



JOINT MEETING
Port Angeles City Council
and the Lower Elwha Klallam Tribal Council
City Hall, 321 East Fifth Street
September 20, 2018
10:00 a.m.

A. Call to Order - Special Meeting at 10:00 a.m.

1. Welcome and Introductions
2. Roll Call

B. Public Comment

The Joint Councils desire to allow the opportunity for Public Comment. However, the business of the meeting must proceed in an orderly, timely manner. At its most restrictive, Public Comment shall be limited to a total of 15 minutes for the Public Comment period and shall be limited to today's agenda items. Individuals may speak for three minutes or less, depending on the number of people wishing to speak. If more than 20 people are signed up to speak, each speaker may be allocated two minutes (Council Rules of Procedure Section 12).

C. Meet Jointly with the Lower Elwha Tribal Council

1. Port Angeles City Council to consider a proposed Purchase and Sale Agreement –

Potential Action: approve the Purchase and Sale Agreement for the property located at 107 and 111 East Front Street and 110 East Railroad Avenue in Port Angeles

D. Adjournment



LOWER ELWHA KLALLAM TRIBE

2851 Lower Elwha Road
Port Angeles, WA 98363

(360) 452-8471
Fax: (360) 452-3428

RESOLUTION NO. 114-18

APPROVING AGREEMENT WITH CITY OF PORT ANGELES FOR THE PURCHASE AND SALE OF REAL PROPERTY

WHEREAS, the Lower Elwha Tribal Community (or Lower Elwha Klallam Tribe) (“Tribe”) is a federally recognized Indian tribe under the Treaty of Point-No-Point of January 26, 1855, which governs itself and its territory in accordance with its Constitution and By-Laws, approved under Section 16 of the Indian Reorganization Act by the Secretary of Interior on April 29, 1968; and,

WHEREAS, in accordance with its Constitution and By-Laws, the Lower Elwha Community Council (Community Council) is the governing body of the Tribe and the Lower Elwha Klallam Business Committee (Business Committee) is the duly elected representative body of the Tribe, responsible for ensuring the full array of tribal governmental functions and services for the Tribe and its members and for preserving and protecting the culture, treaty rights, natural resources, public safety, and general health and welfare of the Tribe and its members; and,

WHEREAS, under Article IV, Section 1 of the Tribe’s Constitution, the Tribe is authorized to engage in economic development activities for the benefit of the Tribe, to enter into agreements with local governments, and to acquire real property in the name of the Tribe both within and outside the Lower Elwha Reservation; and

WHEREAS, the area known today as Port Angeles Harbor and its surrounding waterfront is of supreme cultural and historical importance to the Tribe and is the site of the ancient Klallam villages of Tse-whit-zen and Y’Innis and an associated cemetery; and

WHEREAS, today Tribe owns land on Ediz Hook and is heavily engaged in the cleanup of toxic contamination and aquatic habitat restoration on the Harbor; and

WHEREAS, the Tribe desires to expand its social, cultural, and economic presence in Port Angeles and along the Harbor and waterfront, and to function as a strong partner with the City, Port, and general community; and

WHEREAS, the Tribe has negotiated the sale of real property from the City on Front Street in downtown Port Angeles and intends to hold this property and develop it for economic purposes, including a hotel and related facilities, in accordance with feasibility studies and plans that it is actively developing with its economic enterprise department and its consultants; and

WHEREAS, the Tribe desires that the Purchase and Sale Agreement be mutually enforceable as between the parties in accordance with its terms and acknowledges the dispute resolution provisions and limited waiver of the Tribe's sovereign immunity in Section 26 of the Agreement; and

WHEREAS, the Business Committee duly provided timely written notice to all voting members of the Tribe of a meeting of the Community Council on this date at which the subject of this resolution approving the Purchase and Sale Agreement was to be considered and acted upon, which a quorum of Community Council members did not attend, and therefore, according to the Constitution and prior resolution of the Community Council delegating authority to the Business Committee, the Business Committee has the authority to act on the adoption of this resolution;

THEREFORE BE IT NOW RESOLVED THAT, on behalf of the Tribe, the Lower Elwha Klallam Business Committee hereby approves the attached Agreement for the Purchase and Sale of Real Property with the City of Port Angeles, including the limited waiver of sovereign immunity in Section 26.d.iv of the Agreement, as well as the other dispute resolution provisions in Section 26, and subject to verification that the City has approved the Agreement in accordance with all applicable legal requirements and that the Agreement is being executed on the City's behalf by persons fully authorized to do so, authorizes and directs the Chairwoman, or Vice-Chair in her absence, to execute the Agreement on behalf of the Tribe.

