

**AGREEMENT
BETWEEN
MILES SAND AND GRAVEL COMPANY
AND
CITY OF TENINO**

THIS AGREEMENT is entered into by and between CITY OF TENINO, a municipal corporation of the State of Washington (herein referred to as "TENINO" and Miles Sand & Gravel Company, a corporation of the State of Washington (herein referred to as "MILES").

WHEREAS, Miles desires to purchase Class A Reclaimed Water from Tenino; and

WHEREAS, Tenino is in the process of constructing a wastewater treatment facility that will produce Class A Reclaimed Water, and

WHEREAS, Tenino is purchasing real property from Miles and the parties have agreed that part of the purchase price can be paid in the form of reclaimed water as provided in this Agreement;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and in the Purchase and Sale Agreement between the parties it is mutually agreed by and between Tenino and Miles as follows:

Section 1. Conditions of Agreement.

- a. Tenino will install a reclaimed water line, including setting the meter, at the City's expense, to the southern property line of the Wastewater Treatment Plant Facility at the time the facility is constructed.
- b. Tenino will provide and sell to Miles at least 10,000 gallons of Class A Reclaimed Water per day, up to 50% of the total output of the wastewater treatment facility including 10,000 gallons per day.
- c. Tenino will provide Miles annually the first right of refusal on future Class A Reclaimed Water for sale by Tenino as to quantities above 50% of the total output of the wastewater treatment facility.
- d. The water available to Miles under this Agreement may only be used by Miles on the property described on Exhibit A attached to this Agreement.
- e. Assign Miles to the Industrial Classification (Ordinance No. 732) in the Reclaimed Water Rate Ordinance as adopted by the Tenino City Council.
- f. Miles is under no obligation to purchase any amount of reclaimed water but will be responsible for paying the monthly base rate as set by Tenino Ordinance No. 732.

Section 2. Term of Agreement. This contract shall commence upon installation of the reclaimed water line and meter, and be in effect for fifteen (15) years from date of installation.

Process for Termination. This Agreement cannot be terminated without written consent of both parties.

Section 3. Reclaimed Water Credit. In addition to the \$60,000 in cash paid at closing, as compensation for the sale of the property, Miles will receive a \$140,000 credit on account to be used for sewer utility charges of any type including all charges for connection and monthly charges and reclaimed water charges but not including sewer line extensions. It is anticipated, per the Letter of Intent between Miles and Tenino dated 10/11/05 (attached as Exhibit B), that new parcel "C" will be incorporated into Tenino's Urban Growth Area (UGA) by 2017. When new parcel "C" is incorporated into the Tenino UGA, but no later than ten (10) years from the date of this agreement, Miles will receive an additional \$160,000 credit on account which will be used for sewer utility charges associated with development activity on any of the Miles owned parcels. Any portion of the \$300,000 that has not been credited to Miles and/or its assigns shall be paid by Tenino at the expiration of this Agreement. Tenino has the right to refund the credit balances at any time up to the expiration of this Agreement.

Section 4. Entire Agreement. This agreement contains all of the agreements of the parties with respect to Class A Reclaimed Water.

Section 5. Amendment. Provisions within this agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

Section 6. Renewal Option. Miles has the option to renew the Agreement by mutual consent of both parties based upon negotiation of the conditions and rates.


Section 7. Severability. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Entered into this 18th day of April, 2007.

CITY OF TENINO

By: 
Kenneth A. Jones, Mayor

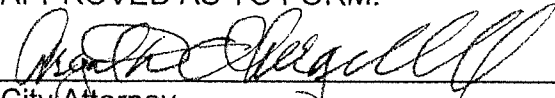
MILES SAND AND GRAVEL COMPANY

By: 
Walt Miles

ATTEST:

By: 
Joyce Bielefeld, Clerk/Treasurer

APPROVED AS TO FORM:


City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

On the terms and conditions set forth herein, **MILES SAND AND GRAVEL CO., INC.** a Washington corporation ("Seller"), hereby agrees to sell to **CITY OF TENINO, a municipal corporation of the State of Washington** ("Buyer"), and the Buyer agrees to purchase from Seller, the property described below (the "Property"), all of which is located in Thurston County, Washington.

