BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER: 22-01-04-21

IN THE MATTER OF AUTHORIZING THE EXECUTION OF AN OPTION AGREEMENT FOR A DIRECT SALE OF COUNTY OWNED EXCESS REAL PROPERTY FOR $45,700 UNDER 271.310 TO THE CITY OF LOWELL, IDENTIFIED AS THE SOUTH PORTION OF WEST BOUNDARY ROAD, (MAP NO. 19-01-14-24), AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE DOCUMENTS TO COMPLETE THE SALE.

WHEREAS, this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to sell the following excess Lane County real property, to wit:

Approximately 0.20 acres of land identified as the southern portion of land along West Boundary Road (County Road No. 360) on Assessor's Map 19-01-14, being more particularly described on the attached Bargain and Sale Deed, (SEE EXHIBIT A); and

WHEREAS, said property was acquired by purchase from the United States through the General Road Fund for road purposes and not by tax foreclosure; and

WHEREAS, ORS 271.310 provides the transfer or lease of real property owned or controlled by a political subdivision if the real property is not needed for public use or whenever the public interest may be furthered; and

WHEREAS, the sale of the County owned real property meets the criteria set forth in ORS 271.310; and

WHEREAS, the Board is of the opinion that selling the County owned real property is in the best interest of the public; and

WHEREAS, an offer was received by the City of Lowell to purchase the property in the amount of $45,700 through an Option Agreement; and

WHEREAS, an Option Agreement has been presented to the County and a good faith deposit made in the amount of $475 by the City of Lowell.

NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. The offer from City of Lowell in the amount of $45,700 is accepted.

2. The County Administrator is authorized to execute any documents necessary to complete the sale.

3. That upon execution of the Option Agreement, a Deed conveying said property to City of Lowell is signed by the County Administrator.
4. Evergreen Land and Title and Lane County Right of Way Staff is instructed to close the
transaction and record the Deed.

5. The sale proceeds are disbursed to the General Road Fund (225-3632-446120-101).

**IT IS FURTHER ORDERED** that this Order shall be entered into the records of the Board of
Commissioners of the County.

**ORDERED** this _4th_ day of _January_, 2022.

[Signature]

Chair
Lane County Board of Commissioners
OPTION AGREEMENT
FOR WEST BOUNDARY ROAD PROPERTY IN LOWELL, OREGON

DATE: ____________________________________________, 2021
("Effective Date")

FROM: Lane County, a political subdivision of the State of Oregon
("County")

TO: City of Lowell, an Oregon municipal corporation
("Lowell")

RECITALS

A. County and Lowell desire to cooperate for the transfer of title and sale of two County-owned properties located in Lowell, Oregon to promote the future development of Lowell by providing a site for a new city hall and a site for commercial development.

B. County owns fee simple title to the real property described as Assessors Tax Map and Lot number 19-01-14-24-04500, and has agreed in principle to relinquish title of that property to Lowell without charge pursuant to ORS 271.330 for public purposes, with a reversionary interest that is removable under ORS 271.335.

C. County owns fee simple title to the real property described in Exhibit A, referred to herein as the "Property."

D. County and Lowell wish to enter into this Option Agreement to set forth their mutual understandings regarding the option.

AGREEMENT

In consideration of the terms and conditions and the mutual understandings and promises of the parties set forth herein, County and Lowell agree as follows:

Section 1. Grant of Option. For and in consideration of the sum of Four Hundred Seventy-Five Dollars ($475.00) paid to County by Lowell (the "Consideration"), receipt of which is acknowledged, County grants to Lowell the sole and exclusive option to purchase the Property for development purposes (the "Option") in the manner and for the price stated in this Agreement.

Section 2. Option Terms.

