



AGENDA REPORT
May 30, 2019

**Approval Re: Purchase of Undivided ½ Interest in the Final Parcel Needed
for the Hall Road Pump Station Drainage Improvement Project – District 2.
(Fiscal Impact: \$100,000.00)**

SUBJECT:

Approval Re: Purchase of Undivided 1/2 Interest in the Final Parcel Needed for the Hall Road Pump Station Drainage Improvement Project - District 2.

FISCAL IMPACT:

Fiscal Impact: FY 2018 – 2019: \$100,000.00 (Funding Source: Stormwater Fund 1112/260030/5610000)

FY 2019 – 2020: No impact

DEPT/OFFICE:

Public Works

REQUESTED ACTION:

It is requested that the Board of County Commissioners 1) approve and authorize the Chair to execute the Contract for Sale and Purchase needed for the Hall Road Pump Station Drainage Improvement Project, and 2) waive the requirement for a Phase I Environmental Site Assessment as required by AO37, and 3) authorize filing of a partition or other necessary legal action.

SUMMARY EXPLANATION and BACKGROUND:

The subject property is located in Section 02, Township 24, Range 36.

The Hall Road Pump Station Drainage Improvement Project will replace the Mosquito Control pump and the need for two temporary portable pumps during substantial rain events. The scope of work includes the installation of two permanent electric pumps designed to discharge a combined 50,000 gallons per minute of stormwater runoff into the Sykes Creek Mosquito Control Impoundment to further improve the recovery time for much of the area south of Chase Hammock Road and east of State Road 3 during larger storm events. Private parcels extend to inside the limits of the perimeter berm and are necessary for stormwater and flood control uses. This is half of the final acquisition of parcels needed for the project. However, if the Board approves this acquisition of 1/2 ownership, there may be additional acquisition efforts required relative to the other 1/2 ownership interest in the subject parcel.

An appraisal was obtained from W.H. Benson & Company report dated February 8, 2019 with a valuation of \$136,000.00 for 100% interest in the entire parcel.

Potential options are as follows:

- 1) Accept the counteroffer from the seller and instruct staff to proceed with the closing.
- 2) Reject the counteroffer and extend an offer to the owners in an amount determined by the Board at this time.

Staff recommendation is to accept the counteroffer of \$100,000.00 from the Seller. The County Attorney's Office has reviewed the contract.

CLERK TO THE BOARD INSTRUCTIONS:

Return original executed Contract for Sale and Purchase to Department.

ATTACHMENTS:

- | | Description |
|---|-------------------------|
| □ | Hall Rd Contract |

BOARD OF COUNTY COMMISSIONERS

AGENDA: CONTRACT FOR SALE AND PURCHASE FOR THE HALL ROAD PUMP STATION IMPROVEMENT PROJECT – DISTRICT 2

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION / NATURAL RESOURCES MANAGEMENT DEPARTMENT

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor		_____	<u>5/29/19</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney		_____	<u>5/29/19</u>

AGENDA DUE DATE: May 29, 2019 for the May 30, 2019 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 31, 2019

M E M O R A N D U M

TO: Corrina Gumm, Interim Public Works Director

RE: Item J.4., Approval of Purchase of Undivided ½ Interest in the Final Parcel Needed for the Hall Road Pump Station Drainage Improvement Project

The Board of County Commissioners, in regular session on May 30, 2019, executed Contract for Sale and Purchase needed for Hall Road Pump Station Drainage Improvement Project; waived the requirement for a Phase I Environmental Site Assessment as required by AO-37; and authorized filing of a partition or other necessary legal action. Enclosed is a fully-executed copy of the Contract.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: Contracts Administration
Budget
Finance

CONTRACT FOR SALE AND PURCHASE

Seller: ~~Kimball R. McMullin and Marie Regina Forbes~~, as ~~Co~~ Trustees of the Raymond C. Forbes Indenture of Trust U/A/D December 17, 1992 as to 1/2 interest

Buyer: Board of County Commissioners, Brevard County, Florida
2725 Judge Fran Jamieson Way, Viera, Florida 32940

Legal description of property being transferred: See attached Exhibit "A"

The transfer shall be made pursuant to the following terms and conditions and the Standards for Real Estate Transactions, on the reverse side of this contract.

