



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 13, 2019

Department: Public Works Agenda Planning Date: 3/7/2019 Time required:

Audio/Visual aids N/A

Contact: Thomas Kissinger Phone: 503-566-4139

Department Head Signature:

TITLE Consider Approval of Purchase and Sale Agreement #PW-2692-19 between Marion County and Salem-Keizer School District #24J

Issue, Description & Background Marion County Public Works intends to sell Auburn Park, located at 4650 Auburn Road NE, Salem OR 97301, to Salem-Keizer School District #24J so that the school district may expand Auburn Elementary. Auburn Park was originally purchased from the City of Salem using federal Land and Water Conservation Fund dollars, through the State of Oregon. As such, this park is subject to section 6(f) of the Land and Water Conservation Fund Act and the County must replace the fair market value, as determined by a Yellowbook appraisal, of Auburn Park with newly converted park land. Additionally, the County must develop new park land to provide equal or greater recreational value than existed at Auburn Park. Proceeds from the sale of Auburn Park shall be used towards this conversion. Because suitable land is not available at the time of the sale, the federal government and Oregon Parks and Recreation Department (OPRD) have consented to a one time set aside of the federal funds until such time that the County is able to identify a suitable replacement property.

Financial Impacts: The school district has agreed to a purchase price of \$360,000.00 for the land at Auburn Park. Additionally, the school district has agreed to pay the County up to \$15,000.00 for reimbursement of any costs associated with obtaining Yellowbook appraisal(s) on replacement properties.

Impacts to Department & External Agencies The County will transfer the deed to Auburn Park to Salem-Keizer School District, upon execution of this agreement and the conclusion of the closing process.

Options for Consideration: 1) Approve Purchase and Sale Agreement #PW-2692-19 2) Withhold approval of Purchase and Sale Agreement #PW-2692-19

Recommendation: Public Works Staff recommends approval of Purchase and Sale Agreement #PW-2692-19

List of attachments: Purchase and Sale Agreement #PW-2692-19

Presenter: Brian May, Environmental Services Division Manager

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Copies to:

Thomas Kissinger, tkissinger@co.marion.or.us

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, hereinafter referred to as the "**Agreement**", is made and entered into on _____, 2019 by and between Marion County, a political subdivision of the State of Oregon, hereinafter called "**Seller**," and the Marion County School District 24J aka Salem-Keizer School District 24J, an Oregon municipal corporation, hereinafter called "**Purchaser**." Seller and Purchaser may be referred to herein jointly as the "**Parties**" and severally as a "**Party**."

RECITALS:

- A. Seller is the owner of the Property, as defined in Section 1 below, which is adjacent to a parcel of property owned by Purchaser on which it operates a school. The Parties desire to enter into this Agreement to allow for the expansion of said school.
- B. The Property was purchased from the City of Salem using federal funds for the purpose of operating a park. The federal government has consented to a land swap to facilitate the planned expansion. However, Seller has been unable to identify a suitable replacement property (the "**Replacement Property**") at this time.
- C. As a result of the unavailability of land, the federal government has consented to a one time set aside of the federal funds used to purchase the Property until such time as Seller is able to identify a suitable Replacement Property. This Agreement is the result of this consent.
- D. Upon Closing, proceeds from the sale shall be placed in escrow, between the Seller and the federal government, until such time that a Replacement Property is identified and proceeds are used for the acquisition of said Property. Any interest earned on the proceeds in escrow shall be due to the Seller, pursuant to the stipulations imposed by the federal government.
- E. Seller and Purchaser shall cooperate in good faith to finalize the proposed transaction.

AGREEMENT:

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

1. Description of Property

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the real property and all improvements thereon, located in the county of Marion County, State of Oregon, which property is commonly known as 4650 Auburn Road NE measuring 4.37 acres, more or less, and which has the legal description as set forth in **Exhibit "A,"** which is attached hereto and incorporated by this reference herein (the "**Property**").

2. Purchase Price

The purchase price which Purchaser agrees to pay for the Property is the sum of Three Hundred Sixty Thousand and No/100 Dollars (\$360,000.00) (the "**Purchase Price**") to be paid in cash at Closing. In addition, Purchaser shall contribute up to Fifteen Thousand and No/100 Dollars (\$15,000.00) towards the cost of obtaining Yellowbook Appraisal(s) for the Replacement Property.

