

**RESOLUTION NO. 2018-55**

**RESOLUTION AUTHORIZING CITY MANAGER OR DESIGNEE TO COMPLETE PURCHASE OF FOREST GROVE RURAL FIRE PROTECTION DISTRICT'S HALF INTEREST IN PROPERTY AT THATCHER PARK**

**WHEREAS**, the City of Forest Grove (City) and the Forest Grove Rural Fire Protection District (District) each own one-half of the tax lot 1N426DD00300, an 0.96 acre parcel located at Thatcher Park in Forest Grove; and

**WHEREAS**, this property had been jointly purchased with the intent of locating a fire station to serve that area as growth occurred; and

**WHEREAS**, this site is no longer the intended location of a fire station meaning the property is surplus to the District's needs; and

**WHEREAS**, the City has been using the property as part of a dog park located at Thatcher Park and has need of the property for park use; and

**WHEREAS**, the District has agreed to sell its interest in the property to the City for its original purchase price plus closing costs.

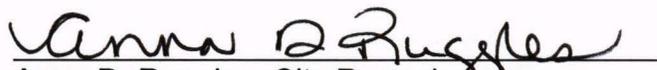
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

**Section 1.** The City Council approves the purchase of the property for \$37,760 plus closing and other acquisition costs.

**Section 2.** The City Manager or designee is authorized to complete the purchase of the property.

**Section 3.** This resolution is effective immediately upon its enactment by the City Council.

**PRESENTED AND PASSED** this 11<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 11<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
Peter B. Truax, Mayor

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the last date of signature indicated below (the “Effective Date”), by and between the Forest Grove Rural Fire Protection District, an Oregon Rural Fire Protection District organized under ORS Chapter 478 (“Seller”) and the City of Forest Grove, an Oregon Municipal Corporation (“City”).

### RECITALS

- A. Seller is the owner of an undivided one-half interest in approximately one acre of real property, together with all the improvements thereon and all rights appurtenant thereto (including but not limited to access rights, timber rights, water rights, grazing rights, development rights and mineral rights), located at Thatcher Park in the County of Washington, State of Oregon, commonly known as Tax ID 1N426DD00300, and more particularly described on the attached Exhibit A (the “Property”).
- B. City currently owns the other undivided one-half interest in the Property and desires to purchase from Seller, and Seller desires to sell and convey to the City, all Seller’s right, title and interest in the Property.
- C. The terms of this Agreement are as follows:

### TERMS

1. **Purchase and Sale.** Seller agrees to sell and convey to the City, and the City agrees to purchase from Seller, Seller’s entire interest in the Property upon the terms and conditions set forth below in this Agreement.
2. **Purchase Price.** Subject to Section 6.1.1 below, the Purchase Price for the Property is **Thirty-Seven Thousand Seven-Hundred Sixty Dollars (\$37,760.00)**, payable as follows:
  - 2.1. **Earnest Money Deposit.** Within ten (10) days after execution of this Agreement, the City shall deposit into escrow with First American Title Company (the “Title Company”) the sum of \$2,500.00 (the “Earnest Money”). The Title Company shall invest the Earnest Money in a federally insured, interest-bearing account. The accrued interest will be treated as part of the Earnest Money. If the Earnest Money is retained by Seller, Seller will receive the interest. If the Earnest Money is retained by the City, the City will receive the interest. At Closing, the Earnest Money, together with interest on it, if any, will be credited toward payment of the Purchase Price.
  - 2.2. **Balance of Purchase Price.** On or before the Closing Date (as hereafter defined), the City shall deposit into escrow with the Title Company the balance of the Purchase Price.
3. **Closing Date.** This transaction shall close no later than ninety (90) days after the Effective Date of this Agreement, unless otherwise extended as set forth herein (the “Closing Date” or “Closing”). Closing will occur at the office of the Title Company, located at 6113 NE Cornell Road, Hillsboro, Oregon.
4. **City’s Title Review.**
  - 4.1. **Title Report: Unacceptable Exceptions.** Within fifteen (15) days after the Effective Date, the City shall order from the Title Company a preliminary title report on the Property, along with legible copies of all plats and exceptions documents referenced in such report (the “Title Report”). The City will have forty-five (45) days following the later of (i) the Effective Date or (ii) the City’s receipt of the Title Report to review the Title Report and give Seller written notice of the exceptions listed in the Title Report that are unacceptable to the City (the “Unacceptable Exceptions”). Mortgages, delinquent taxes, or other financial obligations secured by the Property are automatically deemed Unacceptable Exceptions. If the City notifies Seller of its objection

to any Unacceptable Exceptions, Seller will thereafter have fifteen (15) days to provide the City written notice stating whether Seller will (at Seller's sole cost and expense) cause such exceptions to be removed from the Title Policy issued to the City at Closing. If Seller refuses to remove any of the Unacceptable Exceptions and the City is not then satisfied with the condition of title, the City may elect to terminate this Agreement, in which event the Earnest Money shall be returned to the City.

