

Memorandum Date: April 17, 2008  
Order Date: May 7, 2008

W.3.E.4.

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**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works

**PRESENTED BY:** Frank Simas, Right of Way Manager

**AGENDA ITEM TITLE:** In the Matter of Entering into an Intergovernmental Agreement with the City of Lowell Regarding the Release of Restrictions From a Parcel of City-owned Land and the Sale of a Portion of County-owned Surplus Road Fund Property in Connection with the Lowell/St. Vincent de Paul Affordable Housing Development.

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**I. MOTION**

Move approval of the Order.

**II. AGENDA ITEM SUMMARY**

The City of Lowell wishes to obtain the release of Road Fund Restrictions on a portion of a parcel of land relinquished to the City by Lane County in 1991, and to purchase additional surplus Lane County Road Fund property in connection with the Lowell/St. Vincent de Paul Affordable Housing Development.

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

In 1965, the United States of America, U. S. Army Corps of Engineers (The Corps) quitclaimed certain lands in the City of Lowell to Lane County. The lands quitclaimed were portions of land that were acquired by The Corps in connection with the construction of Dexter Dam and Lookout Point Dam.

Pursuant to Order 91-1-2-17, the County relinquished to the City of Lowell by Quitclaim, a portion of the lands conveyed to the County by The Corps. The area relinquished contained approximately 8.6 acres as shown stippled on the attached map identified as Attachment 1. The land was relinquished to the City at no cost, as provided by ORS 271.330, but because it was originally acquired using County road funds, the deed contained language and covenants restricting the land to public road purposes.

The land conveyed to the City and as originally conveyed to the County contained restrictions imposed by The Corps reserving a strip of land 100 feet in width to be perpetually retained for public road purposes to meet "governmental

requirements for access and unlimited heavy hauling between Lookout Point and Dexter Dams”, and a “blanket” easement to accommodate the installation of a communications cable line.

The City is now proposing to partner with St. Vincent de Paul Society of Lane County to develop a 20-lot affordable housing subdivision to allow the construction of single-family dwellings for low and moderate income families. The homes to be constructed would be owner-occupied, and the buyers would need to contribute some of the labor during the home's construction in order to qualify for the financing to be provided through the U.S. Department of Agriculture's Mutual Self-help Housing Program. The proposed subdivision would occupy approximately 4 acres of the land that was conveyed to the City by Lane County.

In order to utilize the property for other than public road purposes, the City is requesting to obtain the release of the Road Fund restrictions imposed in the 1991 quitclaim deed on a portion of the property identified as Tract 2 on the map identified as Attachment 2 and to purchase an additional parcel of surplus county-owned Road Fund property comprising approximately 0.64 acres, and identified as Tract 1 on Attachment 2.

In addition, the City will need to complete negotiations with The Corps for the release of the heavy-haul restrictions and the communication line easement and for the acquisition of an additional 1.2 acres± of fee-owned land shown on Attachment 2 as “Corps Property”. The area proposed for use as the future street will not require the release of the Road Fund restrictions. There is a small area on the westerly end of the proposed development where the future street will connect with West Boundary Road that will require relinquishment of Lane County's interest so that it may be incorporated into the Lowell street system.

The City wishes to enter into an Intergovernmental Agreement (IGA) with Lane County in substantial conformance with the draft IGA identified as “EXHIBIT A”.

The proposed IGA calls for the City to pay to Lane County a total of \$74,900 for the rights to be acquired, consisting of \$55,650 for the release of the Road Fund restrictions and \$19,250 for unrestricted conveyance of Lane County's rights to the Tract 1 property. The compensation for the release and conveyance is in accordance with a staff appraisal of the property completed in mid-2006. Based on the trend in the market in the area of Lowell since then, it is not anticipated that a re-appraisal would show any significant increase or decrease.

The City's obligation to purchase the property and obtain the release would be contingent upon its successful completion of negotiations with The Corps, the obtaining of financing for the construction of the improvements, and the obtaining of all necessary permits and approvals.

Upon approval, the deeds will be placed in escrow pending satisfaction of all contingencies and the deposit of funds by the City, to be no later than June 30, 2009.

