

**AGENDA COVER MEMORANDUM**

**Agenda Date: April 28, 2004**

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**DATE:** April 13, 2004

**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer 2

**SUBJECT:** ORDER/IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH LEO LEMKE FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 16-25-28-00-02300 (SECOND LOT WEST OF 45500 MCKENZIE HIGHWAY, LEABURG)

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1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH LEO LEMKE FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 16-25-28-00-02300 (SECOND LOT WEST OF 45500 MCKENZIE HIGHWAY, LEABURG)
2. **ISSUE/PROBLEM:** Mr. Lemke wishes to acquire a purchase option for the subject property to allow him time to conduct research on the feasibility of developing it. The proposed terms of the option agreement are a sale price of \$7,000 for the property, an option period through October 1, 2004 and a cost of \$400 for the option.
3. **DISCUSSION:**

3.1 Background

The subject parcel was acquired through tax foreclosure in June, 1972. The parcel is .34 acres, zoned RR2 and fronts the Mckenzie River (a cliff prevents direct access to the river).

The parcel is likely a legal lot of record as it was created in 1939 (no formal verification has been done by the Land Management Division). It has an assessed value of \$19,288.

The property file indicates that the parcel was initially withheld from sale for possible use by the parks division. It was later offered at a Sheriff's sale on November 13, 1986 with a minimum bid of \$5,000. The property has remained in inventory since that time but has received numerous inquiries from potential buyers.

The subject parcel, independently, cannot be developed with a dwelling as its size, topography and proximity to the river preclude locating a well and septic system within current setback requirements. Mr. Lemke has indicated that he has acquired the right to purchase the parcel adjoining the subject – tax lot 2200. It is possible that the two lots together can be developed with a dwelling.

### 3.2 Analysis

Mr. Lemke is taking the initiative to research the feasibility of developing the subject parcel together with the adjoining property. In addition to the cost of the option agreement, Mr. Lemke will expend resources for planning fees, legal lot verifications, etc. Using an option agreement reduces the risk to the buyer as well as protecting their expenditure of resources. By reducing the risk in the transaction the County receives greater consideration for the property. The option agreement also shifts the burden of investigative procedures to the purchaser.

As the property has been through a Sheriff's sale, it can be sold at private sale pursuant to the provisions of ORS 275.200. ORS 275.200 allows the County to sell its property at private sale without further notice if it has not sold at Sheriff's sale. The sale price cannot be less than 15% of the minimum bid for which the property was offered at the Sheriff's sale. The proposed agreement meets the requirements for private sale pursuant to statute.

### 3.3 Alternatives/Options

1. Accept the proposal as presented.
2. Reject the offer and direct staff to continue negotiations for terms which would be acceptable to the Board. The Board can also offer the property at a future Sheriff's sale if it wishes.

### 3.4 Recommendation

It is recommended that alternative one be pursued with authority to execute the agreement delegated to the County Administrator. It is also recommended that the Board Order

include provisions for execution of the Quitclaim Deed by the Board should the purchase option be exercised, thus expediting the sale, and that the Property Management Officer be authorized to execute closing documents should an escrow agent be used to close the transaction.

3.5 Timing

None.

4. **IMPLEMENTATION/FOLLOW-UP:** Upon approval by the Board of County Commissioners, the County Administrator will execute the option agreement.

5. **ATTACHMENTS:**  
Board Order  
Option Agreement  
Plat Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH LEO LEMKE FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 16-25-28-00-02300 (SECOND LOT WEST OF 45500 MCKENZIE HIGHWAY, LEABURG)

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to sell the following real property which was acquired through tax foreclosure, to wit:

See Attached Exhibit "A"

WHEREAS said real property is owned by Lane County and not in use for County purposes, and sale of said property would benefit Lane County by its return to the tax roll, and

WHEREAS said parcel was offered at a Sheriff's sale on November 13, 1986 for a minimum bid of \$5,000.00 and remained unsold after such sale with no bid received and

WHEREAS use of a purchase option agreement will allow the purchaser to expend resources to properly investigate the property while protecting the purchaser's interest in said property

IT IS HEREBY ORDERED that pursuant to ORS 275.200, and ORS 275.275, the County Administrator is authorized to execute an Option to Purchase with Leo Lemke substantially similar to attached exhibit "A", that the Board shall execute the Quitclaim Deed should the purchase option be exercised with Mr. Lemke or his designee as grantee and that the Property Management Officer is authorized to execute closing documents.

