ORDER / IN THE MATTER OF
AUTHORIZING THE COUNTY
ADMINISTRATOR TO SIGN A PURCHASE
AND SALE AGREEMENT FOR THE
CONVEYANCE OF COUNTY OWNED
REAL PROPERTY, MAP NO. 15-04-16-00-
01200, NEAR HARRISBURG, OREGON, TO
WILLAMETTE RIVERKEEPER

WHEREAS, Lane County is the legal owner of record of the following Real Property:

Beginning at a point 60 rods North of the SE corner of the SE quarter of the SW quarter of Section 16, Township 15 S, Range 4 W of the Willamette Meridian, thence North 40 rods, thence East to the West line of Lot 11 in said Section, thence Southerly along said West line to a point due East of beginning, thence West to the place of beginning. Also: Lot 11 of Section 16. Also: 19.68 acres and 4.0 acres by accretion, revised county lines for Linn, Benton, Lane, Marion and Polk Counties based on 1/8/03 Middle of Willamette River DOR File No. 22460-2003; and

WHEREAS, the Property, which was deeded to Lane County on August 27, 1927, due to failure to pay property taxes, is an approximately 50-acre island in the Willamette River, subject to periodic flooding, with most areas only accessible by watercraft; and

WHEREAS, Willamette Riverkeeper, an Oregon public benefit corporation, has proposed to acquire and manage the Property at no cost, to benefit river health and the general public, with access for public recreation and has agreed to the restrictions and provisions as stated in ORS 271.330; and

WHEREAS, ORS 271.330 grants public agencies express power to convey real property to a non-profit corporation for the creation of open space, parks or natural areas for perpetual public use, including without consideration of property held by counties as a result of tax foreclosures; and

WHEREAS, the County has prepared a Purchase and Sale Agreement to outline the details of conveyance of the above referenced property to Willamette Riverkeeper, a copy of which is attached to this Order as Exhibit A;
NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. The County Administrator is authorized to sign the Purchase and Sale Agreement, which outlines the conveyance of the Property to Willamette Riverkeeper.
2. The County Administrator is authorized to sign the conveyance documents necessary to change ownership to Willamette Riverkeeper.

ADOPTED this 21st day of June, 2022.

____________________________________
P a t  F a r r ,  C h a i r  
Lane County Board of Commissioners
PURCHASE AND SALE AGREEMENT

FOR PROPERTY ON ISLAND IN WILLAMETTE RIVER
NEAR HARRISBURG, OREGON

DATE: June 14, 2022

FROM: Lane County,
a political subdivision of the State of Oregon,
by and through its Department of County Administration

TO: Willamette Riverkeeper,
an Oregon public benefit corporation

County and Riverkeeper are each a “party,” and are collectively referred to in this Agreement as the “parties.”

RECITALS

A. County owns fee simple title to an approximately 50 acre parcel of real property acquired by tax foreclosure on August 27, 1927, and described as Lane County Assessor’s Tax Map and Lot number 15-04-16- 00-01200 (the “Property”).

B. The Property is on an island in the Willamette River, subject to periodic flooding, outside effective management and control of County, and County is unable to monitor activities on the Property, which may lead to negative impacts on the river system.

C. Riverkeeper proposes to acquire and manage the Property to benefit river health and the general public, with access for public recreation.

D. ORS 271.330 grants public agencies express power to convey real property to a nonprofit corporation for the creation of open space, parks or natural areas for perpetual public use, including transfers without consideration of property held by counties as a result of tax foreclosures.

E. County desires to relinquish title of the Property to Riverkeeper without charge pursuant to ORS 271.330 for the creation of open space, parks, or natural areas for perpetual public use, with a reversionary interest retained by the County pursuant to ORS 271.335.

F. Riverkeeper has agreed to utilize and maintain the Property as a natural area and maintain access for the public, in accordance with the requirements of ORS 271.330.

G. County and Riverkeeper recognize that the intended use of the Property is charitable and anticipate that the Property will qualify for an exemption from property taxes under ORS 307.130 or another applicable property tax exemption.

