

LAND SALE AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2004, by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter referred to as "Seller", and the CITY OF LAKE OSWEGO, a municipal corporation of the State of Oregon, hereinafter referred to as "Buyer."

WITNESSETH

WHEREAS, Seller is the owner of certain real property located in Clackamas County, Oregon which is more particularly described on Exhibit "A", hereto and incorporated by reference, hereinafter referred to as the "Property"; and

WHEREAS Seller is also the owner of certain real property located adjacent to the Property in Clackamas County, Oregon, which is more particularly described on Exhibit "B" hereto and incorporated by reference, hereinafter referred to as the "Easement Area."

1. PURCHASE AND EASEMENT AGREEMENT. Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property, and Seller agrees to convey to Buyer and Buyer agrees to accept from Seller an exclusive, perpetual easement in the form attached as Exhibit "C" for the purpose of constructing, maintaining and operating park and recreation improvements within the Easement Area, for the price and on the terms and conditions set forth below. The conveyance includes all pilings, docks and subsurface structures that were abandoned in place upon termination of prior use of the site.

2. PRICE; PAYMENT.

2.1 The consideration for the purchase of the Property and conveyance of the easement over the Easement Area shall be the sum of ONE MILLION SIX HUNDRED THOUSAND and no/100 DOLLARS (\$1,600,000.00).

2.2 The consideration shall be payable in cash at closing.

3. CLOSING.

3.1 Closing shall be at Pacific Northwest Title of Oregon, Inc., 5335 Meadows Road, Suite 144, Lake Oswego, Oregon 97035. The parties each shall pay one-half of the escrow fee and closing costs as of the date of closing.

3.2 Closing shall occur on or before December 15, 2004, subject to a reasonable extension if necessary to comply with this agreement.

4. PRELIMINARY TITLE REPORT. Buyer has ordered a preliminary title report to show the condition of title to the Property and the Easement Area (the "Title Report") and shall mail a copy to Seller, together with a copy of all exceptions listed therein. Buyer will have ten days from receipt of the Title Report or ten days from the date of execution of this agreement, whichever date occurs last, to review the Title Report and to notify the Seller, in writing, of Buyer's disapproval of any exceptions shown in the Title Report. Those exceptions not objected to by Buyer are referred to below as the "Permitted Exceptions." If Buyer notifies Seller of disapproval of any exceptions, Seller shall have 15 days after receiving the disapproval notice to either remove the exceptions or provide Buyer of reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this agreement by written notice to Seller given within 15 days after expiration of such 15-day period, in which event this Agreement shall be null and void.

5. CONDITIONS.

5.1 Condition of Property and Easement Area. Buyer's obligation to purchase the Property and the easement for the Easement Area is contingent upon Buyer's approval of its physical inspection of the Property and Easement Area, including, without limitation, making an

environmental assessment of the soils, waters and improvements on the subject Property and Easement Area. Should the Buyer determine, in its sole discretion, based upon its investigation of the Property and Easement Area that the environmental or other conditions are unacceptable to Buyer, Buyer may elect to terminate this Agreement by written notice to Seller given at any time before the applicable date set forth above. Buyer shall have until the closing date to complete its physical inspection of the Property and Easement Area and mail written notice to the Seller. By mutual written addendum to this agreement, the parties may elect to extend the closing date to enable Buyer to make such additional inspections as may be necessary or to enable Seller to correct any unacceptable conditions. Buyer and its agents shall have full access to the Property for the purpose of conducting Buyer's inspections.

5.2 Approval. This transaction is subject to the approval of this sale by the City Council of the City of Portland on or before December 1, 2004.

