

After Recording Return to:

CITY OF MOUNT VERNON
CITY ATTORNEY'S OFFICE
P.O. BOX 809
910 CLEVELAND AVENUE
MOUNT VERNON, WA 98273



201204170137
Skagit County Auditor

4/17/2012 Page 1 of 9 4:03PM

SETTLEMENT AGREEMENT GENERAL RELEASE OF CLAIMS AND COVENANT NOT TO SUE

This Settlement Agreement is entered into between City of Mount Vernon (the "City"), a municipal corporation, and Darrell K. Heiner and Sara Rose Heiner, father and daughter, their heirs, successors, and assigns, ("the Heiners"), collectively known as "the Parties".

RECITALS

WHEREAS, the Heiners are the owners of certain real property located at 13987 State Route 9, Mount Vernon, WA, 98273, identified by Skagit County Assessor Parcel Number 24515, more particularly described in Attachment "A" attached hereto and incorporated herein by reference as if fully set forth (hereinafter referred to as "the Heiner Property"); and *11-34-4 SESW*

WHEREAS, the City is the owner of certain real property located at 14005 State Route 9, Mount Vernon, WA 98273, identified by Skagit County Assessor Parcel Number 24705, more particularly described in Attachment "B" (hereinafter referred to as "the City Property") and owns an easement more particularly described in Attachment "C" attached hereto and incorporated herein by reference as if fully set forth; and

WHEREAS, the Heiners filed a claim for damages against the City, alleging among other things, that the City has been engaged in a nuisance and trespass to the Heiner Property as a result of the City's noise, dust, and vibrations emanating from the dirt road and City trucks on that same road along the southern border of the Heiner property; and

WHEREAS, the City has denied liability, maintains that its use is both reasonable and lawful; and

WHEREAS, without admitting fault or liability, the Parties agree to enter into this Settlement Agreement to completely, wholly, and with finality, resolve their disputes.

AGREEMENT

Now, therefore, the Parties having agreed to settle the claim for damages referenced above and all potential and future claims arising from the dust, dirt, noise, vibrations and particulates emanating from the gravel/dirt road, the City Property, and City trucks on that same road along the southern border of the Heiner property and to avoid the expense of further litigation and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. The recitals set forth above are incorporated in the body of the Settlement Agreement as if set forth fully herein.

2. **Payment.** The City shall pay to the Heiners the sum of Five Thousand Dollars (\$5,000.00) (hereinafter the "Settlement Payment"). The Settlement Payment shall be delivered to the Heiners' legal counsel by check within fifteen days of the effective date of this Settlement Agreement.

3. **Release of Claims and Covenant Not to Sue.** The Heiners, both individually, and on behalf of their respective successors, heirs, and assigns, release and forever discharge the City, its officials, employees, attorneys, and all agents from any and all present and future claims, demands, causes of action, obligations, damages, attorneys fees, rights of whatever nature in law, equity or otherwise, and liabilities of any nature whatsoever arising out of or relating to any fact, cause, and matter relating to dust, dirt, particulates, vibrations, and noise emanating from the gravel/dirt road, City vehicles, and the City Property as a result of the City's use of the gravel/dirt road and City Property for a reclamation pit (past and future); provided however, that the City's use of the City Property as a reclamation pit complies with all permits required by law. In the event the City substantially intensifies its current use of the City Property as a reclamation pit or gravel/dirt road this Settlement agreement shall not apply.

Each party understands and agrees that this release includes all claims for costs, expenses, interest, attorneys' fees, arbitration fees, taxable or otherwise incurred in or arising out of the Heiners' claim. The Heiners agree and acknowledge that they will not initiate, or cause to be initiated, nor file any suit, charge, agency filing, complaint, audit, or any kind of action whatsoever relating to the facts, events, acts, omissions, and/or circumstances covered by this Settlement Agreement; provided, however, that nothing herein shall prevent any party from taking necessary steps to enforce the terms of this Agreement.

