

CITY OF SEATTLE
ORDINANCE 126905
COUNCIL BILL 120650

AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the acquisition of real property at 6109 S Fountain St; authorizing acceptance of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.

WHEREAS, in August 2014, voters approved Proposition 1, creating a metropolitan park district contiguous with the borders of the city of Seattle, known as the Seattle Park District, as permitted under chapter 35.61 RCW; and

WHEREAS, the Taylor Creek West Fork headwater wetland is the last surviving urban headwater wetland in a salmon-bearing watershed in Seattle; and

WHEREAS, the Taylor Creek West Fork headwater property provides significant open space benefits, including wildlife habitat and recreational opportunities, and the area is, therefore, a priority area for additional acquisitions for parks and open space; and

WHEREAS, Seattle Parks and Recreation has determined that this acquisition would expand and connect existing City-owned properties that border a broader natural area owned by King County; and

WHEREAS, funding for the acquisition is available from Park District funds; NOW,

THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (“Superintendent”), or the Superintendent’s designee, is authorized, on behalf of The City of Seattle, to acquire the following described real property, situated in the City of Seattle, County of King, State of

1 Washington, together with all rights, privileges, and other property pertaining thereto, for open
2 space, park, and recreation purposes:

3 LOT 7, BLOCK 9, GUTHRIES TERRACE PARK AN ADDITION TO CITY OF
4 SEATTLE, PLUS THAT PORTION OF LOT 8, GUTHRIES TERRACE PARK,
5 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 52 OF PLATS,
6 PAGES 24 AND 25, IN KING COUNTY, WASHINGTON, DESCRIBED AS
7 FOLLOWS:

8
9 BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 8;
10 THENCE SOUTHEASTERLY ALONG SOUTHWESTERLY LINE 31.76 FEET;
11 THENCE NORTH 3°46'17" WEST, 32.13 FEET TO THE NORTHERLY LINE;
12 THENCE WESTERLY ON THE NORTHERLY LINE 20 FEET TO BEGINNING;
13 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
14 WASHINGTON.

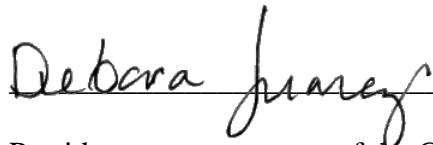
15 Section 2. The Superintendent, or the Superintendent's designee, is authorized, on behalf
16 of the City of Seattle, to execute such documents, as deemed necessary or desirable to acquire
17 the Property for a purchase price of \$110,000.

18 Section 3. The Superintendent, or the Superintendent's designee, is authorized, on behalf
19 of the City of Seattle, to accept a deed for the Property for open space, park, and recreation
20 purposes by attaching to the deed the Superintendent's written acceptance thereof and recording
21 the same.


22 Section 4. Any act consistent with the authority of this ordinance taken after its passage
23 and prior to its effective date is ratified and confirmed.

1 Section 5. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

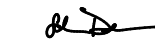
4 Passed by the City Council the 26th day of September, 2023,
5 and signed by me in open session in authentication of its passage this 26th day of
6 September, 2023.

7 
8 President _____ of the City Council

9 Approved / returned unsigned / vetoed this 2nd day of October, 2023.

10 
11 Bruce A. Harrell, Mayor

12 Filed by me this 2nd day of October, 2023.

13 
14 Scheereen Dedman, City Clerk

15 (Seal)

16
17
18 Attachments:
19 Attachment 1 – Agreement for Purchase and Sale of Real Property

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (hereinafter referred to as the “Agreement”) is entered into by and between THE CITY OF SEATTLE, a Washington municipal corporation (hereinafter referred to as the “Buyer”), and FESTUS BREWSTER, an unmarried person (“Seller”), as of the date this Agreement has been executed by both Buyer and Seller (“Effective Date”). “Parties” to this Agreement, shall mean the Buyer and Seller.

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Property. The “Property” in this Agreement shall hereinafter mean and comprise all of the following:

(a) That certain real property with Tax Parcel Number 297680-0935-09, vacant land, in Seattle, Washington and more particularly described in Exhibit A attached and mapped in Exhibit B attached (the “Real Property”).