4.2. Failure to Deliver Clean Title at Closing. If Seller fails to eliminate any Unacceptable Exception by the Closing Date, then the City may, without limiting any of its otherwise available remedies, elect to either (a) accept title to the Property subject to such exceptions, (b) refuse to accept the Property and terminate this Agreement, in which case the Earnest Money shall be refunded to the City, or (c) extend the Closing Date for a period of forty-five (45) days to provide Seller with additional time to remove such exceptions. If the City elects option (c) and at the end of the 45-day period such exceptions have not been removed, the City may then elect to proceed in accordance with either option (a) or (b) described above. To the extent that an Unacceptable Exception is a monetary lien or financial obligation secured by the Property, the Title Company is hereby directed to pay off such lien or obligation to the extent that it can be satisfied by application of all or a portion of the Purchase Price delivered into escrow by the City at Closing.

4.3. Permitted Exceptions. All exceptions other than the Unacceptable Exceptions objected to by the City shall be deemed acceptable to the City (the "Permitted Exceptions"); provided, however, that in no event will mortgages, delinquent taxes, or other financial obligations secured by the Property be deemed Permitted Exceptions. Should the Title Company inform the City of any new title exceptions not appearing on the initial Title Report, such new exceptions shall be deemed Unacceptable Exceptions, unless specifically accepted in writing by the City.

## 5. **City's Due Diligence and Inspections.**

5.1. Seller's Delivery of Documents. Within fifteen (15) days after the Effective Date, Seller shall deliver to the City any and all material information and documentation in Seller's possession or control pertaining to the Property (the "Due Diligence Documents"). The Due Diligence Documents include (without limitation) copies of (a) all environmental data, studies, analyses, and reports relating to the Property or any neighboring property, (b) any existing survey of the Property, (c) any existing leases, boundary agreements, road maintenance agreements, or other contracts relating to all or a portion of the Property, (d) all topographical, geotechnical, wetlands, soils, and groundwater reports, or any other professional reports relating to the Property, (e) any well logs or water right certificates or permits relating to the Property, and (f) copies of any government permits, land use approvals or conditions, or zoning restrictions affecting the Property. If Seller is aware of the existence of any material information and documentation pertaining to the Property that are not in Seller's possession or control, Seller shall notify the City of the existence of such information within fifteen (15) days after the Effective Date or two (2) business days after learning of the such information. Should Seller fail to timely provide the City with the Due Diligence Documents, the City may, at the City's sole discretion, extend the Closing Date for a period not to exceed twenty (20) days so that the City may have adequate time to review such additional documentation.

5.2. Property and Environmental Inspections. The City and its agents, including but not limited to consultants, surveyors, engineers, home inspectors, appraisers, and other professionals hired by the City, shall have the right to access the Property to conduct environmental studies (including but not limited to Phase I and Phase II Environmental Site Assessments), structural inspections, sewer and septic system sampling, asbestos and lead testing, and any other due diligence the City deems necessary. Seller shall cooperate with the City in making such inspections. The City and its agents will have the right to enter the Property at reasonable times before Closing to perform such surveys, analyses, studies, appraisals, and other due diligence that the City deems necessary; provided, however, that the City shall give Seller forty-eight (48) hours' notice prior to entering any building located on the Property. Any area disturbed by the City's inspections shall be restored by the City, at the City's sole costs and expense, to its pre-inspection condition.

## 6. Conditions Precedent to Closing.

6.1. Conditions Precedent to City's Obligations. In addition to any other conditions contained in this Agreement, the conditions set forth in this Section 6.1 must be satisfied prior to the City's obligation to acquire Seller's interest in the Property. These conditions are intended solely for the City's benefit and the City has the sole right and discretion to waive, by written notice, any of the conditions. In the event any condition is not satisfied or waived on or before Closing, the City will have the right to terminate this Agreement, in which event the Earnest Money shall promptly be returned to the City.

