

CITY OF MONROE
RESOLUTION NO. 024/2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MONROE, WASHINGTON, AUTHORIZING THE SALE OF
CERTAIN REAL PROPERTY TO ROBERT H. FORD

WHEREAS, the City of Monroe owns the real property legally described in the Purchase and Sale Agreement attached hereto as Exhibit A, incorporated herein by this reference as if set forth in full; and

WHEREAS, on June 24, 2014, the City Council held a public hearing to consider the surplus of the property, and subsequently passed Resolution No. 014/2014, declaring this property surplus to the City's Needs; and

WHEREAS, the City desires to sell, and Robert H. Ford desires to purchase, said property in accordance with the terms and conditions set forth in the Purchase and Sale Agreement.

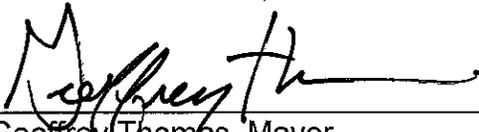
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Approval of Purchase and Sale Agreement. The City Council hereby authorizes the disposition of the property described in the attached Purchase and Sale Agreement in accordance with the terms of said agreement. The Mayor is authorized to execute the Purchase and Sale Agreement on behalf of the City in substantially the form attached hereto, together with such minor revisions as deemed necessary or appropriate.

Section 2. Effective Date. This resolution shall take effect immediately upon passage.

ADOPTED by the City Council of the City of Monroe, at its regular meeting thereof, and APPROVED by the Mayor this 18th day of November, 2014.

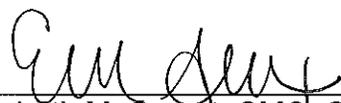
CITY OF MONROE, WASHINGTON



Geoffrey Thomas, Mayor

(SEAL)

ATTEST:



Elizabeth M. Smoot, CMC, City Clerk

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PURCHASE AND SALE AGREEMENT
(Former City Well Site)

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2014, by and between the City of Monroe, a Washington municipal corporation, ("Seller") and Robert H. Ford, and/or his assignee, a Washington limited liability company ("Purchaser").

RECITALS

- A. Seller owns certain real property in Snohomish County, State of Washington, more particularly described on Exhibit A, and referred to herein as "the Property".
- B. Purchaser desires to purchase the Property for development consistent with applicable zoning and land use regulations of Snohomish County.
- C. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

TERMS

To provide for the purchase and sale of the Property herein described, and in consideration of the covenants and promises set forth herein, the receipt and sufficiency of which are mutually acknowledged, it is hereby agreed by and between Seller and Purchaser (collectively, "the parties") as follows:

1. **PURCHASE AND SALE.** Seller is the owner of certain real property consisting of approximately 12.45 acres, located in Snohomish County, WA, identified as Snohomish County Assessor's Parcel No. 28073100100800, and legally described in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full. Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, upon the terms and conditions hereinafter set forth.
2. **PURCHASE PRICE AND TERMS OF PAYMENT.** The total purchase price ("Purchase Price") for the Property is Two Hundred and Seventy Thousand Dollars and 00/100 cents (\$270,000.00). The balance of the Purchase Price, less the Earnest Money Deposit, is due and payable at Closing.
3. **EARNEST MONEY DEPOSIT.** Within thirty (30) business days following Purchaser's receipt of a fully executed copy of this Purchase and Sale Agreement, Purchaser shall deliver to Escrow Company, for the benefit of the Seller, a cash deposit (hereinafter "Earnest Money Deposit") of Ten Thousand Dollars (\$10,000). The Earnest Money Deposit shall be applied to the Purchase Price at closing; **PROVIDED, IN THE EVENT PURCHASER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY AS**

(Handwritten initials)

SPECIFIED HEREIN, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES, BUT NOT AS A PENALTY, AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER. Purchaser and Seller agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and further represent a reasonable estimate of the losses that Seller will incur if Purchaser fails to purchase the Property after all conditions precedent to Purchaser's performance have been satisfied. The Earnest Money Deposit shall be refunded to Purchaser in the event that Purchaser gives Seller and the Escrow Company written notice of its decision not to proceed with the purchase of the Property prior to the end of the Inspection Period (as extended per this Agreement) or any one of the closing contingencies set forth in Section 7 below are not satisfied.

5. **CONVEYANCE/SELLERS WARRANTIES.** Upon Closing, title to the Property shall be conveyed from Seller to Purchaser by a Statutory Warranty Deed ("the Deed"), subject only to the exceptions described in Section 9. Seller warrants that it has marketable title to the Property subject only to the exceptions listed in the preliminary title commitment to be provided by Seller to Purchaser.

