

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2022 ("Effective Date"), by and between the **City of Auburn**, a Washington municipal corporation ("City" or "Buyer"), and **Diamond J. Investments LLC**, an Oregon Limited Liability Company ("Seller"). Seller and Buyer are collectively referred to as the "Parties."

RECITALS

A. Seller owns certain real property created by Auburn Short Plat SP-2-81 and SP-3-81, REC# 8201260641 in Auburn, Washington, also known as King County Parcel Nos. 936000-0011, 12, 15 & 17 (collectively the "Subject Property"), legally described in attached **Exhibit A**.

B. Seller wishes to sell, and Buyer wishes to buy, the Subject Property owned by Seller described in **Exhibit A** along with any interest Seller has in Tract A & B of SP-2-81 and SP-3-81.

C. Buyer intends to use grant funds from the King County Conservation Futures and King County Cooperative Watershed Management grant programs for the purchase of the Subject Property.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which the Parties mutually acknowledge, Buyer and Seller agree as follows:

1. **Certain Defined Terms.** For purposes of this Agreement, the following capitalized terms in this Agreement will have the following definitions:

1.1 "Closing" or "Close of Escrow" means the recordation of the Deed in the Official Records and Seller's receipt of the Purchase Price.

1.2 "Closing Date" means the date which is thirty (30) days after the expiration or waiver of the due diligence and feasibility review period, but a date not to exceed May 31, 2022, but which may be extended pursuant to Section 5.

1.3 "Deposit" means an amount of Two thousand five hundred dollars (\$2,500), plus any other amounts designated as a Deposit in this Agreement.

1.4 "Escrow" means the escrow opened with Escrow Agent for the consummation of the transaction described in this Agreement.

1.5 "Escrow Agent" means Ticor Title Company, located at: 33400 9th Ave S. #102 Federal Way, WA 98003.

1.6 "Official Records" means the official real property records of King County, Washington.

1.7 "Permitted Exceptions" has the meaning as set forth in Section 6.1 below.

1.8 "Purchase Price" has the meaning as set forth in Section 3.

1.9 "Title Company" means Ticor Title Company.

1.10 "Title Policy" means the then current Buyer-purchased standard coverage ALTA owner's policy of title insurance issued by the Title Company to Buyer with coverage in the amount of purchase price, showing title to the Subject Property vested in Buyer subject only to the Permitted Exceptions.

2. **Purchase and Sale.** Buyer agrees to buy, and Seller agrees to sell, the Subject Property legally described in **Exhibit "A"**, and any and all interest in Tracts A & B the Seller may have on the terms and conditions set forth in this Agreement.

3. **Purchase Price; Cash Payment.** The Purchase Price is **One Hundred Six Thousand Five Hundred Dollars and no cents (\$106,500.00)**, which will be payable in full at Closing. The Deposit will be applied to the Purchase Price due at Closing. The Purchase Price payment by Buyer will be via wire transfer of collected federal funds.

4. **Earnest Money Deposit.** On execution of this Agreement, Buyer will deposit with Escrow Agent **Two Thousand Five Hundred Dollars and no cents (\$2,500.00)** in cash (the "Deposit"), which the Escrow Agent will hold as an earnest money deposit for this transaction. The Deposit will be held in Escrow and applied or disposed of by the Escrow Agent based on the terms of this Agreement. The Deposit will not be refunded and will become property of Seller upon expiration of Buyer's Due Diligence and Feasibility period.

5. **Due Diligence and Feasibility.** Due Diligence and Feasibility Period. Buyer shall have the right for a period of **two months** from the Effective Date of this Agreement (the "Due Diligence Period") to conduct Buyer's due diligence and feasibility review, examination and inspection of all matters pertaining to its acquisition of the Subject Property, including such inspections, tests, and surveys as Buyer deems appropriate to determine the suitability of the Subject Property for Buyer's intended use. Buyer is solely responsible to determine its ability to use the Subject Property for its intended use and is solely responsible for submitting all necessary applications for City, State, and Federal permits necessary to determine feasibility. If, based upon Buyer's review, examination and inspection, Buyer determines in its sole discretion that it intends to acquire the Subject Property, then Buyer shall promptly notify Seller of such determination in writing prior to

