**CITY OF KIRKLAND**
**Department of Finance & Administration**
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3100**
**www.kirklandwa.gov**

## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Tracey Dunlap, Director of Finance & Administration
Chris Dodd, Facilities Services Manager

**Date:** June 19, 2014

**Subject:** SALE OF MUNICIPAL COURT PROPERTY

### RECOMMENDATION:

Council declares the Municipal Court property at 11515 NE 118th Street, Kirkland, WA 98034 surplus and authorizes the City Manager to execute all documents necessary to complete the sale.

### BACKGROUND DISCUSSION:

In 2009, the City of Kirkland purchased the building at 11515 NE 118th Street, Kirkland, WA 98034 that had been leased by the Municipal Court since 2005 for $2.695 million. The sale of the Court property is an integral part of the financing plan for the Kirkland Justice Center and other municipal facility investments required to serve the larger City population and boundaries following annexation. In preparation for the sale, the City solicited broker opinions of value that ranged from $2.4 million to $4.2 million. At the same time, the City received several unsolicited calls of interest from prospective purchasers of the property. Since there appeared to be significant interest in the property and there was uncertainty as to a reasonable asking price, the City decided to forego engaging a broker and advertise a request for bids (RFB) for purchase of the property. The minimum bid was set at $2.75 million to ensure that the City recouped its original investment plus the costs of the transaction. The RFB was published on March 24, 2014 and a walk through was conducted with approximately eight interested parties in attendance on April 11, 2014. One bid was received and opened on April 24, 2014 with a total purchase price of $3.41 million offered by Nion Company, a Kirkland-based producer of high-precision microscopes. While only one bid was received, other interested parties contacted the City after the bid opening to express their interest if the successful bid fell through.

As part of the buyer's due diligence process, an inspection of the building resulted in identification of the need to replace or significantly rehabilitate the building's roof and HVAC systems at an estimated cost of $300,000. The buyer requested that the City recognize that both systems are at the end of their useful life and the City has agreed to a final purchase price of $3.2 million. The purchase and sale agreement is included as Attachment A to the enclosed Resolution.

The attached resolution declares the property surplus and authorizes the City Manager to execute all documents necessary to complete the sale. The terms of the grant that was used to fund a portion of the purchase price of the Court property in 2009 require that the proceeds from the building sale be used toward the KJC. The City Manager recommends that a portion of the proceeds above the planned $2.75 million amount be used to fund the firing range shortfall ($111,203 after the previously approved use of $85,000 in seizure funds) and that the remaining additional funds from the higher sales price (ranging from $330,000-$340,000 depending on transaction costs) are set aside in the facilities sinking fund for future capital needs at the Kirkland Justice Center.

Council Meeting: 07/1/2014
Agenda: Approval of Agreements
Item #: 8. g. (1).

RESOLUTION R-5062

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AND SALE AGREEMENT FOR THE SALE OF REAL PROPERTY KNOWN AS 11515 NE 118TH STREET, KIRKLAND, WASHINGTON, AND DECLARING THE PROPERTY TO BE SURPLUS.

WHEREAS, on May 31, 2014, the City opened the Kirkland Justice Center; and

WHEREAS, the Kirkland Municipal Court moved to the Kirkland Justice Center on June 16, 2014 from its previous location at 11515 NE 118th Street, Kirkland, Washington (the "Property"); and

WHEREAS, the City has no further need for the Property and desires to declare the Property surplus and sell it; and

WHEREAS, the proceeds from the sale of the Property were an assumed and necessary part of the financing plan for the Kirkland Justice Center; and

WHEREAS, the City, after soliciting bids for the Property in a competitive process, received a bid from Nion Company ("Buyer") in the amount of $3,410,000, which was substantially in excess of the minimum bid price of $2,750,000; and

WHEREAS, in the course of due diligence and Property inspection, the Buyer noted that the roof and the HVAC system are at the end of their useful lives and need replacement at an approximate cost of $300,000; and

WHEREAS, in recognition of these due diligence items, City staff and Buyer have negotiated a reduction in the purchase price from $3,410,000 to $3,200,000;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The Property known as 11515 NE 118th Street, Kirkland, Washington is hereby declared to be surplus, and sale of the Property is authorized by the City Council.

Section 2. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland a Purchase and Sale Agreement with Nion Company substantially similar to that attached to this Resolution as Attachment "A."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of July, 2014.

Signed in authentication thereof this ____ day of July, 2014.

_____
MAYOR

Attest:

_____
City Clerk

# REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Agreement made this 30th day of June, 2014 ("Effective Date"), by and between NION Company, a for-profit corporation of the State of Washington ("Buyer"), and the City of Kirkland, a municipal corporation of the State of Washington, owner of the real property hereinafter described ("Seller").