**B. Policy Issues**

This property is not needed for use by Lane County now or in the foreseeable future. The consideration proposed under the terms of the IGA will provide full reimbursement to the Road Fund based on the staff appraisal.

**C. Board Goals**

This project addresses the County Goal of contributing to "appropriate community development in the area of transportation and telecommunications infrastructure, housing, growth management and land development."

**D. Financial and/or Resource Considerations**

This property is a Road Fund asset, and upon close of escrow, the proceeds from the sale will be deposited in the Road Fund.

**IV. Analysis**

ORS 271.310 and ORS 275.030 provide for direct sales of such property if the property was not acquired by foreclosure for non-payment of property taxes and the county governing body deems it not to be in the best interest of the county to sell and convey the property by means of a Sheriff's auction.

**V. Alternatives/Options**

1. Approve the Order authorizing the execution of the IGA in substantial conformance with the attached draft by the County Administrative Officer.
2. Deny the Order and direct staff otherwise.

**VI. TIMING/IMPLEMENTATION**

If the Board approves the Order, Public Works staff will place the documents in escrow. When all conditions necessary for closing have been satisfied, the proceeds from the sale will be deposited in the Road Fund.

**VII. RECOMMENDATION**

Option 1.

**VIII. FOLLOW-UP**

N. A.

**IX. ATTACHMENTS**

Attachment 1 - Relinquishment Map

Attachment 2 - Conceptual Plan

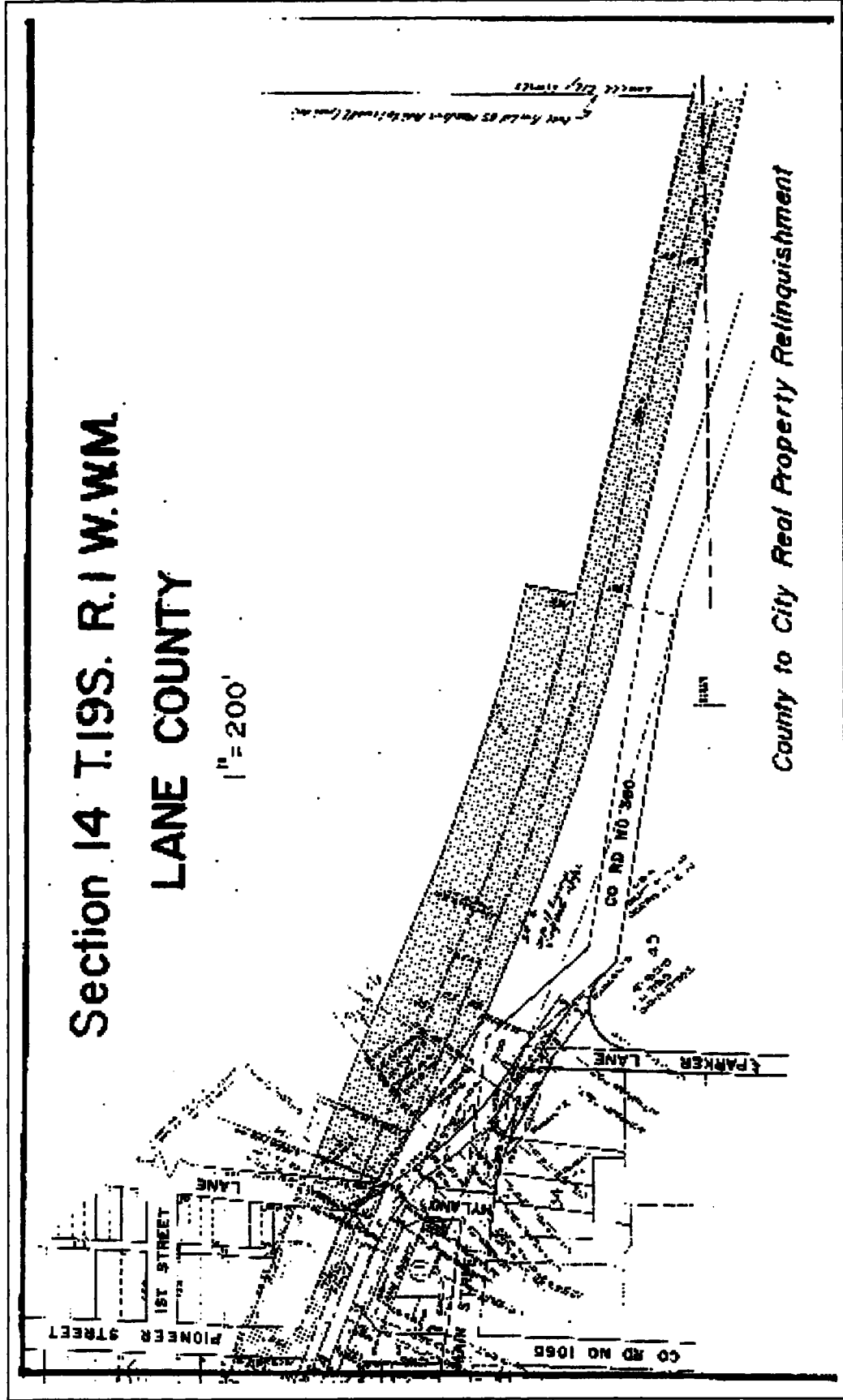
Order with "Exhibit A"