2.1 Term. The initial term of the Option (the "Initial Term") commences on the Effective Date and will continue for a period of three (3) years. Lowell has the right to extend the Option for an additional period of two (2) years. This extension period (the "Extension Term") will commence on the date that the Initial Term expires. The Initial Term and the Extension Term are referred to collectively in this Agreement as the "Term." If the last day of the Initial Term or the Extension Term falls on a Saturday, Sunday, or a holiday recognized by the federal government or the State of Oregon, all of Lowell’s rights during either such time period will extend through the next business day.
2.2 **Exercise of Option.** The Option must be exercised, if at all, by written notice (the “Exercise Notice”) given by Lowell to County at any time during the Term, stating that Lowell has elected to exercise the Option. The Option may be exercised only with respect to the entire Property, and nothing contained herein will be construed as permitting Lowell to purchase less than all of the Property under this Agreement. Upon exercise of the Option, Lowell will be obligated to purchase the Property from County, and County will be obligated to sell the Property to Lowell, for the price and in the manner herein set forth.

2.3 **Failure to Exercise Option.** If Lowell fails for any reason to exercise the Option in the manner set forth herein, Lowell will have no further claim against or interest in the Property or the Consideration, unless Lowell is entitled to a refund of the Consideration under another provision of this Agreement. In the event of the failure to exercise the Option, Lowell will provide County with any instruments that Owner reasonably deems necessary for the purpose of removing from the public record any cloud on title to the Property that is attributable to the grant or existence of the Option.

Section 3. **Purchase Price**

3.1 **Purchase Price.** The purchase price for the Property (the “Purchase Price”) will be the sum of Forty-Seven Thousand Five Hundred Dollars ($45,700.00), adjusted for inflation as follows:

3.1.1 On the first anniversary of the Effective Date, the Purchase Price shall be adjusted for inflation based upon the then-current U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, 1982-84 Base Year, or its designated successor rate (the “Adjustment Standard”). The amount of the adjustment shall be equal to the product of the Purchase Price multiplied by the Adjustment Standard. If the Adjustment Standard is zero or less than zero, no adjustment will be made.

3.1.2 On each successive anniversary of the Effective Date, the Purchase Price shall be further adjusted in the same manner as described in subsection 3.1.1, based upon the cumulative value of the Adjustment Standard for the period of years since the Effective Date multiplied by the Purchase Price.

3.2 **Payment of Purchase Price.** The Purchase Price for the Property will be payable as follows:

3.2.1 Lowell will be given credit for the sum stated as Consideration in Section 1 above.

3.2.2 The entire balance of the Purchase Price, adjusted in accordance with 3.1.1 and 3.1.2 above, as applicable, shall be paid in cash at Closing.

Section 4. **Property Investigation.**

4.1 **Due Diligence Period.** The term “Due Diligence Period” means a period of one hundred eighty (180) days commencing on the date that Lowell elects to exercise its purchase option by delivering the Exercise Notice as provided in subsection 2.2 hereof.

4.2 **Access to Information and the Property.** At all times during the Due Diligence Period, Lowell shall have the right to conduct investigations of the Property (the “Due Diligence Investigation”) which may include, physical inspections of the Property, such as soil, geological, environmental, structural, mechanical, engineering and any other assessments and tests Lowell, in its sole discretion, deems necessary or desirable. As of the date of the Exercise Notice, County grants to Lowell and its agents the right to enter on the Property at any reasonable time before the Closing Date, as hereinafter defined, for the purpose of conducting tests or studies that Lowell may deem necessary or appropriate in connection with its acquisition...
of the Property. Lowell shall bear the cost of all tests and studies undertaken. County shall cooperate with Lowell in making such tests and studies. Within thirty (30) days of the Effective Date, County shall create, and provide to Lowell a copy of, a list of all documents in County’s possession, custody or control relating to the Property, including, without limitation, all soil tests; asbestos surveys; engineering reports; and environmental assessments, reports and studies. Upon Lowell’s request, County shall within thirty (30) days of such request provide Lowell with copies of any requested documents and other information in County’s possession, custody or control, regarding the condition of the Property.