Purchase price: ~~Sixty-Eight Thousand Dollars and No/100~~ ^{One hundred thousand dollars 7/1/19} ~~130,000.00~~ (\$68,000.00)

Deposit: \$100 to be transferred to an escrow account established and held by the Brevard County Clerk, such deposit to be applied to the purchase price.

Time for acceptance of offer; effective date; facsimile: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before the **July 9, 2019**, deposit(s) will, at Buyer's option, be returned and this offer withdrawn. The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed this offer. A facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as originals.

Title evidence: At least 15 days before closing date, Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney or Buyer shall at Buyer's expense obtain a title search and/or title insurance commitment (with legible copies of instruments listed as exceptions attached thereto) and, after closing, an owner's policy of title insurance.

Closing Date: This transaction shall be closed and the deed and other closing papers delivered on or before **September 30, 2019**, unless modified by other provisions of this Contract.

Warranties: The following warranties are made and shall survive closing.

- a. SELLER warrants that there are no parties in occupancy other than Seller.
- b. SELLER warrants there is no hazardous waste or other environmental contamination located in or upon the property being acquired by the County. Seller shall indemnify and defend Buyer from any and all claims or expenses resulting from hazardous waste or environmental contamination located in or upon the property provided such waste or contamination was not placed on the property by the Buyer.
- c. SELLER warrants that he/she has no knowledge of any fact or restriction which would prevent use of the property for drainage and flood control area purposes.
- d. SELLER hereby represents and warrants to COUNTY that SELLER has not engaged or dealt with any agent, broker or finder, in regard to this Agreement or to the sale and purchase of the property contemplated hereby. SELLER hereby acknowledges and covenants that SELLER is solely responsible for any and all commissions due arising out of or connected within the sale or transfer of the property. SELLER hereby indemnifies COUNTY and agrees to hold COUNTY free and harmless from and against any and all liability, loss, costs, damage and expense, including but not limited to attorney's fees and costs of litigation both prior to and on appeal, which COUNTY shall ever suffer or incur because of any claim by any agent, broker or finder engaged by SELLER, including broker, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the property contemplated hereby.

STANDARDS FOR REAL ESTATE TRANSACTIONS

- A. EVIDENCE OF TITLE:** A title insurance commitment issued by a Florida licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price insuring Buyer's title to the Real Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract and those which shall be discharged by Seller at or before closing. Seller shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving evidence of title to examine it. If title is found defective, Buyer shall within 3 days thereafter, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, Seller will have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within five (5) days after expiration of the thirty (30) day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall immediately be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is, Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) in the title within the time provided therefor. If Seller is unable to remove the defects within the times allowed therefor, Buyer shall either waive the defects or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract
- B. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If survey shows encroachment on Real Property or that improvements located on Real Property encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.
- C. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in the Warranties section of the agreement.
- D. LIENS:** Seller shall furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding date of closing. If Property has been improved or repaired within that time Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at closing of this Contract.
- E. TIME PERIOD:** Time is of the essence in this Contract.
- F. DOCUMENTS FOR CLOSING:** Seller shall furnish the deed, bill of sale, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish closing statement.
- G. EXPENSES:** Documentary stamps on the deed, if required, and recording of corrective instruments shall be paid by Seller. Buyer will pay for the cost of recording the deed.
- H. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations. Prorations will be made through day prior to occupancy if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer and escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and the

prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either Buyer or Seller, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is in the closing statement.

I. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens as of date of closing (not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.

J. PROCEEDS OF SALE; CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If abstract of title has been furnished, evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence. Proceeds of the sale shall be held in escrow by Seller's attorney or by another mutually acceptable escrow agent for a period of not more than 5 days after closing date. If Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all deposit(s) and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale. If Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. The escrow and closing procedure required by this Standard shall be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S. (1993), as amended.

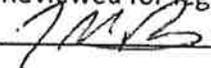
K. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach. In the event of any litigation arising out of this contract, each party shall bear its own attorney's fees and costs. The parties hereby agree to waive trial by jury.