6. RIGHT OF FIRST REFUSAL. Seller agrees not to sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of an interest in the Easement Area, including, without limitation, any disposal of the property as surplus, without first offering the Easement Area property to Buyer on the same terms and conditions. Upon receipt from a third party (the "Third-Party Offeror") a bona fide offer to purchase the Easement Area, or a part of it, or an interest in it, Seller shall give Buyer written notice (the "Notice") of the price, terms, and conditions of the offer and deliver a copy of the executed contract evidencing the offer (the "Offer") to Buyer. Buyer shall have 15 days from the date that Buyer receives the Notice and a copy of the Offer to notify Seller whether Buyer elects to purchase the Easement Area pursuant to the terms of the Offer. If Buyer elects to exercise its right to purchase the Easement Area, then, in addition to giving Seller written notice of its election within the 15-day period, Buyer also shall tender an

amount equal to the earnest money deposit, if any, specified in the Offer, which will be held and used in accordance with the terms of the Offer. The closing of the transaction pursuant to the terms of the Offer shall occur within 90 days after the date that Buyer elects to exercise the right of first refusal.

7. TITLE INSURANCE. At closing, Seller shall furnish Buyer at Seller's expense with an standard owners' policy of title insurance in the amount of the consideration stated above, standard form, insuring Buyer as the owner of the Property and holder of the easement subject only to the usual printed exceptions and the Permitted Exceptions.

8. DEED. At Closing, Seller shall execute and deliver to Buyer a statutory warranty deed, conveying the Property to Buyer free and clear of all liens and encumbrances other than the Permitted Exceptions, and containing a restriction limiting the use of the Property to public park, recreation and open space uses. The deed shall also reserve to the Seller an access easement over an area located within a radius of 30 feet from the Northwest corner of the Property for the purpose of allowing ingress and egress from the stub of Foothills Road to the Easement Area described on Exhibit B from time to time as is reasonably necessary to access Seller's treatment facility adjacent to the Easement Area in order to conduct maintenance, repairs and improvements to that facility. The deed shall provide that Seller's right of ingress and egress under this reserved easement shall be exercised in a manner that does not unreasonably interfere with Buyer's use of the Property and that does not damage improvements and landscaping on the Property.

9. EASEMENT. At Closing, Seller shall execute and deliver to Buyer an exclusive, perpetual easement to the Easement Area, in the form attached as Exhibit C, for the purpose of constructing, maintaining and operating park and recreation improvements.

10. POSSESSION. Buyer shall be entitled to possession of said Property and Easement Area immediately upon closing.

11. TAXES; PRORATES. Taxes, utilities, rents, if any, and the current portions of assessments for governmental or quasi-governmental improvements, if any, shall be prorated between the parties as of the date of closing.

12. SELLER'S REPRESENTATIONS. Seller represents and warrants to the Buyer as follows:

12.1 Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule or regulation with respect to the Property or Easement Area.

12.2 There is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or Easement Area or their operation.

12.3 To the best of Seller's knowledge, the construction, occupancy, and operation of the Property and Easement Area materially conform to and comply with all applicable city, county, state, and federal law, statutes, ordinances, and regulations.

12.4 The Seller is the legal and beneficial fee simple titleholder of the Property and Easement Area and has good, marketable, and insurable title to the Property and Easement Area, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments, or other matters, except as disclosed by the preliminary title report.

12.5 The Seller has not entered into any other contracts for the sale of the Property or the Easement Area nor to there exist any rights of first refusal or options to purchase the Property or Easement Area.

12.6 With the exception of conditions disclosed within the Interim Soil Cleanup Plan (ISCP) attached as Exhibit D, or the DEQ-approved Focused Soil Corrective Action Plan (FSCAP) attached as Exhibit E, the Seller has not received any notices of violations or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property or the Easement Area.

12.7 Other than the conditions disclosed in the ISCP or the FSCAP, to the Seller's knowledge the Property and the Easement Area have not been used for the storage or disposal of any hazardous material or waste during Seller's possession. Other than as disclosed in the ISCP or the FSCAP, to Seller's knowledge there are no environmentally hazardous materials or wastes contained on or under the Property or the Easement Area and neither have been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may be located or deposited. The term "hazardous material or waste" means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed or regulated under any law pertaining to the protection of human health or the environment, and includes without limitation petroleum oil and its fractions.