(b) All rights, privileges, covenants and easements appurtenant to the Real Property, including without limitation all mineral, oil, gas and other hydrocarbon rights associated with the land, all development rights, air rights, and all appurtenances used with the beneficial use and enjoyment of the Real Property (collectively, the “Appurtenances”).

(c) All of the property collectively referred to in this Agreement as the “Property” or “Real Property.”

2. Purchase. Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement.

3. Purchase Price.

3.1. Amount. The purchase price (“Purchase Price”) for the Property is One Hundred Ten Thousand no/100 Dollars (\$110,000.00).

3.2. Payment. Buyer shall pay Seller the Purchase Price at Closing. All references to dollars shall mean those amounts in United States currency.

3.3 Deposit. Within ten (10) days of Buyer's receipt of this Agreement signed by Seller, Buyer will open an escrow account First American Title Company, Inc.; First American Title Company, 555 S Renton Village PL, #760 Renton, WA 98057; Attention: Kalie Cyr (referred to hereafter as "Escrow Holder" or "Title Company") and shall deliver to Escrow Holder a deposit of Five Thousand and NO/100 Dollars (\$5,000.00) (the "Deposit") together with a copy of the fully executed Agreement. Escrow Holder shall place the Deposit in an interest-bearing account for the benefit of the Buyer. Escrow Holder shall apply or disburse the Deposit as provided in this Agreement. At Closing, Escrow Holder shall apply the Deposit with interest, if any, to the Purchase Price.

4. Title.

4.1. Condition of Title. Seller shall convey to Buyer a good and sufficient statutory warranty deed, conveying good, insurable, marketable title, free from all encumbrances, subject only to the Permitted Exceptions (defined in Subsection 4.3 below). Consistent with the Condition of Title in this section, Sellers agree that Title insurance to the Property shall be issued as a standard owner's policy of title insurance, unless at the option of the Buyer, the Buyer requests insurable Title by an ALTA extended coverage owner's policy, in the amount of the Purchase Price. Seller shall satisfy all requirements of the Title Company for issuance of the title policy (the "Title Policy") in accordance with the Commitment (defined in Subsection 4.2 below), and under all other terms of this Agreement.

4.2. Title Insurance Commitment. Buyer has obtained a current title insurance commitment issued by Title Company, No. 4209-3934609, Report dated April 14, 2022 ("Commitment"). Updates to the Commitment shall commit Title Company to insure title in Buyer for the Purchase Price subject only to preprinted general exceptions in the Commitment and Permitted Exceptions (defined Subsection 4.3 below) and shall commit the Title Company to issue such policy endorsements as required by Buyer, and, at the election of Buyer, shall commit Title Company to issuance of a 2006 ALTA Owner's Extended Coverage Policy of title insurance. If required by the Title Company to issue an extended coverage owner's ALTA title insurance policy, Buyer shall obtain a survey and title updates for an extended policy at its own expense.

4.3. Permitted Exceptions. Those exceptions to title listed on Exhibit C attached hereto, with any additional exceptions to title approved in writing by Buyer constitute permitted exceptions ("Permitted Exceptions"). Seller, at their sole cost and expense, shall remove all exceptions other than Permitted Exceptions.

5. Conditions Precedent.

5.1. Conditions Precedent to Buyer's Obligation to Purchase. Buyer's obligations regarding purchase of the Property and the Closing are subject to fulfillment, or waiver thereof by Buyer in writing, of all conditions within this Agreement ("Buyer's Conditions Precedent"), including without limitation the following, not later than the Closing Date (unless an earlier date is specified):

(a) Title Policy. The Title Company shall be prepared to issue the Title Policy as described in Section 4.

(b) Moratorium. No reassessment, reclassification, rezoning or other change in judicial or administrative decision or proceedings (including amendments and modifications of any of the foregoing) pending or proposed to be imposed by any governmental or quasi-governmental authority or any public or private utility having jurisdiction over the Property shall have occurred.

