

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Purchase of 8.32 acres as addition to Hamlin Park
DEPARTMENT:	City Attorney's Office
PRESENTED BY:	Ian R. Sievers, City Attorney

BACKGROUND:

In mid 2005 Shoreline and Seattle Public Utilities (SPU) began negotiations for the acquisition of 8.32 acres of property adjoining Hamlin Park along the south boundary of the parcel and generally located south of NE 168th and east of 16th Ave. NE. This residentially zoned parcel is currently undeveloped open space informally used as an extension of Hamlin Park with a number of social trails entering from abutting rights of way. The site has a mixed cover of timber stands and open grass areas. Approximately 10% has steep slopes over 40%. See site map, Attachment A.

The City initially proposed to purchase the parcel over several years on an installment basis when SPU first notified the City that it intended to surplus the property as no longer needed by the water utility. However, SPU preferred a cash out and its surplus process was suspended until the City's proposed parks bond levy, which included this parcel, was successfully passed in May 2006.

The City Manager executed a Purchase and Sale Agreement (Attachment B) for the property on May 23, 2007, contingent upon City Council ratification and approval of the property. SPU will complete its surplus procedure and approve the Purchase and Sale Agreement in August 2007. Closing is expected to occur approximately 30 days after SPU approves the purchase.

FINANCIAL ANALYSIS:

The City Attorney's Office and the Real Property Services Division of SPU have completed an extended negotiation of the fair market value of this property. The process included an initial June, 2005 appraisal by Seattle (\$3,850,000), a Shoreline review appraisal in February 2006 (\$3,300,000) and an updated Seattle appraisal January 15, 2007 (\$4,140,000). Following a final correction to the 2007 appraisal's zoning and subdivision assumptions for private sector residential development, and investigation and correction for an unrecorded Ronald Sewer District easement bisecting the parcel, SPU has accepted Shoreline's tentative offer of a final fair market value of \$3,527,800 (subject to SPU legislative approval). There are sufficient funds included in the Parks capital bond proceeds for payment of this purchase price.

RECOMMENDATION

It is recommended that Council approve the purchase of the 8.32 acre SPU parcel described in the Purchase and Sale Agreement executed by the City Manager on May 23, 2007 at a purchase price of \$3,527,800.

