

PURCHASE AND SALE AGREEMENT

RECITALS:

WHEREAS: Okanogan County Public Works has identified a need to develop a new source of rock, sand, and gravel for road construction and maintenance activities in the Methow District to allow the repair, maintenance, and construction of county roads to be accomplished at a more reasonable cost to the taxpayers, and

WHEREAS: Long haul times from existing sources of rock, sand, and gravel increase the cost of road maintenance materials, increase equipment maintenance and repair cost, and increases the operating time of diesel powered equipment, and

WHEREAS, Public Works staff has identified a potential rock source on property that is currently for sale, and

WHEREAS, the County wishes to mitigate the potential impacts of a gravel pit operation by utilizing the property not necessary for a gravel pit site as wildlife habitat and public access property; and

WHEREAS, the Seller is willing to enter into a purchase and sale agreement and is acting as his agent, and

WHEREAS: the County Road Maintenance Supervisor is acting as agent for the County, and

WHEREAS: the Okanogan Board of County Commissioners are the "Buyer", and

WHEREAS, the public road system maintained by Okanogan County Public Works will be benefitted by the development of a gravel pit at this location, be it

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

1. **PARTIES:** THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made between Okanogan County Board of County Commissioners as "Buyer", and Claude Miller as "Seller". Buyer agrees to purchase Seller's property on the following terms and conditions:

2. **PROPERTY:** Okanogan County Parcel Numbers: 3123310006, 3023064004, 3022011005, and 3022120005.

Legal Description: See Attachment A

3. PURCHASE PRICE: The Purchase Price is \$1,000,000.00 payable at the time of closing as mutually agreed to. Upon acceptance of this offer (see section 4 Terms sub-section A Acceptance of this offer), the Buyer shall deposit \$100,000.00 in the form of a check with the identified closing agent. In the event all contingencies are satisfied and waived, the earnest money shall apply to the final purchase price and applicable fees and costs at closing. In the event the Buyer terminates this agreement in accordance with any contingency clause contained herein, the earnest money shall be returned to the Buyer less any administrative fees. In the event the Buyer terminates this agreement for any other reason, the earnest money shall be forfeit to the Seller less any administrative fees. The parties agree that the earnest money shall represent liquidated damages and shall be the sole recourse in the event of termination of this agreement for reasons not consistent with the terms of this agreement.

4. TERMS:

A. ACCEPTANCE:

This offer shall be deemed accepted when the following process steps have been completed;

The Road Maintenance Supervisor Gary George, Agent for the Buyer, and Claude Miller, the Seller, shall be authorized to act as agents for the Buyer and Seller respectively. Upon their agreement to the terms and conditions to be presented to the Buyer, the agent for the Buyer and the Seller will affix their signatures to this agreement.

Upon signing this agreement as described above, the Buyer shall have 45 days to schedule a public hearing at which this purchase and sale agreement shall be considered. Within 5 days of the conclusion of the public hearing the Buyer shall by motion and vote:

- 1) Accept the agreement and order the deposit of earnest money and the commencement of all activities listed in section 5 feasibility period, or
- 2) Reject the agreement at which time all offers and agreements regarding this property will terminate. Neither Buyer nor Seller will be eligible for damages or reimbursement for expenses.

B. SELLER'S TERMINATION

The seller may terminate this agreement without penalty until the agreement is ratified in accordance with Section 4 A Acceptance. Once ratified this agreement may be terminated in accordance with Section 13 of this agreement.

5. FEASIBILITY PERIOD

The Buyer shall have 180 days from acceptance of this offer to satisfy and waive the following contingencies:

1) Soil testing

This offer is contingent upon soil testing for contaminants. The soil testing shall be at the sole expense of the Buyer. In the event test results are received that are not satisfactory to the Buyer, the Buyer shall notify the Seller of their intent to terminate this

agreement, unless otherwise agreed to by both parties. In the event of termination, the earnest money, less administrative fees, shall be returned to the Buyer.

2) Title Report

The Buyer shall examine a title report prepared by an agent of the Buyer's choice, at the sole expense of the Buyer, for the property described in this agreement. In the event the Title Report is not satisfactory to the Buyer, the Buyer shall notify the Seller of their intent to terminate this agreement, unless otherwise agreed to by both parties. In the event of termination, the earnest money, less administrative fees, shall be returned to the Buyer.

4) The Buyer may obtain an appraisal, at the sole expense of the Buyer, within this feasibility period. If the appraisal establishes the market value of the property to be less than the agreed upon price the Buyer may terminate this agreement, unless, the Seller agrees to reduce the sale price to the appraised value, or as otherwise agreed to by both parties.