H. County and Riverkeeper enter into this Purchase and Sale Agreement to set forth their mutual understandings regarding the transfer of title to the Property.
AGREEMENT

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

Section 1. The Property. The Property is more particularly described in Exhibit A, which is attached to this Agreement and incorporated herein by this reference.

Section 2. Term. The initial term of this Agreement commences on the Effective Date and will continue through December 31, 2022, unless extended or earlier terminated by agreement of the parties.

Section 3. Purchase Price. In exchange for Riverkeeper’s agreement to utilize and maintain the Property as a natural area for public benefit as provided in this Agreement, County will transfer title to the Property at no cost, for $0.

Section 4. Property Investigation.

4.1 Due Diligence Period. The term “Due Diligence Period” means a period of sixty (60) days commencing on the Effective Date.

4.2 Access to Information and the Property. At all times during the Due Diligence Period, Riverkeeper will have the right to conduct investigations of the Property (“Due Diligence Investigation”) which may include, physical inspections of the Property, such as soil, geological, environmental, engineering and any other assessments and tests Riverkeeper, in its sole discretion, deems necessary or desirable. As of the Effective Date, County grants to Riverkeeper 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 Riverkeeper may deem necessary or appropriate in connection with its acquisition of the Property. Riverkeeper will bear the cost of all tests and studies undertaken.

4.3 Title. Not later than seven (7) days following the commencement of the Due Diligence Period, County will provide Riverkeeper with a preliminary title report (the “Title Report”) covering the Property. The Title Report must 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 must be accompanied by legible copies of all plats and special exceptions to title referenced in the Title Report (the “Exceptions”). County must 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 Agreement without having obtained the prior written consent of Riverkeeper, which may be given or withheld in Riverkeeper’s sole and absolute discretion. Within fourteen (14) days of receiving the Title Report and the Exceptions documents, Riverkeeper must give written notice (the “Initial Notice”) to County of all Exceptions that Riverkeeper will 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 Riverkeeper within fourteen (14) days of receiving the Initial Notice (the “Reply Notice”), then Riverkeeper may exercise any of the following rights by giving written notice to County prior to Closing: (i) Riverkeeper may terminate this Agreement and pursue all remedies available to Riverkeeper at law or in equity; or (ii) Riverkeeper may accept title to the Property subject to any such Unacceptable Exception(s). Exceptions that are shown on the Title Report and to which County is not obligated to remove or to which Riverkeeper does not object are referred to herein as the “Permitted Exceptions.”
4.4 Approval/Disapproval of the Due Diligence Investigation. Riverkeeper will have the right to approve or disapprove the results of Riverkeeper’s Due Diligence Investigation, in the exercise of Riverkeeper’s sole and absolute discretion, by written notice delivered to County not later than the expiration of the Due Diligence Period. If Riverkeeper does not provide written approval of the results of Riverkeeper’s Due Diligence Investigation before the expiration of the Due Diligence Period, then Riverkeeper will be deemed to have disapproved the condition of the Property. In such event, this Agreement will automatically terminate. Riverkeeper may thereafter exercise any remedy available to Riverkeeper if the condition was not approved by reason of a breach of this Agreement by County.

Section 5. Conditions Precedent to Closing. County and Riverkeeper must have performed all of the covenants, conditions, agreements and promises to be performed by that party under this Agreement and must have confirmed all covenants, representations and warranties made by it under this Agreement remain true and correct as of the Closing Date.

Section 6. Remedies. In the event either party breaches any term or provision of this Agreement, and such breach is not cured after the other party has provided notice to the breaching party written notice of the breach, then the non-breaching party may in its sole discretion elect to terminate this Agreement.

Section 7. Closing

7.1 Time and Place. Closing of the sale and purchase of the Property (the “Closing”) must occur on a date (the “Closing Date”) mutually agreeable to the parties, but in all events the Closing must not later than December 31, 2022.