4.3 Title. Not later than seven (7) days following the commencement of the Due Diligence Period, County shall provide Lowell with a preliminary title report (the “Title Report”) covering the Property. The Title Report shall be issued by a title company licensed to conduct business in the State of Oregon and selected by County (the “Title Company”). The Title Report shall be accompanied by legible copies of all plats and special exceptions to title referenced in the Title Report (the “Exceptions”). County shall remove or cause to be removed any Exception created or suffered to be created by County as security for payment of a sum of money (including mortgages, deeds of trust, tax liens, contractor’s liens, and judgment liens) and any Exception created, or suffered to be created, by County after the Effective Date of this Option Agreement without having obtained the prior written consent of Lowell, which may be given or withheld in Lowell’s sole and absolute discretion. Within fourteen (14) days of receiving the Title Report and the Exceptions documents, Lowell shall give written notice (the “Initial Notice”) to County of all Exceptions that Lowell shall require County to remove at or before Closing (the “Unacceptable Exceptions”). If County cannot remove or cause to be removed any one or more of the Unacceptable Exceptions County is required to remove pursuant to this subsection 4.3 at or before Closing, and County so states in a written notice delivered to Lowell within fourteen (14) days of receiving the Initial Notice (the “Reply Notice”), then Lowell may exercise any of the following rights by giving written notice to County prior to Closing: (i) Lowell may terminate this Option Agreement and pursue all remedies available to Lowell at law or in equity; or (ii) Lowell may accept title to the Property subject to any such Unacceptable Exception(s) and instruct Escrow Agent to hold in escrow and not disburse to County at Closing funds in an amount equal to at least one hundred fifty percent (150%) of the reasonably estimated cost of removing any such Unacceptable Exception(s); or (iii) pursue all remedies available to Lowell at law or in equity, including without limitation pursue County for the costs incurred by the Lowell in removing the Unacceptable Exception(s). The foregoing rights of Lowell shall not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which County is not obligated to remove or to which Lowell does not object are referred to herein as the “Permitted Exceptions.”

4.4 Approval/Disapproval of the Due Diligence Investigation. Lowell shall have the right to approve or disapprove the results of Lowell’s Due Diligence Investigation, in the exercise of Lowell’s sole and absolute discretion, by written notice delivered to County not later than the expiration of the Due Diligence Period. If Lowell does not provide written approval of the results of Lowell’s Due Diligence Investigation before the expiration of the Due Diligence Period, then Lowell shall be deemed to have disapproved the condition of the Property. In such event, this Option Agreement shall automatically terminate. Lowell may thereafter exercise any remedy available to Lowell if the condition was not approved by reason of a breach of this Option Agreement by County.

Section 5. Remedies.

5.1 Lowell’s Remedies. In the event County breaches any term or provision of this Option Agreement, and such breach is not cured after Lowell providing written notice to County of the breach and prior to Closing, then Lowell may in its sole discretion elect either or both: (i) to tender performance of the obligations of County and specifically enforce all obligations of County, or (ii) to pursue all other remedies against County available to Lowell at law or in equity.
5.2 **County’s Remedies.** In the event Lowell breaches any term or provision of this Option Agreement, and such breach is not cured after County providing written notice to Lowell of the breach and prior to Closing, and regardless of whether the breach occurs before or after Lowell exercises the Option, then County, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Option Agreement by giving Lowell written notice of termination. County acknowledges (i) the adequacy of this exclusive remedy, and (ii) that this limitation of remedies is an essential part of this Option Agreement from the perspective of Lowell. County expressly waives the right to pursue any other right or remedy at law or in equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Lowell under this Option Agreement. Lowell and County have established the foregoing remedy in favor of County because of the difficulty and inconvenience of ascertaining the actual damages County may suffer as a result of a breach of this Option Agreement by Lowell.

