

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the last date of signature indicated below (the “Effective Date”), by and between MOLALLA RIVER SCHOOL DISTRICT, an Oregon public school district (“MRSD”), and the CITY OF MOLALLA, an Oregon municipal corporation (“City”), collectively referred to herein as the “Parties”.

RECITALS

WHEREAS, MRSD is the owner of approximately 5.60 acres of real property (the “Property”), a portion of which is commonly known as Fox Park (“Fox Park”), located on and within Assessor’s Parcel No. 01098680, in the City of Molalla, County of Clackamas, State of Oregon, and as described and generally depicted in the attached *Exhibit A*; and

WHEREAS, the City currently leases that portion of the Property known as Fox Park from MRSD pursuant to that certain Lease Agreement by and between MRSD and the City for a term beginning December 1, 2024 through December 1, 2074 (the “Lease”); and

WHEREAS, a portion of undeveloped right of way, which is a part of a roadway commonly known as Hezzie Lane, located from the north boundary of North Valley Drive, to the south boundary of Lynn Lane, in the City of Molalla, County of Clackamas, State of Oregon and dividing the properties utilized by MRSD for the Molalla Elementary School, Assessor’s Parcel No. 01091918 (the “Elementary Property”) and the Molalla River Middle School, Assessor’s Parcel No. 01091794 (the “Middle School Property”), is described in the attached *Exhibit B* (“Hezzie Lane”); and

WHEREAS, the City desires to purchase from MRSD, and MRSD desires to sell and convey to the City, all right, title and interest in that portion of the Property that constitutes Fox Park in exchange for the City’s vacation of Hezzie Lane in accordance with the terms of ORS 271; and

WHEREAS, the Parties wish to enter into this agreement to govern the terms and conditions of the Fox Park – Hezzie Lane transaction; and now, the Parties do hereby agree as follows:

TERMS

1. **Conveyance.** MRSD agrees to convey to the City all rights and title in that portion of the Property referred to herein as Fox Park upon completion of the obligations and conditions as set forth in this Agreement.

2. **Closing.**

2.1. Closing Date. This transaction shall close no later than the later to occur of: (a) thirty (30) days after the City has approved the creation of Fox Park as a separate legal lot from the remainder of the Property that can be legally conveyed under Oregon law, by partition or other land use action, (b) thirty (30) days after the City's notice stating that it is satisfied with the condition of Fox Park pursuant to Section 3.9 of this Agreement; and (c) thirty (30) days after the City's land use approval required by Section 3.3 of this Agreement ("Closing Date"). Each party may extend the Closing Date one time by up to fourteen (14) days if that extension is required by causes beyond the Party's reasonable control.

2.2. Manner and Place of Closing. This transaction will be closed by Chicago Title of Oregon 10151 SE Sunnyside Rd. #300, Clackamas, OR 97015, (the "Title Company"). Closing must take place in the manner and in accordance with the provisions set forth in this Agreement.

3. Conditions Precedent to Closing.

3.1. Approval. Prior to Closing but not later than thirty (30) days after the City's approval of the creation of Fox Park as a separate legal lot, conveyance of Fox Park must be approved by the Molalla City Council and the MRSD School Board as further described in their respective bylaws. After such date, a Party's termination of this Agreement for the sole reason that the Agreement has not been approved by such Party's governing body (the City Council or School Board, as applicable), shall not be a failure of a condition precedent that permits such Party to terminate this Agreement without subjecting the terminating Party to liability under Section 9.

3.2. Vacation. Prior to Closing, the City shall vacate the roadway herein referred to as Hezzie Lane in accordance with the procedures provided under ORS 271.

3.3. Land Use Approval. Prior to Closing, the City will have issued a land use approval for the District's project for a new middle school on or adjacent to the Middle School and Elementary School Properties, as set forth in Land Use File Number SDR02-2025, which does not require the dedication of real property, or require to be constructed streets, sidewalks, trails, or other infrastructure or improvements, that would materially separate the Elementary School Property and Middle School Property. In connection with the land use approval required by this Section 3.3, the City will state in a document, which can be recorded by the District in the official records of Clackamas County, that: (a) it is the intent of the present City Council that the City will not take any actions or impose any future requirements on the District that would materially separate the Elementary School Property and the Middle School Property so long as such properties are used as one or two (but not more than two) school sites, and (b) in connection with any future proposed development of the Elementary school and Middle School Properties by the District to a use other than as described in clause (a), the City will negotiate in good faith with the District to avoid

requiring any actions as a part of such development that would materially separate the Elementary School Property and Middle School Property.