(c) Zoning; Survey. There are no existing violations of zoning ordinances or other laws, ordinances or restrictions applicable to the Property; there are no encroachments upon the Property; and there are no other matters disclosed by survey that are unacceptable to Buyer, in Buyer's sole discretion.

(d) Noncompliance - Violation. Existing uses of the Property fully comply with all zoning laws (and applicable variances) and any other local, municipal, regional, state or federal requirements and the improvements on the Property comply with all applicable building, safety, health, zoning, environmental, subdivision and other laws, ordinances and regulations.

(e) No Actions or Proceedings. There is no action, proceeding or investigation, pending or threatened, regarding the title, ownership, maintenance, use or operation of the Property.

(f) No Environmental Violations. The Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under, above or about the Property, including but not limited to soil and groundwater conditions.

(g) Representations, Warranties and Covenants of Seller. Seller shall have performed every agreement to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of Closing.

(h) No Adverse Changes. As of Closing, there shall have been no adverse change in the physical condition of the Property from the date of this Agreement.

(i) Seller's Deliveries. Seller shall have delivered each of the items described (and no later than the delivery time specified) in Subsection 6.1 to Buyer and in Subsection 8.1 to Escrow Holder.

(j) Investigation. Buyer shall have notified Sellers that the conditions stated in Section 6 have been satisfied or waived within the time periods required.

(k) No Seller Bankruptcy. If at any time prior to Closing, (i) there shall be filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to effect any plan or other arrangement with creditors or seeking the appointment of a receiver and the same is not discharged or dismissed before Closing; (ii) a receiver or liquidator is appointed for all or substantially all of Seller's Property; (iii) Seller makes an assignment for the benefit of creditors or takes any other similar action for the benefit or protection of creditors, then Buyer shall have the right in its sole and absolute discretion and in addition to all other remedies available to Buyer under this Agreement or at law or in equity to cancel and terminate this Agreement after which the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement.

(l) Debris and Personal Property. On the Date of Closing, the Property shall be free of garbage, waste, debris, and personal property. Seller holds Buyer harmless from all claims and expenses arising from removal and disposal of garbage, waste, debris, and personal property.

5.2. Benefit of Buyer. The Buyer's Conditions Precedent are solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer may waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition regarding any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation regarding any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.

5.3. Termination. If any Buyer's Condition Precedent is not satisfied or waived prior to Closing (or such earlier date as provided elsewhere in this Agreement), then Buyer, in Buyer's sole discretion, may terminate this Agreement by written notice to Seller and Escrow Holder, and the Parties shall have no further obligations under this Agreement, except that Buyer shall be entitled to return of the Deposit together with interest, if any, and Seller and Buyer shall be entitled to return of any documents deposited with Escrow Holder.

6. Investigation of the Property.

6.1. Seller's Initial Deliveries. Within seven (7) days after the Effective Date, Sellers shall, at their sole expense, deliver to Buyer (a) a completed disclosure statement for unimproved real property in the form required by Section 64.06.013 and 64.06.015 of the Revised Code of Washington; and (b) signed complete copies of all leases affecting the Property, including, without limitation, all subleases, assignments, and rental or occupancy agreements, all contracts and accounting records affecting the Property, and (c) other existing documents, records and materials concerning the operation or physical condition of the Property, including, without limitation, all surveys, maps, plans, soils reports and environmental site assessments.

6.2. Entry. Without limiting any rights of Buyer under this Agreement, as of the Effective Date, Buyer and Buyer's agents and employees may enter the Property to conduct soils, engineering, environmental and other tests, inspections, surveys and investigations at the Property ("Investigations") at Buyer's sole expense. Seller agrees to cooperate with any Investigations made by or at Buyer's direction. The exercise by Buyer of any of the preceding rights or any other act of Buyer shall not negate any representation, warranty or covenant of Seller, or modify any of Buyer's rights or Seller's obligations if any breach occurs by Seller of any of their representations, warranties or covenants under this Agreement. To the extent permitted by applicable law, Buyer shall indemnify and hold Seller harmless from all damages, expense, liens or claims (including attorneys' fees) arising from Buyer's negligence in exercise of its rights under this Subsection 6.2 or failure to pay third parties, and this indemnity shall survive termination of this Agreement.