3. Escrow Closing

The Parties shall open an interest-bearing escrow account at AmeriTitle located at 320 Church St. NE, Salem, Oregon immediately upon signing of this Agreement. Purchaser shall pay all costs associated with the transaction and Seller shall be entitled to any interest accrued under the terms of this Agreement.

Subject to the satisfaction or waiver by Purchaser and Seller of the conditions set forth in this Agreement, the transaction shall close no later than December 31, 2018, or upon satisfaction of Purchaser's conditions to closing as set forth below (the "**Closing Date**"). For purposes of determining prorations, the Closing Date shall be the date upon which the deed is recorded. Purchaser shall be entitled to possession on the Closing Date.

4. Disbursement and Other Actions by Escrow Holder

At closing, the escrow holder shall do the following:

4.1 Funds

Disburse all funds deposited with the Escrow Holder by the Purchaser in payment of the purchase price as follows:

- 4.1.1 Deduct all items chargeable to the account of the Seller pursuant to this Agreement.
- 4.1.2 Retain the remaining balance of the funds, subject to the Federal Restrictions as set forth in Section 11 below.

4.2 Recording

Cause the deed, and any other documents that the Parties may mutually direct to be recorded in the official records and obtain conformed copies for distribution to the Purchaser and the Seller.

4.3 Title Policy

Issue the title policy to the Purchaser.

4.4 Disbursement of Documents to Purchaser

Disburse to the Purchaser the FIRPTA certificate, and any other documents (or copies thereof) deposited into escrow by the Seller pursuant hereto.

5. Preliminary Title Report

Promptly after the Purchaser and Seller have signed this Agreement, Purchaser has the option to order, at Purchaser's expense, a preliminary title report through AmeriTitle showing the condition of title to the Property.

Purchaser shall have fifteen (15) days after receipt of the preliminary title report within which to notify Seller in writing of Purchaser's disapproval of any exceptions shown in the preliminary title report. If Purchaser disapproves any exceptions or matters, Seller shall have fifteen (15) days within which to agree to remove the exception. Failure to give written notice to such agreement to Purchaser shall be deemed to be refusal, except that Seller shall automatically be deemed to agree to remove monetary liens other than non-delinquent taxes and assessments. If Seller does not agree to remove any other exceptions or matters disapproved by Purchaser, this Agreement shall terminate without further liability to either Party unless Purchaser waives its objection within a second fifteen (15) day period. If Seller shall agree to remove any exception or matter objected to by Purchaser, Seller shall then have thirty (30) days to remove such exception. Purchaser hereby disapproves of all monetary exceptions and Seller agrees to clear them at or before closing.

6. Title Insurance Policy

In due course after closing, Seller, at Purchaser's expense, shall furnish unto Purchaser a standard coverage ALTA Buyer's policy of title insurance, with such endorsements as Purchaser may require and the cost of which Purchaser shall be solely responsible, for the full value of the Purchase Price, showing a marketable title to said described premises to be vested in Seller, free and clear of all encumbrances. All monetary exceptions are hereby rejected and Seller agrees to clear such exceptions at or before closing. Seller shall sign such documents as are necessary for the title company to issue the above referenced insurance.

7. Prorates

The real property taxes, if any, will be prorated as of closing. Seller shall be responsible for payment of any deferred taxes, penalties, or assessments, if any. Seller shall pay all utilities through the date of closing.

8. Deed

Upon payment in full of the purchase price at closing, Seller shall deliver to Purchaser at closing a Statutory Warranty Deed conveying the Property to Purchaser free and clear of all encumbrances, except those approved by Purchaser above.

9. Conditions for Benefit of Purchaser

The following shall be conditions precedent to Purchaser's obligation to perform hereunder and they may be waived in whole or in part only by Purchaser. Purchaser's obligation to close this Agreement is expressly conditioned upon the satisfaction, in Purchaser's sole discretion, on written waiver by Purchaser, of all of the following conditions. Except where a different time period is specifically stated, Purchaser shall waive or satisfy all such conditions no later than one hundred twenty (120) days after the execution date, said 120-day period shall be called the "**contingency period.**" Seller acknowledges that the conditions are for the benefit of Purchaser and that it will be left to the

discretion of Purchaser to determine whether the conditions have been satisfied or whether Purchaser wishes to waive satisfaction of one or more conditions. The waiver by Purchaser of any condition shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of Seller:

9.1 Purchaser Obtaining Board Approval of the Purchase

This Agreement shall be contingent on Salem Keizer School Board's approval of the purchase of the Property and the allocation of the Purchase Price for the purchase of the Property.

