

REAL ESTATE PURCHASE AND SALE AGREEMENT
("Agreement")

1. **Effective Date.** November 7, 2019
2. **Parties.** Clark County, a political subdivision of the State of Washington, hereinafter referred to as "**Seller**", and

City of Vancouver, Washington, a municipal corporation, hereinafter referred to as "**Purchaser**".
3. **Property Sold.** Purchaser hereby agrees to purchase, and Seller hereby agrees to sell, the real property which portion is legally described in Exhibit A and is depicted in the attached Exhibit B, attached hereto and incorporated herein by reference (the "Property") and all improvements thereon excepting the existing gas probes, monitoring wells and gas flare station and which is a part of Assessor's parcel Numbers 105740-000, 199863-000, 199845-000 and 199864-000 located at 8713 NE 94th Ave., Vancouver, County of Clark, Washington. The Purchaser will purchase the listed parcels in their entirety. Any boundary line adjustments shall only occur with the Seller's consent which consent shall not be unreasonably withheld and provided this shall not preclude the Purchaser from combining parcels.
4. **Purchase Price.** The TOTAL PURCHASE PRICE shall be established by an appraisal to be conducted by the Purchaser. Purchaser shall be responsible for all costs associated with the aforementioned appraisal establishing the fair market value ("Appraised Value") of the property. The Seller reserves the right to hire an appraiser, at its cost, to review the appraisal provided by the Purchaser or conduct its own separate appraisal. If the Seller hires an appraiser, that review shall be completed within sixty (60) days of receiving the appraisal conducted by the Purchaser. If the two (2) Appraised Values are within ten percent (10%) of each other, the Purchase Price shall be the average of the two (2) Appraised Values. If the two (2) Appraised Values are not within ten percent (10%) of each other, the Parties shall mutually agree upon a third appraiser. The third appraiser will determine their opinion of Appraised Value. The Purchase Price shall then be determined by the average of the third Appraised Value with that of the first two (2) Appraised Values closest to it. The Purchase Price shall be payable as follows: all cash at Closing.
5. **Earnest Money. Earnest Money Deposit.** Upon execution of this Agreement, Purchaser shall deliver to the Escrow Holder as defined in herein, for the account of Purchaser \$10,000.00 as earnest money (the "Earnest Money") in the form of cash or check or promissory note (the "Note"). If the Earnest Money is in the form of a check being held undeposited by the Listing Selling Firm, it shall be deposited no later than 5 PM Pacific Time three days after execution of the Agreement by Purchaser and Seller in the Listing Selling Licensee's Pooled Trust Account (with interest paid to the Washington Housing Fund) to the Escrow (as

hereinafter defined) for depositing in a separate, interest-bearing account. If the Earnest Money is in the form of the Note, it shall be due and payable no later than 5 PM Pacific Time one day after execution of this Agreement by Purchaser and Seller or after satisfaction or waiver by Purchaser of the conditions to Purchaser's obligation to purchase the Property set forth in this Agreement or Other: _____. If the Note is not redeemed and paid in full when due, then (i) the Note shall be delivered and endorsed to Seller (if not already in Seller's possession), (ii) Seller may collect the Earnest Money from Purchaser, either pursuant to an action on the Note or an action on this Agreement, and (iii) Seller shall have no further obligations under this Agreement. The purchase and sale of the Property shall be accomplished through an escrow (the "Escrow") which Seller has established or will establish with Fidelity National Title, attn: Melissa Miller (the "Title Company") and the Earnest Money shall be deposited with Title Company or Other: _____. The Earnest Money shall be applied to the payment of the purchase price for the Property at Closing. Any interest earned on the Earnest Money shall be considered to be part of the Earnest Money. The Earnest Money shall be returned to Purchaser in the event any condition to Purchaser's obligation to purchase the Property shall fail to be satisfied or waived through no fault of Purchaser.

6. Title. Title shall be conveyed by Statutory Warranty Deed free of encumbrances or defects, except those of record acceptable to Purchaser and encroachments, defined as Permitted Exceptions in Paragraph 7 below. Rights reserved in federal patents or state deeds, building or use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Platted or vacated streets or roadways within the boundaries of the Property shall not be considered an encumbrance, and Purchaser accepts any and all risk associated with such platted or vacated streets or roadways.