12.8 Seller represents that, to the best of Seller's knowledge, the activities outlined in the ISCP and FSCAP have been fully performed to date, and that the environmentally hazardous materials or wastes disclosed in the ISCP and FSCAP have been completely removed from the property.

12.9 Seller has received no written notice of any liens to be assessed against the Property or Easement Area.

12.10 Seller is not a "foreign person" as that term is defined in IRC §1445. On the Closing Date, Seller will execute and deliver to Buyer a certification of nonforeign status on a form required by the IRS.

12.11 Tenancies. To the best of Seller's knowledge, there are no tenancies or other possessory interests affecting the Property or the Easement Area. The parties acknowledge that a former tenant, Georgia-Pacific Corporation, has certain clean-up responsibilities relating to the Property and Easement Area and has not cooperated with a request by Seller, made shortly prior to the execution of this Agreement, for additional documentation concerning the status of the Property and Easement Area.

12.12 General Representation. The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time. The Seller's representations and warranties contained here shall survive the close of escrow.

13. INDEMNIFICATION. Subject to the limitations of the Oregon Tort Claims Act, Seller shall hold Buyer, its directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property or the Easement Area, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property or the Easement Area, the preparation and implementation of any

closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

14. ASSIGNMENT. Seller hereby assigns all of its rights, including without limitation any and all claims and causes of action, past, present and future, relating to the prior tenancy or occupancy of the Property and Easement Area by the FORT JAMES OPERATING COMPANY (Fort James) or the GEORGIA-PACIFIC CORPORATION (G-P), any condition of the Property and Easement Area resulting from the activities of Fort James, G-P, or their officers, employees, agents, successors or assigns, any environmental condition or presence of any Hazardous Substance on or about the Property or Easement Area, or relating to any obligation or liability of Fort James or G-P relating to or pursuant to any lease or rental agreement with Seller for the Property or the Easement Area, pursuant to the “Georgia-Pacific Termination – Plan of Action” dated July 29, 2004, or pursuant to the ISCP or FSCAP, including without limitation the obligation to obtain a No Further Action letter for the Property and Easement Area from the Oregon Department of Environmental Quality.

15. NOTICES. Any notice given with respect hereto, whether or not required to be given shall be deemed given when actually delivered or when deposited in the United States Post Office by registered or certified mail, return receipt requested, in any envelope addressed as hereinafter set forth, or to such other address as either party may hereafter specify in writing by notice to the other. Notices to the parties shall be addressed to the attention of:

Seller: City of Portland
Bureau of Environmental Services
1120 SW 5th Avenue, Room 1000
Portland, OR 97204
Telephone: 503-823-7740

Buyer: City of Lake Oswego
Douglas J. Schmitz, City Manager
380 "A" Avenue
P.O. Box 369
Lake Oswego, Oregon 97034
Telephone: 503- 635-0215

16. DEFAULT. If either party shall fail or refuse to carry out any provision hereof, the other party shall be entitled to such remedy or remedies for breach of contract as may be available under applicable law of the State of Oregon, including without limitation the remedy of specific performance, if such other party has fully performed all of its obligations hereunder. Time is of the essence hereof.

17. ATTORNEY FEES. If any suit or action is brought under or arising out of this agreement, and upon any appeal thereof, the losing party agrees to pay the prevailing party's reasonable attorney fees to be fixed by the trial and appellate courts respectively.

18. USE OF THE PROPERTY. 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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. (ORS 93.040).

19. ENTIRE AGREEMENT. This agreement shall supersede all prior agreements between the parties relating to the subject matter hereof, and no warranties, representations or

agreements with regard thereto, except for those contained herein, shall be binding upon the parties.
 This agreement may not be modified or amended except by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this instrument on or as of the date and year first written above.