the expiration of the Due Diligence Period and the Deposit will become nonrefundable (except as otherwise provided herein), and the Parties will proceed to Closing. In the event that Buyer fails to deliver such notice to Seller on or before the expiration of the Due Diligence Period, Buyer will be deemed to be satisfied and to have waived its right to terminate this Agreement pursuant to this subsection. If Buyer timely and affirmatively advises Seller in writing of its dissatisfaction based on its Due Diligence review, then this Agreement automatically terminates, the Parties' rights under this Agreement shall be of no further force or effect and the Deposit will be returned to Buyer.

6. Title Policy. Promptly after mutual execution of this Agreement, Buyer will obtain a standard coverage preliminary title insurance commitment covering the Subject Property from the Title Company (the "Commitment"). The Title Company will be instructed to deliver a copy of the Commitment and copies of exceptions to Buyer, Seller, and the Parties' respective counsel. Approval by Buyer of the exceptions to title set forth in the Commitment (other than as hereinafter set forth) will be a condition precedent to Buyer's obligation to purchase the Subject Property. Unless Buyer gives written notice that it disapproves the exceptions to title shown on the Commitment (other than the exceptions to title approved by Buyer and described in Section 6.1 below), stating the exceptions so disapproved, within ten (10) days after the date of delivery of the Commitment to Buyer, Buyer will be deemed to have approved such exceptions. If Buyer disapproves any title exceptions, Seller will have a ten (10) day period after its receipt of Buyer's written notice of disapproval of the same within which to provide written notice to Buyer as to which of such disapproved title exceptions Seller will remove (or cause to be removed) from title; provided, however, that Seller will not be required to actually remove such exception(s) until Closing. If, for any reason, Seller's notice given pursuant to the immediately preceding sentence does not covenant to remove all of Buyer's disapproved title exceptions at or prior to Closing, Buyer has the right to terminate this Agreement by written notice to Seller and Escrow Agent given within ten (10) days after the earlier of the expiration of such ten (10) day period or the date Seller informs Buyer that it does not intend to remove the disapproved items (the "Termination Notice"). Buyer's failure to deliver the Termination Notice within such ten (10) day period will be deemed Buyer's approval of any such previously disapproved title exception. If Buyer delivers the Termination Notice within such ten (10) day period, the obligation of Seller to sell, and Buyer to buy, the Subject Property will terminate.

6.1 Permitted Exceptions. In addition to such other exceptions to title as may be approved by Buyer pursuant to the provisions of Section 6 above, Buyer shall accept title to the Subject Property subject to the following (collectively, the "Permitted Exceptions"):

The printed exceptions which appear in the then current ALTA form standard coverage owner's policy of title insurance issued by Title Company in the State of Washington; and items created by, or on behalf of, Buyer.

7. **Buyer's Right of Entry.** Buyer, and its agents and consultants, at Buyer's sole expense and risk, may enter the Subject Property during the term of this Agreement for the purpose of Buyer's due diligence and feasibility study of the Property. Buyer will (a) exercise care at all times on or about the Subject Property, and (b) take precautions for the prevention of injury to persons or damage to property on or about the Subject Property. Any physical alteration of the Subject Property in connection with Buyer's study will be restored by Buyer immediately upon demand by Seller, at Buyer's sole expense. Buyer indemnifies Seller against any loss, damage, or claim resulting from Buyer's inspections and tests. Buyer is not Seller's agent in connection with such activities and has no authority to allow any liens to encumber the Subject Property. Buyer shall keep the Subject Property free from all mechanics', materialmen's and other liens, and all claims, arising from any work or labor done, services performed, or materials and supplies furnished in with Buyer's actions in the exercise of its right of entry on the Subject Property and Buyer will maintain all insurance as required by Seller with respect to activities on the Subject Property.