3.4. Partition. Prior to Closing, MRSD shall partition Fox Park from the Property in substantially the configuration depicted in the attached *Exhibit C* in accordance with Title 17 of the Molalla Municipal Code. The City will provide the technical expertise of the City's staff or (at the Parties' shared expense) consultants to complete the partition process, including, without limitation, engaging all technical non-legal professionals (including without limitation, a surveyor). The legal description created by the surveyor as part of the partition process will be utilized by the parties for the purposes of closing and will supplement Exhibit C to this Agreement without further action by the Parties. The City shall coordinate review and input into the partition application with MRSD prior to MRSD's submission to the Molalla Community Development Department. Subject to MRSD's reasonable review and comment, MRSD will promptly review, comment upon, and, upon approval, execute, all documents required in connection with completing the partition, including, without limitation, those prepared by City staff and its retained professionals. To the extent allowed under state and local law, all governmental authorizations and land use approvals required in connection with the vacation, the partition, and any other land use action under contemplated by this Agreement shall be expedited to the best of the Parties' abilities.

3.5. Easement and Maintenance Agreement. Prior to Closing, the Parties shall enter into an easement and maintenance agreement over those portions of Tax Lot No. 01091918 that will best allow for shared access to the parking lot running adjacent to Fox Park, as depicted in the attached *Exhibit D*. The easement agreement shall: 1) include provisions for the shared ongoing maintenance of the parking lot; and 2) be recorded in the deed records of Clackamas County, Oregon, concurrent with Closing. The form of easement and maintenance agreement is set forth in the attached *Exhibit E*. In addition, the Parties agree to enter into additional easements, to made upon the partition plat for Fox Park, pursuant to a separate easement in substantially the same form as the utility easement portions of *Exhibit E*, or in a form otherwise mutually agreed between the Parties to accommodate existing utilities that currently serve the Property as generally set forth in *Exhibit F*, which will no longer exist on the property being served once the partition contemplated by Section 3.4 occurs. To the extent such utilities are shared by the Parties, such easements will include cost sharing mechanisms for maintenance, repair and replacement of the utilities.

3.6. Condition of Fox Park Through Closing. To the extent within the control of MRSD and subject to the Lease between the Parties, MRSD hereby agrees to: (a) allow the City to maintain Fox Park in substantially the same condition as it was on the Effective Date, reasonable wear and tear excepted; (b) keep all existing insurance policies affecting Fox Park in full force and effect; (c) make all regular payments of interest and principal on any existing financing; (d) comply with all government regulations; and (e) keep the City timely advised of any repair or improvement required to keep Fox Park in substantially the same condition as it was on the Effective Date.

3.7. City's Title Review. Within fifteen (15) days after the Effective Date, the City shall order from the Title Company a preliminary title report on Fox Park, along with legible copies of all plats and exceptions documents referenced in such report (the "Title Report").