9.2 Environmental Site Assessment

Within one hundred twenty (120) days after Seller signs this Agreement, a Phase I and Phase II Environmental Site Assessment, and a wetlands evaluation, satisfactory to Purchaser shall be performed, at Purchaser's expense, and reports shall be received by Purchaser. Said reports shall be prepared after the date of this Agreement or updated to the date of this Agreement from a licensed engineer or environmental consultant selected by Purchaser and reports shall cover the Property. The report must demonstrate, to Purchaser's sole satisfaction, that there are not present on the Property any hazardous substances, wastes, or materials, any pollutants or contaminants, or other similar substances or materials which are included under or regulated by any local, state or federal law, rule, or regulation pertaining to environmental regulation, contamination or clean up, or any PCBs, asbestos, radon or underground storage tanks or wetlands. In the event that the environmental site assessment discloses any environmental condition which is unsatisfactory to Purchaser, Purchaser shall be responsible for providing remedy to any such environmental condition, at Purchaser's expense. If Purchaser elects not to perform such remedial actions, Purchaser shall have ten (10) working days from receipt of the report to notify Seller of Purchaser's election to terminate this Agreement, whereupon the obligations of both Parties hereunder shall be discharged and this Agreement shall terminate.

9.3 Feasibility Studies

Purchaser may conduct a feasibility study to determine if the Property is suited for Purchaser's intended use. If, pursuant to such feasibility study, Purchaser determines that the Property is not suitable for its intended use, Purchaser shall so notify Seller no later than one hundred twenty (120) days after the execution date, whereupon the obligations of both Parties hereunder shall be discharged, and this Agreement shall terminate. If Purchaser does not give Seller notice required herein in the time period allotted therefore, Purchaser shall be deemed to have waived the condition stated herein regarding feasibility. Such feasibility study may include, but not be limited to, the investigation of the zoning, the effect of local land use regulations and municipal ordinances, environmental assessment, engineering, surveys, hydrological, topographical, traffic, soil and water analyses, availability and quality of access, utilities, water and sewage to and from the Property, and obtaining a building permit for construction of contemplated improvements to the Property, the costs of which shall be borne exclusively by the Purchaser.

In order to determine feasibility, Purchaser may go upon the Property, at any reasonable time, for the purpose of making or conducting any inspection, investigation, test or survey reasonably relative to Purchaser's decision to purchase the Property, or to Purchaser's prospective use thereof. This shall include, but not be limited to, any drilling or testing necessary for the completion of all environmental site assessments permitted under the terms of this Agreement. Purchaser hereby agrees to defend, indemnify and to hold Seller harmless from any and all liabilities or obligations incurred as a result of such entrance of Purchaser or its agents on the Property, except that Purchaser shall not be liable to Seller, or have an obligation to indemnify Seller, on account of Purchaser's discovery of any hazardous materials on the Property, or for disclosing the results of any tests, inspections, or surveys performed by Purchaser.

Commencing on the date this Agreement is executed, Purchaser shall have the right, at Purchaser's sole expense, to initiate and pursue to completion proceedings to obtain all government permits and approvals necessary for Purchaser's contemplated development and use of the Property. Seller shall execute such reasonable applications for, and shall otherwise reasonably cooperate with, Purchaser's efforts to obtain such governmental permits or approvals affecting the Property; provided, however, that Purchaser shall fully compensate Seller for any lien, encumbrance, or charge thereon, attributable to Purchaser's activities with respect to this Section, and shall indemnify, defend and hold Seller harmless therefrom any expenses, claims or liabilities arising out of Purchaser's activities in regard thereto.

9.4 Delivery of Reports

Purchaser receiving from Seller within fifteen (15) days of the signing of this Agreement copies of all inspection reports, studies, surveys, soil tests, appraisals, permits, applications for land use actions, information related to past uses of the Property, architectural drawings, engineering studies or reports, and tax assessments and notices concerning or affecting the Property which are in Seller's possession or are available to Seller.

9.5 Yellowbook Appraisal

Purchaser has obtained its own Yellowbook Appraisal of the Property and a copy has been provided to the Seller. Purchaser's purchase of the Property is contingent on Purchaser's approval of the value of the Property, in its sole and absolute discretion, based on findings contained in said appraisal.

