

16510

FOURTH AMENDED REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS FOURTH AMENDED REAL ESTATE PURCHASE AND SALE AGREEMENT ("First Amended Agreement") is made and entered into as of April 30, 2009, by and between KING COUNTY, a political subdivision of the State of Washington (the "Seller") and the CITY OF KENT, a municipal corporation (the "Buyer").

RECITALS

- A. Seller owns that certain real property located in the County of King, State of Washington, which consists of approximately 14 acres of unimproved land, commonly identified as the Mullen Slough Natural Area, the legal description of which is attached hereto as EXHIBIT A (the "Property").
- B. Buyer and Seller are parties to that certain Real Estate Purchase and Sale Agreement, dated February 21, 2008, as amended by Amendment One to the Purchase and Sale Agreement for Mullen Slough, Amendment Two to the Purchase and Sale Agreement for Mullen Slough, and Amendment Three to the Purchase and Sale Agreement for Mullen Slough. Following execution of the Real Estate Purchase and Sale Agreement, environmental contamination was discovered on the Property, necessitating a delay in the due diligence period and requiring three subsequent amendments. In order to unambiguously express the intent of the parties, the parties have elected to replace the Real Estate Purchase and Sale Agreement, as amended, with this Fourth Amended Agreement.
- C. Buyer and Seller agree that the contingencies provided in Sections 5.1, 5.1.1 and 5.1.2 have been satisfied and are hereby removed. With specific regard to the removal of the inspection contingency provided in Section 5.1.1, Buyer agrees to proceed with the purchase and remedy the contamination after closing, subject to a reduction in the Purchase Price.
- D. Buyer acknowledges that the Property was purchased for open space purposes with Conservation Futures funds as authorized by King County Ordinance 14714 and is required by law to be maintained in strict conformance with the uses authorized under RCW 84.34.020. Buyer intends to maintain the Property as open space in conformity with all existing restrictions.
- E. Seller is desirous of selling the Property and Buyer is desirous of purchasing the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree that the Real Estate Purchase and Sale Agreement, as previously amended is hereby amended, superseded and replaced in its entirety by this Fourth Amended Agreement.

**ARTICLE 1.
PURCHASE AND TRANSFER OF ASSETS**

1.1 PROPERTY TO BE SOLD. Subject to and upon the terms and conditions set forth in this Fourth Amended Agreement, Seller shall sell, convey, assign, transfer and deliver to Buyer on the Closing Date (as hereinafter defined) and Buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties:

- (a) all of Seller's right, title and interest in the Property as described in **EXHIBIT A**;
- (b) all of Seller's right, title and interest in improvements and structures located on the Property, if any;
- (c) all of Seller's right, title and interest in and to tangible personal property, if any, owned by the Seller and attached, appurtenant to or used in connection with the Property ("Personal Property");
- (d) all of Seller's tenements, hereditaments, easements and rights appurtenant to the Property including but not limited to, all of the Seller's right, title, and interest in and to streets, alleys or other public ways adjacent to the Property, easements for public utilities, all sewers and service drainage easements, all rights of connection to the sewers, and all rights of ingress and egress, and all leases, licenses, government approvals and permits affecting the Property.

Hereinafter, the items listed in Section 1.1 are collectively referred to as the "Purchased Assets."

**ARTICLE 2.
PURCHASE PRICE**

2.1. PURCHASE PRICE AND PAYMENT. In consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets, Buyer shall, in full payment therefore, pay to Seller on the Closing Date a total purchase price of Two Hundred Eighty Thousand Dollars \$(280,000) (the "Purchase Price")

2.2. ALLOCATION OF PURCHASE PRICE. Seller and Buyer agree that the entire Purchase Price is allocable to real property and that the value of the Seller's Personal Property, if any, is *de minimus*.

**ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

3.1. WARRANTIES AND REPRESENTATIONS OF SELLER. Seller represents and warrants as follows:

3.1.1. Definition of Seller. The Seller is a municipal corporation and subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite corporate power and authority to carry on its business as

it is now being conducted in the place where such businesses are now conducted.

