

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "PSA") is entered into as of this 12 day of November, 2021 (the "Effective Date"), by and between the City of Salem, an Oregon municipal corporation ("Seller"), and The City of Turner, 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, identified as Marion County Tax Lot Tax Lot #082W29AB04500, commonly known as 5270 Val View Drive, in the City of Turner, Marion County, Oregon, as shown on Exhibit A and more particularly described on Exhibit B (the "Property"). The Property consists of approximately two-tenths (0.2) acre.
- B. 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, and all improvements to the Property except those identified in section 1(a).
 - (a) Specifically excluded from the Property is Seller's existing utilized 69-inch diameter water transmission line. Also specifically excluded from the Property is the bulk water supply meter to be installed pursuant to the Intergovernmental Agreement dated November 12, 2021 between Purchaser and Seller ("IGA"); the meter vault in which the bulk water supply meter will located; and all pipes, valves, and appurtenances connecting the bulk water supply meter to the water transmission line.
 - (b) Purchaser specifically acknowledges that the Property includes the non-utilized 36-inch water main existing on the premises.
- 2. **Purchase Price.** The purchase price for the Property (the "Purchase Price") is ONE Dollar (\$1.00) all cash to Seller at the close of escrow.
- 3. **Earnest Money.** No earnest money shall be required as part of this PSA.

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 PSA with Amerititle, 320 Church Street NE, in Salem, Oregon 97301 (the “**Title Company**”).
- (b) Title Report. Buyer shall obtain and deliver to Seller 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. Buyer’s Review Period.

- (a) Contingencies. Buyer’s purchase of the Property is contingent on the following:
 - (i) Buyer’s written approval or waiver of any and all aspects and characteristics of the Property (including, but not limited to, title encumbrances, survey matters and zoning, inspections); within thirty (30) days (the “**Review Deadline**”), after the Effective Date as herein defined; and,
 - (ii) Buyer’s approval of the Title Report within thirty (30) days after the Effective Date as herein defined; and,
 - (iii) Buyer’s written approval, satisfaction or waiver of any and all aspects and characteristics and matters of the environmental condition of the Property within thirty (30) days after the completion of environmental assessment as described in Section 6(d).
- (b) Objection and Termination. If any condition set forth in Section 5(a) above is not satisfied to Buyer’s satisfaction within the Review Deadline, then Buyer may terminate this PSA by notifying Seller on or before three (3) business days after the Review Deadline, in which event the Parties shall have no further obligations under this PSA. Buyer’s failure to timely terminate this PSA pursuant to this Section 5(b) shall be deemed a waiver or satisfaction of the conditions set forth in Section 5(a) above.
- (c) Access.
 - (i) 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 5(a) above. Buyer may obtain at Buyer’s expense, a Phase I and, if necessary, a Phase II environmental site assessment of the Property. 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, including any repair costs necessitated by Buyer’s inspections or testing, regardless of whether the Closing of the purchase and sale of the Property occurs. Buyer shall also return the Property to pre-testing conditions after any testing. Buyer agrees to provide Seller with a true and complete copy of all environmental studies, tests, and reports that Buyer obtains in connection with its inspection of the Property.

(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 PSA, as applicable.

6. Buyer's Conditions 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 PSA, including delivery of all of the items required to be delivered by Seller pursuant to this PSA; and,
- (b) Buyer shall have obtained a commitment from the Title Company to issue the Title Insurance Policy; and,
- (c) Seller shall have satisfied all material requirements of the IGA.
- (d) Buyer may initiate a Phase I and a Phase II Environmental Assessment of the Premises. If either Phase I or Phase II results indicate environmental liability issues that are unacceptable to Buyer, then Buyer may, on written notice to Seller, terminate this Agreement and it shall be null and void for all purposes, and all of Buyer's Earnest Money shall be returned to Buyer. If such written notice to terminate is not given to Seller on or before three business days after the Review Deadline, this condition shall be deemed waived by Buyer for all purposes.

7. Seller's Conditions 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 PSA, including delivery of all of the items required to be delivered by Buyer pursuant to this PSA; and,
- (b) Buyer shall have satisfied all material requirement of the IGA; and,
- (c) Buyer shall grant to Seller at no cost, easements for Seller's existing utilized 69-inch diameter water transmission line; the bulk water supply meter to be installed pursuant to the IGA; the meter vault in which the bulk water supply meter will located; and all pipes, valves, and appurtenances connecting the bulk water supply meter to the water transmission line, on the Property.

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 PSA shall take place as soon as possible, but no later than twenty-one (21) days from satisfaction of requirements in Section 6 and Section 7, unless mutually agreed upon by the Parties.

