

ORDINANCE O-4590

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR THE RICHARDS' PROPERTY IF POSSIBLE AND, IF NOT, AUTHORIZING THE ACQUISITION OF THAT PROPERTY FOR PARK PURPOSES BY APPROPRIATE EMINENT DOMAIN PROCEEDINGS IN THE MANNER PROVIDED FOR BY LAW AND PROVIDING FOR THE COST OF PROPERTY ACQUISITION.

1           WHEREAS, the Richards' property ("Property") is adjacent to the  
2 City's current McAuliffe Park and its acquisition is necessary to expand  
3 the park and enhance the public's use and enjoyment of the park; and

4           WHEREAS, staff has negotiated a proposed Purchase and Sale  
5 Agreement ("Agreement") for acquisition of the Property as provided in  
6 the attached Exhibit A, which will be forwarded to the owners if  
7 approved by the Council; and

8           WHEREAS, if the owners do not accept the Agreement or one  
9 substantially similar to it, staff would like to be prepared to initiate  
10 eminent domain proceedings; and

11           WHEREAS, staff has provided notice to affected property owners  
12 and the public of this final action authorizing condemnation pursuant to  
13 RCW 8.25.290.

14  
15           NOW, THEREFORE, the City Council of the City of Kirkland do  
16 ordain as follows:  
17

18           Section 1. The City Manager is hereby authorized and directed  
19 to execute on behalf of the City of Kirkland a Real Property Purchase  
20 and Sale Agreement for the Property substantially similar to that  
21 attached to this Ordinance as Exhibit "A."  
22

23           Section 2. The land and property rights within the City of  
24 Kirkland, King County, Washington, described in Exhibit A attached to  
25 this Ordinance and which description is hereby incorporated by  
26 reference, necessary for public park purposes, is hereby condemned,  
27 appropriated and taken for such public purposes, subject to the making  
28 or paying of just compensation to the owners thereof in the manner  
29 provided by law.  
30

31           Section 3. The expense of acquiring the Property shall be paid  
32 for from Kirkland Parks Levy funding identified in the City of Kirkland's  
33 adopted Capital Improvement Program as well as REET 1 Reserves.  
34


35           Section 4. The City Attorney is authorized to begin and  
36 prosecute legal proceedings in the manner provided by the law to  
37 purchase, condemn, take, appropriate, and otherwise acquire the lands

38 and other property rights and privileges necessary to carry out the  
39 purposes of this Ordinance.

40  
41 Section 5. This ordinance shall be in force and effect five days  
42 from and after its passage by the Kirkland City Council and publication  
43 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary  
44 form attached to the original of this ordinance and by this reference  
45 approved by the City Council.

46  
47 Passed by majority vote of the Kirkland City Council in open  
48 meeting this 2nd day of August, 2017.

49  
50 Signed in authentication thereof this 2nd day of August, 2017.

  
\_\_\_\_\_  
Amy Walen, Mayor

Attest:

  
\_\_\_\_\_  
Kathi Anderson, City Clerk

Publication Date: August 7, 2017

Approved as to Form:

  
\_\_\_\_\_  
Kevin Raymond, City Attorney

OFFER TO PURCHASE AND AGREEMENT TO SELL REAL PROPERTY

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and Kerry A. Richards and Kim B. Richards, owners 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, which must occur within sixty days of the end of the Due Diligence Period provided in Section 9 or Seller may terminate this Agreement, Seller and Buyer hereby agree to the purchase and sale of the real property described as follows:

Parcel No. 292605-9207-04

That portion of the Southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., described as follows:

BEGINNING at the Southwest corner of the Southeast quarter of said Section 29; thence North 1°35'30" East, 724.64 feet to the True Point of Beginning; thence continuing North 1°35'30" East 160 feet; thence South 89°11'50" East 160 feet; thence South 1°35'30" West 160 feet; thence North 89°11'50" West 160 feet to the Point of Beginning; situate in the County of King, State of Washington.

AND

Parcel No. 292605-9194-09

That portion of the Southwest quarter of the Southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., described as follows:

BEGINNING at the Southwest corner of the Southeast quarter of said Section 29; thence North 1°35'30" East, 884.64 feet to the True Point of Beginning; thence continuing North 1°35'30" East, 154.64 feet; thence South 89°11'50" East, 198 feet; thence South 1°35'30" West, 154.64 feet; thence North 89°11'50" West 198 feet to said True Point of Beginning; situate in the County of King, State of Washington.

("Property").

2. Purchase Price; Payment. The Purchase Price for the Property shall be One Million Six Hundred Seventy Two Thousand and 00/100 Dollars (\$1,672,000.00). At or before Closing, Buyer shall deposit the Purchase Price with the Escrow Holder.

3. Escrow Holder: Promptly following the execution of this Agreement, Buyer shall open an escrow with Chicago Title Company, 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. Sale Under Threat of Condemnation. The City of Kirkland declares that as a municipal corporation it is vested with the power of eminent domain to acquire real property for municipal purposes and that it has been authorized by City of Kirkland Ordinance No. \_\_\_\_\_ to acquire the Property through the exercise of eminent domain, and acquisition of the Property (and all interest therein) is under the threat of condemnation. As a result, no Real Estate Excise Tax will be due upon the sale.