3.1.2. Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Seller (i) is within the powers of Seller as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Seller's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Seller is a party to or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof.

3.1.3. Assessments. There is no pending, or to the best of Seller's knowledge, contemplated local improvement district or other special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment described in Section 4.1. of this Agreement.

3.1.4. Full Disclosure. No representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

3.1.5. No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Seller or any action taken by Seller.

3.1.6. Contracts. There are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.

3.1.7. Future Agreements. From and after the date hereof, unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Buyer:

- (i) enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way; or
- (ii) sell, dispose of or encumber any portion of the Property.

3.1.8. Condition of the Property. Seller has not intentionally withheld any material information concerning Hazardous Substances with respect to the Property. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to

cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

3.1.9. Risk of Loss. Until the Closing Date, the risk of loss relating to the Property shall rest with the Seller. Risk of Loss shall be deemed to include any property damage occurring as a result of an "Act of God," including, but not limited to, earthquakes, tremors, wind, rain or other natural occurrence.

3.1.10. Foreign Person. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701 (a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing Date, an affidavit, as set forth in **EXHIBIT C** (Certificate of Non-Foreign Status), evidencing such fact, and such other documents as may be required under the Code.

3.2. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer represents and warrants as follows:

3.2.1. Organization. Buyer is a municipal corporation of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington. Buyer has all requisite corporate power and authority to carry on its business as it is now being conducted in the place where such businesses are now conducted.

3.2.2. Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyers as Individuals (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Buyer's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Buyer is a party to or which is presently in effect and applicable to Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

3.2.3. Full Disclosure. No representation or warranty by Buyer in this Agreement or in any instrument, document, certificate or statement furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

3.2.4. Condition of Property. Buyer acknowledges that, within the Due Diligence Period, it will have conducted a physical inspection and made all investigations Buyer deems necessary in connection with its purchase of the Purchased Assets, and that, as of the date hereof, Seller has provided Buyer with copies of all reports in Seller's possession that have been requested by Buyer. Additionally, Buyer acknowledges that Seller has provided Buyer with a copy of its Phase I Environmental Assessment Mullen Slough Project/John J. Flower Property Kent, Washington, dated September, 2004, which identifies known Hazardous Substances present on the Property. Upon waiver or satisfaction by Buyer of its contingencies pursuant to Article 5, Buyer will be deemed to have approved the physical condition of the Property and agrees to accept and purchase

the same "AS IS, WHERE IS", including, without limitation, the existence or non-existence of any pollutants, contaminants, hazardous waste, dangerous waste, toxic waste, underground storage tanks or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of such substances at, from or into the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, environmental laws and regulations. Buyer acknowledges and agrees that, except to the extent of Seller's representations and warranties in Section 3.1 of this Agreement, and to the extent of any fraud or deliberate misrepresentation by Seller, Seller shall have no liability for, and that Buyer shall have no recourse against the Seller for, any defect or deficiency of any kind whatsoever in the Property including without limitation those relating to Hazardous Substances, without regard to whether such defect or deficiency was discovered or discoverable by the Buyer or Seller.

3.2.5. Property Acquisition and Redevelopment. No costs of any nature associated with the purchase of the Property or redevelopment of the Property will ever be or become an obligation of the Seller. The Buyer shall be solely responsible for all costs associated with the acquisition of the Property and redevelopment of the Property, including without limitation responsibility for all land use approvals, permits, site plan approvals, environmental approvals, and any other governmental approvals necessary for Purchaser to develop and construct on the Property.

3.2.6. No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement, or understanding with the Buyer or any action taken by the Buyer.

3.2.7. Indemnification. Buyer shall indemnify, defend and hold Seller, its officers, agents and employees harmless from and against any and all claims and agency orders or requirements relating to or arising out of, directly or indirectly, the Property after Closing.

