

RESOLUTION NO. 4474

A RESOLUTION AUTHORIZING THE PURCHASE OF PROPERTY KNOWN AS THE INLAND QUICK FREEZE BIKEPATH PROPERTY FROM INLAND ACQUISITION CO., LLC.

WHEREAS, Inland Acquisition Co., LLC, owns certain real property in the City of Albany, Linn County, Oregon, which is suitable for use as an expansion of a bicycle/pedestrian pathway along the south bank of the Willamette River; and

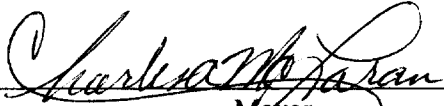
WHEREAS, the City of Albany has determined this property is integral to the construction of the Willamette River Path; and

WHEREAS, Inland Acquisition Co., LLC, has agreed to sell this property, which has been valued at \$202,392, to the City of Albany for \$37,637 with the remaining value to be considered a donation to the City; and

WHEREAS, the City has agreed to pay the purchase price and to complete the terms specified in the section of the agreement entitled "Additional Consideration for Albany."

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council hereby authorizes the purchase of title to the property identified as Inland Quick Freeze Bikepath Property.

DATED THIS 8TH DAY OF AUGUST 2001.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

## **AGREEMENT FOR THE SALE AND PURCHASE OF REAL PROPERTY**

This Agreement is made and entered into this 19<sup>th</sup> day of July, 2001, by and between the **CITY OF ALBANY, OREGON, a municipal corporation**, (hereinafter "Albany") and **INLAND ACQUISITION CO., LLC, an Oregon limited liability company** (hereinafter "Inland").

WHEREAS, Inland owns certain real property in the City of Albany, Linn County, Oregon, which is suitable for use by Albany as an expansion of a bicycle/pedestrian pathway that Albany is building along the south bank of the Willamette River; and

WHEREAS, Albany desires to purchase a portion of Inland's property adjacent to the south bank of the Willamette River; and

WHEREAS, it is the intent of this Agreement to memorialize the terms under which the parties have agreed to the aforesaid purchase and sale:

### **AGREEMENT:**

Now, therefore, in consideration of the mutual promises contained herein, it is agreed as follows:

1. ***Sale and Purchase of Inland Bikepath Property.*** Albany agrees to purchase, and Inland agrees to sell that certain real property located in the City of Albany, Oregon, and more particularly described in Exhibit "1," attached hereto and by this reference incorporated herein (hereinafter the "Inland Bikepath Property").

2. ***Value of Inland Bikepath Property.*** The Inland Bikepath Property has been appraised. The appraisal was completed at the direction of Albany in 1998 when Albany considered obtaining an easement over a portion of the Inland Bikepath Property. The appraisal was completed by Mary E. Ness, MAI, SRA on July 27, 1998. Ness concluded that the subject land has a market value of \$4.30 per square foot. The Inland Bikepath Property consists of 47,068 square feet of property. Using the Ness appraisal value of \$4.30 per square foot, the fair market value of the Inland Bikepath Property is \$202,392.40. Inland is aware that Albany cannot afford to pay Inland \$202,392.40 for the Inland Bikepath Property. Inland admires Albany's dedication and resolve to complete a bikepath along the Willamette River for use by the citizens of Albany. Inland would like to assist Albany by agreeing to sell the Inland Bikepath Property to Albany for \$37,634. The difference between the fair market value of \$202,392.40 and the sales price of \$37,634 (said difference being \$164,758.40) represents a charitable contribution by Inland to Albany.

3. ***Purchase Price for Inland Bikepath Property.*** As explained in Section 2, Albany agrees to pay, at Closing, the sum of Thirty Seven Thousand Six Hundred Thirty Four Dollars (\$37,634) to Inland for the Inland Bikepath Property.

