



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category:	Agreement	Item No:
------------------	-----------	----------

Meeting Date: 08/27/2019

Originating Department: Tax Collector / Property Sales

Issue: In the matter of approving a Land Exchange Agreement with Klamath County School District.

Background: Klamath County and the Klamath County School District have agreed to exchange portions of their properties for mutual benefit.

Fiscal Impact: None

Recommended Motion: Approve and sign the attached Land Exchange Agreement. Fiscal Impact: None

DONE AND DATED this 27th day of August, 2019.

Chair

Vice-Chair

Commissioner

Approved
Denied

Approved
Denied

Approved
Denied

INTERGOVERNMENTAL AGREEMENT

BETWEEN

KLAMATH COUNTY AND KLAMATH COUNTY SCHOOL DISTRICT

REGARDING A LAND EXCHANGE AGREEMENT

This Land Exchange Intergovernmental Agreement (“Agreement”) is made as of this ____ day of _____, 2019, by and between **Klamath County**, a political subdivision of the State of Oregon (hereinafter referenced as the “County”) and **Klamath County School District**, (hereinafter referenced as “School District”).

WHEREAS, School District is the owner of the real property legally described as follows: MTL: 3909-010AD-01900 and MTL: 3909-010DA-02000. See **Exhibit A** which is made part hereof by this reference (hereinafter referenced as “Parcels 2 and 3”).

WHEREAS, the County is the owner of real property legally described as follows: MTL: 3909-010AD-00600. See **Exhibit B** which is made part hereof by this reference (hereinafter referenced as “Parcel 1”).

WHEREAS, the County and School District wish to exchange portions of their properties in the future under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Definitions. Parcels 1, 2, and 3 are sometimes individually referred to hereinafter as the “Exchange Property” or collectively as the “Exchange Properties.”

A party who is intending to convey title to an Exchange Property at closing is sometimes referred to hereinafter as the “Grantor” and a party who is intending to accept title to an Exchange Property at Closing is sometimes referred to hereinafter as the “Grantee.”

2. County Responsibilities. See Exhibit B for locations.
 - a. Maintain the property until this agreement is executed Maintenance is primarily related to spraying or mowing the weeds.
 - b. Remove the address for the property.
 - c. Survey the property and prepare deeds and other survey documents for future public right of way along Crest Street and across School District property (impacts Parcels 2 & 3). Width of land needed for the future public right of way is unknown at this time and is estimated to range between 10 and 20 feet. A determination may take up to 12 months. The completion of this task will not delay the transfer of the Exchange Properties or construction of School District projects.
 - d. Engage in planning efforts (with the School District and possible consultant and public outreach) to determine road width needs along Crest Street and if the road will include a bus stop or drop off/pick up loading lane along the future curb and sidewalk.

- e. Agrees to convey Parcel 1 to the School District if conditions of this agreement are met.

3. School District Responsibilities. See Exhibit B for locations.

- a. Rezone the property (if applicable), School District shall submit application to County Planning.
- b. Submit driveway permit to County Public Works for future driveway to the existing parcel.
- c. Submit appropriate building plans and land use permits to the County Planning/Building Department. Comply with applicable regulations including property line setbacks (or adjust/shift property line as necessary).
- d. Agree to transfer to the County a strip of land along Crest Street for road purposes (not to exceed the total square footage of the property that is being transferred). This transfer will be portions of Parcels 2 & 3 and can occur at any time after the property is transferred as long as the School District doesn't build something that negatively impacts the future right of way(see item "L" below).
- e. Participate in planning efforts financially and with appropriate staff time for planning the appropriate width of street for the future Crest Street. This may also need to include funding (in kind employee time and/or cash matching) for consulting fees and/or construction costs by the School District to plan and improve the existing parking area. Wider street improvements and additional right of way may need to be deeded to the County if the School District determines the best drop off zone is along the future curb in the street (i.e. a bus loading/drop off zone along the curb).
- f. Grant an access easement to the County across Klamath County School District properties for maintaining the 1-C Drain.
- g. Agree to possible right of way dedication across the south portion of the school property if Laverne Street is extended straight through the school property. This equitable trade would not exceed the square footage of land that is being transferred to the School District.
- h. Determine the future location of the school's track to avoid adverse impacts if Laverne Street is extended across the south end of School District property.
- i. Remove vegetation as needed to facilitate improvements. Maintain the property after this agreement is executed (i.e. spray weeds, mow grass, etc.)
- j. Gravel area and establish a driveway if it is utilized for parking or other improvements.
- k. Allow County (and/or their road contractor) or the Utility Company (and/or their utility contractor) to stage possible construction equipment or materials for future improvements in an unused corner of the school's property or an alternative site approved by Public Works.
- l. Submit all preliminary and final construction drawings to Public Works (independent of building/planning review) to verify improvements will not impact future easement/right of way dedications.

4. Exchange Terms. School District and the County acknowledge that Parcel 1 and Parcels 2 and 3 are not of like kind and equal value. The Parties hereby agree that upon completion of successful property line adjustments (described in Paragraphs 2 & 3), that Parcel 1 and Parcels 2 and 3 will be of like kind and equal value. Pursuant to Section 1031 of the Internal Revenue Code, School District will convey Parcels 2 and 3, as legally described after the County survey is complete, to the

County. The County will convey Parcel 1, as legally described after the property line adjustment, to School District at Closing. At Closing, Grantor will execute and deliver a general warranty deed conveying marketable title of the Exchange Property to Grantee. School District shall convey Parcel 2 & 3 to the County together with any easements or restrictions of record which do not interfere or prevent the County from utilizing it, but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed. The County shall convey Parcel 1 to School District together with any easements or restrictions of record which do not interfere or prevent School District from utilizing it, but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed.