Section 6. **Conditions Precedent to Closing.** In addition to any other conditions contained in this Option Agreement, set forth below are certain conditions precedent for the benefit of Lowell (the “Conditions”). The Conditions are intended solely for the benefit of Lowell and Lowell shall have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice shall not constitute such a waiver. In the event any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Lowell shall have the right to terminate this Option Agreement, in its sole election, by giving County notice of termination before the deadline expires and to exercise any remedy available to Lowell in the event that the subject Condition was not satisfied by reason of a breach of this Option Agreement by County. If Lowell does not give County notice of termination before the applicable deadline, then Lowell shall be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this Section 6 are the following:

6.1 On the Closing Date, as hereinafter defined, the Title Company shall be ready, willing, and able to issue to Lowell upon recordation of the Deed, as hereinafter defined, the title insurance policy required by subsection 7.5.

6.2 On or before the Closing Date, as hereinafter defined, County shall have performed all of the covenants, conditions, agreements and promises to be performed by it under this Option Agreement and shall have confirmed all covenants, representations and warranties made by it under this Option Agreement remain true and correct as of the Closing Date.

Section 7. **Closing**

7.1 **Time and Place.** Closing of the sale and purchase of the Property (the “Closing”) shall occur on a date (the “Closing Date”) selected by Lowell, but in all events the Closing shall occur within one hundred forty (140) days after the date that Lowell sent the Exercise Notice. The escrow for the Closing shall be established at the office of the “Title Company”.

7.2 **Closing Obligations.** On or before the Closing Date, County and Lowell shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of County and Lowell.

7.2.1 **County shall deposit the following:**

(1) The conveyance document described in Section 8, duly executed and acknowledged;
(2) Duly executed assignments of Contracts and Leases, if any, subject to and in accordance with subsection 11.1.4;

(3) A duly executed affidavit certifying that County is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445 and ORS 314.258;

(4) Such documents as Lowell or the Title Company may require to evidence the authority of County to consummate this transaction; and

(5) Such other documents and funds as are required of County to close the sale in accordance with this Option Agreement.

7.2.2 Lowell shall deposit the following:

(1) The cash payment specified in subsection 3.1, less any credits available to Lowell under the terms of this Option Agreement;

(2) Such documents as County or the Title Company may require to evidence the authority of Lowell to consummate the transaction contemplated; and

(3) Such other documents and funds as are required of Lowell to close the sale and purchase of the Property in accordance with this Option Agreement.

7.3 Costs. Lowell shall pay the escrow fee of the Title Company. County shall pay the premium for the title insurance policy. Lowell and County shall each pay one-half (1/2) of all conveyance or excise taxes payable by reason of the conveyance. County shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

7.4 Prorations. All property expenses incurred by County prior to the Closing Date shall be paid by County at Closing, without proration; solely excepting therefrom real property taxes and assessments for the tax year in which the Closing occurs which taxes and assessments shall be prorated at Closing.

7.5 Title Insurance Policies. As soon as practicable after Closing, and in any event no later than seven (7) days after the Closing Date, County shall cause the Title Company to issue its standard form owner’s title insurance policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Lowell, subject only to the Permitted Exceptions.

Section 8. Conveyance. At Closing, County shall execute, acknowledge, and deliver to Lowell a Bargain and Sale Deed (the “Deed”) conveying to Lowell fee simple absolute title in the Property, subject only to Permitted Exceptions.

Section 9. Possession. Lowell shall be entitled to exclusive possession of the Property on and after the Closing Date, subject to the rights of tenants in possession.

Section 10. Covenants of County. County acknowledges that the covenants of County contained in this Option Agreement, including the covenants contained in this Section 10 (the “Covenants”), are material inducements to Lowell to enter into this Option Agreement. The Covenants specifically delineated in this section are the following:

10.1 Information. County agrees to deliver to Lowell, within seven (7) days after the
Effective Date, photocopies or electronic copies of all existing documents related to the use or ownership of the Property that County possesses, including (without limitation) all rental and lease agreements (collectively, “Leases”), studies, reports, aerial photographs and other documents of a like nature.