1. **PROPERTY.** The Property being purchased consists of a vacant parcel identified as **Tax Parcel No. (to be assigned upon recording the BLA)**. This property is more particularly described on attached Exhibit A. Seller and Buyer are authorized to confirm and correct the legal description of the Property and to attach that legal description to this Agreement if necessary. The Property includes all of the land and the permanent improvements thereon.

2. **PURCHASE PRICE.** The total purchase price is the sum of **THREE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS** (\$360,000.00). **SIXTY THOUSAND AND NO/100 DOLLARS** (\$60,000.00) shall be paid in cash at closing and the balance will be paid per the terms and conditions of a separate Agreement dated April 18, 2007 executed by the Buyer and Seller. It is anticipated that closing will take place on or before April 30, 2007.

3. **INSPECTION CONTINGENCY.** Buyer shall have five (5) days after mutual execution of this Agreement to complete its evaluation of site conditions. If Buyer fails to notify Seller in writing prior to the expiration of this contingency period that this contingency is satisfied or waived, then this condition will be deemed waived. If Buyer objects to the condition of the Property within said time, then Buyer may terminate this Agreement. Thereafter, neither party will have any obligation to buy or sell the Property to the other.

4. **PROPERTY INSPECTION.** Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter the Property, at reasonable times after notice to Seller, to review and inspect the Property. Buyer agrees to return the property to the same or better condition as it existed at the time of such inspection and to indemnify and defend Seller from all liens, costs, damages, liabilities and expenses, including attorneys' and experts' fees, arising from or relating to Buyer's entry onto and inspection of the Property. This agreement to indemnify and defend Seller shall survive closing.

5. **CONDITION OF PROPERTY.** Except as expressly stated herein, the Property is being sold **"AS IS-WITH ALL FAULTS"** and that no other representations, warranties, guarantees, promises, statements or estimates of any nature whatsoever upon which the Buyer is relying, whether oral or written, express or implied, have been made by Seller, including but not limited to, fitness, merchantability, compliance with governmental laws, rules and regulations, availability of utility rights or the existence of hazardous substances or wetlands. Buyer acknowledges that it is not relying and will not rely upon any statement or representations of any person (other than those, if any, expressly set forth herein) with respect to the physical condition of the Property, including the environmental conditions present on the Property, or of any other matter affecting or relating to the physical condition of the Property. Buyer will instead rely solely on such investigations, examination, and inspection as Buyer may chose to make during the inspection of the Property.

6. **HAZARDOUS SUBSTANCES.** As indicated above, Buyer shall have the right to perform a property inspection at Buyer's costs. Seller will cooperate with Buyer in that site assessment. Seller warrants that, to the best of Seller's knowledge, no hazardous substance has at any time been stored, disposed of, released, or located on or under the Property or on any adjoining property owned by Seller. Seller also warrants that it will not store, dispose or, release or locate hazardous substances on the

Property or on any adjoining property owned by Seller through the date of closing. "Hazardous substances" shall mean any substance currently designated as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), or under the Model Toxic Control Act of the State of Washington, RCW 70.105D.020(5). The representations made in this paragraph shall survive closing.

7. CONDITION OF TITLE, TITLE INSURANCE POLICY.

(a) Within fifteen (15) days after execution of this Agreement, Buyer shall cause Chicago Title Insurance Company (the "Title Insurer") to issue and deliver to Buyer a preliminary commitment for an owner's policy of title insurance (the "Commitment"). Buyer shall give Seller written notice on or before the expiration of twenty (20) days after delivery of the Commitment to Buyer of any defects or encumbrances to which Buyer objects. Any exceptions not objected to within that time shall be deemed to have been approved by Buyer ("Permitted Exceptions"). Seller shall have twenty (20) days after receipt of Buyer's objections to give Buyer notice of which objectionable exceptions will be removed from title. If Seller gives written notice within said time that Seller is unable or unwilling to remove the exceptions timely objected to by Buyer, then this transaction shall terminate and neither party will be obligated to the other unless Buyer elects, by notice to Seller within ten (10) days after Seller's notice, to complete the sale subject to the exceptions Seller is unwilling to remove.

