

ORDINANCE NO. 1083

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 Nine Hundred Thousand Dollars (\$900,000.00). 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 hundred fifty thousand (\$150,000.00) of the total sum of \$900,000.00 shall be paid from the City's current fiscal budget, account number 215-215-455-7631, titled "Parks Development Fund"; two hundred fifty thousand (\$250,000.00) from the City's current fiscal budget from an Interfund Loan from the Sewer Construction Reserve account number WWTP 318-318-432-7340; and the remaining five hundred thousand (\$500,000.00) is to be paid from a grant from Oregon Department of Fish and Wildlife - BPA and a local grant received from the Oregon State Parks Department.

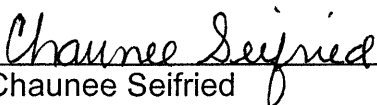
Section 4. City attorney to approve Title Report and Deed. The City Attorney shall first approve the preliminary title report and form of deed for the City's purchase of said property. Purchaser's Title Insurance Policy in the face amount of the purchase price insuring the City's vendee's interest in 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 17, 2001, 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 special meeting thereof on Wednesday, October 24, 2001, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

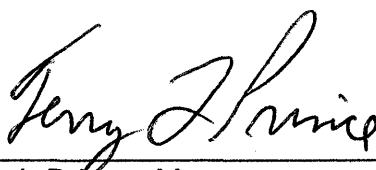


Chaunee Seifried
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 24th day of October, 2001, by the following vote:

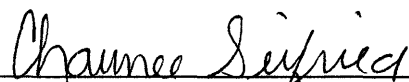
YEAS 5

NAYS 0



Terry L Pance, Mayor

ATTEST:



Chaunee Seifried, City Recorder - Pro Tem

AGREEMENT FOR SALE OF REAL PROPERTY

This Agreement for Sale of Real Property is made this _____ day of _____, 2001, between the **CITY OF CANBY**, a municipal corporation, ("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:

SELLER:

City of Canby City Hall 182 N. Holly Canby, OR 97013 Attn: John Kelley Tel: (503) 266-4021 FAX: (503) 266-9316	Oregon Field Office The Trust for Public Land 1211 SW Sixth Avenue Portland, OR 97204 Attn: Robert Betcone Tel: (503) 228-6620 FAX: (503) 228-4529

B. Seller is or will be the owner of certain real property located in 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:

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

1. **Purchase and Sale.** When Seller obtains title to the Subject Property 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 \$900,000 (Nine Hundred Thousand Dollars) (The "Purchase

Price”).

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

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

- a) Buyer has received an approval from the Canby City Council to purchase the Subject Property;
- b) Buyer has received, reviewed and approved an independent appraisal of the Subject Property that supports the Purchase Price;
- c) Buyer has received, reviewed and approved an environmental site assessment for the Subject Property.

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, 900 SW 5th Ave. Portland, OR, (503) 222-2424 (the "Escrow Holder") for the purpose of closing the purchase and sale of the Subject Property. Escrow shall close on or about November 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 Buyer's obligations set forth herein.

6. **Title.** Title shall be conveyed to Buyer, via statutory warranty deed and shall be free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages except (a) the standard printed exceptions on a form of title insurance policy; (b) the special exceptions showing on the Preliminary Title Report, Effective September 17, 2001, issued by Fidelity National Title Co., (except items number 19²¹ which shall be removed at closing), said report being incorporated herein by reference and (c) such other matters as are approved by Buyer in writing. *JAM*

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 insuring Buyer's interest. Real estate taxes, if any, on the Subject Property shall be prorated between the Seller and Buyer 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:

CITY OF CANBY

By: Terry L Prince

Title: Mayor

Date: October 24, 2001

SELLER:

THE TRUST FOR PUBLIC LAND

By: _____

Title: _____

Date: _____



State of Oregon)
) ss.
County of Clackamas)

On this 24th day of October, 2000¹, before me Martha Anne Moretty, the undersigned Notary Public in and for the state of Oregon, personally appeared Terry L Prince personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Mayor, 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 he/she was authorized to so execute said instrument.



