

*Exhibit A***PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT ("the Agreement") is made and entered into as of the last date of signature indicated below ("the Effective Date"), by and between Nonetop LLC. ("Nonetop" or "the Buyer") and the City of Portland, a municipal corporation, by and through its Water Bureau ("City" or "the Seller").

RECITALS

- A. City is the owner of approximately 4750 SF (.1 acres) of real property, described as 1S1E04DD 8200 (R128726) and located at SW Broadway and SW Grant in Multnomah County, Oregon, together with the improvements thereon, if any, and all rights appurtenant thereto including but not limited to access rights, timber rights, water rights, grazing rights, and development and mineral rights (hereinafter referred to as "the Property").
- B. Nonetop is the owner the Morris Marks House (also known as the Fried-Durkheimer House), currently located by lease on the Property. The Morris Marks does not have a formal landmark designation on the National Register of Historic Places; however, it is a local historic resource through its listing in the City of Portland Historic Resource Inventory. Due to pending development at or on the property where the Morris Marks House is located, the structure must be either demolished or relocated.
- C. City is authorized to enter into this Agreement pursuant to Ordinance _____, but must obtain final approval from City Council prior to Closing.
- D. City desires to convey and Nonetop desires to acquire all rights, title, and interest in the Property. Nonetop further desires to relocate the Morris Marks House onto the Property.

The terms of this Agreement are as follows:

TERMS

1. **Conveyance of Broadway Property.** City agrees to convey the Property to Nonetop upon the terms and conditions set forth in this Agreement. Buyer agrees to purchase the Property for the amount of One Hundred Eighty Thousand Dollars \$180,000. The Parties agree that this exchange is fair.

2. **Closing Date.** This transaction shall close on or before thirty (30) days from the date all conditions precedent have been satisfied or waived, or as soon thereafter as reasonably possible, unless otherwise extended as set forth herein (the "Closing Date" or "Closing").
3. **Payment of Purchase Price.** The Purchase Price shall be payable as follows:
 - a) **Deposit.** Within three (3) business days from the Effective Date, Buyer shall deposit into escrow the sum of Twenty Thousand Dollars (\$20,000) ("Escrow Deposit") to Fidelity National Title Company of Oregon ("Escrow Holder: and "Title Company"), 471 NW Burnside St., Gresham, OR 97030. At Closing, the Escrow Deposit, together with any Base Rent paid in accordance with the Lease Agreement between the parties, and any interest, shall be credited toward the Purchase Price.
 - b) **Cash Balance.** On or before the Closing Date, Buyer shall deposit into escrow cash, a wire transfer of funds, a certified check, or a cashiers' check in the amount of the balance of the Purchase Price.
4. **Conditions Precedent to Closing.**
 - a) **Conditions Precedent to City's Obligations.** Unless otherwise stated, these conditions are intended for the benefit of both parties and these conditions may only be waived by mutual written agreement. In the event that any condition is not satisfied or waived on or before Closing or other date as set forth herein, City shall have the right to terminate this Agreement and exercise any other remedy available.
 - i) **City Council Approval.** This Agreement is expressly conditioned upon the formal approval by the City Council, in the form of a resolution or ordinance, of the terms and conditions set forth in this Agreement. This condition may only be waived by City.
 - ii) **Title. At Closing, the Seller shall convey fee simple** title to the Property by bargain and sale deed. Title shall be good and marketable and shall be insurable as such at ordinary rates pursuant to an ALTA standard owner's title insurance policy issued at Closing by the Title Company free and clear of all liens and encumbrances except for the Permitted Exceptions (defined below).

