STAFF REPORT NO. 132-15

TO: Mayor and City Council
FROM: Eric Holmes, City Manager
DATE: 9/14/2015

Subject: Purchase and Sale Agreement with Vancouver Schools for real property at Norris Road (Fire Station 2)

Key Points:
- The City’s Long Range Facility Plan for the Fire Department determined relocating and rebuilding fire stations 1 and 2 will more strategically serve the public.
- The plan identified property at Fourth Plain and Norris Road as the ideal relocation site for Station #2.
- The City seeks to acquire the property from Vancouver School District at a price of $305,035.25 through the proposed purchase and sale agreement.

Objective: Ratify purchase and sale agreement entered into between the City of Vancouver and Vancouver School District No. 37 for the purchase of real property located at Fourth Plain & Norris Road.

Present Situation: As the City of Vancouver continues to grow, so do the public safety needs of our citizens. As part of our continued efforts to maintain the best public safety policies and practices, the City of Vancouver completed a Long Range Facility Plan for the City’s Fire Department. Upon completion of this plan, it was determined that the City would best be served by maintaining separate fire stations in the areas currently served by Stations #1 and #2. Further, both Stations #1 and #2 should be rebuilt and moved to locations that more strategically serve the public with improved response times.

The Facility Plan indicated that the property located at Fourth Plain & Norris Road would be the ideal site to re-locate Fire Station #2. This property is larger and better situated on the street network than the current site of Fire Station #2. This new location will allow Fire Station #2 to serve the most miles traveled in the fewest minutes of response and will better serve the City’s firefighting and emergency medical incident response requirements.

This property consists of approximately 93,857 square feet (2.15 acres).

Advantage(s):
1. Provides for the public safety needs of our citizens
2. Replaces a fire station that was built in 1950.

Disadvantage(s): No disadvantages are foreseen.

Budget Impact: None. The 2015-2016 budget includes sufficient appropriation for this acquisition.

Action Requested:
1. Ratify the purchase and sale agreement entered into between the City of Vancouver and Vancouver School District No. 37 to purchase real property at the purchase price of $305,035.25 ($3.25/sf).
2. Authorize the City Manager or his designee to execute documents necessary to close this transaction.

Attachment(s):  Purchase and Sale Agreement
REAL ESTATE PURCHASE AND SALE AGREEMENT

1. **Effective Date.** August 25, 2015.

2. **Parties.** Vancouver School District No. 37, hereinafter referred to as "Seller", and City of Vancouver, Washington, a municipal corporation, hereinafter referred to as "Purchaser".

3. **Property Sold.** Purchaser hereby agrees to purchase, and Seller hereby agrees to sell, the following described real estate located in Clark County, State of Washington, located at Fourth Plain & Norris Road (hereinafter referred to as the "Property"):

   2.15 acres (93,857 square feet) of real property, shown in Exhibit A, attached hereto. The legal description will be determined upon completion of boundary survey and is incorporated herein by reference.

   All improvements of any nature and description including, but not limited to, irrigation, plumbing, equipment, light posts, light bulbs, and all plants, shrubs, and trees, and all fixtures not excepted herein are to be left upon the premises as part of the Property purchased.

4. **Purchase Price.** TOTAL PURCHASE PRICE IS $305,035.25 ($3.25/sf), payable in full at closing, and calculated based on the square feet identified in the boundary survey. Seller is not requiring earnest money. Purchaser agrees to work in good faith on all actions that are necessary to carry out the transaction and will not undertake activities that will result in increased costs or delays for the Seller.

5. **Title.** Title shall be conveyed by Statutory Warranty Deed free of encumbrances or defects, except those of record acceptable to Purchaser and encroachments, defined as Permitted Exceptions in Paragraph 6 below. Rights reserved in federal patents or state deeds, building or use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Platted or vacated streets or roadways within the boundaries of the Property shall not be considered an encumbrance, and Purchaser accepts any and all risk associated with such platted or vacated streets or roadways.

6. **Title Insurance.** Within ten (10) days of the Effective Date, Seller shall open Escrow at Clark County Title (Escrow Agent) and deliver to Purchaser a Preliminary Commitment issued by Clark County Title for a standard purchaser's Title Insurance policy. Purchaser shall have fifteen (15) days to notify Seller of any encumbrance or defect in the Preliminary Commitment.
that is not a Permitted Exception. Seller shall have ten (10) days after being notified of an encumbrance or defect to remove the encumbrance or defect or to notify seller the encumbrance or defect will not be removed. Purchaser has five (5) days after being notified by Seller that Seller is not removing an encumbrance or defect to terminate this Real Estate Purchase and Sale Agreement. If Purchaser does not object to an encumbrance or defect, or terminate the Agreement after Seller’s failure to remove the same, the encumbrance or defect will be deemed a “Permitted Exception.” Seller shall reasonably cooperate in the investigation of the condition of title.

