

ORDINANCE NO. 1060

AN ORDINANCE AUTHORIZING PURCHASE OF REAL PROPERTY FOR THE WILLAMETTE - MOLALLA RIVER GREENWAY PROJECT AND DECLARING AN EMERGENCY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Purchase Authorized. The city of Canby is authorized to purchase from THE TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation, the following described real property:

See Exhibit "A" attached to the Agreement for Sale of Real Property attached to this Ordinance.

Section 2. Purchase Price. The total purchase price to be the sum of Three Hundred Seventy Five Thousand Dollars (\$375,000.00). The total purchase price shall be payable in cash and shall be deposited in escrow at or prior to the close of escrow in accordance with the terms of attached Agreement for Sale of Real Property. By this reference the attached Agreement for Sale of Real Property is incorporated within as if set forth herein.

Section 3. Funds to Pay Purchase Price. One half (\$187,500.00) of the total sum of \$375,000.00 shall be paid from the City's current fiscal budget, account number 215-215-455-6640 and number 215-215-455-7630 titled "Parks Acquisition and Development Fund" and the remaining one half (\$187,500.00) is to be paid from a grant received from the Oregon State Parks Department.

Section 4. City attorney to approve Title Report and Deed. The City Attorney shall first approve the preliminary title report and form of deed for the City's purchase of said property. Purchaser's Title Insurance Policy in the face amount of the purchase price insuring the City's vendee's interest in said property is to be furnished by The Trust for Public Land and free and clear of all liens and encumbrances except those set forth in paragraph 6 of the Agreement of Sale of Real Property.

Section 5. Mayor and City Recorder to Execute Agreement of Sale. The Mayor and City Recorder are authorized and directed to execute and deliver in the name of the City of Canby, as purchaser, the required deed and any other documents as may be required for closing the transaction.

Section 6. Emergency Declared. Inasmuch as it is necessary to proceed as quickly as possible with the development of the Willamette - Molalla River Greenway Project for the use and benefit of the citizens of the City of Canby, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon final reading and enactment by the Canby City Council.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 4, 2000, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, October 18, 2000, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Chauncey F. Seifried

Chauncey Seifried
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 18th day of October, 2000, by the following vote:

YEAS 6

NAYS 0

Scott Taylor

Scott Taylor, Mayor

ATTEST:

Chauncey F. Seifried

Chauncey Seifried, City Recorder - Pro Tem

200 302 3414 1.02/10

AGREEMENT FOR SALE OF REAL PROPERTY

This Agreement for Sale of Real Property is made this _____ day of _____, 2000, between The CITY of CANBY, a municipal corporation of the State of Oregon, ("Buyer"), and THE TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation, ("Seller").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

BUYER:

The City of Canby
City Hall

Canby, OR
Attn:
City Manager
Tel: (503)
Fax: (503)

SELLER:

The Trust for Public Land
Waterfront Place Building
1011 Western Ave., Suite 605
Seattle, WA 98104
Attn: Thomas E. Tyner
Tel: (206) 587-2447
FAX: (206) 382-3414

Copies of all notices to Seller should also be sent to:

Oregon Field Office
The Trust for Public Land
1211 SW Sixth Avenue
Portland, OR 97204
Attn: Sam Hodder
Tel: (503) 228-6620
Fax: (503) 228-4529

B. Seller is or will be the owner of certain real property located in the City of Canby, Clackamas County, Oregon, more particularly described on Exhibit A attached hereto and hereby incorporated by this reference.

Said real property, together with any improvements, fixtures, timber, water and minerals located thereon, and any and all rights appurtenant thereto owned by Seller, including but not limited

to timber rights, water rights, grazing rights, access rights and mineral rights, shall be referred to in this Agreement as "the Subject Property."

C. Buyer wishes to purchase the Subject Property from Seller and Seller wishes to sell the Subject Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

2. **Purchase Terms.**

(a) **Price.** The purchase price for the Subject Property shall be Three Hundred Seventy Five Thousand Dollars (\$375,000.00) (the "Purchase Price").

(b) **Method of Payment.** The Purchase Price shall be payable in cash, and shall be deposited in escrow at or prior to the close of escrow.

3. **Condition Precedent to Buyer's Obligation to Purchase Subject Property.** Buyer shall have no obligation to purchase the Subject Property under this Agreement unless and until:

(a) Buyer has received approval from the Canby City Council to purchase the Subject Property;

(b) Buyer shall have received, reviewed (or had reviewed) and approved an independent MAI appraisal of the Subject Property in support of the Purchase Price; and

(c) Buyer shall have received, reviewed and approved an environmental site assessment of the Subject Property indicating that the Subject Property is free from contamination by hazardous substances.