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 warranty deed (the "**Deed**") conveying fee simple title in Buyer, subject only to the Permitted Encumbrances.

10. Closing Costs and Taxes. Seller shall pay one-half of any closing fees, including escrow fees, except that Seller shall not be required to exceed the "Salem's Project Cost Limit" of \$1,000,000 as set forth in the IGA. Should Seller have incurred project costs of \$1,000,000, Buyer shall be responsible for all closing fees, including escrow fees. Recording Fees, transfer taxes and assessments, deed stamps, shall be paid by Buyer. Closing fees, including escrow fees, not paid by Seller shall be paid by Buyer. Any property taxes paid by Seller shall be prorated as of the Closing Date, and Buyer shall be responsible for any additional or deferred taxes that may result from this sale or Buyer's use of the Property. Each party shall pay its own attorney fees, consultant fees and costs, and other expenses solely incurred by that Party.

11. Buyer's Closing Deliveries. On or before the Closing Date, Buyer shall deliver the following:

(a) to the Title Company:

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

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

(a) to the Title Company:

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

13. 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 PSA 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 PSA. 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 PSA have been duly and properly taken.
- (ii) *Validity of Agreement.* This PSA and all other documents required by this PSA to be executed by a 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) Seller's Representations and Warranties. Seller 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) *No Claims.* Seller is unaware of any pending or threatened litigation or administrative action with respect to the Premises.
- (ii) *No Violations.* Seller has not received any written notice from any governmental authority alleging that the Improvements violate any building codes, building or use restrictions, or zoning ordinances, rules, or regulations.
- (iii) *No Contamination.* To Seller's knowledge, the Premises are free of any hazardous material and has not been used to generate, store, or dispose of hazardous materials in violation of any applicable law prior to or during which the Seller has owned the Premises. For purposes of this section, "hazardous material" means all petroleum-based products, radon, asbestos, PCBs, and all substances, wastes, and materials that are so defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, and the Hazardous Materials Transportation Act.

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

14. Purchase AS-IS; No Representations by Seller.

- (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, except those expressly set forth in this PSA.
- (b) The Parties acknowledge that the closing of the sale of the Property is conditioned upon Buyer's inspection of the Property, to Buyer's satisfaction, as provided in Section 5, above. Buyer shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Property.

15. Attorneys' Fees. In the event of any arbitration or litigation between the parties to declare or enforce any provision of this PSA, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorneys' fees incurred in such action in arbitration, trial and all appellate courts.

16. 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.

17. Defaults and Failure to Close

- (a) Default by the Seller. If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Seller, the Buyer shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.
- (b) Default by the Buyer. If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Buyer, the Seller shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.
- (c) Cancellation Charges. If this PSA is terminated because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Title Company. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Title Company. Otherwise, the Parties shall each pay one-half of any required cancellation charges.

18. Notices.

Any notices sent to Salem shall be mailed by first class mail, postage prepaid to:

Clint Dameron, Real Property Services Manager
350 Commercial St. NE
Salem, OR 97301

With a Copy to:

City Attorney
City of Salem
555 Liberty Street SE / Room 205
Salem, OR 97301

Any notices sent to Turner shall be mailed by first class mail, postage prepaid to:

City Manager
City of Turner
5255 Chicago Street SE
PO Box 456
Turner, OR 97392

If the deadline under this PSA 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 PSA. Any reference in this PSA 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 PSA 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 PSA that are not specified herein.
- (c) Amendments. This PSA may not be modified or amended except by mutual agreement of the Parties. No modification or amendment of any provision of this PSA shall be valid or binding unless the modification or amendment is in writing and signed by both parties.
- (d) Waiver. The terms of this PSA shall not be waived except by written instrument. Any such waiver, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if it is signed by all parties to this PSA.
- (e) Severability. If a court of competent jurisdiction holds any portion of this PSA to be void or unenforceable as written, the Parties intend that (1) that portion of this PSA be enforced to the extent permitted by law, and (2) the balance of this PSA remain in full force and effect.
- (f) Counterparts. This PSA and any amendments hereto may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this PSA so executed shall constitute an original.
- (g) Governing Law; Consent to Jurisdiction. The laws of Oregon shall govern this PSA. Exclusive venue for litigation of any action arising under the PSA shall be in the Circuit Court of the State of Oregon for Marion County. The Parties expressly waive any and all rights to maintain an action under the PSA in any other venue and expressly consent that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate the choice of venue in this paragraph.
- (h) No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this PSA or any portion thereof.
- (i) Brokers. Seller and Buyer warrant to each other that neither Buyer nor Seller is represented by a broker. Buyer agrees that Seller is not subject to any commission fee or payment, and Buyer will agree to indemnify and hold Seller harmless therefrom such fee or commission as a part of this PSA and transaction.