7. Title Insurance. Within ten (10) days of the Effective Date, Seller shall open Escrow at Fidelity National Title, Vancouver, WA (attention: Melissa Miller) (Escrow Agent) and deliver to Purchaser a Preliminary Commitment issued by Fidelity National Title for a standard purchaser's Title Insurance policy. Purchaser shall have fifteen (15) days to notify Seller of any encumbrance or defect in the Preliminary Commitment that is not acceptable to the Purchaser. Seller shall have ten (10) days after being notified of an encumbrance or defect to remove the encumbrance or defect or to notify seller the encumbrance or defect will not be removed. Purchaser has five (5) days after being notified by Seller that Seller is not removing an encumbrance or defect to terminate this Real Estate Purchase and Sale Agreement. If Purchaser does not object to an encumbrance or defect, or terminate the Agreement after Seller's failure to remove the same, the encumbrance or defect will be deemed a "Permitted Exception." Seller shall reasonably cooperate in the investigation of the condition of title. In the event of any title defect arises subsequent to the date of the preliminary commitment, Seller shall cause the same to be cured as provided in this section.

8. Contingent Conditions. The enforceability of this Agreement, except as otherwise provided herein, and the obligation of the parties to close escrow is subject to the occurrence or waiver of the following condition(s) within ninety (90) days of the Effective Date hereof and, in any event, prior to the date of closing:

a. Purchaser's obligation to close is contingent upon Purchaser's satisfaction as to the physical condition of the Property, within the Study Period as defined in Paragraph 9 below, as well as the condition of title to the Property as set out in Paragraph 7.

b. The Parties' obligation to close is subject to the satisfaction of the requirements regarding the transfer and reuse of the Property as stated in the Restrictive Covenant recorded under Auditor's recording number 9804090180 including but not limited to: notice of the conveyance to the Department of Ecology ("Ecology") and Ecology's confirmation that the proposed use is not inconsistent with the covenant.

c. The Parties' obligations to close are subject to the ratification of this Agreement within thirty (30) days of the Due Diligence Termination Date.

d. The approval of the sale by the LLOC (Leichner Landfill Oversight Committee). In April of 2019, the Oversight Committee approved a Memorandum of Agreement releasing parcels 199845-000, 105740-000 and 199863-000 for future development.

e. The Parties shall enter into a management agreement for the property. The agreement will detail, in part, the Parties' responsibilities and actions necessary prior to and after closing of the Property. Included in the management agreement, but not limited to, will be responsibility for maintenance of all common improvements, provisions for access to monitor and maintain the monitoring wells, gas probes and gas flare station or other portions of the closed landfill adjacent to the Property, and amendment of the existing Consent Decree.

9. Study Period. The ("Study Period") will commence on the Effective Date and end at 5:00 p.m. on the date which is eighty (80) calendar days following the Effective Date (the "**Due Diligence Termination Date**").

a. During the Study Period Purchaser may contract with vendors for the performance of the following services for the Property being sold:

Level 1 environmental assessment and report;

Boundary survey and boundary line adjustments;

Topographic survey; and

Geotechnical investigation and report.

The Purchaser shall be solely responsible for costs associated with the services described above.

b. Additionally, during the Study Period Purchaser shall have the right to inspect, investigate, test and examine, at Purchaser's expense, all aspects, matters and conditions relating to the Property and the Purchaser's intended use thereof, including, but not limited to, zoning, the presence of hazardous or toxic substances, soil conditions, the availability of utilities, and governmental requirements and restrictions affecting the Property. Purchaser's Due Diligence shall also include a review of the status of all Leases, Licenses and Contracts, if any, pertaining to the Property. Seller shall reasonably cooperate, and shall instruct its agents, employees and

representatives to reasonably cooperate in facilitating Purchaser's Due Diligence of the Property and the proposed transaction.

Purchaser shall pay the costs of all additional tests, inspections, Due Diligences and reviews conducted pursuant to this Agreement. After the performance of any tests, reviews and inspections, Purchaser shall promptly restore any damage to the Property to the same condition as existed prior to the conduct of said tests, reviews and inspections, and this obligation of Purchaser shall survive any termination of this Agreement. Purchaser shall notify Seller prior to any entry and will not unreasonably interfere with or disrupt any business operations at the Property.