ATTACHMENT 1  
LANE COUNTY TO CITY OF LOWELL RELINQUISHMENT IN 1991  
(NOT TO SCALE)

Section 14 T.19S. R.1 W.W.M.

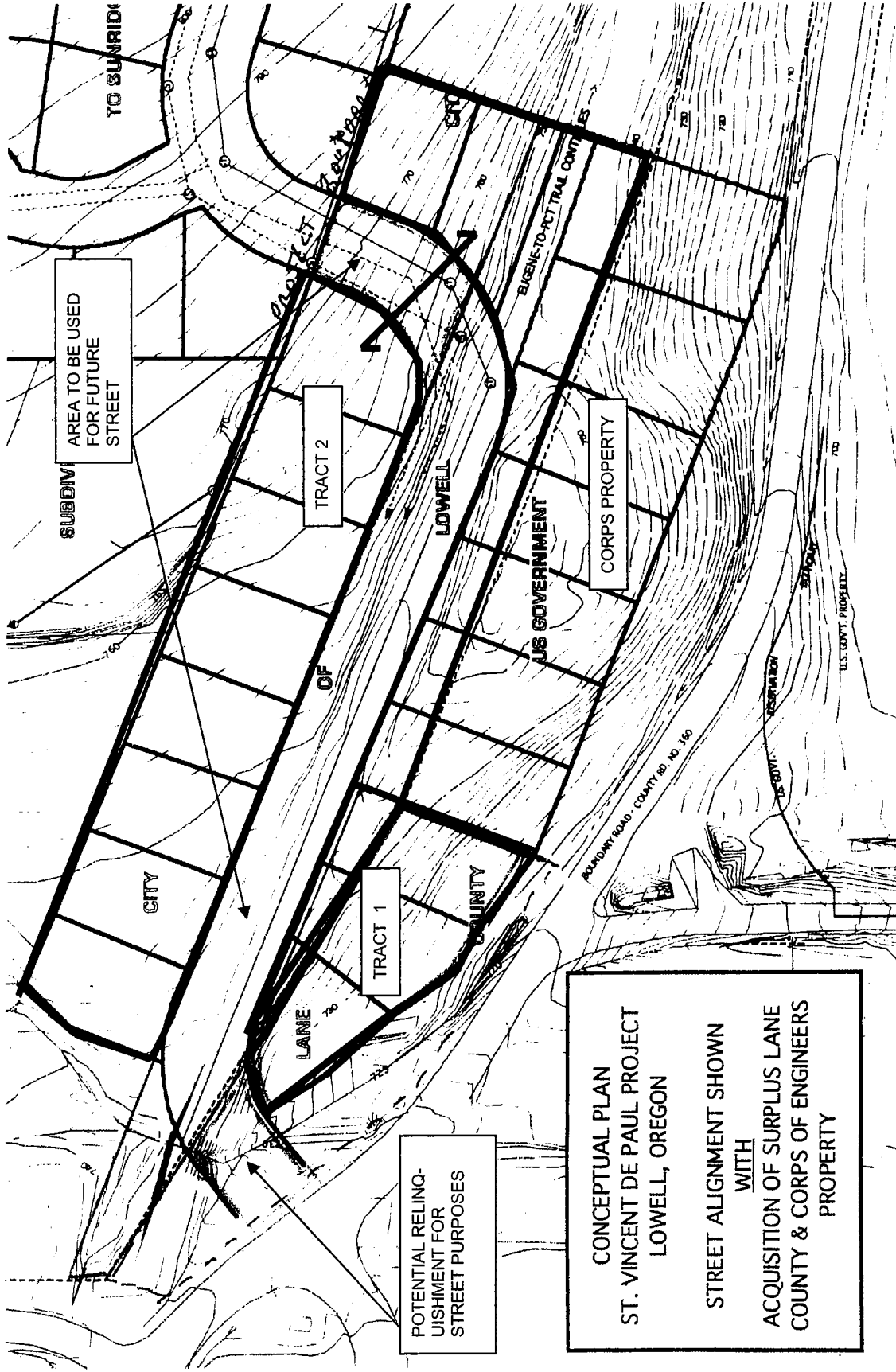
LANE COUNTY

1" = 200'



County to City Real Property Relinquishment

ATTACHMENT 2  
 IGA - CITY OF LOWELL AND LANE COUNTY



POTENTIAL RELINQUISHMENT FOR STREET PURPOSES

CONCEPTUAL PLAN  
 ST. VINCENT DE PAUL PROJECT  
 LOWELL, OREGON

STREET ALIGNMENT SHOWN  
 WITH  
 ACQUISITION OF SURPLUS LANE  
 COUNTY & CORPS OF ENGINEERS  
 PROPERTY

— option 1  
 - - - option 2

**IN THE BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON**

**ORDER NO.**

( **IN THE MATTER OF ENTERING INTO AN  
( INTERGOVERNMENTAL AGREEMENT WITH  
( THE CITY OF LOWELL REGARDING THE  
( RELEASE OF RESTRICTIONS FROM A  
( PARCEL OF CITY- OWNED LAND AND THE  
( SALE OF A PORTION OF COUNTY-OWNED  
( SURPLUS ROAD FUND PROPERTY IN  
( CONNECTION WITH LOWELL/ST. VINCENT  
( DE PAUL AFFORDABLE HOUSING  
( DEVELOPMENT**

**WHEREAS**, ORS 190.010 and the Lane County Home Rule Charter provide that units of local government may enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agents have the authority to perform; and

**WHEREAS**, pursuant to Order 91-1-2-17, Lane County relinquished by Quitclaim Deed to the City of Lowell portions of land conveyed to Lane County by the U.S. Army Corps of Engineers (The Corps) that had been acquired by The Corps in connection with the construction of Dexter and Lookout Point Dams; and

**WHEREAS**, because the land was acquired by Lane County using County Road funds, the Quitclaim Deed contained restrictive language limiting the use of the land to public road purposes; and

**WHEREAS**, the City of Lowell proposes to partner with St. Vincent de Paul Society of Lane County to develop a subdivision on a portion of said land to allow the construction of single-family dwellings for low and moderate income families; and

