

RESOLUTION NO. 2024-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, declaring the City-owned real property known as the "6th and N. Pearl Street parking lot" as surplus to the City of Ellensburg's needs, and to dispose of the property by authorizing the Mayor and City Manager to execute an Agreement for the Acquisition through Exchange of Properties and other related documents for the exchange of properties owned by the City of Ellensburg ("City") and 1102 Parking, LLC ("1102 Parking").

WHEREAS, the City owns a parking lot located at southwest corner of 6th Avenue and N. Pearl Street, which is approximately .28 acres in size, identified by the Kittitas County Assessor's Office as Parcel No. 136933, and legally described as follows:

TOWN EBURG ORIG. N 40' OF LOT 9; ALL OF LOT 10 BLOCK 7; and

WHEREAS, the 6th Avenue and N. Pearl Street parking lot was acquired by the City of Ellensburg ("City") by quit claim deed from Kittitas County in 2011, and is located in the City of Ellensburg; and

WHEREAS, 1102 Parking, LLC owns a parking lot located at southeast corner of 7th Avenue and N. Pearl Street, which is approximately .329 acres in size, identified by the Kittitas County Assessor's Office as Parcel No. 736933, and legally described as follows:

TWN EBURG; ORIGINAL ADD. LOTS 1 & 2 EXC. THE S. 8 1/2 OF LOT 2; BLOCK 3 (SURV. B28/P209); and

WHEREAS, the City and 1102 Parking, LLC are desirous of exchanging each party's parking lot with the other party, and have therefore agreed to sell each of their respective parking lots to the other party by exchange of the parcels; and

WHEREAS, public notice of the City Council's April 15, 2024 public hearing to consider adoption of this Resolution was first published and mailed to nearby property owners in accordance with the provisions of ECC 2.06.080(A)(2); and

WHEREAS, the exchange of parking lots between the City and 1102 Parking, LLC will result in the City gaining approximately 16 additional downtown parking stalls over the existing number of parking stalls at the City's 6th Avenue and N. Pearl Street parking lot; and

WHEREAS, the City and 1102 Parking, LLC jointly commissioned an appraisal of each party's parking lot property in November 2023, and the proposed exchange of properties between the City and 1102 Parking, LLC would be for parcels of approximately equal market value; and

WHEREAS, the City Council hereby finds the 6th Avenue and N. Pearl Street parking lot to be surplus to the City's needs and no longer required for municipal purposes based on acquiring the 1102 Parking, LLC parking lot at 7th Avenue and N. Pearl Street, and that disposition of said property shall be through a Purchase and Sale by Exchange of Property Agreement consistent with Chapter 2.06 ECC and will best serve the common public benefit;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ellensburg, Washington, as follows:

Section 1. The "Whereas" provisions set forth above are hereby incorporated in this Resolution as findings in support of the actions authorized in this Resolution.

Section 2. The real property consisting of a parking lot at the southwest corner of 6th Avenue and N. Pearl Street is hereby declared surplus to the City of Ellensburg's needs and is no longer required for providing municipal services.

Section 3. The property identified in this Resolution will be disposed of through special disposition as authorized by ECC 2.06.202(C), which shall specifically be accomplished by exchange of property with 1102 Parking, LLC for an approximately equivalent value parcel located directly at the southeast corner of 7th Avenue and N. Pearl Street.

Section 4. The Mayor and/or City Manager are hereby authorized to execute an agreement for the purchase and sale by exchange with 1102 Parking, LLC, for the subject parcels, attached hereto as Exhibit 1 and incorporated by reference herein. The Mayor and City Manager are also authorized to execute all other documents necessary to complete the exchange of the property as set forth herein.

ADOPTED by the City Council of the City of Ellensburg this 15th day of April, 2024.



MAYOR

ATTEST:



CITY CLERK

EXHIBIT 1

**AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE THROUGH
EXCHANGE OF PROPERTY**

between

CITY OF ELLENSBURG

and

1102 PARKING, LLC

THIS AGREEMENT is made and entered into this ___ day of April, 2024, by and between the City of Ellensburg, a Washington municipal corporation ("City") and 1102 Parking, LLC, a Washington limited liability corporation ("1102 Parking") (the City and 1102 Parking may also hereinafter be referred to as singularly as "Party" or collectively as "Parties"), who hereby agree as follows:

1. **Purchase by Exchange of Properties.** The Parties each agree to acquire by exchange with the other Party, the properties described below, together with all rights, title, interests, privileges, easements and rights of way appurtenant to the real property (including without limitation, all mineral, oil and gas and other subsurface rights, development rights, air rights, and water rights) being acquired.