4. **Performance by the City.** The City shall pave or chip seal (at the City's option), to a width of approximately 12-feet, a segment of the gravel/dirt road that accesses the City's Property. This access road segment shall extend approximately three hundred and fifty (350) feet from State Route 9 (near the line between Sections 11 and 14) to the northwest corner of the City's Property as set forth in the Exhibit Map identified as Exhibit "A" attached hereto and incorporated herein by this reference. The City shall complete the work before the end of the construction season of 2012. The Parties recognize that the City may be required to obtain further permission from the third party owner of the real property in which the City has obtained the City's Easement prior to construction. The City shall have 45 days following execution of this agreement to expressly warrant to the Heiners that any and all permission from any and all third party(ies) has/have been obtained. If the City fails to so warrant the same within that time



the Settlement Agreement shall be void, and the Parties shall retain all their original legal rights retroactive to the date the Heiners filed their claim for damages, claims and remedies subject to a refund of the payment by the Heiners of five thousand dollars (\$5,000.00) to the City. However, if the City expressly warrants that permission from third party(ies) has/have been made or is unnecessary, the City shall indemnify and hold the Heiners harmless from any breach of this warranty and damages arising therefrom. The City shall clean and maintain the access road segment in a reasonable manner and operate its vehicles or its agent's vehicles along the access road segment in a reasonable manner such that dust does not unreasonably interfere with the rights of the Heiners or their successors to use and enjoy the Heiner Property. Without waiving any legal or contractual rights, the Parties shall, in good faith, attempt to resolve future dust claims as follows: i) the Heiners or their successors shall provide timely written notice (and attach a copy of this Settlement) to the City's Public Works Director if future dust caused by the City unreasonably interferes with the use and enjoyment of the Heiner Property. A copy of the notice and this Settlement shall also be sent to the City Attorney; ii) the City's Public Works Director or designee shall timely review the notice to determine whether or not other measures are warranted and respond, and iii) the Parties agree to physically meet at least once upon the request of either Party in an effort to resolve any future dust issues. The City agrees to use the paved or sealed roads referenced herein as its exclusive access, unless or until, it can obtain other access and stay 250 feet or more away from the Heiners' property; provided however that nothing in this agreement shall be interpreted to create a duty on behalf of the City to seek to obtain other access. The Parties agree that the measures identified in this agreement shall prevent any unreasonable interference with the Heiners' use and enjoyment of their property. To the extent that these measures are fully carried out, the Heiners agree never to bring suit in any matter relating to dust, dirt, particulates, vibrations, and noise emanating from the gravel/dirt road, City vehicles, and the City Property involving the City's operation of its reclamation pit.

5. **Warranty Against Assignment.** The Heiners represent and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, causes of action, obligations, damages or liability released in Paragraph 3 above.

6. **Warranty of Authority to Settle.** The individuals signing this Settlement Agreement on behalf of Heiners warrant that they are fully authorized to sign this Settlement Agreement and to bind the Heiners to the terms of the Settlement Agreement. The individual signing this Agreement on behalf of the City has authority to bind the City subject to City Council approval of the Settlement Agreement.

7. **Parties Bound.** This Settlement Agreement shall bind and inure to the benefit of each party hereto and to their respective heirs, successors, executors, personal representatives, agents and assigns.

8. **Covenant to Run with the Land.** The Settlement Agreement touches and concerns the Heiner Property and the City Property, and constitutes a covenant running with the land and shall bind all properties and the owners of each. The Settlement Agreement shall inure to the benefit the parties hereto and their respective successors, assigns, and all subsequent purchasers of the Heiner Property and the City Property. The Settlement Agreement shall be recorded with the Skagit County Auditor.



9. **Purpose of the Settlement Agreement.** This Settlement Agreement is intended to compromise disputed claims and avoid the expense and risks of litigation. It is not, and shall not be construed and characterized as, any admission of liability of wrongdoing on the part of any party. In addition, this Settlement Agreement shall not be construed or characterized as a victory for one party over another.