**WHEREAS**, the proposed subdivision use will require the release of the Road Fund Restrictions on a portion of the land and the purchase of some additional Lane County surplus Road Fund Property in order to accommodate the proposed 20-lot subdivision; and

**WHEREAS**, ORS 275.030(2) allows the sale of property or interest therein in the manner provided in ORS Chapter 271 if the real estate was not acquired by foreclosure for nonpayment of real property taxes and if the Board determines that the public interest will be furthered; and

**WHEREAS**, said real property is not needed for any public purpose, and the sale of said property would benefit Lane County by its return to the tax rolls and would promote the development of low and moderate-income housing within the County and is therefore in the best interest of the County; and

**WHEREAS**, the City of Lowell has tentatively agreed to purchase the release of the Road Fund Restrictions and the purchase the County's interest in an additional 0.64 acre not previously conveyed to the City for a total consideration of \$74,900 in accordance with an appraisal completed by Lane County staff, and wishes to enter into an Intergovernmental Agreement (IGA) to provide for

the purchase of said property by the City if all contingencies necessary for the closing of the transaction can be satisfied; and;

**NOW THEREFORE BE IT**

**ORDERED** that the County Administrator is hereby authorized to sign an Intergovernmental Agreement in substantial conformance with the attached Exhibit "A", that a Bargain and Sale Deed and Quitclaim Deed be executed when necessary survey work has been completed and the precise legal descriptions can be drawn, that the County Administrator is authorized to sign any documents necessary for the closing of the transaction in escrow and that upon the receipt of the proceeds from the sale they be deposited in the Road Fund.