4. ***Tax Advantage for Donation.*** As explained in Section 2, the difference between the fair market value of \$202,392.40 and the sales price of \$37,634(said difference being \$164,758.40) represents a charitable contribution by Inland to Albany. Although Inland expects to receive a tax advantage for the value of the aforesaid donation, Albany does not warrant any tax advantage to Inland as a result of the aforesaid donation. Albany agrees to assist Inland, at no cost to Albany, by signing documents necessary for Inland to claim a donation to Albany. Said documents shall list the value of the donation based upon the Ness Appraisal, or a subsequent qualified appraisal, if any.

5. ***Earnest Money.*** Inland hereby acknowledges receipt of \$1,000 paid by Albany as earnest money. The earnest money shall be applied to the purchase price on the closing date.

6. ***Covenants of Title.*** Inland agrees to convey the Inland Bikepath Property by Warranty Deed free of any encumbrance, except the rights of the public and governmental bodies in and to that portion of the premises lying below the high water mark of the Willamette River. Inland's warranty will further exclude rights of the public and governmental bodies as shown in Easements, Reservations and Restrictions of record.

7. ***Additional Consideration for Albany.***

7.1 In addition to the payment of money described in paragraph 2 above, Albany agrees to construct a six foot (6') chainlink fence along the southern boundary of the Inland Bikepath Property. Said fence shall be green vinyl coated and shall contain site obscuring slates. Upon the request of Inland, Albany shall install a gate to allow access from Inland's remaining property to the Inland Bikepath Property. Albany further agrees that Inland shall have the right to require Albany to remove the fence, in the future, upon giving Albany 180 days' written notice to do so. Any fencing material so removed shall be the property of Albany. Upon removal, Albany shall have no further obligation to screen or separate the Inland Bikepath Property from the balance of Inland's property.

7.2 Albany further agrees that should Inland apply for the vacation of Madison Street or Hill Street as said rights of way adjoin Inland's property, Albany will waive, or pay from other funds, the vacation application fee which would otherwise be charged. This waiver shall extend to only one single vacation proceeding. Albany makes no representation or covenant concerning the outcome of such a vacation proceeding(s) as these judgments shall be reserved to the appropriate discretion of the City Council.

7.3 Albany further agrees to move the fire hydrant that is currently located on the Inland Bikepath Property to a location on the adjoining Inland property that is suitable for such location. The Albany Fire Department will consult with Inland in an effort to find a mutually agreeable site, but the Albany Fire Department shall retain ultimate authority to determine where the fire hydrant will be relocated. Albany will bear the expense of relocating said fire hydrant.

- 7.4 Albany further agrees to relocate any drainage catch basins located on the Inland Bikepath Property in a manner that will assist in and coordinate with the proper drainage of Inland's remaining property. Albany will bear the expense of relocating said drainage catch basins and reconnecting the catch basins with the existing drainage on the Inland property.
- 7.5 Albany shall grant an encroachment permit to Inland for the location of the Amerigas Tank on the Inland Bikepath Property and for access to and from the Amerigas Tank. Inland agrees to cause the Amerigas Tank to be removed from the Inland Bikepath Property on or before October 31, 2001. The encroachment permit shall be effective on the Closing Date and shall expire on the earlier of the following two dates: (1) the day following the removal of the Amerigas Tank, or (2) October 31, 2001. Inland shall indemnify and hold harmless Albany from all claims arising from Inland's encroachment onto the Inland Bikepath Property.
- 7.6 Albany shall grant encroachment permits to Inland for entry of Inland and Inland's agents onto the Inland Bikepath Property for repair, removal, or construction on Inland property that occurs within 15 feet of the Inland Bikepath Property. Inland shall indemnify and hold harmless Albany from all claims arising from Inland's encroachment onto the Inland Bikepath Property.
- 7.7 Inland shall allow Albany to enter onto Inland's property during the construction of the bicycle/pedestrian pathway and fence, so long as Albany coordinates with Inland prior to entering onto Inland's property and Albany does not interrupt or interfere with Inland's use or Inland's tenant's use of the property. Albany shall indemnify and hold harmless Inland from all claims arising from Albany's entry onto Inland's property.