10. **Voluntary Release and Advice of Counsel.** The Parties warrant, agree and represent that they understand and acknowledge the significance and consequences of this Agreement, and acknowledge that it is voluntary and has not been entered into as a result of any actionable coercion or duress, and expressly confirm that this Settlement Agreement is to be given full force and effect according to each of its express terms and conditions. The Parties each acknowledge that they have conferred with legal counsel of their choice and that they understand the terms of this Settlement Agreement.

11. **Cooperation.** Each of the parties shall execute from time to time all documents that may be necessary to carry out the terms of this Settlement Agreement or to effect its purposes.

12. **Integration.** This Settlement Agreement and the documentation described herein contain the entire understanding between the Parties. They supercede and replace all prior negotiations, agreements, or representations whether oral or written.

13. **Attorneys' Fees.** In the event of any breach of this Settlement Agreement, the prevailing party shall be entitled to recover not only the amount of any judgment that may be awarded in its favor, but also all such other damages, costs and expenses that may be incurred by the party, including court costs, reasonable attorneys' fees, and all other reasonable costs and expenses, taxable or otherwise, in preparing prosecution of, defense of, defending against, or seeking or obtaining an abatement of or an injunction against such action or proceeding, in establishing or maintaining the applicability of this Settlement Agreement or any provision thereof, and in prosecuting any counterclaim based thereon.

14. **Choice of Law and Venue.** The interpretation and enforcement of this Settlement Agreement shall be governed by the laws of the State of Washington without giving effect to choice of law principals. Venue shall be Skagit County Superior Court, Skagit County, WA.

15. **Construction of Agreement.** This Settlement Agreement has been jointly drafted by the Parties following negotiations among them. It shall be construed according to the fair intent of the language as a whole and not for or against any party.

16. **Specific Performance.** The obligations imposed by this Settlement Agreement shall be specifically enforceable.

17. **Third-Party Beneficiaries.** No provision, warranty or representation or agreement herein, whether express or implied, is intended to confer or shall be construed as conferring on any person, not a party to this Settlement Agreement, any rights or remedies whatsoever.



18. **Execution in Counterparts.** This Settlement Agreement may be executed in two or more counterparts, all of which, taken together, shall constitute one and the same agreement.

19. **Effectiveness: Date.** This Settlement Agreement shall become effective when all the Parties have signed it. The date this Settlement Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Settlement Agreement. If any party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this Settlement Agreement.

THE HEINERS

CITY OF MOUNT VERNON

Darrell K. Heiner
Darrell K. Heiner
Date: 4/12/12

Jill Boudreau
By: Jill Boudreau
Its: Mayor
Date: 4/2/12

Sara Rose Heiner
Sara Rose Heiner
Date: 4-12-2012

Approved as to Form:
Kevin Rogerson
Kevin Rogerson, City Attorney



Attachment "A"
(Legal Description of the Heiners Property P24515)

That portion of the Southwest ¼ of the Southeast ¼ and the Southeast ¼ of the Southwest ¼ of Section 11, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at the intersection of the South line of said Section 11 and the Easterly line of the Northern Pacific right-of-way; thence East to a point 11-1/2 rods (189.75 feet) East of the South ¼ corner of Section 11; thence North to the right-of-way of the Northern Pacific Railway; thence in a Southwesterly direction along the Southerly line of said railway to the intersection of the South line of said Section 11 and the point of beginning;

EXCEPT State Highway; AND EXCEPT the following described tract:

Beginning at a point 185.8 feet East and 156 feet North of the ¼ corner on the South boundary of said Section 11; thence West 60 feet; thence North 45 Degrees West, 50 feet, more or less, to the East boundary of the State Highway; thence North 38 Degrees 57' East along the East boundary of said highway, 154.5 feet; thence South 158 feet, more or less, to the point of beginning.

