

**BEFORE THE CITY COUNCIL
FOR THE CITY OF LAFAYETTE, OREGON**

**A RESOLUTION TO AUTHORIZE PURCHASE)
OF REAL PROPERTY IDENTIFIED AS LOTS 1) RESOLUTION 2015-15
AND 2, TOWN OF LAFAYETTE FOR PUBLIC)
PURPOSES, SPECIFICALLY CONSTRUCTION)
OF A FIRE STATION AND RELATED FACILITIES)**

THE CITY COUNCIL (the "Council") OF THE CITY OF LAFAYETTE, OREGON (the "City") sat for the transaction of City business on December 10, 2015, at 6:30 p.m. in the Council Chambers at City Hall and considered and approved this Resolution.

WHEREAS, the City is in need of upgrading and expanding civic center facilities to include a Fire Station or a combination Fire Station and City Hall; and

WHEREAS, the City was authorized by Resolution 2015-12 to review potential sites for expansion of city facilities and to negotiate with the current owners in good faith for the acquisition at fair market value of such properties that are determined to be needed for the stated public purposes; and

WHEREAS, the City has determined that the following properties are best suitable for purchase:

*Lot 2, Block 6, TOWN OF LAFAYETTE,
in the County of Yamhill, State of Oregon*

435 E. 4th Street, Lafayette, OR 97217, Tax Lot 8100, Map 4.3.06CC, 8,000 sq ft
Owner: Donald K. Leard and Janice S. Leard, as Tenants by the Entirety

*Lot 1, Block 6, ORIGINAL TOWN OF LAFAYETTE,
in the County of Yamhill, State of Oregon*

388 N. Jefferson Street, Lafayette, OR 97217, Tax Lot 8101, Map 4.3.06CC, 8,000 sq ft
Owner: Don Leard

Which lots are hereinafter collectively referred to as the "Subject Property" and;

WHEREAS City staff has diligently negotiated with the property owner; has consulted with the Council in Executive Session, and has ultimately reached an agreement for the purchase of the Subject Property contingent upon final approval by this Resolution from the Council; and

WHEREAS the City engaged a real estate appraiser to assist in the determination of the fair market value of the Subject Property, which appraisal provided background information used by the City in its negotiations; and

WHEREAS the Subject Property has dwelling units on each lot that are in disrepair, but which have been income generating for the owner; and

WHEREAS the owners of the Subject Property are willing to sell to the City, which allows the City to avoid having to acquire the Subject Property by eminent domain with its high costs and attendant risks of having to pay not only for the Subject Property, but also for the owners' attorney fees, in addition to the attorney fees incurred by the City on its own behalf; and

WHEREAS the Subject Property is located in close proximity to City Hall, the existing Fire Department, and other City-owned property, which adds a premium to the value attained by the City in acquiring these particular lots; and

WHEREAS the Subject Property is located in the downtown core area, and its enhancement by ultimately replacing the current properties in disrepair with a new Fire Station and related facilities would promote revitalization of the downtown core, and affirm the City's commitment to such downtown revitalization and the development of a civic center facilities; and

WHEREAS City representatives and the property owner have negotiated a Sale Agreement and Receipt of Earnest Money which establishes the terms and conditions of the sale, a copy of which is attached hereto as Exhibit A, subject to ratification and approval by the Council.


NOW, THEREFORE, BE IT RESOLVED by the Council for the City of Lafayette as follows:

1. The City is authorized to acquire the Subject Property on the terms and conditions specified in the Sale Agreement and Receipt for Earnest Money attached hereto as Exhibit A; and
2. Mayor Chris Pagella and/or the City Administrator Preston Polasek are authorized to execute all documents for closing the property purchase; and
3. Funds for the purchase shall be expended from budgeted monies in the General Fund.
4. This Resolution shall be and is effective from and after its passage by the Council.

INTRODUCED AND APPROVED THIS 10th DAY OF December, 2015 by a vote of

VOTE : Ayes: 5 Nays: 0 Abstentions: 0 and Absent: 1.

CERTIFIED:


Chris Pagella, Mayor

ATTESTED:


Angela Speier, Assistant City Administrator

Attachment: Exhibit A, Sale Agreement and Receipt for Earnest Money

EXHIBIT A
to Council Resolution 2015-15

**SALE AGREEMENT AND
RECEIPT FOR EARNEST MONEY**

THIS AGREEMENT IS MADE this 10 day of December, 2015, by and between DONALD K. LEARD individually, and DONALD K. LEARD and JANICE S. LEARD, as Tenants by the Entirety, hereinafter collectively referred to as "Seller," and the CITY OF LAFAYETTE, hereinafter collectively referred to as "Buyer."

WHEREAS Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property and improvements which are identified as follows:

Parcel No. 1

*Lot 2, Block 6, TOWN OF LAFAYETTE,
in the County of Yamhill, State of Oregon*
435 E. 4th Street, Lafayette, OR 97217, Tax Lot 8100, Map 4.3.06CC, 8,000 sq ft
Owner: Donald K. Leard and Janice S. Leard, as Tenants by the Entirety

Parcel No. 2

*Lot 1, Block 6, ORIGINAL TOWN OF LAFAYETTE,
in the County of Yamhill, State of Oregon*
388 N. Jefferson Street, Lafayette, OR 97217, Tax Lot 8101, Map 4.3.06CC, 8,000 sq ft
Owner: Don Leard

Which parcels, and the structures thereon are hereinafter collectively referred to as the "Property." This sale includes all the personal property located therein, including window and floor coverings, appliances and fixtures.