(b) On the closing date, Buyer shall cause the Title Insurer to insure title in the name of the Buyer under a standard owner's policy of title insurance subject only to the Permitted Exceptions.

8. CLOSING OF SALE. This sale shall be closed within five (5) days after the inspection contingency has been satisfied or waived and the condition of title has been approved pursuant to paragraph 7 above. It is anticipated that Closing shall be completed on or before April 30, 2007. Closing shall be conducted by the escrow department of the Title Insurer ("Closing Agent") or such other Closing Agent as Buyer shall designate. "Closing" shall be considered the date the deed and any other conveyance documents, and the cash portion of the purchase price, are deposited in escrow with the Closing Agent for recording and closing. Buyer and Seller shall provide such documents as the Closing Agent may reasonably request.

9. CLOSING COSTS AND PRORATION. Buyer will pay all of the closing costs, including any escrow fees or title insurance charges. Seller shall pay all of the real estate excise tax associated with this transaction. Adjustments or prorations of property taxes, and other charges if any, shall be made on a per-diem basis using a 365 day year.

10. CONVEYANCE; CLEAR TITLE. Title shall be conveyed by Statutory Warranty Deed free of encumbrances or defects except for the Permitted Exceptions.

11. DEFAULT/TERMINATION. If either Buyer or Seller defaults, the non-defaulting party may seek damages or specific performance.

12. POSSESSION. Buyer shall be entitled to possession on Closing.

13. BROKERS. The parties acknowledge that neither party has employed a real estate broker with respect to this transaction and no brokerage fees are due with respect to this transaction.

14. ASSIGNMENTS. Buyer may assign all or any part of this Agreement upon receiving the prior written consent of Seller.

15. **DAMAGE.** If prior to closing, the Property is destroyed or materially damaged by fire or other casualty, Buyer shall have the option of canceling this Agreement. If Buyer elects to purchase the Property, all insurance proceeds, if any, shall be payable to Buyer.

16. **CONDEMNATION.** Seller knows of no condemnation proceedings pending or contemplated against the Property, or any part thereof and Seller has received no notice of the intent or desire of any public authority to take or use the property or any part thereof. In the event that all or any part of the Property is made subject to condemnation, eminent domain, or similar proceedings (or deed in lieu thereof) prior to the Closing Date, Buyer may either (a) terminate this Agreement, or (b) consummate this transaction, in which event all compensation for such condemnation, eminent domain, or other proceeding shall be assigned and be payable to Buyer.

17. **NO LITIGATION.** Seller represents that there is no pending, or to the best of its knowledge, threatened litigation or administrative proceedings which could adversely affect title or use of the Property or any part thereof or the ability of Seller to perform any of its obligations hereunder.

18. **LEGAL AND TAX REVIEW.** Seller and Buyer acknowledge that they have been advised by legal counsel regarding legal and tax matters concerning this Agreement and they have had sufficient opportunity to do so prior to execution hereof.

19. **NOTICES.** Any notice, request, demand, instruction or other communication required or permitted to be given to Seller or Buyer under this Agreement shall be in writing and shall be either: (a) personally delivered to the parties named below by a commercial messenger service regularly retaining receipts for such delivery; (b) sent by registered or certified mail, return receipt requested, effective forty-eight (48) hours after deposit; (c) delivered by a reputable air courier service effective upon delivery thereof to the carrier; or (d) transmitted by facsimile transmission, if a facsimile number has been provided by the party receiving notice, with a copy to be sent by U.S. first class mail, which notice shall be effective upon transmission of the facsimile copy and a receipt of confirmation of delivery. All such notices shall be addressed to the parties as listed herein, or at a substitute address designated by notice.

20. **RECLAIMED WATER.** The Parties have executed an Agreement dated April 18, 2007. The terms and conditions of this agreement are a condition of closing and the representations made in this paragraph shall survive closing.