EXCEPT that portion of the Southwest 1/4 of the Southeast 1/4 of Section 11, Township 34 North, Range 4 East, W.M., described as follows: commencing at the South 1/4 corner of said Section 11, which point is marked by an axle shaft shown as a "solid shaft" on a survey recorded as Skagit County Auditor's File No. 200702230111; thence South 87 Degrees 12'37" East along the South line of Section 11 189.75 feet to a 5/8" rebar and yellow cap marked Is 21591; thence North 02 Degrees 47'23" East 92.05 feet; to the true point of beginning; thence North 42 Degrees 12'37" West 90.44 feet; thence South 87 Degrees 12'37" East 63.95 feet; thence South 02 Degrees 47'23" West 63.95 feet to the true point of beginning. also except a strip of land on the East boundary of an adjoining parcel owned by Thompson, which strip was created by an ambiguity in a warranty deed recorded as Auditor's File No. 135417; commencing at the South 1/4 corner of said Section 11, which point is marked by an axle shaft shown as a "solid shaft" on a survey recorded as Skagit County Auditor's File No. 200702230111; thence South 87 Degrees 12'37" East along said South line of Section 11 189.75 feet to a 5/8" rebar and yellow cap marked Is 21591; thence North 02 Degrees 47'23" East 316.1 feet to the East boundary of State Route 9, said point being the true point of beginning; thence South 02 Degrees 47'23" West 160.10 feet; thence North 87 Degrees 12'37" West 3.95 feet to the Southeast corner of the property conveyed by warranty deed recorded as Auditor's File No. 135417; thence Northerly along the East boundary of property conveyed by said warranty deed 155.89 feet, more or less, to its intersection with the East boundary of State Route 9; thence North 40 Degrees 15'40" East along the East boundary of said route 5.31 feet, more or less, to the true point of beginning together with that portion of the Southwest 1/4 of the Southeast 1/4 of Section 11, Township 34 North, Range 4 East, W.M., described as follows: commencing at the South 1/4 corner of said Section 11, which point is marked by an axle shaft shown as a "solid shaft" on a survey recorded as Skagit County Auditor's File No. 200702230111; thence South 87 Degrees 12'37" East along the South line of Section 11, 189.75 feet to a 5/8" rebar and yellow cap marked Is 21591, said point being the true point of beginning; thence South 87 Degrees 12'37" East along said South line 25.84 feet; thence North 02 Degrees 47'23" East 66.21 feet; thence North 42 Degrees 12'37" West, 36.55 feet; thence South 02 Degrees 47'23" West, 92.05 feet to the true point of beginning. Survey recorded under AF#200702230111.

Situate in the County of Skagit, State of Washington.



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Attachment "B"
(Legal Description of the City's Property P 24705)

The North ½ of the Northwest ¼ of the Northeast ¼ of Section 14, Township 34 North, Range 4 East, W.M., beginning at a point on the South line of said North ½ of the Northwest ¼ of the Northeast ¼, 198 feet East of the Southwest corner thereof; thence North 475 feet; thence East 550 feet; thence South 475 feet to the South line of said subdivision; thence West along said South line, 550 feet to the point of Beginning. Survey AF# 200212120062

Situate in the County of Skagit, State of Washington. Approximately 6 Acres.



Attachment "C"
(Legal Description of the City Easement)

