

RESOLUTION NO. 1459

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, ACCEPTING A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH BRYAN A. MARTIN TO SITE WASTEWATER FACILITIES; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AUTHORIZING THE MAYOR TO IMPLEMENT ADMINISTRATIVE PROCEDURES TO CARRY OUT LEGISLATION; AND, A RESOLUTION EFFECTIVE DATE

WHEREAS, Bryan A. Martin ("Seller") owns real property located in Columbia County, WA, more particularly described in Exhibit "A"; and

WHEREAS, the City of Dayton desires to purchase said real property from Bryan Martin to site wastewater facilities including, but not limited to wetlands, structures and other associated facilities as necessary to complete the City of Dayton Wastewater Treatment Facility Update Project,

WHEREAS, the Mayor and the Seller have negotiated a Real Estate Purchase and sale Agreement attached hereto as Attachment "A" (the "Agreement"); and

WHEREAS, the City Attorney has finished his due diligence on the property; and

WHEREAS, City Council desires to authorize the Real Estate Purchase and Sale Agreement between the City and Bryan A. Martin.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. ACCEPTANCE OF AGREEMENT. The Real Estate Purchase and Sale Agreement between the City and Bryan A. Martin as provided in the form attached hereto as Attachment "A", is hereby accepted.

SECTION 2. EXECUTION OF AGREEMENT. The Mayor is hereby authorized to execute the Real Estate Purchase and Sale Agreement in the form attached hereto as Attachment "A", on behalf of the City of Dayton.

SECTION 3. IMPLEMENTATION. The Mayor or his designee is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

SECTION 4. EFFECTIVE DATE. That this resolution shall take effect and be in full force upon passage and signatures hereon.

PASSED by the City Council of the City of Dayton, Washington on this 18th day of March, 2021.

City of Dayton


Zac Weatherford, Mayor

Attested/Authenticated by:


Trina Cole, City Administrator

Approved as to form:


Quinn Plant, City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

PARTIES:

SELLER:

Bryan A. Martin, a single man
321st West Main St.
Dayton, WA 99328
(hereinafter referred to as "Seller")

PURCHASER:

City of Dayton,
a Washington municipal corporation
111 S. 1st St.
Dayton, WA 99328
(hereinafter referred to as "Purchaser")

DATE: April 14, 2021.

RECITALS:

A. Seller is the owner of certain real property in Columbia County, Washington, more particularly described on Exhibit "A" attached hereto and hereby incorporated by reference ("Real Property" herein).

B. Purchaser desires to purchase the Real Property to site wastewater facilities, including but not limited to wetlands, structures and other associated facilities as necessary to complete the project ("Project" herein).

IN CONSIDERATION of the covenants herein contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. AGREEMENT TO SELL/PURCHASE; DESCRIPTION OF REAL PROPERTY:

Subject to the terms of this Agreement, Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Real Property defined as follows:

1.1. **Real Property:** "Real Property" shall mean the land, together with easements, rights of way, privileges and benefits appurtenant thereto, more fully described in Exhibit "A." The parties authorize the Closing Agent to correct and conform the legal description to the legal description identified on the preliminary commitment for title insurance.

2. **PURCHASE PRICE; EARNEST MONEY; PAYMENT:**

2.1 Purchaser agrees to pay to Seller the appraised value of the Real Property as determined by an independent appraiser agreed to by the parties. Should either party be dissatisfied with the appraisal amount, the dissatisfied party may, at such party's expense, pay for an additional appraisal. The purchase price must then be agreed upon by both parties within 14 days of the last appraisal or this Agreement shall become null and void and the earnest money refunded to Purchaser. In no event shall the purchase price be less than \$295,000..

2.2 Upon execution of this Agreement by the parties, Purchaser shall pay to Seller the amount of \$16,000 as earnest money. In the event of closing of this purchase and sale, the earnest money shall be credited to the purchase price payable by Purchaser to Seller.

2.3 Subject to the parties' agreement on the purchase price, the purchase price shall be paid in collected funds at closing.

3. **CONDITION OF TITLE AND TITLE INSURANCE:**

The status of Seller's title will be shown in a preliminary title commitment for a standard owner's coverage title insurance policy issued by Dayton Title Company, which preliminary title commitment will be ordered by Purchaser or Purchaser's agent immediately upon mutual acceptance of this Agreement. Purchaser will pay the cost for such policy. For purposes of issuance of the preliminary title commitment, an assumed purchase price of \$295,000 shall be used. In the event a higher price is agreed to as provided for in Paragraph 2.1, the title policy shall be updated with the increased amount, and Purchaser shall be responsible to pay any additional premium. Said preliminary title commitment shall have attached photocopies of all documents shown as encumbrances to Seller's title. Title shall be free of all encumbrances or defects, except those approved by Purchaser, as set forth herein, and the following shall not be deemed encumbrances or defects: rights reserved in federal patents or state deeds; building or use restrictions general to the area; easements not inconsistent with Purchaser's intended use; and reserved oil and/or mining rights ("Permitted Exceptions"). Purchaser shall be considered to have accepted the condition of title unless Purchaser provides notice of specific written objections within ten (10) business days after Purchaser's receipt of the preliminary title commitment. Encumbrances to be discharged by Seller shall be paid from Seller's funds at Closing. If Seller is not able to provide insurable

