

# CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works/Engineering & Construction Division/Real Property Services

**DATE:** September 30, 2016

**REQUESTED ACTION:** Execute an Option to Purchase Agreement from SJO Lo 90 B, LLC for the purchase of a 6-acre parcel for a park in Parks District 5. Portion of tax parcel number 200372-000.

Consent     
  Hearing     
  County Manager

**PUBLIC WORKS GOALS:**

- Provide safe and efficient transportation systems in Clark County
- Create and maintain a vibrant system of parks, trails and green spaces
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a healthy, desirable quality of life
- Increase partnerships and foster an engaged, informed community
- Cultivate a nimble, responsive work force
- Make Public Works a great place to work

**BACKGROUND**

This 6-acre property located at approximately NE 99th Street and NE 137th Avenue has been deemed by staff to be a highly suitable location for a future Neighborhood Park in Clark County. Purchase of park property in this area has been identified as a priority for 2016 in the Parks, Recreation and Open Space Plan. This purchase will also eliminate concurrency concerns in the PIF 5 acquisition fund.

**COUNCIL POLICY IMPLICATIONS**

None.

**ADMINISTRATIVE POLICY IMPLICATIONS**

None.

**COMMUNITY OUTREACH**

The Clark County Parks, Recreation and Open Space (PROS) plan broadly identifies acquisition opportunities in this area of the county. An extensive public outreach effort was conducted as a part of developing the PROS plan. The Parks Advisory Board voted to support the purchase of the property to preserve it for park use.

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

PW16-118

**BUDGET DETAILS**

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	PIF District 5 Account
Company Name	Clark County, Public Works – Parks Division

**DISTRIBUTION:**

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

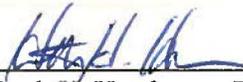
Please call Paulette Matison on ext. 4975 when ready for pick up.

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Attachments:

- Agreement, Map

**PUBLIC WORKS APPROVALS:**

  
\_\_\_\_\_  
Heath H. Henderson, P.E.  
Public Works Director/County Engineer

**APPROVED:** \_\_\_\_\_  
**CLARK COUNTY, WASHINGTON**  
**BOARD OF COUNTY COUNCILORS**

DATE: \_\_\_\_\_

SR #: \_\_\_\_\_

**APPROVED:** \_\_\_\_\_  
**Mark McCauley, County Manager**

DATE: \_\_\_\_\_

## OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT (the "Option Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between SJO LO 90 B, LLC, a Washington limited liability company (hereinafter referred to as "Optionor") and CLARK COUNTY, WASHINGTON (hereinafter referred to as "Optionee") and collectively referred to as Parties.

WHEREAS, Optionor is the owner of six (6) acres of real property located in Clark County, Washington, and more particularly described in Exhibit "A" ("Property") attached hereto and by this reference incorporated herein (the "Property"); and

WHEREAS, the County desires to purchase the property from SJO LO 90 B, LLC to further the County's goal of preserving park land and wildlife habitat areas; and

WHEREAS, Optionor has agreed to grant to the Optionee an option for the acquisition of the property, on the terms provided for herein; and

WHEREAS, Optionor, in consideration of One Hundred Dollars (\$100.00) (the "Option Fee") and other valuable consideration, receipt of which is hereby acknowledged, hereby grants unto the Optionee, the option and right to purchase the property pursuant to the terms herein; and

WHEREAS, possession of the property shall be delivered to the Optionee on the date of closing;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Incorporation of Recital. Each recital set forth above is hereby incorporated into the body of this Agreement by reference.
2. Grant of Option and Purchase Price. Optionor hereby grants Optionee an option (the "Option") to purchase the property, for the purchase price of \$1,200,000.00, contingent on the following terms:
  - a. Optionor agrees to provide public access to the property.
  - b. The future collector road alignment that bisects the subject property must be realigned to the north of the northern property boundary.
  - c. The purchase price is pending an appraisal.

A qualified appraiser shall determine the fair market value. The appraiser shall have 60 days from the date of this Agreement to make the final determination. Optionee shall pay the costs of the appraisal. Optionee is hereby granted the right to exercise the option, and acquire the property pursuant to the terms and conditions of this Agreement, including payment of the purchase price. Notwithstanding the foregoing, should Optionee undertake a subsequent appraisal of the property pursuant to the requirements of a funding agency, and should such subsequent appraisal indicate a higher property value, then Optionor may claim such difference as a charitable donation for federal income tax purposes.