6.3. Period for Investigations. Closing of this transaction is conditioned on Buyer's satisfaction with the Property, the suitability of the Property for Buyer's intended uses and the feasibility of this transaction in Buyer's sole and absolute discretion. Buyer shall have until July 28, 2023 to conduct its Investigations, and to review the items delivered by Seller pursuant to Subsection 6.1 above, (the "Contingency Period"). If Buyer fails to notify Seller and the Escrow Holder in writing that this condition is satisfied or waived prior to 5:00 p.m. Pacific Time on the final day of the Contingency Period, as extended if applicable, then this Agreement shall be deemed terminated, and both Seller and Buyer shall be released and discharged from all further obligations under this Agreement. The Deposit, plus interest, shall be returned to Buyer and, except as provided in Subsection 6.2, neither party shall be subject to a claim by the other for damages of any kind regarding this Agreement or Buyer's attempt to purchase the Property. Buyer and Seller shall extend the Contingency Period by mutual written letter to Escrow Holder as necessary to provide adequate time for Seller's completion of Seller's Work (described in Subsection 6.4 below), if applicable, ("Extended Contingency Period").

6.4 Seller's Work. All of the following constitutes Seller's Work: If the Investigations disclose one or more underground storage tanks on the Property, Seller shall, at Seller's sole cost and expense, cause the underground storage tank(s) to be removed and properly disposed of in compliance with applicable law and regulation by a contractor licensed to conduct underground storage tank decommissioning and removal, and shall cause its licensed contractor to provide to Buyer copies of its license and qualifications, permit for tank removal, and its certification of tank removal, all by a date mutually acceptable to the Parties at least 10 days prior to the end of the Extended Contingency Period. Included within the removal work scope shall be a requirement that the contractor determine whether there is evidence that the underground storage tank(s) are leaking or have leaked product into surrounding soil or groundwater. If there is evidence that the underground storage tank(s) are leaking or have leaked product into surrounding soil or groundwater, or if there is other evidence of soil or groundwater contamination, then Buyer and Seller shall further extend the Extended Contingency Period if necessary and prior to the expiration of such Extended Contingency Period, Seller shall cause its licensed contractor to remove and dispose of all contaminated soil, to undertake all necessary environmental remediation of soil and groundwater in compliance with applicable law and regulation, and to provide to Buyer its certification of soil and groundwater remediation, if applicable, all in compliance with applicable law and regulation. Upon completion of tank removal and, if applicable, remediation of soil and groundwater, Seller shall cause its licensed contractor to restore the Property to its original condition with appropriate fill type, compaction, grading, and ground cover or paving.

6.5 Buyer's Review of Seller's Work. Seller shall give Buyer advance notice of commencement of Seller's Work and Buyer shall have the right to be present during Seller's Work. Buyer and Seller shall further extend the Extended Contingency Period as necessary to give Buyer at least five days to review the reports and/or certifications of Seller's licensed contractor before determining whether to give notice to Seller and Escrow Holder of satisfaction or waiver as provided in Subsection 6.3 above.

7. Seller's Obligations. Before Closing Seller shall, at its sole expense:

7.1. Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller in this Agreement or any Buyer's Conditions Precedent untrue or misleading in any material respect or that would cause Seller to violate any of its covenants or other obligations.

7.2. Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially adversely affect the Property or any part thereof.

7.3. Subject to the terms within this Agreement, Seller shall not convey, mortgage, grant a deed of trust, or contract to do the foregoing or otherwise allow or consent to convey, abandon, relinquish, cloud or encumber title to the Property or any interest or part thereof without Buyer's consent.

7.4. Maintain the Property in good order, condition and repair, and otherwise operate the Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller was retaining the Property.

7.5. Maintain all casualty, liability and hazard insurance currently in force regarding the Property through Closing without diminution in coverage.

7.6. Remedy any violations of law or municipal ordinances or regulations of any federal, state, local or other governmental departments.

7.7. Take no action that will adversely affect title to the Property, nor take action that impairs the issuance of the Title Policy as described in Section 4.