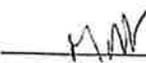
L. CONVEYANCE: Seller shall convey title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller. Personal Property shall, at request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

M. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

N. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed.

Reviewed for legal form and content:

 (Assistant) County Attorney

 Seller's Initial

Inspections: The BUYER shall have 60 days after the Brevard County Board of County Commissioners executes the contract within which to complete physical inspection and evaluation of the property for environmental, hazardous materials, developability, access, drainage and subsurface conditions. In the event a Phase I environmental assessment meeting ASTM standards is prepared and environmental issues objectionable to BUYER are detected, SELLER shall 1) take all steps necessary to remove BUYER'S objections prior to the expiration of the 60 day inspection period, if possible or 2) if acceptable to BUYER, SELLER shall allow an additional 90 days to provide adequate time to conduct a Phase II assessment meeting ASTM standards. If the Phase I assessment reveals contamination this agreement may be terminated by BUYER and BUYER may decline to allow SELLER to clean up or to proceed to a Phase II assessment. Likewise, if the Phase II assessment reveals contamination objectionable to BUYER, BUYER may terminate this agreement. Alternatively, BUYER may grant SELLER an additional 90 days to clean up the site after the Phase II assessment, but BUYER is not required to do so. SELLER shall allow the BUYER or its agents reasonable right of entry upon the property for inspection purposes. Before the expiration of the initial 60-day inspection period or the additional 90-day extension for a Phase II assessment, BUYER shall have the right to terminate this agreement with a full refund of any deposits, should the results of the inspection indicate the property cannot be used for its intended purpose or that mitigation of conditions would be required. If clean up after a Phase II assessment is attempted but unacceptable to BUYER, the BUYER shall receive a full refund of its deposit.

Condemnation: This property is is not being acquired under threat of condemnation. If so, this agreement includes and settles all issues of full compensation for the property being acquired, including fees and costs.

SELLER shall comply with §196.295, Fla. Stat.

SELLER hereby agrees to provide the necessary information and execute a beneficial interest and disclosure affidavit as required by §286.23, Fla. Stat.

Special Clauses: See attached addendum

NOT APPLICABLE

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

SELLER


Date 5/30/19
Kristine Isnardi, Chair

Date _____
Kimball R. McMullin, Co TTEE

Agenda Item # J.4.
As approved by the Board May 30, 2019

Date _____
Marie Regina Forbes, Co TTEE

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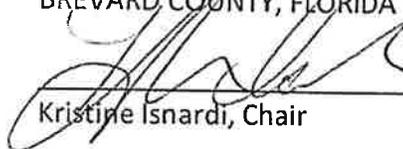
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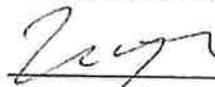
NOT APPLICABLE