- 3.7.1. The City will have thirty (30) days following its receipt of the Title Report to review the Title Report and give MRSD written notice of the exceptions listed in the Title Report that are unacceptable (the "Unacceptable Exceptions") to the City (the "Title Notice"). If the City fails to provide the Title Notice within such 30-day period, all title exceptions are deemed approved, subject to the requirement to convey marketable title.
- 3.7.2. No later than fifteen (15) days after receipt of the Title Notice, MRSD shall give the City written notice (the "Title Response") specifying which Unacceptable Exceptions MRSD will remove, if any. If MRSD agrees to remove any Unacceptable Exceptions, MRSD shall be obligated to do so at its cost on or before the Closing. If MRSD fails to provide the Title Response within such 15-day period, MRSD is deemed not to have agreed to remove any of the Unacceptable Exceptions.
- 3.7.3. If MRSD declines to remove any of the Unacceptable Exceptions, then the City shall give MRSD written notice ("City's Election") of its election to either: (i) terminate this Agreement, or (ii) waive the City's objections to the Unacceptable Exceptions that MRSD has not agreed to remove and proceed with Closing. The City shall deliver City's Election no later than seven (7) days after receipt of the Title Response or the expiration of MRSD's response period. If the City fails to deliver City's Election within such 7-day period, the City is deemed to have elected to terminate the Agreement under subsection 3.6.3(i) above.
- 3.7.4. If MRSD fails to eliminate any Unacceptable Exception which it has agreed to remove before or at the Closing Date, then the City may, without limiting any of its otherwise available remedies, elect to either (a) accept title to Fox Park subject to such exceptions, (b) refuse to accept Fox Park and terminate this Agreement in accordance with Section 9 herein, or (c) extend the Closing Date for a period of forty-five (45) days to provide MRSD with additional time to remove such exceptions. If the City elects option (c) and at the end of the 45-day period such exceptions have not been removed, the City may then elect to proceed in accordance with either option (a) or (b) described above.
- 3.7.5. The City may terminate this Agreement if the Title Company revises the Title Report to add exceptions that are materially adverse to the City or modifies a title exception in a manner that is materially adverse to the City, if within ten (10) business days after the City's receipt of the revised Title Report, the City notifies MRSD that such additions or modifications are not acceptable to the City and MRSD fails to take such action to cause such additions or modifications to not be shown on the Title Policy at the Closing.

3.7.6. For the avoidance of doubt, any exception to the Title Report created by or through the City on its own accord and not due to or in response to an action of another party shall not be an Unacceptable Exception.

3.8. MRSD's Delivery of Documents. Within fifteen (15) days after the Effective Date, MRSD shall deliver to the City the following, to the extent within MRSD's possession and control and created on or after July 1, 2005 (the "Due Diligence Documents"): copies of (a) all environmental data, studies, analyses, and reports relating to Fox Park or any neighboring property, including the remainder of the Property, (b) any existing survey of Fox Park or the Property, (c) any existing leases, other than the Lease, boundary agreements, road maintenance agreements, or other contracts relating to all or a portion of Fox Park or the Property that could reasonably materially affect Fox Park or the City's use or ownership thereof, (d) all topographical, geotechnical, wetlands, soils, and groundwater reports, or any other professional reports relating to Fox Park or the Property, (e) any well logs or water right certificates or permits relating to Fox Park or the Property, and (f) copies of any government permits, land use approvals or conditions, or zoning restrictions affecting Fox Park or the Property that could reasonably materially affect Fox Park or the City's use or ownership thereof. If MRSD knows of the existence of any material information and documentation pertaining to Fox Park or the Property that are not in MRSD's possession or control that could reasonably materially affect Fox Park or the City's use or ownership thereof, MRSD shall notify the City of the existence of such information within fifteen (15) days after the Effective Date or two (2) business days after learning of such information. Should MRSD fail to timely provide the City with the Due Diligence Documents, the Due Diligence Period shall be extended by one (1) day for each day of delay in delivering the Due Diligence Documents so that the City may have adequate time to review such additional documentation.

3.9. Property and Environmental Inspections. The City and its agents, including but not limited to consultants, surveyors, engineers, home inspectors, appraisers, and other professionals hired by the City, shall have the right to access Fox Park, which except as otherwise provided by this Agreement shall be at City's sole cost and expense, to conduct environmental studies (including but not limited to Phase I and Phase II Environmental Site Assessments), structural inspections, sewer and septic system sampling, asbestos and lead testing, and any other due diligence the City deems necessary, provided that the City shall not perform any drilling, coring, or other invasive testing without MRSD's prior written consent, not to be unreasonably, withheld, conditioned, or delayed. MRSD shall cooperate with the City in making such inspections, but shall not be obligated to incur any cost or expense for making Fox Park available. Any area disturbed by the City's inspections shall be restored by the City, at the City's sole cost and expense, to its pre-inspection condition. The City shall indemnify, hold harmless, and defend MRSD from all liens, liability, damages, costs, and expenses, including reasonable attorneys' fees and experts' fees, arising from or relating to the City's or its agents', contractors' or consultants' entry on and inspection of Fox Park. This agreement to indemnify, hold harmless, and defend MRSD shall survive Closing or any termination of this Agreement. The City shall have ninety (90) days from the Effective Date (the "Due Diligence

