

**THE MINT FARM
INDUSTRIAL PARK
REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Agreement is for the purchase by the Purchaser, identified below, and the sale by the CITY OF LONGVIEW, WASHINGTON, (hereinafter referred to as "City"), of the real property described herein.

Purchaser and the City agree as follows:

1. **Purchase and sale:** Purchaser shall purchase and the City shall sell the real property described herein in accordance with the terms and conditions contained in this Agreement.

2. **Parties:**

2.1 **Purchaser:**

Pacific Coast Fertilizer LP
Suite 1710
363 North Sam Houston Parkway East
Houston, Texas 77060
Attn: Scott Charpentier, President of its general partner
(281) 741 - 6702
FAX (281) 310-6103

2.2 **Seller:**

The City of Longview, Washington
1525 Broadway Blvd.
P. O. Box 128
Longview, WA 98632
Attn: David Campbell, City Manager
(360) 577 - 3310
FAX (360) 577-4014

3. **Property:** The real property is that certain tract or lot consisting of approximately 18.59 acres, commonly described as Lots 8, 9, 10 and 11 and two additional storm water conveyance parcels (053603518, 053603519) of The Mint Farm Industrial Park, Plat No. 1, situated in Cowlitz County, Washington. A more accurate legal description thereof is contained in exhibit "A", attached hereto and incorporated herein by this reference.

4. **Purchase price:**

4.1 **Property Price.** The property price for Lots 8, 9, 10, 11 is the sum of \$1,621,521 representing a value of \$2.50 per square foot. The property

price for the two additional storm water conveyance parcels (053603518, 053603519) is the sum of \$161,172 representing a value of \$1.00 per square foot.

- 4.2 Broker Compensation: Purchaser is represented by Jeff Brooks, KIDDER MATHEWS. Broker shall be paid a fee of 2.5% of the Property Price set out in Sections 4.1 above. That amount shall be paid by the Purchaser.
- 4.3 Final Price: The final price for the property is the sum of \$1,782,693 plus Option Payments under Section 6.

5. **Payment of purchase price**: The purchase price shall be paid all in cash at closing, via cashier's check, wire transfer, or other immediately available funds. Any option payments made under the terms of this Agreement shall not apply to the purchase price.

6. **Option Payments**:

Purchaser shall make quarterly option payments to the City according to the following schedule:

Year 1 Quarterly Option \$17,827
Year 2 Quarterly Option \$23,175
Years 3-4 Quarterly Option \$29,200.50

Concurrently with the execution of this Agreement, Purchaser shall deposit with the City, the first quarterly option payment in the amount of \$17,827. Such Option Payment may be in the form of cash or its equivalent. Thereafter, additional Option Payments as indicated above each shall be made at three month intervals, in the same manner, until such time as the sale closes or the contract is terminated as outlined in the Agreement. The Option Payments do not apply to the final purchase price and except as otherwise set forth herein shall be non-refundable to Purchaser. Acceptance of purchaser's offer and signature on this Agreement by the City constitutes receipt of the initial Option Payment.

7. **Title matters**:

- 7.1 Conveyance. At closing, City shall deliver a Statutory Warranty Deed conveying title to the Purchaser, subject only to Permitted Exceptions.
- 7.2 Permitted exceptions: Matters contained in the Declaration of Conditions, Covenants and Restrictions and the Zoning Code of the City, applicable to the Plat of the property, shall constitute permitted exceptions, and the Purchaser hereby acknowledges that such matters have been fully considered prior to the execution of this Agreement, and Purchaser's intended use of the premises is compatible therewith.

7.2 Title review:

7.2.1 Not later than 10 days following the execution of this Agreement by the City, Purchaser shall be furnished with a preliminary commitment for title insurance from STEWART TITLE, 1700 Hudson St., Suite 201, Longview, WA 98632, accompanied with complete copies of any exceptions identified as special exceptions therein.

7.2.2 Purchaser shall have 15 days after its receipt of the preliminary commitment for title insurance in which to notify the City of any objections that it may have to any exceptions shown therein. Failure to notify the City of any such objections within such time shall constitute acceptance of such exceptions.

7.2.3 The City shall have 15 days after its receipt of Purchaser's notice of objections in which to notify purchaser of its election to cure or remove any of the disapproved exceptions. The City's failure to notify Purchaser shall constitute the City's election not to remove any disapproved exceptions. The City shall remove the exceptions it elects to remove on or before closing. If the City elects not to remove exceptions which Purchaser requested to be removed then within sixty (60) days of the aforesaid election of the City, Purchaser may elect to terminate this Agreement, and notwithstanding any provision to the contrary set forth in this Agreement, the City will refund to the Purchaser any Option Payments previously made by the Purchaser. If the Purchaser does not so terminate this Agreement then all of the exceptions to title contained in the preliminary commitment for title insurance other than those exceptions the City elects to cure or remove shall be "Permitted Exceptions".

