

RESOLUTION R-5481

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 JUANITA HEIGHTS PARK.

1 WHEREAS, property owned by Dorothy Emmel ("Property")  
2 is aligned as a potential trail head at Juanita Heights Park and is  
3 desired for public park purposes, to expand public use and  
4 enjoyment, protect natural resources, and enhance neighborhood  
5 connectivity; and  
6

7 WHEREAS, expansion of Juanita Heights Park to preserve  
8 the existing forest is identified in the City of Kirkland Parks,  
9 Recreation, and Open Space (PROS) Plan and further identified in  
10 the adopted Finn Hill Neighborhood Plan; and  
11

12 WHEREAS, the trails connections are supported through  
13 the Finn Hill Neighborhood Plan; and  
14

15 WHEREAS, the City of Kirkland has obtained a grant from  
16 the King County Conservation Futures Tax Grant Program to  
17 reimburse the City for an additional one-half of the Property's  
18 purchase price; and  
19

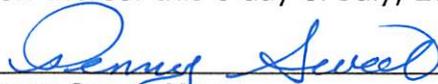
20 WHEREAS, staff has negotiated a proposed Purchase and  
21 Sale Agreement ("Agreement") for acquisition of the Property for  
22 the total amount of \$72,000 as provided in the attached Exhibit  
23 A.  
24

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

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

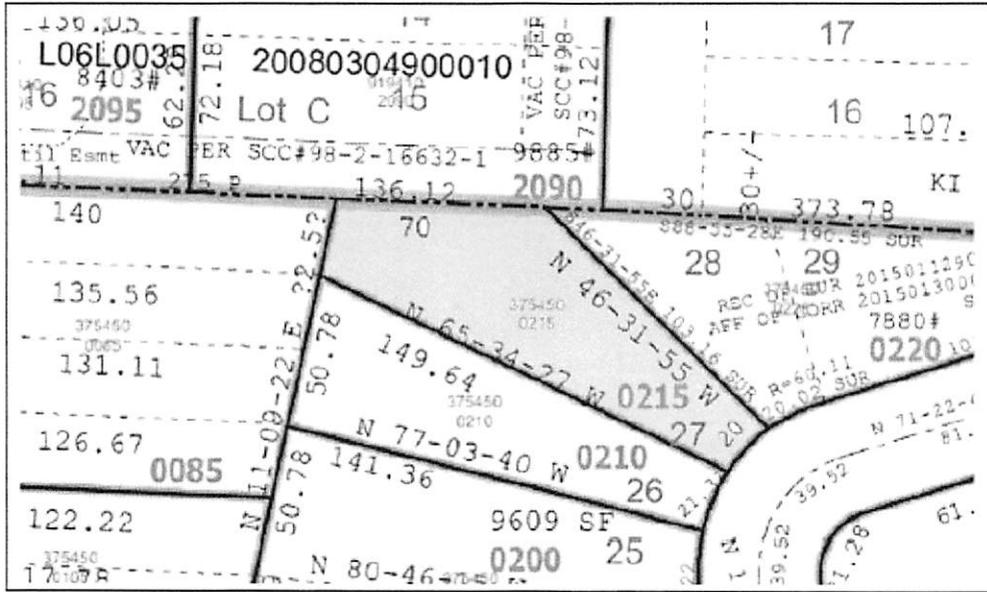
34 Passed by majority vote of the Kirkland City Council in open  
35 meeting on the 6 day of July, 2021.  
36

37 Signed in authentication thereof this 6 day of July, 2021.

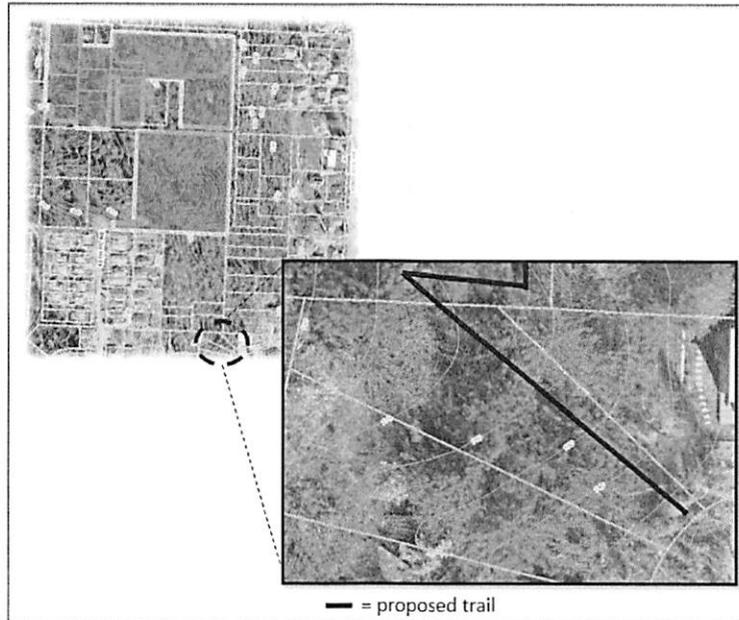
  
\_\_\_\_\_  
Penny Sweet, Mayor

Attest:  
  
\_\_\_\_\_  
Kathi Anderson, City Clerk

ATTACHMENT A: PARCEL MAP



Plat Map



**REAL PROPERTY PURCHASE AND SALE AGREEMENT**

This Agreement made this 9<sup>th</sup> day of June, 2021 ("Effective Date"), by and between the City of Kirkland, a municipal corporation of the State of Washington, ("Buyer" or "the City") and the heirs and devisees of Dorothy Emmel, deceased, through her estate's personal representative ("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 375450-0215, and legally described as:

Lot 27, Block 3, Juanita Beach Camps, according to the plat thereof recorded in Volume 32 of Plats, pages 25, 26, 27 and 28, records of said county.