8. **Closing.**

8.1 Time for Closing. This purchase and sale will be closed in the office of Escrow Agent on the Closing Date. Buyer and Seller will place in Escrow with Escrow Agent all instruments, documents and monies necessary to complete the sale under this Agreement. Funds held in Escrow pursuant to Escrow instructions will be deemed, for purposes of this definition, as available for disbursement to Seller. Neither party needs to be physically present at the Closing.

8.2 Closing Costs.

8.2.1 Seller's Costs. Associated with the sale and conveyance Seller will pay; (a) Seller's share of prorations, if any, and (b) Seller's own legal fees and fees of its own consultant, if any.

8.2.2 Buyer's Costs. Buyer will pay all costs associated with the sale and conveyance of the Subject Property, including but not limited to: (a) the full escrow fees and costs, (b) all premiums charged for the Title Policy and any additional endorsements or coverage Buyer may require, including applicable sales tax, (c) the recording fees for the Deed; and (d) Buyer's share of prorations, if any (d) real estate excise taxes.

8.2.3 Other Costs. All other costs and expenses will be Buyer's obligation.

8.2.4 Real Property Taxation. Seller will be responsible for all real property taxes due and owing prior to the Closing.

8.3 Closing Documents.

8.3.1 Seller's Documents. At Closing, Seller will deliver to Escrow Agent the following instruments and documents:

- a. An executed and acknowledged Statutory Warranty Deed acceptable to Buyer;
- b. The executed real estate excise tax affidavit to accompany the Deed; and
- c. An executed nonforeign person affidavit in the form required under Section 1445 of the Internal Revenue Code.

8.3.2 Buyer's Documents. At Closing, Buyer shall deliver to Escrow Agent the following funds, instruments and documents:

- a. The balance of the Purchase Price in accordance with Section 3; and
- b. An executed real estate excise tax affidavit.

9. **Possession.** Buyer will be entitled to possession of the Subject Property upon Closing.

10. **Representations and Warranties.**

10.1 Seller's Representations and Warranties. In addition to any other representations or warranties of City elsewhere in this Agreement, Seller represents and warrants to Buyer now, and as of the Date of Closing, that:

10.1.1 Authority. Seller has full power and authority to execute this Agreement and perform Seller's obligations and all necessary action to authorize this transaction has been taken, except as specifically provided herein.

10.1.2 Hazardous Substances. Seller has not received notification of any kind from any governmental agency suggesting that the Subject Property is or may be targeted for a Hazardous Substances cleanup; to the best of Seller's knowledge the Subject Property has not been used (a) for the storage, disposal or discharge of oil, solvents, fuel, chemicals or any type of toxic, dangerous, hazardous or biological waste or substance (collectively, "Hazardous Substances"), or (b) as a landfill or waste disposal site; to the best of Seller's knowledge the Subject Property has not been contaminated with any Hazardous Substances; and (c) to the best of Seller's knowledge, there are no underground storage tanks on the Subject Property. Buyer agrees to waive Seller's Disclosure Statement under RCW 64.06.010 with the exception of item 6 "Environmental" under RCW 64.06.013 which Seller shall deliver to Buyer within five (5) business days following execution of this Agreement. A blank copy of the Environmental Section of Seller's Disclosure Statement is attached as **Exhibit B** for reference. Prior to closing, Buyer will be responsible to evaluate the property for Hazardous Substances and Seller will be given the opportunity, but will not be obligated, to remediate any concerns brought to the attention of environmental authorities.

10.1.3 Buyer's Representations and Warranties. In addition to any other representations and warranties of Buyer elsewhere in this Agreement, Buyer represents and warrants to Seller now, and as of the Date of Closing, that (a) Buyer has full power to execute, deliver and carry out the terms and provisions of this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and (b) the individual executing this Agreement on behalf of Buyer has the authority to bind Buyer to the terms and conditions of this Agreement.

10.1.4 "As is" condition of Subject Property. The Purchase Price reflects that Buyer is purchasing the Subject Property "as is," "where is," and "with all faults," except to the extent of representations and warranties specifically made by Seller or in the Statutory Warranty Deed or other documents to be delivered by Seller at Closing.

