Municipality of Anchorage

PURCHASE AND SALE AGREEMENT

FOR

LAND LEGALLY DESCRIBED AS
LOT 3A, BLOCK 3V, RABBIT CREEK VIEW AND RABBIT CREEK HEIGHTS SUBDIVISION REPLAT (PID 020-531-35-000)

THIS AGREEMENT dated _____, 2020, by and between the MUNICIPALITY OF ANCHORAGE, an Alaska municipal corporation, whose mailing address is P.O. Box 196650, Anchorage, Alaska 99519-6650 (Seller); and _____, whose mailing address is _____ (Purchaser);

WHEREAS, the Municipality of Anchorage (Municipality) owns that certain real property known as 16000 Francesca Drive located in Anchorage, Alaska, more particularly described as follows:

Lot 3A, Block 3V, Rabbit Creek View and Rabbit Creek
Heights Subdivision Replat, according to Plat No. 2004-91
(Parcel ID 020-531-35-000)

situated in the Anchorage Recording District, Third Judicial District, State of Alaska, together with all improvements thereon and appurtenances thereto (Property);

WHEREAS, the Municipality desires to sell the Property and Purchaser desires to purchase the Property upon the terms and conditions set forth herein;

ACCORDINGLY, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Purchase and Sale of Real Property; Purchase Price.
Seller shall sell the Property to Purchaser, and Purchaser shall purchase the Property from Seller, for a purchase price of _____ DOLLARS ($_____), payable as follows:

(a) A _____ DOLLAR ($_____) BID DEPOSIT received and held by Seller on _____, 2019; and

(b) An additional FIVE PERCENT (5%) DOWN PAYMENT of _____ DOLLARS ($_____) deposited with the Seller upon execution of this Agreement; and

(c) The BALANCE of _____ DOLLARS ($_____), plus costs, payable at Closing, as defined in Section 5.

2. Due Diligence.

(a) Purchaser shall have a due diligence period of ninety (90) days commencing on the date of this Agreement (Due Diligence Period). Seller shall provide access to all reports, surveys, analyses, and other documents within its control or possession and relating to the Property to Purchaser, and Purchaser agrees to provide Seller with copies of all reports, surveys and analyses regarding the Property upon receipt thereof by Purchaser at no cost to Seller. Neither party makes any representation or warranty of any kind to the other concerning the contents of any of the documents so provided, or the condition of the Property. Neither party assumes any responsibility for the accuracy or completeness of any document provided to the other, or for any information contained therein. Each party releases, acquits and forever discharges the other of and from any and all claims with regard to any documents provided to the other and relating to the Property.

(b) Purchaser and its employees, consultants, contractors and agents shall have reasonable access to the Property for the purpose of conducting due diligence investigations, including taking samples, borings, geotechnical examinations, environmental examinations, and all other actions necessary or appropriate to complete its due diligence review.

(c) Purchaser shall not permit liens or encumbrances to be placed against the Property for expenses incurred as a result of any work done or studies undertaken by Purchaser or at Purchaser's direction. Purchaser shall promptly repair any damage done while inspecting the Property and shall hold Seller harmless for its acts and omissions and those of its employees, consultants, contractors and agents while conducting due diligence. Purchaser shall defend, protect, hold harmless, and indemnify Seller from and against any and all losses, claims, damages, penalties, fines, investigations, assertions, liens, demands, and causes of action of every kind and nature arising from or relating to any act or omission of Purchaser or its employees, consultants, contractors and agents while upon the Property to conduct Purchaser's due diligence.

(d) If Purchaser, in its sole discretion, elects not to purchase the Property, Purchaser shall provide written notice to Seller and Title Company of the termination of this Agreement no later than the end of Due Diligence Period. If Purchaser timely terminates this Agreement pursuant to this paragraph, then Seller may retain ONE THOUSAND DOLLARS ($1,000) of the BID DEPOSIT to cover its reasonably estimated expenses related to this purchase and sale transaction; Seller shall remit the balance thereof to Purchaser, and Title Company shall refund the DOWN PAYMENT to Purchaser, and all rights and obligations of Seller and Purchaser under this Agreement shall terminate and be of no further force or effect.

