW").

RECITALS

- 1. Whereas**, this Transfer Agreement does not involve a real estate transaction and is not subject to the Port's real estate policies or requirement for surplusings or appraisal.
- 2. Whereas**, this Transfer Agreement is a unique contract that is better understood in its historical context.
- 3. Whereas**, the recitals that follow provide such historical context.
- 4. Whereas**, there exists between the Port and the City of Seattle (the "City") the West Seattle Freeway Bridge Interlocal Agreement dated July 7, 1980 whereby the Port agreed to convey \$10 Million in cash as well as land and easements valued at \$1.3 Million to the City to provide much needed capital for the City's construction of the West Seattle Bridge.
- 5. Whereas**, under the 1980 agreement, to provide consideration for the Port's contribution, the City agreed that when the Port applies for vacation of certain identified city streets, as long as the City Council decides to grant the street vacation, compensation for fair market value of the vacated area ordinarily due to the City is waived.
- 6. Whereas**, in Section D and Exhibit D to the 1980 agreement, the Port and City identified certain street areas adjacent to then-Port-owned property at former Terminal 105. The street areas depicted in Exhibit D to the 1980 agreement included SW Dakota Street, a portion of SW Iowa Street/West Marginal Way, and SW Idaho Street.
- 7. Whereas**, at Section H, the 1980 agreement also provided that any additional street vacation requested by the Port during the term of that agreement would be processed on an expedited basis and that if the vacation is granted by the City Council, the vacation would be accomplished at "no cost to the Port other than administrative costs incurred in processing petitions."
- 8. Whereas**, the 1980 agreement failed to state the end date for duration of its term; the agreement has been treated by the Port and the City as effective until the vacation of streets at Terminal 105, Terminal 5, Terminal 18 have been accomplished.

9. Whereas, nine years later, the Port and City entered into another agreement dated December 27, 1989 when the Port needed to vacate additional streets associated with the Central Waterfront Project. The Port paid the City \$2.9 Million.

10. Whereas, the 1989 agreement contained a provision at Section 5 for future street vacations granted to the Port. Section 5 stated that for the streets in the zones identified on the 1989 agreement's attached map at Exhibit G, the Port's application for vacation would be processed expeditiously and the vacation, if granted by the City Council, would be at "no cost to the Port except for the City's administrative costs only," and would "not include any payment based upon the fair market value of the area vacated ..."

11. Whereas, streets such as SW Iowa/West Marginal Way SW and SW Idaho are covered by both the 1980 and 1989 agreements.

12. Whereas, the Port filed a petition dated March 6, 1990 (Clerk File No. 297660) requesting vacation of SW Idaho Street, West Marginal Way SW/SW Iowa Street and SW Dakota Street at or adjacent to the formerly Port owned Terminal 105 property.

13. Whereas, the Port has an enforceable contract right to have streets such as SW Iowa/West Marginal Way SW and SW Idaho vacated without corresponding obligation to pay fair market value for the vacated street area.

14. Whereas, the Port desires to transfer to GRW the Port's right to a reduced cost vacation of a portion of SW Iowa Street and SW Idaho Street, legally described at **Exhibit A**, ("Street Area").

15. Whereas, the Street Area lies at or adjacent to the 15.27 acres in the southerly portion of the former Terminal 105 ("T-105 Property").

16. Whereas, under a real estate exchange agreement between the Port and Birmingham Steel Corporation ("Birmingham") dated June 22, 1995, the Port conveyed to Birmingham the T-105 Property.

17. Whereas, the Port's motivation for entering into that 1995 agreement was to acquire property owned by Birmingham that the Port needed for the expansion of Terminal 5. The expansion of Terminal 5 has enabled the Port to compete more effectively for container shipping business by using to better advantage the natural deep water harbor where Terminal 5 is located.

18. Whereas, under the 1995 agreement, the Port agreed to submit a letter to the City requesting reactivation of the Port's petition requesting vacation of SW Idaho Street, West Marginal Way SW and SW Dakota Street and diligently pursue and satisfy all conditions related to obtaining the vacation.

