

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-236

Authorizing Execution of Intergovernmental Revenue Agreement 0010867 Granting to the City of Troutdale an Option for Purchase of Approximately 47 Acres of Land at Edgefield County Farm

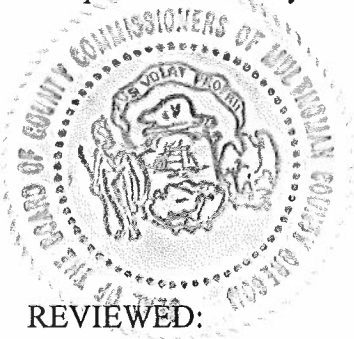
The Multnomah County Board of Commissioners Finds:

- a. Multnomah County owns the 47 acres of land (Tax Lots 100 and 1200, Section 26, T 1 N, R 3 E, W.M., Multnomah County, Oregon) within the real property commonly known as the Edgefield County Farm in the City of Troutdale as described in the attached Intergovernmental Agreement for Option to Purchase Real Estate (Agreement).
- b. Said 47 acres of land are surplus to the needs of Multnomah County.
- c. The City of Troutdale wishes to obtain an option for purchase of the land in order to provide for development of the area in which the land is located consistent with the City's planning.
- d. The purchase price upon exercise of the option granted to the City in the Agreement of \$3,713,000.00 is the appraised fair market value as of October 6, 1999.
- e. It is in the best interest of Multnomah County to sell the real property described in the Agreement before the Board this date, as provided in ORS 275.110.

The Multnomah County Board of Commissioners Resolves:

1. The Chair is hereby authorized and directed to execute the Agreement before the Board this date and any deed or other documents required for performance of the Agreement.

Adopted this 2nd day of December, 1999.

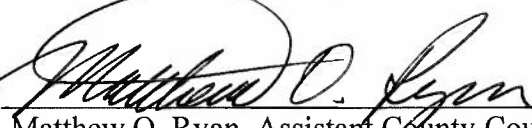


REVIEWED:

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By 
Matthew O. Ryan, Assistant County Counsel

INTERGOVERNMENTAL AGREEMENT FOR OPTION TO PURCHASE REAL ESTATE

THIS OPTION TO PURCHASE REAL ESTATE ("Agreement") is made and executed this _____ day of _____, 1999, by and between the CITY OF TROUTDALE, a municipal corporation ("Optionee"), and MULTNOMAH COUNTY ("Owner").

RECITALS

A. Owner is the owner of approximately 47 acres of real property at NE 244th Avenue and Halsey Street, in the City of Troutdale, Oregon, which property is legally described in Exhibit A (the "Property").

B. Optionee wishes to acquire an option to purchase the Property, and Owner is willing to grant such an option, on the terms and conditions of this Agreement.

AGREEMENT

In consideration of the covenants herein, the parties agree as follows:

1. **Grant of Option.** In consideration of the payment of \$35,000.00 receipt of which is hereby acknowledged by Owner, Owner grants to Optionee the sole and exclusive option ("Option") to purchase the Property.

2. **Option Terms.**

2.1 **Term.** The term of the Option (the "Term") shall commence on the date of this Agreement and shall continue for one year from the date hereof, unless extended as provided herein. The term of this Option may be extended beyond the initial term for successive periods of three months each, not to exceed four such extensions, at the election of Optionee and upon payment to Owner of the amount of \$10,000.00 for each such extension.

2.2 **Exercise of Option.** The Option shall be exercised, if at all, by written notice ("Exercise Notice") given by Optionee to Owner during the initial Term or any extension thereof, which notice shall state that Optionee has elected to exercise this Option. Upon exercise of this Option, Optionee shall, subject to the terms and conditions of this Agreement, be obligated to purchase the Property. If no Exercise Notice is given during the Term, this Agreement shall terminate, Owner shall be entitled to retain the \$35,000.00 option payment described in Section 3 and all amounts paid for extensions of the Term as described in Section 2.1, and the parties shall have no further obligations hereunder.

3. **Option Consideration; Purchase Price and Payment.** The purchase price for the Property shall be \$3,713,000 if the Option is exercised within one year from the date of this Agreement. The purchase price shall be increased by three fourths of one per cent (0.75%) for each month which elapses beyond the end of the initial Term to the exercise of this Option. The purchase price shall be paid in cash or other immediately available funds at closing. The \$35,000.00 option consideration and all amounts paid for extensions of the initial Term shall be credited against the purchase price at closing.