6. **INSPECTION PERIOD.** Purchaser shall have a period ("Inspection Period") of not more than ninety (90) days from the Effective Date of this Agreement to inspect and determine the feasibility of acquiring the Property for Purchaser's intended use, during which period Purchaser shall proceed with due diligence and in good faith to satisfy the closing contingencies.

7. **CLOSING CONTINGENCIES.** Purchaser's obligation to proceed with the closing of the purchase of the Property is contingent upon the following:

i. **Expiration of the Inspection Period.** Upon expiration of the Inspection Period without written notice having been delivered by Purchaser to Seller and Escrow Company stating that Purchaser's acquisition of the Property is not feasible due to the (i) unavailability of financing acceptable to Purchaser; (ii) the condition of the Property; (iii) the inability of Purchaser to develop the Property for Purchaser's intended development use; or (iv) exceptions to insurable title listed in the preliminary title report objectionable to Purchaser and not timely cured by Seller after notice of objection by Purchaser as provided for herein, Purchaser shall be obligated to proceed with the Closing of the purchase of the Property. If during the Inspection Period Purchaser gives written notice to Seller and Escrow Company that the acquisition is not feasible due to any of the reasons set forth above, Purchaser shall be entitled to a refund of the Earnest Money Deposit, and all rights and obligations of the Parties under this Agreement shall thereupon be terminated except as expressly provided herein.

ii. **Information.** Upon written request, Purchaser shall have reasonable access to all documents in Seller's possession relating to the condition of the Property, including documents relating to the presence, use, storage, treatment, generation, transportation, removal or disposal of Hazardous Materials, on the Property.



iii. **Access.** Upon at least three (3) days written prior notice to Seller, Purchaser and its authorized representative(s) may access and enter upon the Property at reasonable times for purposes of inspection and to conduct test borings for soil suitability and other study reasonably necessary for Purchaser. All such inspection and testing shall be at Purchaser's sole expense and Purchaser at its sole expense shall thereafter return the Property to its pre-inspection/test condition. Purchaser shall promptly provide Seller with a copy of any report(s) arising from any inspection, testing or sampling conducted with respect to the Property. Separate from the provisions of Section 8, Purchaser shall defend, hold harmless and indemnify Seller, its officers, officials and employees from and against any and all claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys' fees and costs incurred by Seller for any personal injury, property damage and/or other liability resulting from Purchaser's entry onto and use of the Property pursuant to this section.

7A. HAZARDOUS MATERIAL.

(1) Definition of Hazardous Material. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "hazardous substance" or similar term under the Federal Water Pollution Control Act (33 U.S.C. §1317), (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (iv) petroleum, (v) asbestos or (vi) which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law.

(2) Presence of Hazardous Material. Purchaser acknowledges that the Property may or may not contain certain Hazardous Materials and that Seller only warrants to the best of Seller's actual knowledge, that as of the Effective Date of this Agreement Seller is not aware of the presence on or beneath the Property of any legally unacceptable levels of Hazardous Materials. Seller makes no, and expressly disclaims any, other representation or warranty to Purchaser regarding the presence or absence of any Hazardous Materials on or under the Property. It shall be Purchaser's exclusive responsibility under this Agreement to examine the Property and to review such reports or other documents it deems necessary to satisfy itself as to the presence or absence of any such Hazardous Materials. For purposes of this section, "Seller's actual knowledge" means the actual knowledge, as of the date of this Agreement, of the City of Monroe Mayor or any director-level employee of Seller.

(3) Right to Inspect. Prior to the expiration of the Inspection Period, Purchaser shall have the right, at its cost and expense, to conduct such physical inspections of the Property as necessary in order to determine the presence or absence of Hazardous Material on or under the Property in accordance with Section 7.



(4) Indemnification. If the parties proceed to the Closing, Purchaser shall indemnify, defend and hold Seller harmless from any and all claims, demands (including demands by any governmental agency), liabilities, costs, expenses, penalties, damages, losses and liens, including without limitation clean up costs and reasonable attorneys' fees, arising out of or with respect to any Hazardous Material released on or under the Property subsequent to the Closing. The indemnity provided for herein shall survive the Closing hereunder and shall not be merged into the Deed. Seller shall indemnify, defend and hold Purchaser harmless from any and all claims, demands, (including demands by any government agency), liabilities, costs, expenses, penalties, damages, losses and liens arising from any material breach of Seller's warranty in Section 7A(2) The indemnity provided for herein shall survive the Closing and shall not be merged into the Deed.