title in accordance with this Agreement and Purchaser does not waive such exceptions to coverage that are not part of the Permitted Exceptions, the earnest money shall be refunded to Purchaser and this Agreement shall terminate and be of no force or effect. Promptly following Closing, Seller shall provide to Purchaser at Purchaser's expense a policy of title insurance pursuant to the preliminary title commitment, insuring title to the Real Property subject only to the Permitted Exceptions and other exceptions set forth herein.

4. **CONTINGENCIES:**

This Purchase and Sale Agreement is subject to the following conditions being satisfied on or before closing:

4.1 Completion by Purchaser of due diligence with respect to the suitability of the Real Property for the Project. Upon mutual acceptance of this Agreement, Seller hereby grants Purchaser and its agents and contractors entry and access to the Real Property for a period of **six (6) months** after Purchaser's receipt of the preliminary title commitment described in Section 3. Said right of entry and access period may be extended an additional thirty (30) days upon written mutual agreement. During such right of entry and access, Purchaser may conduct, at its own expense, a full investigation of legal, title, environmental, geotechnical, hydrological, cultural, archaeological and fair market valuation matters and other matters reasonably related to the suitability of the Real Property for the Project. Such investigation may include but not be limited to core samples, test pits and other samples. Purchaser shall restore the Real Property and improvements to reasonably the same condition they were in prior to Purchaser's entry on the Real Property and investigation of the Real Property. Purchaser shall indemnify, hold harmless, and defend Seller from all claims, demands, judgments, fines, penalties, damages, liabilities, losses and expense of whatever kind or nature arising out of its performance of due diligence on the Real Property. If the results of such investigation are unsatisfactory in Purchaser's sole discretion, Purchaser may, at its option, elect to terminate this Agreement by giving Seller written notice of termination prior to the end of the right of entry and access period. In the event of termination by Purchaser under this section, the earnest money shall be forfeited to Seller and this Agreement shall immediately terminate and be of no further force or effect, and without further obligation of any Party, with the exception of Purchaser's obligation of indemnity as provided in this Subsection.

4.2 Mutual agreement of the parties with respect to the purchase price. In the event the parties do not agree upon the purchase price prior to the date of Closing, the earnest money shall be refunded to Purchaser and this Agreement shall immediately terminate and be of no further force or effect, and without further obligation of any Party under the terms of this Agreement, with the exception of Purchaser's obligation of indemnity as provided in this Section 4.

5. **POSSESSION:**

Purchaser shall have possession of the Real Property upon closing. Purchaser shall in addition have a right of entry and access to the Real Property as provided in Subsection 4.1 above.

6. **COVENANTS, REPRESENTATIONS AND WARRANTIES:**

6.1. **Seller's Covenants.** Seller hereby covenants and agrees as follows:

6.1.1. From the date of this Agreement through the closing date, the Seller shall not make any material alterations to the Real Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Real Property, nor enter into any contract of sale, leases or agreements pertaining to the Real Property without the Purchaser's prior written consent.

6.1.2. During the contract period, Seller shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Real Property without Purchaser's prior consent.

6.1.3. Seller shall in good faith use its best efforts to remove all disapproved exceptions within the preliminary title commitment.

6.1.4. During the contract period, Seller will operate and maintain the Real Property in a manner consistent with Seller's past practices relative to the Real Property and so as not to cause waste to the Real Property.

6.2. **Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties to Purchaser, each of which shall be true on the date hereof and on the date of closing. Seller shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below incorrect or untrue, and upon receipt of such notice, Purchaser may elect to terminate this Agreement. Upon Purchaser's election to terminate, the earnest money shall be refunded

to Purchaser and this Agreement shall immediately terminate and be of no further force or effect, and without further obligation of any Party under the terms of this Agreement, with the exception of Purchaser's obligation of indemnity as provided in Section 4.

6.2.1. Seller has full power and authority to enter into and carry out the terms and provisions of this Purchase and Sale Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Seller necessary to confer such authority upon the persons executing this Purchase and Sale Agreement and such other documents have been, or will be, taken. Consummation of this transaction will not breach any material agreement to which Seller is a party. Purchaser shall have no obligation to pay any funds prior to, at, or following closing to any third party. Seller has good and marketable title to the Real Property and at closing such title shall be subject only to the encumbrances permitted by Purchaser.

