

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the “Agreement”) is entered into as of _____, 2025 (the “Effective Date”), by and between the City of San Leandro, a California municipal corporation and charter city (“City”), and KK Eden Properties, LLC, a California limited liability company (“Purchaser”). City and Purchaser are collectively referred to herein as the “Parties.”

RECITALS

A. City is owner of an unimproved dirt and gravel strip of real property within the boundaries of the City used by the City, adjacent businesses and the public for roadway purposes, known as Eden Road (the “Property”). The Property is designated as Alameda County Assessor’s Parcel Number 042-4530-005-02, and more particularly described in Exhibit A attached hereto and incorporated herein.

B. The Purchaser owns certain other parcels of real property that are located adjacent to the Property (the “Adjacent Parcels”).

C. Alco Iron & Metal Co., a California corporation (“Applicant”), has applied to the City for a conditional use permit (“CUP”) to use a portion of the Adjacent Parcels for Applicant’s business under Planning Application #PLN21-0027. As a condition to issuance of the CUP, City and/or other relevant agencies with regulatory authority have indicated that Applicant must make certain improvements to Eden Road.

D. City, Applicant and Purchaser have entered into an Eden Road Public Improvement Agreement (“Public Improvement Agreement”), dated March 19, 2024, which provides for City to sell the Property to Purchaser, and for City, Applicant and Purchaser to perform certain obligations relating to the design, permitting and construction of improvements to Eden Road on the Property, for the City to pay Applicant One Million Dollars (\$1,000,000) upon Applicant’s receipt of all permits for such project and Two Million Dollars (\$2,000,000) within 30 days following completion of Eden Road, for certain public utility easements to be granted with respect to such obligations, and for the ongoing maintenance of Eden Road (the “Eden Road Project”).

E. The City Council has made a finding that the Property is “exempt surplus land” pursuant to Government Code Section 54221(f) of the Surplus Land Act, as it is surplus land that is a former street, right of way, or easement, and is conveyed to an owner of an adjacent property.

F. The City has conducted a valuation of the Property which has determined that the Property has no value, because of the extraordinary cost of the improvements to be made to the Property, together with extraordinary costs of future maintenance.

G. Purchaser agrees to purchase the Property, and City agrees to sell the Property to Purchaser, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, City and Purchaser hereby agree as follows:

1. **Incorporation of Recitals and Exhibits.** The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. **Purchase and Sale.**

2.1 **Agreement to Buy and Sell Property.** Subject to the terms and conditions set forth herein, City agrees to sell the Property to Purchaser, and Purchaser hereby agrees to acquire the Property from City.

2.2 **Purchase Price.** The purchase price for the Property to be paid by Purchaser to City (the "Purchase Price") is One Dollar (\$1.00). The Purchase Price shall be paid in cash at the Closing to the City.

2.3 **Public Utility Easement.** Purchaser agrees to sell and convey to City a public utility easement (the "PUE") in perpetuity across the entire length of Eden Road in accordance with Section 5 of the Public Improvement Agreement. The PUE shall include an easement for public access. The form of the PUE shall be prepared by Purchaser and shall be reasonably acceptable to City. The Public Improvement Agreement provides that Applicant shall hire a California-licensed land surveyor and shall be responsible for the costs associated with the development and preparation of the plat and legal description for the PUE, and the City shall be responsible for the review and approval of the PUE documents. The plat and legal description for the real property to be subject to the PUE is more particularly described in Exhibit B attached hereto and incorporated herein.

3. **Escrow.**

3.1 **Escrow Account.** Purchaser has opened an escrow account (the "Escrow") maintained by _____ (the "Escrow Holder"). Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 **Opening of Escrow.** Within five (5) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the "Opening of Escrow," and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 **Satisfaction of Due Diligence Contingency.** Purchaser will have _____ () days from Opening of Escrow (the "Due Diligence Contingency Period") to complete physical inspections of the Property and due diligence related to the purchase of the Property. City shall provide to Purchaser copies of all reasonably available and known documents relating to the ownership and use of the Property, including but not limited to plans, permits and

reports (such as environmental, engineering and land surveys) that City has in its possession not later than ten (10) days following the execution and delivery of this Agreement.