Title Report. Seller has ordered and provided to Buyer preliminary title reports covering the Broadway Property in the title report. Within twenty (20) days of the Effective Date, whichever is later, Buyer shall give written notice to Seller of the exceptions to title that Buyer shall require Seller to remove from the record at or before Closing (the "Unacceptable

Exceptions”). Mortgages, deeds of trust, liens, environmental violations, delinquent taxes, or other financial obligations secured by the Property are automatically deemed Unacceptable Exceptions. Exceptions to title not objected to are referred to as “Permitted Exceptions.” Seller shall thereafter have fifteen (15) days to use its best efforts to remove such exceptions at Seller’s sole cost or inform Buyer in writing that it is unable to remove any such exception. All new exceptions to title appearing on subsequent title reports shall be considered unacceptable, unless accepted in writing by Buyer. If for any reason Seller cannot remove any of the Unacceptable Exceptions before Closing, then Buyer may elect to either accept title to the Property subject to such exceptions, or; refuse to accept the Property and terminate this Agreement;

- iii) Environmental Review. Before Closing, Buyer may, at its expense and in its sole discretion, engage consultants, surveyors, or engineers to conduct environmental studies, soil analyses, surveys, building inspections, and appraisals. Within ten (10) days after the Effective Date, Seller shall deliver to Buyer copies of all relevant environmental studies or analyses within Seller’s control. Buyer and its agents shall have the right to enter the Property at reasonable times before Closing to make such tests, inspections, soil analyses studies, surveys, appraisals and other investigations as Buyer may require (collectively, “investigations”), and Seller shall cooperate therewith. Any areas disturbed by such investigations shall be restored by Buyer, at Buyer’s expense, to their pre-inspection condition. It shall be a condition to Closing that the results of such investigations be acceptable to Buyer in its sole discretion. If Buyer notifies Seller prior to Closing that Buyer cannot accept the Property due to the results of its investigations under this section, and Buyer and Seller have not reached an agreement regarding the items disclosed by the investigations, then Buyer may, at its option and upon written notice to Seller, terminate this Agreement of Purchase and Sale.
- iv) Boundaries/Access; Delivery of Surveys and Reports. It is a condition to Closing that (1) there are no discrepancies in the boundaries of the Broadway Property; (2) there are no encroachments or prescriptive or adverse rights on or affecting the Property or any portion thereof; and (3) the Property has insurable vehicular access. Within ten (10) days after execution of this Agreement, Seller shall deliver to Buyer a copy of all surveys made of the Property and in Seller’s possession or control. If Seller knows of any such surveys, studies or reports that are not in Seller’s possession, Seller shall notify Buyer of the existence of such reports.
- v) Representations, Warranties, and Covenants of Seller. Seller shall have duly performed every act to be performed by Seller hereunder and Seller’s representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

- vi) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Broadway Property.
- vii) Seller's Deliveries. Seller shall have timely delivered each item to be delivered by Seller pursuant to this Agreement.
- viii) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or committed to issue the title policy to Buyer.
- ix) Taxes. Seller agrees that all taxes, assessments and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied of record by Seller. Regular real property taxes payable during the year in which Closing occurs and any rents or income applicable to the Property shall be prorated as of Closing.
- b) Conditions Precedent to Seller's Obligations. The close of escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to Buyer's delivery to the Escrow Holder on or before the Closing Date, the documents and materials described in subsection 7.b) below.
- c) Failure of Conditions to Closing. In the event any of the conditions set forth in Section 3(a) or (b) are not timely satisfied or waived, for a reason other than the default of Buyer City or Seller under this Agreement:
 - i) This Agreement, the escrow, and the rights and obligations of Buyer and Seller shall terminate, except as otherwise provided herein; and
 - ii) The Escrow Holder is hereby instructed to promptly return to Seller and Buyer all funds and documents deposited by them, respectively, in escrow that are held by the Escrow Holder on the date of the termination.
- d) Cancellation Fees and Expenses. In the event this escrow terminates because of the default of one Party, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the defaulting Party. In the event the escrow terminates because of the non-satisfaction of any condition for a reason other than the default of one of the Parties under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne equally by both Parties.