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

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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

APPROVED AS TO FORM

Date 4-30-08 lane county

\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL



EXHIBIT A



**INTERGOVERNMENTAL AGREEMENT  
City of Lowell and Lane County  
Lowell/St Vincent de Paul Affordable Housing Development**

**THIS AGREEMENT** is entered into by and between Lane County, a political subdivision of the State of Oregon, hereinafter referred to as **COUNTY**, and the City of Lowell, an Oregon municipal corporation hereinafter referred to as **CITY**.

**RECITALS**

1. ORS 190.010 and the Lane County Home Rule Charter provide that units of local government may enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agents, have authority to perform; and

2. WHEREAS, by Quitclaim Deed dated January 26, 1965, and recorded February 15, 1965, on Reel 259, under Recorder's Reception Number 92323, Lane County, Oregon Deed Records, the United States of America (hereinafter called USA) remised, released and forever quitclaimed all its right, title and interest in and to certain lands within Section 14, Township 19 South, Range 1 West, Willamette Meridian, to **COUNTY** subject to certain restrictions (hereinafter called **Federal Restrictions**) reserving and designating a portion of said land to be perpetually retained to meet governmental requirements for access and unlimited heavy hauling between the Lookout Point and Dexter Dams, in addition to a perpetual easement for operation and maintenance of a communication cable line; and

3. Whereas by quitclaim deed dated April 11, 1991, **COUNTY** released and quitclaimed all of its right title and interest in a portion of said lands **CITY**, subject to the legal restrictions (hereinafter called County Restrictions) imposed in connection with the acknowledgment that the lands were acquired with Road funds of **COUNTY** and the acceptance by **CITY** that said lands be used for public road purposes; and

4. WHEREAS, **CITY** wishes to obtain the unrestricted conveyance from **COUNTY** of additional lands comprising approximately 0.64 acres originally conveyed to County by USA by means of the quitclaim deed referred to in Section 2 above, and wishes to obtain the release of the County Restrictions over approximately 1.59 acres previously conveyed as described in Section 3 above in order for **CITY** to develop a subdivision on said land for the purpose of constructing low income housing in cooperation with Saint Vincent de Paul of Lane County; and

5. Whereas the subject lands were originally purchased from the USA with Lane County Road Fund monies, and pursuant to Article IX, Section 3a of the Oregon Constitution, such revenue may only be used for the construction, reconstruction, improvement, repair and maintenance of public highways and roads in the state, and therefore the compensation to Lane County for the unrestricted conveyance and the release of the County Restrictions must be based on the market value of the rights to be conveyed in order to reimburse the County Road Fund. **COUNTY** has completed an appraisal of said land and restrictions, and has concluded that the estimated market value is \$74,900; and

6. WHEREAS, **CITY** has received Federal Authorization and is currently negotiating with the U. S. Army Corps of Engineers to obtain the release of the Federal Restrictions encumbering said lands and acquire needed excess Federal Land and must complete these

**EXHIBIT A**

and other tasks, including obtaining all necessary financing and permits before completing the purchase of said land and release of the County Restrictions; and

7. WHEREAS, said property is surplus to the needs of **COUNTY** at the present time and in the foreseeable future, and the sale of said property will promote the development of self help housing within the City of Lowell, and such sales are permitted pursuant to ORS 275.030(2); and

Now, therefore, it is mutually agreed as follows:

**AGREEMENTS**

**COUNTY AGREES TO:**

1. Sell to **CITY** the area depicted and described as Tract 1 on Exhibit A attached hereto and incorporated herein by reference.
2. Release the County Restrictions encumbering the area identified as Tract 2 on said Exhibit A. Conveyance of Tract 1 and the release of the County Restrictions shall be by Quitclaim Deed.
3. Deposit the necessary conveyance documents in escrow, furnish a Preliminary Title Report, pay one-half the cost of the escrow fee and pay the costs of recording the Quitclaim Deed.
4. Cooperate with **CITY** in matters of mutual interest in completing the transaction, including furnishing all necessary consents in connection with required permitting or approvals and allowing City, its contractors, agents and employees entry on said property for the purpose of completing any surveying, studies or reports in connection with the proposed development of said property.

