

RESOLUTION R-5355

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 PROPERTY  
TO EXPAND WINDSOR VISTA PARK.

1 WHEREAS, property owned by Steve and Maryellen Hess  
2 ("Property") is adjoining Windsor Vista Park and is desired for public  
3 park purposes, to expand public use and enjoyment, protect natural  
4 resources, and enhance neighborhood open space; and  
5

6 WHEREAS, expansion of Windsor Vista Park to develop the  
7 park is identified in the City of Kirkland Parks, Recreation, and Open  
8 Space (PROS) Plan; and  
9


10 WHEREAS, staff has negotiated a proposed Purchase and Sale  
11 Agreement ("Agreement") for acquisition of the Property for the total  
12 amount of \$60,000 as provided in the attached Exhibit A.  
13

14 NOW, THEREFORE, be it resolved by the City Council of the  
15 City of Kirkland as follows:  
16

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

22 Passed by majority vote of the Kirkland City Council in open  
23 meeting on the 5th day of February, 2019.  
24

25 Signed in authentication thereof 5th day of February, 2019.

  
Penny Sweet, Mayor

Attest:

  
Kathi Anderson, City Clerk

## OFFER TO PURCHASE AND AGREEMENT TO SELL REAL PROPERTIES

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and Steve Hess and Maryellen Hess, owners of the real Properties 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 Properties. Subject to City Council appropriation of funds, Seller and Buyer hereby agree to the purchase and sale of the real property described as follows:

Tract B, Windsor Vista Number 3, according to the plat thereof recorded in Volume 86 of Plats, Pages 7 and 8, in King County, Washington.

Parcel No.: 947720-1690 ("Property")

2. Purchase Price; Payment. The Purchase Price for the Property shall be Sixty Thousand and 00/100 Dollars (\$60,000.00). 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 ("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 a title company 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, 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.

5. 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, Washington offices of Chicago Title Company ("Escrow") no later than sixty (sixty) days after mutual execution of this Agreement. 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.

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, on Seller's request, the City will advise King County to refund the excess taxes to Seller if refundable.

8. Condition of Properties. 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.

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 material persons' liens or claims might arise.

8.2 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, 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 subject 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:

City of Kirkland Attn: Parks Director  
123 Fifth Avenue  
Kirkland, WA 98033  
Ph. (425) 587-3030

To Buyer:

Steve & Maryellen Hess  
25954 210th Ave SE,  
Maple Valley, WA 98038

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. Seller has until January 25, 2019, 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 the real Property from Seller on the terms and conditions set forth above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF KIRKLAND

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

Approved as to form:

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

**Maryellen Hess**

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

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_, 2019.

Print Name: \_\_\_\_\_  
 NOTARY PUBLIC in and for the State  
 \_\_\_\_\_, residing \_\_\_\_\_  
 Commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_, 2019.

Print Name: \_\_\_\_\_  
 NOTARY PUBLIC in and for the State  
 \_\_\_\_\_, residing \_\_\_\_\_  
 Commission expires: \_\_\_\_\_