(5) Release. If the parties proceed to Closing, then Purchaser and its employees, contractors, agents, and each of them, and its successors, assigns, heirs, devisees and executors, agree to forever release, discharge and acquit Seller and its contractors, agents, officials and employees, and each of them (collectively, "Releasees"), of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of duty of any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, costs, sums of money, accounts, compensations, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character (including without limitation reasonable attorneys' fees) (collectively "Claims"), and irrespective of how, why or by reason of what facts, whether heretofore or now existing, or which could, might or may be claimed to exist in the future, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, including all Claims for nondisclosure, or unsuitable recommendation, each as if fully set forth herein at length, which in any way arise out of, or are connected with, or relate to (1) any Hazardous Material on or under the Property, or migrating to or from the Property, at the Closing or released on or under the Property subsequent thereto, and (2) any required clean-up of any and all Hazardous Material which might remain or subsequently be placed on or under the Property, including without limitation any personal injuries suffered by any person or persons. The release provided for herein shall survive the Closing and shall not be merged into the Deed. This Section 7A(5) shall not apply to any violation of the limited knowledge representation provided in Section 7A(2) above.

8. INDEMNITY. The parties agree to defend, hold harmless, and indemnify each other, their respective officers, officials and employees, from and against any claims, demands, penalties, fees, liens, damages, losses, expenses, including reasonable attorneys' fees and costs incurred by the indemnitee for liability resulting from any breach of the warranties and representations in this Agreement. The representations and warranties contained in this Agreement and this indemnity shall survive Closing.

9. TITLE. Seller, at Seller's expense and upon delivery, shall provide Purchaser with a preliminary title insurance commitment from Chicago Title Company ("Title Insurance Company"). Seller shall make request for the commitment within five (5) days from the Effective Date of this Agreement. Purchaser shall inform Seller of any objections it has to the listed exceptions to insurable title identified in the title report within thirty (30) days of Purchaser's



receipt of the report and Seller shall have the option of curing any stated objection. If Seller declines to cure any exception objected to by Purchaser, this Agreement shall terminate, and Purchaser, as its sole and exclusive remedy, shall be refunded the Earnest Money Deposit, unless Purchaser agrees within 15 days to withdraw its objection to the exception. Seller's conveyance of title by the Deed pursuant to Section 10(e) shall be subject to all exceptions to insurable title listed in the preliminary title report and not objected to by Purchaser.

10. ESCROW AND CLOSING.

a. **Closing Agent; Date of Closing.** The sale shall be closed at the Everett, Washington offices of Chicago Title Company ("Closing Agent" or "Escrow Company"), no later than fifteen (15) days following the expiration of the Inspection Period without written notice to Seller by Purchaser that the development of the Property is not feasible. Purchaser and Seller shall deposit with the Closing Agent, all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. Seller agrees to maintain the Property and its improvements in their present condition, normal wear and tear excepted, until Purchaser is entitled to possession. In the event that this sale cannot be closed by the date provided herein due to the unavailability of either party, the Closing Agent, or financing institution to sign any necessary document, or to deposit any necessary money, because of any interruption of available transport; strikes, fire, flood or extreme weather; governmental regulations; incapacitating illness; acts of God; or other similar occurrences; the Closing date shall be extended seven (7) days beyond cessation of such condition, but in no event more than fourteen (14) days beyond the Closing as provided herein without written agreement of the parties.

b. **Expenses of Escrow.** Title insurance premiums, loan fees and all other costs or expenses of escrow shall be paid as follows:

- (i) the cost of securing a standard coverage title insurance policy for Purchaser shall be paid by Seller;
- (ii) the cost of discharging any liens or encumbrances to clear title, shall be paid for by Seller;
- (iii) the costs of recording the Deed to Purchaser shall, including stamps, shall be paid by Purchaser; and
- (iv) all other expenses of escrow shall be shared equally by the parties.

c. **Pro-Rations.** All real property taxes and utility charges against the Property shall be pro-rated as of the date of Closing. Said prorations, if any, shall be effected on the basis of the latest available utility and/or tax bills and other applicable statements and based upon a 365 day calendar year. If current year utility and/or tax statements are not available at the close of escrow, the prorations will be made as above provided and shall be adjusted between Purchaser and Seller outside of escrow as soon as the utility and/or tax bills or other information is available.