3. Environmental Acknowledgements; Indemnification.

(a) Purchaser acknowledges it has had an opportunity to review Seller’s files related to the Property. Seller has not tested and does not intend to test for hazardous or contaminate substances.

(b) "Environmental Event," "Hazardous Substances" and "Release" are defined for the purposes of this Agreement as follows:

(i) "Environmental Event" is defined as, without limitation, any assertion or claim made against Seller or Purchaser by any government agency or third party, alleging the Release of Hazardous Substances or environmental contamination of any kind on or in connection with the Property or other affected property in the vicinity ("Affected Property"), as well as the personal injury or property loss to persons caused by:

(*a*) the presence of Hazardous Substances in, on or under the Property or Affected Property, or the migration thereof to adjacent properties; or
(*b*) the exposure to lead-based paint on the Property; or
(*c*) the removal, handling, use, disposition, or other activity causing contact of any kind with asbestos on the Property.

(ii) "Hazardous Substance" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" which are or become regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including the Comprehensive Environmental Response and Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9601 *et seq*., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq*.; the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et seq*.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq*.; substances controlled by the laws of the State of Alaska as hazardous substances, petroleum products, waste or materials, including those defined in AS 46.03.826(5) and AS 46.03,900(9); asbestos containing materials; any petroleum products or derivatives; and in the rules and regulations adopted and guidelines promulgated pursuant to such provisions.

(iii) "Release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping, whether directly onto the Property or flowing onto the Property from offsite sources.

(c) Purchaser shall defend, protect, hold harmless, and indemnify Seller from and against any and all losses, claims, damages, penalties, fines, investigations, assertions, liens, demands, and causes of action of every kind and character arising from an Environmental Event. Purchaser's obligations to defend and indemnify shall include, without limitation, the obligation to undertake all remediation, and to undertake

the defense of any and all costs of removal action, remedial action, other "response costs" as that term is defined under applicable federal state and local law, reasonable attorney's fees, penalties, fines, damages, interest, and administrative/court costs incurred by Seller in response to and defense of such, regardless of the basis of liability alleged by or against any party, including strict liability under AS 46.03.822 or federal law. In the event Seller is required to undertake any actions to remedy any Release of Hazardous Substances, lead-based paint or asbestos on the Property or Affected Property, then Purchaser shall promptly reimburse and indemnify Seller for all costs and expenses incurred in doing so, including without limitation its legal fees, costs to consultants and contractors, civil penalties, and other costs, together with interest thereon, incurred as a result of the remediation of or response to any action, proceeding or other claim related to the Property or Affected Property.

4. No Warranties.

Purchaser agrees that, except as expressly contained in this Agreement, no representations or warranties by or on behalf of Seller, express or implied, are or have been made to Purchaser as to the condition of the Property or improvements situated thereon, any restrictions related to development or use thereof, the applicability of any government requirements pertaining thereto, including but not limited to environmental requirements, the presence or absence of Hazardous Substances, presence of ground water, the suitability or fitness thereof for any purpose, the Property's compliance with federal, state and municipal laws, or any matter or thing affecting or related to the Property (including improvements), and Purchaser accepts the same **AS IS WITH ALL FAULTS**. Seller has agreed to sell the property on the terms specified herein in reliance upon the foregoing limitations of Seller's liabilities and would not have entered this Agreement without such limitations. Purchaser has been advised to investigate and determine regulations, restrictions and potential defects which would affect the use of the Property. Costs to remedy defects, to obtain site plan approvals, permits and variances and to replat shall be borne by Purchaser. **The Property is sold AS IS, WHERE IS.**

5. Closing.

Closing of this purchase and sale transaction (Closing) shall be at _____ (Title company) in Anchorage, Alaska, at such time and date acceptable to Seller and Purchaser, but no later than _____. Closing shall be upon terms and conditions set forth in escrow instructions acceptable to the parties and providing, *inter alia*, as follows:

(a) Purchaser shall:

(i) Pay the BALANCE of the purchase price to Seller; and

(ii) Pay all closing costs, including for appraisal of the Property (if desired by Purchaser). Purchaser shall be responsible for any sales commissions, consulting fees or additional services.

