

**OPTION AGREEMENT
AND
AGREEMENT OF PURCHASE AND SALE**

DATE: July ~~_____~~, 8, 2020 (“Effective Date”)

FROM: City of Albany, Oregon (“Owner”)

TO: Cumberland Community Events Center (“Optionee”)

RECITALS

Owner owns fee simple title to the real property described in Exhibit A attached hereto, together with all improvements situated on it. The real property, without improvements, together with all other rights, hereditaments, and tenements appurtenant to the real property are collectively referred to herein as the “Property.”

Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated.

Owner has agreed to grant Optionee an exclusive option to purchase the Property, and the parties desire to evidence their agreement regarding the option.

The parties therefore agree as follows:

AGREEMENT

Section 1. Grant of Option

Owner, in consideration of the sum of \$ ~~_____~~ 1.00 paid to Owner by Optionee in cash, receipt of which is acknowledged by Owner, grants to Optionee the sole and exclusive option to purchase the Property (the “Option”) in the manner and for the price stated in this Agreement.

Section 2. Option Terms

2.1 Term. The term of the Option (the “Term”) commences on the Effective Date and will continue until 5:00 p.m., ~~_____~~, October 15 2020. If the last day of the Term falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the state of Oregon, all of Optionee’s rights during either such time period will extend through the next business day.

2.2 Exercise of Option. The Option must be exercised by written notice (the “Exercise Notice”) given by Optionee to Owner at any time during the Term stating that Optionee has elected to exercise the Option. The Option may be exercised only with respect to the entire Property, and nothing contained herein will be construed as permitting Optionee to purchase less than all of the Property under this option. Upon exercise of the Option, Optionee

1 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

shall be obligated to purchase the Property from Owner, and Owner will be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

2.3 Failure to Exercise Option. If Optionee fails for any reason to exercise the Option in the manner set forth herein, Optionee will have no further claim against or interest in the Property or the Option Money Payment. In the event of the failure to exercise the Option, Optionee will provide Owner with any instruments that Owner reasonably deems necessary for the purpose of removing from the public record any cloud on title to the Property that is attributable to the grant or existence of the Option.

Section 3. Option Money

In payment for Owner's grant of this Option, Optionee has paid or will pay Owner the following sum (the "Option Money Payment"):

(1) Contemporaneously with the execution of this Agreement, Optionee has paid Owner the cash sum of ~~\$1.00~~ as stated in Section 1, the receipt of which is acknowledged by Owner. No other Option Money Payment is due or payable during the Term.

If Optionee fails to pay Owner any Option Money Payment on or before the date on which the payment is due, TIME BEING OF THE ESSENCE OF THIS AGREEMENT, then the Option and all of Optionee's rights under this Agreement will automatically and completely terminate without any act or action by Owner. If the Option is exercised and the Property is acquired by Optionee, then the Option Money Payment paid by Optionee will be credited against the Purchase Price at Closing.

Section 4. Intentionally Left Blank

Section 5. Purchase Price

5.1 Purchase Price. The purchase price for the Property (the "Purchase Price") will be **\$69,000.00**.

5.2 Payment of Purchase Price. The purchase price for the Property will be payable as follows:

5.2.1 The entire balance of the Purchase Price will be paid in cash at closing.

Section 6. Remedies

6.1 Optionee. If Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain the return of all Option Money Payments previously paid to Owner or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner under this Agreement. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner.