4. **Condition of the Subject Property.** Buyer acknowledges that it has had the opportunity to conduct an investigation or inspection of the Subject Property, and agrees to accept the same "as is" in its present condition, except as such condition may be affected by the representations and warranties made by Seller to Buyer with regard to the Subject Property in Section 9 of this Agreement.

5. **Escrow.** Upon execution of this Agreement, or as soon thereafter as is convenient, the parties shall open an escrow with Fidelity National Title Company of Oregon, 900 SW Fifth Avenue, Portland, Oregon 97204, telephone number (503) 222-2424 (the "Escrow Holder") for the purpose of closing the purchase and sale of the Subject Property. Escrow shall close on or before January 15, 2001, provided that closing will be subject to Seller being in a position to convey title to the

Subject Property and subject to the satisfaction of the condition precedent set forth in Paragraph 3 above.

6. **Title.** Title shall be conveyed to Buyer via a statutory warranty deed in form and substance satisfactory to Buyer, free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages except (a) the standard printed exceptions on the form of title insurance policy issued pursuant to Section 7; (b) special exceptions 7-16 and 19 set forth in preliminary title report number 10-15390-28 dated February 18, 1999 issued by Escrow Holder; (c) an easement for ingress, egress and utilities retained in favor of Caffall Bros. Forest Products, Inc.; and (d) such other matters as are approved by Buyer in writing.

7. **Title Insurance.** Buyer shall be provided with a standard owner's policy of title insurance in the full amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the exceptions noted in Section 6.

8. **Possession.** Possession shall be delivered to Buyer on close of escrow.

9. **Seller's Representations.** Seller makes the following representations:

(a) Seller has full power and authority to enter into this Agreement and the person signing this Agreement for Seller has full power and authority to sign for Seller and to bind it to this Agreement and, at closing, will have full power and authority to sell, transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement.

(b) Seller is not a "foreign person" and is not otherwise subject to back-up withholding of tax under Section 1445 of the Internal Revenue Code.

(c) Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property or pending or threatened against Seller which could affect Seller's title to the Subject Property, affect the value of the Subject Property, or subject an owner of the Subject Property to liability.

(d) Within Seller's knowledge, there are no:

(i) Intended public improvements or private rights which will result in the creation of any liens upon the Subject Property securing an obligation to pay money.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof.

(iii) Actual or impending mechanics liens against the Subject Property or any portion thereof.

(iv) Notices or other information giving Seller reason to believe that any conditions existing on the Subject Property or in the vicinity of the Subject Property or in ground or surface waters associated with the Subject Property may have a

material affect on the value of the Subject Property or subject the owner of the Subject Property to potential liabilities under environmental laws.

(e) There is no lease, license, permit, option or right of first refusal which affects the Subject Property or any portion thereof which will not be terminated by closing.

(f) Within Seller's knowledge, there is no condition at, on, under or related to the Subject Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any hazardous substance on the Subject Property nor any release or threatened release of any hazardous substance, pollutant or contaminant into, upon or over the Subject Property or into or upon ground or surface water at the Subject Property. Within Seller's knowledge, no hazardous substance is now or ever has been stored on the Subject Property in underground tanks, pits or surface impoundments

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Seller shall be obligated to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer or Seller may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property, or (b) defer the closing date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. **Buyer's Representations.** Buyer makes the following representations:

(a) Buyer has all requisite authority and power to enter into this Agreement.

(b) Neither Buyer's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

The representations and warranties of Buyer contained herein shall be effective through the close of escrow.

11. **Closing Expenses and Fees.** The escrow fee shall be paid one-half by Buyer and one-half by Seller. Seller will pay the premium on the title policy referred to in Paragraph 7. Real estate taxes, if any, on the Subject Property shall be paid by Seller as of the close of escrow based upon the latest available tax bill. Other fees and charges shall be allocated in accordance with the customary practices of Clackamas County, Oregon.

12. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

13. **Attorneys' Fees.** If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

14. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.

15. **Time of the Essence.** Time is of the essence of this Agreement.

16. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

17. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

18. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Seller and Buyer pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

20. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

22. **Statutory Notice under ORS 93.040.** 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.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

BUYER:

THE CITY OF CANBY

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

SELLER:

THE TRUST FOR PUBLIC LAND

By: _____

Title: _____

Date: _____

State of Oregon)
) ss.
County of Multnomah)

On this _____ day of _____, 2000, before me _____, the undersigned Notary Public in and for the state of Oregon, personally appeared _____ and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as _____ and _____, on behalf of The City of Canby, and acknowledged to me that The City of Canby executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that they were authorized to so execute said instrument.