CERTIFICATION

The foregoing resolution was presented at a duly called and noticed meeting of the Lower Elwha Community Council on September 10, 2018, and in the absence of a quorum thereof, but in accordance with prior delegation of authority to the Lower Elwha Business Committee, the

Business Committee has voted to adopt this resolution by a vote of 3 FOR, 0 AGAINST, and 0 ABSTENTIONS.

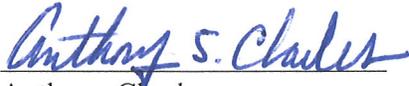
Dated this 10th day of September, 2018,



Frances G. Charles
Chairwoman



Russell Hepfer
Vice-Chairman



Anthony Charles
Secretary-Treasurer



Steven Joaquin Robideau
Council member



George Charles
Council member

AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

This Real Property Purchase and Sale Agreement (“Agreement”) is made and entered into, as of the date of the last signature affixed below, by and between the **LOWER ELWHA KLALLAM TRIBE**, a federally recognized Indian tribe, (herein referred to as “Purchaser” or “Tribe”), and the **CITY OF PORT ANGELES**, a Washington municipal corporation and non-charter code city (herein referred to as “Seller” or “City”) (each individually a “Party” and collectively the “Parties”).

RECITALS

A. The City is the owner of that certain real property described in Section 1 below (the “Property”).

B. The City has identified the Property as surplus to the City’s needs and is desirous of selling the Property and the Tribe is desirous of purchasing the Property.

C. The City has made full disclosure to the extent of its knowledge that the Property is contaminated from the release of hazardous substances. The Parties have each investigated the extent of the contamination at the Property, which are “Environmental Conditions” as defined in Section 4 below.

D. The Tribe plans to purchase the Property, conduct environmental cleanup and remediate all hazardous substances within the boundaries of the Property, and redevelop the Property for economic development purposes to be determined on the basis of a feasibility study. The Tribe’s plans for the environmental cleanup and remediation of hazardous substances are further described in Section 4 below.

E. The City expects the sale of the Property to the Tribe, together with the environmental cleanup and redevelopment of the Property, to reap net positive benefits to the City.

F. The Tribe will be responsible for the environmental cleanup and effective remediation of hazardous substances on the Property and the prevention of any further release or migration of hazardous substances as further described in Section 4 below.

G. The City and Tribe will indemnify the other for certain claims as further described in Section 4 below.

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 as follows:

1. **Property to Be Sold.** Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell, convey, assign, transfer and deliver to Purchaser on the Closing Date (as defined in Section 19 below) and Purchaser shall buy, assume and accept from Seller on the Closing Date the following assets and properties (collectively, the “Property”):
 - a. All the Seller’s right, title and interest in the Property at 107 and 111 East Front Street and 110 East Railroad Avenue, Port Angeles, County of Clallam, Washington 98363 (Tideland Block 1, Lots 7 and 8, and the western half of Lot 6, except the most southern 10 feet thereof), commonly identified as Assessor’s Parcel Number(s) 063000500070 and 063000500080. Purchaser and Seller authorize the Closing Agent to insert and/or correct the legal description of the Property at closing.
 - b. Notwithstanding the foregoing description, the Property does not include the adjacent rights-of-way for municipal streets and sidewalks, as the Tribe will provide a quitclaim to the City of the rights-of-way adjacent to the Property at closing. Purchaser and Seller authorize the Closing Agent to insert and/or correct the legal description of the rights-of-way at closing.
 - c. All of the Seller’s right, title, and interest in improvements and structures located on the 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 all easements for public utilities, all sewers and service drainage easements, all rights of connection to the sewers, all rights of ingress and egress, and all leases, licenses, government approvals, and permits affecting the Property (with the exception of the rights-of-way that are to be quitclaimed back to the City and the utility easement described below).
 - e. Seller shall retain a utility easement in property as shown and described on the attached Exhibit A until such time as the switch is relocated. Purchaser shall execute the utility easement at closing. Purchaser and Seller authorize the Closing Agent to insert and/or correct the legal description of the utility easement at closing.

