

INTERGOVERNMENTAL AGREEMENT
FOR TURNER PERMANENT BOOSTER WATER PUMP STATION

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF SALEM (“Salem”), an Oregon municipal corporation, and the CITY OF TURNER (“Turner”), an Oregon municipal corporation, both herein referred to individually or collectively as “Party” or “Parties”.

RECITALS:

- A. WHEREAS, Salem is the wholesale water supplier to Turner’s municipal water supply system, pursuant to an agreement dated May 25, 1957 and as amended by an agreement dated May 24, 2007; and,
- B. WHEREAS, Salem desires to add a new location to deliver water to Turner (“Connection Location”) as jointly agreed upon by Turner; and,
- C. WHEREAS, the addition of another connection location will allow Salem greater flexibility in its delivery of water to Turner and increase the resiliency of Salem’s water system; and,
- D. WHEREAS, construction of a water pump station is necessary at the new Connection Location to maintain a similar water pressure and level of service in Turner’s water municipal water supply system; and,
- E. WHEREAS, construction of a larger water distribution main within Turner’s municipal water supply system is needed to allow Turner to maintain its current level of service while utilizing only one connection location between Salem’s water transmission line and Turner’s water system. Turner has secured funding from the State for construction of a larger distribution main. Turner has initiated design and expects construction to be completed by December 31, 2023, soon after the scheduled March 31, 2023, completion date for the water pump station; and,
- F. WHEREAS, Oregon Revised Statutes (ORS) 190.010 authorizes Salem and Turner to enter into an intergovernmental agreement whereby Salem provides water to Turner. Additionally, by the authority granted in ORS 190.110, Salem may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties; and
- G. WHEREAS, the City of Turner obtained a Conditional Use Permit for 5270 Val View Drive, Tax Lot #082W29AB04500, in the City of Turner, Marion County, Oregon, with the Conditional Use Permit having been granted by decision of the City Counsel of the City of Turner on April 22, 2021; and,
- H. WHEREAS, details of the real estate portions of this Agreement will be set forth in a Purchase and Sale Agreement (“PSA”) as attached as Exhibit I; and
- I. WHEREAS, the parties wish to enter into this Agreement and to restate the obligations of the prior Agreements

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Effective Date. The effective date of this Agreement is the date of the last signature hereon ("Effective Date").

2. Prior Agreements. Except as and unless expressly waived or modified in this Agreement, each Party reserves all rights and privileges, implied or express, granted or established to the Party as set forth in that Water Supply Agreement dated May 25, 1957, and the AMENDMENT TO WATER SUPPLY AGREEMENT DATED MAY 25, 1957, dated May 24, 2007.

3. Duties of Salem. Salem shall:

A. Construct the following improvements:

1. Connection Location by installation of a bulk water supply meter and connection of the bulk water supply meter to Salem's water transmission line.
2. Water pump station, including but not limited to: pumps; building; emergency electrical generator; all necessary mechanical, electrical, instrumentation, and control systems; backflow protection; and associated waterlines between the bulk water supply meter and the pump station and between the pump station and Turner's water system (hereafter referred to as "Water Pump Station").
3. Decommissioning of Salem's temporary Turner Booster Water Pump Station located at 7160 3rd Street SE; Turner, Oregon.
4. Other related work as mutually agreed upon by Salem and Turner.

B. Complete the engineering and construction phases for the Project through the use of in-house personnel and consultant services. This includes the following:

1. Final plans and specifications for the improvements as described in Section 3.A.
2. Obtaining any required permits for project construction.
3. Estimates of cost.
4. Contracting for construction of the project.
5. Construction administration and inspection.
6. Payments to Contractor up to Salem's Project Cost Limits as described in Section 5.
7. Commissioning and startup of constructed improvements.
8. Operations and maintenance training of mechanical, electrical, and instrumentation equipment by manufacturer's representatives.
9. Final inspection and payment.
10. Real estate services for transfer of Real Property and easements.
11. Project closeout.