3.4 Due Diligence Inspections. During the Due Diligence Contingency Period, Purchaser and its agents, contractors and employees shall have the right to enter upon the Property for the purpose of making inspections or to perform environmental testing, at Purchaser's sole risk, cost and expense. All of such entries upon the Property shall be within fifteen days after the Effective Date of this Agreement, during normal business hours and after at least twenty-four (24) hours prior notice to City, and City or City's agent shall have the right to accompany Purchaser during any activities performed by Purchaser on the Property. At City's request, Purchaser shall provide City with a copy of the results of any environmental tests and inspections made by Purchaser, at no cost to City. If any inspection or test disturbs the Property, Purchaser will restore the Property to the substantially the same condition as existed before the inspection or test. Purchaser shall defend, indemnify and hold City and the Property harmless from and against any and all losses, costs, damages, claims or liabilities, including but not limited to, mechanic's and materialmen's' liens, arising out of or in connection with Purchaser's inspection of the Property as allowed pursuant to this Section 3.4.

3.5 Termination Upon Due Diligence Disapproval. Purchaser shall have the right, in its sole discretion, to terminate this Agreement for any reason (or no reason) by written notice to City prior to the expiration of the Due Diligence Contingency Period (as it may be extended). If Purchaser timely sends such a termination notice, this Agreement shall terminate, and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. In the event of Purchaser's termination of this Agreement pursuant to this Section 3.5, Purchaser shall be responsible for the costs of Escrow and any cancellation fees.

4. Property Disclosure Requirements.

4.1 Condition of Title/Preliminary Title Report. Escrow Holder shall deliver a Preliminary Title Report for the Property (the "Preliminary Report") to Purchaser within three (3) days after the Opening of Escrow. Purchaser shall have until the end of the Due Diligence Contingency Period to approve or disapprove the condition of title to the Property; provided that all existing deeds of trust, mechanic's liens and other financial liens and encumbrances, if any, shall be paid off and removed from title concurrently with or prior to the Closing. If there are any changes to the Preliminary Report prior to Closing, Purchaser shall have five (5) days after receipt of the revised Preliminary Report to approve or disapprove such changes.

4.2 Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the buyer of real property. Other applicable laws require City to provide certain disclosures regarding natural hazards affecting the Property. City agrees to make any necessary disclosures required by law. City shall provide Purchaser with all documents reasonably known to City pertaining to the environmental condition of the Property.

5. Closing and Payment of Purchase Price.

5.1 **Closing.** The closing (the “Closing” or “Close of Escrow”) will occur no later than thirty (30) days after the expiration of the Due Diligence Contingency Period, as it may be extended (“Closing Date”), or such other date that the Parties agree in writing. In the event that Closing has not occurred on or prior to the Closing Date, either Party not then in default may, upon five (5) days advance written notice to the other Party, terminate this Agreement and the Escrow. As long as neither Party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon as possible. Upon any such termination of this Agreement, neither Party shall have any further rights or obligations hereunder; except for the rights and obligations expressly provided to survive termination of this Agreement.

5.2 **Purchaser’s Conditions to Closing.** Purchaser's obligation to purchase the Property is subject to the satisfaction of all of the following conditions or Purchaser's written waiver thereof (in Purchaser’s sole discretion) on or before the Closing Date:

(a) Purchaser has not sent a notice of termination to City prior to the end of the Due Diligence Contingency Period.

(b) City has deposited into the Escrow a fully executed “Grant Deed” and all other documents to be submitted by City pursuant to this Agreement, all duly executed by City.

(c) City has performed all obligations to be performed by City pursuant to this Agreement.

(d) City’s representations and warranties herein are true and correct in all material respects as of the Closing Date.