For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase of Real Property. Seller and Buyer hereby agree to the purchase and sale of the real property described as follows ("Property"):

> Lot 12 of Kirkland 405 Corporate Center, a Binding Site Plan, according to the plat thereof filed in Volume 154 of Plats on pages 58 through 63 inclusive, records of King County, Washington

together with all of Seller's right, title and interest in all structures, fixtures, buildings and improvements situated on the Land (collectively, the "Improvements").

2. Purchase Price; Payment. The Purchase Price for the Property shall be Three Million Two Hundred Thousand and 00/100 Dollars ($3,200,000.00). The Buyer shall deposit the Purchase Price with the Escrow Holder at or before Closing.

3. Earnest Money. Buyer has deposited Earnest Money in the amount of $175,000 with Seller. If the transaction contemplated by this Agreement is closed, then the Earnest Money will be applied in payment of the Sales Price to be paid at Closing. If the transaction is not closed, then the Seller will disburse the Earnest Money in accordance with the provisions of this Agreement.

4. Escrow Holder. Promptly following the execution of this Agreement, Buyer shall open an escrow with Chicago Title Insurance Company, 701 Fifth Avenue, Suite 2300, Seattle, Washington, 98104 (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the Closing pursuant to escrow instructions of the Parties which shall be consistent herewith.

5. Feasibility Contingency and Access. Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the contracts and leases affecting the Property; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the Earnest Money unless Buyer gives written notice to Seller within 20 business days of the Effective Date stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section shall be deemed to be satisfied. As used in this Agreement, the term "Feasibility Period" shall mean the period beginning upon the Effective Date and ending upon the satisfaction or waiver of the feasibility contingency.

Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections

concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soil conditions, sensitive areas, wetlands or other matters affecting the feasibility of the Property for Buyer's intended use. Seller shall provide monitored access to the "evidence room" to Buyer so that Buyer can ensure that it is acceptable for Buyer's purpose. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security and confidentiality. Buyer shall not perform any invasive testing, including environmental inspections beyond a Phase I assessment, without obtaining Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for the purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This Agreement to indemnify and defend Seller shall survive closing. Buyer may continue to enter the Property in accordance with the foregoing terms and conditions after removal or satisfaction of the feasibility contingency only for the purpose of leasing or to satisfy conditions of financing.

6. Financing Contingency. Buyer's obligations under this Agreement are contingent upon its securing a general financing commitment from a financial institution or any other party, upon commercially reasonable terms, within 20 business days of the execution of this Agreement. Buyer has received preliminary approval for financing for the Property and shall pay required costs and make a good faith effort to procure such financing. In the event that Buyer does not provide notice of its election to exercise its rights pursuant to this Section within this 20 day period, the financing contingency shall be deemed to be waived by Buyer. Buyer shall not reject those terms of a commitment which provide a loan amount of at least 70% of the purchase price.

7. Title Policy and Condition of Title. Seller authorizes Buyer, its Lender, Listing Agent, Selling Licensee and Closing Agent, at Seller's expense, to apply for and deliver to Buyer an extended coverage owner's policy of title insurance. The title report shall be issued by Chicago Title Insurance Company. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of 20 days after mutual acceptance of this Agreement or the expiration of the Feasibility Period. This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within 10 days of Buyer's notice of such objections: (1) Seller agrees to remove all objectionable provisions; or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within 5 days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within 2 days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided that the lien securing any financing which Buyer has agreed to assume shall be a permitted exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of any real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy shall contain no exceptions other than the General Exclusions and Exceptions common to such policies and the Permitted Exceptions.

8. Closing. This sale shall be closed on or before August 29, 2014 ("closing") by Chicago Title Insurance Company, 701 5th Avenue, Suite 2300, Seattle, Washington 98104 ("Closing Agent"). Buyer and Seller shall deposit with Closing Agent by noon on the scheduled closing date all instruments and monies required to complete the purchase in accordance with this Agreement. "Closing" shall be deemed to have occurred when the deed is recorded and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided that the same are consistent with this Agreement. Buyer is entitled to possession on closing.

9. Closing Costs. Seller shall deliver any information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for closing. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable endorsements requested by Buyer and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Real estate excise taxes shall be paid by Seller. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of closing. Buyer shall pay to seller at closing an additional sum equal to any utility deposits for which Buyer receives the benefit after closing. Buyer shall pay all costs of financing including the premium for the lenders title policy. Buyer shall pay all sales or use tax applicable to the transfer of personal property included in the sale. Pursuant to RCW 60.80, Buyer and Seller request the Closing Agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges affecting the Property. The names and address of all utilities providing service to the Property and having lien rights are as follows are:

Gas and Electricity – Puget Sound Energy - 1-888-225-5773
BOT-01H, P.O. Box 91269, Bellevue, WA 98009-9269
Water, Sewer - Northshore Utilities – (425)-398-4400
6830 NE 185th St., Kenmore, WA 98028
Garbage/Recycle – Waste Management - (425) 814-1695
City of Kirkland - Utility Department, P.O. Box 3327, Kirkland, WA 98083-3327
Storm Water – Service provided by the City of Kirkland and paid within Property Tax.
King County Treasury Services – 500 Fourth Ave., Sixth Floor, Seattle, WA 98104-2364

10. Post-Closing Adjustments, Collections and Payments. After closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at closing based on estimates. Any bills or invoices received by Buyer after closing shall be paid by Seller upon presentation of such bill or invoice.