10.2 Maintenance. Before the Closing Date, County shall maintain the Property in the same or better condition as it exists as of the Effective Date and shall not cause or permit any waste. In the event County performs or causes to be performed before the Closing Date any predevelopment site work that changes the condition of the Property, Lowell, in its sole discretion, may either approve such changes or require County, prior to the Closing Date and at County’s sole cost and expense, to restore the Property to the same condition as existed as of the Effective Date.

10.3 Ownership. As of the Effective Date, there are no leases or other agreements granting any type of ownership, possessory, or occupancy interest in any person or entity. During the Term, County shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it to any third party to acquire, possess or occupy all or any portion of it.

Section 11. Warranties and Representations of County – Condition of the Property. Except for the specific representations and warranties of County contained herein, Lowell agrees that Lowell is not relying and will not be relying on any representations or warranties, direct or indirect, by County or on behalf of County, oral or written, express or implied, to Lowell or any agents, representatives or employees of Lowell, with respect to the Property, its condition, its fitness or suitability for any particular purpose, its compliance with any laws or any restrictions related to the development of the Property.

11.1 Warranties. County acknowledges that the warranties and representations of County contained in this Option Agreement, including but not limited to the warranties and representations contained in this Section 11 (the “Warranties”), are material inducements to Lowell to enter into this Option Agreement. All Warranties, and Lowell’s right to assert a breach of them, shall survive execution of this Option Agreement, the Closing, and the execution and delivery of the Closing documents. If, before Closing, Lowell discovers or is advised that any of the Warranties was untrue when made or has not remained true and correct until Closing, then Lowell may terminate this Option Agreement and pursue all remedies available to Lowell at law or in equity. County warrants and represents to Lowell that the following matters are and will remain until Closing true and correct:

11.1.1 Status of County. County warrants that County is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in Internal Revenue Code §1445 and ORS 314.258.

11.1.2 Breach of Agreements. Neither the execution of this Option Agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the exercise of the Option and Closing of the transaction contemplated herein, shall constitute or will constitute a default under any other agreement or contract that relates to the Property or to which County is a party.

11.1.3 Authority. County warrants that all consents, documents, or approvals have been obtained that are necessary to the effectiveness of the grant of the Option by County.

11.1.4 Contracts; Leases. County warrants and represents to Lowell that there are and will be no maintenance contracts, service agreements, or other contracts of any nature that pertain to, cover, or affect the Property or any part of it, which cannot be terminated upon no more than thirty (30) days’ written notice (collectively, the “Contracts”). County, at its sole cost and expense, shall provide to Lowell copies of all Contracts and Leases, if any, existing as of the Effective Date as part of County’s obligations under subsection 10.1. Lowell shall determine, in its sole discretion, whether on or before
Closing and as a condition thereto, each such Contract or Lease shall be terminated or assigned to Lowell. Within fourteen (14) days of receiving copies of all of the Contracts and Leases, Lowell shall provide to County written notice of its determination. County, at County’s sole cost and expense, shall thereafter be responsible for terminating or assigning to Lowell its interest in each of the Contracts and Leases in accordance with Lowell’s determination prior to the Closing Date.

11.1.5 No Liens. At all times during the Term, County shall keep the Property free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property. If any such lien shall at any time be filed against the Property, County shall, within thirty (30) days after notice to County of the filing thereof, cause the same to be discharged. During the Term, Lowell shall have the right to post and maintain notices of non-responsibility. Such notices shall be located in such areas reasonably acceptable to County.

11.2 Changed Conditions. If County discovers that one or more of the Warranties or one of the conditions referred to in the Warranties has changed after this Option Agreement is executed, County shall immediately inform Lowell, in writing, of such discovery. If the changed condition or Warranty cannot be cured within seven (7) days of the date County discovers the change, then Lowell may either terminate this Option Agreement (and its exercise of the Option, if any) by giving written notice of termination to County within seven (7) days after receiving the notice from County. If Lowell does not so elect to terminate this Option Agreement, County shall be responsible for correcting the changed condition or Warranty. If the changed condition or Warranty can be corrected within seven (7) days after discovery by County, Lowell shall not have the right to terminate this Option Agreement pursuant to this subsection and County shall correct the changed condition or Warranty within such timeframe. If Lowell does not terminate this Option Agreement and the changed condition or Warranty is not corrected by the Closing Date, then Lowell shall have the right to instruct Escrow Agent to hold in escrow and not disburse to County at Closing funds in an amount equal to at least one hundred fifty percent (150%) of the reasonably estimated cost of correcting the changed condition or Warranty until such time as the changed condition is corrected, and County shall correct such changed condition, at County’s sole expense and in an expeditious manner. A change caused by County is deemed to be a breach of this Option Agreement by County if the change materially and adversely affects the Property or Lowell’s rights.