6.2.2. Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Real Property are pending or threatened.

6.2.3. Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Real Property.

6.2.4. Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Real Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation affecting the Real Property.

6.2.5. No special or general assessments have been levied against the Real Property except those disclosed in the preliminary title commitment and Seller has not received written notice that any such assessments are threatened.

6.2.6. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.2.7. The Real Property is subject to no unrecorded leases, easements, encumbrances or other agreements affecting the Real Property except as shown on the preliminary title commitment.

6.2.8. To the knowledge of Seller: (a) no hazardous substances, as the same may be defined by any applicable law or regulation, are, will be, or have been stored, treated, disposed of or incorporated into, on or around the Real Property in violation of any

applicable statutes, ordinances, or regulations; (b) the Real Property is in material compliance with all applicable environmental, health and safety requirements; and (c) any business heretofore operated on the Property has disposed of its waste in accordance with all applicable statutes, ordinances and regulations. Seller has no actual notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of environmental, health or safety statutes, ordinances or regulations.

6.3. **Purchaser's Representations.** Purchaser hereby makes the following representations to Seller, each of which shall be true on the date hereof and on the date of closing:

6.3.1. Purchaser has full power and authority to enter into and carry out the terms and provisions of this Purchase and Sale Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Purchaser necessary to confer such authority upon the persons executing this Purchase and Sale Agreement and such other documents have been, or will be, taken.

6.4. **Survival of Covenants.** The covenants, representations, and warranties contained in Section 6 of this Agreement shall survive the delivery and recording of the Deed from the Seller to the Purchaser.

7. **DATE OF CLOSING:**

The date of Closing of this purchase and sale transaction shall be no later than **seven (7) months from the date of mutual acceptance of this Agreement, unless extended by mutual agreement of the parties.** Closing shall occur in the office of Dayton Title Company, Dayton, Washington, or at such other location as may prove expedient. The parties shall deposit with the Closing Agent all instruments and documents and monies necessary to complete the purchase and sale of the Real Property, which will include but may not be limited to an Excise Tax Affidavit, Statutory Warranty Deed, and Closing Escrow Instructions.

8. **CLOSING COSTS:**

8.1. **Closing Escrow Fees:** Purchaser shall pay all closing escrow fees.

8.2. **Real Estate Excise Tax:** Purchaser shall be responsible for payment of real estate excise tax, if any, on this transaction.

8.3. **Title Insurance:** Purchaser shall be responsible for payment of the title insurance premium in connection with this transaction for the Real Property.

8.4. **Recording Fees:** Purchaser shall pay all recording fees related to this purchase and sale, not including any documents required to be recorded for Seller to provide good and marketable title.

8.5. **Attorney Fees:** Each party shall pay its own attorney fees in connection with this transaction.

8.6. **Proration of Taxes:** All real and personal property taxes and assessments payable in the year of closing shall be prorated as of the date of Closing.

9. **THIRD PARTY RIGHTS:**

No party other than Purchaser and Seller, and their successors and assigns, shall have any right to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of said parties, their heirs, personal representatives, successors or assigns, and not for the benefit of any other party.

10. **EARNEST MONEY:**

Earnest money in the amount of \$16,000.00 shall be paid to Seller by Purchaser upon mutual acceptance of this Agreement

11. **GENERAL PROVISIONS:**

11.1. **Notices:** Notices under this Agreement shall be in writing and may be delivered (1) personally; (2) by U.S. mail, certified or registered; (3) by a nationally recognized overnight courier service; or (4) by facsimile transmission, if a facsimile number has been provided by the party receiving notice, with a copy to be sent by U.S. first class mail. Mailed notices shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Couriers notices shall be deemed delivered when the courier's records indicate that delivery has occurred. Facsimile notices shall be effective when actually transmitted to the facsimile number provided. Either party may change its address for notices by written notice to the other.

11.2. **Attorney's Fees:** In the event of any dispute arising out of or relating to this Agreement, whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy

(including without limitation any adversary proceeding or contested matter in any bankruptcy case), the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorney's fees.

11.3. **Documents**: Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement to carry out its provisions.

11.4. **Time of Essence**: Time is of the essence of each and every provision of this Agreement.

11.5. **Legal and Tax Implications**: This Agreement affects legal rights and obligations and will have tax implications. The parties recognize and acknowledge that each party has been represented by separate counsel during the negotiation of this Agreement. In particular, the Parties recognize and acknowledge that the Purchaser has been represented by Menke Jackson Beyer, LLP and Seller has been represented by David S. Grossman of the Minnick-Hayner law firm.