Signed: Martha Anne Moretty
Printed: Martha Anne Moretty
Notary Public in and for the State of Oregon.
Residing at 182 N Holly Canby
My commission expires 2-20-2003

State of Oregon)
) ss.
County of Multnomah)

On this _____ day of _____, 2001, before me _____, the undersigned Notary Public in and for the state of Oregon, 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.

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

EXHIBIT "A"

A portion of Government Lots 9 and 10 of Section 21, and a portion of Government Lot 8, of the Southwest Quarter of Section 22, Township 3 South, Range 1 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Beginning at a point marked by a 5/8 inch Iron Rod, with a Yellow Plastic Cap marked "Riverside Eng" on the Northeasterly right-of-way line of Molalla Forest Road which point bears North 00°00'00" East 846.35 feet, South 44°31'39" East 426.45 feet, South 37°31'56" East 277.73 feet and North 59°27'47" East 25.00 feet from the Southwest corner of Section 22, Township 3 South, Range 1 East, said point being on the arc of a 1165.21 foot radius curve; thence Northwesterly along the arc of said curve (the chord of which bears North 37°31'56" West 283.82 feet) 284.52 feet; thence North 44°31'39" West 519.23 feet along said Northeasterly line to the most Northerly line of a tract of land as described in Document No. 77-20343 Clackamas County, Oregon Deed Records; thence North 45°00'00" East 92.95 feet along said Northerly line to the ordinary highwater line of the Willamette River; thence Northwesterly along said ordinary highwater line as follows: North 34°31'42" West 160.13 feet; North 10°53'37" West 34.02 feet; North 39°34'28" West 108.47 feet; North 31°28'28" West 58.87 feet; North 59°15'09" West 76.82 feet; North 44°00'20" West 204.45 feet; North 32°23'20" West 116.72 feet; North 28°01'45" West 189.47 feet; North 26°08'17" West 201.28 feet; North 16°44'13" West 242.37 feet; North 19°47'27" West 283.63 feet; North 18°33'30" West 255.15 feet; North 26°00'36" East 37.64 feet; North 25°48'35" West 64.26 feet; North 17°31'55" West 150.67 feet; North 27°09'55" West 171.97 feet; and North 24°47'33" West 188.34 feet to the Westerly boundary of the land conveyed to Ostrander Railway and Timber Company by deed Book 236 Page 535, Clackamas County, Oregon Deed Records; thence along said Westerly boundary line South 08°18'05" West 1030.66 feet to a 1 inch Iron Pipe; thence South 45°36'49" East 198.68 feet to the Westerly right-of-way line of Mollala Forest Road and being on the arc of a 362.03 foot radius curve to the left; thence along the arc of said curve (the chord of which bears South 34°55'37" East 134.31 feet) 135.09 feet; thence South 45°37'00" East 580.17 feet to the beginning of a 520.61 foot radius curve to the right; thence along the arc of said curve (the chord of which bears South 39°05'20" East 118.37 feet) 118.63 feet; thence South 32°33'40" East 319.18 feet to the beginning of a 597.96 foot radius curve left; thence along the arc of said curve (the chord of which bears South 38°32'39" East 124.66 feet) 124.89 feet; thence South 44°31'39" East 799.50 feet to the beginning of a 1115.21 foot radius curve to the right; thence along the arc of said curve (the chord of which bears South 37°31'56" East 271.64 feet) 272.31 feet; thence North 45°28'21" East 50.00 feet to the point of beginning.

TOGETHER WITH an easement for ingress and egress as disclosed in that certain Warranty Deed to The Trust for Public Land, a nonprofit California public benefit corporation, recorded March 27, 2001, as Recorder's No. 2001-020557, said easement is located upon, over and across that portion of the land known as Mollala Forest Road, being a portion of the property conveyed to the City of Canby by Deed recorded March 27, 2001, Recorder's No. 2001-020558.