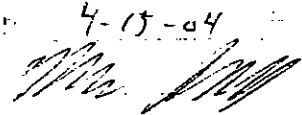
IT IS FURTHER ORDERED that pursuant to ORS 275.275, \$50 of the proceeds from the sale of the purchase option be disbursed through General Fund account 124-5570260-43370 with the remaining funds, and those received if the purchase option is exercised, disbursed through Foreclosure Fund account, 228-5570270-446120.

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Bobby Green, Chair,  
Board of County Commissioners

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH LEO LEMKE FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 16-25-28-00-02300 (SECOND LOT WEST OF 45500 MCKENZIE HIGHWAY, LEABURG)

16-25-28-00-02300  
4-15-04  


**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**16-25-28-00-02300**

Beginning at a point on the Southerly right of way line of the McKenzie Highway which point is found by running from a stone set in County Survey #1034 for the Northwest corner of the SE1/4 of Section 28, Township 16 South, Range 2 East of the Willamette Meridian, South 272.3 feet to the Southerly right of way line of said Highway, North 57° 42' West along said Southerly line 697.10 feet to the beginning of a curve to the left whose long chord bears North 58° 07' West thence; along said curve to the left and a radius distance of 259.70 feet to THE BEGINNING POINT OF THE TRACT HEREIN DESCRIBED, thence; South 41° 45' West 85.00 feet more or less to the edge of the water of the McKenzie River; thence Northwesterly along the rivers edge to a point 100 feet distant, North 48° 15' West from the Easterly line of this tract thence; North 41° 45' East to the Southerly line of said Highway thence Southeasterly along said Highway to the place of beginning. All in Lane County, Oregon.

## **OPTION TO PURCHASE/SALE AGREEMENT**

**LANE COUNTY**, a political subdivision of the State of Oregon, hereinafter called **COUNTY**, and **LEO LEMKE**, hereinafter called **PURCHASER**, do hereby agree to enter into an **OPTION TO PURCHASE/SALE AGREEMENT** for that certain real property identified as Assessor's map # 16-25-28-00-02300 and more particularly described as:

See Attached Exhibit "A"

### **RECITALS**

- A.** COUNTY is the owner of said property due to foreclosure for non-payment of property taxes.
- B.** COUNTY wishes to sell said property and PURCHASER wishes to buy said property from COUNTY.
- C.** The ability to develop or otherwise use said property is unknown at this time with regards to applicable uses, ability to secure development permits, environmental condition, access, status of title and other related issues.
- D.** To facilitate the sale of said property, COUNTY is willing to grant a period of time for PURCHASER to investigate said property to determine its feasibility for purchase and to grant an option to purchase said property under the terms and conditions set forth in this agreement.

### **AGREEMENT**

- 1. OPTION.** COUNTY does hereby grant to PURCHASER an option to purchase the subject property under the terms and conditions set forth in this agreement.
- 2. TERM.** The term of the option period shall commence upon full execution of this agreement and expire at midnight, October 1, 2004.
- 3. CONSIDERATION.** PURCHASER shall pay COUNTY the sum of **FOUR HUNDRED DOLLARS (\$400.00)** for said option payable upon execution of this agreement. Said sum is **not** refundable should PURCHASER choose not to exercise their purchase option for any reason.
- 4. PURCHASE PRICE.** The purchase price shall be **SEVEN THOUSAND (\$7,000.00)** cash payable to Lane County. Payment shall be by cash or cashier's check payable to Lane County. No personal or business checks will be accepted.
- 5. EXERCISE OF OPTION.** PURCHASER shall notify COUNTY in writing on or before the expiration of the option period of its intention to execute said option.

6. **TITLE.** COUNTY makes no claim to, and does not warrant title to, the subject property as being free of liens, encumbrances, easements or any other defects to title. It shall be PURCHASER'S obligation to investigate the status of title to the subject property. The COUNTY shall cooperate with PURCHASER in removing any objectionable items from title. However, all expenses and any liability or claims incurred in removing items from title shall be borne by PURCHASER. The COUNTY shall convey its interest in the subject property with a QUITCLAIM DEED. Title insurance, if any, shall be at the option and expense of PURCHASER.