2. **Purchase Price.** In consideration of the sale, transfer, conveyance, assignment and delivery of the Property, the total purchase price is nine hundred and fifty thousand dollars (\$950,000) (the “Purchase Price”). The Tribe will pay three hundred

thousand dollars (\$300,000) in cash at closing. The City will grant the Tribe a six hundred and fifty thousand (\$650,000) credit (“Credit”) against the Purchase Price in exchange for the Tribe addressing the “Environmental Conditions” at the Property that qualify as “Matters Addressed by the Credit,” as these terms are defined in Section 4 below, by performing remedial actions in compliance with Chapter 70.105D RCW, the Model Toxics Control Act, and its implementing regulations (“MTCA”), and by performing remedial actions identified by the Tribe through its consultant, Associated Environmental Group, LLC (“AEG”), as described in AEG’s *Site Characterization Report* dated July 28, 2017. The Credit against the Purchase Price is subject to the additional terms below in Section 4 of this Agreement. No part of the Purchase Price is contingent on the Tribe obtaining financing.

3. **Allocation of Purchase Price.** Seller and Purchaser agree that the entire Purchase Price is allocable to real property and that the value of personal property, if any, is *de minimis*.
4. **Environmental Conditions.** Section 4 of this Agreement, and all of its subsections, shall survive closing.
 - a. “Environmental Conditions” means the releases and potential releases of hazardous substances at the Property that require cleanup and remedial action under MTCA, as identified by:
 - i. the Tribe through its consultant, AEG, as described in AEG’s *Site Characterization Report* dated July 28, 2017 (attached as **Exhibit B**); and
 - ii. the *Phase I Environmental Site Assessment* prepared by ALKAI Consultants, LLC and dated October 27, 2004 (attached as **Exhibit C**); and
 - b. The Tribe will take full responsibility to cleanup and remediate all hazardous substances on the Property as required by MTCA, including releases to soil and groundwater. The Tribe will have licensed environmental professionals perform the environmental work and remedial actions in a manner that is substantially equivalent to that of a Washington State Department of Ecology (“Ecology”) cleanup in compliance with MTCA. The Tribe will sufficiently remediate the contamination at the Property in compliance with MTCA within a “Reasonable Time Period,” as defined below, even if it does not complete the environmental remediation work exactly as proposed in the *AEG Site Characterization Report*.
 - c. A “Reasonable Time Period” means that remedial actions shall be taken by the Tribe consistent with requirements under MTCA to: (i) cease and

confirm the cessation of any migration of contamination that may be migrating from the Property to the right-of-way adjacent to the Property or to other property, including soil and groundwater outside the boundaries of the Property; and (ii) take any action required at the Property by Ecology to protect human health and the environment, within two (2) years of closing or earlier if so directed by Ecology. The Parties may mutually agree, in writing, to amend the Reasonable Time Period, which agreement is not to be unreasonably withheld.

- d. As part of the consideration for this Agreement, the City agrees to waive all fees for City-issued permits (“Fee Waiver”) that are required solely for the cleanup and remedial work consistent with requirements under MTCA to address the “Matters Addressed by the Credit” as defined below in Subsection 4.e of this Agreement. This Fee Waiver does not include fees for permits issued by the City required for development or redevelopment of the Property.
- e. The scope of Environmental Conditions that fall within the Credit are defined as “Matters Addressed by the Credit,” and include investigation and remediation costs required by MTCA to address only the Environmental Conditions located within the boundaries of the Property including the utility easement, including soil and groundwater, which excludes the rights-of-way that are to be quitclaimed by the Tribe to the City at closing, and also excludes other property to which hazardous substances have migrated from the Property before closing.
- f. In exchange for the Credit, the Tribe shall assign to the City all legal and equitable claims and defenses, including those under MTCA and common law, the Tribe would have related to the release of hazardous substances at the Property and cleanup contribution against the former owners of the Property, Richard and Francis Niichel (the “Niichels”), and all other prior owners and operators of the Property, within the scope of Matters Addressed by the Credit (“Assigned Claims”). The City shall have the ability to bring the Assigned Claims as if brought directly by the Tribe. This provision shall survive closing.
- g. The Tribe agrees to cooperate with the City’s efforts to bring the Assigned Claims and otherwise pursue cost recovery, limited to the matters on the following enumerated list:
 - i. The Tribe consents to its environmental consultant(s) speaking with the City’s environmental consultant(s) periodically regarding remedial actions at the Property relating to Matters Addressed by the Credit, and for the City’s environmental consultant(s) to be

