

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”), by and between the State of Oregon, acting by and through its Department of Administrative Services (“**Seller**”), and the City of Salem, an Oregon municipal corporation (“**Buyer**”). Buyer and Seller are each a “**Party**” and together the “**Parties**.”

### RECITALS

- A. Seller is the owner of that certain real property located in Marion County, Oregon, commonly known as the D Street Field in Salem, as shown on Exhibit A (the “**Property**”). The Property consists of approximately seven (7) acres.
- B. The Property is part of a larger parcel of real property, approximately 47.37 acres, commonly known as the North Campus of the Oregon State Hospital (the “**Master Parcel**”), as shown on Exhibit A.
- C. Buyer desires to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, on the terms and conditions contained herein.

### AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Seller and Buyer agree as follows:

1. **Agreement of Purchase and Sale.** Subject to and upon the terms and conditions herein, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property, together with all of Seller’s right, title and interest in and to any rights, licenses, privileges, reversions and easements appurtenant to the Property except for any mineral rights.
2. **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) is Two hundred thirty-one thousand dollars per acre (\$231,000). Final price shall be determined upon creation of legal lot, generally described as the property north of the existing parking lots on B Street NE, west of 25<sup>th</sup> Street NE, South of D Street NE, and east of 23<sup>rd</sup> Street NE (Exhibit A).
  - a) In addition to the Purchase Price, Buyer agrees to install, at its own cost, sanitary sewer improvements in a capacity large enough to service the entire Master Parcel no later than September 1, 2019. The location shall be mutually agreed upon, but generally located near the intersection of B Street NE and 25<sup>th</sup> Street NE.
3. **Earnest Money.**
  - (a) **Generally.** As of the Effective Date, Buyer has delivered to Seller the amount of One Thousand Dollars (\$1,000.00) (the “**Earnest Money**”), payable to the Title Company (as defined

in Section 4(a) below). On or before three (3) business days after the Effective Date, Seller shall deposit such Earnest Money with the Title Company.

(b) Release to Seller. If this Agreement has not earlier been terminated on or before the Review Deadline (as defined in and pursuant to Section 7(b) below), the Earnest Money shall be released to Seller, and the Earnest Money shall be credited to the Purchase Price at Closing (as defined in Section 8 below).

#### **4. Title Company and Title Report.**

(a) Title Company. On or before three (3) business days after the Effective Date, the Parties shall deposit an executed copy of this Agreement with First American Title Company in Salem, Oregon (the “**Title Company**”).

(b) Title Report. On or before ten (10) business days after the Effective Date, Seller shall deliver to Buyer a current preliminary commitment for title insurance for the Property, issued by the Title Company, together with copies of the underlying documents (the “**Title Report**”).

**5. Subdivision of Master Parcel.** Seller is in the process of severing the Property from the Master Parcel pursuant to a subdivision application (the “**Subdivision Application**”) with the City of Salem (the “**City**”). Seller shall, at its own cost and expense, continue to use its reasonable best efforts to pursue and secure the City’s approval of the Subdivision Application and recordation of the final plat, and Buyer shall reasonably cooperate with such efforts.

#### **6. Seller’s Pre-Closing Improvement Work.**

None required.

#### **7. Buyer’s Review Period.**

(a) Contingencies. Buyer’s purchase of the Property is contingent on the following:

(i) Buyer’s approval of any and all aspects and characteristics of the Property (including, but not limited to, environmental matters, survey matters and zoning); and

(ii) Buyer’s approval of the Title Report.

(b) Objection and Termination. If any condition set forth in Section 7(a) above is not satisfied to Buyer’s satisfaction within forty-five (45) days after the Effective Date (the “**Review Deadline**”), then Buyer may terminate this Agreement by notifying Seller on or before ten (10) business days after the Review Deadline, in which event the Parties shall have no further obligations under this Agreement and the Earnest Money shall be returned to Buyer. Buyer’s failure to timely terminate this Agreement pursuant to this Section 7(b) shall be deemed a waiver or satisfaction of the conditions set forth in Section 7(a) above.

(c) Access.