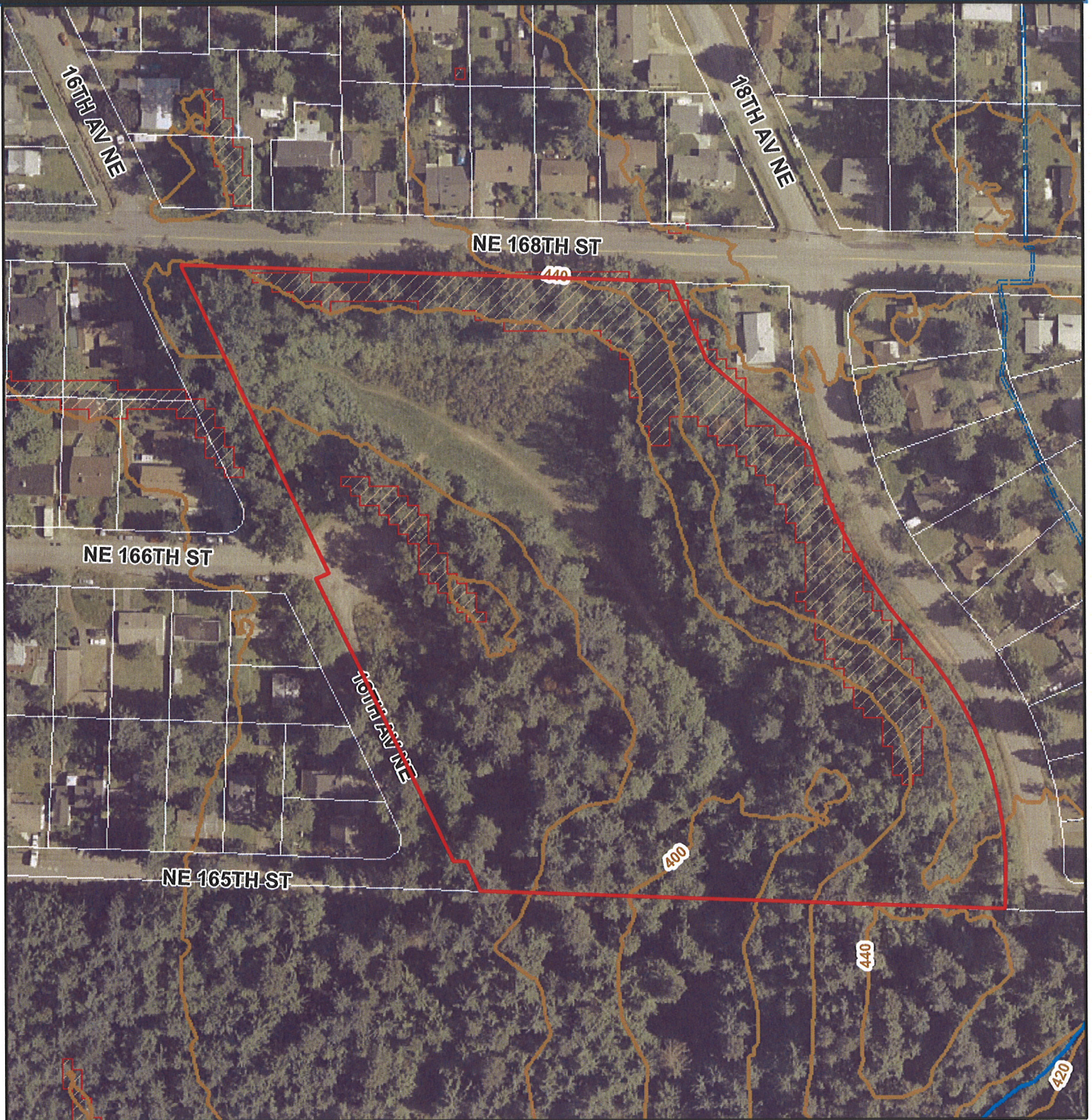
Approved By: City Manager  City Attorney ____

ATTACHMENTS

Attachment A: Parcel Site Map
Attachment B: Purchase and Sale Agreement

PARK AND OPEN SPACE ACQUISITION

HAMLIN PARK ADDITION



 Tax Parcel
 Steep Slope (> 40%)

Topography

— 20'

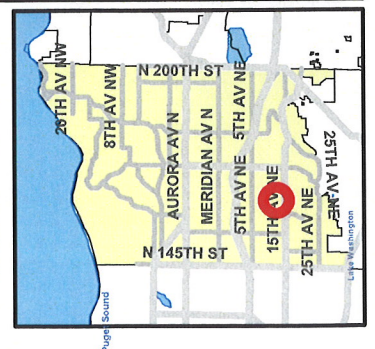


View Along Trail in North Part of Property



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ATTACHMENT A



OPTION AND REAL ESTATE PURCHASE AND SALE AGREEMENT**Vacant Land**

THIS CONTRACT CONTROLS THE TERMS OF THE SALE OF THE REAL PROPERTY.
READ CAREFULLY BEFORE SIGNING.

This OPTION and PURCHASE AND SALE AGREEMENT (this "Agreement") is dated for reference purposes ~~July 1, 2007, by and between City of Seattle, Seattle Public Utilities Division, a municipal corporation of the State of Washington (hereinafter "Seller"), and The City of Shoreline, a Washington state municipal corporation ("Buyer").~~

1. **GRANT OF OPTION:** Seller, for good and valuable consideration, receipt of which is acknowledged by Seller, grants to Buyer, the sole and exclusive right to purchase the following described real estate located in the City of Shoreline, County of King, consisting of, wooded, vacant land, approximately 8.32 acres, Tax Parcel Number 092604-9017-09 and more fully described as

See Exhibit A attached.