21. **TIME.** Time is of the essence. If a date specified in this Agreement (such as expiration of the feasibility period, or the Closing Date), falls on a Saturday, Sunday, or holiday, then the date specified shall be deemed to be the next following business day.


22. **COUNTERPARTS.** This Agreement may be signed in counterpart originals and will be effective once the counterparts have been signed by the parties.

23. **AGREEMENTS.** There are no oral or other agreements which modify or affect this Agreement. THIS AGREEMENT CONSTITUTES THE FULL UNDERSTANDING BETWEEN THE SELLER AND BUYER. This Agreement shall be binding upon the heirs, successors and assigns of Seller and Buyer.

SELLER:

MILES SAND AND GRAVEL CO., INC.

a Washington corporation

By: 
Walt Miles

Its: PRESIDENT

Address: P.O. Box 130 Auburn, WA 98071-0130


Phone No.: (253) 833-3705

Dated: 4-17-07


BUYER:

CITY OF TENINO,

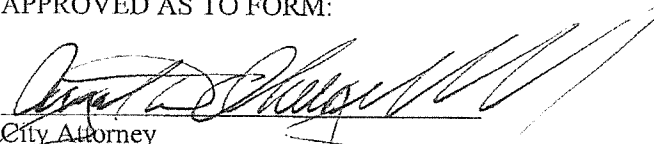
a Washington municipal corporation


Kenneth A. Jones, Mayor

ATTEST:

By: 
Joyce Bielefeld, Clerk/Treasurer

APPROVED AS TO FORM:


City Attorney

Address: P O Box 4019, Tenino, WA 98589

Phone No.: (360) 264-2368

Dated: 4/24/07

EXHIBIT A

PARCEL A - NEW DESCRIPTION

A PORTION OF PARCELS A, B AND C, RECORDED UNDER THURSTON COUNTY AUDITOR'S FILE NO. 3683259, LOCATED IN SECTIONS 25 AND 36, TOWNSHIP 16 NORTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THURSTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 36, (SOUTHWEST CORNER OF SAID SECTION 25); THENCE SOUTH 01°50'20" WEST ALONG THE WESTERLY LINE OF SAID SECTION 36, A DISTANCE OF 1169.95 FEET TO THE NORTHWEST CORNER OF MIMA ACRES NO. 2, AS RECORDED IN VOLUME 4 OF SURVEYS, PAGE 9, UNDER THURSTON COUNTY AUDITOR'S FILE NO. 949578; THENCE SOUTH 88°17'00" EAST ALONG THE NORTH LINE OF SAID MIMA ACRES NO. 2, A DISTANCE OF 2128.66 FEET; THENCE NORTH 42°47'56" EAST A DISTANCE OF 1275.37 FEET TO THE SOUTHWEST CORNER OF MIMA ACRES, AS RECORDED IN VOLUME 2 OF SURVEYS, PAGE 28, UNDER THURSTON COUNTY AUDITOR'S FILE NO. 915923; THENCE NORTH 21°48'35" EAST ALONG THE WESTERLY LINE OF SAID MIMA ACRES A DISTANCE OF 1200.00 FEET; THENCE NORTH 89°44'02" WEST A DISTANCE OF 360.31 FEET; THENCE NORTH 02°12'09" EAST A DISTANCE OF 372.50 FEET; THENCE NORTH 88°16'55" WEST A DISTANCE OF 775.29 FEET; THENCE NORTH 01°36'45" EAST A DISTANCE OF 1228.99 FEET; THENCE NORTH 89°44'19" WEST A DISTANCE OF 67.44 FEET; THENCE SOUTH 74°13'41" WEST A DISTANCE OF 1057.00 FEET; THENCE SOUTH 52°14'01" WEST A DISTANCE OF 1514.13 FEET TO THE WEST LINE OF SAID SECTION 25; THENCE SOUTH 01°38'45" WEST ALONG SAID WEST LINE A DISTANCE OF 1228.61 FEET TO THE SOUTHWEST CORNER OF SAID SECTION AND THE POINT OF BEGINNING.