(e) The Title Company is irrevocably committed to issue a CLTA or ALTA standard coverage title insurance policy to Purchaser, together with such endorsements as are requested by Purchaser, effective as of the Closing Date, insuring title to Purchaser in the full amount of the Purchase Price, subject only to those exceptions to title which have been approved by Purchaser.

(f) There shall be no litigation or administrative proceeding pending with respect to the Property as of the Closing, nor any moratoria which would adversely impact the completion of the Eden Road Project on the Property.

(g) Possession of the Property will be delivered to Purchaser immediately upon the Close of Escrow.

5.3 **City’s Conditions to Closing.** The Close of Escrow and City’s obligation to sell and convey the Property to Purchaser are subject to the satisfaction of the following

conditions or City's written waiver (in City's sole discretion) of such conditions on or before the Closing Date:

(a) Purchaser has deposited into the Escrow the full amount of the Purchase Price, and all other costs required by this Agreement to be paid by Purchaser.

(b) Purchaser has deposited into the Escrow all documents to be submitted by Purchaser pursuant to this Agreement, all duly executed by Purchaser.

(c) Applicant shall have obtained all governmental approvals and permits necessary for the work to be performed on Eden Road in accordance with Section 4 of the Public Improvement Agreement, shall have submitted bonds for the performance of the Eden Road Project or alternate security approved by the City pursuant to Section 3(a)(i) of the Public Improvement Agreement, and shall have demonstrated its readiness to commence the Eden Road Project within thirty (30) days of close of escrow.

(d) Purchaser has performed all obligations to be performed by Purchaser pursuant to this Agreement before the Closing Date.

(e) Purchaser's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

5.4 Conveyance of Title. City will deliver marketable fee simple title to Purchaser at the Closing, subject only to the exceptions to title which have been approved by Purchaser.

5.5 Deliveries at Closing.

(a) **Deliveries by City.** City shall deposit into the Escrow for delivery to Purchaser at Closing a grant deed, substantially in the form attached hereto as Exhibit C ("Grant Deed).

(b) **Deliveries by Purchaser.** No less than one (1) business day prior to the close of escrow, Purchaser shall deposit into Escrow a signed PUE, and immediately available funds in the amount, which, together with the Deposit, is equal to: (i) the Purchase Price; (ii) the Escrow fees and recording fees; and (iii) the cost of the Title Policy.

(c) **Closing.** Upon Closing, Escrow Holder shall: (i) record the Grant Deed and the PUE; (ii) disburse to City the Purchase Price; (iii) charge the Purchaser for documentary transfer taxes and governmental conveyance fees, if any; (iv) deliver to Purchaser a certified copy of the executed Grant Deed; (v) deliver to the City a certified copy of the executed PUE; (vi) pay any commissions and other expenses payable through Escrow; and (vii) distribute to itself the payment of Escrow fees and expenses required hereunder.

(d) **Closing Costs.** Purchaser will pay all Escrow fees, recording fees, title insurance and title report costs, documentary transfer taxes and governmental conveyance fees, if applicable. City will not be responsible for any costs of this transaction.

(e) **No Prorations.** As the Property is currently owned by a public agency, no prorations of property taxes and assessments will be required.

6. **As Is Conveyance.** Notwithstanding anything to the contrary in this Agreement, this sale is made and will be made without representation, covenant, or warranty of any kind by City. As a material part of the consideration for this Agreement, Purchaser agrees to accept the Property on an “as is” and “where is” basis, with all faults, and without any representation or warranty, all of which City hereby disclaims. No warranty or representation is made by City as to fitness for any particular purpose, merchantability, design, quality, condition, operation or income, compliance with drawings or specifications, absence of defects, absence of hazardous or toxic substances, hazardous materials, hazardous wastes, absence of faults, flooding, or compliance with laws and regulations including, without limitation, those relating to health, safety, and the environment. Purchaser acknowledges that it has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance, and legal condition of the Property and that Purchaser is not now relying, and will not later rely, upon any representations and warranties made by City or anyone acting or claiming to act, by, through or under or on City’s behalf concerning the Property. The provisions of this Section 6 shall survive indefinitely any closing or termination of this Agreement.