ARTICLE 4. TITLE MATTERS

4.1. TITLE. Seller shall deliver to Buyer good and marketable title, free and clear of all liens, defects and encumbrances except for the Permitted Exceptions (as defined in Section 4.1.3 of this Agreement).

4.1.1 Title Commitment. Seller shall obtain a current ALTA form of commitment for a standard coverage owner's policy of title insurance (the "Title Commitment") issued by Pacific Northwest Title Company (the "Title Company"), describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the total purchase price for the Property.

4.1.2 Survey. Buyer and Seller acknowledge that Seller has not provided a survey of the Property to Buyer and that Buyer shall satisfy itself as to any survey of property lines it deems necessary.

4.1.3 Review of Title Commitment and Survey. Buyer shall have until five (5) days after receipt of the last dated Title Commitment and Survey, if any has been obtained, (the "Review Period") in which to notify Seller of any objections Buyer has to any matters shown or referred to in the Title Commitment or Survey. Any exceptions or other items that are set forth in the Title Commitment or the Survey and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions ("Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall notify Buyer within five (5) days after Seller receives Buyer's notice of objections of any exceptions to the title or items on the Survey which Seller is not willing or able to remove or otherwise resolve, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by written notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at Closing.

4.2. OWNER'S TITLE INSURANCE POLICY. At the closing, Seller shall cause a standard coverage owner's policy of title insurance to be issued by the Title Company in the full amount of the purchase price, effective as of the closing date, insuring Buyer that the fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions contained in such title insurance policy, to the matters approved by Buyer as provided herein, and to any other matters approved in writing by Buyer. The obligation of Seller to provide the title policy called for herein shall be satisfied if, at the closing, the Title Company has given a binding commitment, in a form reasonably satisfactory to Buyer, to issue the policies in the form required by this section. Seller shall pay any sum owing to the Title Company for the preparation of the preliminary and binding commitments generated by the Title Company.

4.3. CONVEYANCE. Seller shall convey to Buyer the title to the Property by Bargain and Sale Deed in substantially the form attached hereto as **EXHIBIT B**, subject to the Permitted Exceptions, an open space covenant, and a reserved river protection easement. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, and building or zoning regulations or provisions shall be deemed Permitted Exceptions.

ARTICLE 5. CONTINGENCIES

5.1. DUE DILIGENCE INSPECTION AND FEASIBILITY. Buyer may satisfy itself by investigation and inspection, at its cost and expense, in its sole and absolute discretion, that the condition of the Property for Buyer's contemplated use meets with its approval and with the approval of the State of Washington Salmon Recovery Funding Board, a grant from whom is funding purchase of the Property (Due Diligence Period).

5.1.1. Inspections. During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at Buyer's expense to (i) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Purchaser (subject to the limitations set forth below and Paragraph 5.1.2 Right of Entry); (ii) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; and (iii) examine all Due Diligence materials that Buyer may reasonably request from Seller that are not subject to attorney-client privilege or that the County is not otherwise prohibited from disclosing by law; (IV) determine to its satisfaction

whether approvals, permits and variances can be obtained under applicable land use and zoning codes for Buyers proposed development of the property, (V) determine whether Purchaser's proposed development of the property is economically feasible.

5.1.2. Right of Entry. Buyer and Buyer's designated representatives or agents shall have the right and Seller hereby grants to Buyer and Buyer's designated representatives the right to enter the Property pursuant to a County permit and conduct the tests, investigations and studies set forth in this Article 5 upon three (3) days advance written notice; provided that such right of entry will be limited to those times and dates that will not disrupt Seller's use of, or Seller's operations and activities on the Property. Invasive tests of the Property, such as drilling or excavation shall be subject to Seller's prior written approval. The Buyer will not be permitted to undertake activities that damage County property. In connection with such inspections, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability, for injuries, sickness or death of persons, including employees of Buyer caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors or employees in entering Seller's property for the above purposes, to the extent not caused by or arising out of any act, error or omission of Seller, its officers, agents and employees.