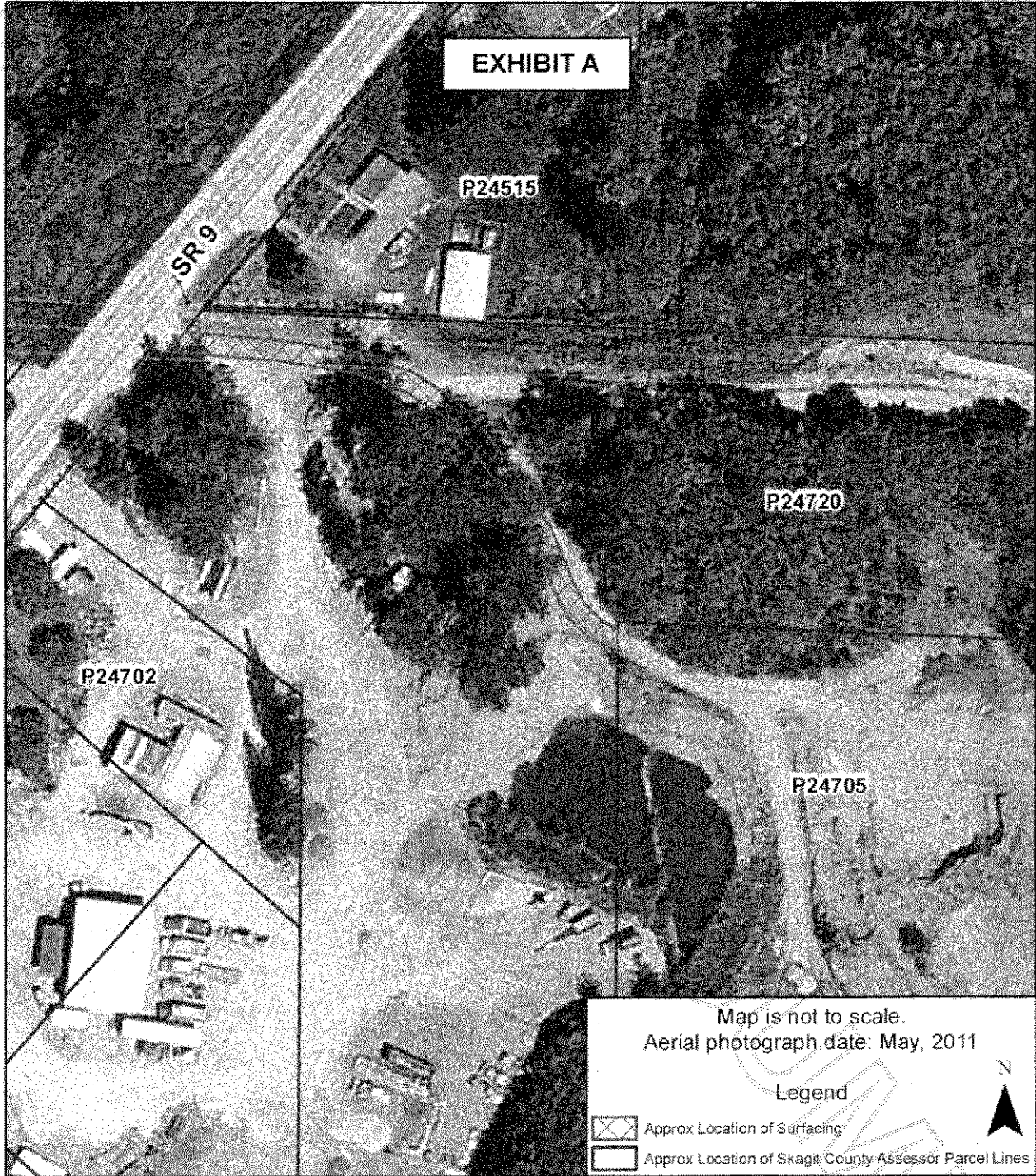
A non-exclusive easement for the ingress, egress and operating and maintaining an open pit mine over and across a strip of land 50 feet in width, being the North 50 feet of the Northeast $\frac{1}{4}$, of the Northwest $\frac{1}{4}$, of Section 14, Township 34 North, Range 4 East, W.M. all lying Easterly of State Highway No.9 and the North 50 feet of the West 198 feet of the Northwest $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of Section 14. All of said 50 foot tract lying Southerly and parallel to the North line of said Section 14.

Situate in the County of Skagit, State of Washington



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EXHIBIT A



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