

**RESOLUTION NO. 2021-13**

**RESOLUTION AUTHORIZING CITY MANAGER TO ENDORSE  
AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF  
FOREST GROVE AND THE FOREST GROVE SCHOOL DISTRICT FOR AN  
OPTION TO PURCHASE REAL PROPERTY NORTH OF DAVID HILL ROAD**

**WHEREAS**, the City Council gave staff direction to look at purchasing two acres of property north of David Hill Road in area designated for a neighborhood park in the City's Parks Master Plan; and

**WHEREAS**, City of Forest Grove (City) and the Forest Grove School District (District) have been negotiating the purchase of sixteen acres of property with the City purchasing two acres and the District purchasing the other fourteen acres from a developer purchasing a 37.69 acre parcel; and

**WHEREAS**, the City and District could not reach agreement on the location of the City's two acres primarily due to the surface water drainage issues of the site; and

**WHEREAS**, District proposed and City staff agreed that the District should purchase the entire sixteen and give the City an option to purchase up to two acres of that parcel after the District has completed its site planning; and

**WHEREAS**, an IGA has been prepared to give the City an option to purchase up to two acres from the District at a future date.

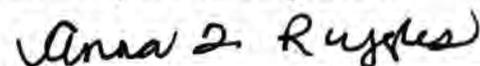
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

**Section 1.** The City Council hereby approves the Intergovernmental Agreement between the City and the District for option to purchase up to two acres of real property at the site north of David Hill Road, attached as Exhibit A.

**Section 2.** The City Manager is authorized to endorse the agreement on behalf of the City.

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

**PRESENTED AND PASSED** this 22<sup>nd</sup> day of February, 2021.



Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 22<sup>nd</sup> day of February, 2021.



Peter B. Truax, Mayor

## INTERGOVERNMENTAL AGREEMENT OPTION TO PURCHASE REAL PROPERTY

This Intergovernmental Agreement (this "Agreement") is made and entered into under ORS 190.010 between Forest Grove School District No. 15, a school district of the State of Oregon organized under ORS Chapter 332 (the "District"), and the City of Forest Grove, a political subdivision of the State of Oregon (the "City") (each a "Party," and collectively, the "Parties").

### RECITALS

A. Each Party is a "unit of local government" as defined in ORS 190.003 and is empowered to enter into intergovernmental agreements under ORS 190.010.

B. The District has entered into a January 12, 2021, purchase and sale agreement with Venture Properties, Inc. (the "Venture PSA"), to purchase an approximately 16-acre portion of a 37.69-acre parcel of land located north of David Hill Road and east of Brook Street as shown on the attached Exhibit A and more fully described on the attached Exhibit B. The 16-acre portion to be purchased by the District is the shown on attached Exhibit C (the "School Property.") The sale is scheduled to close sometime between April 15 and June 1, 2021, pending certain land use approvals and other contingencies.

C. The District is acquiring the School Property in order to site future school uses. The District expects to start developing the School Property sometime within the next five to ten years, contingent on approval by District voters of a capital bond measure.

D. The City had originally intended to be a party to the PSA and was going to purchase a portion the School Property for future park purposes as set forth in the City of Forest Grove Comprehensive Plan. The City elected to withdraw from the PSA in return for an option to purchase up to two acres of the School Property at the time the District develops the School Property. The District is willing to grant this option, because having the full 16 acres provides the maximum flexibility to the District to design and program the site for future school uses.

### AGREEMENT

For good and valuable consideration as described the Recitals, the Parties agree as follows:

**1. Identification and Creation of Park Property.** When the District proceeds with development of the School Property for school purposes, the District agrees to identify an approximately two-acre portion of the School Property for sale to the City for future park purposes (the "Park Property).

1.1 Location. The District will consult with the City with regard to the location of the Park Property, but the final decision on the location of the Park Property will be at the sole discretion of the District based on the District's site and program design needs for school use of the School Property.

If the City wishes to proceed with the location, the City shall notify the District in writing within thirty (30) days of being notified in writing of the District's selection.

1.2 **Creation.** If the City elects to proceed as provided in Section 1.1 the District agrees to create the identified Park Property as a separate legal parcel by lot line adjustment in conjunction with obtaining land use/permitting approval of its development of the School Property for school use. The City will reimburse the District for 50 percent of its costs to obtain the lot line adjustment. The Parties understand that the final size and design of the Park Property will be subject to any conditions imposed under the required land use process, including without limitation dedications of right-of-way or utility easements.

**2. Offer of Sale.** Within one year of the date that the Park Property is created as a legal parcel, the District will offer in writing to sell the Park Property to the City (the "Offer Letter").

2.1 **Price.** The price will be payable in cash at closing. The District will offer the property to the City at the higher of:

(a) Fair market value at the time of sale as determined by a Member of the Appraisal Institute (MAI) appraiser selected by the District; or

(b) The per-acre price paid by the District for the School Property under the Venture PSA, multiplied by the number of acres of the Park Property.

2.2 **Property Offered As Is.** The City will be responsible for any approvals necessary to use the Park Property for park purposes after closing, including any conditions of approval that may be imposed by approval authority.

2.3 **Other Terms and Conditions.** Other terms and conditions will be subject to negotiation of a purchase and sale agreement between the District and the City at the time of sale.

**3. Response to Offer.** The City will have 180 days from the date of the Offer Letter to accept the offer in writing and commence negotiation of a purchase and sale agreement.

3.1 **Failure to Accept Offer.** If the City fails to accept the offer within the time period provided in this section, this Agreement will terminate and the District may sell or use the Park Property at the District's sole discretion.

3.2 **Failure to Execute a Purchase and Sale Agreement.** If the Parties fail to negotiate in good faith and execute a purchase and sale agreement within 180 days of acceptance of the offer by the City, this Agreement will terminate and the District may sell or use the Park Property at the District's sole discretion.

**4. Term.** The term of this Agreement commences on the date it has been executed by both Parties. This Agreement terminates on the earlier of (1) the City not agreeing to the location in writing as provided in Section 1.1, (2) failure to close the sale of the School Property to the District under the Venture PSA, (3) failure of the City to timely accept the offer as provided in Section 3.1 of this Agreement, (4) failure of the Parties to timely execute a purchase and sale agreement as provided in Section 3.2 of this Agreement, or (5) closing of the sale of the Park Property from the District to the City.

5. **Notices.** All notices required or permitted to be given under this Agreement must be in writing and will be deemed given on the date deposited in the United States mail, certified or registered form, postage prepaid, return receipt requested, addressed as follows:

To District: Ilean Clute, Director of Finance and Operations  
Forest Grove School District  
1728 Main Street  
Forest Grove, OR 97116

To City : Anna Ruggles  
City Recorder  
City of Forest Grove  
1924 Council Street  
Forest Grove, OR 97116

Either Party may change its address by giving ten days' notice to the other Party.

6. **Governing Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Oregon.

7. **Binding Effect.** This Agreement will be binding on the Parties and is non assignable.

8. **Headings.** The captions and headings used in this Agreement are for reference only and will not be construed to define or limit the scope or content of this Agreement.

9. **Entire Agreement.** This Agreement contains the final and entire understanding between the Parties with respect to its subject matter and is intended to be an integration of all prior negotiations and understandings. No change or modification of this Agreement will be valid unless it is in writing and is signed by both Parties.

10. **Waiver.** A failure by a Party to enforce any right under this Agreement will not be deemed a waiver of that right or of any other right.

11. **Counterparts.** 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 both Parties.

12. **Authority to Execute.** Each person executing this Agreement on behalf of the District and the City, respectively, warrants his or her authority to do so.

13. **Statutory 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, ORS 195.301 AND ORS 195.305 TO 195.336 AND OREGON LAWS 2007, CHAPTER 424, SECTIONS 5 TO 11, OREGON LAWS 2009, CHAPTER 855, SECTIONS 2 TO 9 AND 17, AND OREGON LAWS 2010, CHAPTER 8, SECTIONS 2 TO 7. 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 ORS 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, ORS 195.301 AND ORS 195.305 TO 195.336 AND OREGON LAWS 2007, CHAPTER 424, SECTIONS 5 TO 11, OREGON LAWS 2009, CHAPTER 855, SECTIONS 2 TO 9 AND 17, OREGON LAWS 2010, CHAPTER 8, SECTIONS 2 TO 7.

14. **Consents.** The Parties agree to act in good faith and with fair dealing 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, such consent, approval, or other action will not be unreasonably withheld, delayed, or conditioned by the Party unless the provision in question expressly authorizes the Party to withhold or deny consent or approval or to 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. Any provision indicating that consent is not to be unreasonably withheld will be interpreted to mean that consent will not be unreasonably withheld, delayed, or conditioned.

Duly executed by the Parties as of the dates set forth below.

FOREST GROVE SCHOOL DISTRICT NO. 15    CITY OF FOREST GROVE

By:  
Title City Manager  
Date: February 22, 2021

By:  
Title  
Date:



*A place where families and businesses thrive.*

CITY RECORDER USE ONLY:

AGENDA ITEM #: 6.  
MEETING DATE: 02/22/2021  
FINAL ACTION: RESO 2021-13

**CITY COUNCIL STAFF REPORT**

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**TO:** *City Council*

**FROM:** *Jesse VanderZanden, City Manager*

**MEETING DATE:** *February 22, 2021*

**PROJECT TEAM:** *Paul Downey, Administrative Services Director  
Tom Gamble, Parks & Recreation Director*

**SUBJECT TITLE:** *IGA for Option to Purchase Real Property from FGSD*

**ACTION REQUESTED:**

<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Order	<input checked="" type="checkbox"/>	X	Resolution	<input type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
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*X all that apply*

**ISSUE STATEMENT:** At an October 26, 2020, executive session, City staff presented the opportunity to purchase two acres of land for a future neighborhood park in property that was being annexed north of David Hill in conjunction with the Forest Grove School District who is purchasing 14 acres of a 16 acre parcel from a developer who is selling 16 acres of a 37.69 acre parcel the developer is purchasing. City and FGSD staff worked together to locate a two acre parcel on the 16 acre parcel on which both parties could agree. For reasons to be explained below, City and FGSD staff agree the best course of action at this time was for the District for buy all 16 acres and give the City an option to buy up to 2 acres at late date. An intergovernmental agreement (IGA) has been prepared for that option to purchase. A resolution authorizing the City Manager to execute the IGA is attached for Council consideration.

**BACKGROUND:** A developer is purchasing 37.69 acres of property north of David Hill which has subsequently been annexed into the City. The developer was offering to sell 16 acres of that property to the City and FGSD as part of that property had been indicated for schools and park as the part of the Westside Planning Study. At the October 26, 2020 executive session, the City Council gave consensus to staff to work with the FGSD and the developer to reach an agreement to purchase 2 acres of property out of the 16 acres site that developer was proposing to sell to the City and FGSD.

District staff proposed that the City purchase an L-shaped 2 acres in the northwest corner of the site to give the school district the most flexibility in laying out the remainder of the property for the 2 future schools the district is planning on building on the site. City and district staff began their due diligence work as part of the purchasing the property. City staff developed two concerns with the proposed two acres: 1) most of those two acres could be required to address surface water drainage issues as the 16 acres drains towards that northwest corner; and 2) a future road could bisect the 2 acres and make it less usable as a neighborhood park. The drainage issue and the

unknown effect it would have on the layout of the property was the key issue for both the City and FGSD. Both staffs looked at other places on the property to locate the City's 2 acre site but District staff were concerned about committing to a different two acres until the District had site planned the property.

District staff proposed that it purchase the entire site and then sign an IGA with the City giving the City an option to purchase up to 2 acres that the District would offer to the City after the District had completed the site plan for the property including addressing the drainage issue. City staff agreed that given the concerns listed above that this was the best course of action to take at this time. Neither the District nor the City were planning on developing the property in the near future. For the City, developing the property in conjunction with the District makes the most sense from recreational and financial concerns.

The District developed an IGA which has been reviewed by City staff and the City Attorney. The IGA says the District will consult with the City on the location of the park property, but the final decision on the location of the park property will be at the sole discretion of the District based on the District's site and program design needs for the school use of the school property. How the purchase price is arrived at in the future is in the IGA. The IGA does not commit the City to purchase the property. The points at which the City can decline to exercise the option to purchase are in the IGA.

**FISCAL IMPACT:** There is no immediate financial outlay for park property that is required. Staff will include the potential future purchase of this property at the District's per acre price in the City's Capital Improvement Plan (CIP) so the potential obligation of Parks System Development Charges (SDC) for this option are accounted for in the CIP.

**STAFF RECOMMENDATION:** Staff recommends that the City Council approve the resolution approving the proposed IGA with the FGSD and authorize the City Manager to execute the IGA.

**ATTACHMENT(s):**  
Resolution & Intergovernmental Agreement, Exhibit A