5. Contingencies / Property Line Adjustment. To ensure that the Exchange Properties are of like kind and equal value, a property line adjustment will need to be performed. The County will convey approximately 1.36 acres of Parcel 1. County will prepare the documents to achieve creation of the future public right of way on Parcels 2 & 3 (see Exhibit A). The County will obtain a surveyor to prepare the new legal descriptions once the survey is completed. The exchange of the Parcels shall be contingent on a successful property line adjustment.
6. Dedications and Easements. After the date of this Agreement, but prior to Closing, Grantor shall not dedicate, gift, transfer, mortgage or convey any interest in Grantor's Exchange Property without written consent from Grantee, which may be withheld for any reason.
7. Special Assessments. Special assessments on the Exchange Property prior to the date of Closing shall be paid by Grantor. Special assessments on the Exchange Property after the date of Closing shall be paid by Grantee. The special assessments for the year of the date of Closing shall be prorated based upon the then most current property valuations and upon the most current rate as determined by law.
8. Closing. Closing shall occur within forty-five (45) days from the date of the successful property line adjustment unless mutual extensions are agreed to by the parties.
9. No Real Estate Commission and Finder's Fee. The Parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee, in connection with the transaction contemplated by this Agreement. Each party warrants to the other party that it shall indemnify and hold harmless for any and all claims of any person for broker's or agent's commissions or finder's fees in connection with this transaction.
10. Condition of Exchange Properties. Grantor acknowledges that its representatives or agents have examined the Exchange Properties prior to entering into this Agreement. This Agreement is based upon Grantee's inspection of the Exchange Property and not upon any representation or warranties or conditions by Grantor and/or Grantor's agents. Grantee acknowledges Grantor is conveying the Exchange Property on an "as is" basis, except for the warranties and representations as provided in this Agreement and the warranties in the general warranty deed.

11. Default. In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default and seek any remedy at law or in equity without notice or demand, including specific performance.

An unsuccessful application for a property line adjustment shall not be considered a default. If the property line adjustment is unsuccessful, through no fault of the Parties, this Agreement will be null and void.

12. Non-Foreign Status. At the date of Closing, School District shall deliver to the County the Certification of Non-Foreign Status duly executed and containing such other information as may be required by Internal Revenue Code Section 1445 and the Regulations issued thereunder.
13. Right to Effectuate Exchange. The County acknowledges that School District may undertake an additional Internal Revenue Code Section 1031 tax deferred exchange of their interest in all or any portion of the Exchange Property. School District's rights and obligations under this Agreement may be assigned to facilitate such exchange. The County agrees to cooperate with School District and any assignee of School District to enable it to qualify for such exchange; provided that such cooperation shall not require the County to incur any additional costs or liability and that the County shall be able to realize all intended benefits of this Agreement.
14. Assignment. In the case of the assignment of this Agreement by either of the parties, prompt notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.
15. Severability. If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
16. Further Assurances. Each undersigned party will, except as otherwise provided herein, whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants, contingencies and agreements herein provided. School District and the County agree to use their best efforts in cooperation to carry out the intent of this Agreement.
17. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

18. Construction. Whenever used herein including acknowledgements, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.
19. Non-Merger. All representations and warranties made herein are intended to survive Closing and shall not be merged in the deed unless otherwise stated in this Agreement. This Agreement shall not be canceled at Closing.
20. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned Parties.
21. Notice and Demands. Notice, demand, or other communication mandated by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personal at the addresses stated above.
22. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
23. Governing Law. All aspects of this Agreement shall be governed by the laws of the state of Oregon.
24. Attorney's Fees. In the event suit or action is instituted to enforce any of the terms of this Agreement, each party shall be responsible for its own attorney fees, costs and related expenses.
25. Successor and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns.
26. Time is of the Essence. The parties agree time is of the essence under this Agreement.
27. Future costs for construction improvements: Outside of collectively pursuing grants with matching funds, both parties agree that future construction costs will be borne by each party. That is, County gas tax can only be spent on roadways and items inside the right of way for road purposes. School parking lots, utilities, drop off areas along the frontage, etc. will be the responsibility of the County School District. Some common savings may be achieved by bidding future construction improvements for the road and parking lot at the same time (increased project size, hire one contractor, hire one consultant, etc). In doing so, each party agrees to fund their portion of the improvements even though the project will be most likely administered by the County.

28. Commitment to pursue future project: By entering into this agreement, the School District understands that the County may (or may not) proceed with the roadway improvement project. Availability of funding by the County and impacted Utility Companies will need to be closely analyzed for short term and long term impacts. Grant funding will most likely need to be pursued.

Dated this ____ day of _____, 2019.

Klamath County
305 Main St
Klamath Falls, OR 97601
(541) 883-5100

Klamath County School District
2845 Greensprings Dr.
Klamath Falls, OR 97601
541-883-5000

Donnie Boyd, Board Chair

Authorized Signor

Kelley Minty Morris, Commissioner

EIN

Derrick DeGroot, Commissioner

Date

Approved as to form and legal sufficiency:

Mika N. Blain
Klamath County Counsel

Date