4. **Terms of Purchase and Sale.**

4.1. **Title Report.** Within ten (10) days after of the date an Exercise Notice is given, Owner shall order and cause to be delivered to Optionee a preliminary title report (the "Preliminary Commitment"), together with legible copies of all documents shown therein as exceptions to title, from a title company reasonably acceptable to Optionee ("Title Company"). Optionee shall have not later than thirty (30) days after receipt of the Preliminary Commitment within which to give notice in writing to Owner of any objection to such title or to any liens or encumbrances affecting the Property. If Optionee fails to raise any such objection within such thirty (30) day period, all conditions and exceptions to title set forth in such Preliminary Commitment shall be "Permitted Exceptions." If Optionee objects to an exception to title, Owner shall be obligated to notify Optionee within ten (10) days after notice of such objection whether Owner is willing to remove such exception. If Owner is willing to remove such exception, Owner shall do so at or prior to closing. If Owner is not willing to remove the objected-to exception, Optionee may, by written notice to Owner within ten (10) days after notice of Owner's unwillingness to remove such exception, terminate this Agreement, or Optionee may elect to acquire the Property subject to such exception. All exceptions described in the Preliminary Commitment and not removed or to be removed pursuant to this Section 4.1 shall be "Permitted Exceptions."

4.2. **Reports, Studies.** Within ten (10) days after of the date an Exercise Notice is given, Owner shall deliver to Optionee all of the following items relating to the Property which are in Owner's possession or available to Owner: topographical surveys, boundary surveys and all other surveys; the most recent property tax statements; all licenses, permits, approvals and entitlements issued, approved or granted by governmental authorities; all environmental, soils (including foundations), wetlands, seismic and land use reviews, reports, assessments, inspections, studies and certificates; any plans for improvements; any documentation relating to utilities, access and easements, occupation or operation of the Property; and all other documentation relating to the use of the Property. Within thirty (30) days after expiration of this Option without exercise thereof by Optionee, Optionee shall deliver to owner all of the items relating to the Property as described hereinabove which are in Optionee's possession or available to Optionee.

4.3. **Contingencies.** Upon giving an Exercise Notice, Optionee's obligation to close the sale and purchase shall be subject to the satisfaction or waiver by Optionee of all of the following conditions:

(a) Optionee's approval of title as set forth in Section 4.1 of this Agreement if required thereunder.

(b) Optionee's approval of any items disclosed in the certificate given pursuant to Section 4.4.

(c) Optionee satisfying itself within a period of thirty (30) days from the date it receives the reports and studies described in Section 4.2 as to the environmental condition of the Property, and the condition of the soils, including without limitation Optionee's satisfaction, in its sole discretion, with the results of the assessments and/or reports obtained pursuant to Section 4.2.

(d) Optionee obtaining a satisfactory commitment from McMenamins, Inc., or an affiliate thereof, within thirty (30) days from the date the Exercise Notice is given, that such entity or affiliate will purchase the Property on terms and conditions satisfactory to Optionee.

If the foregoing conditions are timely satisfied or waived, Optionee shall give Owner written notice thereof. If Optionee shall fail to give written notice to Owner of the timely satisfaction or waiver of all of the foregoing conditions, such conditions shall be deemed to have failed, this Agreement and Optionee's rights hereunder shall terminate, Owner shall be entitled to retain the option payment, and neither party shall have any further rights or obligations hereunder. If the foregoing conditions are timely satisfied or waived by notice thereof having been timely given to Owner, the sale is to close on or before thirty (30) days following the date all such conditions have been satisfied or waived.

4.4. Representations and Warranties. On the closing date, Owner shall deliver to Optionee a certificate in which Owner shall make the following representations and warranties in favor of Optionee:

(a) Except as disclosed to Optionee in writing, Owner has received no notice from any governmental agency having jurisdiction in the matter of any violation of any statute, law, ordinance, deed restriction or rules or regulations with respect to the construction, existence, maintenance or operation on or of the Property.

(b) Except as disclosed to Optionee in writing, Owner has not received any written notice from any governmental agency of any violation of any statute, law, ordinance, deed restriction, rule or regulation (including environmental laws) with respect to the Property.

(c) Except as disclosed to Optionee in writing, there are no actions, claims or proceedings pending or, to Owner's knowledge, threatened by any party against Owner in connection with the Property or against the Property.

(d) Owner has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated herein, and the individual executing this Agreement on behalf of Owner has been duly authorized to do so.