d. **Closing Defined.** Closing for the purpose of this Agreement, is defined as the date that all documents are executed and the sale proceeds are available for disbursement to Seller. When notified, Purchaser and Seller will deposit, without delay, in escrow with Closing Agent, all instruments and monies required to complete the transaction in accordance with this Agreement.

e. **Statutory Warranty Deed.** At closing, Seller will convey marketable title to the Property to Purchaser by statutory warranty deed (the "Deed"), subject only to the Special and Standard Exceptions set forth in the Preliminary Commitment for Title Insurance not timely objected to by Purchaser and those exceptions timely objected to by Purchaser but agreed in writing by Seller to be satisfied by the time of Closing. Without prejudice to Section 12, Purchaser will acquire the Property "as is" with respect to any matter which a physical inspection of the Property would disclose.

11. **POSSESSION.** Purchaser shall be entitled to possession of the Property at Closing.

12. **CONDITION OF PROPERTY; DISCLAIMER.** Except as expressly provided herein, Purchaser agrees to purchase the Property in its present condition on the terms noted. Purchaser accepts the Property "AS IS" "and "WITH ALL FAULTS," and Seller makes no, and hereby expressly disclaims any, warranty of any kind, express or implied, with respect thereto. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, IT IS EXPRESSLY AGREED THAT SELLER MAKES NO WARRANTY AS TO THE MARKETABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROPERTY.

a. **Water Wells.** Without limitation of the foregoing provisions of Section 12, Purchaser expressly acknowledges the presence of three (3) inoperative water wells ("the Water Wells") located upon the Property in the approximate locations depicted in Exhibit B, attached hereto and incorporated herein by this reference as if set forth in full. With respect to the Water Wells, Purchaser hereby agrees and covenants as follows:

(i) Upon Closing, Purchaser shall accept sole liability and responsibility for any personal injury and/or property damage (including without limitation any surface or groundwater contamination), harm or loss, caused to or by, arising out of or otherwise relating in any manner to the Water Wells.

(ii) Purchaser expressly accepts sole responsibility for completing the formal decommissioning process for the Water Wells in accordance with all applicable provisions of state law, including without limitation Chapter 18.104 RCW, Chapter 173-160 WAC, and any applicable requirements of the Washington Department of Ecology. Purchaser shall be exclusively responsible for obtaining any applicable permits, licenses and/or approvals necessary to complete said decommissioning process. Purchaser shall complete the decommissioning process at Purchaser's sole expense.



(iii) Separate from the provisions of Section 8 of this Agreement, Purchaser shall protect, defend, indemnify and hold harmless Seller, its officials and employees from any and all claims, injuries, damages, losses and suits, including attorneys' fees, arising out of, resulting from, or in connection with Purchaser's obligations under this subsection 12(a).

The provisions of this subsection 12(a) shall survive Closing.

13. DEFAULT.

a. **By Seller.** In the event of any default by Seller, Purchaser shall be entitled to immediately cancel this Agreement (in which case the Earnest Money Deposit not yet forfeited under the terms of this Agreement prior to Seller's default shall be refunded to Purchaser); provided, however, Purchaser may, at its option, waive any default by Seller and proceed with the purchase of the Property.

b. **By Purchaser.** In the event of any default by Purchaser, prior to the close of the escrow, Seller may waive the default, or at Seller's option, terminate the escrow and Purchaser's right to purchase the Property and retain the forfeited Earnest Money Deposit.

14. ATTORNEYS' FEES. In the event any action or proceeding to compel compliance with, or for a breach of, the terms and provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to the reasonable attorneys' fees of the prevailing party.

15. ASSIGNMENT. This Agreement may not be assigned without the other party's prior written consent, however, the Seller acknowledges that Purchaser intends to assign his rights and obligations under this Agreement to an entity yet to formed, and Seller's consent to such assignment, shall not be unreasonably withheld.

16. CASUALTY LAW. Seller agrees to maintain its own property and public liability insurance on the Property prior to Closing. Purchaser acknowledges and agrees this obligation shall be deemed satisfied by Seller's current membership in the Washington Cities Insurance Authority risk pool. The parties agree that Purchaser shall not be responsible to acquire any insurance for the Property until after Closing.