**CITY AGREES TO:**

1. Purchase from **COUNTY** the area identified as Tract 2, on said Exhibit A, and to compensate **COUNTY** for the release of the County Restrictions on Tract 1 as shown on said Exhibit A.
2. Purchase price is to be \$74,900.00.
3. Pay one-half of the escrow fees in connection with the closing of said transaction.
4. To provide funds necessary for closing of the transaction within 7 days of notification by the escrow holder that the transaction is ready for closing.

**BOTH PARTIES AGREE:**

1. The term of this agreement shall be from the date of execution hereof to the date of closing of the purchase transaction, but in no event shall the term extend beyond June 30, 2009.

EXHIBIT A

2. The purchase price shall be paid in cash at closing, which is to occur no later than June 30, 2009.

3. Conveyance of the property shall be by quitclaim deed and **COUNTY** makes no representation as to the presence or absence of any hazardous materials existing on said property, and said conveyance shall also be subject to final approval by the Lane County Board of County Commissioners.

4. **CITY's** agreement to purchase any or all of the above-referenced property is contingent upon the successful completion of negotiations with USA for the release of the Federal Restrictions, successful acquisition of excess Federal land, and on issuance of all necessary permits and approvals needed to begin construction on the above-referenced subdivision.

5. To the extent allowable by the Oregon Constitution and limitations of the Oregon Tort Claims Act, each of the parties hereto agree to indemnify and save the other harmless from any claims, liability or damages resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers, agents or employees relative to the responsibilities of the indemnifying party in performance of this agreement.

6. **Dispute Resolution-** The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they agree to present their disagreements to a mutually selected mediator. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This procedure shall be followed to its conclusion prior to either party seeking relief from a court, except in the case of an emergency.

If the dispute remains unresolved through mediation, the parties may agree in writing to submit the dispute to arbitration, using such arbitration process as they may choose at the time and which includes the following conditions:

- a) The location of the arbitration shall be in Eugene, Oregon;
- b) Each party shall bear its own costs (except arbitration filing costs), witness fees, and attorney fees;
- c) Arbitration filing costs and any arbitrator's fees will be divided equally between the parties; and
- d) Judgment upon award rendered by the Arbitrator may be entered in a court in Lane County, Oregon.

7. This agreement constitutes the entire agreement between **COUNTY** and **CITY** on the subject matter hereof. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both **COUNTY** and **CITY**. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The delay or failure of the board to enforce any provision of this agreement shall not constitute a waiver by the **COUNTY** of that provision or any other provision. **CITY** by the signature below of its authorized representative, hereby acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms and conditions.