19. Whereas, the City reactivated the petition for the vacation of the Street Area and accepted the Port's work to satisfy the conditions for vacation of the Street Area, knowing that the ownership of the T-105 Property changed from the Port to Birmingham.

20. Whereas, the 1995 agreement provided that if the City did not pass an ordinance vacating said streets by March 1, 1997, or the Port failed to satisfy all conditions of a conditional ordinance by the same date, the Port would pay Birmingham \$881,347.50 by no later than April 1, 1997 ("Refund"). The Refund was based on \$9.25 per square foot X number of square feet in unvacated SW Idaho (71,550 sf) and unvacated West Marginal Way SW (16,920 sf). The Refund was intended to compensate Birmingham for the Port's failure to obtain the vacation of the Street Area.

21. Whereas, the 1995 agreement also provided that if the Refund for the value of the Street Area was paid by the Port and Birmingham thereafter obtained a street vacation, Birmingham would promptly repay the Refund to the Port.

22. Whereas, the Port failed to obtain vacation of the Street Area and pursuant to the 1995 agreement, the Port paid Birmingham the Refund.

23. Whereas, in June 2002, Birmingham filed for Chapter 11 bankruptcy protection. In connection with the bankruptcy, Nucor Corporation obtained title to substantially all of Birmingham's assets, including all property and equipment in connection with Birmingham's Seattle steel mill operations. Pursuant to the Bankruptcy Order and conveyance of the Statutory Warranty Deed recorded on December 9, 2002, General Recycling of Washington, LLC, a wholly owned subsidiary of Nucor Corporation, acquired title to the T-105 Property and the land lying within the right of way of streets in front of or adjoining the T-105 Property to the center line of said streets.

24. Whereas, if the City Council passes an ordinance granting vacation of the Street Area in the near future, GRW would benefit because GRW would be free to make use of the Street Area after it is freed of the City's easement for travel.

25. Whereas, the Port no longer has a real estate interest in the T-105 Property and the land lying within the right of way of the Street Area.

26. Whereas, neither Nucor Corporation nor GRW assumed any of the rights, responsibilities or obligations of the 1995 agreement; consequently, when Birmingham's assets were sold and its liabilities were discharged in bankruptcy in 2002, the 1995 agreement became unenforceable.

27. Whereas, the 1995 agreement does not bind GRW to repay the Refund that the Port previously paid to Birmingham.

28. Whereas, the 1995 agreement does not bind the Port to pursue the vacation of the Street Area for GRW. The City Council has not yet passed the Ordinance granting the vacation. Consequently, the Port is free to exclude the Street Area from the petition for vacation.

29. Whereas, normally, if the abutting owners desire the vacation of a street, they would be required to not only petition the City Council and meet City-imposed mitigating conditions as well as administrative fees for the street vacation, but also compensate the City in an amount up to the full appraised value of the vacated area.

30. Whereas, in reliance on the City's cooperation under the Port's 1980 and 1989 agreements with the City, the Port has acted to derive a benefit from the ability to initiate reduced-cost street vacations for abutting owners in the following ways: a) by exchanging the value of vacated street area for other land needed by the Port; and b) by negotiating the amount of monetary compensation for the value of the right to a reduced-cost street vacation.

31. Whereas, the Port's desire to transfer the Port's right to a reduced-cost vacation of the Street Area is motivated by the Port's desire to receive monetary compensation for the transfer of said right.

32. Whereas, the Port's realization of a benefit from the vacation of the Street Area depends on the Port reaching agreement with GRW regarding the terms of the transfer of said right.

33. Whereas, GRW wishes to obtain a vacation of the Street Area in an expeditious manner at a cost less than what GRW would otherwise have to pay the City.