7.3 Title Insurance: At closing, the City shall cause the title insurance company identified above to issue a policy of title insurance, which policy shall be an ALTA standard coverage owner's policy of title insurance, insuring the Purchaser in the amount of the purchase price against any loss or damage by reason of defects in title to the property delivered at closing, other than Permitted Exceptions.

7.4 Title Uninsurable: If title is not insurable at closing in accordance with the provisions of this Agreement, Purchaser in its sole discretion may elect to (a) proceed to closing despite such noninsurability, or (b) Purchaser may terminate this Agreement whereupon the City shall repay all Option Payments previously made to it under this Agreement and all other obligations of the parties shall cease or (c) Purchaser may seek specific performance of the City's obligation to provide the title insurance required by Section 7.3.

8. Possession and right of entry: Purchaser shall be entitled to possession of the property upon closing. Prior to closing, Purchaser shall have the right for itself and its agents, employees, consultants and others to enter onto the property and to conduct such inspections and studies as purchaser may deem necessary and appropriate, at Purchaser's sole cost and expense. These inspections and studies may include, without limitation, (i) core borings; (ii) environmental tests and investigations, including hazardous substances investigation; (iii) engineering tests; (iv) physical inspections of all improvements, subsurface soils and structural members; (v) examination of plans, specifications, manuals, and other documents relating to the condition of the property; (vi) studies and tests covering soil and subsoil conditions, geological tests, percolation tests, topographic studies, flood protection, wetlands, zoning and planning regulations, determinations of the adequacy of electricity, gas, water, sewer and other utility facilities and any other development feasibility studies. Purchaser shall be responsible for site safety with any testing, boring or other activities undertaken for site analysis and shall restore the property after each test analysis activity is completed.

Upon request of the Purchaser, the City shall deliver to Purchaser copies of all reports and surveys, if any, in the City's possession, regarding investigations, tests and/or studies which have been made with respect to the property, including but not limited to environmental, engineering, soils, geological, wetland and development feasibility.

9. City's Covenants, Representations and Warranties. City hereby covenants, represents and warrants to Purchaser as follows:

9.1 Validity; No Conflict; Title. This Agreement constitutes the valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as limited by the application of bankruptcy, moratorium, and other laws affecting creditors' rights generally and as limited by the application of equitable principles. Execution and delivery of this Agreement, consummation of the transaction described herein, and compliance with the terms of this Agreement do not and will not (i) conflict with, or constitute a default under, any agreement to which the City is a party or by which the City or the property is bound, (ii) violate any regulation, law, court order, judgment, or decree applicable to the City or the property, (iii) require any consent, approval or authorization of any governmental authority or any other person or entity, or require any designation, declaration or filing with any governmental authority on the part of Seller or any other person or entity which has not been obtained, or (iv) violate any preferential rights of purchase or conflict with any requirements of consent to transfer. The City has fee simple title to the property, free of unrecorded liens and encumbrances, and has the right and power to convey same

9.2 Leases, Contracts and Easements. No parties other than the City are in possession of any portion of the property as lessees or tenants

through any recorded or unrecorded agreement. After the date hereof until the earlier of the termination of this Agreement or the closing, the City shall not enter into any other agreement related to the property or record or allow to be recorded any liens or encumbrances other than any of the foregoing which will terminate prior to the closing without the prior written consent of Purchaser, which will not be unreasonably withheld provided that such do not interfere with Purchaser's contemplated use of the Property.

9.3 Compliance with Laws. The City is in compliance with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to the City.

The City has received no notice, citation, complaint or other similar communication from any governmental authority or any other person or entity asserting that the property or the ownership or operation thereof is not in compliance with all applicable laws, rules or regulations. No condition exists or to Seller's knowledge has existed in any way relating to the property involving or resulting from any spill, discharge, leak, emission, injection, dumping or release of any hazardous materials on or from any of the property. The City has not, and to City's knowledge, no other person or entity has used, handled, generated, produced, manufactured, treated, stored, transported, released, discharged or disposed of any hazardous materials on, under or from the property in violation of any environmental laws.

The City has disclosed to Purchaser in writing any and all known conditions of a material nature with respect to the property that may affect the health or safety of any tenant or occupant of the property.

9.4 Operation of the Property. After the date hereof until the earlier of the termination of this Agreement or the Closing, Seller shall (i) operate the Property in compliance with all applicable laws, rules or regulations and otherwise in substantially the same manner as the Property has been operated, (ii) maintain the Property in substantially the same condition and manner as existed on the date hereof; and (iii) not allow any additional recorded or unrecorded liens or encumbrances to be placed on the Property.