2 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

6.2 Owner. If Optionee breaches any term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, will be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain all Option Money Payments paid by Optionee. ~~Owner expressly reserves the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience resulting from Owner having to remove existing Tenants and improvements, all of which is required only by this transfer of title in lieu of Condemnation.~~

6.3 Other Remedies. The limitations on remedies set forth in this section do not apply to any cause of action accruing after Closing or preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

Section 7. Conditions Precedent to Closing

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (the "Conditions"). The Conditions are intended solely for the benefit of Optionee and Optionee will have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice will not constitute such a waiver. If any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee will have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the deadline expires, to obtain the return of the Option Money Payments paid, and to exercise any remedy available to Optionee if the subject Condition was not satisfied by reason of a breach of this Agreement by Owner. If Optionee does not give Owner notice of termination before the applicable deadline, then Optionee will be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this section are the following:

7.1 On the Closing Date, the Title Company (defined below) will be ready, willing, and able to issue, and will issue to Optionee on recordation of the Owner's deed mentioned below, the title insurance policy required by Section 9.6.

7.2 On or before the Closing Date, Owner will have performed all the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

7.3 On or before _____, **October 1, 2020**, Optionee will have conducted any environmental reviews and audits (the "Environmental Audits") of the Property, indicating to the satisfaction of Optionee that the Property does not contain, either on its surface or in its subsurface or underlying water table, any Hazardous Substances (defined in Section ~~4~~**13.1.2**). The Environmental Audit may include a historical review of the use of the Property, review of all regulatory agency permits and compliance and enforcement files and records, soil tests, the

3 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

acquisition of core samples and water table samples by drilling conducted on the Property, and such other tests and studies as Optionee may deem appropriate. All tests and studies will be conducted by agents selected by Optionee and performed as Optionee directs, subject to the approval of Owner, which must not be unreasonably withheld, and the provisions of Section ~~4211~~.

Section 8. Title

Within 15 days following the Effective Date, Owner will deliver to Optionee, at ~~Optionee's~~ Owner's expense, a preliminary title report (the "Title Report") covering the Property. The Title Report will be issued by the Title Company (defined in Section 9.1). The Title Report will be accompanied by legible copies of all plats and exceptions to title referenced in the Title Report (the "Exceptions"). Within 20 days of receiving the Title Report and the Exceptions, Optionee will give written notice (the "Initial Notice") to Owner of the Exceptions that Optionee will require Owner to remove of record at or before Closing (the "Unacceptable Exceptions"). If Optionee fails to give Owner the Initial Notice, then Optionee will be deemed to have approved the Title Report. Owner has 10 days following receipt of the Initial Notice to give written notice (the "Reply Notice") to Optionee of those Unacceptable Exceptions that Owner concludes, in good faith, that Owner cannot or will not remove at or before Closing. Owner will not have any obligation to institute litigation or spend any sum of money to cure or remove any Exceptions, but Owner will be obligated to remove, at or before Closing, any Exception created or suffered to be created by Owner that is security for payment of a sum of money (including mortgages, deeds of trust, tax liens, contractor's liens, and judgment liens) and any Exception created, or suffered to be created, by Owner after the Effective Date. Owner agrees to remove all Unacceptable Exceptions not referenced in a duly given Reply Notice. If one or more of the Unacceptable Exceptions cannot be removed at or before Closing and Owner so states in a duly given Reply Notice, then Optionee may exercise any of the following rights by giving written notice to Owner within 15 days of receiving the Reply Notice: (1) Optionee may terminate this Agreement, in which event the Option Money Payments will be refunded to Optionee and neither party will have any further liability, (2) Optionee may accept title to the Property subject to the Unacceptable Exceptions, or (3) Optionee may attempt to cure the Unacceptable Exceptions or any of them without cost or liability to Owner (but Owner will be obligated to cooperate with the cure efforts and to join in the execution of any curative instruments that will operate to remove the Unacceptable Exceptions). The foregoing rights of Optionee will not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which Optionee does not object or to which Optionee agrees, in writing, to waive objection, are referred herein to as the "Permitted Exceptions."

Owner will not cause, permit, or suffer any matter to be recorded with respect to the Property during the Term.

Section 9. Closing

9.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") will occur on (the "Closing Date selected by Optionee, but in all events the Closing will occur at least 60 days after the date that the Exercise Notice is given. The escrow for the Closing will be

4 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

established at the office of Amerititle (the “Title Company”), at 1393 Clay Street, Albany, Oregon 97322.