BUYER:

SELLER:

CITY OF LAKE OSWEGO

CITY OF PORTLAND

By: _____
 Douglas J. Schmitz, City Manager
 Per City Council approval on
 _____, 2003

By: _____
 Per Council approval on
 _____, 2003

State of Oregon)
) ss.
 County of _____)

On this _____ day of _____, _____, before me the undersigned Notary Public, personally appeared _____ (“Grantor”)

- personally known to me
- proved to me on the basis of satisfactory evidence

To be the person who executed the within instrument

- as _____ or on behalf of the entity therein named, pursuant to authority, and acknowledged to me the execution hereof.

WITNESS my hand and official seal Notary Signature	Notary Seal (Do not place seal over any portion of text or signature)
_____ Notary name: _____	

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, _____, before me the undersigned Notary Public, personally appeared Douglas J. Schmitz,

- personally known to me
- proved to me on the basis of satisfactory evidence

To be the person who executed the within instrument

- as City Manager of the City of Lake Oswego or on behalf of the entity therein named, pursuant to authority, and acknowledged to me the execution hereof.

WITNESS my hand and official seal Notary Signature	Notary Seal (Do not place seal over any portion of text or signature)
_____ Notary name: _____	

APPROVED AS TO FORM:

David Powell, City Attorney
City of Lake Oswego

APPROVED AS TO FORM:

Pete Kasting, Deputy City Attorney
City of Portland

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EXHIBIT A

A tract of land situated in the southwest quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, Clackamas County, Oregon, more particularly described as follows:

Beginning at a 5/8" iron rod with yellow plastic cap marked "DEHAAS & ASSOCIATES, INC." set in the southerly right of way line of a road of variable width;

said iron rod bears South 54° 18' East, 111.03 feet; thence South 53° 15' 15" East, 164.10 feet; thence South 77° 25' 30" East, 81.07 feet; thence South 52° 22' 36" East, 113.81 feet from an iron pipe set in the most westerly, southwesterly corner of that certain tract of land conveyed by deed dated March 15, 1927, from The Oregon Iron and Steel Company to Ward C. Smith;

from said point of beginning, thence North 19° 32' 42" East, 54.63 feet to a 5/8" iron rod with yellow plastic cap marked "DEHAAS & ASSOCIATES, INC.";

thence South 89° 12' 48" East, 329.12 feet to a point of intersection with the mean low water line of the Willamette River at elevation 5.4 feet above mean sea level, National Geodetic Vertical Datum of 1929;

thence meandering along said mean low water line the following courses:

South 02° 35' 52" East, 136.31 feet;

South 04° 02' 20" East, 153.86 feet;

South 16° 21' 51" East, 69.58 feet;

South 08° 11' 21" West, 43.10 feet;

South 01° 17' 16" East, 71.70 feet;

South 05° 18' 06" East, 54.59 feet;

South 09° 56' 43" West, 129.27 feet;

South 18° 40' 57" West, 49.22 feet to the south line of that tract described in Book 620, Page 685, Clackamas County Deed Records;

thence leaving said low water line North 52° 52' 28" West, 177.83 feet along said south line;

thence North 17° 21' 28" West, along the east line of said tract, 79.51 feet;

thence along the south line of that tract of land described in Book 620, Page 715, Clackamas County Deed Records, the following courses:

South 43° 08' 32" West, 109.04 feet;

South 56° 09' 32" West, 95.98 feet;

South 66° 05' 32" West, 178.72 feet to the easterly right of way line of Foothills Road;

Tax Map 21E02CC Tax Lot 00100

thence along the west line of said tract and the easterly right of way line of Foothills Road the following courses:

North 34° 37' 32" East, 96.20 feet;

North 24° 53' 32" East, 104.56;

North 11° 43' 32" East, 102.22 feet;

thence continuing along the west line of said tract and the easterly right of way line of Foothills Road and said easterly right of way line extended northerly, North 05° 20' 32" East, 400.00 feet;

thence continuing along the westerly line of said tract, North 84° 39' 28" West, 20.00 feet to the point of beginning.