Section 12. Independent Investigation; AS-IS Sale.

12.1 Investigation. Lowell acknowledges and agrees that it has been given or will be given during the Due Diligence Period, a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Lowell’s choosing, including, without limitation:

12.1.1 All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes;

12.1.2 The physical condition and aspects of the Property, including, without limitation, the square footage, the structure, the seismic aspects, the paving, the utilities, if any, and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property shall include, but not be limited to, Lowell’s examination of the presence or absence of Hazardous Substances. For purposes of this Agreement, “Hazardous Substances” shall mean inflammable explosives, pollutants, contaminants, radioactive materials, asbestos, polychlorinated biphenyls, lead, lead-based paint, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, oil, or related materials, which are listed or regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.); the Clean Water Act (33 U.S.C.

12.1.3 Any easements and/or access rights affecting the Property; and

12.1.4 All other matters of material significance affecting the Property.

12.2 AS-IS Acknowledgements and Releases.

12.2.1 Lowell specifically acknowledges and agrees that County is selling and Lowell is purchasing the Property on an “AS IS WITH ALL FAULTS” basis, including but not limited to both latent and patent defects, and that Lowell is not relying on any representations or warranties of any kind whatsoever, express or implied, from County or its agents, employees, elected and appointed officials, legal counsel, departments, offices, and affiliates as to any matters concerning the Property, including without limitation such matters as: (i) the quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, the structural elements, seismic aspects of the Property, appurtenances, access, sewage, utility systems, if any; (ii) the square footage of the Property; (iii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater; (iv) the existence, absence, quality, nature, adequacy and physical condition of utilities serving the Property, if any; (v) the development potential of the Property, and the Property’s use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (vi) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (vii) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (viii) the presence of Hazardous Substances on, under or about the Property; (ix) the quality of any labor and materials used in any improvements on the Property; (x) the condition of title to the Property; (xi) the contracts or other agreements affecting the Property; and (xii) the economics of the operation of the Property.

12.2.2 Lowell acknowledges that some defects may become apparent only after the Closing Date. Lowell on behalf of itself and on behalf of its transferees and their respective successors and assigns shall, upon Closing be deemed to waive, relinquish, release and forever discharge County and its agents, employees, elected and appointed officials, legal counsel, departments, offices, and affiliates from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs and expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property including, without limitation, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, the environmental condition of the Property and all Hazardous Substances on, under, or about the Property; (ii) any environmental law; or (iii) any other matter described in this subsection 12.2.

Section 13. Waiver. Failure by County or Lowell to enforce any right under this Option Agreement shall not be deemed to be a waiver of that right or of any other right.

Section 14. Successors and Assigns. Subject to the limitations on County’s right to convey the
Property set forth elsewhere herein, the terms, warranties, covenants, conditions and representations herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of County and Lowell. With the consent of County, which shall not be unreasonably refused, Lowell may assign its interest in this Option Agreement and the Property to any public or private entity with the consent of County. In the event that an assignee assumes the obligations of Lowell hereunder, then Lowell shall have no further liability with respect to this Option Agreement.