Period”) in which to physically inspect Fox Park and to satisfy itself, in its sole and absolute discretion, with its review of the Due Diligence Documents and the results of the City’s inspections of Fox Park conducted pursuant to this Section and Section 3.8 above. On or before the expiration of the Due Diligence Period, the City shall provide written notice to MRSD that either: (i) it is satisfied with the condition of the Fox Park and elects to proceed to Closing; or (ii) it is not satisfied with the condition of Fox Park. If the City notifies MRSD prior to end of the Due Diligence Period that the City is not satisfied with Fox Park due to the results of its due diligence and inspections, the Closing Date will be automatically extended for a period of forty-five (45) days so that MRSD and the City may address such results. If at the end of the 45-day period, the City and MRSD have not reached an agreement regarding the issues disclosed as a result of such due diligence and inspections, the City and MRSD may mutually agree to extend the Closing Date for an additional length of to address such results to the City’s satisfaction, or the City may, in its discretion terminate this Agreement and require re-dedication of the Hezzie Lane right of way, if it has already been vacated. If the City fails to provide MRSD with written notice of the City’s election on or before the expiration of the Due Diligence Period, the City shall be deemed to not be satisfied with the condition of Fox Park.

4. Deliveries to the Title Company.

4.1. By MRSD. On or before the Closing Date, MRSD shall deliver the following into escrow with the Title Company:

4.1.1. *Deed.* A Statutory Special Warranty Deed (the “Deed”), duly executed and acknowledged in recordable form by MRSD, conveying Fox Park to the City subject to only those exceptions accepted by the City pursuant to Section 3.7. The Title Company’s usual, preprinted exceptions (typically listed as general exceptions 1-5 on the Title Report) shall not be listed as exceptions on the Deed.

4.1.2. *Proof of Authority.* Such proof of MRSD’s authority to enter into this Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or the City.

4.1.3. *Easement and Maintenance Agreement.* A fully executed Easement and Maintenance Agreement in substantially the same form as set forth in *Exhibit E*.

4.1.4. *Lease Termination.* A fully executed termination of the Lease (or amendment terminating the Lease as to Fox Park) in mutually agreeable form.

4.1.5. *Other Documents.* Such other fully executed documents and funds as are required of MRSD to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

4.2. By the City. On or before the Closing Date, the City shall deliver the following into escrow with the Title Company.

4.2.1. *Easement and Maintenance Agreement*. A fully executed Easement and Maintenance Agreement in substantially the same form as set forth in *Exhibit E*.

4.2.2. *Proof of Authority*. Such proof of the City's authority to enter into this Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or MRSD.

4.2.3. *Lease Termination*. A fully executed termination of the Lease (or amendment terminating the Lease as to Fox Park) in mutually agreeable form.

4.2.4. *Other Documents*. Such other fully executed documents and funds as are required of the City to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

5. **Delivery at Closing**. At Closing, MRSD shall deliver to the City: (i) exclusive possession of Fox Park; and (ii) keys to any improvements and personal property located on Fox Park not already in the City's possession.

6. **Title Insurance**. At Closing, MRSD shall cause the Title Company to issue to the City a standard ALTA owner's title insurance policy in the amount of eight hundred and ten thousand dollars \$810,000.00, or in such lesser amount as the Title Company will insure, insuring fee simple title vested in the City or its nominees, subject only to those exceptions permitted under Section 3.7 of this Agreement (the "Title Policy"). For the avoidance of doubt, the cost of the Title Policy shall be shared by the City and MRSD.