11. Operations Prior to Closing. Prior to closing, Seller shall continue to operate the Property in the ordinary course of its business and maintain the Property in the same condition as existing on the Effective Date, but shall not be required to repair material damage from casualty except as otherwise provided in this Agreement. Seller shall not enter into or modify service contracts or other agreements affecting the Property which have terms extending beyond closing without first obtaining Buyer's consent, which shall not be unreasonably be withheld.

12. Condition of Property. Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement. Seller warrants as follows: that Seller is the sole legal owner of the fee simple interest in the Property and is not holding title as a nominee for any other person or entity; that no person or entity has a first right of refusal or option to

purchase or other similar right to or interest in the property; that no labor, materials or services have been furnished in, on or about the property or any part thereof as a result of which any mechanics', laborers' or materialpersons' liens or claims might arise.

13. Seller's Representations. Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated above, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof (a) Seller is authorized to enter into the Agreement, to sell the Property. And to perform its obligations under this Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement comprise all material documents in Seller's possession or control regarding the operation and condition of the Property; (c) Seller has not received any written notices that the Property or the business conducted thereon violate any applicable laws, regulations, codes or ordinances; (d) Seller has all certificates of occupancy, permits and other governmental consents necessary to own and operate the Property for its current use; (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after closing; (f) There is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at closing) all local state and federal taxes (other than real and personal property taxes and assessments described above) attributable to the period prior to closing which, if not paid, could constitute a lien on the Property (including any personal property), or for which Buyer may be held liable after closing; (h) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used in this Agreement, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products and asbestos.

14. As-Is. Except for those representations and warranties specifically included in this Agreement; (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness of a particular purpose, tenentability, habitability and use; (iii) Buyer otherwise takes the Property "As Is;" and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

15. Casualty. Seller bears the risk of loss until closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and obtain a refund of the earnest money if improvements on the Property are destroyed or materially damaged by casualty before closing. Damage will be considered material if the cost of repair exceeds the lesser of $100,000 or five percent of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with closing in which case at closing Seller

shall assign to Buyer all claims and right to proceeds under any property insurance policy and shall credit to Buyer at closing the amount of any deductible provided for in the policy.

16. FIRPTA—Tax Withholding at Closing. Closing Agent is instructed to prepare a certification that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act. Seller agrees to sign this certification.

17. Conveyance. Title shall be conveyed by a Statutory Warranty Deed subject only to the Permitted Exceptions.

18. Agency Disclosure. At the signing of this Agreement, Seller is not represented by a real estate agent and Buyer is represented by Duke Young/Windermere Bellevue Commons ("Selling Licensee"). Any commission to be paid to the Selling Licensee shall be paid by the Buyer and shall not be deducted from the Purchase Price.

19. Assignment. Buyer may assign this Agreement or Buyer's rights under this Agreement to Nion2, a limited liability company with the same underlying ownership as Buyer. Otherwise, Buyer may not assign this Agreement to any other party.

20. Remedies. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then Seller may terminate this Agreement and keep the earnest money as liquidated damages as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, then, as Buyer's sole remedy, Buyer may either (a) terminate this Agreement and recover all earnest money or fees made by Buyer whether or not the same are identified as refundable or applicable to the purchase price; or (b) bring suit to specifically enforce this Agreement and recover incidental damages provided Buyer must file suit within 60 days of the scheduled date of closing or any earlier date Seller has informed Buyer in writing that Seller will not proceed with Closing.

21. Information Transfer. In the event this Agreement is terminated, Buyer agrees to deliver to Seller within 10 days of Seller's written request, copies of all materials received from Seller and any non-privileged plans, studies, reports inspections, appraisals, surveys, drawings, permits application or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.

22. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them. This Agreement and any addenda and exhibits to it state the entire understanding of the Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect this Agreement.

23. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart. Electronic delivery of documents (such as fax or email) shall be legally sufficient to bind the party the same as delivery of an original.

EXECUTED to be effective as of the date listed above.

CITY OF KIRKLAND (SELLER)

By: _____
Its: _____

Approved as to form:

_____
Assistant City Attorney

NION COMPANY (BUYER)

By: _____
Its: _____