10. Satisfaction or Failure of Conditions

If the conditions to Purchaser's obligation to close are satisfied, the Parties shall proceed to close the transaction in accordance with the other terms and conditions of this Agreement. If Purchaser, in its sole discretion, is not satisfied with any condition of the Property as set forth herein, and if Purchaser and Seller have not reached a written agreement in settlement thereof on or before the last day of the contingency period, then Purchaser shall deliver to Seller a termination notice, to be received by Seller on or before the last day of the contingency period, informing Seller of Purchaser's desire to terminate this Agreement. If such notice is properly delivered, the title company shall immediately return the Promissory Note to the Purchaser. Upon Purchaser's receipt thereof, neither

Party hereto shall have any further rights against or obligations to the other under this Agreement, except as may be otherwise expressly provided herein.

11. Federal Restrictions

Seller purchased the Property from the City of Salem using federal funds set aside for funding the purchase of parks and recreation lands. Due to the use of these funds, any sale of the Property requires acquiescence of the federal government. The federal government has consented to the sale of this land subject to certain restrictions on the funds received by Seller's sale of the Property. Upon Closing the proceeds of the sale shall be placed in escrow until such time that a suitable Replacement Property can be identified and any interest earned on these proceeds shall be due to the Seller at such time that a suitable Replacement Property is purchased. Under no circumstances shall the proceeds of the sale be used for any purpose other than the purchase of a Replacement Property, unless approved in writing by applicable federal agencies.

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 Purchaser 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 close of escrow.

These representations and warranties shall survive the closing of this Agreement 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 and warrants as follows:

14.1 Pending or Threatened Proceedings

As of the date of closing, there are no pending or threatened litigations, condemnation proceedings or annexation proceedings affecting the Property, and Seller has no knowledge of any litigation that is threatened, against or affecting Seller or the Property in any way; nor does Seller know or have reasonable grounds to know of any basis for the foregoing.

14.2 Notice of Violations

As of the date of closing, Seller has not received notice pertaining to the violation of any law, statute, ordinance, rule, 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.

14.3 Pending or Contemplated Assessments or Charges

Seller does not know of any pending or contemplated assessments or similar charges except those of record and shown in the commitment which will affect the Property; and to Seller’s knowledge there is no pending proceeding for any increase of the assessed valuation of any portion of the land or Property except as may be disclosed on such commitment. To facilitate Purchaser’s feasibility analysis, Seller, within ten (10) days of the execution date, shall deliver to Purchaser a narrative description and dollar estimate of:

14.3.1 All charges, assessments and special taxes to which the Property is presently subject or which Seller has any reason to expect will later be imposed on the Property;

14.3.2 All dues, assessments or charges of any owner’s association or the like for which Purchaser will be responsible or which are or may be assessed against the Property; and

14.3.3 All governmental fees and charges, other than those imposed on a City and/or

County wide basis, which Purchaser will be required to pay in connection with its development and/or use of the Property, including the construction of buildings or other improvements thereon. Specifically excluded from this provision are any potential System Development Charges (SDC's), as these fees are determined during the planning phase of any capital improvement.

Seller represents and warrants that the description and estimate shall be true, complete and accurate to the best knowledge of Seller, Seller's agents and Seller's attorneys.

14.4 Debt, Creditors or Bankruptcy

There are no unpaid bills or claims in connection with the Property. There are no attachments, executions, or assignments for the benefit of creditors, or voluntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened by or against Seller or otherwise affecting the Property.

14.5 Material Fault or Defect

The Property is free from material fault or defect.

14.6 Notices of Unperformed Work

Seller has received no notice from any insurance company or board of fire underwriters recommending or requiring any work to be done on the Property that remains unperformed.

14.7 Condemnation Proceedings

There is no claim, suit, investigation, inquiry, exercise of eminent domain or condemnation proceeding in the nature of declaration or designation of the Property or any part thereof for historic, landmark, archaeological, wilderness, flood plain, wetlands or conservation purposes or for any other restriction on use, development, or alteration.

14.8 Zoning

No action or proceeding has been commenced, is pending or threatened, to change the zoning requirements applicable to the Property to a different or more restrictive use. There are no restrictions on the use of the Property, other than the zoning designation.