* * * W I T N E S S E T H * * *

FOR AND IN CONSIDERATION OF the mutual promises, covenants, and obligations contained herein, the parties do hereby agree as follows:

1. Sale and Purchase. Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$340,000.00 (the "Purchase Price").

2. Earnest Money. Seller hereby acknowledges receipt of the sum of \$5,000.00 paid by Buyer as earnest money in the form of a Promissory Note, a copy of which is attached hereto. The earnest money Note shall be redeemed on the Closing Date and shall be applied to the Purchase Price.

3. Payment of Purchase Price. The Purchase Price shall be paid as follows:

3.1 At closing, the earnest money shall be credited to the Purchase Price.

3.2 At closing, Buyer shall pay the balance of the purchase price in cash.

4. Closing. Closing shall take place on or before the 31st day of January, 2016 (the "Closing Date"), at the offices of TICOR Title, 105 NE 4th St, McMinnville, OR 97128, Phone: 503-472-6101. Each party shall pay one-half of the escrow fee and one-half of any applicable transfer or documentary stamp taxes.

5. Preliminary Title Report. Within 10 days after full execution of this Agreement, Seller shall furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have 10 days from receipt of the Title Report to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any exceptions shown in the Title Report. Those exceptions not objected to by Buyer are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds shall be deemed Permitted Exceptions. If Buyer notifies Seller of disapproval of any exceptions, Seller shall have 15 days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 15 days after expiration of such 15-day period, in which event the earnest money shall be refunded to Buyer and this Agreement shall be null and void.

6. Condition Precedent. Buyer's obligation to purchase the Property is contingent upon approval of this Agreement by the City Council of the City of Lafayette.

7. Deed. On the Closing Date, Seller shall execute and deliver to Buyer a statutory warranty deed, conveying the Property to Buyer, free and clear of all liens and encumbrances except those specified herein, and the Permitted Exceptions.

8. Title Insurance. Within 15 days after closing, Seller shall furnish Buyer with an ALTA owner's policy of title insurance in the amount of the purchase price, standard form, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

9. Taxes; Prorates. Real property taxes for the current tax year, and other usual items shall be prorated as of the Closing Date.

10. Possession. Buyer shall be entitled to possession immediately upon closing.

11. Seller's Representations. Seller represents and warrants to Buyer as follows:

11.1 Seller knows of no material defects with respect to the land. The structures are sold AS-IS without representation as otherwise provided for herein.

11.2 Seller has received no written notice of any liens to be assessed against the Property.

11.3 Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property.

11.4 Seller is not a “foreign person” as that term is defined in IRC §1445. On the Closing Date, Seller will execute and deliver to Buyer a certification of non-foreign status on a form required by the IRS.

11.5 The Property has never been used for the storage or disposal of any hazardous material or waste. There are no environmentally hazardous materials or wastes contained on or under the Property, and the Property has not been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may have been located or deposited.

11.6 All representations and warranties contained in this Agreement will survive closing and the conveyance of the Property to Buyer.

11.7 No representations are being made as to the quality of the structures on the Property. Buyer has inspected the Property and is buying the Property based on its own inspections and not in reliance on any representations of the Seller.

12. Binding Effect/Assignment Restricted. This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Buyer will not assign its rights under this Agreement without Seller’s prior written consent.

13. Remedies. TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT. If the conditions described in section 6 above are satisfied or waived by Buyer and the transaction does not thereafter close, through no fault of Seller, before the close of business on the Closing Date, Buyer shall forfeit the earnest money deposit to Seller as liquidated damages. If Seller fails to deliver the deed described in section 7 above on the Closing Date or otherwise fails to consummate this transaction, the earnest money shall be refunded to Buyer.

14. Attorney Fees. In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

15. Notices. All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set out below. Any notice so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

16. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

17. Applicable Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

18. Acceptance. This Agreement shall be null and void unless accepted by Seller, by Seller’s execution of it, on or before the 15th day of December, 2015.

19. ORS Disclaimer. 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.

SELLER:

BUYER:



Donald K. Leard

City of Lafayette, Oregon

By: 

Chris Pagella, Mayor



Janice S. Leard

EXHIBIT A
to Sale Agreement and Receipt for Earnest Money

PROMISSORY NOTE
(For Earnest Money)

\$5,000.00

December 10, 2015

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF LAFAYETTE does hereby promise to pay to the order of DONALD K. LEARD and JANICE S. LEARD, the sum of Five Thousand Dollars (\$5,000.00) with interest thereon at the rate of six percent (6%) per annum from the date of this note until paid in full.

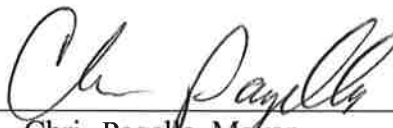
This note is due and payable at closing of the real property sale transaction between the parties hereto. In the event of closing of this transaction, all accrued interest shall be forgiven.

This note is intended to be a deposit of earnest money in the above-referenced transaction, and shall be subject to the terms and conditions of that agreement, a copy of which is attached hereto.

If this note is placed in the hands of an attorney for collection, we promise and agree to pay holder's reasonable attorneys fees, costs, disbursements and other collection costs, even though no suit or action is filed hereon; if a suit or action is filed, the amount of such reasonable attorneys fees shall be fixed by the court or courts in which the suit or action, including any appeal therein, is tried, heard, or decided.

BUYER:

City of Lafayette, Oregon

By: 
Chris Pagella, Mayor