SUBJECT TO RESERVATIONS, RESTRICTIONS AND EASEMENTS OF RECORD.

PARCEL C - NEW DESCRIPTION

A PORTION OF PARCELS A, B AND C, RECORDED UNDER THURSTON COUNTY AUDITOR'S FILE NO. 3683259, LOCATED IN SECTIONS 25 AND 36, TOWNSHIP 16 NORTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THURSTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 36, (SOUTHWEST CORNER OF SAID SECTION 25); THENCE NORTH 01°36'45" EAST ALONG THE WESTERLY LINE OF SAID SECTION 25, A DISTANCE OF 1228.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 01°36'45" EAST ALONG SAID WEST LINE A DISTANCE OF 1630.26 FEET TO THE SOUTHERLY MARGIN OF OLD HIGHWAY 99 SOUTHEAST (TENINO-GRAND MOUND HIGHWAY); THENCE NORTH 73°53'59" EAST ALONG SAID SOUTHERLY MARGIN A DISTANCE OF 2899.57 FEET, TO A 5/8" REBAR WITH A PLASTIC SURVEY CAP, MARKED "GIBBS & OLSON, WILLIAMS 34147"; THENCE LEAVING SAID SOUTHERLY MARGIN, SOUTH 10°16'27" EAST A DISTANCE OF 1007.77 FEET TO A 5/8" REBAR WITH A PLASTIC SURVEY CAP, MARKED "GIBBS & OLSON, WILLIAMS 34147"; THENCE NORTH 80°27'03" EAST A DISTANCE OF 423.12 FEET, TO A 5/8" REBAR WITH A PLASTIC SURVEY CAP, MARKED "GIBBS & OLSON, WILLIAMS 34147" AND THE WESTERLY LINE MIMA ACRES, AS RECORDED IN VOLUME 2 OF SURVEYS, PAGE 28, UNDER THURSTON COUNTY AUDITOR'S FILE NO. 915923; THENCE SOUTH 01°48'35" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 1824.80 FEET; THENCE LEAVING SAID WESTERLY LINE, NORTH 89°44'02" WEST A DISTANCE OF 360.31 FEET; THENCE NORTH 02°12'09" EAST A DISTANCE OF 372.50 FEET; THENCE NORTH 88°16'55" WEST A DISTANCE OF 775.29 FEET; THENCE NORTH 01°36'45" EAST A DISTANCE OF 1228.99 FEET; THENCE NORTH 89°44'19" WEST A DISTANCE OF 67.44 FEET; THENCE SOUTH 74°13'41" WEST A DISTANCE OF 1057.00 FEET; THENCE SOUTH 52°14'01" WEST A DISTANCE OF 1514.13 FEET TO THE POINT OF BEGINNING.

SUBJECT TO RESERVATIONS, RESTRICTIONS AND EASEMENTS OF RECORD.

**LETTER OF UNDERSTANDING
BETWEEN
MILES SAND AND GRAVEL COMPANY
AND
CITY OF TENINO**

EXHIBIT B

This is a letter of understanding concerning the potential sale of property owned by Miles Sand and Gravel to the City of Tenino for a waste water treatment plant (WWTP). As outlined below, Miles Sand and Gravel agrees to sell, and the City agrees to buy property in Thurston County, as follows:

1. Property

The property to be purchased is a portion of Parcel No. 12625130101 on Old Highway 99 SE. The portion to be purchased is approximately 20 acres in size, plus or minus, and is that portion lying east of the existing driveway (the Property). The driveway is not included in the Property and the City will develop its own access to Highway 99. If the City is unable to obtain a driveway permit from Thurston County, Miles Sand and Gravel agrees to allow the City to access the Property from the existing driveway.

2. Price

The purchase price is the fair market value of the Property as determined by an independent appraiser. The appraiser will be an MAI, jointly selected by the parties. The purchase price will be paid in cash at closing.