(b) Seller shall deliver a quit claim deed for the Property to Purchaser, SUBJECT TO all assessments, easements, covenants, conditions and restrictions of record.

6. Closing Costs.
Purchaser shall assume any pending or future taxes and assessments. All closing costs, including costs of title insurance (if desired by Purchaser), escrow fees, deed preparation, and recording fees shall be paid by Purchaser. Each party shall pay its own legal fees outside of escrow.

7. Possession.
Seller shall deliver possession of the Property to Purchaser as of the date of Closing.

8. Risk of Loss.
Risk of loss due to fire, earthquake, acts of God, or other calamity shall rest on Seller until Closing. In any such event, either Seller or Purchaser may, at their option, rescind this Agreement by notice to the other party.

9. Termination.
(a) If Closing is not completed by _____ for any reason not solely caused by Seller, the Seller shall promptly refund the DOWN PAYMENT to Purchaser, and Seller may retain the entire BID DEPOSIT.

(b) If Closing is not completed by _____ for reasons caused solely by Seller, then Seller shall promptly refund the DOWN PAYMENT and the entire BID DEPOSIT to Purchaser.

(c) In either event, this Agreement shall terminate and, except as provided above, all its terms and conditions become void and unenforceable, and each party waives all claims against the other for any damages or other relief, including specific performance, arising out of or related to this Agreement. Each party shall bear its own costs and attorneys fees.

10. Notices. All notices required under the terms of the Agreement or by law shall be in writing and sent by certified mail, return receipt requested, or facsimile to the appropriate party or parties at the following address or addresses and facsimile numbers, unless changed by the party to be notified in writing:

Seller:

Municipality of Anchorage
Municipal Manager
P. O. Box 196650
Anchorage, AK 99519-6650

With copies to:

SAMPLE

Municipality of Anchorage
Real Estate Department
P.O. Box 196650
Anchorage, Alaska 99519-6650

Municipal Attorney
Municipality of Anchorage, Department of Law
P.O. Box 196650
Anchorage, Alaska 99519-6550

Purchaser:

_____
_____
_____
_____

With a copy to:

_____
_____
_____
_____

Title Company:

_____
_____
_____
_____

Notice is complete, if mailed, upon deposit, postage prepaid, in the United States mail.

11. Costs and Attorney's Fees.
If Purchaser or Seller brings any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party(ies) shall be responsible for the costs of the prevailing party(ies) and reasonable attorney's fees in such action, as determined by the court.

12. No Assignment.
This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

13. Time of the Essence.
Time is of the essence for performance by the parties under this Agreement.

14. Governing Law and Venue.

SAMPLE

This Agreement shall be governed under the laws of the State of Alaska. Exclusive jurisdiction and venue for any action pertaining to this Agreement shall be in the State of Alaska Superior Court in the Third Judicial District at Anchorage, Alaska.

15. Entire Agreement; Modification.
This Agreement, together with any attachments and other documents referenced herein, sets forth the entire agreement and understanding of the parties with respect of the transactions contemplated under this Agreement, and supersedes all prior agreements, arrangements, understandings and negotiations. No modification of this Agreement shall be effective unless in writing and signed by authorized representatives of Seller and Purchaser.

16. Counterparts and Facsimile Signatures.
This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall be deemed a single document. Signatures on this Agreement forwarded by facsimile are intended to be the equivalent of original signatures, with the original executed Agreement thereafter to be provided promptly to the other party.

17. Successors.
All the covenants, agreements, terms and conditions contained in this Agreement shall apply to and are binding upon Purchaser and Seller, and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first mentioned above.

Date: _____	Date: _____
MUNICIPALITY OF ANCHORAGE	PURCHASER:
By: _____	By: _____
William D. Falsey	Name: _____
Municipal Manager	

(ACKNOWLEDGEMENTS NEXT PAGE)

SAMPLE

STATE OF ALASKA)
) SS
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by William D. Falsey, Municipal Manager of the Municipality of Anchorage, an Alaska municipal corporation, on behalf of the corporation.

_____
Notary Public in and for the State of Alaska
My Commission expires: _____

STATE OF ALASKA)
) SS
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, Purchaser.

_____
Notary Public in and for the State of Alaska
My Commission expires: _____

SAMPLE