- C. Contract for the construction of improvements. The parties agree Salem shall have sole authority in administration of contracts for construction.
- D. Provide equipment to Turner from Salem's existing Turner Temporary Booster Water Pump Station located at 7160 3rd Street SE; Turner, Oregon for permanent use in the new Water Pump Station. Equipment to be provided shall include existing pump skid assembly to include pump and motor assemblies, piping manifold, and appurtenances; electrical equipment including service disconnect panel, automatic transfer switch panel, power distribution panel, pump station control panel, lighting panel, transformer; and other mechanical and electrical equipment as agreed upon by Salem. All such equipment shall be considered part of the Water Pump Station as used in this Agreement.
 - 1. All equipment provided to Turner from Salem's existing Turner Temporary Booster Water Pump Station is provided "as is" without any warranty express or implied.
 - 2. Salem shall retain ownership and possession of the existing 300kW emergency generator located at Salem's Turner Temporary Booster Water Pump Station.
- E. Provide timely notice to Turner of design meetings and workshops and allow Turner, or their designated representative, to participate in design meetings and workshops, and to review all engineering plans and specifications for the Water Pump Station.
- F. Provide timely notice to Turner of project meetings and allow Turner, or their designated representative, to attend such project meetings during construction, witness commissioning, and participate in punchlist inspections.
- G. Assume ownership, maintenance, and control of the existing utilized 69-inch diameter water transmission line; the bulk water supply meter to be installed pursuant to this Agreement; 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.
- H. Convey real property to Turner as described in Section 9 of this Agreement.

4. Duties of Turner. Turner shall:

- A. Participate in project meetings, witness commissioning, and participate in punchlist inspections as necessary to assure that the Water Pump Station complies with Turner's codes and ordinances, is compatible with Turner's municipal water supply, complies with Turner's Design Standards, meets Turner's operation and maintenance requirements, and that proposed connections to Turner's water system are acceptable to Turner and complies with Turner's codes and ordinances.

- B. Conduct a timely review and provide written approval of the final water pump station construction plans and specifications prior to Salem advertising for construction bid proposals.
- C. Upon closing of the real estate transaction as set forth in the PSA attached as Exhibit 1, assume all ownership, maintenance, and control of the Water Pump Station, including all responsibility for operation and maintenance at its sole cost and expense, and be responsible for all liability to persons and property resulting from the Water Pump Station. However, if either party terminates the real estate transaction in accordance with the terms set forth in the PSA then:
 - 1. Salem shall transfer and Turner shall assume all ownership, maintenance, and control of the Water Pump Station, including all responsibility for operation and maintenance at its sole cost and expense, and be responsible for all liability to persons and property resulting from the Water Pump Station, as of the date of Project Completion via a Bill of Sale.
 - 2. Salem will grant to Turner at no-cost easement(s) for ongoing access, maintenance, and protection of the Water Pump Station.
- D. "Project Completion" as used in this Agreement means completion of construction, and completion of all required startup, testing, and commissioning activities of the water pump station.
- E. Prior to Project Completion, provide written concurrence that the water pump station complies with the intent of the final engineering plans and specifications.
- F. Turner agrees to Salem completing the engineering and construction phases for the Project through the use of in-house personnel and consultant services, including but not limited to all matters set forth in section 3.B.

5. Project Funding

- A. Salem shall contribute up to \$1,000,000 to the project costs ("Salem's Project Cost Limit").
- B. Any unspent Salem funds will be retained by Salem and will not be available for Turner's use.
- C. Subject to Salem's Project Cost Limit of \$1,000,000, Salem shall reimburse Turner for project costs incurred during engineering, design, construction, inspection, and commissioning of the project, and Salem shall also reimburse Turner for any closing fees, recording fees, transfer taxes and assessments, paid by Turner in accordance with the PSA. Amounts paid by Salem to Turner shall be included in Salem's Project Cost Limit of \$1,000,000.
- D. Turner shall present invoices for the project costs incurred by Turner. Salem shall pay such invoices within 30 days of receipt.

- E. Required fees for permits, approvals, and utility connections for the design and construction shall be included in the project costs.
- F. The value of equipment provided by Salem to Turner as described in Section 3.D will not be included in Salem's Project Cost Limit.
- G. The value of the real property to be conveyed by Salem to Turner as described in the PSA shall not be included in Salem's Project Cost Limit. However, closing fees and any other costs paid by Salem for the transfer of the real property in accordance with the PSA shall be included in Salem's Project Cost Limit.
- H. Turner is solely responsible for any and all project costs and costs associated with the transfer of the real property as set forth in the PSA in excess of Salem's Project Cost Limit of \$1,000,000.
- I. If Salem anticipates that its projects costs will exceed \$1,000,000, Salem shall notify Turner of Salem's anticipated excess project costs. Upon Project Completion Salem shall invoice Turner for project costs expended by Salem in excess of \$1,000,000. Turner shall pay such invoices within 30 days of receipt. Salem reserves the right to not incur any costs in excess of \$1,000,000.