11. Maintenance of Subject Property; Risk of Loss, Condemnation.

11.1 Maintenance of Subject Property. From the date of this Agreement until the Closing Date (or any earlier termination of this Agreement), Seller agrees to maintain the Subject Property in substantially the same condition existing as of the Effective Date, ordinary wear and tear, damage by casualty excepted.

11.2 Risk of Loss; Condemnation. Risk of loss of or damage to the improvements on the Subject Property will be borne by Seller at all times until the Closing Date and no event of casualty or damage shall affect the parties' obligations under the Agreement or the Purchase Price, however, Buyer will have the right to receive any insurance proceeds due Seller in connection with any casualty or damage and Seller covenants to maintain commercially reasonable casualty insurance in place with respect to the Subject Property at all times prior to Closing. Seller shall promptly notify Buyer of any condemnation or eminent domain proceeding which affects or may affect the Subject Property. In the event of any condemnation or eminent domain proceeding by any entity other than City, or a deed in lieu of or under threat thereof, which affects a material portion of the Subject Property, Buyer may elect either to terminate this Agreement, or to purchase the Subject Property in the condition existing on the Closing Date without adjustment of the Purchase Price.

12. Default.

12.1 Time of Essence. Time is of the essence for this Agreement.

12.2 Seller's Remedies for Buyer's Default or Failure to Close. If Buyer fails, without legal excuse, to complete the purchase of the Subject Property in accordance with this Agreement, Seller's sole and exclusive remedies shall be to retain the Deposit as liquidated damages. Buyer expressly agrees that the retention of the Deposit by Seller represents a reasonable estimation of the damages in the event of Buyer's default and failure to close, that actual damages may be difficult to ascertain, and that this provision

does not constitute a penalty. In this respect, Buyer and Seller acknowledge that these damages have been specifically negotiated between Buyer and Seller and will compensate Seller for delaying the eventual sale of the Subject Property and to compensate Seller or its costs and expenses associated with this Agreement.

12.3 Buyer's Remedies for Seller's Default. If Seller fails to complete the sale of the Subject Property in accordance with this Agreement, Buyer's remedy will be to terminate this Agreement or to seek specific performance.

13. **Notices.** All notices, demands and other communications required or permitted to be given shall be in writing and shall be sent by personal delivery (including by means of professional messenger or courier service) or registered or certified mail, postage-prepaid, return-receipt requested, or by electronic mail (email) at the addresses provided. Notice shall be deemed to have been given if personally delivered or sent by electronic mail (email), upon receipt, if sent by mail, two (2) days after duly placed in the U.S. Mail to all of the addresses designated for such party.

The Parties' respective addresses for notices are as follows:

If to City: City of Auburn
Real Estate Division
25 West Main Street
Auburn, WA 98001-4998
Attn: Josh Arndt
Email: jarndt@auburnwa.gov

With copies to: City Attorney's Office
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Attn: City Attorney
Email: kcomeau@auburnwa.gov, druth@auburnwa.gov

If to Seller: Diamond J. Investments, LLC
Brad Johnson, its -
32113 S Palmer Rd
Molalla, OR 97038
503.819.4173
Bradj3176@canby.com

Notice of change of address shall be given by written notice in the manner detailed in this Section.

14. General.

14.1. Entire Agreement. This is the entire Agreement of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers must be in writing. No waiver of any right or remedy in the event of default will constitute a waiver of such right or remedy in the event of any subsequent default. Venue for disputes under this Agreement is the Superior Court of King County, Washington.

14.2 Choice of Law. This Agreement will be governed by the laws of the State of Washington.

14.3 No Third Party Beneficiaries/Severability. This Agreement is for the benefit only of the Parties and shall inure to the benefit of and bind the heirs, personal representatives, successors and permitted assigns of the parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.4 Survival of Rights, Duties, and Obligations. The Parties' rights, duties, covenants, and obligations shall survive Closing and the expiration or earlier termination of this Agreement.

14.5 Indemnification. From and after Closing, and for a period of ten (10) years from the Closing Date, Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Subject Property, except to the extent caused by the negligence or willful misconduct of Buyer.

