



**RANDALL A. HARMON**  
MANAGER

**TRANSPORTATION MAINTENANCE DIVISION**

**McCoy Building**

902 ABERNETHY ROAD | OREGON CITY, OR 97045

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Execution of a Purchase and Sale Agreement to  
Acquire Property on Springwater Road

<b>Purpose/Outcomes</b>	To Execute a Purchase and Sale Agreement to acquire property on Springwater Road (tax lot 44E0901500) owned by Estacada Rural Fire District. Transportation Maintenance has utilized this property since 1988 as a stockpile site.
<b>Dollar Amount and Fiscal Impact</b>	The listing price is \$70,000 and funds are available through the Transportation Maintenance budget.
<b>Funding Source</b>	Transportation Maintenance budget, 215-7433
<b>Duration</b>	This is a one-time property purchase.
<b>Previous Board Action/Review</b>	A Board Order approving the resumption of the lease agreement between Estacada Rural Fire District and Clackamas County for the Springwater Stockpile Site #3005 was submitted February 20, 1997.
<b>Strategic Plan Alignment</b>	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
<b>County Counsel Review</b>	Reviewed and approved by Counsel on 5-1-19.
<b>Contact Person</b>	Randall A. Harmon, 503-650-3246

**BACKGROUND:**

The property on Springwater Road (tax lot 44E0901500) has been utilized by Transportation Maintenance since 1988 for stockpiling of road maintenance materials. The site was given a conditional use of aggregate stockpiling in an EFU zone back in 1988. This property is up for sale by the Estacada Rural Fire District, with a listing price of \$70,000.

Transportation Maintenance has found the Springwater Stockpile site to be centrally located for the spring, summer and fall work program in the Estacada area. Maintaining a stockpile site in this area reduces the cost of hauling material to the work sites by approximately 30%.

When the land came up for sale, the County's right-of-way agent reviewed land value and market information and determined that the listing price was reasonable and then proceeded to work with County Counsel to have a purchase and sale agreement drafted for this property.

**RECOMMENDATION:**

Staff respectfully recommends the Board execute the attached Purchase and Sale Agreement.

Sincerely,

Randall A. Harmon  
Transportation Maintenance Division

## PURCHASE AND SALE AGREEMENT

Date: May 9, 2019

Seller: Estacada Rural Fire District No. 69  
445 SE Currin Street  
Estacada, OR 97023

Buyer: Clackamas County  
Attn: Department of Transportation and Development  
150 Beaver Creek Road  
Oregon City, OR 97045

In consideration of the mutual promises contained herein, the Seller and Buyer agree as follows:

### 1. Description of Property

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the certain land and any improvements thereon, together with all water rights, if any, located near the city of Estacada, in Clackamas County, Oregon, which Property is commonly known as tax lot 1500 on Clackamas County Tax Assessor Map #44E09, and is more particularly described in **Exhibit "A"** and depicted in **Exhibit "B,"** both of which are attached hereto and incorporated by this reference herein (the "**Property**")

Any personal property left on the premises at the time of closing shall, including but not limited to aggregate materials, at the option of Buyer, become the Property of Buyer or Buyer may require Seller to remove it at Seller's expense.

### 2. Purchase Price

The purchase price which Buyer agrees to pay for the Property is the sum of Seventy Thousand Dollars (\$70,000).

### 3. Payment of the Purchase Price

Buyer shall pay the purchase price in cash or immediately available funds at closing.

### 4. Escrow Closing

The parties shall open an escrow at mutually agreed upon title company (the "**Title Company**") immediately upon signing this Agreement. Time is of the essence. Closing shall occur at such escrow on or before June 30, 2019. Seller and Buyer shall each pay one-half of the escrow fees. Those closing costs normally allocated to a party such as release or recording fees, and similar such costs shall be allocated to the parties accordingly.

### 5. Possession

Buyer shall be entitled to possession on the closing date.

