

RESOLUTION R-5233

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR TOTEM LAKE.

1 WHEREAS, in 2013 the Council adopted the City's Work Program,
2 which included emphasis on Totem Lake revitalization and
3 implementation of the Totem Lake Action Plan; and
4

5 WHEREAS, the Totem Lake neighborhood is currently the City's
6 largest employment center and the highest revenue generator of all
7 Kirkland business districts; and
8

9 WHEREAS, the Totem Lake Neighborhood contains the City's
10 only Urban Center, a designation made by the State Growth
11 Management Planning Council in 2003, which areas are a focus for
12 regional growth, high density housing and employment; and
13

14 WHEREAS, by 2030, Totem Lake is expected to grow from its
15 present population of 5,544 to 9,800, double its housing units to 6,000
16 and employment is expected to increase from 11,511 to 29,000; and
17

18 WHEREAS, prioritizing the Totem Lake Park Master Plan and
19 acquisition of the Totem Lake to serve this growth is appropriate; and
20

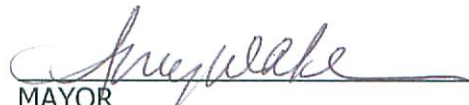
21 WHEREAS, ownership of Totem Lake will enable the City to carry
22 out these improvements without on-going coordination with the King
23 Conservation District and will facilitate obtaining state and federal grants
24 to implement these projects by securing site control.
25

26 NOW, THEREFORE, be it resolved by the City Council of the City
27 of Kirkland as follows:
28

29 Section 1. The City Manager is hereby authorized and directed
30 to execute on behalf of the City of Kirkland a Real Property Purchase
31 and Sale Agreement for the Property substantially similar to that
32 attached to this Resolution as Exhibit "A."
33

34 Passed by majority vote of the Kirkland City Council in open
35 meeting this 17th day of January, 2017.
36

37 Signed in authentication thereof this 17th day of January, 2017.


MAYOR

Attest:


City Clerk

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made this _____ day of _____, 2017, by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and the King Conservation District, a municipal corporation of the State of Washington and the owner of the real property hereinafter described ("Seller").

For and in consideration of the mutual covenants herein contained, the sufficiency of which is unconditionally acknowledged by Buyer and Seller, the parties hereby agree as follows:

1. Purchase of Real Property. Subject to City Council appropriation of funds, Buyer and Seller hereby agree to the purchase and sale of the real property described as follows:

Tract A, Totem Lake South, according to the plat thereof recorded in Volume 110 of Plats, pages 9 through 11, inclusive and Correction Map of Totem Lake South, according to the plat thereof recorded in Volume 110 of Plats pages 92 and 93, in King County, Washington;

Together with that portion of Totem Lake Way vacated by Ordinance 2463, recorded under recording number 7905230687.

("Property").

2. Purchase Price; Payment. The Purchase Price for the Property shall be Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00). Seller is in possession of One Hundred and Forty Three Thousand One Hundred Twenty Five and 45/100 Dollars (\$143,125.45) in grant funds available to Buyer under Seller's Member Jurisdiction Grant Program, which upon Closing shall be retained by Seller and credited toward the Purchase Price. At or before Closing, Buyer shall deposit the remaining balance of the Purchase Price in the amount of Four Hundred and Six Thousand Eight Hundred Seventy Four and 55/100 Dollars (\$406,874.55) with the Escrow Holder.

3. Escrow Holder: Promptly following the full execution and acceptance of this Agreement, Buyer shall open an escrow with NexTitle, Bellevue, Washington (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the closing pursuant to the escrow instructions of the parties which shall be consistent herewith.

4. Title Policy and Condition of Title. Buyer will order a standard coverage preliminary commitment for title ("Title Report") from NexTitle immediately upon mutual execution and acceptance of this Agreement. Within sixty (60) days after receipt of the title report, Buyer shall notify Seller in writing what exceptions to title, if any, are objectionable and will not be accepted by Buyer. All other exceptions shall constitute permitted exceptions. If Buyer fails to provide Seller with timely notice of any objections to the exceptions to title, then all exceptions to title shall be considered permitted exceptions. Seller shall remove all exceptions that are not permitted exceptions prior to the closing date. However, if Seller is unable to remove any such exceptions prior to the closing date, this Agreement shall be deemed null and void unless the

time for closing is extended by mutual agreement of the Parties or the parties otherwise agree in writing to waive and accept any exception that cannot be removed from title. If additional exceptions arise between the date the report is ordered and closing, within thirty (30) after the receipt of any update to this report, the foregoing procedure will be used to address any such exceptions.

As a condition of closing, Seller shall also obtain the written consent required for this conveyance to occur without triggering a reversion, in whole or in part, from the entity or its successors in interest ("Grantee" under the Quitclaim Deed dated August 23, 1979 and recorded under King County Recording No. 7909040608, which deed is incorporated herein by this reference) from whom it is obligated to obtain such consent pursuant to Exhibit A to the Statutory Warranty Deed dated June 30, 1979 and recorded under King County Recording No. 7908311213 by which Seller acquired title to the Property (the "Statutory Warranty Deed"), which deed is incorporated herein by this reference.