34. Whereas, the Port has agreed to continue to pursue the expeditious vacation of the Street Area in order to obtain a vacation of the Street Area without having to pay compensation for the fair market value of the Street Area, and transfer its right to a reduced-cost vacation of the Street Area to GRW on the terms and conditions set forth herein.

NOW, THEREFORE, and in consideration of the mutual benefits and promises contained herein, the Port and GRW agree as follows:

A. The recitals set forth above are acknowledged by the Port and GRW as if specifically incorporated herein; provided however, the parties acknowledge and agree that GRW is relying upon the Port that the legal and factual matters set forth in Recital 1, and those other recitals pertaining to matters occurring on or before December 9, 2002 are true and correct. It is further acknowledged by the Port and GRW that the transfer of the Port's right to a reduced-cost vacation of the Street Area is intended to free GRW of the normal obligation to pay the City the appraised value of the Street Area once it is vacated.

B. The Port shall continue to diligently pursue and satisfy all conditions related to obtaining a vacation of the Street Area legally described at Exhibit A.

C. The Port shall not exclude the Street Area from its petition for vacation filed with the City.

D. The Port shall pay any administrative costs imposed by the City in processing the Port's petition for vacation of the Street Area and shall bear the cost of satisfying the conditions for vacation.

E. The Port hereby transfers to GRW its right to a reduced-cost vacation of the Street Area subject to the Escrow Agent's (defined below) release of GRW's payment to the Port of Five Hundred Thousand Dollars (\$500,000) (the "Transfer Funds").

F. Within ten business days of the execution of this Transfer Agreement, unless such deadline is waived by GRW, the Port shall establish an escrow account at Chicago Title Company, 701 Fifth Avenue, Suite 3400, Seattle, WA 98104, which shall serve as the Escrow Agent for this transaction.

G. Within five business days of the establishment of said escrow account, unless such deadline is waived by the Port, GRW shall deposit the Transfer Funds with the Escrow Agent. The parties shall cooperate in establishing mutually acceptable escrow instructions, which shall include the following instructions:

1) That the Escrow Agent is authorized and instructed to close this transaction by releasing the Transfer Funds to the Port when, and only when:

a) the Escrow Agent has received authorization to close, by telephone and or in writing (including facsimile or email) from GRW's signatory to escrow instructions; and

b) the Escrow Agent has in his/her possession satisfactory written evidence of the passage of an Ordinance by the City of Seattle granting the vacation of the Street Area.

c) the Escrow Agent has in his/her possession the monies for escrow fees for this transaction.

2) That the Escrow Agent is instructed to charge the Port escrow fees for this transaction.

H. The Port represents and warrants that it has received all necessary authorizations, to enter into this Agreement and perform the terms hereof.

I. GRW shall be in default hereunder upon the occurrence of any one of the following events where such occurrence is not cured within 30 days after written notice is received by GRW of such default:

- 1) Failure of GRW to timely deposit the Transfer Funds with the Escrow Agent;
- 2) Failure of GRW to cooperate, in good faith, in establishing mutually acceptable escrow instructions.

In the event of default by GRW, the Port may at its election terminate this Transfer Agreement by written notice delivered to GRW. Regardless of the termination of this Agreement, if the City Council passes an ordinance granting vacation of the Street Area without charging GRW for the appraised value of the Street Area, and GRW has not paid the Port the Transfer Funds, the Port shall be entitled to payment of \$500,000. Such amount is intended to prevent unjust enrichment of GRW.

J. The Port shall be in default hereunder upon the occurrence of any one of the following events where such occurrence is not cured within 30 days after written notice is received by the Port of such default:

- 1) The Port excludes the Street Area from its petition for vacation;
- 2) The Port fails to diligently pursue and satisfy all conditions related to obtaining a vacation of the Street Area;
- 3) The Port fails to pay City-imposed administrative costs related to processing the petition for vacation of the Street Area or the cost of satisfying the conditions related to obtaining said vacation
- 4) If after release to the Port of the Transfer Funds, the City charges GRW a fee, and/or seeks to recover the fair market value for the vacation of the Street Area.