5. Title Policy and Condition of Title. Buyer will order a standard coverage preliminary commitment for title ("Title Report") from a title company immediately upon mutual execution hereof. Within 30 days after receipt of the title report, Buyer shall notify Seller what exceptions to title, if any, will be accepted by Buyer. Only those exceptions approved by Buyer in writing shall constitute permitted exceptions. Seller shall remove all exceptions that are not permitted exceptions prior to closing date, however if Seller is unable to remove such exceptions prior to closing date, this Agreement shall be deemed null and void unless the time for closing is extended by mutual agreement of the parties.

6. Closing. Title on closing to be conveyed to Buyer by statutory warranty deed free and clear of all taxes, assessments, liens, and encumbrances, 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 Chicago Title Company ("Escrow") no later than 45 days after the Kirkland City Council authorizes condemnation of the Property. This date may be extended by agreement of the parties which agreement shall not be unreasonably withheld.

The cost and expenses of closing shall be paid by Buyer. Seller shall pay any cost or expense required to be paid in order to clear Seller's title. Buyer and Seller shall place with escrow all instruments, documents, and monies necessary to complete the sale in accordance with this Agreement.

7. 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.

8. 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 City will advise King County to refund the excess taxes to Seller if refundable.

9. Due Diligence Inspection. Buyer shall satisfy itself by investigation and inspection, at its cost and expense in its sole and absolute discretion, that the condition of the Property for Buyer's contemplated use meets with its approval ("Due Diligence Contingency"). If Buyer is not satisfied with the condition of the Property, Buyer may terminate this Agreement by delivering written notice of termination to Seller within seventy five (75) days of the date this Agreement is

signed by both parties ("Due Diligence Period"). In such event this Agreement shall terminate and the Parties shall have no further obligations hereunder.

During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at its own expense to (a) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Buyer; (b) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary; and (c) examine all due diligence materials related to the Property that Buyer may reasonably request from Seller that are in Seller's possession and about which Seller has knowledge, and that are not protected as attorney work product, by the attorney-client privilege or by other similar confidentiality protections. If Buyer does not purchase the Property, Buyer shall restore it to its pretest condition after the testing is complete.

10. 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. If not, Buyer may elect at its sole discretion to either 1) rescind this Agreement, with Seller refunding the entire purchase price and reimbursing Buyer for all costs incurred, or 2) have Seller pay for all costs of repair or restoration at Seller's expense.

10.1 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.

10.2 This offer is made with respect to the physical condition of the real property on an "as is and where is basis" as of the date of closing.

11. 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.

12. 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.

13. **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:

Kerry A. Richards  
Bradshaw & Richards, P.S.  
11300 Roosevelt Way NE, Suite 300  
Seattle, WA 98125

To Buyer:

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

Kim B. Richards  
c/o Kerry A. Richards  
Bradshaw & Richards, P.S.  
11300 Roosevelt Way NE, Suite 300  
Seattle, WA 98125

14. **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.

15. Seller has until \_\_\_\_\_, 2017, to accept this offer. Time is of the essence of this Agreement and the dates and deadlines contained herein are also of the essence of this Agreement.

The above identified Buyer hereby makes the foregoing offer to purchase real property from Seller on the terms and conditions set forth above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF KIRKLAND

By: \_\_\_\_\_  
Kurt Triplett, City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

**ACCEPTANCE OF OFFER TO PURCHASE AND AGREEMENT TO SELL**

The Seller hereby accepts the foregoing offer to purchase real property and agrees to sell same to Buyer on the terms and conditions set forth above.

\_\_\_\_\_  
Kerry A. Richards

\_\_\_\_\_  
Kim B. Richards

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PUBLICATION SUMMARY  
OF ORDINANCE O-4590

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR THE RICHARDS' PROPERTY IF POSSIBLE AND, IF NOT, AUTHORIZING THE ACQUISITION OF THAT PROPERTY FOR PARK PURPOSES BY APPROPRIATE EMINENT DOMAIN PROCEEDINGS IN THE MANNER PROVIDED FOR BY LAW AND PROVIDING FOR THE COST OF PROPERTY ACQUISITION.

SECTION 1. Authorizes the City Manager to execute a purchase and sale agreement for the Acquisition of the Richards' property.

SECTION 2. Authorizes condemnation of property necessary for park purposes.

SECTION 3. Identifies the source of revenue for the acquisition.

SECTION 4. Authorizes the City Attorney to initiate condemnation proceedings to acquire the property necessary for the public purpose.

SECTION 5. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 2nd day of August, 2017.

I certify that the foregoing is a summary of Ordinance O-4590 approved by the Kirkland City Council for summary publication.

  
\_\_\_\_\_  
Kathi Anderson, City Clerk