Name of Document For Recording: Easement Grantor: City of Portland Grantee: City of Lake Oswego Consideration: \$0.00, together with other good and valuable consideration. Tax Statement to be mailed to: No change. Statutory Recordation Authority: ORS 93.710(1). <u>After Recording, Return To:</u> City of Lake Oswego Attn: City Recorder P.O. Box 369 Lake Oswego, OR 97034	(For County Recording Use Only)
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EASEMENT

Grantor: The City of Portland, a Municipal Corporation of the State of Oregon

Grantee: The City of Lake Oswego, a Municipal Corporation of the State of Oregon

1. Grant of Easement. The above named grantor hereby grants and conveys a permanent, exclusive easement to the City of Lake Oswego over and across the real property described on the attached Exhibit 1.

2. Use and Restrictions of Easement. The purpose of the easement shall be for public park, recreation and open space uses, including, without limitation, the construction, repair, replacement and maintenance of improvements and landscaping relating to such uses. Usage will be of a passive recreational nature where the main function will be to provide Greenway riverfront enjoyment and circulation from the southern park area owned by Grantee to Tryon Creek and Grantee's property to the north. Typical improvements include pathways, landscaping, park benches, river viewpoint improvements, and transient moorage dock facilities for light watercraft (not including a marina for permanent moorage or boat launching ramp). Typical activities include passive recreational use such as traversing the Greenway Trail. Grantor shall be allowed ingress and egress across the easement area from time to time as is reasonably necessary to access Grantor's adjacent treatment facility in order to conduct maintenance, repairs and improvements to that facility. Grantor's right of ingress and egress shall be exercised in a manner that does not unreasonably interfere with Grantee's use of the easement area and that does not damage improvements and landscaping on the easement area.

3. Indemnity. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 et seq.) Grantee shall defend, indemnify, and hold Grantor, its officers, agents and employees, harmless against all third-party claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by or resulting from any act or omission of an act sustained in any way in connection with the use of the easement area by Grantee for public park, recreation and open space uses.

4. Consideration for Easement. The consideration for this easement is the non-monetary mutual benefit derived by the parties, plus the purchase of adjacent property from Grantor by Grantee for public park, recreation and open space purposes.
5. Term of Easement. This easement is perpetual.
6. Easement to Bind Successors / Amendment of Easement. This easement shall run with the land, shall be binding upon the Grantor's and Grantee's successors and assigns and shall only be modified by the Grantor and Grantee by execution of a recordable document to that effect.
7. Exclusive Easement. This easement is exclusive to Grantee.
8. Warranty of Title. Grantor warrants to Grantee that Grantor is the fee title owner of the real property upon which this easement is granted.
9. Representation of Liens and Encumbrances. Grantor warrants to Grantee that the real property upon which this easement is granted free and clear of all liens and encumbrances.

IN WITNESS WHEREOF, the undersigned Grantor has hereunto executed this Easement on the date stated below the Grantor's signature.

The City of Portland, a Municipal Corporation of the State of Oregon
By: _____
Name of Authorized Person: _____
Office/Title of Authorized Person: _____

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, _____, before me the undersigned Notary Public,
personally appeared _____ (“Grantor”)

- personally known to me
- proved to me on the basis of satisfactory evidence

To be the person who executed the within instrument

as _____ or on behalf of the entity therein named, pursuant to authority, and
acknowledged to me the execution hereof.

WITNESS my hand and official seal Notary Signature	Notary Seal (Do not place seal over any portion of text or signature)
_____ Notary name: _____	

This document is accepted pursuant to authority and approved for recording.

City of Lake Oswego, Oregon

Douglas J. Schmitz, City Manager

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State of Oregon)
) ss.
County of _____)

On this _____ day of _____, _____, before me the undersigned Notary Public,
personally appeared Douglas J. Schmitz,

- personally known to me
- proved to me on the basis of satisfactory evidence

To be the person who executed the within instrument

- as City Manager of the City of Lake Oswego or on behalf of the entity therein named, pursuant to authority, and acknowledged to me the execution hereof.

WITNESS my hand and official seal Notary Signature	Notary Seal (Do not place seal over any portion of text or signature)
_____ Notary name: _____	

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EXHIBIT 1
(Legal Description – Easement Area)