Concurrently, Seller shall also obtain the written consent from Grantee to eliminate Exhibit A as an encumbrance on the Property to be conveyed to Buyer, excluding Paragraph 1 of Exhibit A to the Statutory Warranty Deed relating to encumbrances and requirements of record at the time the Property was conveyed to Seller, to be replaced with the following encumbrance, which shall be recited within the text of the Statutory Warranty Deed from Seller to Buyer and shall read as follows:

Pursuant to the authorization granted in the attached Consent, herein incorporated by reference, Exhibit A to the Statutory Warranty Deed dated June 30, 1979 and recorded under King County Recording No. 7908311213 is hereby eliminated and replaced with the following encumbrance:

1. Grantee agrees to develop and maintain the Property as a park, in perpetuity, preserving the wetlands and attendant wildlife to the maximum extent consistent with human use of the park, and
2. Grantee agrees to seek those funds necessary to continue development of the Property as a park when reasonable and appropriate.

Alternatively, Seller will obtain the reversionary interest and authority to modify Exhibit A from Grantee by quit claim deed and Seller will make such modifications as outlined above to be included in the deed to Buyer as provided above.

In the event Seller determines neither of the foregoing alternatives is possible, Buyer may at its discretion attempt to condemn the reversionary interest and any other interest held by Grantee. If Buyer's condemnation results in it having to pay any entity or individual for the value of the interest obtained, that amount will be deducted from the Purchase Price.

If Buyer and Seller are unable to eliminate and modify the foregoing encumbrance, this Agreement shall be deemed null and void unless the Parties otherwise agree in writing.

5. Closing. Title on closing to be conveyed to Buyer by statutory warranty deed shall be free and clear of all taxes, assessments, liens, and encumbrances, except for permitted exceptions, and shall be so insurable. The date of closing shall be the date the deed is recorded.

The deed shall be recorded when sale proceeds are available for Seller. Buyer shall be entitled to possession of the Property on closing. The closing of the sale of the Property shall be held at the Bellevue offices of NexTitle ("Escrow") no later than 60 days after all contingencies identified in this Agreement have been satisfied. This date may be extended by agreement of the parties which agreement shall not be unreasonably withheld.

Buyer and Seller will each pay customary costs and expenses of closing. Seller shall pay any cost or expense required to be paid in order to clear Seller's title consistent with the terms of this Agreement. Buyer shall be required to cooperate with Seller in a reasonable manner in Seller's efforts to obtain the Grantors' consent and approval of this conveyance. Buyer and Seller shall place with Escrow all instruments, documents, and monies necessary to complete the sale in accordance with this Agreement.

6. Access to Property. Buyer and its employees and agents shall have the right and permission from the date of this Agreement through closing date to enter upon the Property for inspection purposes, but Buyer will not conduct any tests at the Property that involve piercing the ground or structures.

7. Property Tax. Even though Buyer is exempt from property taxes, all property taxes applicable to the Property will be paid by Seller prior to closing or through Escrow. Immediately after closing, if any taxes have been paid in excess of what was required, the Buyer will advise King County to refund the excess taxes to Seller if refundable.

8. Condition of Property. All representations and warranties of Seller contained herein shall be true, accurate, and complete at the time of closing. The physical condition of the property at closing shall be the same as on the date of this Agreement.

8.1 Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement. Seller warrants as follows: that Seller is the sole legal owner of the fee simple interest in the Property and is not holding title as a nominee for any other person or entity; that no person or entity has a first right of refusal or option to purchase or other similar right to or interest in the Property; that no labor, materials or services have been furnished or will be furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborers' or materialpersons' liens or claims might arise.

8.2 This offer is made with respect to the physical condition of the Property on an "as is and where is basis" as of the date of closing, provided that Buyer does not waive any claim it may now have or hereafter acquire against Seller based on, arising out of, or in any way related to toxic, dangerous, or hazardous waste or substance as the same may now or hereafter be defined by any applicable law or regulation, nor does Buyer release Seller from any liability to Buyer based upon, arising out of, or any way related to toxic, dangerous, or hazardous waste or substance as may hereafter be found and determined to have been on or within the Property as of the date of closing of this sale or earlier.

9. Seller's Knowledge. To the best of Seller's knowledge, the Property is not in violation of any law or regulation relating to the environmental conditions thereon and there is

no hazardous waste, toxic substance or pollutant, within the scope of any state, federal or local environmental statute or rule, on or in the vicinity of the Property or on any parcels of land which abut the Property to the best of Seller's knowledge. Further, to the best of Seller's knowledge there is no asbestos, PCB's or underground storage tanks located on the Property or which have been removed therefrom.

10. Remedies. If Seller reasonably concludes that Buyer is in breach of this Agreement, Seller's sole remedy shall be to terminate this Agreement by sending written notice to Buyer and Escrow. If Buyer reasonably concludes that Seller is in breach of this Agreement, Buyer shall have the right to either terminate this Agreement by sending written notice to Seller and Escrow or may instead maintain an action for specific performance (together with recovery of costs and attorney's fees incurred in such action). If an action or proceeding occurs between the parties seeking enforcement of any provision contained in this Agreement, the prevailing party in any such action or proceeding shall be entitled to reasonable attorney's fees and costs in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

11. Notice. Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given whether delivered by facsimile, delivered to the person, or three days after being deposited in the United States mail, addressed as follows:

To Seller:

King Conservation District
Attn.: Executive Director
1107 SW Grady Way, Suite 130
Renton, WA 98057
Ph. (425) 282-1900
Fax. (425) 282-1898

To Buyer:

City of Kirkland
Attn.: City Manager
123 Fifth Avenue
Kirkland, WA 98033
Ph. (425) 587-3030
Fax. (425) 587-3025

12. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them.

DATED this _____ day of _____, 2017.

KING CONSERVATION DISTRICT

CITY OF KIRKLAND

By: _____
Dick Ryon, Chair
King Conservation District
Board of Supervisors

By: _____
Kurt Triplett, City Manager

Approved as to form:

City Attorney