6. Water Pump Station Design.

The parties agree to design the water pump station to conform to City of Turner design standards.

7. Schedule.

The parties agree that they will make best efforts to complete construction of the improvements such that the water pump station is operational by March 31, 2023.

8. Warranty.

Salem shall ensure that all construction contracts for all public improvements constructed under this agreement warrant that the improvements be free of defects due to workmanship or materials for a period of one year from Final Completion as defined in the contracts, and that the construction contracts are fully assignable and otherwise transferable to the City of Turner upon notification to the contractors which shall occur upon final completion as defined in the contracts. However, any such warranty shall not include the equipment and materials provided by Salem to Turner as set forth in Section 3.D.

9. Property.

- A. The Connection Location and Water Pump Station shall be located at 5270 Val View Drive SE, Turner, Oregon 97392 (Marion County Tax lot 082W29AB04500). At the effective date of this Agreement the real property is owned by Salem with certain easements reserved to Salem and to Turner. Upon Project Completion, Salem and Turner shall transfer the Property as defined in the PSA in accordance with the terms and conditions of the PSA attached hereto as Exhibit 1 and incorporated herein.

- B. At closing as defined in the PSA, Turner shall grant at no-cost easement(s) (“Easement”) to Salem for Salem’s existing utilized 69-inch diameter water transmission line; the bulk water supply meter to be installed pursuant to this Agreement; 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 as set forth in the PSA.
- C. Salem shall retain ownership and control of the existing utilized 69-inch diameter water transmission line; the bulk water supply meter to be installed pursuant to this Agreement; 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.

10. Water Supply.

- A. The Parties acknowledge that pursuant to section 2.3 of the AMENDMENT TO WATER SUPPLY AGREEMENT DATED MAY 25, 1957, dated May 24, 2007, Salem has the authority to deliver water to Turner at one or more jointly agreed upon Connection Locations. The parties agree that pursuant to this authority:
 - 1. That the new Connection Location which will be established pursuant to this Agreement will be the primary point of supply Salem to supply water to Turner upon completion of the Water Pump Station, unless and until a different Connection Location is utilized pursuant to the terms of the Water Supply Agreement dated May 25, 1957, and the AMENDMENT TO WATER SUPPLY AGREEMENT DATED MAY 25, 1957, dated May 24, 2007, or any amendments thereto or any subsequent water service agreements between the Parties.
 - 2. That the existing Aldersgate Connection Location at 7790 Marion Road SE, Turner, Oregon shall remain active to provide emergency fire flow capacity to Turner’s water system until no later than December 31, 2023.
 - 3. The Parties agree that upon completion of the water pump station all other Connection Locations existing at that time shall remain in place and be inactive during normal operation of Salem’s water system, with the exception of the Aldersgate Connection Location as set forth in section 10.A.2. Nothing in this subsection shall be interpreted as limiting Salem’s authority to reactivate any of the Connection Locations at Salem’s discretion.
- B. Nothing in this section is intended as a modification of the terms and conditions of the Water Supply Agreement dated May 25, 1957, and the AMENDMENT TO WATER SUPPLY AGREEMENT DATED MAY 25, 1957, dated May 24, 2007, or to limit the ability of Salem to deliver water to Turner at one or more jointly agreed upon connection locations.
- C. Salem reserves the right to supply water to Turner at other Connection Locations as needed for maintenance and repair of Salem’s water system with prior notification to Turner.

11. Indemnity.

To the fullest extent permitted by law, Turner agrees to forever defend, indemnify, release, and hold Salem, its officers, officials, agents, employees, contractors, affiliates, and volunteers, harmless from and against any and all losses, damages to persons or property, sickness, disease, injuries or deaths of persons, liability, claims, suits, liens, demands, and causes of action of every kind and character, including environmental liability, and the amounts of any judgments, penalties, interest, court costs, legal fees, attorney's fees, and alternative dispute resolution costs, incurred by Salem in defense of same ("Claims") arising in favor of any person, corporation or other entity, including the parties hereto and their officers, officials, agents, employees, contractors, affiliates, and volunteers, arising out of, pertaining to, or occurring through, in whole or in part, the exercise of, the rights and privileges retained by, granted to, or exercised by Turner, or by Turner's officers, officials, agents, employees, contractors, affiliates, and volunteers, pursuant to this Agreement, including but not limited to, the ownership, operation, and maintenance of the Water Pump Station that is the subject of this Agreement and the real property transferred to Turner pursuant to the PSA attached hereto as exhibit 1.