c. Nothing stated in this Section shall be deemed to authorize Purchaser to create or suffer any lien to be placed against the Property, and Purchaser shall indemnify, defend and hold Seller harmless from any and all costs or liens arising or claimed as a result of any such activity on or with respect to the Property and from any claims, loss or damage (including, without limitation, reasonable attorney's fees and costs), suffered by Seller as a result of the activities of the Purchaser or of any party employed or engaged by Purchaser to perform any test, inspection, Due Diligence or review on the Property, except to the extent arising from the negligence or willful misconduct of Seller or its agents, and this obligation shall survive any termination of this Agreement.

d. Within ten (10) days of the Effective Date, Seller shall deliver to Purchaser, for inspection and review all reports concerning the condition of the Property and all licenses, permits, improvement agreements, bonds, development agreements, leases, agreements, contracts, documents, instruments, reports, surveys, books and records relating to the Property ("Seller's Records"). Should Seller fail to timely deliver to Purchaser all of the Seller's Records, the Study Inspection Period and Due Diligence Termination Date shall each be extended for one (1) day for each day of delay in Purchaser's receipt of all of the Seller's Deliveries.

e. In the event that Purchaser does not give Seller a written approval or waiver of all Contingencies, other than City Council ratification, on or prior to the Due Diligence Termination Date, then such Contingencies shall be deemed waived.

f. At any time prior to the expiration of the Study Period, Purchaser elects in its sole discretion not to proceed to acquire the Property due to circumstance discovered during Purchaser's due diligence that demonstrate the Purchaser will not be able to use the Property for its intended use, Purchaser may terminate this Agreement by giving written notice of termination to Seller and Escrow Agent. Should Purchaser not give written notice of termination within the Study Period, Purchaser may not thereafter terminate this Agreement without Seller's consent.

g. Each party shall promptly pursue and utilize best efforts to complete the procedure required for any pre-sale approval requirements. If any of the above conditions are not satisfied or waived by the benefitted party prior to the date of closing, the benefitted party may withdraw from this transaction and may be released from all liability hereunder by giving written notice to the other party and the escrow/closing agent. The agreement by a party to close this transaction

constitutes their approval or waiver of all such conditions if they have not been approved or waived earlier.

10. Representations and Condition of Property.

a. **Boundaries.** To Seller's knowledge, there are no unrecorded easements, unrecorded reservations or encroachments on the Property, nor any encroachments by improvements on such real property onto any easements or rights of way or any adjoining property or which would otherwise conflict with the property rights of any other person, except for the Permitted Exceptions.

b. Seller makes no representations as to the boundaries of the Property; or that any existing curbs or sidewalks or fences are the boundary of the Property; and Seller disclaims any and all warranties against encroachments upon the Property.

c. **Zoning.** Seller makes no representations as to the zoning of the Property. Purchaser has investigated the current status of zoning on the Property to its satisfaction.

d. **Wetlands.** Purchaser has made its own determination as to existence or nonexistence of wetlands on the Property and is not relying on any representations of Seller.

e. **Environmental Contamination.** Other than the conditions disclosed by the Seller pursuant to Subsection 9.d of this Agreement, Seller is aware of no environmental contamination on or affecting the Property. In the event that undisclosed environmental contamination is found on the Property and is determined to have existed prior to the date of closing, Sellers agree to defend and indemnify and hold Purchaser harmless against all claims of any nature including but not limited to claims for damages, injunction or administrative enforcement.

f. **Consent Decree.** Purchaser acknowledges that the Property is subject to Consent Decree issued by the Department of Ecology. Purchaser agrees to not take any action which would cause a violation of that decree. Purchaser acknowledges it will become party to the Consent Decree as owner of the property.

g. **Master Plan.** Purchaser agrees that its development and use of the Property shall be consistent with the terms and conditions of the approval of the Leichner Master Planned Development CUP 2016-00001.

h. **Survival.** All representations and warranties set forth above shall be true as of the date of closing and shall survive closing and not merged into the documents delivered at closing.

11. Closing. The sale shall be closed in the office of closing agent, Fidelity National Title within no more than thirty (30) days after satisfaction or waiver of all contingencies ("Closing Date"), provided the parties can mutually agree to extend the Closing Date to a date that is within thirty days of the Closing Date ("Extended Closing Date"). Purchaser and Seller shall deposit with Escrow Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement.

For purposes of this Agreement, "date of closing" shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller.

12. Failure to Close.

Purchaser's Remedies. If, due to no fault or delay on the part of the Purchaser, the Seller, for any reason fails to close the purchase of the Property, the Purchaser may at its option exercise any remedy available to it by law or in equity under the circumstances including, but not limited to, the remedy of specific performance and enforcement of this Agreement through an action in eminent domain.