7. **MRSD's Representations and Warranties**. MRSD hereby warrants and represents to the City the following matters and acknowledges that they are material inducements to the City to enter into this Agreement. These representations and warranties shall survive Closing for a period of two (2) years. Notwithstanding any of the provisions of this Agreement, or any rights which the City might otherwise have at law, equity or by statute, whether based on contract or some other claim, the City agrees that any liability of MRSD to the City will be limited to amount of out-of-pocket expenses that the City directly incurred in resolving the matter that arose due to MRSD's breach of the following representations and warranties, provided (a) MRSD's obligation to reimburse the City shall under no circumstances whatsoever exceed Two-Hundred Fifty Thousand Dollars (\$250,000) (the "Liability Cap"); and (b) no claim by the City alleging a breach by MRSD of any representation or warranty of MRSD contained in this Section 7 may be made, and MRSD shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or

together with any other claims by the City alleging a breach by MRSD of any such representation or warranty is for an aggregate amount in excess of Ten Thousand Dollars (\$10,000) (the “Floor Amount”), in which event MRSD’s liability respecting such claim or claims shall be for the entire amount thereof, subject to the limitation set forth in clause (a) above; provided, however, that if any such liability is for an amount that is less than or equal to the Floor Amount, then MRSD shall have no liability with respect thereto. Nothing in this Section 7 shall relieve MRSD from liability and neither the Liability Cap nor the Floor Amount shall apply in the event a court of competent jurisdiction determines that MRSD committed actual fraud hereunder. MRSD warrants and represents to the City that the following matters are true and correct, and will remain true and correct through Closing:

7.1. Authority. Subject to MRSD’s receipt of School Board approval under Section 3.1 above, MRSD has full power and authority to enter into this Agreement (and the persons signing this Agreement for MRSD has full power and authority to sign for MRSD and to bind it to this Agreement) and, upon the creation of Fox Park as a separate legal lot that may be conveyed under Oregon law to sell, transfer, and convey all right, title, and interest in and to Fox Park in accordance with this Agreement. Except in connection with the creation of Fox Park as a separate legal lot that may be conveyed under Oregon law, no further consent of any partner, shareholder, creditor, investor, judicial, or administrative body, governmental authority, or other party is required.

7.2. Hazardous Substances. For purposes of this Agreement, the term “Hazardous Substances” has the meaning defined in and includes those substances set forth in ORS 465.200. Except as otherwise specifically affirmatively disclosed by MRSD in writing, to MRSD’s knowledge:

7.2.1. MRSD has not brought onto, stored on, 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 Fox Park, any Hazardous Substances in violation of any environmental laws of the federal or state government.

7.2.2. No underground storage tanks are located on Fox Park, including (without limitation) any storage tanks that may have at one time contained any Hazardous Substances.

7.2.3. Fox Park is materially in compliance with applicable state and federal environmental standards and requirements affecting it.

7.2.4. MRSD has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to Fox Park.

7.2.5. MRSD has not transferred, and no other person has transferred, Hazardous Substances from Fox Park to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements.

7.2.6. There are no proceedings, administrative actions, or judicial proceedings pending or, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

Notwithstanding the foregoing, the City acknowledges that under the Lease, and predecessor leases, beginning with a Lease between the City and MRSD dated September 23, 1998, the City has indemnification obligations relating to the environmental condition of the Property. Nothing in this Section 7.2 shall reduce the obligation of the City to indemnify, hold harmless, and defend MRSD to the fullest extent required under such leases.

7.3. Encroachments. Except as otherwise specifically affirmatively disclosed by MRSD in writing, to MRSD's knowledge: (a) all structures and improvements which are located on the portion of the Property intended to be partitioned as Fox Park including any driveways and accessory structures, are wholly within the lot lines of the Property, (b) no existing building, structure, or improvement of any kind encroaches upon the portion of the Property intended to be partitioned as Fox Park from any adjacent property other than the Property, and (c) there are no present or past discrepancies or disputes regarding the boundaries of the Property that would materially affect the proposed boundaries of the portion of the Property intended to be partitioned as Fox Park.

7.4. Rights and Contracts Affecting Property. Except for this Agreement, the Lease, and as otherwise disclosed in the Title Report, MRSD has not entered into any other contracts for the sale, lease or encumbrance of Fox Park, nor do there exist any rights of first refusal or options to purchase Fox Park granted by MRSD. Except for this Agreement, the Lease, and as otherwise disclosed in the Title Report, MRSD has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to Fox Park that would materially adversely affect the City's ownership and use of Fox Park, and except as otherwise specifically affirmatively disclosed by MRSD in writing, to MRSD's knowledge, no other such rights encumber Fox Park. There are no service contracts or other agreements pertaining to Fox Park that the City will be required to assume from MRSD at Closing.