present upon request for soil and groundwater sampling events to observe and take split samples (at the City's sole discretion and expense for costs incurred by the City's consultant).

- ii. The Tribe shall inform the City at least two (2) weeks prior to the excavation and removal of any underground storage tank ("UST") and/or above-ground storage tank ("AST") identified in the AEG *Site Characterization Report*, and consents to the City having its environmental consultant(s) present for such excavation to observe and take photographs and split samples upon request (at the City's sole discretion and expense for costs incurred by the City's consultant).
- iii. The Tribe consents to providing the City portions of USTs and/or ASTs for forensic analysis to be used in its pursuit of the Assigned Claims, and shall provide the City the opportunity to remove portions of USTs and ASTs prior to their disposal or recycling (at the City's sole discretion and expense for costs incurred by the City's consultant).
- iv. The Tribe shall provide the City with a copy of all analytical results from environmental samples and field data taken at the Property and all reports submitted to Ecology relating to the Matters Addressed by the Credit.
- v. The Tribe shall provide the City with a copy of all invoices and backup materials from its environmental consultant(s), and subcontractor(s) if any, sufficient to support cost recovery claims against potentially liable persons under MTCA for all costs incurred and to show that remedial actions were conducted in a manner that is substantially equivalent to that of an Ecology cleanup in compliance with MTCA.
- vi. As needed and upon request, the Tribe will execute assignment of claim documents to support the City's efforts against third parties consistent with Paragraph 4(f) of this Agreement regarding "Assigned Claims."
- h. The Tribe shall indemnify, defend, and hold harmless the City from and against all third-party claimants for all remedial action costs at the Property, including, but not limited to, the Matters Addressed by the Credit and remedial action costs resulting from a release of a hazardous substance at or from the Property after closing.
- i. The City shall indemnify, defend, and hold harmless the Tribe from and

against all third-party claimants for all remedial action costs resulting from a release of a hazardous substance from the Property that both occurred prior to closing and migrated from the Property to surrounding properties and/or the adjacent rights-of-way.

- j. The Tribe shall release and waive all legal and equitable claims and defenses, including those under MTCA and common law, against the City as to the Property relating to environmental contamination and the release of hazardous substances at the Property.
- k. The City shall release and waive all legal and equitable claims and defenses, including those under MTCA and common law, against the Tribe relating to environmental contamination resulting from the release of hazardous substances migrating from the Property to surrounding properties before closing.
- l. The Tribe shall submit a construction management plan to the City as soon as practicable, and no later than thirty (30) days prior to breaking ground on construction, and will consult with the City regarding the minimization of disruption to traffic and the downtown area during the environmental cleanup, remediation, construction, and redevelopment work.

5. **Site Redevelopment by Purchaser.** The Purchaser intends to completely redevelop the Property as a hotel consistent with Purchaser's March 20, 2017 proposal to the City, except that the hotel redevelopment is anticipated to be completed within 5 years after closing rather than three years as stated in the proposal.

6. **Warranties and Representations of Seller.** Seller represents and warrants as follows:

- a. The Seller is a State of Washington municipal corporation and non-charter code city 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.
- b. **Execution, Delivery and Performance of Agreement, Authority.** The execution, delivery and performance of this Agreement by Seller (1) is within the powers of the Seller as a State of Washington municipal corporation and non-charter code city, (2) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Seller's authority, and (3) 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 or which is presently in effect and applicable to Seller. This

Agreement constitutes the legal, valid and binding obligations of Seller enforceable against Seller in accordance with the terms hereof.

