

INTERGOVERNMENTAL AGREEMENT

BY THIS AGREEMENT, effective on the date last signed by both parties ("Effective Date"), State of Oregon ("Seller") and the City of Salem, an Oregon municipal corporation ("Purchaser"), do hereby agree as follows:

1. **Authority**: By the authority granted in ORS 366.395, Seller may relinquish title to any of its property not needed by it for highway purposes to any other governmental body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by Seller.

2. **Premises**. Seller shall sell to Purchaser and Purchaser shall purchase from Seller, at the price and on the terms and conditions set forth herein, the real property, access and property rights, and all improvements thereto which are located in City of Salem, Marion County, Oregon, and are more particularly shown on Exhibit A, attached hereto and incorporated herein, ("Premises").

3. **Purchase Price**. No cash, but other good and valuable consideration ("Purchase Price") for the Premises, the sufficiency of which is hereby acknowledged.

4. **Earnest Money**. No Earnest Money shall be required.

5. **Purchaser's Conditions**.

5.1 **Environmental Contingency**. Seller will complete a Phase I Environment Site Assessment (ESA). If ESA results indicate environmental liability issues that are unacceptable to Purchaser, then Purchaser may, on written notice to Seller, terminate this Agreement and it shall be null and void for all purposes. If such written notice to terminate is not given to Seller on or before Closing, this condition shall be deemed waived by Purchaser for all purposes.

5.1.1 ESA Expenses. Seller shall bear the cost of the ESA.

5.2 **Inspection Contingencies**.

5.2.1 Inspection Expenses. Other than as set forth in Section 5.1.1, all costs and expenses of all Purchaser's tests, inspections, and studies will be paid by Purchaser, and paid when due, regardless of whether this transaction closes. Purchaser shall not allow any materialmen's liens or other encumbrances on the Premises.

6. **Seller's Conditions**

Purchaser shall undertake, at its sole expense, a partition and property validation of the Premises and the adjacent property identified as Marion County Tax Lot 073W12AD00400.

7. **Title Insurance.**

7.1 **Title Report.** Purchaser will order a preliminary title report with respect to the Premises (the "Title Report") in order to investigate title to its sole satisfaction.

7.2 **Rescission of Agreement—Title Defects.** If Seller elects not to eliminate any title exception disapproved by Purchaser, Purchaser may elect to cancel this Agreement by written notice to Seller given on or before thirty (30) business days after Seller's notification of the election. In this event, the Deposit, if any, will be forfeited by Purchaser and this Agreement will terminate. If Purchaser does not elect to cancel this Agreement, Purchaser's objections to the disapproved exceptions that Seller elected not to eliminate are deemed waived and the Premises will be conveyed to the Purchaser with such defects without credit against the purchase price. The foregoing notwithstanding, Seller agrees that it will cause all trust deed liens or monetary encumbrances against the Premises that are not accepted by Purchaser to be released of record by the Closing Date. If Purchaser fails to give timely notice to Seller of termination under this paragraph, then Purchaser's right of termination will be deemed waived. Any title coverage shall be paid by Purchaser.

8. **Risk of Loss.** All risk of loss, injury, damage or condemnation of the Premises shall be transferred from Seller to Purchaser at the time of Closing. If the Premises are partially destroyed or partially condemned at any time prior to Closing and that portion of the Premises destroyed or condemned constitutes a material part of this transaction, or if the Premises are totally destroyed or condemned, either party may terminate this Agreement without liability or obligation to the other party. All insurance proceeds and condemnation awards, received by or accruing to Seller by reason of such loss, injury, damage, or taking, shall be for the account of Seller, and the Purchase price shall not be reduced thereby unless agreed between the parties prior to Closing. If the Premises are partially destroyed or condemned and the loss or condemnation is immaterial, the transaction shall be closed without reduction or adjustment in the Purchase Price, and the proceeds of all insurance and all condemnation proceeds shall accrue to Purchaser.

9. **Taxes and Assessments: Closing Costs.** Recording Fees, transfer taxes and assessments, deed stamps and one-half of any closing fees, including escrow fees, shall be paid by Purchaser. Each party shall pay its own attorney fees and other expenses incurred.

10. **Title Documents.**

10.1 **Deed.** Seller agrees to execute and deliver to Purchaser a bargain & sale deed conveying title to the Premises, subject to the accepted title exceptions of record. Purchaser and Seller shall mutually agree on the form and text of the deed.

11. **Possession.** Purchaser shall be entitled to possession of the Premises at Closing.

12. **Closing.** The term "Closing" as used in this Agreement means the payment by the Purchaser to Seller of that portion of the Purchase Price due at Closing and the delivery by Seller to Purchaser of the warranty deed and title insurance policy. Unless otherwise agreed by the parties, or the Agreement is terminated pursuant to Sections 4, 5 and 6, Closing shall take place at the earliest possible date, but no later than April 30, 2017.

13. **Statutory Warning (ORS 93.040(2)).** 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.

14. **Brokers.** Seller and Purchaser warrant to each other that no person or entity of any sort is entitled to any commission, broker fees, finder fees, or other payment.

15. **Default.** In the event that either party fails to close this transaction when and as required hereby, the other party's sole remedy is to terminate this Agreement, in which case this Agreement shall be null and void.

16. **Assignment.**

16.1 Neither this Agreement nor any rights arising under it may be assigned or mortgaged by Purchaser without the prior written consent of Seller, and any attempt to transfer this Agreement or any rights or interests arising hereunder, by operation of law or otherwise, without such consent shall be void and of no force and effect.

16.2 The rights and obligations arising under this Agreement shall run with the land, and shall be binding on the parties' successors and assigns. In the event Seller sells, conveys, or otherwise transfers fee title to the Premises, or interest therein, to a third party, Seller shall assign its rights and obligations arising under this Agreement to that party contemporaneously with that sale, conveyance, or transfer.

17. **Modification.** No part of this Agreement may be modified without the express written consent of both parties.

18. **Notices.** Any notice or demand required or permitted to be given under the terms of this Agreement shall be deemed duly given or made if given by any of the following methods:

a. Deposited in the US mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectfully addressed as follows:

To Seller:

ODOT – Right of Way Section MS#2
Attn: Ladd Whitcomb
4040 Fairview Industrial Drive SE
Salem, OR 97301
503-986-3639

To Purchaser: City of Salem
Attn: Real Property Services Manager
350 Commercial St. NE
Salem, OR 97301
503.540.2404

With a Copy to: City of Salem, City Attorney's Office
555 Liberty St, SE Rm. 205
Salem, OR 97301
503-588-6003

b. Sent to the above addresses via an established national overnight delivery service (such as Federal express), charges prepaid, or

c. Sent via any electronic communications method, provided the sender obtains written confirmation of receipt of the communication by the electronic communication equipment at the office of the addressee listed above.

19. **Enforcement and Attorney's Fees.** In the event a suit or other action is instituted to enforce any of the terms or obligations under this Agreement, each party shall bear the costs of its respective attorney's fees.

20. **Integration.** This Agreement contains the entire agreement between the parties concerning the subject hereof, including all oral understandings and agreements, and there are no collateral understandings or agreements or representations or warranties not expressly included herein.

21. **Recording.** Neither this Agreement nor any copy hereof shall be recorded without the express written consent of Seller.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year indicated below.

STATE OF OREGON

By Joseph A. Gray Date _____

Title State Right of Way Manager

CITY OF SALEM

By _____ Date _____

Title _____

TBD