9.5 Litigation and other Matters. The City has received no notice of any pending or contemplated condemnation action with respect to the property, and the City does not have any knowledge of any pending or contemplated condemnation. The City has received no notice of any

pending or contemplated special assessments with respect to the property and has no knowledge of any pending or being contemplated; and the City has no knowledge of any pending or threatened judicial or administrative action pertaining to or potentially affecting the Property, title to the property, this Agreement or the transactions contemplated hereby.

If, prior to closing, the City discovers any information or facts that would materially change the representations and warranties of the City as made herein, the City shall promptly give written notice to Purchaser of such facts or information.

10. Purchaser's Representations. This Agreement constitutes the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms except as limited by the application of bankruptcy, moratorium, and other laws affecting creditors' rights generally and as limited by the application of equitable principles. Execution and delivery of this Agreement, consummation of the transaction described herein, and compliance with the terms of this Agreement do not and will not (i) conflict with, or constitute a default under, any agreement to which Purchaser is a party or by which Purchaser is bound, (ii) violate any regulation, law, court order, judgment, or decree applicable to Purchaser or (iii) require any consent, approval or authorization of any governmental authority or any other person or entity, or require any designation, declaration or filing with any governmental authority on the part of Purchaser.

11. Closing: Closing of the purchase and sale shall take at such time as the City is notified by the Purchaser no less than 7 days prior to the closing. At the closing the Statutory Warranty Deed to the property will be delivered by the City and the purchase price will be delivered to the City or is available to the City. Closing shall be conducted through escrow at the offices of the title insurance company named above or such other place as the City and the Purchaser may agree parties may agree. Said title insurance company shall also be the "Closing Agent" for the parties. This Agreement, together with such other instructions as are appropriate, shall constitute the escrow instructions to the Closing Agent.

11.1. Contract Period: Purchaser shall have 24 months to complete the development phase or pre-construction phase of Purchaser's project with the Purchaser's right to extend the development phase for an additional 12 months. Purchase of the site is dependent on completion of the development phase which includes the granting of all necessary permits and the arrangement of financing for Purchaser's project. The total time taken for the development phase of Purchaser's project shall constitute the Contract Period. Provided that Purchaser has provided Seller with reasonably necessary information and reasonable time for Seller to do so, Seller shall use its reasonable efforts at no out-of-pocket cost to

Seller to cooperate with Purchaser in seeking all permits and consents that relate to the Property that Purchaser believes are necessary or advisable for it to use the Property for the purposes that Purchaser elects.

11.2 Deposits and prorations: The parties shall each timely deposit with the Closing Agent all instruments, documents and funds necessary to enable the purchase and sale to occur in accordance herewith. Real estate taxes and assessments for the current year and utilities and all other amounts payable or receivable attributable to the property shall be prorated as of the date of Closing.

11.3 Closing costs: The City shall pay any real estate excise tax that is payable, one-half of the fees of the Closing Agent, the premium for the title insurance policy, and its own attorneys fees. Purchaser shall pay the cost of recording the deed, one-half of the fees of the Closing Agent, the amount of any additional costs of title insurance, its own attorney's fees and any other costs of closing.

11.4 Adjacent Property: Purchaser's obligation to purchase the Property is conditioned on the simultaneous closing of Purchaser's purchase of certain parcels of property located directly to the east of the Property from NWM Properties LLC ("Adjacent Property"). In the event that Purchaser, despite its commercially reasonable efforts, is unable to consummate the simultaneous purchase of the Adjacent Property on or before the closing, Purchaser may terminate this Agreement, both parties shall be released from further obligations hereunder (except for any such obligations that expressly survive the expiration or earlier termination of this Agreement) and the City shall retain any Option Payments.

12. **Default; remedies; termination:** If either party fails to perform its obligations when due under this Agreement, such party shall be in default.

12.1 Purchaser's failure to close: If Purchaser fails to purchase the property in accordance with its obligations under this Agreement, the exclusive remedy for such failure shall be to terminate this Agreement and City retain the Option Payments, the parties agreeing that the damages that would be incurred by the City in such event would be difficult or impossible to determine with precision and that the amount of the Option Payment is reasonable in light of such difficulty or impossibility, the purchase price and the nature of the property.

12.2 City's failure to close: If the City is in default, and as a result, this transaction fails to close, Purchaser shall receive a refund of the Option Payments made. In addition, if the City is in default, the Purchaser shall

have the right to specific performance by the City of its obligations under this Agreement.

- 12.3 At any time prior to Closing, Purchaser may in its sole discretion and for any reason terminate this Agreement upon written notice to the City. If such notice is given both parties shall be released from further obligations hereunder (except for any such obligations that expressly survive the expiration or earlier termination of this Agreement) and except as otherwise set forth in this Agreement, the City shall retain any Option Payments paid by Purchaser provided that the termination was not as a result of City's default.