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**EXHIBIT A**

**CITY OF LOWELL**

By: \_\_\_\_\_  
Warren R. Weathers

Title: Mayor

Date: \_\_\_\_\_

**Address for Notice:**

City of Lowell  
P.O. Box 490  
Lowell, OR 97452

**LANE COUNTY**

By \_\_\_\_\_  
Jeff Spartz

Title: **County Administrator**

Date: \_\_\_\_\_

**Address for Notice:**

Lane County Public Works  
3040 North Delta Highway  
Eugene, OR 97408

**APPROVED AS TO FORM**

Date: \_\_\_\_\_ Lane County

\_\_\_\_\_  
Office of Legal Counsel

DRAFT

\_\_\_\_\_

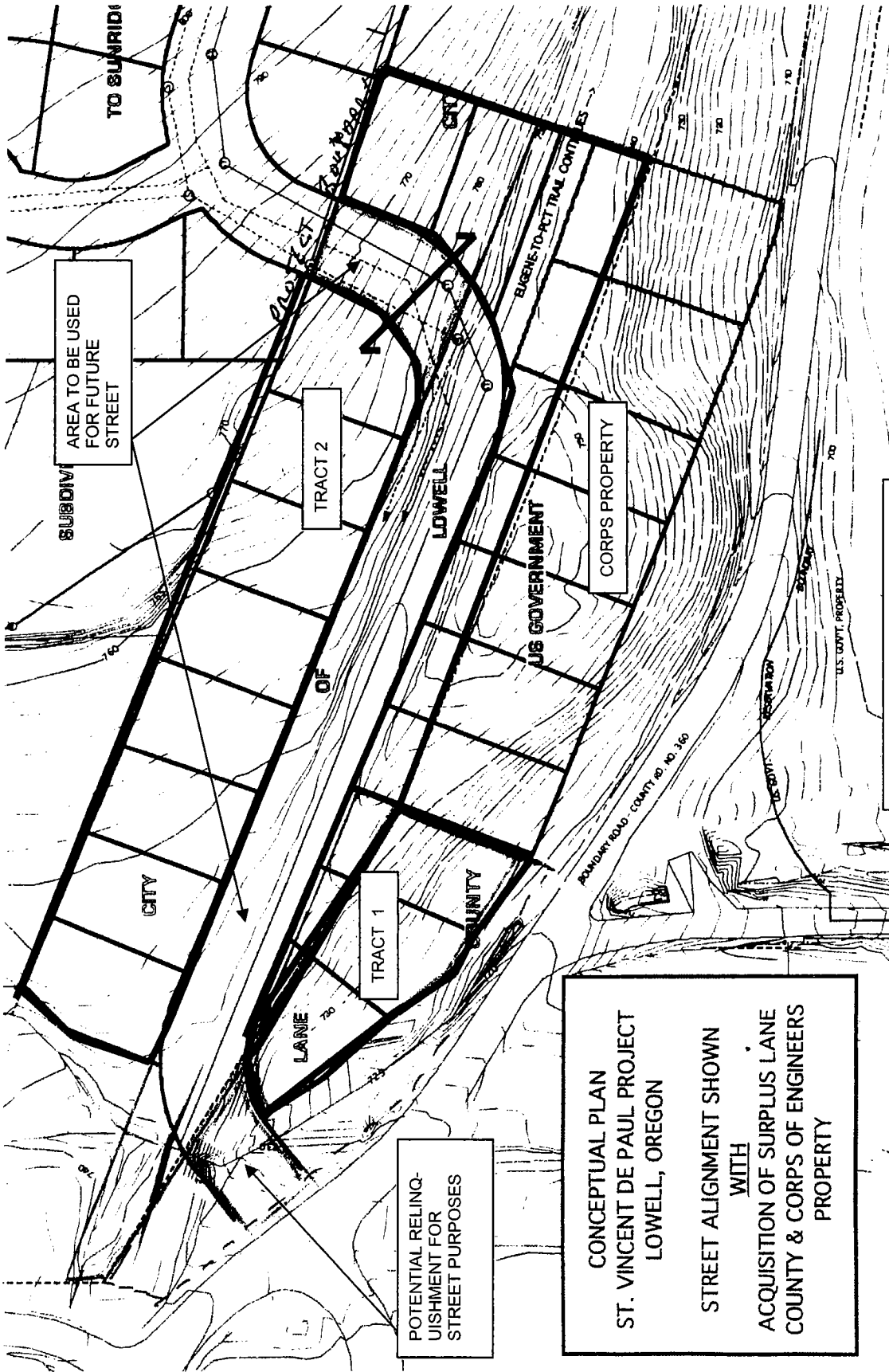


EXHIBIT "A" TO IGA

POTENTIAL RELINQUISHMENT FOR STREET PURPOSES

CONCEPTUAL PLAN  
 ST. VINCENT DE PAUL PROJECT  
 LOWELL, OREGON  
 STREET ALIGNMENT SHOWN  
 WITH  
 ACQUISITION OF SURPLUS LANE  
 COUNTY & CORPS OF ENGINEERS  
 PROPERTY

— — — — — OPTION 1  
 - - - - - OPTION 2