5.1.3 Approval of King County Council. Seller's obligation to close is contingent upon approval of the Metropolitan King County Council by ordinance of the conveyance of the Property from Seller to Buyer. This contingency shall automatically be removed upon the effective date of such ordinance. If this contingency is not removed by 5:00 p.m. on the day before the Closing date set forth in this Agreement or as otherwise agreed to in writing by the Parties, Buyer or Seller may terminate this Agreement upon written notice to the other and neither party shall have any further rights or obligations to the other hereunder.

ARTICLE 6

COVENANTS OF SELLER PENDING CLOSING

6.1. CONDUCT, NOTICE OF CHANGE. Seller covenants that between the date hereof and the Closing Date, Seller shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and all covenants of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing Date shall have been performed at or prior to the Closing Date as provided for in this Agreement. Seller shall give Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

ARTICLE 7

COVENANTS OF BUYER PENDING CLOSING

7.1. CONDUCT, NOTICE OF CHANGE. Buyer covenants that between the date hereof and the Closing Date, Buyer shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing

Date (except such representations, warranties and matters which relate solely to an earlier date), and that all covenants of Buyer set forth in this Agreement which are required to be performed by it at or prior to the Closing Date shall have been performed at or prior to the Closing Date as provided for in this Agreement. Buyer shall give Seller prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

ARTICLE 8 CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

All obligations of Buyer hereunder are subject to the fulfillment of each of the following conditions at or prior to the Closing Date, and Seller shall exert its best efforts to cause each such condition to be fulfilled:

8.1. DELIVERY OF DOCUMENTS. Seller shall have delivered to Buyer at or prior to Closing all documents required by the terms of this Agreement to be delivered to Buyer unless a different time period is expressly provided for in this agreement.

8.2. REPRESENTATIONS, WARRANTIES AND COVENANTS. All representations, warranties and covenants of Seller contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

8.3. OBLIGATIONS. All obligations required by the terms of this Agreement to be performed by Seller at or before the Closing Date shall have been properly performed in all material respects.

8.4. TITLE. Any and all matters shown or referred to in the Title Commitment to which Buyer has objected within the time specified in Section 4.1, shall have been cured by Seller, unless such objections have been waived by Buyer.

8.5. APPROVAL OF COUNSEL. Counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

8.6. CONDEMNATION. No portion of the Purchased Assets shall have been taken or damaged by any public or quasi-public body, and Seller shall not have transferred any portion of the Purchased Assets to any such body in lieu of condemnation.

8.7. TITLE. Seller shall have caused the Title Company to be irrevocably committed to issue an owner's policy of title insurance for the full amount of the Purchase Price, effective as of the Closing Date, containing no exceptions other than the Permitted Exceptions.

ARTICLE 9 CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

All obligations of Seller to close on the Closing Date are subject to the fulfillment of each of

the following conditions at or prior to the Closing Date, and Buyer shall exert its best efforts to cause each such condition to be so fulfilled:

9.1. REPRESENTATIONS, WARRANTIES AND COVENANTS. All representations, warranties and covenants of Buyer contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

9.2. OBLIGATIONS. All obligations required by the terms of this Agreement to be performed by Buyer at or before the Closing Date shall have been properly performed in all material respects.

9.3. DELIVERY OF DOCUMENTS. Buyer shall have delivered to Seller at or prior to Closing Date all documents required by the terms of this Agreement to be delivered to Seller.

9.4. APPROVAL OF COUNSEL. Counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

ARTICLE 10. CLOSING

10.1. CLOSING/CLOSING DATE. The Closing shall take place on or before June 30, 2009, unless the Buyer's grant funding contingency period is extended pursuant to a written agreement executed by Buyer, Seller, and the State of Washington Salmon Recovery Funding Board. The contingency period may be extended by the Buyer by mutual agreement with Seller. Upon execution of this Agreement, the parties agree to establish an account with Pacific Northwest Title Company (the "Escrow Agent"). The Escrow Agent shall serve as Closing Agent for the transaction contemplated herein and the Closing shall occur in the offices of the Escrow Agent in Seattle, Washington. The title, right of possession and interest to the Purchased Assets shall pass to Buyer upon the Closing Date and thereafter the risk of loss thereof shall be the responsibility of Buyer.