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

SELLER


Date 5/29/19
Kristine Isnardi, Chair

Date _____
Kimball R. McMullin, Co TTEE


Date 5/29/19
Marie-Regina Forbes, Co TTEE

Agenda Item # J.4.
As approved by the Board 05/30/19

EXHIBIT A

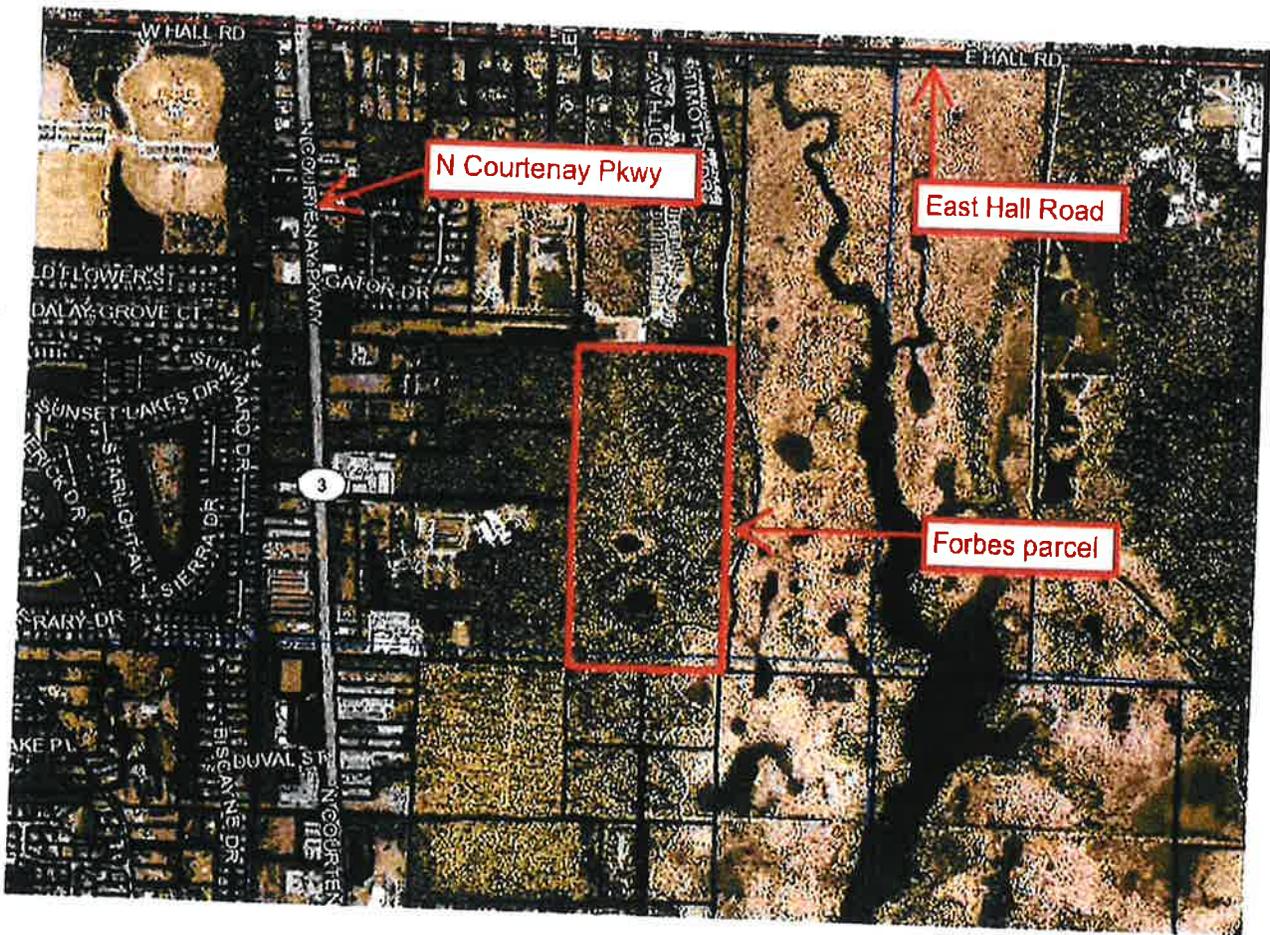
The West one-half (W1/2) of the Southeast Quarter (SE ¼) of Section 2, Township 24 South, Range 36 East, said land lying and being in Brevard County, Florida.

LOCATION MAP

TWP: 24 RNG: 36 SEC: 02 DISTRICT: 2

STREET NAME: XXX Vacant Land off Hall Road

OWNER'S NAME: McMullin and Forbes



PROPERTY FACT SHEET
PROJECT: HALL ROAD PUMP STATION

OWNER: Kimball R. McMullin and Marie Regina Forbes

PARCEL LOCATION: off East Hall Road, Merritt Island

PARCEL SIZE: 80 acres, whole parcel, one-half interest

ZONING/LANDUSE: GU – General Use

IMPROVEMENTS: N/A vacant land

TOPOGRAPHY: wetlands

FLOOD ZONE: AE

TAX PARCEL ID#: 24-36-02-00-752

MARKET VALUE: \$38,000.00 (2018 Assessment) (Property Appraiser's Records)

PUBLIC UTILITIES: none

PROPERTY TRANSACTION:
(Clerk of the Court Records) Purchase date: April 1, 1996
Sale amount: \$60,000.00 (1/2 interest)

BENSON APPRAISAL DATE: 02/08/2019
Appraisal Amount: \$136,000.00