3. Option Fee. Commensurate with the execution of this Option Agreement by the County, the County shall pay to SJO LO 90 B, LLC the sum of One Hundred Dollars (\$100.00) as consideration for the right to exercise its option to purchase the property during the term of this Option Agreement. On or before the expiration of the term, the County shall either exercise its right pursuant to paragraph 4 of this Option to Purchase Agreement, or this option shall terminate and SJO LO 90 B, LLC shall retain the option fee. In the event the County exercises its option to purchase, the option fee shall be applied to the purchase price.

4. Exercise of Option. The term of this option shall be valid for six months from the date of last execution of this Agreement (the "Term"). This Option shall be binding upon Optionor, and Optionor and Optionee shall have the right to exercise the option, provided that once the option is exercised, the actual sale of the property must close no later than 180 days after exercise of the option. The option shall be exercised by the County by providing written notice to SJO LO 90 B, LLC of the County's intent to purchase the property for the purchase price and to close within 180 days.

5. Termination of Option. This Option shall expire and all rights of Optionee shall terminate if Optionee does not exercise its rights herein on or before the expiration of six months after the date of last execution of this Option Agreement.

6. Condition of Title. Optionor hereby agrees from and after the date hereof until the termination of this Agreement of the closing of the sale of the property, it will take no action that will adversely affect title to the property.

7. Inspection and Evaluation of the Property. Optionee shall have the right until the expiration of this option in which to conduct its review of the property. Said review may include periodic physical and engineering inspections of the property. At closing of the purchase of the property, Optionee will be purchasing such property AS IS, WHERE IS and Optionor makes no representations as to the environmental condition of the property or its suitability for any particular purpose.

8. Closing Date. The closing date for the purchase of the property (the "Closing Date") shall be no later than 180 days after Optionee provides written notice of its exercise of the option.

9. Title/Title Insurance. Subject to performance by the Optionee, the Optionor agrees to execute and deliver on the date of closing a Statutory Warranty Deed to the subject property free and clear of all encumbrances except those, which are mutually acceptable to the Optionee and Optionor. Optionee shall notify the Optionor of any objection to the title by no later than seven days after the receipt of the preliminary title commitment. The Optionor shall have the right for seven days after receipt of Optionee's objections (if any) to remove said title objections. If Optionor is unable or unwilling to cure or to insure said exceptions by use of said efforts, Optionor shall so notify Optionee, and Optionee shall have seven days to notify Optionor in writing of its election to either:

- a. Terminate this Agreement, by written notice to Optionor, whereupon neither party shall have any further rights or liabilities thereunder: or

- b. Waive its objections to title and, in such event, Optionee shall accept or cause to be insured over at Optionee's expense, the exceptions that Optionor was unable or unwilling to cure or insure, and the parties shall close the transaction contemplated by this Agreement.

10. Closing Costs.

- a. Optionor (Seller) shall pay the following costs and expenses in connection with this transaction;
  - i. Optionor's attorneys' fees;
  - ii. Real property taxes, if any, shall be prorated to the date of closing, unless all or any part thereof is waived by the Clark County Assessor;
  - iii. Real estate excise taxes or transfer taxes due on the conveyance, if any.
- b. Optionee (Purchaser) shall pay the following costs and expenses in connection with this transaction;
  - i. Optionee's attorneys' fees;
  - ii. Escrow fee;
  - iii. Title insurance premium or abstract fee and sales tax thereon, if any;
  - iv. Fees for recording of the Statutory Warranty Deed.

11. Default; Remedies; Specific Performance. In the event of a material breach or default in or of this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof by Optionor, Optionee shall have, without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right to (a) demand and have specific performance of this Agreement; (b) demand injunctive relief to enforce any provision of this Agreement; or (c) terminate this Agreement upon written notice without liability to Optionor, without waiving the specific right to proceed with an action for condemnation.

12. Environmental Concerns. The Optionor warrants that the Optionor has no knowledge, without duty of inquiry, of (a) any hazardous substance or hazardous waste on the subject property as defined by applicable State or Federal law; and (b) any hazardous substance toxic water, or other toxic substance having been produced, disposed of, or kept on the premises while Optionor has been in ownership. The Optionee has the Optionor's consent to have the appropriate person(s) enter on to the property for the purpose of conducting appropriate environmental studies to the Optionee's complete satisfaction regarding the subject matter at Optionee's expense.

13. Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Optionor at:

SJO LO 90 B, LLC  
915 W 11th St  
Vancouver, WA 98661

Optionee at:

Clark County Parks  
4700 NE 78th Street  
Vancouver, WA 98665

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

14. Neutral Authorship. Each of the provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

15. Time is of the Essence. Time is of the essence in the performance of this Agreement.

16. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Assignment. This Agreement and all rights, title and interest of Optionee may not be assigned by Optionee without the Optionor's prior written consent.

18. Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the purchase and sale of the property and supersedes all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof.

19. Amendment, Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement or as otherwise may be provided in this Agreement. No failure by Optionor or Optionee to insist upon the strict performance of the other party's obligation hereunder shall constitute a waiver of strict performance thereafter of all of the other party's obligations hereunder. All the terms, provisions, and conditions of this Agreement shall insure to the benefit of and be enforceable by Optionor and Optionee and their respective heirs, legal representatives, successors and assigns.

20. Attorney's Fees. If any action is brought to enforce this Agreement after execution, or any provision thereof, to rescind the same, to collect damages for a breach thereof, or for declaratory judgment thereunder, the prevailing party in such action, whether plaintiff or defendant, shall be entitled to reasonable attorney's fees, court costs and expenses of litigation.

21. Miscellaneous.

a. The County and SJO LO 90 B, LLC warrant one to the other that they have not used the services of any real estate company, real estate 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. Either party may assign its rights in or to this Agreement. All rights and obligations created by this Agreement shall be binding upon, and inure to the benefit of each party's heirs, assigns and successors in interest.

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

22. Authority. Each party represents and warrants to the other that it has the authority to enter into this Agreement.

In witness whereof, this Agreement has been made and signed by the parties hereto.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Optionor:

SJO LO 90 B, LLC

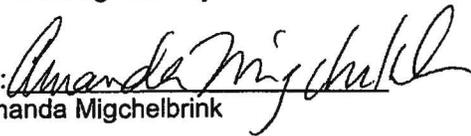
By:   
Steven J. Oliva  
Managing Member

Optionee:

Clark County, Washington

By: \_\_\_\_\_  
Mark McCauley  
County Manager

Approved as to form only:  
Anthony F. Golik  
Prosecuting Attorney

By:   
Amanda Migchelbrink

STATE OF WASHINGTON

COUNTY OF CLARK

I certify that I know or have satisfactory evidence that Mark McCauley signed this instrument on oath stated that he is authorized to execute the instrument and acknowledged it as the Clark County Manager, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of WA  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

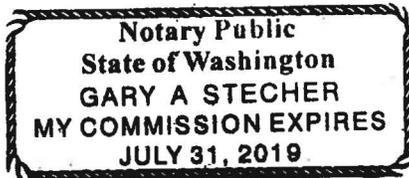
STATE OF WASHINGTON

COUNTY OF CLARK

On this day personally appeared before me Steven J. Oliva to me known to be the Managing Member of SJO LO 90 B, LLC, a Washington limited liability company, and acknowledged that said instrument to be the free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Dated: 9/27/2016

*Gary A. Stecher*  
\_\_\_\_\_  
Notary Public in and for the State of WA  
Residing at VANCOUVER, WA  
My commission expires: 7/31/16





AKS ENGINEERING & FORESTRY VANCOUVER  
9600 NE 126th Avenue, Suite 2520, Vancouver, WA 98682  
P: (360) 882-0419 F: (360) 882-0426

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM-KEIZER, OR

**LEGAL DESCRIPTION  
FOR  
SJO LO 90 B  
(AUSTIN HERITAGE PUD)**

**PROPOSED PARK AREA**

Being a portion of the Southwest quarter of Section 35, Township 3 North, Range 2 East, Willamette Meridian, City of Vancouver, Clark County, Washington, described as follows:

**COMMENCING** at a brass cap marking the Southwest corner of Section 35 as shown in book 56 of surveys, page 75 of Clark County Auditor's Records;

THENCE North 01° 54' 47" East, along the West line of the Southwest quarter of Section 35 (Survey 56-75) for a distance of 1,345.29 feet to the **POINT OF BEGINNING**;

THENCE continuing North 01° 54' 47" East, along said West line for a distance of 581.46 feet;

THENCE South 88° 05' 13" East, leaving said West line for a distance of 324.59 feet;

THENCE South 69° 32' 10" East, for a distance of 136.86 feet;