## **6. Preliminary Title Report**

Buyer shall order, at Seller's expense, a preliminary title report through the Title Company showing the condition of title to the Property, and Seller shall furnish Buyer with a copy of the preliminary title report and copies of all exceptions.

Buyer shall have fifteen (15) days after receipt of the preliminary report within which to notify Seller and the Title Company in writing of Buyer's disapproval of any exceptions shown in the preliminary report. In the event of disapproval of any exceptions, Seller shall have ten (10) days to attempt to eliminate any disapproved exceptions, except standard exceptions encumbrances cleared by closing. If not eliminated by closing, the escrow and this Agreement shall be terminated unless Buyer then elects to waive Buyer's prior disapproval. Failure of Buyer to disapprove any exceptions within fifteen (15) days after Buyer's receipt of the preliminary report shall be deemed an approval of the preliminary report.

## **7. Title Insurance Policy**

Promptly after closing, Seller shall furnish to Buyer, at Seller's expense, a standard owner's policy of title insurance, together with all endorsements required by Buyer insuring condition of title to the Property, for the amount of the purchase price, free and clear of all encumbrances, except the exceptions contained in the preliminary report which have been accepted, deemed accepted, or waived by Buyer pursuant to Section 6 above. Buyer shall be responsible for any additional premiums for an extended coverage title insurance policy.

## **8. Prorates**

The real, and any personal, property taxes and assessments will be prorated as of closing. If the Closing occurs before the tax rate is fixed for the then current tax year, the apportionment of taxes shall be made on the basis of the tax rate for the preceding tax year applied to the latest assessed valuation of the Property, and when the tax rate is fixed for the tax year in which the Closing occurs, Seller and Buyer shall adjust the proration of taxes and, if necessary, shall refund or pay such sums to the other party as shall be necessary to effect such adjustment.

The Seller shall cause to be paid all utility charges through the closing date.

## **9. Deed**

Upon payment in full of the purchase price at closing, Seller shall deliver to Buyer at closing a Statutory Warranty Deed conveying the Property to Buyer free and clear of all encumbrances, except those referred to above. Buyer does not agree to assume any obligations or liens of Seller's.

## **10. Due Diligence**

Buyer shall have a period of forty five (45) days after the effective date of this Agreement (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Buyer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Buyer's intended use, zoning, access, and utilities. During the period from the effective date of this Agreement until the earlier of closing or termination of this Agreement, Buyer and its employees, agents, consultants, contractors, prospective tenants or

purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Buyer may deem necessary, including without limitation environmental assessments. Buyer hereby indemnifies and holds Seller, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Buyer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Buyer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense, except that the test pits need only be backfilled with clean available fill and compacted with the bucket of a backhoe. On or before expiration of the Due Diligence Period, Buyer at its option and in its sole and absolute discretion may provide Seller with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Buyer at its option and in its sole and absolute discretion may provide notice to Seller of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Buyer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Buyer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to Seller prior to expiration of the Due Diligence Period. Where Buyer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder.

## **11. Conditions**

The following shall be conditions precedent to Buyer's obligation to perform hereunder and they may be waived in whole or in part only by Buyer.

### **11.1 Due Diligence**

Buyer providing the Approval Notice described in Section 10.

### **11.2 Agreements**

Buyer reviewing and approving all leases, management and service contracts, within 45 days after Seller has signed this Agreement.

### **11.3 Estoppel Certificates**

Buyer obtaining within 45 days after Seller signs this Agreement, estoppel certificates and subordination agreements from any tenants on the Property. Such certificates and agreements shall be prepared by Buyer, at Buyer's expense.

### **11.4 Records**

Buyer's review, to Buyer's satisfaction, within 45 days after Seller signs this Agreement the historical financial records of the Property, including, but not limited to, maintenance and repair records, property tax records, utility cost records, operating statements, profit and loss statements, projected budgets, and all other permits and licenses relating to the Property.

### **11.5 Seller Performance**

Performance by Seller, by the closing date unless an earlier time is stated herein, of all the agreements, terms and conditions of this Agreement to be performed by Seller.