14.9 Completion and Accuracy of Records and Documents to Purchaser

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

14.10 Seller's Maintenance of Property

Seller represents that it will maintain the Property in a manner consistent with Seller's past practices until this Agreement is closed or escrow is terminated, whichever occurs earlier. Seller will not enter into any agreement affecting the Property without the Purchaser's prior

written consent.

14.11 Purchaser's Possession at Closing

At closing there will be no Parties in possession of any portion of the Property, nor any Parties with any right to such possession, other than Purchaser. No person, corporation, or other entity other than Purchaser (by reason of this Agreement) has any right or option to acquire the Property or any portion thereof. There are no outstanding service or other contracts affecting the Property.

14.12 Authority of Seller

Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby, and has obtained all necessary consents and approvals of all requisite Parties to execute and perform this Agreement. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller and the partners, officers, or trustees of Seller, if any, have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

14.13 Drainage of Water

Property is offered to Seller AS IS and, by signing Agreement, Purchaser agrees that any environmental factors affecting the drainage of surface and subsurface waters are acceptable or nonexistent.

14.14 Delivery of Documents by Seller to Purchaser

The Seller has delivered to Purchaser all the documents required to be delivered under this Agreement.

14.15 Wetlands

No wetlands on the Property have been filled, altered or drained.

14.16 Material Adverse Changes

There have been no material adverse changes related to or connected with the Property from the date hereof until the Closing Date.

The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time. The Seller's representations and warranties contained in this section shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

15. Indemnification by Seller

Seller shall indemnify, defend and hold harmless Purchaser, its successors, heirs, principals, officers, directors, employees, agents and assigns (for purposes of this Section, collectively "**Purchaser**") from and against any and all liability, loss, claim, damage or expense, including, without limitation, legal, accounting, consulting, engineering, and other expenses, to which Purchaser may become subject insofar as they may arise out of or are based upon:

15.1 Seller's Ownership, Operation and Maintenance of Property

Any act or omission of Seller in its ownership and operation and management of the Property on or prior to the Closing Date; and

15.2 Breach of Representation, Warranty or Failure to Perform Obligations

Seller's breach of any representation and warranty contained in this Agreement or failure to perform any obligation contained in this Agreement to be performed by Seller.

16. Time of Essence

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

17. Remedies

The remedies set forth herein are exclusive. In the event the conditions precedent to Purchaser's obligations have occurred, and Purchaser fails to close the sale through no fault of Seller, then Seller's sole and exclusive remedy shall be Purchaser's payment of any costs incurred by Seller under the terms of this Agreement.

If the transaction fails to close because the conditions precedent to Purchaser's obligations have not occurred, or if Seller's title is not marketable, then this Agreement shall be of no further force or effect, and Seller shall pay for any escrow and title insurance charges.

In the event the conditions precedent to Seller's obligation to perform have occurred, and Seller through, no fault of Purchaser, fails to close this Agreement, then the Seller shall pay any escrow and title insurance charges and the Purchaser. Purchaser may recover such damages as may be allowable in law and at equity; or Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser shall have the right to an action for specific performance or damages, or both. In addition to any other damages allowable, Purchaser shall be entitled to all of its out-of-pocket expenses incurred in connection with the transaction, including its due diligence costs and other expert expenses.

18. 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 Purchaser 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.

19. Damage or Destruction; Condemnation

Until closing, the risk of loss shall be retained by Seller. In the event all or any material portion of the Property is damaged, destroyed, condemned, or threatened with condemnation prior to the close of escrow, Purchaser 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, Purchaser may elect to terminate this Agreement or to close this Agreement as provided for herein, including payment to the Seller of the purchase money required. In such event, the Purchaser shall be credited with all insurance proceeds or condemnation proceeds payable to or for the account of Seller.

20. 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. Purchaser may assign Purchaser's rights under this Agreement without Seller's prior written consent.

21. Attorneys' Fees

In the event any arbitration, suit, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, the prevailing Party shall recover from the losing Party reasonable attorneys' fees, together with all expenses, which may reasonably incur in taking such action, including, but not limited to costs incurred in searching records, the costs of title reports and expert witness fees, and anticipated post-judgment collection costs. If any appeal is taken from any judgment or decree of the trial or bankruptcy court, the losing Party shall pay the prevailing Party in the appeal its reasonable attorneys' fees and costs in such appeal. Said sums shall be in addition to all other sums provided by law.