(hereafter "Property")

in the manner and for the price stated in this Agreement ("Option"). Buyer shall have the right, by written notice (the "Exercise Notice") given to Seller at any time during the Term to elect to purchase the Property in accordance with this Agreement. Seller acknowledges that, notwithstanding anything to the contrary elsewhere herein, Buyer's exercise of its Option is conditioned on due authorization of the Shoreline City Council. Upon exercise of the Option, Buyer shall be obligated to purchase the Property from Seller (subject to the terms, conditions, and any remaining contingencies set forth herein), and Seller shall be obligated to sell the Property to Buyer, for the Purchase Price and in the manner herein set forth.

1.1 **Term.** The term of the Option (the "Term") shall commence on the date of mutual execution hercof (the "Effective Date") and shall continue until the date that is thirty (30) days thereafter. If the last day of the Term falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the State of Washington, all of Buyer's rights during such time period shall extend through the next business day.

2. **PURCHASE PRICE:** The total purchase price shall be THREE MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$3,527,800). The Purchase Price shall be paid in cash at Closing.

Option and Purchase and Sale Agreement -0

Buyer  / Seller 

ATTACHMENT B

3. **CONDITION OF TITLE:** The title is to be free of all encumbrances or defects except rights reserved in federal patents or state deeds, building or use restrictions general to the area, and the unrecorded Ronald Sewer easement attached hereto as Exhibit B. Building or zoning regulations or provisions shall not be deemed encumbrances or defects. Encumbrances to be discharged by Seller may be paid out of purchase money at closing.

4. **EARNEST MONEY RECEIPT:** (a) Buyer hereby deposits, and receipt is hereby acknowledged, of TWENTY THOUSAND DOLLARS (\$20,000), evidenced by a Promissory Note due five (5) days after waiver of contingencies under Paragraph 13, paid or delivered as earnest money in part payment of the purchase price for the Property. (b) Earnest money and this agreement shall be held by Closing Agent for the benefit of the parties hereto.

5. **FINANCING:** This agreement is not conditioned upon Buyer's financing

6. **TITLE INSURANCE:** Buyer shall, promptly after the effective date of this Agreement, at its expense, order a preliminary commitment for title insurance on the Property from Pacific Northwest Title. The preliminary commitment for title insurance, together with copies of all exceptions noted therein, shall constitute the "Title Report." Purchaser may, at Purchaser's expense, purchase an owner's policy of title insurance with liability in such amount as buyer may choose insuring fee simple title to the Property in Purchaser, subject only to the encumbrances or defects noted in paragraph 3 above or waived in writing. If title is not so insurable, this agreement shall terminate; provided, however, that Buyer may waive defects in writing and elect to purchase or the Seller may elect to make the title insurable in its sole discretion within thirty (30) days of notice of defect. The Closing Agent shall not be responsible for delivery of title.

7. **DEFAULT: Seller's Remedies.** If the transaction fails to close due to default by Buyer, Seller shall terminate this Agreement, and collect and retain the Earnest Money as of the date of default, as the sole and exclusive remedy available to Seller as a result of such breach, whereupon Buyer shall deliver to Seller, at no cost to Seller, copies of any reports, studies, or tests performed by Buyer or its agents in connection with this transaction (excluding financial feasibility studies or other proprietary information). Seller hereby waives any other remedy it may have.

Buyer's Remedies. If the transaction fails to close due to default by Seller, Buyer's sole and exclusive remedy shall be to (i) recover the Earnest Money and any extension fees paid by Buyer or (ii) specifically enforce Seller's obligations under this Agreement. Provided, however, Buyer shall not be entitled to recover consequential damages including lost profits.

8. **CONVEYANCING:** Title shall be conveyed by Statutory Warranty Deed free of encumbrances or defects except those noted in Paragraph 3.

Option and Purchase and Sale Agreement -1

Buyer [Signature] / Seller [Signature]

9. **PRO-RATION:** Taxes for the current year if any, rents, insurance, interest, water and other utilities constituting liens shall be prorated as of date of closing.