### **11.6 Property Condition**

That there is no change in the condition or legal requirements of the Property, whether directly or indirectly, including any dumping of refuse or environmental contamination, after the effective date of this Agreement, and that no legal action or proceeding (including condemnation) affecting the Property or the Buyer's intended use thereof shall have been threatened or commenced.

### **11.7 Title Commitment**

That the Title Company shall be irrevocably committed to issue an owner's title insurance policy insuring that fee simple title is vested in Buyer as of the closing date, in the amount of the purchase price, subject only to the permitted exceptions.

### **11.8 Representations**

The representations made by Seller in this Agreement being true and correct as of the date of closing.

## **12. Required Statutory Notice**

The following is the notice as required by Oregon law: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

## **13. Hazardous Waste**

Seller represents and warrants that the Property has never been used to generate, manufacture, transport, store or dispose of any hazardous substance; that no leak, spill or discharge of a hazardous substance has occurred on, in or under the Property or the ground

waters thereof and that the soil, ground water and soil vapor on, in or under the Property is free of hazardous substances; that there are no potentially hazardous environmental conditions on the Property; and that the Property has not been identified by any governmental agency as the site upon which or potentially upon which hazardous substances may have been located or deposited.

Seller indemnifies and holds Buyer harmless from any and all claims, penalties, fines, costs or liabilities, including, but not limited to, cleanup, remedial action or restoration work, including attorney and expert fees, related in any way to the presence or suspected presence of hazardous waste in the soil, ground water or soil vapor on, in or under the Property, except for any hazardous substance generated on the Property after the date hereof.

These representations and warranties shall survive the closing of this transaction and the delivery of the deed called for herein.

**“Hazardous substance”** is used in this Agreement in its broadest sense to include all hazardous, toxic or contaminating substances, including petroleum products, radon, asbestos, or similar materials which are now or in the future may be regulated by any environmental law.

**“Environmental law”** shall be interpreted broadly to include any present or future local, municipal, state or federal law, order, rule or regulation relating to environmental protection or pollution control.

#### **14. Representations**

Seller represents as follows:

##### **14.1 Property Condition**

The Property and the yard will be in substantially its present condition.

##### **14.2 Litigation**

As of the date of closing, there are no pending or threatened litigations, condemnation proceedings or annexation proceedings affecting the Property.

##### **14.3 Violations**

As of the date of closing, Seller has not received notice pertaining to the violation of any law, statute, ordinance, rule or regulation or deed restriction affecting the Property, and the Seller has no knowledge of any facts which might be a basis for any such notice.

##### **14.4 Liens**

As of the date of closing, Seller has no notice of any liens to be assessed against the Property.

##### **14.5 Defects**

The Property is free from material fault or defect.

#### **14.6 Leases**

Any leases affecting the Property are in full force and effect with no default or alleged default by either landlord or tenant.

#### **14.7 Records**

All books, records, documents and information to be provided by Seller to Buyer in connection with this transaction will be complete, true and accurate at the time they are delivered to the Buyer and as of the date of closing.

#### **14.8 Property Maintenance**

Seller represents that it will operate and maintain the Property in a good state of repair until this transaction is closed or escrow is terminated, whichever occurs earlier. Seller will not enter into additional leases, rental agreements, or other contracts or agreements affecting the Property without the Buyer's prior written consent.

#### **14.9 Encroachments**

There are no encroachments or any persons adversely possessing any portion of the Property or any rights-of-way thereover, and no licenses have been granted by Seller. Buyer has the right to rely on any boundaries or rights-of-way identified by Seller or Seller's agents.

#### **14.10 Authority**

Seller has been duly organized and is validly existing as a public entity, in good standing in the State of Oregon. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby.

#### **14.11 Realtor**

Seller is represented by all real estate sales agents involved in this transaction and as such they are Seller's agents in fact. All representations and warranties of such agents are deemed to be those of Seller. The representations in this Section are intended to survive the closing of this transaction and the delivery of the deed called for herein.