(i) *Generally.* From the Effective Date through the Review Deadline, Seller grants to Buyer and Buyer's agents a right of reasonable access to the Property, for the purposes of inspecting the Property pursuant to Section 7(a) above. With respect to any inspection or testing that is invasive or involves digging, boring or removing any portion of the Property, Buyer must first submit to Seller a written request for any such invasive testing, and Buyer may not proceed with any such invasive testing unless Seller has given written approval of Buyer's plan; and Seller's approval shall not be unreasonably withheld, conditioned or delayed. Buyer shall conduct any such invasive testing in strict accordance with the plan approved by Seller. Seller will be entitled to have a representative present at all times during any inspection or testing on the Property. Buyer shall pay when due all costs and expenses of Buyer's inspections, tests and studies of the Property, regardless of whether the Closing of the purchase and sale of the Property occurs.

(ii) *Indemnification.* Buyer shall protect, defend, indemnify and hold Seller and Seller's agents and employees harmless for, from and against any claims, liabilities, damages, liens, attorneys' fees, penalties, demands, causes of actions and suits of any nature whatsoever which are the proximate result of the entry onto the Property by Buyer, its agents, employees, representatives or contractors. This indemnity obligation shall survive the Closing or the termination of this Agreement, as applicable.

**8. Closing.** So long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, the closing of the purchase and sale of the Property ("Closing") under this Agreement shall take place within thirty (30) business days after the later of the following days:

- (a) the Review Deadline; or
- (b) the City's approval of the Subdivision Application and Seller's recordation of the final plat.

The date on which Closing occurs is the "**Closing Date.**"

**9. Conveyance of Property.** At Closing, Seller shall convey the Property to Buyer by a bargain and sale deed, with a reservation of mineral rights (the "**Deed**").

**10. Closing Costs.**

(a) Buyer's Closing Costs. In connection with the transactions contemplated herein, Buyer shall pay the following costs and expenses:

- (i) all legal and professional fees and fees of other consultants incurred by Buyer;
- (ii) the costs of the additional premium for the Title Insurance Policy (as defined in Section 10(b)(ii) below) for extended coverage, if requested by Buyer;

- (iii) all recording fees;
- (iv) the costs of any duplicating, delivery or other administrative charges imposed by the Title Company; and
- (v) all property taxes and assessments for the Property arising on or after the Closing Date.

(b) **Seller's Closing Costs.** In connection with the transactions contemplated herein, Seller shall pay the following costs and expenses:

- (i) all legal and professional fees and fees of other consultants incurred by Seller;
- (ii) the costs of the title insurance premiums, commitment fees and search fees for the issuance of an ALTA standard owner's policy for the Property (the "**Title Insurance Policy**"); and
- (iii) all property taxes and assessments for the Property arising before the Closing Date.

(c) **Shared Closing Costs.** All Closing costs not set forth in Section 10(a) or (b) above shall be allocated and prorated between the Parties in accordance with common commercial practices in Marion County, Oregon.

**11. Buyer's Closing Deliveries.** On or before the Closing Date, Buyer shall deliver to the Title Company:

- (a) all documents required to be executed in connection with this Agreement; and
- (b) immediately available funds in the amount of the Purchase Price minus the Earnest Money, and the amount of all Closing costs and other expenses to be paid by Buyer at Closing pursuant to Section 10(a) above.

**12. Seller's Closing Deliveries.** On or before the Closing Date, Seller shall deliver the Title Company:

- (a) the executed and acknowledged Deed; and
- (b) immediately available funds in the amount of all Closing costs and expenses to be paid by Seller at Closing pursuant to Section 10(b) above.

**13. Conditions Precedent to Buyer's Obligation to Close.** The following are conditions precedent to Buyer's obligations to consummate the transaction described herein:

- (a) Seller shall have timely performed, in all material respects, all of the obligations required to be performed by Seller by the terms of this Agreement, including delivery of all of the items required to be delivered by Seller pursuant to this Agreement;

- (b) Buyer shall have obtained a commitment from the Title Company to issue the Title Insurance Policy; and
- (c) Satisfaction of Buyer's contingencies set forth in Section 7(a) of this Agreement.
- (d) Seller's creation of legal lot.