9.2 Closing Obligations. On the Closing Date, Owner and Optionee will deposit the following documents and funds in escrow, and the Title Company will close escrow in accordance with the instructions of Owner and Optionee.

9.2.1 Owner will deposit the following:

(1) The conveyance documents described in Section 10, duly executed and acknowledged;

(2) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445(b);

(3) Original counterparts or legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Owner that relate to the Property;

(4) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and

(5) Such other documents and funds, including (without limitation) escrow instructions, that are required of Owner to close the sale in accordance with this Agreement.

9.2.2 Optionee will deposit the following:

(1) The cash payment specified in Section 5, minus any credits due Optionee under the terms of this Agreement;

(2) Any documents that Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated; and

(3) Any other documents and funds, including (without limitation) escrow instructions, that are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement.

9.3 Costs. Optionee and Owner will each pay ~~all~~half of the escrow fee of the Title Company with respect to the Closing. Owner will pay the premium for the title insurance policy that Owner is obligated to provide to Optionee. Optionee will pay the fee for recording the conveyance documents referred to herein.

9.4 Prorations. All items of expense incurred by Owner with respect to the Property will be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs will be prorated between Owner and Optionee as of the Closing Date.

5 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

9.5 Title Insurance Policies. As soon as practicable after Closing, and in any event no later than **30** days after the Closing Date, Owner will cause the Title Company to issue its standard form Owner's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property is vested in Optionee, subject only to the Permitted Exceptions and the standard printed exceptions.

Section 10. Conveyance

At the Closing, Owner will execute, acknowledge, and deliver to Optionee a Statutory Warranty Deed conveying the Property to Optionee, subject only to the Permitted Exceptions.

Section 11. Access to Property

11.1 Access. Owner grants to Optionee and its agents the right to enter on the Property at any reasonable times before the Closing Date for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. Owner will cooperate with Optionee in making the tests and studies. No soil tests or drilling will be undertaken without first obtaining Owner's approval with respect to the agents retained to perform the work and the location and purpose of the tests or drilling. ~~Optionee will not interfere with or disturb the rights of any tenants of Owner in possession of any portion of the Property.~~ Optionee will protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. If Optionee fails to exercise the Option and purchase the Property, Optionee will fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities under this paragraph. ~~If Optionee fails to exercise the Option, Optionee will deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property.~~

11.2 Approvals. Optionee has the right to apply for and obtain any governmental approvals to use and develop the Property as Optionee may desire. Owner will assist and cooperate with Optionee in obtaining any such approvals but does not guarantee any specific result in regards to any approvals. Such cooperation includes (without limitation) signing all applications and other documents requested by Optionee that may be reasonably related to such matters, as long as Owner approves the form and substance of all such documents. All costs and expenses incurred with respect to such approvals will be paid for by Optionee.

Section 12. Covenants of Owner

12.1 Ownership. During the Term, Owner will not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

6 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

Section 13. Warranties and Representation of Owner

13.1 Warranties Owner acknowledges that the warranties and representations of Owner contained in this Agreement, including the warranties and representations contained in Section 13 (the “Warranties”), are material inducements to Optionee to enter into this Option Agreement. All Warranties, and Optionee’s right to assert a breach of them, shall survive execution of this Agreement, the Closing, and the execution and delivery of the Closing documents. If, before Closing, Optionee discovers or is advised that any of the Warranties was untrue when made, then Optionee shall have the option to either (1) terminate this Agreement and obtain the return of all Option Money Payments paid, without waiving any cause of action that Optionee may be entitled to assert against Owner by reason of the breach of Warranty, or (2) continue this Agreement, without waiving any cause of action that Optionee may be entitled to assert against Owner by reason of the breach of the Warranty. If, after Closing, Optionee discovers or is advised that any remedy available to Optionee at law or in equity by reason of the breach of such Warranty, Owner warrants and represents to Optionee that the following matters are true and correct:

13.1.1 Litigation; Law. There is no litigation, arbitration, or administrative hearing pending before any governmental authority that concerns or affects the Property or any portion of it and, to the knowledge of Owner, no such proceeding is threatened. To the knowledge of Owner, the Property complies with all laws, ordinances, and governmental approvals and decisions that relate to it.