Section 15. Notices. All notices required or permitted to be given shall be in writing and shall be deemed received upon personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To County: Lane County
          County Administration
          125 East 8th Avenue
          Eugene, Oregon 97401

With Copy to: Lane County
              Office of County Counsel
              125 East 8th Avenue
              Eugene, Oregon 97401

To Lowell: City of Lowell
           Attn: City Administrator
           PO Box 490
           Lowell, OR 97452

With Copy to: Lane Council of Governments
              Attn: Gary Darnielle
              859 Willamette Street, Suite 500
              Eugene, OR 97401

The foregoing addresses may be changed by written notice, given in the manner described in this section.

Section 16. Attorney Fees. If litigation is instituted with respect to this Option Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.

Section 17. Risk of Loss. County shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, a material casualty loss occurs to the Property by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, County shall give Lowell written notice of such event. In such event, Lowell shall have the right to terminate this Option Agreement. If Lowell does not elect to terminate this Option Agreement, then this Option Agreement shall continue in force and, if Lowell exercises the Option and the Property is conveyed to Lowell, then all interest of County in and to any insurance proceeds or condemnation awards that may be payable to County on account of such casualty or condemnation shall be assigned to Lowell at Closing.

Section 18. Integration, Modification, Amendments. This Option Agreement, including the Exhibit attached hereto, contains the entire agreement of the parties with respect to the Property. Any modifications,
changes, additions, or deletions to this Option Agreement must be approved by both County and Lowell, in writing.

Section 19. Counterparts; Pronouns; Capitalized Terms. This Option Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall be effective when one or more counterparts have been signed and delivered by County and Lowell. With respect to any pronouns used, each gender used shall include the other gender and the singular and the plural, as the context may require.

Section 20. Governing Law; Interpretation; Severability. This Option Agreement shall be governed by the laws of the state of Oregon. The terms “day” or “days” as used means calendar day or days. The terms “business day” or “business days” means a day or days other than a Saturday, Sunday, or day on which banking institutions in Eugene, Oregon are authorized or required by law or executive order to be closed. If this Agreement requires any act to be done or action to be taken on or by a date which is not a business day, that act or action will be deemed to have been validly done or taken if done or taken on the next succeeding business day. In the event a court of competent jurisdiction holds any portion of this Option Agreement to be void or unenforceable as written, County and Lowell intend that (i) that portion of this Option Agreement be enforced to the extent permitted by law, and (ii) the balance of this Option Agreement remain in full force and effect.

Section 21. Time Is of the Essence. Time is of the essence of this Option Agreement.

Section 22. Authority to Execute. Each person executing this Option Agreement on behalf of County and Lowell, respectively, warrants his or her authority to do so.

Section 23. Statutory Disclosure. The following statement is made pursuant to ORS 93.040(2): 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 LOWELL 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.
Executed on the day and year first above written.

LANE COUNTY

By: __________________________
    Steve Mokrohisky,
    County Administrator

CITY OF LOWELL

By: __________________________
    Jeremy Caudle
    City Administrator

Attachments:
Exhibit A – Legal Description of West Boundary Road Property
EXHIBIT A - LEGAL DESCRIPTION OF WEST BOUNDARY ROAD PROPERTY

County Surplus Land (South Portion)
19-01-14
West Boundary Road, Road No. 360

A tract of land lying in the Southeast one-quarter of the Northwest one-quarter (SE ¼ NW ¼) of Section 14, Township 19 South, Range 1 West of the Willamette Meridian, Lane County, Oregon, and being a portion of that tract of land conveyed to LANE COUNTY, a political subdivision of the State of Oregon, by that certain deed recorded February 15, 1965, Recorder’s Reception Number 92323, LANE COUNTY OREGON DEED RECORDS, including portions of land bounded by the southerly and northerly extensions of Blocks 10 and 11, respectively, of the Plat of Lowell, as platted and recorded on Book 4, Page 37, in Lane County Plat Records, Lane County Oregon, being the easterly margin of Pioneer Street and the westerly margin of Hyland Street, respectively, and south of a strip of land, variable feet in width lying in County Road Number 360, Blakely Road, also known as West Boundary Road, the centerline and widths in feet being described as follows:

Beginning at Engineer’s Centerline Station L 0+00, said station being 762.06 feet South and 1118.71 feet West of the initial point of Meadows Addition to Lowell as Platted and recorded in Book 4, Page 56, Lane County Oregon Record of Plats; run thence South 68° 39' East 983.27 feet; thence on a 409.29 feet radius curve right (the long chord of which curve bears South 53° 48' 45" East 209.61 feet) a distance of 211.96 feet, thence South 38° 58' 30" East, 30.37 feet; thence on a 572.96 feet radius curve (the long chord of which bears South 47° 57' 53" East 179.06 feet) a distance of 179.79 feet, then South 56° 57' 15" East, 229.25 feet to Engineer’s Centerline Station L16+34.64.

The widths in feet of the strip of land herein described are as follows:

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<thead>
<tr>
<th>STATION TO STATION</th>
<th>NORTH SIDE OF CENTERLINE</th>
<th>SOUTH SIDE OF CENTERLINE</th>
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<td>L 0+00.00</td>
<td>L 10+08.66 POC</td>
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<td>L 10+08.66</td>
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EXCEPT all that land conveyed to Stan Mansfield and Aulber Carter by that certain deed recorded June 7, 1989, Recorder’s Reception Number 24411, LANE COUNTY OREGON DEED RECORDS;

The tract of land to which this description applies contains 8,624 square feet, more or less, exclusive of existing right of way.
Lane County, a political subdivision of the State of Oregon, pursuant to Order No. __________ of the Board of County Commissioners of Lane County, hereinafter called Grantor, for the true and actual consideration of $47,500 Dollars, conveys to City of Lowell, a municipal corporation of the State of Oregon, hereinafter called Grantee, all that real property situated in Lane County, State of Oregon, described as follows:

See Attachments A and B

Grantee, by acceptance of this grant, hereby declares and otherwise agrees that Grantee shall indemnify, hold harmless and defend the Grantor, its officials, agents and employees, from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising in and from Grantee acceptance and use of the subject property, unless such claims, damages, or losses are caused by Grantor's negligent or intentional act(s).

Containing a total of 0.20 acres, more or less.

Subject to existing right of way, assessments, easements, restrictions, and reservation of record, if any.

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.
IN WITNESS WHEREOF, the undersigned have executed this instrument this __________ day of __________________, 2022.

LANE COUNTY, a political subdivision of the State of Oregon

______________________________________
Steve Mokrohisky,
County Administrator

This instrument was acknowledged before me on ________________________, 2022 by STEVE MOKROHISKY, who is the COUNTY ADMINISTRATOR of LANE COUNTY, a political subdivision of the State of Oregon, on behalf of Lane County by authority of its Board of Commissioners

______________________________________
Notary Public for Oregon

My Commission Expires: ____________________

This conveyance is accepted and approved for recording on behalf of the City of Lowell pursuant to ORS 93.808.
ATTACHMENT A
LEGAL DESCRIPTION
County Surplus Land (South Portion)
19-01-14
West Boundary Road, Road No. 360

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ATTACHMENT B

NW 1/4, SEC. 14, T19S, R1W, W.M.

PUBLIC ROAD ESSENTIAL per Board Order dated
Feb. 13, 1965, filed in Commissioner's Journal
Reel 25, Page 885. Also see R445/73351.

North Shore Drive
(Blakely Road, County Road #360)

West Boundary Road
(Blakely Road, County Road #360)

South Portion Sale to City of Lowell

Print Schedule
No. 1 of 1

LAMIE COUNTY DEPARTMENT OF PUBLIC WORKS
WEST BOUNDARY ROAD
PROPOSED DISPOSITION OF COUNTY OWNED PROPERTY
TO THE CITY OF LOWELL

PEGGY KEPPLER
COUNTY ENGINEER

DAN HURLEY
DIRECTOR OF PUBLIC WORKS

COUNTY ROAD LEGAL NO. 360
MAINTENANCE NO. M-6270
SCALE: 1:40
SHEET 1 OF 1