7.8. Not enter into any lease or rental or occupancy agreement affecting the Property or amend or extend any existing license or use agreement for all or any portion of the Property without Buyer's prior written consent.

8. Deliveries to Escrow Holder.

8.1. By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

(a) Deed. A statutory warranty deed, in form and substance satisfactory to Buyer and its counsel, duly executed and acknowledged by Seller (the "Deed"), conveying to Buyer indefeasible good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions and easements, except only the Permitted Exceptions.

(b) FIRPTA Affidavit. A certificate in form and substance acceptable to Buyer and its counsel, duly executed by Seller, evidencing that Seller are exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(c) ALTA Affidavits. Any affidavits, certifications or instruments, including any lien affidavits or mechanic's lien indemnifications, duly executed and acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.

(d) Title Insurance Policy. The Title Policy in conformance with Section 4.

(e) Closing Certificates. A certificate of Seller dated as of the Closing Date certifying that all of Seller's representations and warranties remain true as of the Closing Date, or if not, specifying the respect in which any representation or warranty is no longer true.

(f) Certificates of Authority. Such certificates as are necessary or required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller for this transaction, and evidence that the execution of such instruments is the official act and deed of Seller.

(g) Excise Tax Affidavit. A real estate excise tax affidavit signed by Seller.

(h) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

8.2. By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder by the Closing Date cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the balance of the Purchase Price and Buyer's share of closing costs and prorations.

9. Close of Escrow.

9.1. Time. Closing shall occur in the office of Escrow Holder no later than September 12, 2023 (if not extended by Buyer's Investigations described in Section 6 above) unless further extended by written agreement or unless accelerated by written agreement if the Parties conclude an earlier Closing is possible. As used in this Agreement, "Closing," "Closing Date" or "Date of Closing" means the date on which all appropriate documents are recorded and proceeds of sale are available for disbursement to Seller in accordance with this Agreement. Funds held in reserve accounts under escrow instructions shall be deemed, for purposes of the definition of "Closing," "Closing Date" and "Date of Closing," as available for disbursement to Seller.

9.2. Closing Costs and Prorations.

(a) Closing Costs. Buyer and Seller shall each pay their own attorneys' fees. Buyer shall pay the cost of recording the Deed, escrow fees, the title insurance premium charged by the Title Company for Buyer's Title Policy and the endorsements required by Buyer, and the cost of any survey required by the Title Company (if any). Seller's monetary liens on the Property, if not previously discharged, shall be discharged in full out of the Purchase Price at Closing. Seller shall pay real estate excise tax, if any is due.

(b) Prorations. Seller shall pay real property taxes, general assessments, surface water management fees and other fees (if any) payable to governmental entities, utility charges, amounts payable under contracts, annual permits, and other expenses normal to the ownership, use, operation and maintenance of the Property through the Closing Date. If Seller is entitled to a reimbursement for overpayment of real property taxes, it shall be Seller's responsibility to seek such reimbursement from the appropriate taxing authority outside of Closing. Seller shall provide evidence satisfactory to Buyer that accounts for utility services to the Property (if any), including but not limited to electricity, heating oil (if applicable), natural gas (if applicable), solid waste, water, sewer, telephone, internet service, and cable, are current and there are no delinquent charges owing. Any special assessments against the Property in existence as of the Closing Date shall be paid in full by Seller. All prorations shall be as of 11:59 p.m. on the Closing Date.

9.3. Procedure. Escrow Holder shall close escrow as follows:

- (a) Obtain the release of the Property from any liens described in the Commitment, and delivery of all documents by Seller, and in this Agreement except the Permitted Exceptions;
- (b) Confirm with Buyer delivery of all documents by Seller;
- (c) Confirm with Buyer that Seller's Work, if applicable, has been completed to the satisfaction of Buyer;
- (d) Confirm with Buyer that other Buyer's Conditions Precedent have been satisfied;
- (e) Complete the prorations and credits;
- (f) Issue and deliver the Title Policy to Buyer;

- (g) Deliver any other documents deposited by Sellers with Escrow Holder to Buyer;
- (h) Deliver the Purchase Price less Seller's closing costs and prorations and Buyer credits, if any, to Seller; and
- (i) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date endorsed thereon.