13.1.2 Hazardous Substances. For purposes of this subsection, the phrase “Hazardous Substances” has the same meaning attributed to it in ORS 465.200(16). Owner warrants, represents, and covenants as follows:

(1) To the knowledge of Owner, there are no Hazardous Substances in, on, or buried on or beneath the Property, and no Hazardous Substances have been emitted or released from the Property in violation of any applicable laws;

(2) Owner has not brought onto, stored on, buried on, used on, emitted or released from, or allowed to be brought onto, stored on, buried on, used on, or emitted or released from, the Property any Hazardous Substances in violation of any applicable environmental laws; and

(3) To the knowledge of Owner, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Owner agrees not to cause or permit any such tanks to be installed in the Property before Closing.

13.1.3 Status of Owner. Owner is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC §1445.

13.1.4 Breach of Agreements. Neither the execution of this Agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the

7 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

exercise of the Option and closing of the transaction contemplated herein, constitutes or will constitute a default under any other agreement or contract that relates to the Property or to which Owner is a party.

13.1.5 Authority. No consents, documents, or approvals that have not been obtained are necessary to the effectiveness of the grant of the Option by Owner.

13.1.7 Contracts and Leases. There are no lease agreements, maintenance contracts, service agreements, or other contracts of any nature that pertain to, cover, or affect the Property or any part of it.

As used herein, the phrase “to the knowledge of Owner” or any variation of that phrase refers to matters within the actual knowledge of Owner and do not include constructive or imputed notice or knowledge; and the use of that phrase does not imply that Owner has undertaken any special inquiry or investigation with respect to the representation modified by the phrase, unless circumstances within the actual knowledge of Owner would warrant a reasonable person to undertake further inquiry when presented with similar circumstances.

13.1.8 Access and Site Conditions. Owner warrants and represents to Optionee that, to the knowledge of Owner, the Property has unimpeded access to Pine Street, which is believed to be a dedicated public street. Owner has no knowledge of any pending changes in land use designation (comprehensive plan or zoning ordinance) that apply to the Property. To the knowledge of Owner, there are no material encroachments onto the Property.

13.2 Changed Conditions. If Owner discovers that one or more of the Warranties or one of the conditions referred to in the Warranties has changed after this Agreement is executed, through no fault of Owner, Owner will immediately inform Optionee, in writing, of that discovery. If the changed condition or Warranty cannot be cured within 10 days of the date Owner discovers the change, then Optionee may terminate this Agreement (and its exercise of the Option, if any) by giving written notice of termination to Owner within 15 days after receiving the notice from Owner, and all Option Money Payments previously paid by Optionee will be returned to Optionee. If the changed condition or Warranty can be corrected within 10 days after discovery by Owner, Optionee will not have the right to terminate this Option Agreement under this section and Owner will correct the changed condition or Warranty within 10 days of the discovery. If Optionee does not terminate this Agreement and the changed condition or Warranty can be corrected and is not corrected by the Closing Date, then Optionee will have the right to withhold 150% of the estimated costs of correcting the changed condition or Warranty until the changed condition is corrected, and Owner will correct the changed condition, at Owner’s sole expense and in an expeditious manner, failing which Optionee may use the withheld sums to make the correction. A change caused by Owner is deemed to be a breach of this Agreement by Owner if the change materially and adversely affects the Property or Optionee’s rights.

Section 14. Recording

8 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(Pride Printing Company, Inc. Cumberland Community Events Center / City of Albany)

If Optionee fails to exercise the Option before the Term expires, Optionee will execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property if requested by Owner.

