

**ORDINANCE NO. 1511**

**AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH PIONEER PROPERTY, LLC FOR THE PURCHASE OF REAL PROPERTY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby offers transit services known as Canby Area Transit; and

**WHEREAS**, the City of Canby acquired, for the benefit of Canby Area Transit, certain property on Hazel Dell Way for use as a Transit Bus Yard; and

**WHEREAS**, Canby Area Transit currently leases office space used for administrative and dispatch services; and

**WHEREAS**, Canby Area Transit desires to construct office space in a permanent location; and

**WHEREAS**, suitable land immediately adjacent to the City-owned transit bus yard property is currently available for purchase; and

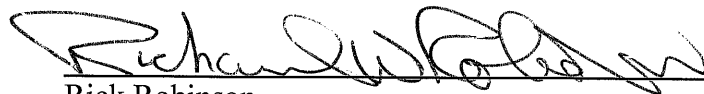
**WHEREAS**, the City of Canby would like to have a more permanent location for Canby Area Transit administrative and dispatch services close to the Canby Area Transit bus yard.

**NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:**

**Section 1.** The City Administrator is hereby authorized on behalf of the City to enter into a Purchase and Sale Agreement for the purchase of real property from Pioneer Property, LLC. A copy of the Purchase and Sale Agreement is attached hereto as Exhibit "A."

**Section 2.** Due to to the difficulty of scheduling an environmental review and time restraints, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on June 19, 2019, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on July 17, 2019, commencing at the hour of 7:00 PM at the Council Meeting Chambers located at 222 NE 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor, Canby, Oregon.



Rick Robinson  
City Recorder Pro-Tem


**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the July 17, 2019, by the following vote:

YEAS 5

NAYS 0

  
\_\_\_\_\_  
Brian Hodson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Rick Robinson  
City Recorder Pro-Tem

## PURCHASE AND SALE AGREEMENT

Effective Date: July 17, 2019

**SELLER:** Pioneer Property, LLC  
an Oregon limited liability company  
1012 Island View  
Kemah, TX 77565  
ATTN: Manager  
281-772-5249  
281-957-9233 (fax)

**BUYER:** City of Canby  
an incorporated Oregon municipality  
PO Box 930  
Canby, OR 97013  
ATTN: City Administrator  
503-266-0745  
503-266-7961 (fax)

### Recital

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property with all improvements located on Hazel Dell Way, Canby, Oregon, having the following legal description (the "Property"):

Lot 19 S Hazel Dell Way  
APN – 5030908  
Tax Lot 4507  
Section 34, T3S, R1E, W.M.  
City of Canby,  
County of Clackamas,  
State of Oregon.

### Agreement

Now, therefore, for valuable consideration, the parties agree as follows:

- 1. Sale and Purchase.**
  - 1.1 Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$380,000 (the "Purchase Price").

1.2 Buyer agrees to pay all costs required for closing of this transaction. Costs shall include but not be limited to legal document preparation, inspections if initiated by Buyer, environmental reports if initiated by Buyer, surveys, title policies, escrow fees, recording fees, and Buyer's prorated portion of real estate taxes.

2. **Payment of Purchase Price.** The Purchase Price and costs must be paid at closing.

3. **Closing.** Time is of the essence. Closing must take place on a mutually agreed on date, but in no event later than August 31, 2019. The terms *closed*, *closing* or *closing date* mean when the deed or contract is recorded and funds are available to Seller. The Escrow Agent shall close this transaction and act as escrow agent. .

4. **Preliminary Title Report.** Seller will furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have 10 days from the execution of this Agreement to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any special exceptions shown in the Title Report. Those exceptions the Buyer does not object to are referred to below as the "Permitted Exceptions." Mortgages, delinquent taxes or other financial obligations secured by the Property are automatically deemed Unacceptable Exceptions. If Buyer notifies Seller in writing of Unacceptable Exceptions, Seller will have 15 days after receiving the Unacceptable Exceptions notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Seller Assurance Period"). If Seller does not remove the Unacceptable Exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 15 days after expiration of the Seller Assurance Period, and, when applicable, this Agreement will be of no further binding effect.

5. **Seller's Delivery of Documents.** Within 15 days after the Effective Date, Seller shall deliver to Buyer any and all material information and documentation in the Seller's possession or control pertaining to the Property (the Due Diligence Documents).

If Seller is aware of the existence of any material information and documentation pertaining to the Property that are not within Seller's possession or control, the Seller shall notify Buyer of the existence of such information within fifteen (15) days after the Effective Date or two (2) business days after learning of such information

6. **Property and Environmental Inspections.** Buyer and its agents including but not limited to consultants, surveyors, engineers, home inspectors, appraisers, and other professionals hired by the Buyer shall have the right to access the Property to conduct environmental studies (including but not limited to Phase I and II

assessments), and any other inspections and testing Buyer deems necessary. Seller shall cooperate with Buyer making such inspections. Any area disturbed by Buyer's inspections shall be restored by Buyer at Buyer's sole cost and expense to its pre-inspection condition. To the extent allowed under state law, Buyer agrees to indemnify and hold Seller harmless from all loss, damage, or liability caused as a result of Buyer or Buyer's agents' access to the Property under this section. If Buyer is not satisfied, in its sole discretion, with the result of Buyer's inspections, Buyer may terminate this Agreement by written notice to Seller given at any time before the date set forth in Section 7.1.1 below.

