

RESOLUTION R-5533

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT TO ACQUIRE VACANT PROPERTY FOR THE NE 142ND STREET SURFACE WATER DRAINAGE PROJECT.

1 WHEREAS, the NE 142nd Street Surface Water Drainage
2 project provides surface water improvements to reduce flooding
3 risk, provide redundancy to the system, reduce maintenance
4 needs, and support habitat restoration in the area; and
5

6 WHEREAS, during the design stage, staff discovered a
7 parcel of land owned by T&M Jenn LP that would facilitate the
8 proposed storm system; and
9

10 WHEREAS, this project addresses the Council's
11 "Dependable Infrastructure" and "Sustainable Environment"
12 goals; and
13

14 WHEREAS, staff has negotiated a proposed purchase and
15 sale agreement for the acquisition of the property for the total
16 amount of \$2,500.
17

18 NOW, THEREFORE, be it resolved by the City Council of the
19 City of Kirkland as follows:
20

21 Section 1. The City Manager is hereby authorized and
22 directed to execute on behalf of the City of Kirkland a Real
23 Property Purchase and Sale Agreement for the property
24 substantially similar to the agreement attached to this Resolution
25 as Exhibit "A."
26


27 Passed by majority vote of the Kirkland City Council in open
28 meeting this 19 day of April, 2022.
29

30 Signed in authentication thereof this 19 day of April, 2022.



Penny Sweet, Mayor

Attest:



Kathi Anderson, City Clerk

Exhibit A to Resolution

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Agreement made this ___ day of ____, 2022 ("Effective Date"), by and between the City of Kirkland, a municipal corporation of the State of Washington, ("Buyer" or "the City") and T & M Jenn LP, a Washington Limited Partnership ("Seller").

For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase of Real Property. Seller and Buyer hereby agree to the purchase and sale of the real property in the City of Kirkland, King County tax parcel number 659950-0310, and legally described as:

The North 50 Feet of Lot 30, Pacesetter Homes, Idlewild, according to the Plat recorded in Volume 95 of Plats, Page 66 in the Northeast quarter of section 24, Township 26 North, Range 4, in King County, Washington. Situate in the County of King, State of Washington.

("Property"), together with all of Seller's right, title, and interest in all structures, fixtures, buildings, and improvements situated on the land.

2. Purchase Price and Covenant: Payment. The Purchase Price for the Property shall be Two Thousand, Five Hundred and 00/100 Dollars (\$2,500.00). The Seller does not require earnest money to be bound to this Agreement. The expectation of closing is sufficient consideration. The Date of Closing shall be the date that 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 offices of the Kirkland City Attorney's Office.
3. Feasibility Contingency and Access. Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the contracts and leases affecting the Property; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate unless Buyer gives written notice to Seller within 20 business days of the Effective Date stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section shall be deemed to be satisfied. As used in this Agreement, the term "Feasibility Period" shall mean the period beginning upon the Effective Date and ending upon the satisfaction or waiver of the feasibility contingency.

Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soil conditions, sensitive areas, wetlands or other matters affecting the feasibility of the

Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security and confidentiality. Buyer shall not perform any invasive testing, including environmental inspections beyond a Phase I assessment, without obtaining Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for the purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This Agreement to indemnify and defend Seller shall survive closing.

4. Title Policy and Condition of Title. Seller authorizes Buyer, its Lender, Listing Agent, Selling Licensee and Closing Agent, at Seller's expense, to apply for and deliver to Buyer an extended coverage owner's policy of title insurance. The title report shall be issued by Chicago Title Insurance Company. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of 20 days after mutual acceptance of this Agreement or the expiration of the Feasibility Period. This Agreement shall terminate unless within 10 days of Buyer's notice of such objections: (1) Seller agrees to remove all objectionable provisions; or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within 5 days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within 2 days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided that the lien securing any financing which Buyer has agreed to assume shall be a permitted exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of any real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy shall contain no exceptions other than the General Exclusions and Exceptions common to such policies, the Covenant and the Permitted Exceptions.
5. Closing. This sale shall be closed within 30 days of execution of this agreement, ("Closing") by Chicago Title Insurance Company, 11900 NE 1st Street, Building G, Suite 110, Bellevue, WA 98005("Closing Agent"). Buyer and Seller shall deposit with Closing Agent by noon on the scheduled closing date all instruments and monies required to complete the purchase in accordance with this Agreement. Closing shall be deemed to have occurred when the deed is recorded, and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided that the same are consistent with this Agreement. Buyer is entitled to possession on closing.