Section 15. Waiver

Failure by Owner or Optionee to enforce any right under this Agreement will not be deemed to be a waiver of that right or of any other right.

Section 16. Successors and Assigns

Subject to the limitations on Owner's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained are binding on and inure to the benefit of the heirs, successors, and assigns of Owner and Optionee. Optionee may not assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Owner.

Section 17. Notices

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To ~~Owner~~Optionee: Cumberland Community Events Center
P.O. Box 2495
Albany, OR 97321

With a Copy

To: Joel D. Kalberer
Weatherford Thompson, P.C.
130 W. First Avenue
Albany, OR 97321

To ~~Optionee~~Owner: Peter Troedsson
City Manager
333 Broadalbin St. SW
Albany, OR 97321

With a Copy

To: M. Sean Kidd
City Attorney
260 Ferry Street SW, Suite 202
Albany, OR 97321

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above will be effective when received by the party for whom it is intended.

9 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(~~Pride Printing Company, Inc.~~ Cumberland Community Events Center / City of Albany)

Section 18. Attorney Fees

If litigation is instituted with respect to this Agreement (including any litigation undertaken in the context of bankruptcy proceedings), the prevailing party will be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, the amount to be set by the court before which the matter is heard.

Section 19. Real Estate Commission

Each party agrees to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other party against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

Section 20. Integration, Modification, or Amendments

This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Owner and Optionee, in writing.

Section 21. Representation

Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section ~~19~~18, each party will be responsible for all attorney fees incurred by it with respect to this Agreement.

Section 22. Counterparts; Pronouns

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 Owner and Optionee. With respect to any pronouns used, each gender used includes the other gender and the singular and the plural, as the context may require.

Section 23. Governing Law; Interpretation

This Agreement is governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law and (2) the balance of this Agreement remain in full force and effect.

Section 24. Time Is of the Essence

Time is of the essence of this Agreement.

Section 25. Authority to Execute

Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.

10 - OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE

(~~Pride Printing Company, Inc.~~ Cumberland Community Events Center / City of Albany)

Section 26. Statutory Disclaimer

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 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROEPRTY 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.336 AND SECTION 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Section 27. Consents

The parties agree to act in good faith and with fair dealing with one another 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, the consent, approval, or other action will not be unreasonably withheld, delayed, or conditioned by a party unless the provision in question expressly authorizes the party to withhold or deny consent or approval or 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 is to be interpreted to mean that consent will not be unreasonably withheld, delayed, or conditioned.)

Executed on the day and year first above written.

OWNER:

CITY OF ALBANY

Title

OPTIONEE:

Cumberland Community Events Center

By: _____
Name: _____
Title: _____

Attachments:
Exhibit A—Property

EXHIBIT A

Property

[Description of Property]

EXHIBIT B

Form of Memorandum

After recording return to:

**MEMORANDUM OF OPTION AGREEMENT
AND AGREEMENT OF PURCHASE AND SALE**

_____, a _____ (“**Owner**”), and _____,
a _____ (“**Optionee**”), have entered into an Option Agreement and Agreement
of Purchase and Sale dated _____, 20__ (the “**Option Agreement**”), wherein
Owner has granted to Optionee the sole and exclusive option to purchase the property described
in Exhibit A. The term of the option will expire on _____, 20__.

This Memorandum is being executed and recorded in the Official Records of _____
County, Oregon, to give notice of the provisions of the Option Agreement and will not be
deemed or construed to define, limit, or modify the Option Agreement in any manner.
Executed as of _____, 20__.

OWNER:

OPTIONEE:

_____, a _____

_____, a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by
_____, as _____ of _____, a _____, on behalf of said
_____.

/s/ _____
Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by
_____, as _____ of _____, a _____, on behalf of said
_____.