7.5. No Legal Proceedings. Except as otherwise specifically affirmatively disclosed by MRSD in writing, to MRSD's knowledge, there is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against Fox Park or against MRSD that could (a) affect MRSD's right or title to Fox Park, (b) affect the value of Fox Park, or (c) subject an owner of Fox Park to liability.

7.6. Changed Conditions. If before the Closing MRSD discovers any information or facts that would materially change the foregoing warranties and representations, MRSD shall immediately give notice in writing to the City of those facts and information. If any of the foregoing warranties and representations ceases to be true before Closing, MRSD may, at its option, remedy the problem, at its sole expense, before Closing. If the problem is not remedied by MRSD before Closing, the City may elect to either: (a) terminate this Agreement and require that MRSD re-dedicate the Hezzie Lane right-of-way to the City if it has been vacated, or (b) extend the Closing Date for a period not to exceed forty-five (45) days or until such problem has been remedied, whichever occurs first. Should the City extend the Closing Date and the problem is not remedied within the 45-day timeframe, the City may then elect to terminate this Agreement in accordance with Section 9 herein. For the avoidance of doubt MRSD's liability under this Section 7.6 for failing to remedy a problem shall be limited to the remedies in Section 9 and MRSD shall not be liable under this Section 7 for such failure. City shall have no rights under this Section 7.6 to the extent any change in MRSD's representations and warranties under this Section 7 arises directly out of the City's use or possession of Fox Park or any other action or inaction of the City.

7.7. Limitation of Liability. To the extent that prior to Closing the City has actual present knowledge of any information that is inconsistent with any representations or warranties or that renders the same inaccurate, but Buyer does not terminate this Agreement in accordance with Section 7.6 and Section 9, then, in any such case, such representations and warranties shall be deemed modified to conform to such information unless the District, after written notification required by 7.8 and upon request from the City fails to affirmatively disclose in writing any additional information to make the representation and warranty in question accurate.

7.8. Knowledge. As used in this Agreement, "MRSD's knowledge" and similar phrases mean the present current actual knowledge of Tony Tiano, Maintenance Supervisor and Tony Mann, Superintendent, without duty of inquiry. For purposes of this Agreement, "Except as otherwise specifically affirmatively disclosed by MRSD in writing" means the actual affirmative disclosure of information that would make any representation or warranty inaccurate, and not the mere presence of such information in the Due Diligence Materials. To the extent the City has or gains actual present knowledge of any information or facts that are materially inconsistent with any representations or warranties or that renders the same inaccurate, the City shall promptly give notice in writing to MRSD of those facts and information. For the avoidance of doubt, MRSD shall be not liable under this Section 7 for a breach of any representation or warranty merely on account of such notice from the City, except to the extent that the representation or warranty was, to MRSD's knowledge, untrue when it was made or MRSD fails to disclose additional information of which MRSD has knowledge related to such representation and warranty as required by Section 7.7.

7.9. AS-IS. The City acknowledges that the City has conducted all investigations and inspections of Fox Park as it desires. The City hereby affirms that MRSD, its agents, employees

and/or attorneys have not made, nor has the City relied upon any representation, warranty or promise with respect to Fox Park or any other subject matter of this Agreement except as expressly set forth in this Agreement, including, without limitation, any warranties or representations (except as provided in this Agreement), express or implied, as to (a) the quality, nature, adequacy and physical condition of Fox Park, including, but not limited to, appurtenances, access, landscaping, topography, square footage or acreage of Fox Park, (b) the quality, nature, adequacy and physical condition of soils, geology, and any groundwater, (c) the availability, existence, quality, nature, adequacy or physical condition of utilities serving Fox Park, (d) the development potential of Fox Park, or Fox Park's use, habitability, merchantability, or fitness, or the suitability, value or adequacy of Fox Park for any particular purpose, (e) the zoning or other legal status of Fox Park or any other public or private restrictions on use of Fox Park, (f) the compliance of Fox Park or its operation with any applicable land use and zoning laws and regulations, building codes, environmental laws, or other codes, laws, regulations, statutes, ordinances, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (g) the presence of hazardous substances or materials on, under, or about Fox Park or the adjoining or neighboring properties, (h) the quality of any labor and materials used in any improvements included as part of Fox Park, (i) the condition of title to Fox Park, (j) the existence of encroachments on Fox Park, or encroachments from Fox Park onto adjacent properties, and other matters that would be disclosed by an ALTA survey of Fox Park, or (k) the economics or profitability of the operation or development of Fox Park.

