

Exhibit A to Ordinance

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 the City of Portland, a municipal corporation, by and through its Water Bureau (“City” or “the Buyer”) and Daniel M. Hellwege and Diana Hellwege (“the Seller”).

RECITALS

- A. Seller is the owner of a parcel of land located in Multnomah County, Oregon, as legally described in Exhibit A, said exhibit being attached hereto and by this reference made a part hereof (hereinafter “the Property”). The Property includes all rights appurtenant thereto including but not limited to access rights, timber rights, water rights, grazing rights, and development and mineral rights.
- B. Seller agrees to convey all its rights, title, and interest in the Property to the City in consideration of \$875,000 to be paid to the Seller in cash at closing.
- C. Buyer is completing a process to obtain authority from its City Council to purchase the Property. If the purchase is authorized, the City can close within 45 days.
- D. If approved by City Council, the number of the ordinance that authorizes the purchase may be written on the following line: _____.
- E. The City has determined that this purchase is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (“the Relocation Act”). Accordingly, in addition to the consideration reflected above, Seller is entitled to relocation benefits pursuant to the Relocation Act and Oregon Revised Statutes Chapter 35. If the purchase is approved by the City Council, the City will complete an analysis to determine the relocation benefits Seller is entitled to receive and present it concurrently with the authorized offer to purchase the Property.

The terms of this Agreement are as follows:

TERMS

1. **Conveyance the Property.** At closing, Seller will convey title to the Property to the City by General Warranty Deed pursuant to the terms and conditions set forth in this Agreement. Buyer will purchase the Property in consideration of Eight Hundred Seventy-five Thousand Dollars (\$875,000.00) (“Purchase Price”) to be paid to Seller in cash at closing. Additional consideration shall include relocation

benefits to be analyzed and presented in an offer upon City Council's approval of the purchase.

2. **Closing Date.** This transaction shall close on or before forty five (45) days from the date the purchase is authorized by the City Council of the Buyer and 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) Cash Balance. On or before the Closing Date, Buyer shall deposit to _____ ("Escrow Holder: and "Title Company") in cash, via ACH transfer in the amount 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) Title. At Closing, the Seller shall convey fee simple title to the Property by General Warranty 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).
 - ii) Title Report. Buyer will order preliminary title reports covering the Property. Within twenty (20) days of the Effective Date, 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 Property; (2) there are no encroachments or prescriptive or adverse rights on or affecting the Property or any portion thereof. 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 its 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 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.
- 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 Section 6 below.
- c) Failure of Conditions to Closing. In the event any of the conditions set forth in Section 4(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. **Taxes.** Seller shall have full responsibility for payment of all applicable real property taxes which accrue before Closing.
6. **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 general warranty deed duly executed and acknowledged in recordable form by Seller, conveying the Property to the City subject to the terms of this Agreement, and any other matters that may be approved in writing by both parties.

- ii) 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 the City.
 - iii) 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.
 - iv) 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 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.
7. **Deliveries to Buyer at Closing.** Seller shall deliver exclusive possession of the Property to Buyer at close of escrow.
8. **Costs.** Buyer shall pay the cost of recording the deeds and all other recording charges, if any. Buyer shall pay the premium for the title insurance policy, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer shall pay all escrow fees and costs. Buyer and Seller shall each pay its own legal and professional fees. All other costs and expenses of closing shall be borne by Buyer.
9. **Seller's Representations and Warranties.** In addition to any express agreements of Seller contained herein, the following constitute representations and warranties of Seller to City:
- a) Seller 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 Seller 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 Seller have the legal power, rights, and actual authority to bind Seller to the terms and conditions of this Agreement.

10. **Risk of Loss, Condemnation.** The Seller 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 this Agreement. 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 this Agreement, 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. Condemnation or the threat of condemnation, referenced in this section, is not a reference to the City’s power of eminent domain nor a threat of use of the power of eminent domain by the City.

11. **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 Seller

To City

City of Portland Water Bureau
 Attn: Ben Gossett
 1120 SW 5th Avenue, 6th Floor
 Portland, OR 97204

With Copy to:

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.

12. **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.

13. **Further Actions of City and Seller.** Buyer and Seller 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.

14. **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.
- e) Entire Agreement. This Agreement 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. Buyer and Seller 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.

Buyer

City of Portland, an Oregon
Municipal Corporation

By: _____

Title: _____

Date: _____

Approved as to Form:

Deputy City Attorney

Seller

By: _____

Title: _____

Date: _____

Attachments:

Exhibit A – Legal Description of Subject Property

EXHIBIT "A"**EXHIBIT A**

LEGAL DESCRIPTION: Real property in the County of Multnomah, State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF MULTNOMAH AND STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LEGAL SUBDIVISION, WHICH POINT IS MARKED BY A MONUMENT; THENCE SOUTH 0°11'30" WEST ALONG THE WEST LINE OF SAID LEGAL SUBDIVISION A DISTANCE OF 307.81 FEET TO A POINT IN THE SOUTH LINE OF DODGE PARK BLVD. AND THE POINT OF BEGINNING OF THE TRACT HEREIN TO BE DESCRIBED; THENCE CONTINUING SOUTH 0°11'30" WEST A DISTANCE OF 332.66 FEET TO A POINT IN THE NORTH LINE OF CARPENTER LANE, COUNTY ROAD NO. 414; THENCE SOUTH 88°57'30" EAST ALONG SAID NORTH LINE A DISTANCE OF 267.73 FEET; THENCE NORTH 0°11'30" EAST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER A DISTANCE OF 318.23 FEET TO A POINT IN THE SOUTH LINE OF DODGE PARK BLVD.; THENCE NORTH 85°52'30" WEST ALONG SAID SOUTH LINE A DISTANCE OF 268.33 FEET TO THE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.



Legal Description