9.4. Incorporation of Escrow Instructions. This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Escrow Holder following its execution. The Parties may execute additional escrow instructions if such additional escrow instructions shall not change the terms of this Agreement.

9.5 Possession. Possession of the Property shall be delivered to Buyer upon Closing.

10. Brokerage Commission. Seller warrants to Buyer and Buyer warrants to Seller that each party's sole contact with the other and with the Property regarding this transaction has been directly with the other party and has involved no broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that party regarding the other party or the Property. To the extent permitted by applicable law, each party shall indemnify, defend and hold the other party harmless against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying party's actions.

11. Condemnation. If there is a condemnation (by an entity other than Buyer) of all or part of the Property initiated before Closing, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) days following the date the notice is received (a) to proceed with the Closing, in which event all condemnation proceeds already received by Seller by the Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (b) to terminate this Agreement. Unless this Agreement is terminated, Seller shall take no action regarding any condemnation proceeding without the prior written consent of Buyer.

12. Representations, Warranties and Covenants.

12.1. Seller's Representations, Warranties and Covenants. Besides the representations, warranties and covenants contained elsewhere in this Agreement, Seller as of the date of this Agreement and as of the Closing Date makes the following representations, warranties and covenants:

(a) Title. Seller is the sole owner of the Property. At Closing, Buyer will acquire the entire fee simple estate and right, title and interest in and to the Property, free and clear of all recorded or unrecorded liens, encumbrances, covenants, restrictions, reservations, easements, options, tenancies, leases, encroachments, claims or other matters affecting title or possession of the Property, subject only to the Permitted Exceptions.

(b) Agreements to Transfer or Encumber. Seller has not committed nor obligated itself in any manner to sell or encumber the Property or any interest therein to any party other than Buyer or to lease all or any portion of the Property.

(c) Compliance with Law. To the best of Seller's knowledge the Property complies materially (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property (including those related to zoning, building and engineering).

(d) Bankruptcy, Etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

(e) Litigation. There is no pending or to Seller's best knowledge threatened judicial, municipal or administrative proceedings regarding Seller, this transaction or in any manner affecting the Property or any portion thereof or in which Seller is or will be a party by reason of Seller's ownership of the Property or any portion thereof.

(f) Notices. Seller has not received any notices from any insurance companies, governmental agencies or from any other Parties regarding any violations or other matters concerning the Property.

(g) Taxes and Assessments. Other than amounts disclosed by the Commitment, to the best of Seller's knowledge, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges levied, assessed or imposed on or against the Property.

(h) Tax Returns. Seller has filed all local, state and federal tax forms that are required to be filed by Seller, have paid all taxes due by Seller to date and will pay all such taxes that become due by Seller prior to the Closing.

(i) Underground Storage Tanks. To the best of Seller's knowledge, there are no cisterns, wells, subterranean storage or underground storage tanks on the Property and underground storage tanks have not been removed from the Property.

(j) Violation of Property Restrictions. To the best of Seller's knowledge, the Property and the current use, occupation and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions or agreements (including, without limitation, any of the Permitted Exceptions), site plan approvals, zoning or urban redevelopment plans applicable to the Property.

(k) Tax Valuation/Assessment. Seller has no knowledge and has received no notice of any proceedings pending for the correction of the assessed valuation of Real Property or any other pending or threatened special assessments affecting the Real Property.

(l) Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations and the transactions contemplated hereby. This Agreement has been, and the documents contemplated will be, duly executed and delivered by Seller and constitutes the Seller's legal, valid and binding obligation enforceable against Seller under its terms. The consummation by Seller of the sale of the

Property is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(m) No Omissions. All representations and warranties made by Seller in this Agreement, and all information in any certificate furnished by Seller to Buyer for this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer for this transaction are true and complete copies of the documents they purport to be and to the best of Seller's knowledge contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained not misleading.