6.1.1. City Approval. Prior to Closing, purchase of the Property must be approved by the Forest Grove City Council.

6.1.2. Reserved.

6.1.3. Due Diligence and Inspection Results. The City must be satisfied, in its sole and absolute discretion, with its review of the Due Diligence Documents and the results of the City's inspections of the Property conducted under Section 5.2 above. If the City notifies Seller prior to the Closing Date that the City is not satisfied with the Property due to the results of its due diligence and inspections under Section 5, the Closing Date will be automatically extended for a period of forty-five (45) days so that Seller and the City may address such results. If at the end of the 45-day period, the City and Seller have not reached an agreement regarding the issues disclosed as a result of such due diligence and inspections, the City may obtain written consent from the Seller to extend the Closing Date for an additional length of time to be determined by both parties at the time of the extension or this Agreement will automatically terminate and the Earnest Money shall be refunded to the City.

6.1.4. Title. At Closing (a) Seller shall convey fee simple title to the Property to the City in accordance with Section 7.1.1, and (b) the Title Company must be committed to issue to the Title Policy described below in Section 9 to the City.

6.1.5. Representations, Warranties, and Covenants of Seller. Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

6.1.6. No Material Changes. At Closing, there shall have been no material adverse changes related to or connected with the Property.

6.1.7. Seller's Deliveries. Seller shall have timely delivered each item to be delivered by Seller pursuant to this Agreement, including (without limitation) the documents and materials described below in Section 7.1.

6.1.8. Removal of Personal Property and Debris. Seller shall have removed or have caused to be removed from the Property, at Seller's sole cost and expense, any and all personal property, except any property specifically authorized by the City to remain on the property, as well as all trash, rubbish, debris, illegally dumped materials or illegal fill materials.

6.2. Conditions Precedent to Seller's Obligations. Closing and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the City's delivery to the Title Company on or before the Closing Date of (i) the Purchase Price and (ii) the documents and materials described below in Section 7.2.

6.3. Failure of Conditions. In the event any of the conditions set forth above in Sections 6.1 or 6.2 are not timely satisfied or waived for a reason other than the default of the City or Seller under this Agreement,

then this Agreement, escrow, and the rights and obligations of the City and Seller hereunder shall terminate and the Earnest Money shall be returned to the City.

6.4. Cancellation Fees and Expenses. In the event the escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of Seller under this Agreement, the City shall pay the cancellation charges required to be paid to the Title Company. In the event this escrow terminates because of Seller's default, Seller shall pay the cancellation charges required to be paid to the Title Company.

## **7. Deliveries to the Title Company.**

7.1. By Seller. On or before the Closing Date, Seller shall deliver the following into escrow with the Title Company:

7.1.1. Deed. A Statutory Warranty Deed (the "Deed"), duly executed and acknowledged in recordable form by Seller, conveying Seller's interest in the Property to the City free and clear of all liens and encumbrances except the Permitted Exceptions accepted by the City pursuant to Section 4 above. The Title Company's usual, preprinted exceptions (typically listed as general exceptions 1-5 on the Title Report) shall not be listed as exceptions on the Deed.

7.1.2. Nonforeign Certificate. Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. Seller shall give the City a certification to this effect in the form required by that statute and related regulations.

7.1.3. Proof of Authority. Such proof of Seller's authority to enter into this Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or the City.

7.1.4. Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Title Company in order to issue the Title Policy.

7.1.5. Other Documents. Such other fully executed documents and funds as are required of Seller to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

7.2. By City. On or before the Closing Date, the City shall deliver the following into escrow with the Title Company.

7.2.1. Purchase Price. The Purchase Price, in accordance with Section 2 above.

7.2.2. Proof of Authority. Such proof of the City's authority to enter into this Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or Seller.

7.2.3. Other Documents. Such other fully executed documents and funds as are required of the City to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

## **8. Deliveries to City at Closing.**

8.1 Right to Possession. At Closing, Seller shall deliver to the City (i) exclusive possession of the Property and (ii) keys to all improvements and personal property located on the Property that has been authorized to remain on the Property after Closing by the City.