17. WRITTEN NOTICE. Except as otherwise provided herein, any and all notices provided under this Agreement must be in writing and shall be deemed given when delivered in person, or when deposited with Federal Express or other similar overnight service, return receipt requested, or when deposited in the United States mails, postage prepaid for certified mail, return receipt requested, or upon actual receipt of a facsimile or other similar transmission (provided that a copy of the facsimile is delivered or deposited within twenty-four hours in the manner specified above), properly addressed to Seller and to Purchaser as follows:

TO SELLER:



Gene Brazel, City Administrator
City of Monroe
806 West Main Street
Monroe, WA 98272

TO PURCHASER:

Robert H. Ford
PO Box 1587
Monroe, WA 98272

Either party may designate a different address for receiving notices hereunder by giving at least ten (10) days written notice thereof to the other party.

18. **TIME IS OF ESSENCE AND COMPUTATION OF TIME.** Time is of the essence of this Agreement. Unless otherwise stated in this Agreement, any period of time in this Agreement shall begin the day after the event starting the period and shall expire at 5:00 p.m. Pacific time of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday or legal holiday as defined in RCW 1.15.050, in which case the specified period of 5 days or less shall not include Saturday, Sunday or legal holidays.

19. **COMPLETE AGREEMENT.** This Agreement supersedes any and all agreements, written or oral between the parties hereto regarding the subject Property, which are prior in time to this Agreement. Neither Purchaser nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.

20. **COMMISSION.** Seller shall be solely responsible for payment to the listing Broker (Newmark Grubb Knight Frank) outside of the Closing per separate agreement. The parties represent and warrant that no other brokers are owed a commission with respect to the transaction set forth herein.

21. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue of any suit arising out of or related to this Agreement shall be in Snohomish County, Washington.

22. **NON-MERGER.** The terms and provisions of this Agreement shall not merge in the Deed or other conveyance instrument transferring the Property to Purchaser at Closing, but shall survive the Closing of this transaction.

23. **COUNTERPARTS AND FACSIMILE TRANSMISSION.** This Agreement may be executed in counterparts, all of which together shall be deemed to be one original, even if the



parties have not executed the same original. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing or original document.

24. EFFECTIVE DATE. This Agreement shall become effective as of the date first listed above when signed by both parties. The parties expressly acknowledge that Monroe City Council approval and authorization for the Mayor to sign this Purchase and Sale Agreement is required for this Agreement to be effective.

25. REGULATORY AUTHORITY PRESERVED. Purchaser expressly acknowledges that Seller is a municipal corporation organized under the laws of the state of Washington and has executed this Agreement in its proprietary capacity as owner of the Property. Nothing in this Agreement shall be construed as waiving, abridging or otherwise limiting the City of Monroe's regulatory authority, police power and/or legislative discretion, which are hereby expressly reserved in full. Without prejudice to the foregoing, nothing in this Agreement shall be construed as entitling Purchaser to receive any permit, license or other regulatory approval, or as waiving or excusing Purchaser's compliance with any applicable regulatory process.

26. CONDEMNATION. If any part of the Property is condemned prior to the Closing, Seller shall promptly give Purchaser written notice of such condemnation and Purchaser shall have the option of either applying the proceeds of any condemnation award on a pro rata basis to reduce the Purchase Price or to declare this Agreement terminated by delivering written notice to Seller, in which event, the Earnest Money Deposit together with accrued interest thereon, shall be refunded to Purchaser.

EXECUTED as of the date hereinabove written.

SELLER:

CITY OF MONROE
a Washington Municipal Corporation

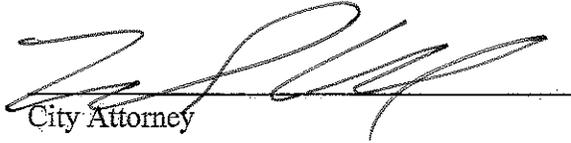
By: _____
Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By:


City Attorney

STATE OF WASHINGTON)

COUNTY OF _____)

On this day, personally appeared before me _____, the Mayor of the City of Monroe, Washington and stated that he is authorized to sign this instrument on behalf of said company for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2014.

NOTARY

Print Name

My Commission expires: _____

/
/
/

PURCHASER:



Robert H. Ford

Exhibit A

Description of the Property

SEC 31, TWP 28, RGE 07RT - 1B), SE 1/4 NE 1/4 NE 1/4 LESS N 40FT, TGW N 264FT OF
E1/2 SE14 NE1/4 LESS RD



Exhibit B

Site Diagram: Water Wells

— To be attached —


Choose starting point, or click on the map...
 Choose destination...