8. **Partitioning.** This conveyance shall require partitioning of the Inland Bikepath Property from the remainder of Inland's adjoining property. Inland hereby irrevocably agrees to cooperate as requested by Albany to achieve said partitioning. Inland further irrevocably authorizes Albany, in Inland's name, to apply for, and participate in, all partitioning actions which are deemed appropriate by Albany in order to achieve said partitioning. The partitioning fee shall be waived or paid by Albany. All other costs associated with the partitioning shall be paid by Albany.

9. **Conditions to Albany's Obligations Hereunder.** It is expressly agreed that all of Albany's obligations hereunder shall be conditioned upon the occurrence of the following acts:

- 9.1 The City Council of the City of Albany must approve the terms of this Agreement within 30 days of the date hereof.
- 9.2 Partitioning must be completed so that the Inland Bikepath Property can be lawfully conveyed.

10. **Closing.** The transfer of the property shall occur at the offices of AmeriTitle, 1393 Clay St., SE Albany, Oregon, on or before September 18, 2001. Closing will be delayed in 30-day increments if the partitioning has not yet been completed. The parties shall share equally in all closing costs, including but not limited to escrow fees, government lien search fees, and recording costs. Inland and Albany will each pay its own attorney fees related to this transaction.

11. **Binding Effect/Assignment Restricted.** This Agreement is binding upon all parties and shall inure to the benefit of Inland, Albany, and their respective heirs, legal representatives, successors and assigns.

12. **Remedies. TIME IS OF THE ESSENCE** regarding this Agreement. If the conditions described in paragraph 9 above are satisfied or waived by Albany and the transaction does not thereafter close, through no fault of Inland, on the closing date set forth herein, Albany shall forfeit the earnest money paid to Inland and Inland may bring such action as it deems appropriate to specifically enforce the balance of the obligations hereunder. If Inland fails to deliver the deed described in paragraph 6 above on or before the closing date, or otherwise fails to consummate this transaction, the earnest money shall be refunded to Albany, but acceptance by Albany of the refund will not constitute a waiver of other remedies available to Albany.

13. **Authorization to Initiate Construction of Bicycle/Pedestrian Path.** In the event that Closing does not occur on or before September 01, 2001, through no fault of Albany and Albany is not in breach of this Agreement, Inland hereby irrevocably authorizes and licenses Albany to enter onto the Inland Bikepath Property to construct and maintain the bicycle/pedestrian pathway and to construct the fence called for in paragraph 7.1 above and all related improvements to the bicycle/pedestrian pathway. The only precondition to this license shall be acceptance by the Albany City Council of the terms of this Agreement as called for in paragraph 9.1 above and placement into escrow the entire amount of the purchase price for the Inland Bikepath Property as called for in paragraph 3 above. Albany shall indemnify and hold harmless Inland from all claims arising from Albany's occupancy pursuant to this license prior to closing.

14. **Attorney Fees.** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

15. **Notices.** All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party as the address first set forth above. Any notices so transmitted shall 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.

To Albany: City of Albany  
333 Broadalbin Street  
P.O. Box 490  
Albany, OR 97321

To Inland: Inland Acquisitions Co., LLC.  
729 NE 194th Street  
Portland, OR 97230

16. **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.

17. **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

18. **Disclaimer.**

**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.**

19. **Representation.** This Agreement is the subject of a negotiated transaction wherein both sides have had input into the terms hereof. As a consequences, the customary rule of contractual construction which resolve ambiguities against the drafter shall not apply. Albany has been represented in this transaction by the law firm of Long, Delapoer, Healy, McCann & Noonan, P.C., Attorneys at Law. Inland has been represented in this transaction by the law firm of Weatherford, Thompson, Ashenfelter & Cowgill, P.C., Attorneys at Law. Each party acknowledges that they have relied strictly on the advise and representations provided to them by their respective attorneys.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the date and year first above written.

CITY OF ALBANY, OREGON

By SKO By A  
Title: City Manager

INLAND ACQUISITION CO., LLC.

By \_\_\_\_\_  
Title:

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CITY OF ALBANY, OREGON

By [Signature]  
Title: City Manager

INLAND ACQUISITION CO., LLC.

By [Signature]  
Title: \_\_\_\_\_

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Resolution No. 4474

Recorded Document Recorder File No. 3982