14.6 Signing Authority. Each of the Parties represents and warrants that the individual signing this Agreement on its behalf is duly authorized to enter into this Agreement and to execute and legally bind such Party to it.

14.7 Attorneys' Fees. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party is entitled to recover from the other party such sum as the Court may adjudge reasonable as attorneys' fees, including fees incurred at trial, on any appeal and in any petition for review.

14.8 Exclusivity. During the term of this Agreement, Seller will not market nor list the Subject Property for sale, nor accept any offers from third parties with respect to sale of the Subject Property.

14.9 Reservation of Police Power. Notwithstanding anything to the contrary set forth in this Agreement, Buyer understands and acknowledges that City's authority to exercise its police (regulatory) powers in accordance with applicable law shall not be deemed limited by the provisions of this Agreement.

14.10 This purchase is subject to the approval of the King County Futures Committee, which Buyer shall make reasonable effort to obtain by the expiration of the due diligence and feasibility period. If no notice of King County Futures Committee is delivered to Seller by the end of the feasibility period, then approval shall be deemed to have been granted. Buyer may request an extension, at no cost to Buyer for this provision. Seller agrees to allow for an extension of this provision if Buyer can demonstrate reasonable efforts in obtaining said approval.

14.11 Approval by Auburn City Council. The Parties acknowledge that this Agreement shall not be deemed accepted by or binding on Seller until approved by the Auburn City Council

14.12 Exhibits. The following exhibits are attached and incorporated into this Agreement by reference.

- (i) **Exhibit A – Legal Description of the Subject Property**
- (ii) **Exhibit B – Seller Disclosure, Environmental**

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SIGNATURE PAGE

BUYER
CITY OF AUBURN

Nancy Backus, Mayor Date:

Attest: _____
Shawn P. Campbell, City Clerk

Approved as to Form:

Kendra Comeau, Auburn City Attorney

SELLER

Diamond J Investments LLC

Signature: Date:

Print Name:

Title:

Address:

Contact Info:

EXHIBIT "A"

Legal Description

For APN/Parcel ID(s): 936000-0011-02, 936000-0012-01, 936000-0015-08 and
936000-0017-06

PARCEL A: (936000-0011-02 936000-0012-01)

LOT(S) 1 AND 2, KING COUNTY SHORT PLAT NO. SP-2-81, ACCORDING TO
THE SHORT PLAT THEREOF, RECORDED JANUARY 26, 1981 UNDER
RECORDING NO. 8101260642, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND
EGRESS OVER TRACTS A OF KING COUNTY SHORT PLAT NO SP-3-81,
RECORDED UNDER RECORDING NO. 8101260641, RECORDS OF KING
COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

PARCEL B: (936000-0015-08 936000-0017-06)

LOT(S) 3 AND 4, KING COUNTY SHORT PLAT NO. SO-3-81, ACCORDING TO
THE SHORT PLAT THEREOF, RECORDED JANUARY 26, 1981, UNDER
RECORDING NO. 8101260641, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND
EGRESS OVER TRACTS A OF KING COUNTY SHORT PLAT NO SP-3-81,
RECORDED UNDER RECORDING NO. 8101260641, RECORDS OF KING
COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

TICOR TITLE COMPANY COMMITMENT NO. 70179646

EXHIBIT "B"
Seller Disclosure – Environmental

ENVIRONMENTAL DISCLOSURE		Yes	No	Don't Know	N/A
A	Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?	X			
B	Does any part of the property contain fill dirt, waste, or other fill materials?			X	
C	Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?		X		
D	Are there any shorelines, wetlands, floodplains, or critical areas on the property?	X			
E	Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?		X		
F	Has the property been used for commercial or industrial purposes?		X		
G	Is there any soil or groundwater contamination?			X	
H	Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?		X		
I	Has the property been used as a legal or illegal dumping site?		X		
J	Has the property been used as an illegal drug manufacturing site?		X		
K	Are there any radio towers in the area that cause interference with cellular telephone reception?		X		

If you answered yes to any of the following please give further details here.

A. Property ~~is~~ wetlands so probably floods some

D. Wetlands on property