10.2. PRORATIONS. All prorations, unless otherwise specifically provided for herein, shall be made as of the Closing Date.

10.2.1. Closing Costs. Buyer has satisfied itself as to the condition of Title for the property. Seller shall pay for the owner's standard coverage title policy. Buyer and Seller shall each pay one half of escrow fees, if any. Buyer shall pay for all additional closing costs associated with this purchase and sale, including but not limited to, the cost of its own attorneys' fees. Except as otherwise provided in Section 10.2 of this Agreement, all other expenses hereunder shall be paid by the party incurring such expenses.

10.2.2. Taxes. Seller shall pay, to the extent not exempt by law, any applicable real estate taxes, excise tax or assessments ("Taxes") on the Property.

10.3. SELLER'S DELIVERY OF DOCUMENTS AT CLOSING. At the Closing, Seller will deliver to Buyer the following properly executed documents:

(a) Seller's Certificate of Non-Foreign Status substantially in the form of **EXHIBIT C**, attached hereto;

(b) A Bargain and Sale Deed conveying the Property, which shall be in substantially similar form to that attached hereto as **EXHIBIT B**;

10.4 BUYER'S DELIVERY OF DOCUMENTS AND PURCHASE PRICE AT CLOSING. At Closing, the Buyer shall deliver cash to Seller in the amount of the Purchase Price.

ARTICLE 11. TERMINATION

11.1. TERMINATION BY EITHER PARTY. Either party may terminate this Agreement if a condition to its obligation to consummate the transactions contemplated by this Agreement as set forth in Articles 8 and 9 has not been satisfied by the Closing Date. In that event, if neither party is in default under this Agreement, the parties shall have no further obligations or liabilities to one another and all documents delivered into escrow shall be returned to the appropriate party.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1. NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES. Each statement, representation, warranty, indemnity, covenant, and agreement made by Seller and Buyer in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Buyer pursuant to this Agreement or in connection herewith shall be deemed the representation, warranty, indemnity, covenant and agreement of Seller and Buyer and shall survive the Closing Date unless a different time period is expressly provided for in this Agreement and all such statements are made only to and for the benefit of the parties hereto, and shall not create any rights in other persons.

12.2. DEFAULT. In the event of any litigation hereunder, the Superior Court of King County, Washington shall have the exclusive jurisdiction and venue.

12.3. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

12.4. NOTICES. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier or certified or registered mail, return receipt requested. All notices shall be addressed to the parties at the addresses set forth below or at such other addresses as any parties may specify by notice to all other parties and given as provided herein:

If to Buyer:	City of Kent Mike Mactutis Environmental Engineering Manager
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220 Fourth Avenue South
Kent, Washington 98032

If to Seller: Bob Thompson, Real Estate Services Section
Facilities Management Division
Department of Executive Services
King County Administration Building
500 Fourth Avenue, Room 500
Seattle, Washington 98104-2337

With a copy to: King County Prosecuting Attorney
Attn: Tim Barnes
400 King County Court House
516 Third Avenue
Seattle, Washington 98104

12.5. ENTIRE AGREEMENT AND AMENDMENT. This writing (including the exhibits attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto.

12.6. SEVERABILITY. In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, such holding shall not impact or affect the remaining provisions of this Agreement unless that court of competent jurisdiction rules that the principal purpose and intent of this contract should and/or must be defeated, invalidated or voided.

12.7. WAIVER. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

12.8. BINDING EFFECT. Subject to Section 12.14 below, this Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and assigns.