### **15. Time of Essence**

Time is of the essence of the payment and performance of each of the obligations under this Agreement.

### **16. Remedies**

In the event the conditions precedent to Buyer's obligations have occurred, and Buyer fails to close the sale through no fault of Seller, then Seller as to its sole remedy may require Buyer to pay any escrow and title insurance charges.



If the transaction fails to close because the conditions precedent to Buyer's obligations have not occurred, or if Seller's title is not marketable, then Buyer may terminate this Agreement, which then shall be of no further force or effect.

In the event the conditions precedent to Seller's obligation to perform have occurred, and Seller, through no fault of Buyer, fails to close this transaction, then the Seller shall pay any escrow and title insurance charges. However, Seller's payment of any escrow and title insurance charges does not constitute a waiver of other remedies available in law or equity to Buyer.

#### **17. Foreign Investment in Real Property Tax Act**

The Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445, requires every person who purchases U.S. real property from a foreign person to deduct and withhold from the Seller's proceeds, ten percent (10%) of the gross sales price with certain exceptions. Seller and Buyer agree to execute and deliver as appropriate, any instrument, affidavit or statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA.

#### **18. Damage or Destruction; Condemnation**

Until closing, the risk of loss shall be retained by Seller. Seller shall keep the Property fully insured until closing. In the event all or any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation prior to the close of escrow, Buyer may terminate this Agreement. In such event, escrow will be terminated, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, Buyer may elect to terminate this Agreement or to close this transaction as provided for herein, including payment to the Seller of the purchase money required. In such event, the Buyer shall be credited with all insurance proceeds or condemnation proceeds payable to or for the account of Seller.

#### **19. Applicable Law**

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

#### **20. Nonliability of Officials and Employees**

No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

## **21. Merger**

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

## **22. Headings**

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

## **23. Severability**

If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

## **24. No Partnership**

Neither anything in this Agreement or the documents delivered in connection herewith nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

## **25. Nonwaiver of Government Rights**

Subject to the terms and conditions of this Agreement, by making this Agreement, the Buyer is specifically not obligating itself, the County, or any other agency with respect to any discretionary governmental action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

## **26. Entire Agreement; Waivers**

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the Buyer and the Seller, and all amendments thereto must be in a writing signed by the appropriate authorities by the Buyer and the Seller.

## **27. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

## **28. 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.

**29. Weekends and Holidays**

If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Friday, Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

**30. Rule of Construction**

Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

**31. Exhibits**

All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

**32. Binding Effect/Assignment**

This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives and assigns.

**33. Attorneys' Fees**

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

**34. Governing Law and Venue**

The parties hereby submit to jurisdiction in Clackamas County, Oregon and agree that any and all disputes arising out of or related to this Agreement shall be litigated exclusively in the Circuit Court for Clackamas County, Oregon and in no federal court or court of another county or state. Each party to this Agreement further agrees that pursuant to such litigation, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for deposition in Clackamas County, Oregon.

/////

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**"SELLER"**

Estacada Rural Fire District No. 69

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2019

**"BUYER"**

CLACKAMAS COUNTY, a corporate body politic

By: \_\_\_\_\_  
Chair

Date: \_\_\_\_\_, 2019

**LIST OF EXHIBITS**

EXHIBIT A	Legal Description - Property
EXHIBIT B	Property Map

## **Exhibit A**

A parcel of land lying in the NW  $\frac{1}{4}$  of Section 9, Township 4 South, Range 4 East, W.M., Clackamas County, Oregon, and being that property conveyed by that deed to the State of Oregon, by and through its State Highway Commission, recorded in book 269, page 142 of the Clackamas County Record of Deeds.

The parcel of land to which this description applies contains 1.0 acres, more or less, outside of the existing right of way.

**Exhibit B**

# EXHIBIT B

INT ELL COF  
DLC NO. 4