8. The City's Representations and Warranties. In addition to any express agreements of the City contained herein, the following constitute representations and warranties of the City to MRSD:

8.1. Subject to the conditions stated herein, the City has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

8.2. Subject to the conditions stated herein, all requisite action has been taken by the City in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated herein.

8.3. Subject to the conditions stated herein, the persons executing this Agreement and the instruments referred to herein on behalf of the City have the legal power, right, and actual authority to bind the City to the terms and conditions of this Agreement.

9. Legal and Equitable Enforcement of this Agreement.

9.1. Default by MRSD. In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by MRSD, including but not limited to failure to perform any material obligation under this Agreement, the City may exercise any or all of the

following remedies: (i) terminate this Agreement, in which event the City shall be entitled to reimbursement by MRSD for all its out-of-pocket expenses not to exceed \$40,000.00 incurred in connection with the transaction and MRSD shall re-dedicate the Hezzie Lane right-of-way to the City if it has been vacated, or (ii) have the right to pursue the remedy of specific performance of this Agreement. If the City has not filed an action for specific performance within sixty (60) days after the scheduled Closing Date, the City shall be deemed to have elected remedy (i) above.

9.2. Default by the City. In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by the City, including but not limited to failure to perform any material obligation under this Agreement, MRSD may exercise any or all of the following remedies: (i) terminate this Agreement, in which event MRSD shall be entitled to reimbursement by the City for all its out-of-pocket expenses not to exceed \$40,000.00 incurred in connection with the transaction and shall have the right to the vacated Hezzie Lane right of way, if already vacated, or if not already vacated, the City shall promptly vacate the Hezzie Lane right of way, or (ii) have the right to pursue the remedy of specific performance of this Agreement. If MRSD has not filed an action for specific performance within sixty (60) days after the scheduled Closing Date, MRSD shall be deemed to have elected remedy (i) above.

9.3. Notice Required. Neither Party shall be deemed in default under this Agreement unless the Party is given written notice of its failure to comply with this Agreement and such failure continues for a period of thirty (30) days following the date such notice is given. This section will not be construed as extending the time by which any notice or contingency waiver must be given.

9.4. Cancellation Fees and Expenses. In the event the escrow terminates because of the City's default, the City shall pay the cancellation charges (if any) required to be paid to the Title Company. In the event this escrow terminates because of MRSD's default, MRSD shall pay the cancellation charges (if any) required to be paid to the Title Company.

10. Expenses. The Parties agree to equally share the following expenses to be paid in accordance with this Section 10, including legal fees, incurred in connection with the performance of the conditions set forth herein, unless otherwise specified in writing:

- Drafting and execution of this Purchase & Sale Agreement
- Phase I Environmental Site Assessment
- Right of Way Vacation
 - Document Preparation
 - Recording/Map Updates
- Partition
 - Preliminary Plat Application
 - Survey and Exhibits
 - County Surveyor Preliminary Review
 - Final Plat Application

- County Surveyor Final Review
- Survey Revision(s)
- Recording
- Drafting and Recording of Easement and Maintenance Agreement
 - Survey & Exhibit
 - Document Preparation
 - Review(s) and Revision(s)
 - Recording
- Closing Costs/Title Company

10.1. Payment of Expenses. By the 15th day of each month after the execution of this Agreement, each Party shall provide an invoice to the other Party setting forth the expenses the invoicing Party incurred during the previous 30 days. Expenses incurred shall include any and all expenses allowable above for which the invoicing party has received a bill or an invoice from a third party. The receiving Party shall pay all undisputed charges on the invoice within 25 days of receipt.