**14. Conditions Precedent to Seller's Obligation to Close.** The following are conditions precedent to Seller's obligations to consummate the transaction described herein:

- (a) Buyer shall have timely performed, in all material respects, all of the obligations required to be performed by Buyer by the terms of this Agreement, including delivery of all of the items required to be delivered by Buyer pursuant to this Agreement;
- (b) the City's approval of the Subdivision Application and the recording of the applicable subdivision document(s) in the records of Marion County.

**15. Representations and Warranties.**

(a) Parties' Representations and Warranties. Each Party makes the following representations and warranties which are true on the date hereof and shall be true on the Closing Date as if made on such date:

(i) *Power and Authority.* The Party is duly organized and existing under the laws of Oregon, and has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The Party has taken all action necessary to authorize the execution, delivery and performance of this Agreement. The performance by the Party of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, document or instrument to which the Party is a party or by which it is bound or affected. All proceedings required to be taken by or on behalf of the Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

(ii) *Validity of Agreement.* This Agreement and all other documents required by this Agreement to be executed by Party shall constitute, when so executed, the valid and binding obligation of the Party thereto, enforceable against it in accordance with their respective terms.

(b) Survival. All representations and warranties made by the Parties hereunder shall survive Closing.

**16. Purchase AS-IS; Documents Regarding Property.**

(a) Buyer understands, acknowledges and agrees that Buyer is buying Property "AS-IS" and "WHERE-IS," with all faults and without any representations or warranties, express, implied or statutory, of any kind whatsoever (including, without limitation, any representations or warranties regarding environmental matters), by Seller, its agents, brokers, consultants, counsel, employees, managers or any other person.

(b) Prior to the Effective Date, Seller has delivered to Buyer certain documents regarding the environmental condition of the Property, as listed below in this Section 16(b). Buyer understands and acknowledges that Seller's delivery of these documents to Buyer does not in any way constitute a representation or warranty from Seller about any matter, but rather is merely a conveyance to Buyer of documents in Seller's possession regarding environmental matters relating to the Property. Buyer further understands and acknowledges that Seller does not represent or warrant that these documents constitute all of the documents or information in Seller's possession regarding environmental matters relating to the Property.

<b>Title</b>	<b>Date</b>

**17. Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

## 18. Notices.

(a) Addresses. An “**Address**” means the address set forth beneath a Party’s signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 18(b) below to the other Party’s Address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 18(b) below.

(b) Delivery.

<b>Method of delivery</b>	<b>When notice deemed delivered</b>
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

## 19. Miscellaneous.

(a) Time is of the Essence; Calculation of Days. Time is of the essence in relation to the Parties’ performance of any and all of their obligations under this Agreement. Any reference in this Agreement to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or State of Oregon holiday.

(b) Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

(c) Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

(d) No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party’s right to otherwise require performance of the same provision, or any other provision.

(e) Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and

provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

(f) Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

(g) Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between Seller (or any other agency or department of the State of Oregon) and Buyer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 19(g) be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

(h) No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this Agreement or any portion thereof.

(i) Exhibits. The Exhibit listed below is incorporated as part of this Agreement:

Exhibit A: Property and Master Parcel

*[remainder of page intentionally left blank]*

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

**SELLER:**

The State of Oregon, by and through its Department of Administrative Services

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Address: \_\_\_\_\_  
City, State, ZIP: \_\_\_\_\_  
ATTN: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

**BUYER:**

The City of Salem, an Oregon municipal corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Steven D. Powers  
Its: City Manager

Address: 350 Commercial St. NE \_\_\_\_\_  
City, State, ZIP: Salem, OR 97301 \_\_\_\_\_  
ATTN: Clint Dameron \_\_\_\_\_  
Phone Number: 503-540-2404 \_\_\_\_\_  
Email Address: CDameron@cityofsalem.net \_\_\_\_\_  
Fax Number: 503-589-2054 \_\_\_\_\_

#7415925v4

**EXHIBIT A**  
**Property and Master Parcel**