7.2 Title Insurance Policies. No title insurance policy will be provided by County.

7.3 Conditions Precedent to Closing. In addition to all other conditions set forth in this Agreement, Riverkeeper’s obligation to proceed with the Closing is subject to all of the following conditions, which are intended solely for the benefit of Riverkeeper, any or all of which Riverkeeper will have the right to waive by written notice, at Purchaser’s sole discretion:

7.3.1 County’s timely compliance with each of its obligations, covenants, and agreements set forth in this Agreement.

7.3.2 The accuracy and completeness in all material respects of each of County’s representations and warranties as of the Effective Date of this Agreement and the Closing Date.

7.3.3 No administrative or judicial proceeding has been commenced as of the Closing Date that seeks to prevent or restrain the consummation of the transaction contemplated by this Agreement or that would adversely affect the Conservation Property or its use.

7.3.4 As of the Closing Date, there have been no material adverse change in the physical and environmental condition of the Conservation Property.

7.4 Closing Obligations. On or before the Closing Date, County and Riverkeeper must provide the following documents to one another.
7.4.1 County will provide the following:

(a) The conveyance document described in Section 8, duly executed and acknowledged;
(b) Such documents as Riverkeeper may require to evidence the authority of County to consummate this transaction; and
(c) Such other documents as are required of County to close the sale in accordance with this Agreement.

7.4.2 Riverkeeper will provide the following:

(a) Such documents as County may require to evidence the authority of Riverkeeper to consummate the transaction contemplated; and
(b) Such other documents and funds as are required of Riverkeeper to close the sale and purchase of the Property in accordance with this Agreement.

7.5 Costs. Riverkeeper will pay for recording the conveyance documents referred to herein.

Section 8. Conveyance. At Closing, County will execute, acknowledge, and deliver to Riverkeeper a statutory Quitclaim Deed (the “Deed”) conveying to Riverkeeper fee simple absolute title in the Property, subject only to Permitted Exceptions and the following statutory restrictions and provisions:

8.1 A restriction on the use of the Property that limits the uses of the Property to open space, parks, or natural areas for perpetual public use in accordance with ORS 271.330;

8.2 A provision for the reversion of the Property to County if the Property is not used in conformance with the restriction in subsection 8.1 of this Agreement;

8.3 A provision that, providing Riverkeeper has complied with its obligation to manage the property in accordance with the terms of this Agreement in the period subsequent, County will anticipate waiving and relinquishing County’s reversionary interest after 20 years, in accordance with ORS 271.335.

Section 9. Possession. Riverkeeper will be entitled to exclusive possession of the Property on and after the Closing Date.

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

10.1 Information. County agrees to deliver to Riverkeeper, 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.

10.2 Maintenance. Before the Closing Date, County will maintain the Property in the same or better condition as it exists 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 may 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, Riverkeeper agrees that Riverkeeper 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 Riverkeeper or any agents, representatives or employees of Riverkeeper, 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 of the County.

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 Agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the Closing of the transaction contemplated herein, 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 from County.

11.1.4 No Liens. At all times during the Term, County will 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.

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 Agreement is executed, County will immediately inform Riverkeeper, 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 Riverkeeper may terminate this Agreement by giving written notice of termination to County within seven (7) days after receiving the notice from County.

Section 12. Independent Investigation; AS-IS Sale.

12.1 Investigation. Riverkeeper 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 Riverkeeper'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 area, the seismic aspects, and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property will include, but not be limited to, Riverkeeper's examination of the presence or absence of Hazardous Substances. For purposes of this Agreement,

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 RIVERKEEPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT COUNTY IS SELLING AND RIVERKEEPER IS PURCHASING THE PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS, INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS, AND THAT RIVERKEEPER 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 or the adjoining or neighboring 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 Riverkeeper acknowledges that some defects may become apparent only after the Closing Date. Riverkeeper on behalf of itself and on behalf of its transferees and their respective successors and assigns will, 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, ventilation, 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. To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, the parties agree to indemnify, defend, and hold each other, their agents, officers and employees, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the other party’s negligence in the performance of or failure to perform under this Agreement. Neither party to this Agreement will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of its own officers, employees or agents.

