

RESOLUTION R-5295

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 ACQUISITION OF A PORTION OF THE SALT HOUSE CHURCH PROPERTY TO PROVIDE A SITE FOR THE CONSTRUCTION OF A SHELTER FOR HOMELESS WOMEN AND FAMILIES.

1 WHEREAS, the Council has recognized that providing a
2 permanent shelter for homeless women and families will be an
3 important link in the pathway to housing on the Eastside and will provide
4 a permanent location for services that are being provided on an
5 emergency basis in temporary locations now; and
6

7 WHEREAS, the 2015-2016 City Work Program included an item
8 to "Partner with A Regional Coalition for Housing [ARCH] and non-profit
9 organizations to site a permanent Eastside women's shelter in Kirkland"
10 and the 2017-2018 City Work Program includes an item to "Partner with
11 ARCH to finance and construct a permanent women/family Eastside
12 shelter in Kirkland; and
13

14 WHEREAS, the Council authorized the City Manager to execute
15 a Memorandum of Understanding (MOU) to pursue the necessary
16 process steps to acquire a site on a property located at 11920 NE 80th
17 Street on January 17, 2017; and
18

19 WHEREAS, a site on that property has been identified for
20 acquisition, which will be created by deed without subdivision pursuant
21 to Kirkland Municipal Code section 22.04.010(d); and
22

23 WHEREAS, the City has since been able to negotiate the
24 attached Purchase and Sale Agreement, Attachment 1, to acquire that
25 site and will continue to work with Salt House Church and Holy Spirit
26 Lutheran Church (the property owners) to create the necessary
27 easement to provide access and utilities to the site, which will be
28 entered into before the sale occurs, and a maintenance agreement for
29 that easement area, which will be negotiated before permits are issued;
30 and
31

32 WHEREAS, authorization to execute the Purchase and Sale
33 Agreement will enable staff to begin the process of seeing the shelter
34 constructed and negotiating agreements with other non-profits to bring
35 this project to completion,
36

37 NOW, THEREFORE, be it resolved by the City Council of the City
38 of Kirkland as follows:
39

40 Section 1, The City Manager is hereby authorized and directed
41 to execute on behalf of the City of Kirkland a Real Property Purchase
42 and Sale Agreement for the Property substantially similar to that
43 attached to this Resolution as Attachment 1 and is further authorized to

44 negotiate and execute on behalf of the City an access and utility
45 easement for the Property and a maintenance agreement for the
46 easement area.

47

48 Passed by majority vote of the Kirkland City Council in open
49 meeting on the 6th day of February, 2018.

50

51 Signed in authentication thereof this 6th day of February,
52 2018.



Amy Walen, Mayor

Attest:



Kathi Anderson, City Clerk

AGREEMENT TO PURCHASE AND SELL REAL PROPERTY

This Agreement to Purchase and Sell Real Property ("Agreement") is made this _____ day of _____, 2018 ("Effective Date"), by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and Holy Spirit Lutheran Church, a _____, 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. Seller and Buyer hereby agree to the purchase and sale of the real property ("Property") to be created by deed without subdivision as allowed by Kirkland Municipal Code Section 22.04.010(d) and described as follows:

THE WEST 125.00 FEET OF THE NORTH 122.50 FEET OF LOT 11, BLOCK 2, BURKE & FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 6, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 68, IN KING COUNTY, WASHINGTON.

AND AN EASEMENT TO PROVIDE ACCESS AND UTILITIES TO THE PROPERTY.

2. Purchase Price; Payment. The "Purchase Price" for the Property shall be Six Hundred Thousand and 00/100 Dollars (\$600,000.00). 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 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 in accordance with the terms of this Agreement and pursuant to any additional 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 Escrow Holder immediately upon mutual execution hereof or obtain an update if a Title Report has already been obtained. Within 30 days after receipt of the Title Report or update, 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 or Seller may instead elect to terminate this agreement by giving notice to Buyer. However if Seller elects instead to try and remove the unapproved exceptions and 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.

5. Closing. Title on closing to be conveyed to Buyer by statutory warranty deed free and clear of all taxes, assessments, liens, and encumbrances other than the Deed Restriction/Covenant provided below, and shall be so insurable.

Deed Restriction/Covenant. The Property cannot be resold for private commercial or residential redevelopment in the event that a permanent women and family shelter proves infeasible, but the parcel could be used for other non-profit or public purposes.