7. Contingent Conditions. The enforceability of this Agreement, except as otherwise provided herein, and the obligation of the parties to close escrow is subject to the occurrence or waiver of the following condition(s) within sixty (60) days of the Effective Date hereof, and in any event prior to the date of closing:

   a. Seller’s obligation to close is contingent upon Seller’s Board of Directors approval of this Agreement and compliance with all laws or regulations pertaining to the sale of the Property, including without limitation, any laws pertaining to the prior approval and advertising for sale of surplus property by the.

   b. Purchaser’s obligation to close is contingent upon Purchaser’s satisfaction as to the physical condition of the Property, within the Study Period as defined in paragraph 8 below, as well as the condition of title to the Property as set out in Paragraph 6, and City Council’s ratification of this Agreement.

8. Study Period. The “Study Period”) will commence on the Effective Date and end at 5:00 p.m. on the date which is sixty (60) calendar days following the Effective Date (the “Due Diligence Termination Date”).

   a. During the Study Period Purchaser will contract with vendors for the performance of the following services:

    Level 1 environmental assessment and report for the Property being sold only;

    Boundary survey and boundary line adjustments;

    Topographic survey; and

    Geotechnical investigation and report for the Property being sold only.

The boundary survey, boundary line adjustments and topographic survey will be done for the entire 9 acres of property the Seller owns, including the approximately 2.15 acres being conveyed to Purchaser per this Agreement. Prior to contracting for these services, Purchaser shall review the scope of work and cost for each service with Seller. The Purchaser shall be solely responsible for costs associated with the Level 1 environmental assessment and report and the geotechnical report. The Seller and Purchaser shall share the expense of survey, boundary line adjustments and topographic survey in an amount that represents the percent of the ownership of the parcels. Purchaser shall pay the costs and be reimbursed by Seller for Seller’s
share. The obligation to contract and pay for these services is not contingent upon closing. Seller shall make payment to Purchaser within ten (10) days of receipt of invoice.

b. Additionally, during the Study Period Purchaser shall have the right to inspect, investigate, test and examine, at Purchaser's expense, all aspects, matters and conditions relating to the Property and the Purchaser's intended use thereof, including, but not limited to, zoning, the presence of hazardous or toxic substances, soil conditions, the availability of utilities, and governmental requirements and restrictions affecting the Property. Purchaser's Due Diligence shall also include a review of the status of all Leases, Licenses and Contracts, if any, pertaining to the Property. Seller shall reasonably cooperate, and shall instruct its agents, employees and representatives to reasonably cooperate in facilitating Purchaser's Due Diligence of the Property and the proposed transaction.

Purchaser shall pay the costs of all additional tests, inspections, Due Diligences and reviews conducted pursuant to this Agreement. After the performance of any tests, reviews and inspections, Purchaser shall promptly restore any damage to the Property to the same condition as existed prior to the conduct of said tests, reviews and inspections, and this obligation of Purchaser shall survive any termination of this Agreement. Purchaser shall notify Seller prior to any entry and will not unreasonably interfere with or disrupt any business operations at the Property.

c. Nothing stated in this Section shall be deemed to authorize Purchaser to create or suffer any lien to be placed against the Property, and Purchaser shall indemnify, defend and hold Seller harmless from any and all costs or liens arising or claimed as a result of any such activity on or with respect to the Property and from any claims, loss or damage (including, without limitation, reasonable attorney's fees and costs), suffered by Seller as a result of the activities of the Purchaser or of any party employed or engaged by Purchaser to perform any test, inspection, Due Diligence or review on the Property, except to the extent arising from the negligence or willful misconduct of Seller or its agents, and this obligation shall survive any termination of this Agreement.

d. Within ten (10) days of the Effective Date, Seller shall deliver to Purchaser, for inspection and review all reports concerning the condition of the Property and all licenses, permits, improvement agreements, bonds, development agreements, leases, agreements, contracts, documents, instruments, reports, surveys, books and records relating to the Property ("Seller's Records"). Should Seller fail to timely deliver to Purchaser all of the Seller's Records, the Study Inspection Period and Due Diligence Termination Date shall each be extended for one (1) day for each day of delay in Purchaser's receipt of all of the Seller's Deliveries.