Turner warrants to Salem that its indemnity obligation will be supported by liability insurance to be furnished by Turner, provided that recovery under or in respect to this indemnity shall not be limited to the proceeds of any such insurance. Turner's indemnity obligation under this Agreement, shall extend to the full amount of any such Claims, and shall extend to, but not be limited to, the negligent or intentional acts and omissions of any officer, official, agent, employee, contractor, affiliate, and volunteer of Turner, or any person on or using the real property.

12. Termination.

- A. This Agreement can be terminated at any time by mutual consent of the parties.
- B. Salem may terminate this Agreement effective upon delivery of written notice to Turner, or at such later date as may be established by Salem, under any of the following conditions:
 - 1. If Turner fails to perform any of its obligations under the provisions of this Agreement or so fails to fulfill its obligations in a timely manner such as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from Salem fails to correct such failures within ten (10) days or such longer period as Salem may authorize.
 - 2. If Turner fails to provide payment of its share of the cost of the project.
 - 3. If Salem fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Salem, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

4. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
 5. If any license, certificate, or insurance required by law, regulation, or this Agreement to be held by either Party to fulfill the Party's obligations under this Agreement is for any reason denied, revoked or not renewed.
- C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

13. Dispute Resolution.

The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

14. Amendment.

This Agreement may not be modified or amended except by mutual agreement of the parties. No modification or amendment of any provision of this Agreement shall be valid or binding unless the modification or amendment is in writing and signed by both parties.

15. Waiver.

The terms of this Agreement 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 Agreement. Failure by Salem to enforce any right under this Agreement shall not be deemed to be a waiver of that right or any other right.

16. Waiver Of Breach.

One or more waivers or failures to object by either Party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

17. Force Majeure.

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

18. Notices.

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

Public Works Department Director
City of Salem
555 Liberty Street SE / Room 325
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 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. No Third Party Beneficiaries.

Turner and Salem are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons.

20. No Agency.

Neither party nor the officers, employees, or agents of that party are, or shall be deemed, agents of the other. Each party shall be separately and exclusively responsible for acts, errors, and omissions of its own officers, employees, and agents except to the extent provided under the indemnity and insurance provisions of this Agreement.

21. Compliance with All Laws.

The Parties will at all times comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government now existing or hereinafter in effect, which may in any manner affect the performance of the Agreement.

22. Counterparts.

This Agreement 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 Agreement so executed shall constitute an original.

23. Entire Agreement.

The Agreement constitutes the entire agreement between the parties, and supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. There are no understandings, agreements or representations, oral or written, regarding this Agreement except as specified or referenced herein. Turner by the signature of its authorized representative below hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

24. Authority to Execute.

Each person executing this Agreement on behalf of Salem and Turner, respectively, warrants his or her authority to do so.

25. Rule of Construction.

Both parties acknowledge and affirm they are each represented by or have sought the advice of legal counsel in connection with this Agreement and the work contemplated hereby, and have read and understood and are fully informed of the contents of the Agreement and the legal consequences thereof, and that by the parties signatures hereon, acknowledge and affirm that the terms of this Agreement shall not be construed against either party as a drafter hereof.

26. Governing Law; Interpretation; Venue.

The laws of Oregon shall govern this Agreement. Exclusive venue for litigation of any action arising under the Agreement 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 Agreement 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.

27. Severability.

If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Salem and Turner intend that (1) that portion of this Agreement be enforced to the extent permitted by law, and (2) the balance of this Agreement remain in full force and effect.