9. **Title Insurance.** At Closing, Seller shall cause the Title Company to issue to the City a standard ALTA owner's title insurance policy in the full amount of the Purchase Price, insuring (a) fee simple title vested in the City or its nominees, subject only to the Permitted Exceptions as established under Section 4 of this Agreement and (b) unrestricted vehicular access from the Property to a public road (the "Title Policy").

10. **Closing Costs.** Seller shall pay for the Title Policy and Seller's share of prorations pursuant to Section 11 below. The City shall pay the cost of recording the Deed, all escrow fees, and the City's share of prorations pursuant to Section 11 below. The City and Seller each shall pay for its own legal and professional fees incurred. All other costs and expenses are to be allocated between the City and Seller in accordance with the customary practice in the county where the Property is located.

**11. Prorations and Taxes.**

11.1. Prorations. Any and all state, county, and/or city taxes for the current year, rents, or other income or operating expenses pertaining to the Property will be prorated between Seller and the City as of the Closing Date.

11.2. Taxes and Assessments. Seller's share of all taxes, assessments, and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by Seller at Closing. If Seller shall fail to do so, the City may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price. If the Property is subject to farm or forest deferred taxes, Seller will have no obligation or responsibility for said deferred taxes, unless the Property becomes disqualified for or loses its deferred tax status as a result of Seller's actions prior to Closing in which case such taxes shall be Seller's responsibility.

12. **Seller's Representations and Warranties.** Seller hereby warrants and represents to the City the following matters, and acknowledges that they are material inducements to the City to enter into this Agreement. Seller agrees to indemnify, defend, and hold the City harmless from all expense, loss, liability, damages and claims, including (without limitation) attorney's fees, arising out of the breach or falsity of any of Seller's representations, warranties, and covenants. These representations and warranties shall survive Closing. Seller warrants and represents to the City that the following matters are true and correct, and will remain true and correct through Closing:

12.1. Authority. Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

12.2. Unrestricted Access. The Property has unrestricted, insurable vehicular access to a public road.

12.3. Minimum Acreage: The Property is at least 0.96 acres in size.

12.4. Hazardous Substances. For purposes of this Agreement, the term "Hazardous Substances" has the meaning defined in and includes those substances set forth in ORS 465.200. Seller warrants and represents as follows:

(a) Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from, or on the Property, any Hazardous Substances in violation of any environmental laws of the federal or state government;

(b) To Seller's knowledge, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that may have at one time contained any Hazardous Substances;

(c) To Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;

(d) Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property;

(e) Seller has not transferred, and to Seller's knowledge no other person has transferred, Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and

(f) There are no proceedings, administrative actions, or judicial proceedings pending or, to Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

12.5. Encroachments. To Seller's knowledge (a) all structures and improvements, including any driveways and accessory structures, are wholly within the lot lines of the Property, (b) no existing building, structure, or improvement of any kind encroaches upon the Property from any adjacent property, and (c) there are no present or past discrepancies or disputes regarding the boundaries of the Property.

12.6. Rights and Contracts Affecting Property. Except for this Agreement, Seller has not entered into any other contracts for the sale of Seller's interest in the Property, nor do there exist any rights of first refusal or options to purchase Seller's interest in the Property. Except for those exceptions of record listed on the Title Report, Seller owns Seller's interest in the Property in fee, free and clear of all liens, conditions, reservations, mortgages, leases, licenses, easements, prescriptive rights, permits, or other similar encumbrances. Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to the Property, and to Seller's knowledge no such rights encumber the Property. There are no service contracts or other agreements pertaining to the Property that the City will be required to assume at Closing.

12.7. Possession. Except as specifically set forth in this Agreement, there are no leases, licenses, or other agreements permitting, nor has Seller entered into any course of conduct that would permit, any person or entity to occupy or use any portion of the Property. Seller shall deliver immediate and exclusive possession of the entire Property to the City at Closing.

12.8. Recitals. The statements and information set forth in the Recitals are true and correct.

12.9. No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property or against Seller that could (a) affect Seller's right or title to the Property, (b) affect the value of the Property, or (c) subject an owner of the Property to liability.

12.10. Mechanic's and Other Liens. No work on the Property has been done or materials provided that would give rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property.

12.11. Public Improvements or Governmental Notices. To Seller's knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property, nor have any notices or other information been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property.

12.12. **Breach of Agreements.** The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound or to which the Property is subject.

12.13. **Bankruptcy Proceedings.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to Seller's knowledge, threatened against Seller, nor are any such proceedings contemplated by Seller.

12.14. **Changed Conditions.** If Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to the City of those facts and information. If any of the foregoing warranties and representations ceases to be true before Closing, Seller shall use its best efforts to remedy the problem, at its sole expense, before Closing. If the problem is not remedied before Closing, the City may elect to either: (a) terminate this Agreement, in which case the City will have no obligation to purchase the Property and the Earnest Money shall be refunded to the City, or (b) extend the Closing Date for a period not to exceed forty-five (45) days or until such problem has been remedied, whichever occurs first. Should the City extend the Closing Date and the problem is not remedied within the 45-day timeframe, the City may then elect to terminate this Agreement and receive a refund of its Earnest Money; provided, however, that such election will not constitute a waiver of the City's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor will it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

**13. Condition of the Property Through Closing.** Seller further represents, warrants, and covenants that until this transaction is closed or escrow is terminated, whichever occurs first, it shall (a) maintain the Property in substantially the same condition as it was on the Effective Date, with no tree cutting, timber harvesting, or alteration of the Property in any way, (b) keep all existing insurance policies affecting the Property in full force and effect, (c) make all regular payments of interest and principal on any existing financing, (d) comply with all government regulations, and (e) keep the City timely advised of any repair or improvement required to keep the Property in substantially the same condition as it was on the Effective Date.

**14. City's Representations and Warranties.** In addition to any express agreements of the City contained herein, the following constitute representations and warranties of City to Seller:

(a) Subject to the conditions stated herein, the City has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein;

(b) Subject to the conditions stated herein, all requisite action has been taken by the City in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated herein; and

(c) Subject to the conditions stated herein, the persons executing this Agreement and the instruments referred to herein on behalf of the City have the legal power, right, and actual authority to bind the City to the terms and conditions of this Agreement.

**15. Legal and Equitable Enforcement of This Agreement.**

15.1. **Default by Seller.** In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by Seller, the City shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including the Earnest Money, and will have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

15.2. **Default by the City.** In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by the City, the City and Seller agree that it would be impractical and extremely difficult to estimate the damages that Seller may suffer. Therefore, the City and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer in the event that the City defaults and fails to complete the purchase of the Property is and will be an amount equal to the Earnest Money. This amount shall be Seller's sole and exclusive remedy (whether at law or in equity), and the full, agreed, and liquidated damages for the breach of this Agreement by the City. The payment of said amount as liquidated damages is not intended as a forfeiture or penalty. All other claims to damage or other remedies are hereby expressly waived by Seller. Upon default by the City, this Agreement will terminate and except as set forth in this section, neither party will have any further rights or obligations hereunder or to one another.

16. **Risk of Loss, Condemnation.** Seller bears the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or any part of the Property is damaged, destroyed, condemned, or threatened with condemnation, Seller shall give the City written notice of such event. The City may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by the City of written notice from Seller of such casualty or condemnation and the Title Company shall return to the City the Earnest Money and any accrued interest thereon.

17. **Notices.** All notices required or permitted to be given must be in writing to the address set forth below and will be deemed given upon (a) personal service or (b) deposit in the United States Mail, postage prepaid. All such notices shall be deemed received (x) upon personal service, (y) three (3) days after deposit in the United States Mail, postage prepaid, or (z) one (1) day after deposit with a nationally recognized overnight courier service.

To Seller: Cleo Howell, Chair  
Forest Grove Rural Fire Protection District  
1919 Ash Street  
Forest Grove OR 97116  
  
Phone No. (503) 357-2665  
Email: cleohowell@forestgroveruralfire.com

To City: City Recorder  
City of Forest Grove  
P.O. Box 326  
Forest Grove, Oregon 97116-0326  
Phone No. (503) 992-3235  
Email: aruggles@forestgrove-or.gov

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manners set forth above will be effective when received by the party for whom it is intended. Telephone, email, and fax numbers are for information only.

18. **Broker or Commission.** Each party represents and warrants that it has not used brokers for this transaction. In the event any person or entity asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then Seller shall indemnify, hold harmless, and defend the City from and against any such claim if based on any action, agreement, or representations made by Seller; and the City shall indemnify, hold harmless, and defend Seller from and against any such claim if based on any action, agreement, or representations made by the City.

**19. Further Actions of City and Seller.** The City and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated, and both parties shall use their best efforts to accomplish Closing in accordance with the provisions hereof.