12.9. LEGAL RELATIONSHIP. The parties to this Agreement execute and implement this Agreement solely as Seller and Buyer. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

12.10. CAPTIONS. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections.

12.11. COOPERATION. Prior to and after the Closing Date the parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

12.12. GOVERNING LAW. This Agreement and all amendments thereof shall be governed by

and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions.

12.13. NON-MERGER. The terms and provisions of this Agreement will not merge in, but will survive, the Closing of the transaction contemplated under this Agreement.

12.14. ASSIGNMENT. Buyer shall not assign this Agreement or any rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld.

12.15. NEGOTIATION AND CONSTRUCTION. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party. All parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each party must determine if they wish to obtain and pay for such legal review. Each party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of the terms found in this Agreement.

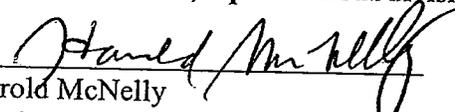
12.16. EXHIBITS. The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

EXHIBIT A	Legal Description of Property
EXHIBIT B	Bargain and Sale Deed
EXHIBIT C	Certificate of Non-Foreign Status

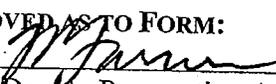
THIS AGREEMENT by and between **KING COUNTY**, a municipal corporation and political subdivision of the State of Washington (the "Seller") and the **CITY OF KENT**, a municipal corporation of the State of Washington (the "Buyer"), for purchase of the Mullen Slough Natural Area, is executed as of the date and year first above written:

SELLER:

KING COUNTY, a political subdivision of the State of Washington


Harold McNelly
(Acting) Manager, Real Estate Services Section

APPROVED AS TO FORM:

By 
Senior Deputy Prosecuting Attorney

BUYER:

CITY OF KENT, a municipal corporation of the State of Washington

Suzette Cooke
Its Mayer

APPROVED AS TO FORM:

By R. A. Pratt for
City Attorney
Assistant City Attorney

STATE OF WASHINGTON

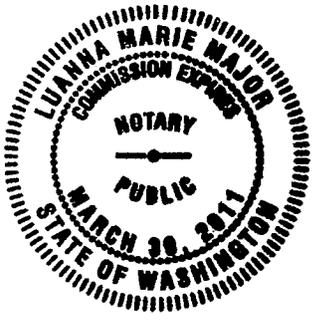
COUNTY OF KING

} ss.

Harold McNelly

On this day personally appeared before me Wayne Richardson, to me known to be the Real Estate Services Section Manager of KING COUNTY, the municipal corporation and political subdivision of the State of Washington that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation and political subdivision, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 30th day of April, 2009.



Luanna Marie Major
Printed Name ANNE LOCKMILLER Luanna Marie Major
NOTARY PUBLIC in and for the State of Washington,
residing at SEATTLE, WASHINGTON
My Commission Expires ~~NOVEMBER 9, 2008~~ March 30, 2011

STATE OF WASHINGTON

} ss.

COUNTY OF KING

On this day personally appeared before me Suzette Cooke, the Mayor of City of Kent, known to me to be the **Buyer** that executed the foregoing instrument, and acknowledged such instrument to be [his/her] free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 28th day of

April

, 2009.

[Handwritten Signature]

Printed Name Lee P. Briggs
NOTARY PUBLIC in and for the State of Washington,
residing at King County
My Commission Expires 7-18-12

EXHIBIT A

**Property Legal Description of the Mullen Slough Natural Area
Assessor's Parcel Number 232204-9028**

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING NORTH OF THE NORTH BOUNDARY OF SR 516 AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 741396:

THAT PORTION OF THE SOUTH HALF OF SECTION 23, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

**Beginning at a point 1586 feet east and 925 feet north of the southwest corner of said Section;
Thence north 829 feet;**

Thence north 50° 29'00" east 410 feet;

Thence north 71° 59'00" east 780 feet;

Thence north 85° 59'00" 272 feet;

Thence south 1365 feet;