The U. S. Department of Housing and Urban Development has provided a written determination that purchase of the Property by Buyer may proceed, subject to any other Contingencies in this Agreement.

Prior to the date of closing, Buyer and Seller will determine the legal description for the Access and Utility Easement referenced above and draft such an easement, which will be recorded on the same date as the deed to the Property. Buyer and Seller will also negotiate a Maintenance Agreement for the Access and Utility Easement prior to issuance of any permits for the development of the Property. In the event Buyer and Seller are unable to reach agreement on the Access and Utility Easement, either may give notice that it is terminating the Agreement.

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 Title Company ("Escrow") no later than 30 (thirty) days after mutual execution of this Agreement. This date may be extended by agreement of the parties which agreement shall not be unreasonably withheld. Buyer shall be entitled to possession of the Property at closing.

Buyer and Seller shall each pay one half of the cost and expenses of closing. 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.

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, if any, 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.

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. 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. In the event the Property contains a well, fuel tank or septic tank, Seller will remove such tank and until it is removed there will be no closing.

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 As Is. Notwithstanding any provision to the contrary in the Agreement:

a. Should Buyer close on this transaction, Buyer acknowledges that they are satisfied with the current condition of the following items and Buyer acknowledges that, except as expressly provided in the Agreement, Seller makes no representations or warranties, express or implied, concerning the condition of the Property in general and, without limitation, the following specific items. Based on the foregoing, the Buyer agrees to accept the Property and the condition of the following items "AS IS, WHERE IS, WITH ALL FAULTS":

i. ~~The condition, location and existence of underground tanks, if any.~~

ii. The location and/or availability of utilities.

iii. The location of all boundary lines, exact size of the Property and the existence of any potential adverse possession or prescriptive easement claims by adjacent property owners or other third parties.

iv. The condition of surface and subsoils, including, without limitation the existence of wetlands.

v. Zoning and building restrictions.

vi. The condition of all improvements located on or under the Property.

vii. Insurability of the Property and improvements located thereon.

viii. The existence of any chemical, pollutant, contaminant, pesticide, ~~petroleum or petroleum product or byproduct~~, radioactive substance, solid waste, dangerous or toxic substance as the same may be defined from time to time in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended, or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), as amended, or in the Washington Hazardous Waste Management Act (RCW Ch. 70.105D), or the Model Toxics Control Act (RCW Ch. 70.105D and RCW Ch. 82.21), as amended, or any other applicable federal, state or local law, ordinance, rule or regulation relating to the environment, pollutants, contamination and similar matters.

b. The parties acknowledge that the assumption of these risks by the Buyer is in consideration of the Agreement.

c. Buyer assumes any and all risks of liability, claims and damages occurring to the Property or the Buyer which arise either directly or indirectly from the above conditions. Buyer hereby releases Seller from any and all claims and damages arising as a result of the foregoing conditions and the terms of this Paragraph 1. shall survive the closing of this Agreement. To the extent this Amendment is inconsistent with any warranty provided for under the Deed to be delivered at Closing, the terms of this Paragraph 1. shall not be merged into the Deed and shall supersede said Deed as to the matters addressed herein.

Notwithstanding the foregoing 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 the condition, location and existence of underground tanks and petroleum or petroleum products or byproducts located on the Property, if any, found and determined to have been on or within the Property as of the date of closing of this sale or earlier.

9. **Seller Disclosure Statements.** To the maximum extent permitted by RCW 64.06, Buyers each expressly waive their rights to receive from Sellers a seller disclosure statement and to rescind this Agreement, both as set forth in RCW 64.06. Each party, as Seller, agrees that the other party, as Buyer, cannot waive its right to receive the section of the Seller Disclosure Statement entitled "Environmental" if the answer to any of the questions in that section would be "yes."

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 receive.

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 when delivered by facsimile, email, in person, or three days after being deposited in the United States mail, addressed as follows:

To Seller:

Holy Spirit Lutheran Church

To Buyer:

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Email: wevans@kirklandwa.gov
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.

13. **Time.** Time is of the essence of this Agreement and the dates and deadlines contained herein are also of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the Effective Date.

DATED this ____ day of _____, 2018.

CITY OF KIRKLAND

By: _____
Kurt Triplett, City Manager

Approved as to form: _____
City Attorney

HOLY SPIRIT LUTHERAN CHURCH

By: _____
Carol Stolz, Church Council President

Date: _____