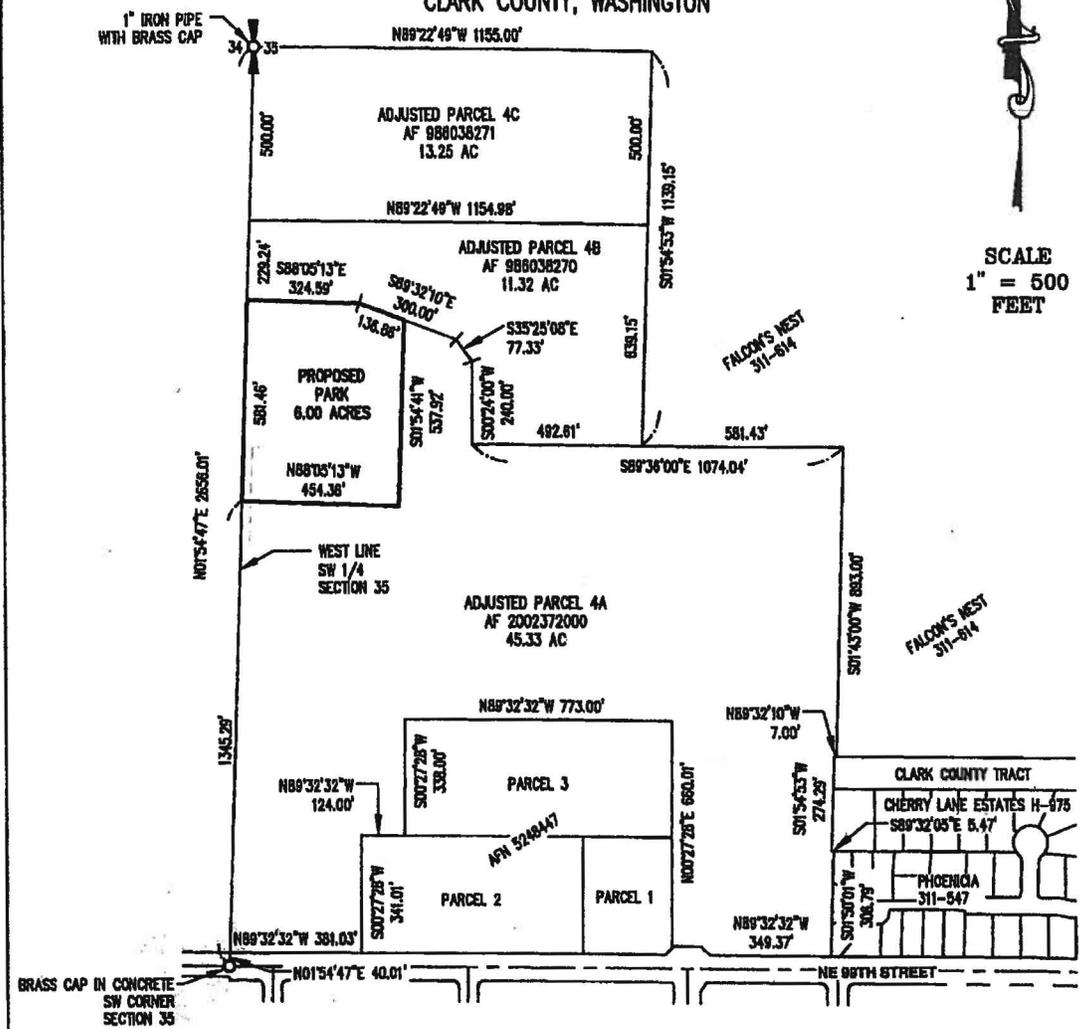
THENCE South 01° 54' 41" West, for a distance of 537.92 feet;

THENCE North 88° 05' 13" West, for a distance of 454.36 feet to the **POINT OF BEGINNING**.

Contains approximately 6.0 acres.