11.6. **Covenants of Cooperation; Best Efforts to Close**: The parties agree to cooperate with each other and to execute such additional documents and instruments, including escrow instructions, as may be reasonably required to consummate the transaction contemplated hereby. The parties shall each use their best efforts to satisfy any expressed or implied condition precedent to closing. No party will unreasonably withhold any cooperation necessary to bring about the closing of the transaction contemplated hereby.

11.7. **Counterparts/Facsimile**: This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile or digital transmissions of any signed original document, and retransmissions of any signed facsimile or digital transmissions, shall be the same as delivery of an original.

11.8. **Survival of agreements**: The representations, covenants, agreements, warranties and indemnifications of this Agreement shall survive closing, except as otherwise expressly stated.

12. **NO JOINT VENTURE**:

No party is the agent, partner, or joint venture partner of the other.

13. **ASSIGNABILITY**:

Neither party shall assign this Agreement, or any part thereof, without the prior written consent of the other party.


14. **WAIVER OF RECEIPT OF SELLER DISCLOSURE STATEMENT:** Purchaser hereby expressly waives the receipt of the seller disclosure statement as provided in RCW 64.06.010(7), except for the following disclosures of the "Environmental" section of the seller disclosure statement:

ENVIRONMENTAL

- | | | | |
|-----------------------------------------|----------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't know | A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property? |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't know | B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | C. Are there any shorelines, wetlands, floodplains, or critical areas on the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Don't know | D. 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? |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't know | E. Is there any soil or groundwater contamination? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input checked="" type="checkbox"/> Don't know | F. Has the property been used as a legal or illegal dumping site? |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't know | G. Has the property been used as an illegal drug manufacturing site? |

[SIGNATURES ON FOLLOWING PAGE]

CITY OF DAYTON

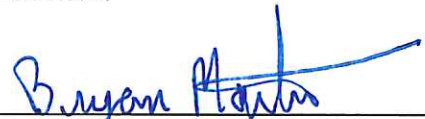
By: 
Zac Weatherford, Mayor
Dated: 03/10/2021

ATTEST:


Trina Cole, City Clerk

Dated: 3/10/2021

SELLER:


Bryan Martin, a single person

Dated: 4-14-21

EXHIBIT "A" – Legal Description

The land referred to herein is situated in the State of Washington, County of Columbia and described as follows:

A tract of land located in the Northeast quarter of the Northwest quarter, and the Northwest of the Northwest quarter of Section 2, Township 9 North, Range 38 E.W.M., and in the Southeast quarter of the Southwest quarter, and the Southwest quarter of the Southwest quarter of Section 35, Township 10 North, Range 38 E.W.M., more particularly described as follows:

Commencing at the Southeast corner of the Southeast quarter of the Southwest quarter of said Section 35; thence South $88^{\circ}34'54''$ West 11.41 feet to the northerly right of way line of the Port of Columbia Railway; thence South $47^{\circ}59'48''$ West 1094.78 feet, along said northerly right of way line, to a point hereafter referred to as "A", and the Point of Beginning for this description; thence South $47^{\circ}59'48''$ West 576.65 feet, along said northerly right of way line; thence North $03^{\circ}14'25''$ West 399.54 feet; thence South $89^{\circ}31'25''$ West 1345.62 feet to the Southwest corner of the North half of the Northwest quarter of the Northwest quarter of said Section 2; thence North $01^{\circ}28'15''$ West 665.92 feet to the Northwest corner of said Section 2; thence North $52^{\circ}51'03''$ East 1479.35 feet; thence South $22^{\circ}07'32''$ East 1684.96 feet to the point of beginning.

TOGETHER WITH an access easement for ingress and egress 20 feet in width, being 10 feet wide on both sides of the following described centerline: Commencing at the aforesaid point "A"; thence South $47^{\circ}59'48''$ West 30.00 feet to the Point of Beginning for this description; thence South $42^{\circ}00'12''$ East 52.14 feet; thence South $17^{\circ}49'23''$ East 166.57 feet; thence through a curve to the right having a radius length of 30.00 feet, and a central angle of $68^{\circ}05'19''$, a curve length of 35.65 feet; thence through a curve to the left having a radius length of 40.00 feet, and a central angle of $63^{\circ}00'00''$, a curve length of 44 feet, more or less, to the northerly right of way line of Highway 12, and the point of terminus of said centerline.

TOGETHER WITH: A FIFTY-ONE PERCENT (51%) INTEREST IN THAT CERTAIN WATER RIGHT MADE AND ENTERED ON THE 19TH DAY OF SEPTEMBER, 1929, AND RECORDED IN VOLUME "N" OF THE SUPERIOR COURT JOURNAL OF COLUMBIA COUNTY AT PAGE 419.

TOGETHER WITH that certain Easement conveyed by instrument recorded May 21, 2007, under Auditor's File No. 28781, records of Columbia County, Washington.