22. Notices

All notices required or permitted to be given hereunder shall be in writing and shall be personally delivered, or sent by overnight delivery service or by U.S. Certified Mail, Return Receipt Requested, or by facsimile, to the telephone number set forth below, with the original sent by U.S. Mail, addresses as set forth below:

Seller:	Marion County Attn: John Lattimer 555 Court Street NE #4130 Salem, OR 97301	<i>With a copy to:</i> Marion County Public Works Attn: Thomas Kissinger 5155 Silverton Road NE Salem, OR 97305
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Purchaser:	Salem-Keizer School District Attn: Michael Wolfe 2450 Lancaster Dr. NE Salem, OR 97305	<i>With a copy to:</i> Saalfeld Griggs, PC Attn: Mark D. Shipman 250 Church Street SE Salem, OR 97301
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Either Party hereto may, by proper notice to the other, designate such other address for the giving of notice as deemed necessary. All notices shall be deemed given on the business day such notice

is personally delivered or sent by facsimile, the business day following dispatch by overnight delivery service, or on the third day following the day such notice is mailed, if mailed in accordance with this Section.

23. Counterparts, Electronic Transmission and Electronic Signatures

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile, email transmission or other means of electronic transmission of any signed original document, and retransmission shall be the same as delivery of an original. The Parties agree that this transaction may be conducted and closed by electronic means in accordance with the provisions of the Uniform Electronic Transactions Act ("**UETA**") as codified in ORS Chapter 84. At the request of either Party, the Parties shall confirm electronically transmitted original signatures or electronic signatures by signing an original document and providing the signed original to the requesting Party.

24. Interpretation

Headings at the beginning of each Section and Subsection are solely for the convenience of the Parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine and vice versa.

25. Rule of Construction

Any rule of construction interpreting this instrument against its drafter shall be inapplicable. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

26. Reference

Unless otherwise indicated, all references to Sections and Subsections are to this Agreement. In the event the date on which Purchaser or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. If one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, then, to the extent consistent with the Parties' intent hereunder, the validity, legality and enforceability of the remaining provisions of any other application thereof shall not be affected or impaired.

27. Governing Law and Venue

The Parties hereby submit to jurisdiction in Marion 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 Marion 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 Marion County, Oregon.

28. Employment of Attorneys

The law firm of Saalfeld Griggs PC of Salem, Oregon, has been employed by Purchaser to prepare the documents in conjunction with this transaction, and such attorneys represent only Purchaser in this matter. Seller is represented by Marion County Counsel in this matter. The rule of

construction that a written Agreement is construed against the Party preparing or drafting such Agreement shall specifically not be applicable in the interpretation of this Agreement, and any documents executed and delivered pursuant to or in conjunction with this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement.

**SELLER:
MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

**PURCHASER:
MARION COUNTY SCHOOL DISTRICT 24J AKA
SALEM-KEIZER SCHOOL DISTRICT 24J**

By: _____ Date: _____
Michael Wolfe, Chief Operating Officer

Exhibit A
Property Legal Description

PARCEL I: (Tax Lot 8100)

Beginning at a point on the North line of the M. L. Savage Donation Land Claim No. 80 in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon, which point is 17.235 chains South 89° 30' East from the Southwest corner of the Z. Pollard Donation Land Claim, which point is also the Northwest corner of a tract of land conveyed to W. J. Ramage and wife by deed recorded February 9, 1948 in Volume 383, Page 263, Deed Records for Marion County, Oregon; thence South 0° 37' East, along the West line of said Ramage Tract, 7.17275 chains to the South line of a tract of land described in Volume 214, page 356, Deed Records for Marion County, Oregon; thence North 89° 30' West 109.08 feet; thence North 0° 37' West, 7.17275 chains to the North line of said Savage Donation Land Claim; thence South 89° 30 * East 109.08 feet to the place of beginning.

PARCEL II: (Tax Lot 8300)

The True Point of Beginning being the Southeast corner of Lot 6, Block 2 of the Auburn Addition, Marion County, Oregon; thence North 0 degrees 37' East, 108.72 feet; thence South 89 degrees 30' East 364.08 feet; thence South 0 degrees 37' East 383.50 feet; thence North 89 degrees 30' West 364.08 feet; thence North 0 degrees 37' West 274.78 feet to the true point of beginning.