3. Feasibility Period

The City will have an initial 90-day period in which to assess the feasibility of the Property as the site of a WWTP and infiltration area. During this feasibility period, Miles will permit access to the Property through a right of entry on the City's standard form. The right of entry will allow investigation and testing, including soils testing. The City will hold Miles harmless from any loss, injury or damage resulting from access by the City and its agents to the

Property and will restore the Property to its pre-existing condition upon conclusion of the feasibility period.

4. Purchase and Sale Agreement

If, by the end of the feasibility period, the City concludes that the site is feasible for the WWTP and infiltration area, the parties will negotiate a purchase and sale agreement, incorporating the terms set forth in this agreement. The P&S agreement will include a provision that will allow the City six months to obtain necessary agency approvals and complete the environmental review. Should the City not be able to secure the necessary permits or agency approvals for the site, they will not be obligated to buy it. The right of entry shall remain in force until either closing or the City formally withdraws its intention to buy the property.

5. Closing and Contingencies

The closing will occur when all of the contingencies set forth below have been met, but not later than December 31, 2006. The sale will be contingent upon the following:

- A. Amendment of the City's Sewer Facility Plan to show the WWTP on the Property.
- B. Begin the annexation process of the proposed 20+ acre site as an essential public facility site, and the issuance of all permits and approvals necessary for the City to construct the WWTP.
- C. With respect to the proposal of adding Parcels 12625310101, 12625240302, 12625420000, 12625130102 and the remaining portion of Parcel No. 12625130101 retained by Miles to the City's UGA, the following applies:
 - 1. The City, as the Proponent, shall begin the process to include the above mentioned parcels into the City's UGA;
 - 2. Upon approval by the City of Tenino City Council to change the UGA, and if approved by Thurston County, Miles Sand and Gravel may

apply for annexation into the City limits; staff will support any annexation proposal for Miles Sand & Gravel Company properties. (However please be advised that Council has final authority); and

3. The City intent is to recommend industrial use of the five parcels and adding additional industrial uses that includes rock crushing, asphalt plants and concrete batch plants to the current industrial use categories.

4. Should incorporation into the UGA and revised zoning not be accomplished by the end of 2006, the City will remain a proponent and shall continue to be the lead in requesting a change to the UGA through Thurston County and if approved, concurrently change the future land use designation to Industrial lands.

D, A determination by Miles Sand and Gravel that Class A water from the WWTP can be feasibly used for washing of sand and gravel by Miles, and can be used in asphalt and concrete batching. (Water Reclamation and Reuse Standards, September 1997, Publication No. 97-23 by Washington State Department of Health and Department of Ecology, Page 18, Article 4 – Commercial and Industrial Uses, Section 13, Washing Aggregate and Making Concrete, “Reclaimed water used for washing aggregate and making concrete shall be at all times Class C reclaimed water or better.” The City will have Class A reclaimed water.)

E. A determination by Miles Sand and Gravel that the City has adequate water rights to serve an industrial development on the Miles parcels to be included in the City limits as described above.

F. The City obtaining funds for construction of the WWTP, including purchase of the Property.

G. Contingencies will be satisfied only when all applicable periods of appeal have expired without the filing of appeals.

6. **Additional Terms**

As a portion of the purchase price, and for the benefit of both properties, Miles will receive a permanent right to obtain Class A water from the WWTP for washing of sand and gravel products and for use in the batching of concrete and asphalt, at no cost to Miles. Actual consumption costs will be as mutually agreed upon between the parties prior to closing.

7. **Title and Miscellaneous Closing**

Miles will provide at its expense to the City a standard title policy. (City does not need to review the status of title prior to entering into the actual earnest money agreement.) Closing costs will be shared by the parties in accordance with standard commercial real estate practices.

8. **Consideration**

The City will pay \$10 as consideration during the feasibility period.

Entered into this 11th day of October, 2005.

CITY OF TENINO

By: 

Kenneth A. Jones, Mayor

MILES SAND AND GRAVEL COMPANY

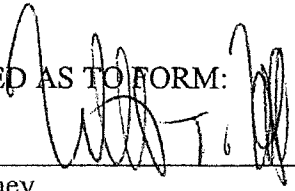
By: 

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APPROVED AS TO FORM: 

City Attorney