- c. **Litigation.** To the best of Seller's knowledge, there is no pending or threatened lawsuit or material claim against or relating to Seller with respect to the Property that would impede or materially affect Seller's ability to perform the terms of this Agreement. To the best of Seller's knowledge, there is no pending or contemplated condemnation or similar proceeding with respect to the Property or any part thereof.
- d. **Assessments.** To the best of Seller's knowledge, there is no contemplated special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment described below.
- e. **Full Disclosure.** To the best of Seller's knowledge, no representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state a material fact which is necessary to make the statements set forth therein not false or misleading.
- f. **Contracts.** Except as disclosed herein by Seller or as may be disclosed in the Title Commitment described below, there are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.
- g. **Future Agreements.** From and after the date of this Agreement unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Purchaser: (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.
- h. **Maintenance of the Property.** Seller shall continue to maintain the Property in compliance with all applicable laws and pay all costs of the Property with respect to the period prior to closing.
- i. **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.

7. **Representations and Warranties of Purchaser.** Purchaser represents and warrants as follows:

- a. Purchaser is a federally recognized Indian Tribe. Purchaser has all requisite sovereign power and authority to carry on its businesses as they are now being conducted in the place where such businesses are now conducted. Purchaser acknowledges that the person signing this Agreement has

authority to execute real estate purchase and sale contracts on behalf of the Purchaser and will submit to Seller the Constitution and Bylaws of the Lower Elwha Tribal Community, approved by the Secretary of the Interior on April 29, 1968, as amended, or other appropriate documentation demonstrating such authority.

- b. **Execution, Delivery and Performance of Agreement, Authority.** The execution, delivery and performance of this Agreement by Purchaser (i) is within the powers of Purchaser as a federally recognized Indian tribe, (ii) has been duly authorized by all necessary governmental action of the Purchaser, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree, award or contract to which the Purchaser is a party or which is presently in effect and applicable to the Purchaser. This Agreement constitutes the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with the terms hereof.

8. **Conveyance.** Seller shall convey to Purchaser the title to the Property by statutory warranty deed, in substantially the form attached hereto as **Exhibit D**, subject only to the Permitted Exceptions and reservations of Seller that may be defined in **Exhibit D**. Rights reserved in federal patents or state deeds, building or use restrictions general to the area, building or zoning regulations or provisions, and easements not inconsistent with Purchaser's intended use shall be deemed Permitted Exceptions.

9. **Condition of Title.**

- a. **Title.** The Seller has the full right and authority to convey marketable fee simple title to the Property, and the Seller will sell, transfer, convey and warrant to the Purchaser the Property free of all liens, defects and encumbrances except those disclosed by the Commitment for Title Insurance to be issued by Clallam Title Company.
- b. **Title Commitment.** Purchaser shall obtain a current ALTA form of commitment for an owner's standard policy of title insurance (the "Title Commitment") issued by Clallam Title Company, located at 204 S. Lincoln Street, Port Angeles, Washington 98362, (360) 457-2000 (the "Title Company"), describing the Property, listing the Purchaser as the prospective named insured and showing as the policy amount the total Purchase Price for the Property. At such time as the Title Company causes the Title Commitment to be furnished to the Purchaser, the Title Company shall cause to be furnished to Purchaser legible copies of all instruments referred to in the Title Commitment as restrictions or exceptions to title to the Property.