/s/ _____
Notary Public for Oregon
My commission expires: _____



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager

FROM: Holly Roten, Central Administrative Officer/PIO ^{HR}

DATE: July 8, 2020, for the July 8, 2020, City Council Meeting

SUBJECT: Republic Services Agreement to Donate Trash Collection and Disposal in Downtown Albany

Action Requested:

Approval of the attached memorandum of agreement with Republic Services, Inc., for the collection and disposal of trash in public-use receptacles located in downtown Albany as a donation from Republic Services to the City.

Discussion:

At the June 24, 2020, city council meeting, the city council discussed revised budget allocations to transient lodging tax recipients. As part of that discussion, the Albany Downtown Association (ADA) noted that they pay approximately \$8,100 per year to Republic Services, Inc., for the collection and disposal of trash in public-use receptacles in downtown Albany. As a fixed cost for ADA, the association requested that the expense be included in their materials and services budget as part of the council's consideration whether to fund, partially or in full, ADA and Albany Visitors Association's operating expenses for the first quarter of Fiscal Year 2020-2021.

Following the June 24 meeting, Julie Jackson, municipal manager for Republic Services, contacted the City with an offer from their company to provide these services at Republic Services' expense in the form of a donation to the City. To facilitate the donation, staff drafted the attached memorandum of agreement. Republic Services management has reviewed and approved the agreement, which provides for automatic one-year renewals. Should Republic Services no longer intend to provide this service at their expense, the agreement provides for six-months' notice to allow the City time to work with ADA to identify an appropriate budget for the expense in the future.

Budget Impact:

There is no immediate budget impact to the City. The donation represents a budget savings to the Albany Downtown Association, a recipient of Albany's transient lodging tax dollars, of approximately \$8,100 per year at current refuse rates.

HR

Attachment

c: Seth Sherry, Economic Development Manager (via email)
Jeanna Yeager, Finance Director (via email)
J.C. Rowley, Finance Manager (via email)

Memorandum of Agreement

between the

City of Albany, Oregon, and Albany-Lebanon Sanitation, Inc.

THIS AGREEMENT, is made and entered into this _____ day of July 2020, by and between the City of Albany, Oregon, hereinafter referred to as the "City," and Republic Services, Inc., dba Albany-Lebanon Sanitation, Inc., hereinafter referred to as "Franchisee," for the collection and disposal of public-use trash receptacles in downtown Albany.

Recitals

WHEREAS, the City is a municipal corporation, duly organized under the statutory authority of the state of Oregon; and

WHEREAS, Republic Services, Inc., dba Albany-Lebanon Sanitation, Inc., holds an exclusive franchise for the collection of solid waste within the Albany city limits as outlined in Albany Municipal Code Chapter 3.28, Albany-Lebanon Sanitation Company Franchise; and

WHEREAS, Franchisee has offered to donate their collection and disposal services for the trash receptacles designated for public use and located in downtown Albany, representing a donation to the City of approximately \$8,100 per year.

Agreement

NOW, THEREFORE, the parties agree as follows:

Term: This agreement shall cover July 1, 2020, through June 30, 2021, and shall automatically renew for one-year increments thereafter. Franchisee agrees to notify City by January 1 of each year for the upcoming July 1 should Franchisee no longer intend to provide this service at Franchisee's expense.

Coverage Area and Service Provided: The downtown area covered under this agreement shall include the area generally described as Water Avenue to Fourth Avenue and Washington Street to Railroad Street. Franchisee agrees, at Franchisee's expense, to provide collection and disposal services for up to 50 public-use trash receptacles in the downtown area. The locations of receptacles installed in the area as of the date of this agreement are shown on the map provided as Exhibit A.

Indemnification: Franchisee agrees to indemnify, defend, and hold harmless the City, its agents, officers, and employees from and against any and all liability, claims, suits, loss, damages, costs,

and expenses arising out of or resulting from the public's negligent or intentional acts of improper or illegal disposal of materials including, but not limited to, the deposit of hazardous, oversized, or otherwise offensive or unacceptable materials in public-use trash receptacles.