13. General provisions:

13.1 Attorney's fees: In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Clark County, Washington.

13.2 Time: Time is of the essence of this Agreement.

13.3 Counterpart signatures: This Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

13.4 Entire Agreement: This Agreement is the entire agreement of the parties concerning the subject matter, and may not be modified except in a written document expressly referring to this Agreement and executed by all the parties hereto.

13.5 Governing Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington

13.6 Memorandum of Agreement. Concurrently with the execution of this agreement, the parties shall execute a Memorandum of Agreement in mutually agreeable form, and promptly following the execution of this agreement, the Memorandum of Agreement shall be recorded with the Cowlitz County recorder to evidence this Agreement.

13.7 Assignment. Purchaser may assign its rights and responsibilities under this Agreement to a business entity owned or controlled by it or its owners or to its lenders without the consent of the City so long as the assignee intends to use the Property for an ammonia facility or a similar industrial project; provided, however, the Purchaser shall give the City notice thereof within ten (10) days after any such assignment.

All other assignments shall require the non-assigning party's written consent, which may not be unreasonably withheld.. Any assignment in breach of this Agreement shall be void. No assignment shall release the assigning party from its obligations under this Agreement.

13.8 Further Assurances. From time to time both before and after Closing, upon request of either the City or Purchaser, the other party shall promptly execute and deliver or cause to be executed and delivered any and all other and further instruments, assignments, certificates, assurances or documents, and promptly do or cause to be done any and all other and further things as may be necessary or appropriate to perform their respective obligations under this Agreement.

13.9 Notices. Whenever this Agreement requires or permits any consent, notice, or request from one party to another, the consent, notice, or request must be in writing and shall be deemed to be delivered and received (a) if personally delivered or if delivered by reputable overnight or express delivery service, when actually received by the party to whom it is sent, (b) if delivered by facsimile, upon receipt of confirmation of successful transmission, or (c) if delivered by mail (whether actually received or not), at the close of business on the third Business Day (as defined below) following the day when placed in the mail, postage prepaid, certified with return receipt requested, addressed to the appropriate party or parties, at the address and/or facsimile numbers of such party set forth in Section 2 (or at such other address as such party may designate by written notice to the other party in accordance herewith).

14. **Condition of the property:** Purchaser has inspected and examined the property to its satisfaction, including the boundaries thereof, the common areas and the public streets, sidewalks and infrastructure, and is desirous of purchasing the property on an AS IS, WHERE IS basis subject however to the accuracy of the City's representations and warranties set out in this Agreement.

15. Maintenance of wetland mitigation area. Purchaser shall assume the City of Longview's maintenance obligations with regard to those properties included in the sale that are specified in, and in the manner provided by, Section 6.3 of the February 2008 Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions, Easements, and Agreements for the Mint Farm Industrial Park.

16. Buyback Option: The City engaged in the development of the Mint Farm Industrial Park in order to create opportunities for job creation and investment for the citizens of Longview. If substantial activity has not occurred with respect to the project the Purchaser plans to locate on the property within 18 months from closing, the City reserves the right to repurchase the property for a sum equal to the Property Price specified in this Agreement. "Substantial activity" with respect to Purchaser's project

includes, among other things, site preparation work or entering into engineering or construction or procurement contracts with respect to the project. This option shall remain in effect until the first to occur of (i) substantial activity with respect to Purchaser's project or (ii) 30 days from the date notification is received by the Longview City Manager of Purchaser's acceptance of another party's offer to purchase the property ("Purchase Offer"). The City shall have 30 days from the date notification is received by the Longview City Manager of the Purchase Offer to commit to repurchase the property or allow the sale of the property pursuant to the Purchase Offer. The City's failure to either commit to repurchase or allow the sale pursuant to the Purchase Offer within the aforesaid 30 day period shall be deemed an allowance of the sale pursuant to the Purchase Offer. The City shall have 90 days after delivering its notice of intent to repurchase the Property to complete the repurchase.

174. Time for acceptance of offer: If this Agreement is submitted as a signed offer by Purchaser, it shall expire unless accepted by the City on or before 5:00 p.m. on the 15th day after the Purchaser's dated signature.

EXECUTED by the parties on the dates below:

PURCHASER:

Date _____

Pacific Coast Fertilizer LP

By: _____

Title

Name - if individual

SELLER:

Date _____

The City of Longview

By: _____

Title

EXHIBIT “A”- LEGAL DESCRIPTION

Legal description to lot, tract or parcel of land situated in
THE MINT FARM INDUSTRIAL PARK
PLAT NO. 1:
