

RESOLUTION NO. 14-15

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET TO THE 2013-2015 BIENNIAL BUDGET AND AUTHORIZING A \$500,000 INTERFUND LOAN FROM THE PUBLIC WORKS BUILDING FUND TO THE POLICE BUILDING FUND AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL PROPERTY SALES AGREEMENT

Supplemental Budget

WHEREAS, the City Commission adopted a budget for the 2013-2015 Biennium and made appropriations by Resolution No. 13-17; and

WHEREAS, through the course of routine operations, conditions that were not known at the time the budget was prepared have occurred and require adjustments to the Adopted Budget; and

WHEREAS, ORS 294.471 provides the legal basis for the City Commission to adopt a supplemental budget by resolution to authorize a change in appropriations; and

WHEREAS, ORS 294.473 requires a public hearing on supplemental budgets that change estimated expenditures in a fund by more than ten percent. The City Commission held a public hearing on December 17, 2014 after notice of the hearing was published in *Oregon City News*, a newspaper of general circulation, on December 3, 2014; and

WHEREAS, the recognition of unanticipated beginning fund balances, transfers of contingency, transfers of appropriation between funds, and an interfund loan are needed to acquire the "Mt. Pleasant" property, an approximately 8.35 acre tract commonly identified as 1232 Linn Avenue in the City of Oregon City, Oregon. The planned use of the property is for construction of Police Department and future City Hall facilities that are seismically sound and adequate to serve the residents of Oregon City; and

WHEREAS, the City of Oregon City and the Oregon City School District have negotiated a real property sales agreement to transfer the Mt. Pleasant property from the School District to the City.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Oregon City that the Supplemental Budget as attached and titled Oregon City, Request for Budget Adjustment, 2013-2015 Budget Adjustment 3, be made a part hereof and authorized.

Interfund Loan

WHEREAS, ORS 294.468 provides the legal basis for a loan from one fund to another by resolution of the City Commission; and

WHEREAS, a loan from the Public Works Building Fund to the Police Building Fund in the amount of \$500,000 is needed to acquire the "Mt. Pleasant" property, an approximately 8.35 acre tract commonly identified as 1232 Linn Avenue in the City of Oregon City, Oregon. The planned use of the property is for construction of Police Department and future City Hall facilities that are seismically sound and adequate to serve the residents of Oregon City.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Oregon City

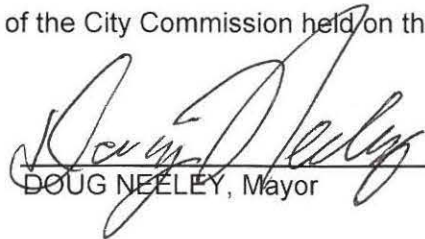
Section 1. That a \$500,000 loan from the Public Works Building Fund to the Police Building Fund is hereby approved. Loan funds will be used to acquire the Mt. Pleasant property, and the loan shall be considered executed on the date that the property is purchased.

The loan shall be repaid from the General Fund or other moneys that would otherwise be provided for the Police Department, and to the extent that other City departments benefit from use of the property, through moneys that would otherwise be provided for those departments. The allocation of amounts used to repay the loan shall be determined annually by the Finance Department using a reasonable basis, including consideration of prorated property use.

The Public Works Building Fund will be repaid annually on January 1 in five equal principal payments of \$100,000. An interest payment will be made with each annual payment at the rate of return on moneys invested in the local government investment pool plus one half percent (0.5%), as of the date of payment or at the annual rate of one and one half percent (1.5%), whichever is greater. Repayment shall be budgeted annually and shall commence on January 1, 2016. Early repayment of the loan is allowed at any time without penalty.

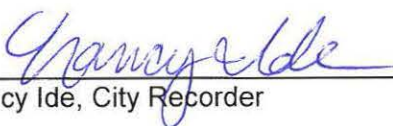
Section 2. That the City Manager is authorized to enter into the attached real property sales agreement to acquire the Mt. Pleasant property.

Approved and adopted at a regular meeting of the City Commission held on the 17th day of December 2014.




DOUG NEELEY, Mayor

Attested to this 17th day December 2014:



Nancy Ide, City Recorder

Approved as to legal sufficiency:



City Attorney

REAL PROPERTY SALE AGREEMENT

DATE: The day and year last written below

PARTIES: Oregon City School District No. 62 (“the District”)
1417 12th Street
Oregon City, Oregon 97045

City of Oregon City (“the City”)
625 Center Street
Oregon City, Oregon 97045

RECITALS:

The District owns Mt. Pleasant School, an improved parcel of 8.35 acres, more or less, commonly identified as 1232 Linn Avenue situated in the City of Oregon City, County of Clackamas, State of Oregon (hereinafter referred to as the “Property”).

The District also owns Barclay School, an improved parcel of 1.69 acres, more or less, commonly identified as 817 12th Street situated in the City of Oregon City, County of Clackamas, State of Oregon, to which the City holds a contingent reversionary interest (hereinafter referred to as “Barclay”).

The City desires to purchase the Property from the District on the terms and conditions set forth herein, in consideration for which the City will relinquish its interest in Barclay.

AGREEMENTS:

1. *Sale and Purchase of the Property.* The District agrees to sell and the City agrees to purchase the Property. The Purchase Price for the Property is one million eight hundred thousand and No/100 Dollars (US\$1,800,000.00), to be paid as provided in Section 3 below.

2. *Earnest Money.* Within five business days of the date hereof, the City will deposit into the escrow the sum of Forty thousand and No/100 Dollars (US\$40,000.00) as earnest money.

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

3.1 At Closing, the earnest money will be applied to the Purchase Price.

3.2 At Closing, the City will be given a credit on the Purchase Price of Three hundred thousand and No/100 Dollars (US\$300,000.00) in consideration of its relinquishment of its

reversionary interest in Barclay, in accord with Section 9 of this Agreement.

3.3 The balance of the Purchase Price shall be paid in full at Closing.

4. *Conditions of Closing.*

4.1 *Preliminary Title Report.* The District and the City have received a “7th Amended Preliminary Title Report dated July 14, 2014, issued by First American Title Insurance Company, Order No. 7012-2258750 (the “Title Report”), showing the condition of title to the Property. At Closing, the District shall convey title to the Property, and the City shall accept title to the Property, subject only to those exceptions to title shown as Items 7 through 12 of the Title Report (the “Permitted Exceptions”).

4.2 *Inspections, Reviews and Environmental Matters.*

4.2.1 The City and its Agents may enter the Property, as reasonably necessary, to make surveys, tests, studies and inspections in connection with the Property and the transaction contemplated hereby, including, without limitation, the structural condition of the improvements; all mechanical, electrical and plumbing systems; the potential presence on the Property of hazardous materials, including a Level 1, 2 or 3 Environmental Site Assessment; pest infestation; soils conditions and wetlands; Americans with Disabilities Act compliance; and, other matters affecting the suitability of the Property for the City’s intended use and/or otherwise reasonably related to the purchase of the Property.

4.2.2 The City shall review applicable zoning, rules, survey results, easements and regulations concerning the Property, including the building, safety and public health department of any other governmental authority which it deems pertinent to its intended use, reconstruction and/or occupancy of the Property.

4.2.3 The City shall indemnify the District from any and all liability, cost and expense for loss of or damage to any person or property arising out of the exercise of the right to enter the Property granted hereunder or arising from an act or omission of the City or its employees, agents, contractors or subcontractors, unless such liability, cost and expense is caused by the District.

4.2.4 The City shall review and approve the District’s Documents (as defined below). Within 14 days of the making of this Agreement, and at any time thereafter as documents are identified or become available, the District shall deliver to the City the following documents relating to the ownership, operation, and maintenance of the Property, to the extent now in existence and to the extent such items are within the District’s possession or control (collectively, the “District’s Documents”): utility bills from the preceding 12 months and any maintenance and service records; warranties in effect; equipment leases; service contracts and any other agreements that apply to the Property; hazardous material inspection reports and all Environmental Site Assessment reports; building plans and specifications; any survey of the Property; engineering reports and/or consultant reports applicable to the Property; certificates of occupancy and/or permits; notices and communications of any kind from any governmental or

regulatory authority relating to the Property; and, any other documents relating to the Property which the City may reasonably request.

4.2.5 The City's obligation to Close this transaction is contingent upon its approval, in its sole discretion, of any such inspections, reports and inquiries made pursuant to this Section 4.2 by not later than December 31, 2014 (the "Due Diligence Period"). If before the expiration of the Due Diligence Period the City does not give notice to the District that it disapproves, in its sole discretion, of the results of its inspection and review of the Property, the City shall be deemed to have satisfied or waived this contingency.

5. *The District's covenants prior to Closing.* From the Effective Date of this Agreement to Closing, the District shall (i) maintain the Property in good repair and in broom clean condition; (ii) continue to operate the Property in the manner previously operated by the District; (iii) not enter into any contracts or purchase orders relating to the Property, other than in the ordinary course of operating and maintaining the Property; and, (iv) perform all acts necessary to insure that its representations, warranties, and covenants made herein shall be true, complete and accurate in all respects on and as of the close of escrow. The covenants under this section shall not obligate the District to perform, or have performed, any maintenance or other work to the improvements on the Property other than ordinary maintenance, or such emergency or temporary repair as the District may determine in its sole discretion.

6. *Risk of loss.* Risk of loss or damage to the Property shall be the District's until the Closing, and thereafter the City's. The District shall maintain adequate insurance coverage on the Property through and including the Closing Date. If prior to close of escrow: (a) all or any material part of the improvements on the Property are destroyed or damaged by fire or other casualty; or (b) all or a material part of the Property is taken by eminent domain, either party may, by written notice to the other, cancel this Agreement prior to close of escrow, in which event this Agreement shall be terminated.

7. *Closing.*

7.1 *Escrow.* The transaction will be closed through Escrow Officer Sheila Houck at the Clackamas Branch of the First American Title Insurance Company of Oregon. The District and the City shall each pay one-half of the escrow fees.

7.2 *Closing Date.* Closing shall occur on a date mutually agreed by the parties no later than fifteen (15) days after the City's approval of the such inspections, reports and inquiries made pursuant to this Section 4.2 (the "Closing Date").

7.3 *Closing Documents.* At Closing the District shall execute and deliver to the City a statutory warranty deed conveying the Property to the City free and clear of all liens and encumbrances except the Permitted Exceptions. At Closing the City and the District shall execute and deliver the documents required under Section 9 hereof.

7.4 *Title Insurance.* At Closing the District will instruct First American Title to issue the City, at the District's expense, an ALTA policy of title insurance in the amount of the

Purchase Price, standard form, insuring the City as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions, if any. At the City's option, the City may obtain extended coverage title insurance, at its expense, and in such case the City agrees to execute such affidavits and other documents requested by First American Title in order to issue extended coverage insurance.

7.5 *Possession.* The City shall be entitled to possession of the Property at 12:01 o'clock a.m. on the calendar day following the Closing Date.

7.6 *Prorates.* Real property taxes, if any, utilities, and other usual items shall be prorated as of the Closing Date.

7.7 *IRS Certification.* The District is not a "foreign person" as that term is defined in IRC §1445 and on the Closing Date The District will execute and deliver to the City a certification of nonforeign status on a form required by the IRS

7.8 *No Agent.* Neither party has employed any broker, agent or finder in connection with the transaction contemplated by this Agreement, or taken action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or other like payment.

8. *Representations, Warranties and Covenants.*

8.1 *Hold Harmless.* The District will indemnify and hold the City harmless from any cost, expense or liability associated with, arising from, or attributable to the possession or occupancy of the Property prior to the transfer of possession. On the transfer of possession the District will surrender the Property to the City and the Property shall be vacant and free of any occupancy or claims of tenants or any other person claiming by or through the District or otherwise. The City will indemnify and hold the District harmless from any cost, expense or liability associated with, arising from, or attributable to the possession or occupancy of the Property subsequent to the transfer of possession.

8.2 *Representations.* The District represents and warrants to the City as follows: The District knows of no material defects with respect to the Property; the District has received no notice of any liens to be assessed against the Property; the District has received no notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property; the District has not been notified by any governmental agency that the Property may be the subject of a proceeding in eminent domain; and except as disclosed in the District's Documents or otherwise in writing to the City prior to Closing, or in the Phase 1 Report, the District has no knowledge of any spills, releases, discharges, disposal, storage or manufacture of Hazardous Substances on the Property or from the Property onto any adjacent properties, or of the presence of any underground storage tanks or other underground receptacles on or under the Property. The term "Hazardous Substances" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, or a hazardous, toxic or radioactive substance, (or designated by any other similar term), by any applicable federal, state or local statute, regulation or ordinance.

8.3 *Representations and Conditions of Property.* Upon Closing, the City accepts the Property in its present condition based upon its inspection thereof, “*as is,*” including latent defects, without any representations or warranties, express or implied, except as set forth in Section 8.2 above or otherwise stated in a writing signed by the District. The City agrees that at Closing it will have ascertained from sources other than the District the applicable zoning, building, and other regulatory ordinances and laws and that it accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property, and the District has made no representations with respect thereto.

8.4 *No Reliance.* In making and executing this Agreement, the City has not relied upon nor been induced by any statements or representations of the District, other than those expressly set forth in this Agreement, in respect of the physical condition of the Property, including the environmental conditions present on the Property, or of any other matter affecting or relating to the physical condition of the Property. The City has, on the contrary, relied solely on such representations, if any, as are expressly set forth herein and on such investigations, examinations, and inspections as it has chosen to make or has made.

8.5 *Personal Property.* The parties agree that the outdoor playground equipment and soccer goals (the “Outdoor Equipment”) at the Property will be retained by the District as its sole and separate personal property, and to the extent the District has not removed the Outdoor Equipment prior to Closing, the City will allow the District access to the Property to accomplish that work, at the District’s expense, by no later than January 31, 2015. In the event the District fails to remove the Outdoor Equipment by January 31, 2015, the City may remove and dispose of the Outdoor Equipment, and the District shall reimburse the City for the cost and expense of removal and disposal upon demand by the City. Further, the City acknowledges the presence on the Property of a plaque marking the location of the original Mt. Pleasant School, which plaque will be preserved on the Property for so long as the Property is owned by the City, and then transferred to the District prior to conveying the Property to a nonparty. In addition, the District may, prior to Closing, remove the student artwork attached to the improvements, repairing any damage to the improvements caused by such removal. In the event the District fails to remove the student artwork prior to Closing, the student artwork shall become the property of the City. Except as otherwise provided in this paragraph, the District shall, prior to Closing, remove all personal property on the Property, including without limitation desks, chairs and file cabinets, and shall deliver possession of the Property to the City at Closing in broom clean condition.

9. *Barclay School.* At Closing, the City will relinquish its contingent reversionary interest in Barclay by written document to be recorded through escrow. The form of the document will be as mutually accepted by the parties during the Due Diligence Period. Further, the parties will, at Closing, execute separate documents (the form of which documents will be as mutually accepted by the parties during the Due Diligence Period):

9.1 by which the City will release any and all claims it may have against the District related to or arising from the District’s prior use of Barclay, or any encroachment onto the City’s adjoining park property, and the District will indemnify, defend and hold the City (and its commissioners, employees and agents) harmless from any and all costs, expense or liability associated with, arising from, or attributable to the District’s prior use and occupancy of all or a

portion of the City's Barclay Park and the District's removal and/or relocation of encroaching fences, playground equipment and other facilities on the City's Barclay Park.

9.2 by which the District will agree to cause a survey to be performed, at the District's expense, to identify the boundary line between Barclay and the City's Barclay Park. The District will further agree to remove or relocate all encroaching fences, playground equipment and other facilities, at its expense, by no later than August 31, 2015, so they are no longer encroaching on the City's Barclay Park. In the event the District fails to remove such encroaching facilities by August 31, 2015, the City may remove or relocate the encroaching facilities, and the District shall reimburse the City for all costs of removal and/or relocation upon demand by the City.

9.3 by which the City would agree to initiate and pursue a vacation of all remaining alleyways within the boundary of the Barclay campus.

In consideration for which the District will credit the City Three hundred thousand and No/100 Dollars (US\$300,000.00) on the Purchase Price of the Property. The parties agree that the value of the consideration expressed in this paragraph is exclusive to this transaction and, in the event the transaction does not Close it cannot be used for any other purpose.

10. *Default; Remedies.*

10.1 A default shall occur if a party fails to perform an obligation contained in this Agreement within 7 days after notice from the other party specifying the nature of the default or, if the default cannot be cured within 7 days, failure within such time to commence and pursue curative action with reasonable diligence.

10.2 In the event the City defaults or otherwise fails to Close after its contingencies have been satisfied or waived, the District shall be entitled to retain the earnest money deposit as its liquidated damages, which sum represents a reasonable estimate of the damages it will incur as a result of the City's failure to Close, not a forfeiture or penalty, as the District's sole and exclusive remedy for the City's default or failure to close. In the event the District defaults or fails to Close, the City may either elect to terminate the Agreement, obtain the return of the earnest money deposit and have damages against the District in the amount of its expenses with third-parties paid pursuing this transaction, or sue to specifically enforce this Agreement.

11. *General Provisions.*

11.1 *Time.* Time is of the essence of this Agreement.

11.2 *Survival.* All representations and warranties contained in this Agreement will survive Closing and the conveyance of the Property.

11.3 *Assignment.* This Agreement cannot be assigned without the prior written consent of the other party.

11.4 *Binding Effect.* This Agreement is binding on and will inure to the benefit of the City, the District, and their respective heirs, legal representatives and successors.

11.5 *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.

11.6 *Interpretation of this Document.* Each of the parties and its counsel has reviewed, revised and negotiated or had the opportunity to negotiate the terms, conditions and language of this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

11.7 *Notice.* Any notice or other communication required or permitted to be given under this Agreement shall be in writing and delivered either personally or by over-night by FedEx or UPS obtaining a signed receipt. A notice or other communication shall be addressed to the parties as follows:

To the District: Oregon City School District
Attn: Superintendent
1417 12th Street
Oregon City, Oregon 97045

with a copy to: Boutin & Associates
Attorneys at Law
5005 Meadows Road, Suite 405
Lake Oswego, Oregon 97035

To the City: City of Oregon City
Attn: City Manager
625 Center Street
Oregon City, Oregon 97045

with a copy to: Garvey Schubert Barer
Attorneys at Law
Attn: William K. Kabeiseman
121 SW Morrison Street, 11th Floor
Portland, Oregon 97204

Any notice or other communication delivered by certified mail shall be deemed to be given on the third day after the date of deposit with the United States Postal Service. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party.

11.8 *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. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

11.9 *Statutory Notice.*

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.

In witness whereof, the parties have made this Agreement the day and year first set forth above, intending to be bound hereby.

THE DISTRICT:

OREGON CITY SCHOOL DISTRICT No. 62

THE CITY:

CITY OF OREGON CITY

By Larry Didway, Superintendent

By David W. Frasher, City Manager

Date

Date

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