- c. **Survey.** Purchaser shall have the option, at its expense, to have prepared and furnished to the Title Company and Purchaser a survey (the “Survey”) of the Property prepared by a licensed public surveyor. The Survey shall be certified to Purchaser and the Title Company, shall be satisfactory to the Title Company so as to permit it to issue an owner’s extended coverage title policy, identify the Property and Right-of-Ways by legal description and shall set forth the number of square feet contained within the Property, show all natural monuments, existing fences, drainages, flood plain limits, any buildings or other site improvements and/or objects, any rights-of-way for streets, sidewalks, existing driveways, alleys or highways, easements and other restriction lines existing and/or proposed which shall affect any portion of the Property, the number of square feet within the “right-of-way” to be quitclaimed by the Purchaser back to the Seller at closing, and such other items as required by Purchaser.
- d. **Review of Title Commitment and Survey.** Purchaser shall have until the end of the Due Diligence Period provided for in Section 10 of this Agreement in which to notify Seller of any objections Purchaser has to any matters shown or referred to in the Title Commitment or Survey and of any title insurance endorsements required by the Purchaser. Any exceptions or other items that are set forth in the Title Commitment or the Survey and to which Purchaser does not object within the review period shall be deemed to be permitted exceptions (the “Permitted Exceptions”). With regard to items to which Purchaser does object within the review period, Seller shall notify Purchaser within ten (10) days after Seller receives Purchaser’s notice of objections of any exceptions to title or items on the survey which Seller is not able to remove or otherwise resolve and any endorsements that Seller is not able to provide following Purchaser’s request within the review period, and Purchaser may, at Purchaser’s option, either waive the objections not cured or Purchaser may terminate this Agreement by notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at closing.
- e. **Owner’s Title Insurance Policy.** At the closing, Purchaser shall cause a standard 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 Purchaser that the fee simple title to the Property is vested in Purchaser, subject only to the usual printed exceptions contained in such title insurance policy, to the matters approved by Purchaser as provided herein, and to any other matters approved in writing by Purchaser. The obligation of the Purchaser 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 Purchaser, to issue the policies in the form required by this section. Purchaser shall pay any sum

owing to the Title Company for the preparation of the preliminary and binding commitments generated by the Title Company.

10. **Due Diligence.** Purchaser shall satisfy itself by investigation and inspection at its cost and expense in its sole and absolute discretion that the condition of the Property for Purchaser's contemplated use meets with its approval, including, but not limited to, the condition of title as reported in the Title Commitment and Survey. If Purchaser approves of the condition of the Property, Purchaser agrees to notify Seller, in writing, thereby removing the contingency. Purchaser shall make such determination within fifteen (15) days following the date of mutual execution of this Agreement (the "Due Diligence Period"). In the event this contingency is not satisfied or waived within the Due Diligence Period, Purchaser may terminate this Agreement upon written notice to Seller on or before the expiration of the Due Diligence Period, and neither party shall have any further rights or obligations to the other hereunder.
11. **Inspections.** During the Due Diligence Period, Purchaser, its designated representatives or agents shall have the right at Purchaser's expense to (i) perform any and all inspections or surveys of the Property deemed necessary by the Purchaser (subject to the limitations set forth in the Right of Entry); (ii) determine to Purchaser's satisfaction and in its sole discretion whether the Property will be eligible for transfer into trust status with the United States; and (iii) determine to Purchaser's satisfaction and in its sole discretion whether Purchaser's proposed development of the property is economically feasible.
12. **Right of Entry.** Purchaser and Purchaser's designated representatives or agents shall have the right, and Seller hereby grants to Purchaser and Purchaser's designated representatives and agents the right, to enter the Property and conduct inspections and surveys 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 or any tenant's use of, or Seller's or any tenant's operations and activities on, the Property.
13. **Condition of Property.** Purchaser accepts the Property "as is, where is" and with all faults in its existing condition, with all contamination, whether known or unknown. Except for the warranties, representations and indemnifications contained in this Agreement, Seller makes no representations or warranties, express or implied, regarding the condition of the Property or its suitability for Purchaser's intended use, or any use.
14. **Tenants.** Two tenants are currently occupying the Property under lease agreements with the City. The Tribe will take title to the Property subject to those lease agreements. The lease agreements, according to their terms, may be terminated by the Tribe on certain conditions. Nevertheless, the Tribe shall provide the tenants

with at least six months' notice prior to the termination date of the leases, unless the tenants agree to a shorter period of time. This provision will survive closing.

15. **Covenants of Seller Pending Closing.** Seller covenants that between the date of mutual execution of this Agreement and the Closing Date, Seller shall take all such actions as may be necessary to assure that the representations and warranties set forth in Section 6 of this Agreement 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 the 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 Purchaser prompt written notice of any material change in any of the information contained in the representations and warranties made in Section 6 of this Agreement or elsewhere in this Agreement which occurs prior to the Closing Date.

16. **Covenants of Purchaser Pending Closing.** Purchaser covenants that between the date of mutual execution of this Agreement and the Closing Date, Purchaser shall take all such actions as may be necessary to assure that the representations and warranties set forth in Section 7 of this Agreement 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 Purchaser 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 in the Agreement.