Thence west 1343 feet to the Point of Beginning;

**EXCEPT that portion thereof lying south of the White River, East of County Road No. 722,
and north of County Road No 76;**

**ALSO EXCEPT that portion condemned in King County Superior Court Cause No. 741396 for
State Highway No 516.**

End of Legal Description

EXHIBIT B TO THE PURCHASE AND SALE AGREEMENT

BARGAIN AND SALE DEED

GRANTOR KING COUNTY, WASHINGTON
GRANTEE CITY OF KENT
LEGAL PORTION OF THE SOUTH ½ OF 23-22-04
TAX ACCT #232204-9028

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of TWO-HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) in hand paid, bargains, sells and conveys to the City of Kent, a municipal corporation of the State of Washington, the Grantee, the following described real estate (attached hereto as Exhibit A), situated in the County of King, State of Washington:

SUBJECT TO THE FOLLOWING COVENANTS, WHICH ARE INTENDED TO BE RUNNING COVENANTS BURDENING AND BENEFITTING THE PARTIES, SUCCESSORS AND ASSIGNS:

The open space use restrictions and restrictions on alienation as specified in RCW 84.34.200, King County Code, Ch. 26.12, and King County Ordinance No. 14714. Buyer covenants to abide by these uses and restrictions in perpetuity and to convey those same uses and restrictions in perpetuity upon any future conveyance.

Buyer acknowledges that the Property was purchased for open space purposes with Conservation Futures funds as authorized by King County Ordinance 14714 and covenants that it shall maintain the Property in strict conformance with the uses authorized under RCW 84.34.020. Buyer additionally covenants that it shall abide by and enforce all terms, conditions and restrictions in Ordinance 14714, including the covenants that the Property will continue to be used for the purposes contemplated by these Ordinances, which prohibit both active recreation and motorized recreation (such as off-road recreational vehicles, but allow passive recreation). The Property shall not be transferred or conveyed except by agreement providing that the Property shall continue to be used for the purposes contemplated by RCW 84.34.020 and in strict conformance with the uses authorized and prohibited under Ordinance 14714 and King County Code, Ch. 26.12. The Property shall not be converted to a different use unless other equivalent lands and facilities within the County or the City shall be received in exchange therefore.

AND RESERVED UNTO KING COUNTY WASHINGTON, THE EASEMENT DESCRIBED IN EXHIBIT B, ATTACHED HERETO.

Dated this 30th day of April, 2009.

GRANTOR, KING COUNTY

BY Harold McNelly
Real Estate Services Section (Acting) Manager

GRANTEE, CITY OF KENT

AND BY Suzette Cooke
Suzette Cook Mayor

STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me Harold McNelly, to me known to be the Real Estate Services Section Manager executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 30th day of April, 2009.

LuAnna Marie Major
Printed Name ANNE LOCKMILLER LuAnna Marie Major
NOTARY PUBLIC in and for the State of Washington,
residing at SEATTLE, WASHINGTON
My Commission Expires March 30, 2011

Notary Public

_____ executed the

... private and confidential information intended for the use of the ...

STATE OF WASHINGTON

COUNTY OF KING

} ss.

On this day personally appeared before me Suzette Cooke to me known to be the Mayer of City of Kent executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and that he/she was authorized to execute the said instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 28th day of April, 2009.

Lee P. Briggs
Printed Name Lee P. Briggs
NOTARY PUBLIC in and for the State of Washington,
residing at SEATTLE, WASHINGTON *King county*
My Commission Expires 7-18-12

... that he/she was authorized to execute the said instrument.