5) This agreement is contingent upon the Buyer obtaining a Conditional Use Permit for the operation of a gravel pit as required by Okanogan County Code 17A.220 District Use chart in accordance with Okanogan County Code 17A.310 Conditional Use Permits within 180 days from acceptance of this offer. If the Conditional Use Permit is not approved with conditions acceptable to the Buyer within 180 days the Buyer may terminate this agreement. If the Conditional Use Permit is approved with conditions acceptable to the Buyer is subsequently appealed the Buyer may terminate this agreement or extend the feasibility period with agreement of the Seller. In the event of termination, the earnest money, less administrative fees, shall be returned to the Buyer.

6) The Seller shall cooperate with the Buyer by allowing access to the property for all activities associated with the satisfaction of the contingencies listed in this agreement.

7) The Seller shall obtain approval for the sale of the property from their lien holders. If the seller is unable to gain approval this offer will terminate, unless otherwise agreed to by both parties, and the earnest money will be returned to the buyer.

C. Closing

After the waiver of all contingencies, the Buyer shall have 30 days to close the purchase of this property unless otherwise agreed to by both parties, except closing shall take place in no event after December 31, 2019 at 5:00 p.m. at which point this offer will terminate, unless extended by mutual agreement of both parties. If this agreement terminates in accordance with this section, the earnest money, less administrative fees, shall be retained by the Seller.

Closing shall be by a qualified closing agent of the Seller's choosing. The parties shall be responsible for the traditional costs at closing plus ½ of the document preparation fee and closing fees. Each party is responsible for their own legal fees.

D. Other Conditions

The Buyer has the option of entering into a first right of refusal or option to purchase agreement with a third party prior to closing at their sole option, provided any agreement is

contingent upon closing the sale of the property.

6. **CONVEYANCE OF TITLE:** Conveyance of fee title shall be by quit claim deed.

7. **CLOSING:** Closing shall be within 30 days of waiver of all contingencies by the Buyer unless otherwise agreed to by both parties. Closing shall not be later than 5:00 p.m. on December 31, 2019, at which time this agreement will terminate unless extended by mutual agreement by both parties. Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for disbursement to Seller. Buyer and Seller shall deposit, when notified and without delay, in escrow with the closing agent all instruments, monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

8. **POSSESSION:** The Buyer shall take possession of the property at time of closing, ****including all water and mineral rights attached thereto, as well as all items of personal property on the property at time of closing, unless otherwise agreed to by both parties, except:

9. **ESCROW/CLOSING COSTS:** Closing shall occur at (seller's choice) who shall act as the escrow/closing agent. Unless limited by law or modified by the terms of this Agreement, Seller shall pay at closing all customary and usual closing costs and fees, including but not limited to the following: Seller shall pay the Seller's excise tax, the cost of the owner's standard form of title insurance, recording fees, and Seller's half share of escrow fees; Buyer shall pay all costs and fees associated with the financing, any other costs agreed to under the terms of this Agreement, and Buyer's half share of the escrow fees (unless prohibited by government regulation). Taxes for the current year, rents, interest, association or homeowner's fees shall be pro-rated as of date of closing.

10. **SELLER'S DISCLOSURE AND REPRESENTATIONS:** Sale of the property is on an "as-is" basis, and Seller makes no representations as to the condition of the property.

11. **INCLUDED ITEMS:** All fixtures and fittings that are attached to the Property are included, free of liens, in the purchase price.

12. **TITLE:** (a) Title Insurance to be issued by: **TRANSNATION TITLE INSURANCE COMPANY, OMAK, WA.** Title insurance provided at closing shall be an ALTA Standard Form of Title Insurance, the cost of which will be paid by Buyer. If Buyer requires Extended Title Insurance, Buyer agrees to pay all costs in excess of those charged for the standard form including, without limitation, increased premiums and survey costs. If a survey is required, Buyer shall order the survey within three (3) business days of receiving notice from the title company that a survey is required and Buyer shall pay the estimated cost of the survey prior to performance of any survey work or Buyer can waive requirement for an extended policy and accept standard title insurance.

(b) Title Insurance Commitment: Within five (5) days of mutual acceptance, Seller shall arrange for the Closing Agent, at Buyer's expense, to apply for a preliminary commitment ("Commitment") for an ALTA form Owner's policy of title insurance ("Policy") as described in subparagraph (a) above, with homeowner's additional protection and inflation protection endorsements, if available at no additional charge, to be issued by the above title company.

Buyer shall pay title insurance cancellation fees.

(c) **Extended Title Insurance:** Buyer acknowledges that the coverage afforded by a standard form policy of title insurance provides limited or no coverage for loss by reason of conflicts in boundary lines, shortage in area, encroachments, or any other matters which an accurate survey would disclose. More extensive coverage through an extended policy of title insurance may be available for an additional charge and subject to additional requirements imposed by the title company including a survey.