In the event of default by the Port under any of the provisions of I (1) – (4), GRW may at its election terminate this Transfer Agreement by written notice delivered to the Port, and to the extent not already disbursed to the Port, receive a full refund of the Transfer Funds. In the event of default by the Port under provision I (4), the Port shall promptly repay the Transfer Funds to GRW. Such amount is intended to prevent unjust enrichment of the Port. The remedies available to GRW in the event of a breach of any of the material terms of this Agreement may include monetary damages but shall exclude specific performance.

K. Liquidated Damages: The potential harm arising from a material breach of this Transfer Agreement would be very difficult to accurately estimate at the time of this Agreement's execution. Nevertheless, the parties have attempted to forecast an amount that would be just compensation in the event of a material breach. The parties have

agreed that ten thousand (\$10,000.00) dollars shall be the amount fixed as liquidated damages in the event of a material breach. Liquidated damages shall be in addition to the amount specified in Sections I and J to prevent unjust enrichment of either party. Liquidated damages is intended to cover the value of time and money expended in negotiating this Agreement, negotiating with the City, pursuing and/or satisfying conditions to vacation, and indefinable opportunity costs.

L. Attorney's fees: In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the substantially prevailing party's actual costs reasonably incurred in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Port by public attorneys or on behalf of GRW by in-house counsel shall be computed at hourly rates charged by attorneys of comparable experience in private practice in the cities in which the Port and GRW's respective headquarters are located.

M. Notices: All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier addressed as follows:

To the Port:

U. S. Postal Service Address:

Port of Seattle
Attn: Mike Kriston
Real Estate Specialist
P.O. Box 1209
Seattle, WA 98111

Overnight Delivery Address:

Port of Seattle
Attn: Mike Kriston
Real Estate Specialist
2711 Alaskan Way
Seattle, WA 98121

To GRW:

U. S. Postal Service and Overnight Delivery Address:

General Recycling of Washing, LLC
Attn: Controller
2424 SW Andover Street
Seattle, Washington 98106-1100

With a copy to (which shall not constitute notice):

Moore & Van Allen, PLLC
Attn: Ronald Melamed
100 North Tryon Street, Suite 4700
Charlotte, NC 28202

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (i) when personally

delivered; (ii) on the third day after mailing when sent by certified or registered mail, return receipt requested, and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (iii) on the date transmitted by facsimile, if the facsimile is confirmed received; or (iv) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

N. Governing Law; Venue: This Transfer Agreement shall be construed under the laws of Washington without regard to its conflicts of laws principles. Jurisdiction and venue for any action relating hereto shall be in King County, Washington.

O. Integration; Modification: This Transfer Agreement, together with Exhibit A constitutes the entire agreement between the parties. There are no terms, obligations, covenants, or conditions other than those contained herein. No modification or amendment of this Transfer Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

P. Counterpart Execution: This Transfer Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

Q. Invalid Provisions/Severability: If any term or provision of this Transfer Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Transfer 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 shall continue in full force and effect.

[SIGNATURES ON ATTACHED PAGE(S)]

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Transfer Agreement as of the date first set forth above.

GENERAL RECYCLING OF WASHINGTON, LLC
a Delaware limited liability company

By: Matthew J. Lyons
Matthew J. Lyons

Its: Vice-President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 2nd day of June, 2011, before me, personally appeared Matthew J. Lyons to me known to be the Vice-President of General Recycling of Washington, LLC, the company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]

Notary Public in and for the State of Washington

Residing at: Kent

My commission expires: 01-17-12



PORT OF SEATTLE
a municipal corporation

By: _____

Its: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this _____ day of _____, 2011, before me, personally appeared _____ to me known to be the _____ of the PORT OF SEATTLE, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged 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 he/she was duly authorized to execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the
State of Washington
Residing at: _____
My commission expires: _____

EXHIBIT A
T-105
STREET VACATIONS

THOSE PORTIONS OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

THAT PORTION OF SOUTHWEST DAKOTA STREET LYING BETWEEN THE EASTERLY MARGIN OF WEST MARGINAL WAY SOUTHWEST AS DESCRIBED BY CITY OF SEATTLE STREET NAME ORDINANCE 101919 AND THE SOUTHWESTERLY MARGIN OF THE DUWAMISH WATERWAY.