Lee P. Briggs
Printed Name Lee P. Briggs

**EXHIBIT A
TO BARGAIN AND SALE DEED**

**PROPERTY LEGAL DESCRIPTION OF THE MULLEN SLOUGH NATURAL AREA
ASSESSOR'S PARCEL NUMBER 232204-9028**

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING NORTH OF THE NORTH BOUNDARY OF SR 516 AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 741396:

THAT PORTION OF THE SOUTH HALF OF SECTION 23, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

**Beginning at a point 1586 feet east and 925 feet north of the southwest corner of said Section;
Thence north 829 feet;**

Thence north 50° 29'00" east 410 feet;

Thence north 71° 59'00" east 780 feet;

Thence north 85° 59'00" 272 feet;

Thence south 1365 feet;

Thence west 1343 feet to the Point of Beginning;

EXCEPT that portion thereof lying south of the White River, East of County Road No. 722, and north of County Road No 76;

ALSO EXCEPT that portion condemned in King County Superior Court Cause No. 741396 for State Highway No 516.

**EXHIBIT B
TO BARGAIN AND SALE DEED**

**RIVER PROTECTION EASEMENT FOR THE MULLEN SLOUGH NATURAL AREA
ASSESSOR'S PARCEL NUMBER 232204-9028**

King County, as Grantor, hereby reserves for itself, for the purposes stated below, a River Protection Easement over, across, along, in, upon and under that portion of the Property referred to in Exhibit A of the Bargain and Sale Deed between King County as Grantor and the City of Kent as Grantee, for the Mullen Slough Natural Area, and more particularly described as follows:

All portions of the above described parcel that are riverward of a line that is parallel to and thirty (30) feet landward of the stable top of the river bank on the Green River ("Easement Area"), as constructed or reconstructed, together with reasonable ingress and egress upon the property to access the easement area.

Grantor reserves for itself a perpetual easement for the purposes of accessing and constructing, inspecting, monitoring, reconstructing, maintaining, repairing, modifying, and removing river bank protection and/or other flood related works, including installing, inspecting, maintaining and removing all vegetation and any other appurtenances thereto across, in, under, on, over and upon the following portions of the above described Easement Area.

Grantee shall have the right at such time as may be necessary and at the Grantee's sole discretion, to enter upon the Property and to have unimpeded access to, in and through the Easement Area for the purposes of exercising the Grantee's rights as described herein.

Grantor agrees not to plant non-native vegetation within the Easement Area and not to remove or otherwise alter any improvements installed by Grantee, including any native vegetation that may be planted and any flood protection works that may be constructed, within the Easement Area, without the prior approval of Grantee. Grantor further agrees not to use herbicides within the Easement Area without the prior approval of Grantee. Nothing contained herein shall be construed as granting any license, permit or right, otherwise required by law, to Grantor with respect to the Property and the Easement Area.

For the purposes of this river protection easement, the term "native vegetation" shall mean vegetation comprised of plant species, other than noxious weeds (as identified on the State of Washington noxious weed list found at Washington Administrative Code Chapter 16-750, as amended from time to time), which are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur at the site.

Neither Grantor nor Grantee is hereby obligated to future maintenance, repair or other action related to the above-described exercise of easement rights. This river protection easement and/or any flood related works constructed or to be constructed within the Easement Area shall not be construed as granting any rights to any third person or entity, or as a guarantee of any protection from flooding or flood damage, and nothing contained herein shall be construed as waiving any immunity to liability granted to Grantee by any state statute, including Chapter 86.12 of the Revised Code of Washington, or as otherwise granted or provided for by law.

The rights, conditions, and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, and successors in interest and assigns of Grantor and Grantee.

EXHIBIT C
TO BARGAIN AND SALE DEED
PERMITTED EXCEPTIONS

EXHIBIT C
SELLER'S CERTIFICATION OF NON-FOREIGN STATUS

SELLER'S CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by KING COUNTY ("Transferor"); the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and
2. Transferor's United States employer identification number is 91-6001327; and
3. Transferor's office address is King County Facilities Management Division, Asset Development and Management Section, Room 500 King County Administration Building, 500 Fourth Avenue, Seattle, WA 98104
4. Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated this 14th day of March, 2008.

TRANSFEROR:

By: Wayne Richard
Title: Manager, Real Estate Services