("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 72,000 and 00/100 Dollars (\$72,000.00). Buyer shall deposit the Purchase Price with the Escrow Holder at or before Closing.
3. **Escrow Holder.** Promptly following the execution of this Agreement, Buyer shall open an escrow with Chicago Title Insurance Company (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 escrow instructions of the Parties which shall be consistent herewith.
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, the statutory lien for real property taxes, or any estate tax or medical care-related liens, 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 on or before June 30, 2021, ("Closing") by Chicago Title Insurance Company, 11900 NE 1<sup>st</sup> 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. Seller and Buyer shall each pay one-half of the escrow fees. Real estate excise taxes, if any, shall be paid by Seller. 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. Assurance. 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.
9. Seller's Representations. Except as disclosed to or known by Buyer prior to the date of this Agreement, 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) The heirs and devisees of Dorothy Emmel, deceased, are the sole legal owners of the fee simple interest in the Property;
  - (b) Seller is authorized to enter into the Agreement, to sell the Property and to perform its obligations under this Agreement;
  - (c) No person or entity has a first right of refusal or option to purchase or other similar right to or interest in the Property;
  - (d) 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;
  - (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 by any governmental entity other than the City of Kirkland;
  - (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 has paid, or will prior to closing pay, all estate taxes that, if not paid, could constitute a lien on the Property or for which Buyer may be held responsible after closing.
  - (i) Seller has paid, or will prior to closing pay, all costs of medical care that could be subject to estate recovery by the State of Washington or that, if not paid, could constitute a lien on the Property or for which Buyer may be held responsible after closing.
10. Condition of Property As-Is. Except for those representations and warranties specifically included in this Agreement, (a) Seller makes no representations or warranties regarding the Property; (b) 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, tenantability, habitability and use; (c) Buyer otherwise takes the Property "As Is;" and (d) 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 Seller will not be entitled to remedies 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 Personal Representative's Bargain and Sale 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 and the Buyer will pay Seller \$1,500.00 as liquidated damages 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 either (a) terminate this Agreement; or (b) bring suit to specifically enforce this Agreement and recover incidental damages provided Buyer must file suit within 60 days of the scheduled date of closing or any earlier date Seller has informed Buyer in writing that Seller will not proceed with Closing.
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 exhibits 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

**(SELLER)**

By: Krista MacLaren

Print Name: KRISTA MacLaren

Its: Personal Representative

of the Estate of Dorothy Emmel

FILED

2019 APR 23 AM 11:21

KING COUNTY  
CLERK OF COURT  
SEATTLE, WA

CERTIFIED  
COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

IN RE THE ESTATE OF  <u>DOROTHY ANN EMMEL</u>  DECEASED	NO: 19-4-08875-1 SEA  LETTERS TESTAMENTARY (LTRTS)
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The last will of the above named decedent was duly exhibited, proven and filed on April 23, 2019. It appears in and by said will that KRISTA J. MACLAREN is/are named Executor(s) and by order of this court is/are authorized to execute said will according to law.

WITNESS my hand and seal of said Court: April 23, 2019.



BARBARA MINER  
King County Superior Court Clerk

By:  Deputy Clerk  
K.Rich

• NOT OFFICIAL WITHOUT SEAL •

I BARBARA MINER Clerk of the Superior Court of the State of Washington for King County do hereby certify that this copy is a true and perfect transcript of said original as it appears on file and of record in my office and of the whole thereof IN TESTIMONY WHEREOF I have affixed this seal of said Superior Court at my office at Seattle on this date APR 23 2019



BARBARA MINER Superior Court Clerk

By: K. RICH   
Deputy Clerk

**FISCAL NOTE**

*CITY OF KIRKLAND*

**Source of Request**

Lynn Zwaagstra, Director of Parks and Community Services

**Description of Request**

Recognize \$166,902 in grant revenue from King County Conservation Futures Tax (CFT) and authorize a purchase and sale agreement in the amount of \$72,000 for the acquisition of the 0.10 acre Emmel Property to expand Juanita Heights Park and Billy Goat Trail for the Juanita Heights Park Trail: Feasibility, Acquisition and Development project (PKC1350300).

**Legality/City Policy Basis**

**Fiscal Impact**

One-time appropriation of new grant revenue. This will add \$166,902 to the General Capital Fund (310) for PKC1350300. This will increase the PKC1350300 project budget to \$410,703. The available balance is \$398,203.

**Recommended Funding Source(s)**

	Description	2020 Est End Balance	Prior Auth. 2019-20 Uses	Prior Auth. 2019-20 Additions	Amount This Request	Revised 2020 End Balance	2020 Target
<b>Reserve</b>							
<b>Revenue/Exp Savings</b>	New unbudgeted grant revenue adding \$166,902 in new appropriations in the General Capital Fund (310). Revenue account numbers - 310*337081						
<b>Other Source</b>							

**Other Information**

Prepared By	Andrea Peterman, Budget Analyst	Date	June 22, 2021
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