4.5. **Right of Entry.** Optionee, its authorized agents, employees and independent contractors shall have the right to enter upon the Property at reasonable times, for the purpose of making or conducting any inspection, investigation, test or survey reasonably related to the purchase of the Property or the satisfaction of Optionee's contingencies hereunder, subject to the following:

(a) Any damage to the Property shall be promptly repaired and the Property restored to the same state as existed prior to such entry.

(b) Optionee shall keep the Property free from liens in connection with any such entry.

(c) Optionee shall indemnify, defend and hold Owner harmless of and from any and all claims, demands, actions and liabilities that may arise or result from Optionee's activities on the Property in connection with any such entry.

(d) **Hazardous Materials.** Optionee shall not generate, release, store or deposit on the Property any environmentally hazardous or toxic substances, materials, wastes, pollutants, oils or contaminants, as defined by any federal, state or local law or regulation (collectively "Hazardous Substances"). Optionee shall indemnify, defend and hold harmless Owner from and against any and all claims, losses, damages, response costs and expenses of any nature whatsoever (including without limitation attorneys', experts' and paralegals' fees) arising out of or in any way related to the generation, release, storage or deposit of Hazardous Substances on the Property by Optionee, its agents or employees during the term of this Agreement.

4.6. **Closing, Escrow, Prorates.** If the conditions set forth in Section 4.3 have been timely satisfied or waived, the purchase and sale shall close on the date designated by Optionee in a written notice to Owner given at least ten (10) days before the designated closing date, but closing shall take place on or before thirty (30) days following the satisfaction or waiver of all such conditions in any event. The purchase of the Property shall be closed in escrow by the Title Company. Prior to closing, each party will deposit with the Title Company the funds, documents and instructions necessary for closing. The cost of the escrow shall be shared equally by Owner and Optionee. Current real property taxes, if any, on the Property will be prorated between the parties as of the date of closing.

4.7. **Bargain and Sale Deed, Title Insurance.** Upon closing, Owner will convey the Property to Optionee by bargain and sale deed. At closing, Owner, at Owner's expense, shall deliver to Optionee a standard title insurance policy in the amount of the total purchase price insuring title to be vested in Optionee subject only to the standard printed exceptions and the permitted exceptions. Optionee shall have the right to require an extended coverage ALTA owner's policy of title insurance. If Optionee exercises its right to require such extended coverage, then Optionee shall pay the additional premium for such coverage; provided, however, Owner agrees to fulfill any other requirements for issuance of such policy including the execution of affidavits and the like.

5. **Remedies.** If Owner breaches any term or provision of this Agreement, then Optionee may either (1) terminate this Agreement and bring an action to recover the option payment, or (2) tender performance of the obligations of Optionee, specifically enforce all obligations of Owner hereunder, and bring an action for any damages arising from any such default by Owner.

6. **Miscellaneous.** This Agreement shall be binding upon and inure to the benefit of the representatives, successors and assigns of the parties hereto. In any litigation concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees at trial and on appeal, in addition to other sums provided by law. This Agreement contains the entire agreement among the parties with respect to its subject matter and supersedes any prior agreement or understanding with respect to the subject matter hereof. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. Upon request of either party, the parties shall execute in a form sufficient for recording a memorandum of this Agreement, which may be recorded at the expense of the party requesting the same.

7. **Zoning and Land Use.** 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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

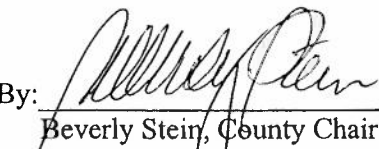
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OWNER

OPTIONEE

MULTNOMAH COUNTY

CITY OF TROUTDALE

By: 
Beverly Stein, County Chair

By: _____
Its: _____

REVIEWED:
THOMAS SPONSER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY

By: 
ASSISTANT COUNTY COUNSEL

DATE 11/22/99

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-3 DATE 12/2/99
DEB BOGSTAD
BOARD CLERK

**INTERGOVERNMENTAL AGREEMENT FOR
OPTION TO PURCHASE REAL ESTATE**

EXHIBIT A

The approximate boundaries of the Properties are shown on the attached sketch as the areas containing 15.93 acres and 41.16 acres, respectively. In the event of exercise of the Option, minor partitions will be required to create the parcels constituting the Property, which will result in final actual legal descriptions of the Property. The boundaries may vary slightly according to final determination of the areas required for the County's Animal Control facility and 242nd Avenue Connector.