1.1. **The 1102 Parking Property.** The City agrees, concurrent with 1.2 below, to purchase by exchange and 1102 Parking agrees to sell by exchange, on the terms set forth in this Agreement, one parcel approximately 0.329 acres in size described as parcel number 736933 and located in the City of Ellensburg, Kittitas County, Washington, and more particularly described in Exhibit A ("1102 Parking Property").

1.2. **The City Property.** 1102 Parking agrees, concurrent with 1.1 above, to purchase by exchange and the City agrees to sell by exchange, on the terms set forth in this Agreement, one parcel approximately 0.28 acres in total size described parcel number 136933 and located in the City of Ellensburg, Kittitas County, Washington, and more particularly described in Exhibit B ("City Property").

1.3. **Property Values.** The parties agree that based on an appraisal of each property conducted by Barnes and Company, Incorporated in November 2023, the market value of each Party's property that is the subject of this Agreement is approximately equivalent, and that each Party is receiving full and fair value for their Property through this exchange.

1.4. **Scrivener's Errors.** In the event of an error in the legal description, the parties agree that either party or a scrivener may correct the error.

1.5. **Laws and Rights.** It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws,

orders, rules and regulations.

1.6. Conveyance. The real property described in Section 1.1 shall be conveyed by 1102 Parking to the City, and concurrently the real property described in Section 1.2 shall be conveyed by the City to 1102 Parking, each conveyance by statutory warranty deed subject only to the permitted exceptions and free and clear of all encumbrances and defects that interfere with each Party's intended use of the properties. The fully executed Deeds shall be delivered to each Party at closing.

1.7. City Property Declared to be Surplus to the City's Needs. The City warrants that its City Council has declared as surplus to the City's needs regarding the property identified in 1.2 above, and that in declaring the property surplus it has followed the required legal procedures for so doing.

2. Conditions Precedent to Sale and Exchange. This Agreement is made and executed by the Parties hereto subject to the following conditions precedent.

2.1. Executed Contract. The "Executed Contract Date" is the date that both Parties have signed this Agreement. If the Agreement is signed on different days, the Executed Contract Date is the date of the last signing party. Both Parties must sign this Agreement within fifteen (15) days of approval from the City Council. If signatures are not received by both parties within fifteen (15) days, this Agreement shall immediately terminate and be without any further force and effect, and without further obligation of either party to the other.

2.2. Title Review. Prior to or within fifteen (15) days after the Executed Contract Date, each Party shall order from AmeriTitle title company, Ellensburg, WA, (the "Title Company") a preliminary title report on its property being exchanged, and copies of all documents referred to therein.

2.3. Mortgages/Other Monetary Liens. The closing of this transaction is contingent upon approval of this Agreement and the conveyance of the Property contemplated herein by 1102 Parking's mortgage company/financial institution or other lender holding a monetary lien on the Property, if any, in a form and to an extent satisfactory to the City in the City's sole absolute discretion.

2.4. Due Diligence. Upon execution of this Agreement by both Parties, each Party is granted a due diligence period until and including thirty (30) days after the Executed Contract Date. Said due diligence period may be extended an additional thirty (30) days upon written notice delivered to the other Party. Each Party may conduct, at its own expense, a full review of legal, title, environmental, archaeological and any other related issues regarding the Property being acquired. If the results of said review are unsatisfactory in that Party's sole absolute discretion, that Party may, at its option, elect to terminate this Agreement by giving the other Party written notice of termination prior to the end of the due diligence period. In the event of termination by a Party under this section, this Agreement shall immediately terminate and be without any further force and effect, and without further obligation of either Party to the other.

3. Closing. On or before the date of closing, each Party shall deliver to the Title Company the Deed for its respective property being exchanged, placing it in escrow.

3.1. Condition of Title. Title to the respective properties is to be free of all encumbrances and defects. Rights reserved in federal patents or state deeds, building or use restrictions general to the area, building or zoning regulations or provisions, utility easements, other easements not inconsistent with each Party's intended use, and oil and/or mineral rights shall not be deemed encumbrances or defects.