Notary Public in and for the State
of Oregon.
Residing at _____,
My commission expires _____.

State of Washington)
) ss.
County of King)

On this _____ day of _____, 2000, before me _____, the undersigned Notary Public in and for the state of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as _____, on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.

Print Name:
Notary Public in and for the State
of Washington
Residing at _____,
My commission expires _____.

EXHIBIT A

(Legal Description)

PARCEL I

A portion of Lot 8 of Section 22, Township 3 South, Range 1 East of the Willamette Meridian, being a part of a tract of land in said Lot 8 and Lot 5 of Section 27, said Township and Range, conveyed by Ostrander Railway and Timber Company to Weyerhaeuser Timber Company by a Deed dated March 15, 1946 and recorded in Book 370, Page 197, Deed Records of Clackamas County, Oregon, and being more particularly described as follows:

Beginning at a point marked by a 1 inch iron pipe on the Northeasterly line of a strip of land known as the Molalla Forest Road, said point being 320.64 feet North and 500.23 feet East of the Southwest corner of said Section 22; thence Northwesterly along said Northeasterly line to a point which bears South 45° West a distance of 96.0 feet from a point described in said Deed dated March 15, 1946, as being the point of beginning and a point on the meander line defining the right or South bank of the Willamette River located a distance of 225 feet Southeasterly from the point of intersection of said meander line with the West line of said meander line; thence Southeasterly along said meander line to a 1 inch iron pipe marking the point of its intersection with a line bearing North 46° East from the beginning point of this description; thence South 46° West 157.0 feet to the point of beginning.

EXHIBIT A, cont'd

PARCEL II

A strip of land 50 feet in width upon, over, and across Lots 8, 9, and 10 of Section 21, Lot 8 of Section 22, and the Fractional West one-half of Northwest one-quarter and the Northwest one-quarter of Southwest one-quarter of Section 27, Township 3 South, Range 1 East of the Willamette Meridian with the extensions thereof to the end that the outside boundaries of said strip on its South end shall extend to intersect the center line of the Oregon City-Salem Territorial Road in said Section 27 and being 25 feet on each side of and measured at right angle to the following described center line:

Beginning at a point on the center line of the Oregon City-Salem Territorial Road in said Section 27, which point is North 89°57' East a distance of 635.0 feet and North 0°03' West a distance of 2443.6 feet from the corner common to Lots 65, 66, 72 and 73 of Canby Gardens, in Sections 33 and 34 of said Township and Range; thence North 0°03' West a distance of 3233.00 feet; thence along a 5° curve to the left through a central angle of 44°36' a distance of 892.0 feet; thence North 44°39' West a distance of 416.8 feet to a point which is North 846.1 feet from the corner common to Sections 21, 22, 27 and 28 in said Township and Range; thence North 44°39' West a distance of 351.6 feet; thence along a 10° curve to the right through a central angle of 11°34' a distance of 115.7 feet; thence North 33°05' West a distance of 345.8 feet; thence along a 10° curve to the left through a central angle of 12°21' a distance of 125.2 feet; thence North 45°26' West a distance of 580.2 feet to a point which is 332.0 feet distant South 45°26' East from a point marked by an iron pipe which is 1100 feet distant South 8°30' West from a post on the meander line of the right bank of the Willamette River set for the most Northerly corner of that tract conveyed to Mary Collins, et al, by Deed recorded September 26, 1946 in Book 377, Page 429, Deed Records of said Clackamas County; thence along a 17° curve to the right through a central angle of 59°32' a distance of 350.2 feet; thence North 14°06' East a distance of 6.9 feet to a point which is hereinafter called "Point Z"; thence along a 10° curve to the right through a central angle of 14°56' a distance of 149.3 feet; thence North 29°02' East a distance of 182.5 feet; thence along a 30° curve to the left through a central angle of 38°57' a distance of 129.8 feet; thence North 9°55' West a distance of 102.7 feet to the upper log dump on the Willamette River; thence along an 80° curve to the left through a central angle of 51°43' a distance of 64.6 feet; thence North 61°38' West a distance of 11.9 feet; thence along an 80° curve to the left through a central angle of 127°30' a distance of 159.4 feet; thence South 23°00' East a distance of 256.4 feet; thence along a 15° curve to the right through a central angle of 23°14' a distance of 154.9 feet; thence South 14°06' West a distance of 108.5 feet to said "Point Z".

EXCEPTING THEREFROM that portion lying North and Northwesterly of a cut off line being North 846.1 feet from the corner common to Sections 21, 22, 27 and 28 in said Township and Range; said cut off line to continue North to the Northerly edge of the 50 foot strip, known as Molalla Forest Road.