TOGETHER WITH:

THAT PORTION OF SOUTHWEST IDAHO STREET LYING BETWEEN THE EASTERLY MARGIN OF SAID WEST MARGINAL WAY SOUTHWEST AS DESCRIBED BY SAID ORDINANCE AND SAID SOUTHWESTERLY MARGIN OF THE DUWAMISH WATERWAY.

TOGETHER WITH:

THAT PORTION OF SAID WEST MARGINAL WAY SOUTHWEST AS DESCRIBED BY SAID ORDINANCE AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 11, BLOCK 414; PLAT OF SEATTLE TIDELANDS, ACCORDING TO THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON.

THENCE NORTH 23°02'30" WEST ALONG THE EASTERLY MARGIN OF SAID WEST MARGINAL WAY SOUTHWEST AS DESCRIBED BY SAID ORDINANCE, A DISTANCE OF 326.01 FEET TO A POINT HEREON REFERRED TO AS POINT "A";

THENCE CONTINUING NORTH 23°02'30" WEST, ALONG SAID EASTERLY MARGIN, A DISTANCE OF 246.25 FEET;

THENCE SOUTH 13°12'45" EAST, A DISTANCE OF 643.65 FEET, TO THE WESTERLY PRODUCTION OF THE SOUTHERLY MARGIN OF SOUTHWEST IDAHO STREET;

THENCE NORTH 90°00'00" EAST, ALONG SAID WESTERLY PRODUCTION OF THE SOUTHERLY MARGIN OF SOUTHWEST IDAHO STREET, A DISTANCE OF 119.40 FEET, TO SAID EASTERLY MARGIN;

THENCE NORTH 23°02'30" WEST, ALONG SAID EASTERLY MARGIN, A DISTANCE OF 108.67 FEET TO THE POINT OF BEGINNING.

EXCEPT:

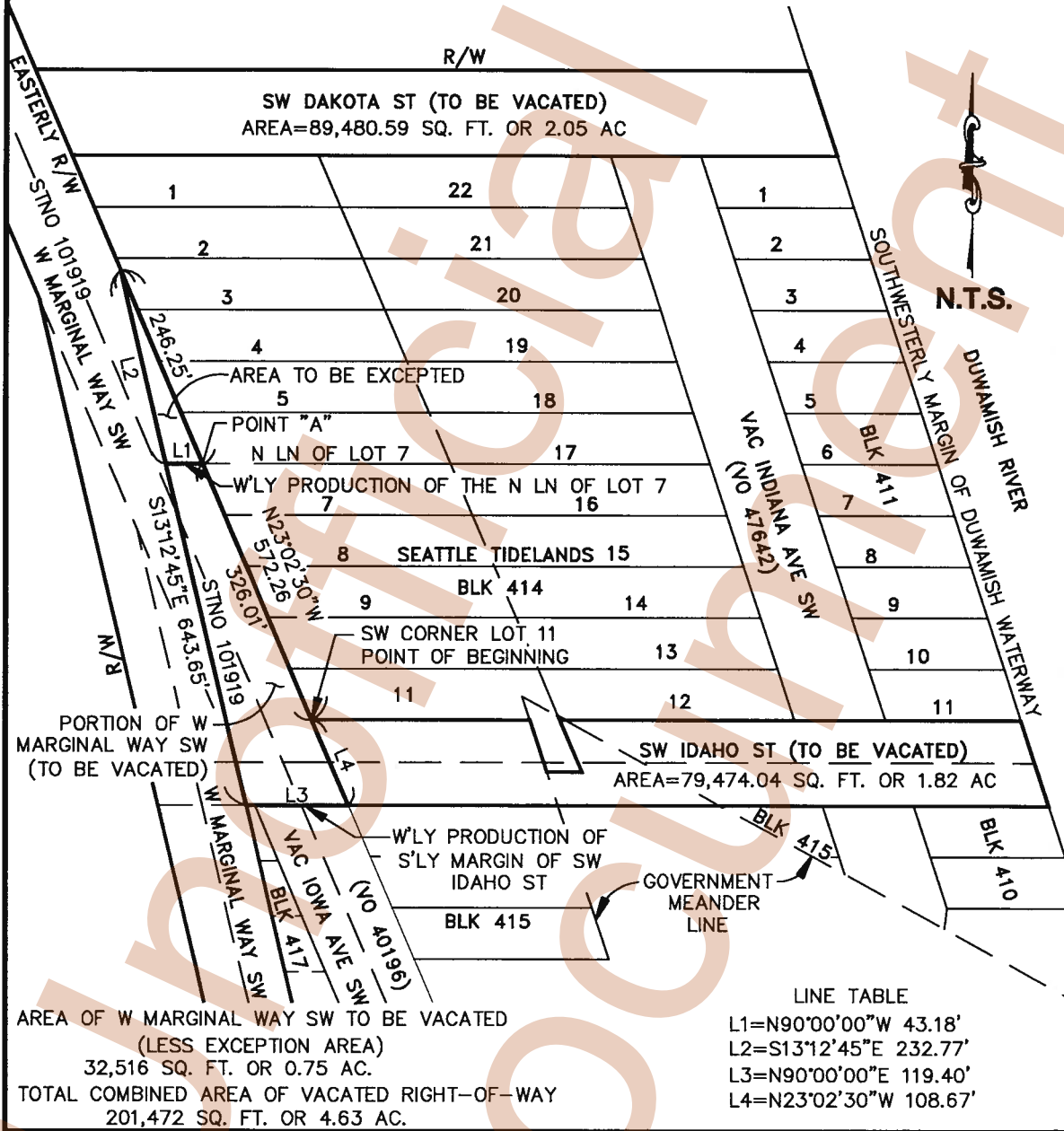
THAT PORTION OF SAID WEST MARGINAL WAY SOUTHWEST AS DESCRIBED BY SAID ORDINANCE AS FOLLOWS: BEGINNING AT THE AFORESAID POINT "A".

THENCE NORTH 23°02'30" WEST, ALONG SAID EASTERLY MARGIN, A DISTANCE OF 246.25 FEET TO THE WESTERLY PRODUCTION OF THE NORTH LINE OF LOT 7, BLOCK 414, OF SAID PLAT;
THENCE SOUTH 13°12'45" EAST, A DISTANCE OF 232.77 FEET;
THENCE NORTH 90°00'00" EAST, ALONG SAID WESTERLY PRODUCTION OF THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 43.18 FEET TO SAID POINT "A" AND THE POINT OF BEGINNING.

CONTAINING 201,472 SQUARE FEET OR 4.63 ACRES, MORE OR LESS.




**PORTION OF NW 1/4 OF THE SW 1/4 SECTION 18,
TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M.
KING COUNTY, WASHINGTON**



AREA OF W MARGINAL WAY SW TO BE VACATED
(LESS EXCEPTION AREA)
32,516 SQ. FT. OR 0.75 AC.
TOTAL COMBINED AREA OF VACATED RIGHT-OF-WAY
201,472 SQ. FT. OR 4.63 AC.

LINE TABLE

L1=N90°00'00"W	43.18'
L2=S13°12'45"E	232.77'
L3=N90°00'00"E	119.40'
L4=N23°02'30"W	108.67'

	PROPOSED STREET VACATION SW IOWA ST, SW IDAHO ST, AND PORTION OF W MARGINAL WAY SW	DATE JAN. 18, 2011
	EXHIBIT "A"	SHEET NO. 03 OF 03