(n) Leases, Service Contracts or Other Contracts. At the date of this Agreement, no leases, licenses, service contracts, or other contracts or agreements are in place regarding or related to the Property.

(o) Mechanic's Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof because of which any mechanics', laborer's or materialmen's liens or claims might arise.

(p) Assumption of Liabilities. Buyer, by the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date. Other than such obligations so assumed by Buyer or any liens or other obligations regarding the Property that result from any action or activities by or on behalf of Buyer after the Closing Date, Seller, after the Date of Closing, will pay and discharge all liabilities of each and every kind arising out of or by the possession, ownership or use of the Property prior to the Closing Date, and shall indemnify, defend and hold Buyer harmless therefrom.

(q) Provide Further Information. From the date of this Agreement to the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the event.

12.2. Effect of Buyer's Inspections. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

13. Environmental Compliance. In addition to and without limiting any other representations, warranties, covenants and agreements in this Agreement, Seller represents, warrants, covenants and agrees:

13.1. Hazardous Substances. Seller has not used, generated, manufactured, produced, stored, released, discharged or disposed of on, under, above or about the Property (or off-site of the Property that might affect the Property) or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above Property (or off-site of the Property that might affect the Property) or transported to or from the Property by any entity, firm or person, or from any source.

13.2. Pre-closing Covenant. Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property (or off-site of the Property that might affect the Property), or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to the Closing.

13.3. Environmental Indemnity. Seller shall protect, indemnify, hold harmless and defend Buyer and its directors, officers, contractors, employees, agents, parents, subsidiaries, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to a breach of any representation, warranty, covenant or agreement in this Section 13 including, without limitation, (a) all consequential damages, and (b) the costs of any required or necessary repairs, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity does not apply to actions of Buyer, its agents or independent contractors.

13.4. Definitions. For the purpose of this Section 13, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Environmental or Safety Law" means the Federal Water Pollution Control Act, the Clean Air Act, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act, the Toxic Substances Control Act ("TSCA"), the Occupational Safety and Health Act, the Hazardous Materials Transportation Act, the Hazardous Materials Transportation Uniform Safety Act, the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act ("HWMA"), the Washington Model Toxics Control Act ("MTCA"), the Washington Industrial Safety and Health Act, the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, together with all regulations promulgated under any such authority, and any and all other federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to (1) any hazardous substance or material regulated or restricted under CERCLA, RCRA, TSCA, MTCA, or the HWMA; (2) any other pollutant, contaminant, or waste; (3) the health or safety of persons; or (4) the protection of the environment or land use. "Environmental or Safety Law" includes past and future amendments and supplements.

(b) "Hazardous Substances" means any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Environmental or Safety Law.

14. Survival. The covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

15. Entire Agreement. This Agreement contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the Parties regarding the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Sellers and Buyer.

16. Default; Remedies, Specific Performance. This Agreement pertains to the conveyance of real property, the unique nature of which is acknowledged by the Parties. If Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right (a) to specific performance of this Agreement; or (b) to terminate this Agreement upon written notice without liability to Seller. If Seller has performed its obligations under this Agreement, and Buyer defaults under the terms and conditions of this Agreement, then the Deposit shall be forfeited to Seller as liquidated damages as Seller's sole and exclusive remedy.

17. Notices. All written notices required to be given under the terms of this Agreement shall be delivered personally or deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the addresses listed below with copies to the Parties listed after such address (if any):

SELLER:

Festus Brewster
14406 34TH AVE S
TUKWILA WA 98168
Telephone: (425)-301-3712

BUYER:

City of Seattle
Seattle Department of Parks and Recreation
300 Elliott Avenue West, Suite 100
Seattle, WA 98119
Telephone: (206)-902-7584
Attn: Mikaela Montemayor, Mikaela.montemayor@seattle.gov

ESCROW AGENT:

Kalie Cyr
First American Title Insurance Company
555 S Renton Village PL, #760
Renton, WA 98057
Tel: 425-873-1680
Fax: 866-733-8986
Email: teamkalie@firstam.com
Doc email address: Teamkalie@firstam.com

The foregoing addresses may be changed by written notice to the other party as provided herein. Mailed notice properly given shall be deemed received two (2) days after deposit in the mail. Facsimile transmission of any signed original document or notice, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Escrow Holder, the Parties will confirm facsimile transmitted signatures by signing an original document.

18. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or applying such term or provision to persons or circumstances other than those which it is held invalid or unenforceable, shall not be affected; and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

20. Construction. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had voluntarily prepared such Agreement. If the date on which Buyer or Seller must take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

21. Time. Time is of the essence of every provision of this Agreement.

22. Force Majeure. Performance by Sellers or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

23. Successors. The terms, conditions and covenants in this Agreement shall bind upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

24. Applicable Law. This Agreement shall be interpreted and governed by the laws of the State of Washington. The venue of any legal action or claim related to this Agreement shall be in the Superior Court for King County.

25. Counterpart Signatures. This Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

26. Expiration Date. This offer shall terminate if not accepted by Seller by 5:00 p.m. on June 6, 2023.

27. No Third Party Beneficiary. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties, and therefore, nothing in this Agreement express or implied shall confer upon any person any right or interest, other than directly to the Parties and their heirs, executors, personal representatives, successors and assigns.

28. Reservation of Rights and Responsibilities. Except as set forth in this Agreement, Buyer and Seller retain all rights, privileges, obligations and remedies as set forth under applicable federal, state or local laws.

29. Contingent upon Approval. This agreement is contingent upon the approval of the Seattle City Council, and in the event approval is not obtained, this agreement shall become null and void.

30. Incorporation of Exhibits. All exhibits and all other documents and instruments referenced in this Agreement shall be incorporated as a term and a part of this entire Agreement. The Exhibit List to this Agreement shall be as follows:

- **Exhibit A** Legal Description of Property
- **Exhibit B** King County Assessor's Parcel Map of Property
- **Exhibit C** Permitted Exceptions

Signatures of the Parties to this Agreement are on the following page.

//

BUYER:

THE CITY OF SEATTLE, A WASHINGTON MUNICIPAL CORPORATION

By: 
[Christopher Williams \(Jun 5, 2023 08:02 PDT\)](#)
Christopher Williams, Assistant Superintendent & Chief of Staff of Parks and Recreation

SELLER:


By: 
[FESTUSBrewster \(May 25, 2023 18:48 PDT\)](#)
Festus Brewster

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 7, BLOCK 9, GUTHRIES TERRACE PARK AN ADDITION TO CITY OF SEATTLE, PLUS THAT PORTION OF LOT 8, GUTHRIES TERRACE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 52 OF PLATS, PAGES 24 AND 25, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 8;
THENCE SOUTHEASTERLY ALONG SOUTHWESTERLY LINE 31.76 FEET;
THENCE NORTH 3°46'17" WEST, 32.13 FEET TO THE NORTHERLY LINE;
THENCE WESTERLY ON THE NORTHERLY LINE 20 FEET TO BEGINNING;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

297680093509

XXXX South Fountain Street
Seattle, Washington 98178

EXHIBIT B

KING COUNTY ASSESSOR'S PARCEL MAP OF PROPERTY

PARCEL NO. 297680-0935-09



EXHIBIT C

**PERMITTED EXCEPTIONS
TITLE COMMITMENT NO. 4209-3934609**

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
3. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, claims of easement or encumbrances which are not shown by the Public Records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
6. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the Public Records; (D) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
7. Any lien, or right to a lien, for services, labor or materials or medical assistance heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.

19. Any and all offers of dedication, conditions, restrictions, easements, boundary discrepancies or encroachments, notes and/or provisions shown or disclosed by Short Plat or Plat of Guthries Terrace Park Addition recorded in [Volume 52 of Plats, Page\(s\) 24-25](#).
20. Covenants, conditions, restrictions and/or easements:

Recorded: March 30, 1954
Recording No.: [4430835](#)

21. The terms and provisions contained in the document entitled "Covenant Running with the Land with Acknowledgment and Acceptance of Risk, Duty to Inform, Need for Insurance, Indemnity and Waiver"
Recorded: April 30, 2008
Recording No.: [20080430002743](#)