e. In the event that Purchaser does not give Seller a written approval or waiver of all Contingencies on or prior to the Due Diligence Termination Date, then such Contingencies shall be deemed waived.

f. At any time prior to the expiration of the Study Period, Purchaser elects in its sole discretion not to proceed to acquire the Property due to circumstance discovered during Purchaser's due diligence that demonstrate the Purchaser will not be able to use the Property for
its intended use, Purchaser may terminate this Agreement by giving written notice of termination to Seller and Escrow Agent. Should Purchaser not give written notice of termination within the Study Period, Purchaser may not thereafter terminate this agreement without Seller’s consent.

f. Each party shall promptly pursue and utilize best efforts to complete the procedure required for any pre-sale approval requirements. If any of the above conditions are not satisfied or waived by the benefitted party prior to the date of closing, the benefitted party may withdraw from this transaction and may be released from all liability hereunder by giving written notice to the other party and the escrow/closing agent. The agreement by a party to close this transaction constitutes their approval or waiver of all such conditions if they have not been approved or waived earlier.

9. **Representations and Condition of Property.**

   a. **Boundaries.** Seller makes no representations as to the boundaries of the Property; or that any existing curbs or sidewalks or fences are the boundary of the Property; and Seller disclaims any and all warranties against encroachments upon the Property.

   b. **Zoning.** Seller makes no representations as to the zoning of the Property. Purchaser has investigated the current status of zoning on the Property to its satisfaction.

   c. **Wetlands.** Purchaser has made its own determination as to existence or nonexistence of wetlands on the Property and is not relying on any representations of Seller.

   d. **As Is.** Except as otherwise expressly provided in this Agreement, Seller is selling and Purchaser is purchasing the Property “AS IS,” and Seller shall not be required to make any improvements to the Property. Purchaser has occupied and operated the Property and has made an inspection of the Property and has reached Purchaser’s own conclusion as to the adequacy and acceptability of the Property based upon such personal inspection.

10. **Closing.** The sale shall be closed in the office of closing agent, Clark County Title within no more than thirty (30) days after satisfaction or waiver of all contingencies (“Closing Date”), provided the parties can mutually agree to extend the Closing Date to a date that is within thirty days of the Closing Date (“Extended Closing Date”). If closing does not occur on or before the Closing Date or Extended Closing Date, whichever is later, this Agreement shall be terminated effective the day after the Closing Date or Extended Closing Date. Purchaser and Seller shall deposit with Escrow Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement.

    For purposes of this Agreement, “date of closing” shall be construed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller.

11. **Closing Costs and Prorated Items.** Seller and Purchaser shall each pay one-half (1/2) of the escrow fees for closing the transaction. Seller shall pay for the cost of providing a standard purchaser’s title insurance policy. If applicable, any real estate taxes, assessments,
water, utility charges on the Property shall be prorated as of the date of closing, and Purchaser assumes and agrees to pay all real property taxes from and after the date of closing.

12. **Maintenance of Property.** Seller shall maintain the Property in its current condition prior to closing.

13. **Miscellaneous.**

   a. Seller and Purchaser warrant one to the other that they have not used the services of any real estate company, real estate sales agent or broker and that there is not a sales commission owed on this Property.

   b. All agreements, warranties, limitations of warranties, and disclaimers contained herein shall continue to be binding after the closing of this transaction.

   c. Notices shall be deemed given on the date of personal delivery to the other party, or in the case of mailing, two (2) business days after the notice has been mailed by certified mail, return receipt requested.

   d. Time is of the essence in this Agreement.

   e. Paragraph headings are included solely for the convenience of the reader, and are not intended to be a part of this Agreement.

   f. It is agreed as used herein the “singular” includes the plural and the “masculine” includes the feminine and vice versa as the context may require.

   g. There are no other verbal or other agreements which modify or affect this Agreement, or which affect this transaction.

   h. This Agreement may be signed in counter parts and shall be binding upon execution by all parties.

14. **Assignment.** Purchaser may not assign its interest herein without consent of Seller.

**Seller:**

Vancouver School District No. 37

By: Mark Stoker, President, Board of Directors

Date: AUG 25 2015

**Purchaser:**

City of Vancouver, Washington, a municipal corporation

By: Eric Holmes, City Manager

Date: 8/18/2015

Approved as to form.