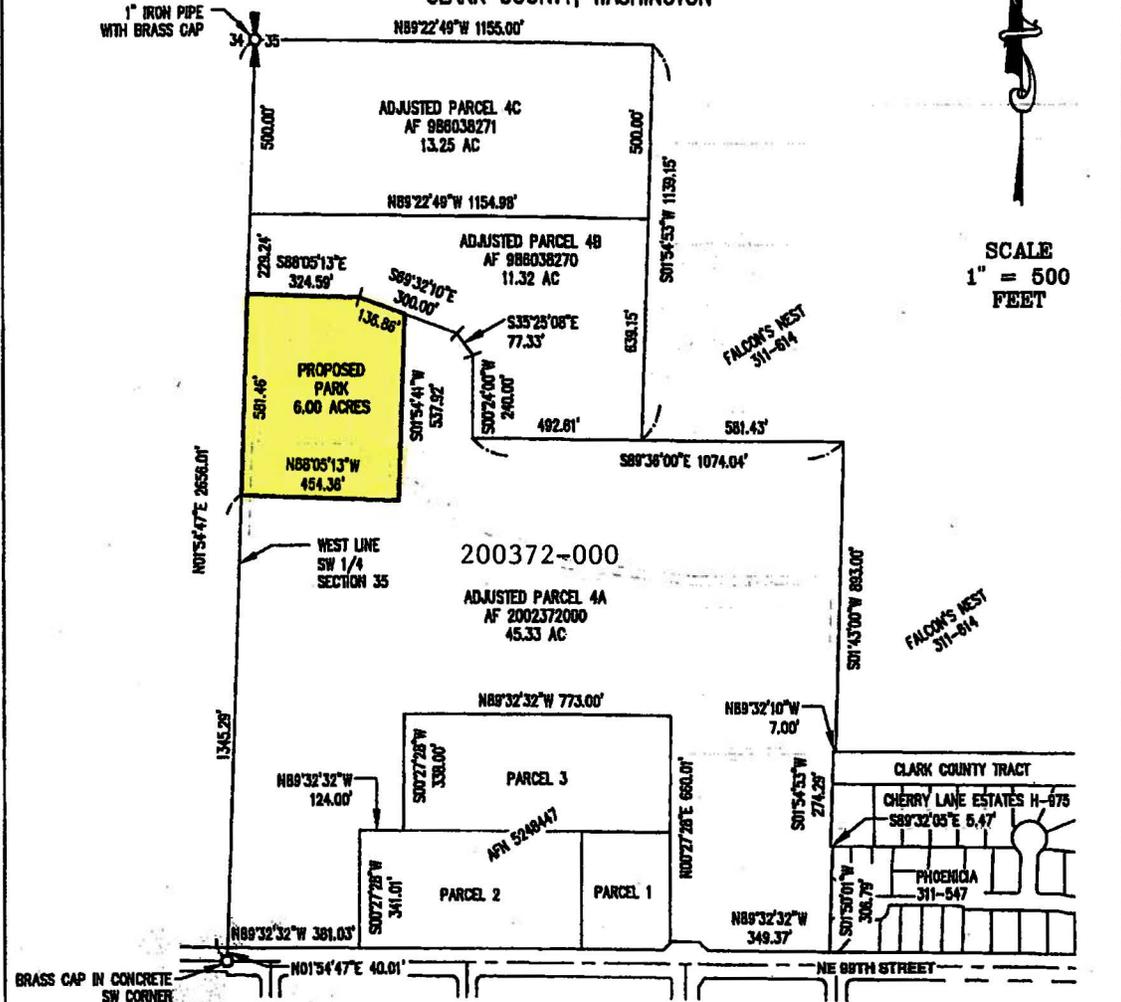
**SKETCH SHOWING  
PROPOSED PARK AREA  
OVER ADJUSTED PARCEL 4A (SJO LO 90 B, LLC PROPERTY)  
IN A PORTION OF THE SW 1/4 OF SECTION 35, T3N, R2E, W.M.  
CLARK COUNTY, WASHINGTON**



DATE: 09-19-2016

PARK TRACT		
DRAWN BY: BJA	CHECKED BY: CAB	DWG: 4437EXH PARK
AKS ENGINEERING & FORESTRY, LLC 9600 NE 126TH AVE, SUITE 2520 VANCOUVER, WA 98682 www.aks-eng.com		JOB: 4437
PHONE: 360.882.0419 FAX: 360.882.0426		<b>AKS</b>

**SKETCH SHOWING  
PROPOSED PARK AREA  
OVER ADJUSTED PARCEL 4A (SJO LO 90 B, LLC PROPERTY)  
IN A PORTION OF THE SW 1/4 OF SECTION 35, T3N, R2E, W.M.  
CLARK COUNTY, WASHINGTON**



DATE: 08-19-2016

PARK TRACT		
DRAWN BY: BJA	CHECKED BY: CAB	DWG: 4437EXH PARK
AKS ENGINEERING & FORESTRY, LLC		JOB: 4437
9600 NE 126TH AVE, SUITE 2520		
VANCOUVER, WA 98682		
www.aks-eng.com		
PHONE: 360.882.0419	FAX: 360.882.0426	