## **7. Conditions**

**7.1** Buyer's obligation to purchase the Property is contingent on satisfaction of each of the following conditions:

**7.1.1** Buyer's approval of its inspection of the Property under Section 6 above. Buyer will have until August 1, 2019, to complete its inspection of the Property. *If Buyer fails to give any notices of termination per Section 6 above, by August 1, 2019, the condition shall be satisfied or waived.*

**7.1.2** Buyer must be satisfied in its sole and absolute discretion with its review of the Due Diligence Documents *by August 1, 2019 or the condition shall be deemed satisfied or waived.*

**7.1.3** . *If notification of material information as provided in Section 5 is made to Buyer on or after July 16, 2019, the August 1, 2019 Conditions satisfaction or waiver as described in this section 7 shall be extended by one day for each day beyond July 16, 2019 that the notification is provided to Buyer.*

**7.1.4** At Closing, the Seller shall remove all Unacceptable Exceptions from the Title Report as reflected in a Pro Forma Title Policy provided by the Escrow Agent.

**8. Marketable Title; Deed.** On the Closing Date, unless agreed otherwise herein, Seller will convey fee simple title to the Property by statutory special warranty deed, free and clear of all liens of record, except the Permitted Exceptions.

**9. Title Insurance.** Within 15 days after Closing, Seller must furnish Buyer with an American Land Title Association owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

**10. Taxes; Prorates.** Real property taxes for the current tax year and other usual items must be prorated as of the Closing Date. At Closing, Buyer shall pay or reimburse Seller for transfer taxes, all recording and escrow fees, and all other normal Closing costs, including the Title policy *set forth in Section 9 above.*

**11. Possession.** Buyer will be entitled to exclusive possession immediately on Closing.

**12. Property Included.** All improvements on the Property.

**13. Personal Property.** N/A

**14. Seller's Representations.** Seller hereby warrants and represents to Buyer the following:

**14.1 Authority.** The Seller has full power and authority to enter into this Agreement and to sell, transfer, and convey all right, title, and interest in and to the Property in accordance with this Agreement.

**14.2** Seller warrants and represents to its knowledge without further investigation, Seller has not brought onto, stored, buried, used on, emitted or released from or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on the Property any Hazardous Substances as defined under ORS 456.200 in violation of any environmental laws of the state or federal government.

**15. Buyer's Representations.** Buyer hereby warrants and represents to Seller the following:

**15.1** Buyer represents that it has accepted and executed this Agreement on the basis of its own examination and personal knowledge of the Property; that Seller and Seller's agents have made no representations, warranties, or other agreements concerning matters relating to the Property; that Seller and Seller's agents have made no agreement or promise to alter, repair, or improve the Property; and that Buyer takes the Property in the condition, known or unknown, existing at the time of the Closing, "AS IS" subject only to the conditions set forth in Section 5 and Section 7.

**16. Risk of Loss.** Seller bears the risk of all loss or damage to the Property from all causes through Closing except those caused by the Buyer.

**17. Binding Effect/Assignment Restricted.** This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Buyer will not assign its rights prior to closing under this Agreement without Seller's prior written consent, which may be withheld in Seller's sole discretion.

**18. Attorney Fees.** If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court or arbitrators, as the case may be, and, in the event of appeal, as set by the appellate courts.

**19. Notices.** All notices and communications in connection with this Agreement must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted will be deemed effective on the date it is placed in the

United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

**20. Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

**21. Survival of Representations.** The covenants, agreements, representations and warranties made herein shall survive Closing and will not merge into the Deed upon recordation in the official real property records.

**22. Applicable Law.** This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon.

**23. No Brokers.** Each Party warrants to the other Party that no broker or agent was consulted or engaged in connection with this transaction, and each Party will indemnify, defend, and hold harmless the other from and against all claims, losses, and liabilities made or imposed for any commission or finder's fee to any broker or agent and arising out of the actions of such party.

**24. Recitals.** The statements and information set forth in the Recitals are hereby incorporated as if fully set forth herein and shall be used for the purposes of interpreting this Agreement.

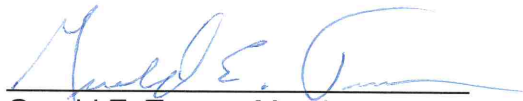
**25. Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties hereby expressly agree that this Agreement is governed by and should be interpreted in accordance with the laws of the state of Oregon.

**26. Acceptance.** This Agreement will be null and void unless accepted by Seller, by Seller's execution of it, on or before July 17, 2019.

**28. Statutory Warning.** 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 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS

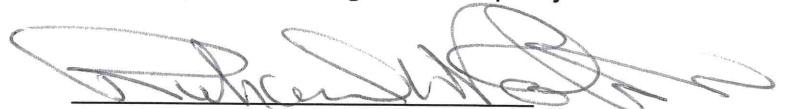
INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SELLER:  
PIONEER PROPERTY, LLC  
an Oregon limited liability company

  
Gerald E. Turner, Member

Dated: 7/18, 2019

BUYER:  
CITY OF CANBY,  
an incorporated Oregon municipality

  
Richard Robinson, City Administrator

Dated: 7/18, 2019