10. **POSSESSION:** Seller shall deliver possession to Buyer on closing.

11. **SELLER'S WARRANTIES/ CONDITION OF PROPERTY:** Seller hereby warrants that Seller is authorized to enter into the Agreement, to sell the Property, and to perform the obligations of the Agreements. To the best of its knowledge, the premises described herein and the improvements thereon do not violate the applicable building or zoning regulations and that he is unaware of any material concealed defects, including hazardous wastes (see Paragraph 12), on the premises or improvements thereon with the exception of the following, to-wit:

Seller makes no representations or warranties regarding the Property other than those specified in this Agreement, Buyer otherwise takes the Property "AS IS," and Buyer shall otherwise rely on its own pre-closing inspections and investigations.

12. **HAZARDOUS SUBSTANCES:** Except as disclosed to Buyer prior to the satisfaction or waiver of the inspection contingency stated in Paragraph 13 below, Seller represents and warrants to Buyer that, to the best of its knowledge: i) there are no Hazardous Substances currently located in, on, or under the Property in a manner or quantity that presently violates any Governmental Requirement (as defined below); (ii) there are no underground storage tanks located on the Property; and (iii) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Governmental Requirements at the Property. As used herein, the term "Hazardous Substances" shall mean any substance or material defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment. The term "Hazardous Substances" specifically includes, but is not limited to petroleum, petroleum by-products, asbestos, PCBs, and any other waste, substance of material now or hereafter defined, listed or designated as hazardous, toxic, a pollutant, waste, or otherwise harmful to human health or the environment under any law, statute, regulation or ordinance. The term "Environmental Law" shall mean any current or future federal, state or local law, regulation, ordinance or code regarding the manufacture, processing, use, handling, release, transportation, storage, or disposal of Hazardous Substances.

13. **CONTINGENCIES/ INSPECTIONS:** Buyer's obligations under this Agreement are contingent upon exercise of the Option to purchase within the term of the Option under Paragraph 1. In addition this Agreement shall terminate and Buyer shall receive a refund of the earnest money unless the following actions are taken: 1) Buyer gives written notice to Seller within twenty-one

Option and Purchase and Sale Agreement -2

Buyer  /Seller 

(21) days of receipt of the title report that Buyer is satisfied, in Buyer's reasonable discretion, concerning all aspects of the Property, including without limitation, its physical condition; the presence of or absence of any hazardous substances; and the suitability of the Property for Buyer's intended purpose.

14. NOTICES: Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered or when delivered by private courier service (such as Federal Express), when sent by facsimile with electronic confirmation of transmission, or three (3) days after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows:

To Buyer: City of Shoreline
Shoreline City Hall
17544 Midvale Avenue North
Shoreline, WA 98133
Attention: City Manager
Fax: (206) 546-7868

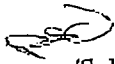
To Seller:

Rcal Property Services
Seattle Public Utilities
P.O. Box 34018
Seattle, WA 98124-4018
Attention: Audrey Hansen
Fax: 206-615-1215

16. TIME FOR CLOSING / RESPONSIBILITIES OF PARTIES: The sale shall be closed in the office of the Closing Agent within thirty (30) days after waiver of the contingencies in Paragraph 13. The Buyer and Seller shall deposit with the closing agent all instruments, documents and monies necessary to complete the sale in accordance with this agreement. Closing costs, excise tax, premium for title insurance and escrow fees, if any, shall be the responsibility of Buyer.

17. CLOSING AGENT: For purposes of this agreement, "Closing Agent" shall be Pacific Northwest Title or other closing agent authorized to perform escrow services pursuant to the provisions of Chapter 18.44 of the Revised Code of Washington who is designated by the parties hereto to perform such duties.

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Buyer  / Seller Agent

18. ESCROW INSTRUCTIONS: This Agreement is intended by the parties to set forth escrow instructions to Escrow Agent. Nonetheless, Seller and Buyer agree to execute and deliver any additional instructions requested by Closing Agent for the purposes of consummating this transaction, provided that any such additional instructions are not inconsistent herewith.