17. **Conditions Precedent to Purchaser's Obligations.** All obligations of the Purchaser in this Agreement 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:
 - a. **Delivery of Documents.** Seller shall have delivered to Purchaser at or prior to closing all documents required by the terms of this Agreement to be delivered to Purchaser.

 - b. **Representations, Warranties and Covenants.** All representations, warranties and covenants of Seller contained herein or in any document delivered pursuant to this Agreement shall be true and correct in all material respects when made and as of the Closing Date.

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

- d. **Title.** Any and all matters shown or referred to in the Title Commitment to which Purchaser has objected within the time specified in Section 10, shall have been cured by Seller, unless such objections have been waived by Purchaser. The Title Company is irrevocably committed to issue an owner's extended coverage policy of title insurance containing no exceptions other than the Permitted Exceptions.
- e. **Condemnation.** No portion of the Property shall have been taken or damaged by any public or quasi-public body, and Seller shall not have transferred any portion of the Property to any such body in lieu of condemnation.

18. 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 Purchaser shall exert its best efforts to cause each such condition to be so fulfilled:

- a. **Representations and Warranties.** All representations and warranties of the Purchaser contained in this Agreement or in any document delivered pursuant to this Agreement shall be true and correct in all material respects when made and as of the Closing Date.
- b. **Obligations.** All obligations required by the terms of this Agreement to be performed by Purchaser at or before closing shall have been properly performed in all material respects.
- c. **Delivery of Documents.** Purchaser shall have delivered to Seller at or prior to closing all documents required by the terms of this Agreement to be delivered to Seller.
- d. **Title.** Purchaser 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.
- e. **Waiver of Contingencies.** Purchaser shall have submitted waivers of, or confirmation of the satisfaction of, all contingencies stated in this Agreement, in writing to Seller, prior to the Closing Date.

19. Closing Date. The sale shall be closed not later than ninety (90) days from the date of mutual acceptance and execution by both Parties of this Purchase and Sale Agreement (the "Closing Date"). The sale shall be closed by Clallam Title Company, located at 204 S. Lincoln Street, Port Angeles, Washington 98362, (360) 457-2000 (the "Closing Agent").

20. **Closing Costs and Proration.** At closing, the Seller shall pay one half and the Purchaser shall pay one half of closing costs. Closing costs shall include real estate excise tax due on this transaction, if any.
21. **Seller's Delivery of Documents at Closing.** At the closing, Seller will deliver to Purchaser a properly executed deed conveying the Property in substantially the form of **Exhibit D** attached hereto.
22. **Purchaser's Delivery of Documents and Purchase Price at Closing.** At the closing, Purchaser will deliver cash or immediately available funds in the amount of three hundred thousand dollars (\$300,000.00).
23. **Possession.** Purchaser shall be entitled to possession upon closing.
24. **Payment in Lieu of Taxes.** Not less than 120 days prior to filing an application, the Tribe shall notify the City of its intention to apply to transfer the Property to the United States Government to be held in trust for the Tribe. The Parties shall adopt an agreement for a payment in lieu of taxes prior to the Tribe transferring the Property. This provision shall survive closing.
25. **Terminations 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 Sections 17 and 18 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 to the Closing Agent shall be returned to the appropriate party.
26. **Miscellaneous Provisions.**
 - a. **Nature and Survival of Representation and Warranties.** Each statement, representation, warranty, indemnity, covenant, and agreement made by Seller and Purchaser in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Purchaser pursuant to this Agreement or in connection with this Agreement shall be deemed the representation, warranty, indemnity, covenant and agreement of Seller and Purchaser 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.
 - b. **Time Is of the Essence.** Time is of the essence for this sale. The Tribe shall execute and carry out the environmental work covered by the Credit to address environmental contamination on the Property within a Reasonable Time Period.