Unless expressly modified by this Agreement, all other sections and provisions of Albany Municipal Code Chapter 3.28, Albany-Lebanon Sanitation Company Franchise, and of the current franchise agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this memorandum of agreement voluntarily and upon proper authority as of the dates below.

By: _____

Date: _____

Peter Troedsson, City Manager
City of Albany, Oregon
P.O. Box 490, Albany, Oregon 97321
Tax ID 93-6002114

By: _____

Date: _____

Shawn Edmonds, General Manager
Republic Services, Inc. dba Albany-Lebanon Sanitation, Inc.
18500 North Allied Way, Phoenix, AZ 85054
Tax ID: 65-0716904



J:\ArcGIS_Pro_Projects\Council\Trash_Cans_Downtown\MXD\Trash_Can_Locations.aprx

★ Street Trash Cans (47)



Exhibit A

Downtown Street Trash Cans

Date: 07/08/2020 Map Source: City of Albany



RESOLUTION NO. _____

A RESOLUTION AUTHORIZING INTERFUND LOAN FROM THE ECONOMIC OPPORTUNITY DEVELOPMENT PROGRAM TO THE ECONOMIC DEVELOPMENT PROGRAM FOR FUNDING OPERATIONS

WHEREAS, on June 24, 2020, the City Council requested the Economic Development Opportunity program fund a loan to the Economic Development Activities program to address Transient Lodging Tax (ILT) revenues shortfall; and

WHEREAS, ORS 294.468 allows for interfund loans made for the purpose of paying operating expenses; and

WHEREAS, the purpose of the loan is to pay operational expenses for the Economic Development Activities program; and

WHEREAS, the principal loan amount is to be \$118,158.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the interfund loan as described below is hereby approved:

- 1. Detail of the loan:

Interfund Loan		DEBITS	CREDITS
<u>Economic Development Fund</u>			
<u>Economic Development Opportunity (11025)</u>			
Intrafund Transfer Out	21111025-909000	118,158	
<u>Economic Development Activities (11010)</u>			
Intrafund Transfer In	21111010-490900		118,158

- 2. The loan will be repaid in Fiscal Year ____ with a rate of return of 1.3%.

DATED AND EFFECTIVE THIS 8TH DAY OF JULY 2020.

Mayor

ATTEST:

City Clerk

Amount Borrowed \$ 118,158.00
Years 10
Interest Rate 1.30%
Payment \$12,676.99

Year	Beg	Payment	Principal
1	\$ 118,158.00	\$ 12,676.99	\$ 11,140.94
2	107,017.06	12,676.99	11,285.77
3	95,731.29	12,676.99	11,432.48
4	84,298.81	12,676.99	11,581.11
5	72,717.70	12,676.99	11,731.66
6	60,986.04	12,676.99	11,884.17
7	49,101.87	12,676.99	12,038.67
8	37,063.20	12,676.99	12,195.17
9	24,868.03	12,676.99	12,353.71
10	12,514.32	12,676.99	12,514.32

Amount Borrowed \$ 118,158.00
Years 5
Interest Rate 1.30%
Payment \$24,561.17

Year	Beg	Payment	Principal
1	\$ 118,158.00	\$ 24,561.17	\$ 23,025.12
2	95,132.88	24,561.17	23,324.44
3	71,808.44	24,561.17	23,627.66
4	48,180.78	24,561.17	23,934.82
5	24,245.96	24,561.17	24,245.96

Interest	Ending Balance
\$ 1,536.05	\$ 107,017.06
1,391.22	95,731.29
1,244.51	84,298.81
1,095.88	72,717.70
945.33	60,986.04
792.82	49,101.87
638.32	37,063.20
481.82	24,868.03
323.28	12,514.32
162.69	-

Rounding
0.02

Interest	Ending Balance
\$ 1,536.05	\$ 95,132.88
1,236.73	71,808.44
933.51	48,180.78
626.35	24,245.96
315.20	-

Rounding
-0.01