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**MULTNOMAH COUNTY  
AGENDA PLACEMENT REQUEST**

(Revised: 09/23/13)

**Board Clerk Use Only**

**Meeting Date:** 4/12/18  
**Agenda Item #:** R.10  
**Est. Start Time:** 11:10 am approx.  
**Date Submitted:** 4/5/18

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**Agenda Title:** **Acceptance of Revised Offer from Kehoe Northwest Properties, LLC, for Purchase of Wapato Facility**

*Note: Title should not be more than 2 lines but sufficient to describe the action requested. Title on APR must match title on Ordinance, Resolution, Order or Proclamation.*

**Requested**

**Meeting Date:** April 12, 2018      **Time Needed:** 30 minutes

**Department:** County Assets (DCA)      **Division:** Facilities & Property Management (FPM)

**Contact(s):** Ken Elliott, Asst. County Attorney, X87604

**Phone:** 503.988.7604      **Ext.** X87604      **I/O Address:** 503/500

**Presenter**

**Name(s) & Title(s):** Sherry Swackhamer, Director DCA; Ken Elliott, Asst. County Attorney

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**General Information**

**1. What action are you requesting from the Board?**

Consideration of a notice of termination and demand for refund of Earnest Money from Kehoe Northwest Properties, LLC (Kehoe) dated March 23, 2018, which was accompanied by a written counteroffer to reduce the purchase price from \$10.8 million to \$5 million and to grant Kehoe an exclusive option to purchase the Property on or before April 20, 2018, at 5 PM. A copy of the notice letter is attached hereto as Exhibit 1. The Board may accept the counteroffer, reject the counteroffer, or propose additional terms and conditions of accepting the counteroffer.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

On November 9, 2017, the Board of Commissioners approved Resolution No. 2017-093, a copy of which is attached hereto as Exhibit 2 (Resolution), declaring the County's Wapato Detention Facility, located at 14355 N Bybee Lake Court, Portland, and 18.4 acres of County-owned industrial land in the Rivergate Industrial Park (collectively, Wapato or the Property)

to be surplus property. The Resolution also approved sale of the Property to Kehoe, in accordance with the terms and conditions set forth in an Agreement of Purchase and Sale (Sale Agreement) attached as Exhibit A to the Resolution.

The Resolution authorized the Chair to execute all documents necessary to complete the sale of the Property "substantially consistent with the Sale Agreement." The Resolution also directed the Director of the Department of County Assets (DCA), the Director of DCA's Division of Facilities & Property Management, the County Attorney, and the Chief Financial Officer to coordinate with the Chair's Office to satisfy all conditions of the Sale Agreement needed to ensure a timely closing.

The Port of Portland's (Port) Special Warranty Deed conveying the Wapato Property to the County in 2001 contains several restrictive covenants. Covenant #3 requires the County to notify the Port in writing if the County intends to sell the Property. Covenant #3 also requires the County and the Port to negotiate in good faith for a period of one hundred twenty (120) days for the Port's purchase of the Property, unless the Port notifies the County that the Port is not interested in buying the Property.

On November 9, 2017, the County and Kehoe executed the Sale Agreement in the form attached as Exhibit A to the Resolution. By an agreement recorded November 16, 2017, in the Multnomah County Official Records as Instrument #2017-138664, the Port waived its First Opportunity to Purchase the Property and the deed restriction limiting use of the Property to a Corrections Facility. The Port also authorized the sale to Kehoe for a warehouse, distribution or other industrial facility, consistent with the industrial uses of the Rivergate Industrial District, and contingent on the sale closing on or before June 30, 2018.

On January 2, 2018, Kehoe notified the County of its election to extend the Due Diligence Period by thirty (30) days, from January 8<sup>th</sup> through February 7<sup>th</sup> as provided in Paragraph 3 of the Sale Agreement. Prior to expiration of the Due Diligence Period, as extended, Kehoe asked the County to grant an additional forty five days to complete its economic feasibility study, and the parties entered into a First Amendment to Purchase & Sale Agreement, dated February 7, 2018, which extended the Due Diligence Period through March 26, 2018.

Kehoe's March 23<sup>rd</sup> counteroffer proposes a reduced price that is not "substantially consistent with the Sale Agreement." Accordingly, the Board must take action at a public meeting to accept the March 23<sup>rd</sup> counteroffer, reject it, or accept it subject to additional terms and conditions.

### **3. Explain the fiscal impact (current year and ongoing).**

If the County accepts Kehoe's counteroffer, the revised purchase price of \$5 million will be payable in cash at Closing, which will occur, if at all, on or before 5 PM on Friday, April 20, 2018. By Resolution #2017-094, adopted on November 9, 2017, the Board declared its intent to earmark the proceeds of the Wapato sale for use in providing housing services and funding comprehensive housing stabilization strategies. The County will also save about \$300,000 per year in maintenance costs for the Property. Wapato will be returned to the tax rolls and add industrial jobs to the local economy.

**4. Explain any legal and/or policy issues involved.**

If the County accepts the counteroffer in Kehoe's March 23<sup>rd</sup> letter, then the notice of termination and demand for refund of the Earnest Money is automatically rescinded and the parties will execute a Second Amendment to the Sale Agreement, substituting the reduced price and terms of the counteroffer.

If the County rejects Kehoe's counteroffer, the notice of termination remains in effect, Kehoe will direct the Escrow Agent to refund the Initial Earnest Money Deposit, and the County is free to consider other offers or restart marketing efforts. The County will be required to advise the Port and request another waiver.

If the County proposes additional conditions to its acceptance, Kehoe may accept those conditions, in which case the parties will proceed to execute a Second Amendment. If Kehoe rejects or asks to modify any of the terms, the parties are free to continue or cease negotiations, and the County is free to consider other offers or restart marketing efforts.

**5. Explain any citizen and/or other government participation that has or will take place.**

In 2016, the Board reviewed several unsolicited offers for purchase and redevelopment of Wapato, including public hearings considering conversion of Wapato to a homeless shelter. None of the proposals culminated in an acceptable, binding purchase and sale agreement. In 2017, FPM retained CBRE Portland to undertake nationwide marketing of Wapato, which resulted in several expressions of interest and the Purchase and Sale Agreement with Kehoe, which the Board accepted.

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**Required Signature**

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**Elected Official or Department Director:** /s/ Sherry Swackhamer, Director, Department of County Assets      **Date:** April 5, 2018

*Note: Please submit electronically. Insert names of your approvers followed by /s/ - we no longer use actual signatures. Please insert date approved.*