Section 14. Taxes. County will remain responsible for the payment of all property taxes and assessments (including, without limitation, all supplemental and deferred taxes and assessments) levied against the Property arising between the Effective Date and the Closing Date.

Section 15. Good Faith and Fair Dealing. The parties agree to act in good faith and with fair dealing with one another in the execution, performance, and implementation of the terms and provisions of this Agreement. Whenever the consent, approval, or other action of a party is required under any provision of this Agreement, the consent, approval, or other action will not be unreasonably withheld, delayed, or conditioned by a party unless the provision in question expressly authorizes the party to withhold or deny consent or approval or decline to take action in accordance with a different standard, in which case the consent or approval or the decision to not take action may be withheld, delayed, or conditioned in accordance with the different standard.

Section 16. Waiver. Failure by County or Riverkeeper to enforce any right under this Agreement will not be deemed to be a waiver of that right or of any other right.

Section 17. 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 will be binding on and inure to the benefit of the heirs, successors, and assigns of County and Riverkeeper. Riverkeeper may not assign its interest in this Agreement or the Property to any public or private entity without the express written consent of County.

Section 18. Notices. Each of the parties designates the following individuals as its authorized representative for this Agreement. Either party may designate a new authorized representative by written notice to the other.

To County: Lane County
Property Manager
125 East 8th Avenue
Eugene, Oregon 97401
Kellie.J.Hancock@lanecountyor.gov

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

To Riverkeeper: Willamette Riverkeeper
Travis Williams
403 SE Caruthers St.
Portland, Oregon 97214
Travis@willametteriverkeeper.org
Any notice, demand, consent, approval, or other communication to be given under this Agreement must be in writing and provided by email addressed to the party’s authorized representative, except as provided below in this section. However, if, in either party’s discretion, email is not the most appropriate method for providing notice, then notice may be provided by personal delivery; certified mail, postage prepaid, return receipt requested; or nationally recognized overnight courier. The effective date of notice will be: for notice by email, the date and time sent if sent between the hours of 8 am and 5 pm, otherwise effective at 8am the following Business Day; for notice delivered in person, the date and time of delivery; for notice by U.S. mail, three days after the date of certification; and for notice by overnight courier, the next business day after deposit with the courier.

Section 19. Risk of Loss. County will bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, 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 will give Riverkeeper written notice of such event. In such event, Riverkeeper will have the right to terminate this Agreement. If Riverkeeper does not elect to terminate this Agreement, then this Agreement will continue in force.

Section 20. Integration, Modification, Amendments. This 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 Agreement must be approved by both County and Riverkeeper, in writing.

Section 21. Counterparts; Pronouns. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same Agreement and will be effective when one or more counterparts have been signed and delivered by County and Riverkeeper.

Section 22. Authority to Execute. Each person executing this Agreement on behalf of County and Riverkeeper, 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 RIVERKEEPER 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

WILLAMETTE RIVERKEEPER

By: ________________________________

Travis Williams
Executive Director

Attachments:

Exhibit A – Legal Description of the Property
EXHIBIT "A"

LEGAL DESCRIPTION

Begin at a point 60 rods North of the SE corner of SE 1/4 of SW 1/4, Section 16, Township 15 South, Range 4 West of the Willamette Meridian, in Lane County, Oregon; run thence North 40 rods; thence East to the West line of Lot 11 in said Section; thence Southerly along the West line to a point due East of the place of beginning; thence West to the point of beginning.

ALSO: Lot 11 in Section 16, Township 15 South, Range 4 West of the Willamette Meridian, in Lane County, Oregon.

ALSO: 19.68 acres and 4.0 acres by Accretion Revise County Lines for Linn, Benton, Lane, Marion & Polk Counties Based on 1/8/03 MIDDLE OF WILLAMETTE RIVER DOR File No. 22-460-2003.