**20. Miscellaneous.**

20.1. Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance is, to any extent, found invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances, other than those to which it is held invalid or unenforceable, will not be affected thereby, and each such term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

20.2. Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

20.3. Survival of Representations. The covenants, agreements, representations, and warranties made herein shall survive Closing and will not merge into the Deed upon recordation in the official real property records.

20.4. Representation. This Agreement was prepared by the City. Seller represents that Seller had an opportunity to consult with its own legal counsel prior to executing this Agreement. Seller waives any claim that any term or condition herein should be construed against the drafter of the Agreement. This Agreement shall be construed as if it had been prepared by both parties.

20.5. Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

20.6. Time of Essence. Seller and the City hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision contained in this Agreement. Unless otherwise specified herein, in computing any period of time described in this Agreement, whenever a date for an action required to be performed falls on a Saturday, Sunday, or a state or federal holiday, then such date shall be extended to the following business day.

20.7. Recitals. The statements and information set forth in the Recitals are hereby incorporated as if fully set forth herein and shall be used for the purposes of interpreting this Agreement.

20.8. Governing Law. The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement is governed by and should be interpreted in accordance with the laws of the state of Oregon.

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, AND 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 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**This document will automatically expire on June 15, 2018, at 5:00 p.m., if not executed by Seller within that time and delivered to the City pursuant to the notice requirements contained in Section 17 above.**

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature specified below.

CITY:

SELLER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Property Legal Description**

**The following described certain real property Washington County of Washington, commonly known as a portion of Assessor's Tax Lot No. 1N4-26-02500 (Account No, R772364), which real property is more particularly described as follows:**

Parcel 3, PARTITION PLAN NO. 2003-024, in the City of Forest Grove, Washington County, Oregon



A place where families and businesses thrive.

CITY RECORDER USE ONLY:	
AGENDA ITEM #:	11 & 12
MEETING DATE:	6/11/18
FINAL ACTION:	Reso 2018-55 Reso 2018-56

**CITY COUNCIL STAFF REPORT**

**TO:** City Council

**FROM:** Jesse VanderZanden, City Manager

**MEETING DATE:** June 11, 2018

**PROJECT TEAM:** Paul Downey, Administrative Services Director  
Michael Kinkade, Fire Chief

**SUBJECT TITLE:** Property Purchases from Rural Fire District

**ACTION REQUESTED:**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Ordinance	Order	X	Resolution	Motion	Informational

X all that apply

**ISSUE STATEMENT:** The attached resolutions authorize the City to purchase: 1) the one-half interest that the Forest Grove Rural Fire Protection District (District) owns in Thatcher Park where the Dog Park is located; and 2) a one-half interest in a lot adjacent to the Gales Creek Fire Station that the District owns. The resolutions also authorize the City Manager or designee to complete the transactions.

**BACKGROUND:** The City and the District purchased approximately one acre at Thatcher Park in May 2003, with the plan of eventually locating a northern fire station on that site. The City currently uses the property as a dog park. Based on further analysis done since 2003, this lot is no longer under consideration as the site of a future fire station. Since the lot will not be used for a fire station, the District does not have any need of the property. The City wants to purchase the District's interest in the property as it is part of the Thatcher Park property. The District has agreed to sell the City the property for its original purchase price plus closing costs.

The District purchased an unimproved lot adjacent to the Gales Creek Fire Station in November 2007. The City chose not to participate in the purchase at the time. Since the time the lot was purchased, a manufactured home jointly purchase by the City and the District has been located on the site for use by resident volunteers. With the jointly-owned manufactured house on the property, it makes sense for the City to purchase a half interest in the property. The City has tentatively agreed to purchase the half-interest for half of what the District originally paid for the property plus closing costs.

The District is scheduled to approve the sales on June 6, 2018.

**FISCAL IMPACT:** Both purchases were budgeted in the current fiscal year and will be carried-over to FY 2018-19 as the purchases will not close by June 30, 2018. The Thatcher Park property will be purchased using Park System Development Funds since the property is part of the City's

current park system. The lot at Gales Creek will be purchased from the Fire Equipment Replacement Funds using equipment reimbursement revenue from the fire conflagrations that the Fire Department went to during the current fiscal year.

**STAFF RECOMMENDATION:** Staff recommends City Council approve the attached resolutions.

**ATTACHMENT(s):**

Resolutions

Exhibit A: Purchase and Sale Agreements