5. **Condition of Property.** Buyer acknowledges that Buyer will have or has had an opportunity prior to Closing to inspect the Property, including any improvements located on the Property, and agrees to accept the Property in its “AS-IS” “WHERE-IS” condition, with all faults, and subject to all liens and encumbrances, as of the Closing Date. Buyer acknowledges that Buyer has ascertained for itself the value and condition of the Property, and has not relied upon any implied or express warranties of City or City’s employees or agents in connection with the Property, the purchase thereof, or the availability of Buyer’s or the Property’s qualifications for any local, state, or federal incentive, benefit, or grant program. City hereby specifically disclaims any warranty, guarantee, representation, or indemnification, oral or written, either past, present, or future, of, as to, or concerning the nature or condition of the Property, including, without limitation, the geotechnical or environmental condition, condition of title, soil and geology of the Property; zoning permitting or governmental approvals relating to the Property or any portion thereof; whether the Property is developable under applicable zoning or other legal requirements; availability of utilities, storm water management systems, flood protection, and road access needed for Buyer’s intended purposes; the Property’s compliance with laws, regulations, ordinances, permits, or codes; the existence or location of any utilities, improvements or encumbrances, on the Property; the suitability of the Property for any structure locate thereon, therein or attached thereto, or which Buyer may construct thereon; and the condition, suitability, or fitness for a particular purpose (whether or not known to City) of any improvement located on, in, or attached to the Property, or the Property itself, for Buyer’s intended use. Buyer agrees that City will not be responsible for, and Buyer hereby releases City from responsibility for, any loss, damage, or costs which may be incurred by Buyer by reason of any condition of the Property, including without limitation to each of the matters set forth above in this Section, and Buyer accepts all risk, loss and liability associated with such conditions. The provisions of this Section shall survive losing or the earlier termination of this Sale Agreement.
6. **Taxes.** There shall be no proration of taxes. The Property is presently exempt from payment of real property taxes under Oregon law because it is in City ownership. Buyer shall have full responsibility for payment of all applicable real property taxes which accrue after Closing. Buyer is responsible for investigating all tax matters at its own expense, determining all necessary filing and qualification requirements, meeting all necessary filing due dates, and meeting all other regulatory requirements, including without limitation verifying the accuracy and completeness of the information contained in this Agreement.

7. Deliveries to Escrow Holder.

- a) By Seller. On or before the Closing Date, Seller shall deliver the following in escrow to the Escrow Holder:
- i) Deed. A bargain and sale deed duly executed and acknowledged in recordable form by Seller, conveying the Property to City subject only to the special exceptions acceptable to City as established under Section 4 of this Agreement, and any other matters that may be approved in writing by City.
 - ii) Non-foreign Certification. An affidavit to City representing and warranting that Seller is not a “foreign person” as defined by Internal Revenue Code § 1445 (26 U.S.C. § 1445), in the form required by that statute and related regulations.
 - iii) Proof of Authority. Such proof of Seller’s authority and authorization to enter into this Agreement and consummate the transaction contemplated by it and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of Seller to act for and bind Seller, as may be reasonably required by the Escrow Holder and/or City.
 - iv) Lien Affidavits. Any lien affidavits or mechanic’s lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the title policy.
 - v) Other Documents. Such other fully executed documents and funds, including without limitation, escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.
- b) By Buyer. On or before the Closing Date, Buyer shall deliver the following in escrow to the Escrow Holder:
- i. Purchase Price. The balance of the Purchase Prices in accordance with Section 3, above.
 - ii. Proof of Authority. Such proof of Buyer’s authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of Buyer to act for and bind Buyer, as may be reasonably required by the Escrow Holder and/or Seller.