19. DATE OF CLOSING: 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.

20. RISK OF LOSS: If prior to closing, improvements on said premises shall be destroyed or materially damaged by fire or other casualty, this agreement at option of Buyer shall become null and void. If Buyer elects to continue, all insurance proceeds, if any, shall be payable to Buyer.

21. ATTORNEYS' FEES: If either party hereto is required to retain an attorney to bring suit or seek arbitration to enforce any provisions of this agreement, said party shall be entitled to reasonable attorneys' fees regardless of whether the matter proceeds to judgment or is resolved by defaulting party curing default.

22. FIRPTA-TAX WITHHOLDING AT CLOSING: Closing Agent is instructed to prepare a certification that Seller is not a "foreign person" within the meaning of the foreign investment in Real Property Tax Act. Seller agrees to sign this certification. If Seller is a foreign person, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

23. ENTIRE AGREEMENT: There are no other verbal or other agreements which modify or affect this agreement. Time is of the essence of this agreement. All subsequent modifications or waivers of any condition of this agreement shall be in writing and signed by the appropriate parties.

24. SURVIVAL: All warranties, representations, covenants, obligations and agreements contained in or arising out of this Agreement shall survive the Closing and the transfer and conveyance of the Property hereunder and any and all performance hereunder. All warranties and representations shall be effective regardless of any investigations made or which could have been made.

BUYER:

THE CITY OF SHORELINE

Dated: 5/8/07

Option and Purchase and Sale Agreement -4

Buyer [Signature] / Seller [Signature]

By: Robert Olander
Robert Olander, City Manager

Approved as to form:

Ian R. Sievers
Ian R. Sievers, City Attorney

On this date 5-18-2007, I/we hereby approve and accept the sale set forth in the above agreement and agree to carry out all the terms thereof on the part of the Seller. I/we further acknowledge receipt of a true copy of this agreement signed by both parties.

SELLER



A true copy of the foregoing agreement signed by Seller is hereby received on

_____, 2005. _____
Buyer

Option and Purchase and Sale Agreement -5

Buyer ES / Seller _____

PROMISSORY NOTE

\$20,000.00

Dated: May 8, 2007

Shorcline, Washington

FOR VALUE RECEIVED, the undersigned, CITY OF SHORELINE ("Maker"), hereby promises to pay to the order of PACIFIC NORTHWEST TITLE COMPANY OF WASHINGTON, INC. ("Holder"), 215 Columbia Street, Seattle, Washington 98104-1511, for the benefit of THE CITY OF SEATTLE ("Seller"), the principal sum of TWENTY THOUSAND DOLLARS (\$20,000.00), payable in accordance with that certain Option and Real Estate Purchase and Sale Agreement (the "Agreement"), between Maker, as Buyer, and Seller.

Maker promises to pay all costs, expenses and attorney's fees incurred by Holder in the exercise of any remedy (with or without litigation) under this Note in any proceeding for the collection of the debt evidenced by this Note, or in any litigation or controversy arising from or connected with this Note.

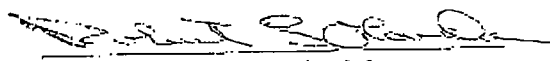
Delay in exercising any of the Holder's rights or options hereunder shall not constitute a waiver thereof, and waiver of any right or option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

This Note shall be construed according to the laws of the State of Washington and pursuant to the terms and conditions of the Agreement.

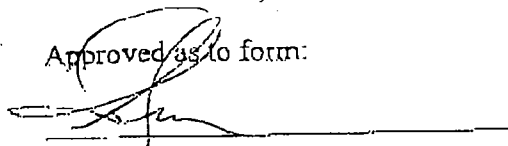
Time is of the essence of this Note and each and every term and provision hereof.

MAKER:

CITY OF SHORELINE


Robert L. Olander, City Manager

Approved as to form:


Ian Sievers, City Attorney