(j) Exhibits. The Exhibit listed below is incorporated as part of this PSA:

Exhibit A: Site Map
Exhibit B: Legal Description

Each person signing this PSA 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:

BUYER:

City of Salem

City of Turner

By: 
City Manager

By: 
City Administrator

Date: 11/12/2021

Date: 10/25/2021

By: _____
Title:

Date: _____

By: _____
Title:

Date: _____

By: _____
Title:

Date: _____

EXHIBIT A
Site Map

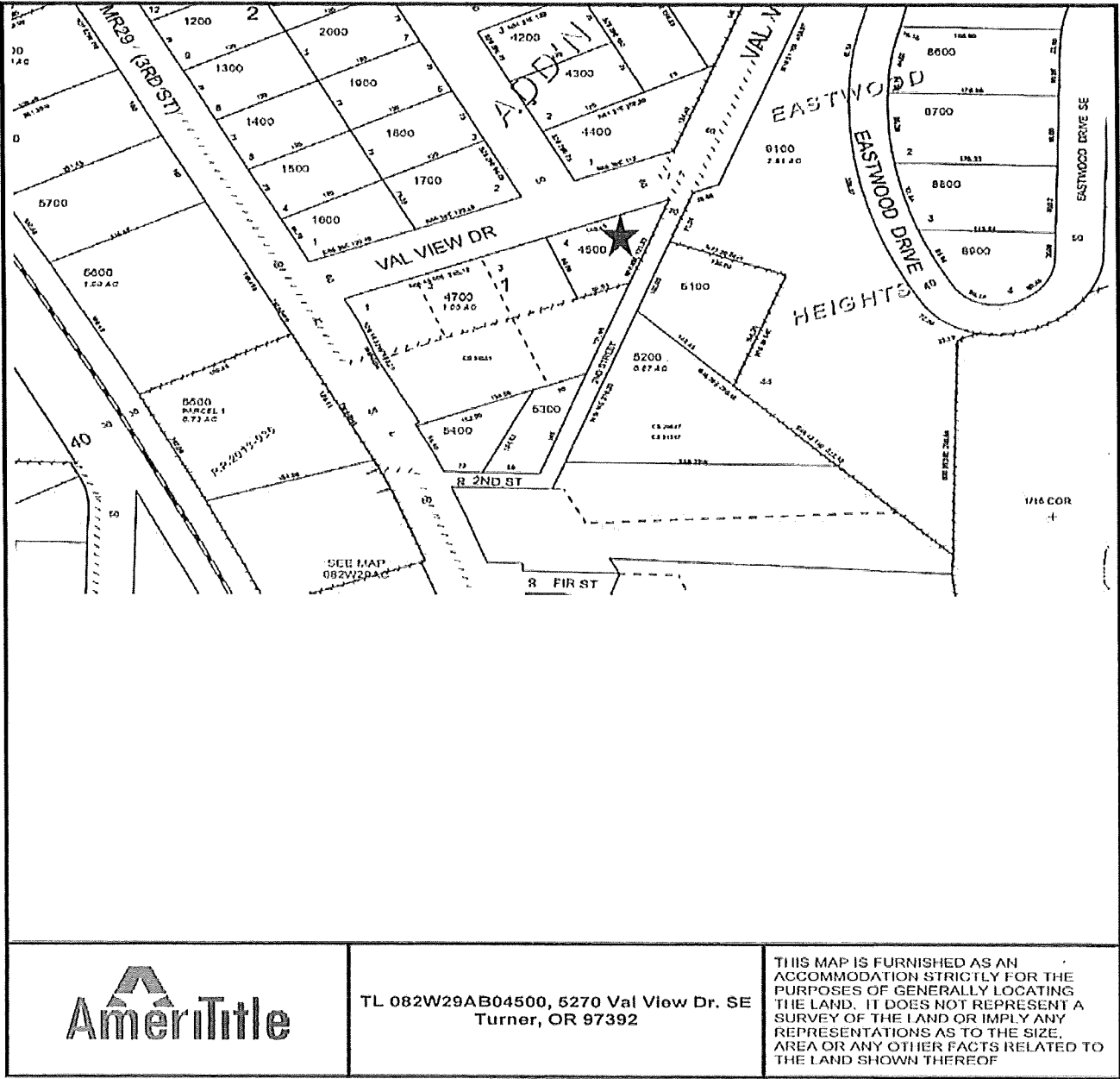


EXHIBIT B
Legal Description

Lot 4, Block 1, WEBB'S ADDITION to the City of Turner, Marion County, Oregon.