3.2. Title Insurance. Each selling party shall, as of the date of closing, provide the purchasing party with a standard owner's policy of title insurance insuring the purchasing party's title to the property being exchanged, subject only to the issuer's standard printed exceptions and exceptions reflecting real estate taxes and assessments for the current year and easements, restrictions, reservations, and mineral rights of record. Each Party hereto, in its capacity as seller, shall bear the cost of the title insurance it is providing under the terms of this paragraph.

3.3. Closing Costs. Each Party hereto shall pay for one-half of any closing costs, including escrow fees, transfer taxes and assessments (if any), and deed stamps. Each party shall pay its own attorney fees and other expenses incurred by it.

3.4. Closing Date. The closing date of this transaction shall be on or before December 31, 2024. "Closing" means the date on which all documents, including the respective statutory warranty deeds, are recorded. This transaction shall be closed through an escrow that is to be held by AmeriTitle. Each party shall execute and deliver on a timely basis all escrow instructions, deeds, and other documents reasonably necessary to close this transaction.

3.5. Possession. Exclusive possession of the City's Property and 1102 Parking's Properties shall be delivered to the other Party at Closing, free and clear of all tenants and others in possession.

4. Covenants, Representations and Warranties.

4.1. Selling Party's Covenants. Each Party, acting as "Selling Party" for the exchange of its respective Property through acquisition by the other Party through exchange of the Property, hereby covenants and agrees as follows:

4.1.1. From the date of this Agreement through the closing date, the Selling Party shall not make any material alterations to the Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Property, nor enter into any leases or agreements pertaining to the Property without the other Party's prior written consent, except as identified in subsection 6 below.

4.1.2. During the contract period, Selling Party shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Property without the other Party's prior written consent.

4.1.3. Selling Party shall remove all disapproved exceptions including all monetary liens affecting the Property prior to closing.

4.1.4. During the contract period, Selling Party will operate and maintain the Property in a manner consistent with Selling Party's past practices relative to the Property and so as not to cause waste to the Property.

4.2. Selling Party's Representations and Warranties. Selling Party hereby makes the following representations and warranties to the other Party, each of which shall be true on the date hereof and on the date of closing. Selling Party shall immediately provide the other Party with written notice of any event which would make any representation or warranty set forth below incorrect or untrue, and upon receipt of such notice, the other Party may elect to terminate this Agreement. Upon that Party's election to terminate, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

4.2.1. Selling Party has full power and authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Selling Party necessary to confer such authority upon the persons executing this Agreement and such other documents have been, or will be, taken, inclusive of obtaining the consent and approval to this Agreement and to any conveyance instrument required herein by any person or persons holding a monetary lien interest in the Property. Consummation of this transaction will not breach any agreement to which Selling Party is a party. The other Party shall have no obligation to pay any funds prior to, at, or following closing to any third party, including any person or persons holding a monetary lien interest in the Property.

4.2.2. Selling Party has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Property are pending or threatened.

4.2.3. Selling Party has not received any written notice of pending or threatened investigation, litigation or other proceeding before a governmental body or regulatory agency which would materially and adversely affect the Property.

4.2.4. Selling Party has not received any written notice from any governmental authority or regulatory agency that Selling Party's use of the Property is in violation of any applicable zoning, land use or other law, order, ordinance or regulation affecting the Property.

4.2.5. No special or general assessments have been levied against the Property except those disclosed in the Preliminary Title Report and Selling Party has not received written notice that any such assessments are threatened.

4.2.6. Selling Party is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

4.2.7. Selling Party consists of a municipal corporation or a single limited liability

corporation as previously identified herein, owning the Property, which is otherwise subject to no unrecorded leases, easements, encumbrances or other agreements affecting the Property except as shown on the Preliminary Title Report.

4.2.8. To the knowledge of Selling Party: (a) the Property has, during its ownership, been operated in compliance with all Federal and/or state laws and regulations concerning pollution/environmental hazards/contaminants, and that the Property is currently free of any such pollution/environmental hazards/contaminants; (b) any business it has operated on the Property has disposed of its waste, if any, in accordance with all applicable statutes, ordinances and regulations; and (c) it has no actual notice of any pending or threatened action or proceeding arising out of the current condition of the Property or any currently alleged violation of environmental, health or safety statutes, ordinances or regulations.

4.3. Buyer's Representations and Warranties. Each Party, acting as "Buyer" of for the acquisition through exchange of the Selling Party's respective Property, hereby makes the following representations and warranties to Selling Party, each of which shall be true on the date hereof and on the date of closing:

4.3.1. Buyer has full power and authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Buyer necessary to confer such authority upon the persons executing this Agreement and such other documents have been, or will be, taken.