28. Representation Regarding Authority To Sign.

Each Party certifies and represents that each individual signing this Agreement on behalf of the Party has been authorized to enter into and execute this Agreement on behalf of that Party, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

CITY OF SALEM:

By: Steven Bowers
City Manager

Date: 11/12/2021

CITY OF TURNER:

By: [Signature]
City Administrator

Date: 10/15/2021

By: _____
Title:

Date: _____

By: _____
Title:

Date: _____

By: _____
Title:

Date: _____

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:

City of Salem

By: 
City Manager

Date: 11/12/2021

BUYER:

City of Turner

By: 
City Administrator

Date: 10/25/2021

By: _____
Title:

Date: _____

By: _____
Title:

Date: _____

By: _____
Title:

Date: _____

EXHIBIT A
Site Map

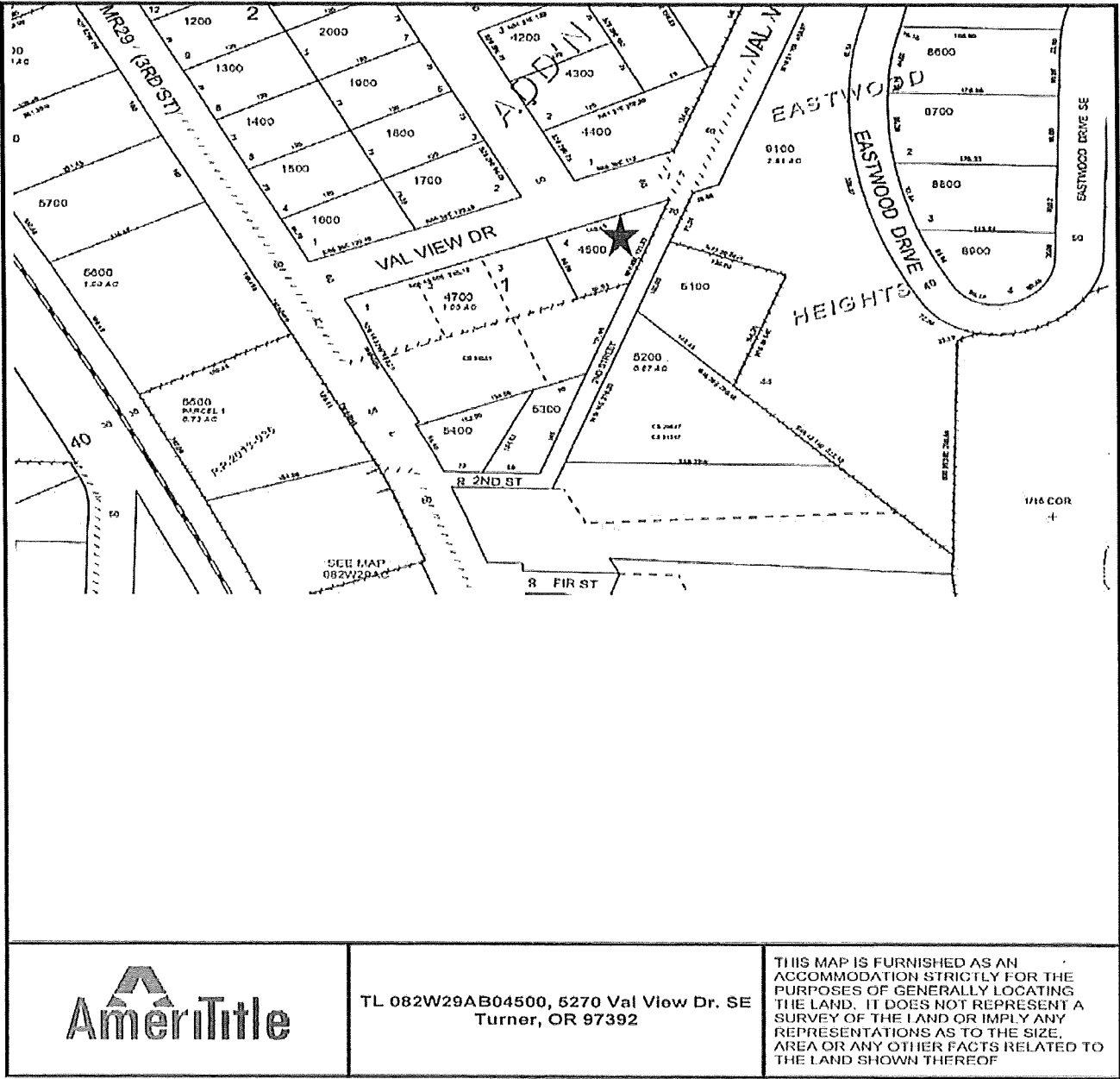


EXHIBIT B
Legal Description

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