8. **Deliveries to Buyer at Closing.** Seller shall deliver exclusive possession of the Property to Buyer at close of escrow.
9. **Title Insurance.** At Closing, Seller shall provide a standard owner's ALTA title insurance policy in an amount equal to Multnomah County's assessment of the fair market value of the property, insuring fee simple title vested in Buyer or its nominees, subject only to the Permitted Exceptions as established under Section 3 of this Agreement.
10. **Costs.** Buyer shall pay the cost of recording the deeds and the memorandum of purchase and sale if attached as an exhibit to this Agreement; Buyer shall pay all other recording charges, if any. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer and Seller shall each pay one-half of all escrow fees and costs. Buyer and Seller shall each pay its own legal and professional fees. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in Multnomah County, Oregon.
11. **City's Representations and Warranties.** In addition to any express agreements of City contained herein, the following constitute representations and warranties of City to Nonetop, subject to the conditions stated herein:
 - a) Subject to City Council approval and the conditions stated herein, City has the legal power, rights, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transaction contemplated here;
 - b) Subject to City Council approval and the conditions stated herein, all requisite action has been taken by City in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and
 - c) Subject to City Council approval and the conditions state herein, the persons executing this Agreement and the instruments referred to herein on behalf of City have the legal power, rights, and actual authority to bind City to the terms and conditions of this Agreement.
12. **Buyer's Representations and Warranties.** In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer to City:
 - a) Buyer has the legal power, rights, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transaction contemplated here;

- b) All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated here; and
- c) The persons executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, rights, and actual authority to bind Buyer to the terms and conditions of this Agreement.

13. **Risk of Loss, Condemnation.** The City shall bear the risk of all loss or damage to the Property from all causes through the Closing Date, other than loss or damage attributable to Buyer's use of the Property under the terms of its Lease Agreement with the City. If, before the Closing Date, all or part of the Property is damaged by any cause of nature other than a cause attributable to Buyer's use of Property under its Lease Agreement with the City, or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Buyer of written notice from Seller of such casualty or condemnation.

14. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service, email, facsimile, or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, and addressed as follows:

To Nonetop

Nonetop, LLC

To City

With Copy to:

City of Portland
Water Bureau
Attn: Tom Klutz

1120 SW 5th Avenue, 6th Floor
Portland, OR 97204

Office of the City Attorney

Attn: Karen L. Moynahan
1221 SW 4th Ave.
Portland, OR 97204

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

15. **No Broker or Commission.** Each party represents and warrants to the other that it has not used or engaged a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person or entity asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then Seller shall indemnify, hold harmless, and defend Buyer from and against any such claim if based on any action, agreement, or representation made by Seller.

16. **Further Actions of City and Seller.** City and Nonetop agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the close of escrow in accordance with the provisions hereof.

17. **Miscellaneous.**

- a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- b) Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- c) Survival of Representations. The covenants, agreements, representations, and warranties made herein shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.
- d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties to it. City may assign its interest in this Agreement to a park entity without the consent of Seller. In the event that an assignee assumes the obligations of City hereunder, then City shall have no further liability with respect to this Agreement.
- e) Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its

agent duly authorized in writing or as otherwise expressly permitted herein. Both parties acknowledge that they have had an opportunity to consult with legal counsel; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

- f) Time of Essence. Nonetop and City hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.
- g) Governing Law. The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon. Any litigation between the parties arising under this Agreement shall occur in the court sitting in Multnomah County having jurisdiction over the matter.
- h) Counterparts Deemed an Original. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

City of Portland, an Oregon Municipal Corporation

By: _____

Title: _____

Date: _____

Approved as to Form:

Deputy City Attorney

Nonetop LLC

By: _____

Title: _____

Date: _____

Attachments:

Exhibit A – Property Description

Exhibit B – Form of Memorandum

EXHIBIT A
Property Description

Portland OR 97204

EXHIBIT C
FINAL AGENCY ACKNOWLEDGMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

(1) (Name of Selling Licensees) of (Name of Real Estate Firm) is the agent of (check one): ___ Buyer exclusively ("Buyer Agency"). ___ Seller exclusively ("Seller Agency"). Both Buyer and Seller ("Disclosed Limited Agency").

(2) (Name of Listing Licensee) of (Name of Real Estate Firm) is the agent of (check one): ___ Seller exclusively ("Seller Agency"). ___ Both Buyer and Seller ("Disclosed Limited Agency").

(3) If both parties are each represented by one or more Licensees in the same Real Estate Firm, and Licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of this Agreement or any terms therein.

Buyer:

Seller:

City of Portland, an Oregon Municipal Corporation

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____