4.4. Survival of Covenants. The covenants, representations, and warranties contained in Section 4 of this Agreement shall survive the delivery and recording of the Deed from the Selling Party to the Buyer.

5. Default. If either party defaults (that is, fails to perform the acts required of it), in its contractual performance herein, the non-defaulting party may seek specific performance of the terms of this Agreement, damages or rescission.

6. Miscellaneous Provisions

6.1. Removal of Improvements. 1102 Parking shall remove from its property, on or before thirty (30) days from the execution of this agreement but no later than five (5) business days prior to the closing date, the electric vehicle charging station and equipment, partial fencing around the property, access gate to the property, and video surveillance cameras.

6.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

6.3. Enforcement and Attorney's Fees. In the event of litigation or if this Agreement is otherwise placed with an attorney for action to enforce this agreement, the prevailing party shall be awarded all reasonable attorney's fees, litigation costs, and other expenses incident to enforcement of rights hereunder, whether in arbitration, at trial, on appeal, or in a bankruptcy proceeding.

6.4. Assignment. Neither this Agreement nor any rights arising under it may be assigned or mortgaged by either Party without the prior written consent of the other Party, and any attempt to transfer this Agreement or any rights or interests arising hereunder, by operation of law or otherwise, without such consent shall be void and of no force and effect.

6.5. Waiver. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit the Party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

6.6. Applicable Law / Venue. This Agreement shall be governed by the laws of the state of Washington. Venue of any action brought to enforce the terms of this Agreement shall be in Kittitas County Superior Court.

6.7. Modification. No part of this Agreement may be modified without the express written consent of both Parties.

6.8. Survival. All representations, warranties and obligations of the parties hereto, in their capacities as selling parties, shall survive the closing date and delivery of the respective deed contemplated in this Agreement and be fully enforceable thereafter.

6.9. Notices. Any notice or demand required or permitted to be given under the terms of this Agreement shall be in writing. Notice may be served upon the other Party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO 1102 PARKING:

Steve Townsend
Partner

1102 Parking, LLC
steve@iseburg.com

TO CITY OF ELLENSBURG:

Heidi Behrends Cerniwey
City Manager
501 N. Anderson St.
Ellensburg, WA 98926
cerniweyh@ellensburgwa.gov

6.10. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, that provision and the remainder of this Agreement will continue in effect and be enforceable to the fullest extent permitted by law. Furthermore, it is the intention of the Parties to this Agreement that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision will have the meaning that renders the provision valid.

6.11. Binding Effect. Regardless of which Party prepared or communicated this Agreement, this Agreement shall be of binding effect between the City and 1102 Parking only upon its execution by an authorized representative of each such Party.

6.12. Counterparts. This Purchase and Sale Agreement may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

6.13. Complete Agreement. This Agreement contains the entire agreement of the Parties concerning the acquisition and exchange of the Properties, including all oral understandings or agreements, and there are no collateral understandings or agreements or representations or warranties not expressly included herein.

6.14. Scrivener. The Party drafting this Agreement is the City. The City makes no representations regarding the rights or responsibilities of 1102 Parking under this Agreement. 1102 Parking is encouraged to review the completed contract with counsel before signing this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

1102 PARKING, LLC

**CITY OF ELLENSBURG, WASHINGTON,
a Washington municipal corporation**

Paul Jinneman

Paul Jinneman (Apr 18, 2024 14:55 PDT)

04/18/2024

Paul M. Jinneman

Date

[Signature]

Rich Elliott, Mayor

4/12/24

Date

Its: Manager

Print Title

[Signature]

By: Terry Weiner, City Attorney

Date

4/16/24

Aaron Reiman Acting

Exhibit A
Legal Description of 1102 Parking's Property

TWN EBURG; ORIGINAL ADD. LOTS 1 & 2 EXC. THE S. 8 1/2 OF LOT 2; BLOCK 3
(SURV. B28/P209)

Exhibit B
Legal Description of City's Property

TOWN EBURG ORIG. N 40' OF LOT 9; ALL OF LOT 10 BLOCK 7






Parking Lot Exchange Agreement

Final Audit Report

2024-04-18

Created:	2024-04-17
By:	Beth Leader (leaderb@ellensburgwa.gov)
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-  Document created by Beth Leader (leaderb@ellensburgwa.gov)
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-  Document e-signed by Paul Jinneman (pjinneman@gmail.com)
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