Sellers' Remedies. If, due to no fault or delay on the part of the Seller, the Purchaser fails to close the purchase of the Property and Purchaser has not terminated the purchase as authorized under this Agreement, Seller, as its exclusive remedy, shall be entitled to the remedy of forfeiture of the earnest money as provided in this Agreement.

13. Closing Costs and Prorated Items. Seller and Purchaser shall each pay one-half (1/2) of the escrow fees for closing the transaction. Seller shall pay for the cost of providing a standard purchaser's title insurance policy. Seller shall pay any real estate excise tax. Purchaser shall pay recording fees. If applicable, any property taxes, assessments, water, utility charges on the Property shall be prorated as of the date of closing, and Purchaser assumes and agrees to pay all real property taxes from and after the date of closing.

14. Maintenance of Property. Seller shall maintain the Property in its current condition prior to closing and as described in the management agreement.

15. Monitoring Wells, Gas Probes and Gas Flare Station. There are groundwater monitoring wells, gas probes and a gas flare station located on the Property. The Purchase Price is based upon an appraisal which included an extraordinary assumption that the Seller would be responsible for the costs of relocating three gas probes and the potential abandonment and/or protection of existing groundwater monitoring wells. The Parties' responsibilities for the monitoring wells, gas probes and gas flare station shall be described in the management agreement.

16. Miscellaneous.

a. Seller and Purchaser warrant one to the other that they have not used the services of any real estate company, real estate sales agent or broker and that there is not a sales commission owed on this Property.

b. All agreements, warranties, limitations of warranties, and disclaimers contained herein shall continue to be binding after the closing of this transaction.

c. Notices shall be deemed given on the date of personal delivery to the other party, or in the case of mailing, two (2) business days after the notice has been mailed by certified mail, return receipt requested. Notices shall be directed to the following:

Seller:

Shawn Hennessee
P.O. 5000
Vancouver, WA 98666-5000
Shawn.Hennessee@clark.wa.gov

Purchaser:

Eric Holmes
P.O. Box 1995
Vancouver, WA. 98668-1995
Eric.Holmes@cityofvancouver.us

- d. Time is of the essence in this Agreement.
- e. Paragraph headings are included solely for the convenience of the reader, and are not intended to be a part of this Agreement.
- f. It is agreed as used herein the "singular" includes the plural and the "masculine" includes the feminine and vice versa as the context may require.
- g. There are no other verbal or other agreements which modify or affect this Agreement, or which affect this transaction.
- h. This Agreement may be signed in counter parts and shall be binding upon execution by all parties.
- i. In the event suit, arbitration or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.


17. Assignment. Purchaser may not assign its interest herein without consent of Seller.

Seller:

Clark County, Washington

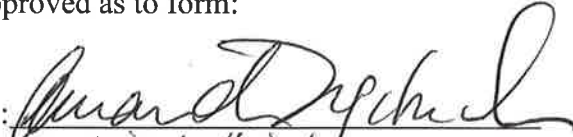
Purchaser:

City of Vancouver, Washington,
a municipal corporation

By: 
Shawn H. Messer
County Manager

Date: 11-21-19

Approved as to form:

By: 
A. Michelbrink

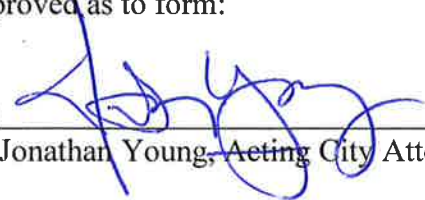
Attest:

By: 
Clerk

By: 
Eric Holmes, City Manager

Date: 11-21-19

Approved as to form:

By: 
Jonathan Young, Acting City Attorney

Attest:

By: 
City Clerk

**EXHIBIT A
LEGAL DESCRIPTION**

Parcel Numbers 105740-000, 199863-000, 199845-000 and 199864-000 located at 8713 NE 94th Ave.

Parcel Number 105740-000 NEWTON NW1/2 LOT 1 N1/2 LOT 2, 3, 4 & 5 25.49Acres

Parcel Number 199863-000 #32 JAMES MCALLISTER DLC 7.42Acres

Parcel Number 199845-000 #13 JAMES MCALLISTER DLC 2.12 Acres

Parcel Number 199864-000 #33 JAMES MCALLISTER DLC .13Acres

35.16 acres

**EXHIBIT B
LOT DEPICTION**