7. **ENVIRONMENTAL CONDITION.** COUNTY has not conducted any environmental investigations, tests or studies of the subject property and has no knowledge of tests, studies or investigations, past or present, or of its present environmental condition or knowledge of any previous uses of, or actions upon, the subject property. County shall immediately notify PURCHASER if it becomes aware of any environmental or hazardous waste investigations, tests, studies, uses, or conditions, past, present or planned for the future.

8. **CLOSING.** Closing shall occur within 30 days from the effective date of PURCHASER'S written notice exercising its purchase option. Upon payment of the purchase price, plus the required recording fees, COUNTY shall deliver to PURCHASER a recorded Quitclaim Deed conveying COUNTY'S interest in the subject property to PURCHASER or PURCHASER'S designee. All moneys paid to COUNTY in consideration for this agreement shall be applied to the purchase price. Should PURCHASER wish to close the transaction through an escrow agent, PURCHASER shall inform COUNTY where to deliver the Quitclaim Deed. PURCHASER shall deposit with the escrow agent the funds required to close the transaction and execute any required documents to effect the closing. COUNTY shall deliver the Quitclaim Deed to the escrow agent with instructions to deliver it to PURCHASER upon receipt of the required payment to COUNTY. COUNTY shall execute any required documents to effect the closing. PURCHASER shall bear all costs associated with the closing of the transaction. PURCHASER shall lose all rights to the property and any monies paid in consideration for this agreement if it fails to close the transaction within 30 days of the written notice exercising the purchase option.

9. **ACCESS.** COUNTY does hereby grant to PURCHASER and/or its agents access to the subject property for the purpose of conducting necessary evaluations.

10. **TESTING PROCEDURES.** PURCHASER shall be responsible for conducting all testing procedures for evaluating the condition of the property. Such procedures shall be conducted by qualified personnel. No actions will be permitted that will significantly alter the existing condition of the property. Such actions include, but are not limited to digging trenches, mounding the dirt and other similar actions. The PURCHASER shall return the property to the same condition as it was prior to any actions by the PURCHASER. The COUNTY shall have the right to review and approve all activities and work being conducted on the property prior to any action by the PURCHASER. Reasonable approval will not be withheld and will be given in a timely manner.

**11. INDEMNIFICATION.** PURCHASER and its agents shall indemnify, defend and hold COUNTY, its commissioners, officers, employees and agents, harmless from any and all claims that may arise due to PURCHASER'S or its agents' conduct on, or investigation of, the property.

**12. WAIVER.** Failure by the COUNTY or PURCHASER to enforce any right under this agreement shall not be deemed to be a waiver of that right or of any other right.

**13. NOTICES.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To PURCHASER: Leo Lemke  
1051 Coburg Road  
Eugene, OR 97401

To COUNTY: Jeff Turk  
Lane County/Property Management  
125 East 8th Avenue  
Eugene, OR 97401

**14. APPROVALS.** PURCHASER shall have the right to apply for and obtain any governmental approvals to use and develop the subject property as PURCHASER may desire. COUNTY, in its capacity as owner of the subject property, shall assist and cooperate with PURCHASER in obtaining such approvals. Such cooperation shall include, but not be limited to, signing all applications and other documents requested by PURCHASER that may reasonably be related to such matters, provided that COUNTY approves the form and substance of all such documents. Such approvals shall not be unreasonably withheld. All costs and expenses incurred with respect to such approvals shall be paid by PURCHASER.

**15. TAXES.** PURCHASER shall not be responsible for any taxes during the option period and will not become responsible for any taxes prior to the date of closing.

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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year indicated below:

**DATED:**

**PURCHASER:**

\_\_\_\_\_

\_\_\_\_\_  
Leo Lemke

STATE OF OREGON)

) ss

County of Lane

)

On \_\_\_\_\_, 2004, personally appeared the above mentioned \_\_\_\_\_  
\_\_\_\_\_ and acknowledged the foregoing instrument to be  
their voluntary act. Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**DATED:**

**COUNTY:**

\_\_\_\_\_

WILLIAM VAN VACTOR  
ADMINISTRATOR, LANE COUNTY:

\_\_\_\_\_  
Pursuant to Order No. \_\_\_\_\_

STATE OF OREGON)

) ss

County of Lane

)

On \_\_\_\_\_, 2004, personally appeared William Van Vactor, Lane County  
Administrator, and acknowledged the foregoing instrument to be his voluntary act. Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**16-25-28-00-02300**

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