7. **Remedies.** In the event of a breach or default under this Agreement by City prior to Close of Escrow, Purchaser reserves the right to either (a) seek specific performance from City or (b) to do any of the following: (i) to waive in writing the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and the Closing Date until City is able to perform; or (iii) to terminate this Agreement upon written notice to City, whereupon City shall cause Escrow Holder to return to Purchaser any and all sums placed into the Escrow by Purchaser, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder. In the event of a breach or default under this Agreement by Purchaser prior to Close of Escrow, City shall have all remedies available at law or equity.

8. **Brokers.** Each Party represents that no real estate broker has been retained by it in the procurement of the Property or negotiation of this Agreement. Each Party shall indemnify, hold harmless and defend the other Party from any and all claims, actions and liability and any commission, finder’s fee, or similar charges from such Party’s broker, and its respective employees, agents, consultants and contractors.

9. **Assignment.** Absent an express signed written agreement between the Parties to the contrary, neither City nor Purchaser may assign its rights or delegate its duties under this Agreement without the express written consent of the other. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

10. **Miscellaneous.**

10.1 **Attorneys’ Fees.** If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing

party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

10.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

10.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

10.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

10.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

10.6 Integrated Agreement; Modifications. This Agreement, together with the Public Improvement Agreement, contains all the agreements of the Parties concerning the subject hereof, and cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

10.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

10.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served

personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To City: City of San Leandro
835 E. 14th Street
San Leandro, California 94577

To Purchaser: KK Eden Properties, LLC
2140 Davis Street
San Leandro, California 94577
Attn: Kem Kantor

If to Escrow Holder: _____

Attn: _____

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

10.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

10.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

10.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

10.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

10.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by

another party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

10.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

10.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between the Parties is effective, executed, or delivered, as of the Effective Date.

10.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

10.17 Possession. At Closing, City shall deliver sole and exclusive possession of the Property to Purchaser.

10.18 Approvals. Whenever this Agreement calls for City approval, consent, extension or waiver, the written approval, consent, or waiver of the City, the City Manager or his or her designee(s) shall constitute the approval, consent, extension or waiver of the City, without further authorization required from the City Council. City hereby authorizes the City Manager and her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce City's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY:

CITY OF SAN LEANDRO

By: _____
Janelle Cameron
City Manager

ATTEST:

By: _____
Kelly Clancy, City Clerk

APPROVED AS TO FORM:

By: _____
Richard D. Pio Roda
City Attorney

BUYER:

KK EDEN PROPERTIES, LLC

By: _____
Kem Kantor, Managing Member

By: _____

EXHIBIT A

LEGAL DESCRIPTION

That real property in the City of San Leandro, County of Alameda, State of California, described as follows:

[To Be Inserted]

APN: 042-4530-005-02

DRAFT

EXHIBIT B

PLAT AND LEGAL DESCRIPTION OF PUE PROPERTY

[To Be Inserted]

DRAFT

EXHIBIT C

Recording Requested by
and When Recorded, Return to:

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Exempt from Documentary Transfer Tax
Per Rev. & Tax. Code § 11922
Governmental Agency acquiring title

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, as of _____, 202__, the City of San Leandro, a California municipal corporation and charter city, hereby grants to _____, all that real property located in the City of San Leandro, County of Alameda, State of California and more particularly described in Attachment No. 1 hereto and incorporated in this Grant Deed by this reference.

By: _____
Janelle Cameron, City Manager

ATTEST:

By: _____
Kelly Clancy, City Clerk

APPROVED AS TO FORM:

By: _____
Richard Pio Roda, City Attorney

Attachment No. 1 to Grant Deed

LEGAL DESCRIPTION

Real property in the City of San Leandro, County of Alameda, State of California, described as follows:

[To Be Inserted]

APN: 042-4530-005-02

DRAFT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NOTARY PUBLIC