6. Closing Costs. Seller shall deliver any information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for closing. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable endorsements requested by Buyer and the cost of any survey required in connection with the same. Buyer shall pay the escrow fees. Real estate excise taxes, if any, shall be paid by Buyer. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of closing. Buyer shall pay to Seller at closing an additional sum equal to any utility deposits for which Buyer receives the benefit after closing. Buyer shall pay all sales or use tax applicable to the transfer of personal property included in the sale. Pursuant to RCW 60.80, Buyer and Seller request the Closing Agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges affecting the Property.

7. Post-Closing Adjustments, Collections and Payments. After closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at closing based on estimates. Any bills or invoices received by Buyer after closing shall be paid by Seller upon presentation of such bill or invoice.

8. Condition of Property. 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 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.

9. Seller's Representations. Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated above, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof (a) Seller is authorized to enter into the Agreement, to sell the Property. And to perform its obligations under this Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement, if any, comprise all material documents in Seller's possession or control regarding the operation and condition of the Property; (c) Seller has not received any written notices that the Property or the tenancy conducted thereon violate any applicable laws, regulations, codes or ordinances; (d) Seller has all certificates of occupancy, permits and other governmental consents necessary to own and operate the Property for its current use; (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after closing; (f) There

is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at closing) all local state and federal taxes, if any, (other than real and personal property taxes and assessments described above), if any, attributable to the period prior to closing which, if not paid, could constitute a lien on the Property (including any personal property), or for which Buyer may be held liable after closing; (h) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used in this Agreement, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products and asbestos.

10. As-Is. Except for those representations and warranties specifically included in this Agreement; (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof and the improvements, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness of a particular purpose, tenant ability, habitability and use; (iii) Buyer otherwise takes the Property "As Is;" and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.
11. Casualty. Seller bears the risk of loss until Closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and obtain a refund of any earnest money if the improvements are destroyed or materially damaged by casualty before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$15,000 or five percent of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with Closing in which case at closing Seller shall assign to Buyer all claims and right to proceeds under any property insurance policy and shall credit to Buyer at Closing the amount of any deductible provided for in the policy.
12. FIRPTA-Tax Withholding at Closing. Closing Agent is instructed to prepare a certification that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act. Seller agrees to sign this certification.

13. Conveyance. Title shall be conveyed by a Statutory Warranty Deed subject only to the Permitted Exceptions and the Covenant.
14. Agency Disclosure. At the signing of this Agreement, neither Seller or Buyer are represented by a real estate agent and, therefore, no commission is due any agent.
15. Assignment. Buyer may not assign this Agreement to any other party.
16. Remedies. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then Seller may terminate this Agreement as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, then, as Buyer's sole remedy, Buyer may terminate this Agreement.
17. Information Transfer. In the event this Agreement is terminated, Buyer agrees to deliver to Seller within 10 days of Seller's written request, copies of all materials received from Seller and any non-privileged plans, studies, reports inspections, appraisals, surveys, drawings, permits application or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.
18. 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. This Agreement and any addenda and exhibit to it state the entire understanding of the Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect this Agreement.
19. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart. Electronic delivery of documents (such as fax or email) shall be legally sufficient to bind the party the same as delivery of an original.

EXECUTED to be effective as of the date listed above.

City of Kirkland (BUYER)

By: _____

Print Name: _____

Its: _____

Approved as to Form:

Assistant City Attorney

T&M Jenn, LP, a Washington Limited Partnership (SELLER)

By: _____

Print Name: _____

Its: _____