(d) **Title Insurance Exceptions and Exclusions:** The title policy shall contain no exceptions to or exclusions from coverage other than those generally provided in the specified title policy form and those which are consistent with subparagraph (e) below. If title cannot be made so insurable by closing, and if Buyer does not elect to waive any exceptions to coverage which are not consistent with this subparagraph and subparagraph (e) below, this Agreement shall terminate at Buyer's option.

(e) **Condition of Title:** Unless otherwise specified in this Agreement, title to the Property at closing shall be free of all encumbrances and defects provided that presently recorded reservations, covenants, conditions and restrictions, easements and existing building or zoning regulations or restrictions, ****reserved oil and/or mining rights, and rights reserved in federal patents or state deeds which do not interfere with Buyer's intended use of the Property shall not be considered encumbrances or defects. Monetary obligations not assumed by Buyer shall be paid from Seller's funds at closing.

13. ASSIGNMENT: Buyer may assign Buyer's interest in this Agreement without Seller's prior written consent.

14. DEFAULT/TERMINATION: If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from the earnest money deposit shall be deducted before the remaining earnest money is refunded to the Buyer or forfeited to Seller. In the event the Buyer fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the Buyer shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure.

15. ATTORNEYS FEES/COSTS AND MEDIATION: If the Buyer or Seller is involved in any dispute relating to this transaction, any prevailing party shall recover reasonable attorney's fees and costs (including those for appeals) which relate to the dispute. In the event of a dispute, the parties shall engage in non-binding mediation in an effort to resolve the dispute without the need for a lawsuit. In the event of mediation each party is responsible for ½ the total cost of mediation. If the parties cannot agree on the choice of mediator, each party will select one mediator and the mediators select together will select a third mediator.

16. FIRPTA COMPLIANCE: If Buyer does not intend to use the property as a principal residence, or if the purchase price exceeds \$300,000.00, this sale may be subject to the withholding and reporting requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), unless Seller furnishes to Buyer an affidavit of non-foreign status. Seller and Buyer agree to comply with FIRPTA, if applicable.

17. **CASUALTY / LOSS:** If, prior to closing, the Property or improvements on the Property are destroyed or materially damaged by fire or other casualty, Buyer may elect to terminate this Agreement, and the earnest money shall be refunded to Buyer.

18. **COMPUTATION OF TIME:** Unless specified otherwise herein, any periods of time referenced in this Agreement shall expire at 9:00 p.m. (Pacific Time Zone) of the last calendar day of the specified time period, unless the last day is a Saturday, Sunday, or legal holiday as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 9:00 p.m. (Pacific Time Zone) on the next business day. Any specified period of three (3) days or less shall include business days only.

19. **PROFESSIONAL ADVICE:** Buyer and Seller each acknowledge that it is advisable to have the terms and conditions of this Agreement reviewed by independent legal counsel and/or a tax advisor, as the terms and conditions affect the parties' rights and may have tax implications. Furthermore, Buyer and Seller agree that they have satisfied themselves as to the terms and conditions of this sale.

20. GENERAL PROVISIONS:

(a) **Notices:** Unless otherwise specified in this Agreement, any notice required or given under the terms of this Agreement must be written. Receipt of any notice shall be defined as the earlier of: three (3) business days following the postmark date; or the date the notice is actually received by the party.

(b) **Faxes and Counterparts:** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or the closing agent, the parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts.

(c) **Integration:** There are no verbal agreements or understandings, which modify this Agreement. This Agreement constitutes the full understanding between Buyer and Seller.

(d) **Time is of the Essence:** Time is of the essence as to all terms and conditions of this Agreement.

(e) **Venue/Applicable Law:** This Agreement shall be interpreted and construed according to the laws of the state of Washington; venue shall be in the county in which the Property is located.

(f) **Survival:** All terms of this Agreement, which are not satisfied or waived prior to closing, shall survive closing. These terms shall include, but not be limited to, Buyer's and Seller's representations and warranties, attorney's fees and costs, etc.

20. ADDENDA/ATTACHMENTS: At the time of Buyer's offer, the following addenda/attachments are part of this Agreement: Attachment A, the legal description. Buyer and Seller may only amend this Agreement by mutual written consent.

21. AGREEMENT TO PURCHASE: Buyer offers to purchase the Property on the above terms and conditions. Buyer hereby acknowledges receipt of a copy of this Agreement. (see section 4A.Acceptance)

SIGNATURE: AGENT FOR BUYER Date

SIGNATURE: BUYER Date

22. SELLER'S ACCEPTANCE: Subject to Seller's counteroffer or modifications, if any, Seller agrees to sell the Property on the terms and conditions specified herein. Seller acknowledges receipt of a copy of this Purchase and Sale Agreement, signed by both parties.

SELLER'S SIGNATURE Date