- c. **Default and Attorney Fees.** If either party defaults (that is, fails to perform the acts required of it) in its contractual performance in this Agreement, the non-defaulting party may seek specific performance, damages, or rescission. In the event that either the Purchaser or Seller shall institute suit to enforce any rights in this Purchase and Sale Agreement, the prevailing party shall be entitled to court costs and reasonable attorney fees.
- d. **Dispute Resolution and Limited Waiver of Sovereign Immunity.**
 - i. **Meet and Confer.** In the event that either Party believes that the other has committed a possible violation of this Agreement, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within ten business days of the service's date of service.
 - ii. **Notice of Disagreement.** If either Party is unsatisfied with the results of the meeting, within ten business days of the date on which the Parties first met, a Party may provide written Notice of Disagreement to the other identifying and describing any alleged violation of this Agreement with particularity and setting forth the action required to remedy the alleged violation.
 - iii. **Judicial Remedy.** If the Party to whom a notice of disagreement has been provided does not remedy the alleged violation, or reach an agreement for the remedy of the same, within 30 days of receipt of the Notice of Disagreement, then the Party providing the notice may institute an action against the noticed Party in the Superior Court of Clallam County, Washington.
 - iv. **Limited Waiver of Sovereign Immunity.** This limited waiver of the sovereign immunity of the Tribe from suit or action is adopted pursuant to the terms of the Constitution and Bylaws of the Lower Elwha Tribal Community, approved by the Secretary of the Interior on April 29, 1968, as amended, and shall be strictly construed and limited to its special terms and the special waiver granted. The Tribe hereby specifically waives its sovereign immunity against suit for the limited purpose of entering, enforcing, and performing under this Agreement. This limited waiver of immunity is limited to only the provisions of this Agreement and with the exception of the obligations that survive closing shall terminate consistent with the termination or expiration of this Agreement. The Tribe understands and agrees that such limited waiver shall permit the City to take all actions allowable under this Agreement or any applicable law to

enforce the terms of this Agreement, secure the benefits thereof, and ensure the Tribe's performance thereunder, with venue for any such action only in the Superior Court of Clallam County, Washington. This waiver is not intended to be and shall not be construed as a general waiver of the Tribe's sovereign immunity. This Agreement does not create any enforceable rights in any person or entity not a party hereto. Nothing in this Agreement shall be construed to authorize any suit, execution, attachment, or judicial process against the persons or property of the Tribe or any of its officers, agents, or employees, or against the Tribe's Governing Body or any member thereof, other than as specifically set forth above.

- e. **Complete Agreement and Amendment.** This Agreement, and the exhibits to it, constitutes the full understanding between the Purchaser and Seller regarding the sale of the Property, and the Parties agree that no other verbal or written agreements shall modify or affect the Agreement. This Agreement may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto.
- f. **No Merger.** The terms of this Agreement shall not merge in the deed or other conveyance instrument transferring the Property to Purchaser at closing.
- g. **Severability and Savings.** In the event any portion of this Agreement, except those portions noted below, shall be found to be invalid by any court of competent jurisdiction, then such holding shall not impact or affect the remaining provisions of this Agreement; provided, however, in the event all or any portion of Sections 1, 2, 4, 5, 6, 7, 10, 11, 13, 24, 25, and subsections b and d of Section 26 of this Agreement shall be found to be invalid by any court of competent jurisdiction, then such holding shall cause the remaining provisions of this Agreement to be defeated, invalidated and void.
- h. **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.
- i. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and assigns.
- j. **Legal Relationship.** The parties to this Agreement execute and implement this Agreement solely as Seller and Purchaser. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

Exhibit C

ALKAI Consultants, LLC, *Phase I
Environmental Site Assessment*, dated
October 27, 2004

Exhibit D

Deed as to Form

- s. **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 two days after deposit in the United States mail if by first class, 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 the Tribe: Frances G. Charles, Chairwoman
Lower Elwha Klallam Tribe
2851 Lower Elwha Road
Port Angeles, WA 98363
Phone: (360) 452-8471

Copy to: Office of Tribal Attorney
Lower Elwha Klallam Tribe
2851 Lower Elwha Road
Port Angeles, WA 98363
Phone: (360) 452-8471

If to the City: City Manager
City of Port Angeles
321 East 5th Street
PO Box 1150
Port Angeles, WA 98362

Copy to: City Attorney at the same address.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

SELLER: City of Port Angeles

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By _____

Title

Need Notary Block

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

PURCHASER: Lower Elwha Klallam Tribe

By: _____

Name: Frances Charles

Title: Chairwoman

Date: _____

Approved as to Form:

By _____

Title

Need Notary Block