10.2. Disputed Expenses. A Party may dispute any charge for an expense set forth on an invoice provided under Section 10.1 by providing written notice to the invoicing Party within 10 days of receipt of the invoice. Such written notice must contain the amount of the disputed charge and the reason the receiving party believes the charge is not accurate or an allowable expense. The invoicing party shall reply to the written dispute in writing within 10 days either explain why the disputed charge is accurate or allowable or correcting the charge. If the disputed charges are resolved, any unpaid expenses shall be paid by the receiving Party within 5 days. The parties shall negotiate in good faith to resolve any remaining disputed expenses. If the parties are unable to resolve any disputed expense within fourteen (14) days, the parties are free to pursue any legal remedies that may be available.

10.3. Final Expenses. Prior to Closing each Party shall include an accounting to the Title Company of any expenses that have either not been paid by a receiving Party or have not been invoiced by the invoicing Party. Such expenses shall be paid at Closing, through escrow. Any dispute related to such outstanding expenses must be resolved by the Parties prior to Closing. If such dispute is not resolved within (14) days, the parties may either (1) extend Closing to a date after which such dispute is resolved or (2) declare a breach and terminate this Agreement pursuant to Section 9.

11. Risk of Loss. MRSD bears the risk of all loss or damage to Fox Park from all causes, through the Closing Date (subject to any relevant provisions of the Lease). If, before the Closing Date, all or any part of Fox Park is damaged, destroyed, or otherwise made unoccupiable, MRSD shall give the City written notice of such event. The City may terminate this Agreement by giving written notice to MRSD within fifteen (15) days following receipt by the City of written notice from MRSD of such casualty and this Agreement shall thereby be terminated.

12. **Notices.** All notices required or permitted to be given must be in writing to the address set forth below and will be deemed given upon: (a) personal service; (b) deposit in the United States Mail, certified mail, return receipt requested; (c) by overnight courier, or (d) if an e-mail address is shown below, sent by electronic mail: All such notices shall be deemed given either at the time of personal delivery or, in the case of overnight courier or certified mail, upon delivery or refusal of delivery as evidenced by such carrier's receipt, or, in the case of electronic mail, when sent.

To MRSD:

Ron Stewart, Capital Projects Manager
412 S. Swiegle Avenue
PO Box 188
Molalla, Oregon 97038
Email: ron.stewart@molallariv.k12.or.us

With a copy to:

Nathaniel Levy
Miller Nash LLP
1140 SW Washington Street, Suite 700
Portland, OR 97205
Email: nathaniel.levy@millernash.com

To the City:

Dan Huff, City Manager
City of Molalla
117 N. Molalla Avenue
Molalla, Oregon 97038
Email: dhuff@cityofmolalla.com

With a copy to:

Chad Jacobs, City Attorney
Beery, Elsner & Hammond, LLP
1804 NE 45th Ave.
Portland, OR 97213
Email: chad.jacobs@behlaw.com

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manners set forth above will be effective when received by the party for whom it is intended. Telephone and fax numbers, if any, are for information only.

13. **Broker or Commission.** Each party represents and warrants that it has not used the services of any brokers for this transaction. 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 MRSD shall indemnify, hold harmless, and defend the City from and against any such claim if based on any action, agreement, or representations made by MRSD; and the City shall indemnify, hold harmless, and defend MRSD from and against any such claim if based on any action, agreement, or representations made by the City.

14. Further Actions of the City and MRSD. Subject to the rights of the City and MRSD under this Agreement, the City and MRSD agree to execute all such instruments and documents reasonably and to take all actions reasonably required pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and both parties shall use commercially reasonable efforts to accomplish Closing in accordance with the provisions hereof.

15. Miscellaneous.

15.1. Recording. At the City's request, the City and MRSD will execute a mutually agreeable memorandum of this Agreement, which may be recorded against Tax Lot No. Tax Lot No. 01098680 at the shared cost and expense of the Parties. At the Closing or upon the termination of this Agreement, the City will execute a commercially reasonable termination of such memorandum, the cost of which shall be borne equally by the City and MRSD.

15.2. Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance is, to any extent, found 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, will not be affected thereby, and each such term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

15.3. Waivers. No waiver of any breach of any covenant or provision contained herein will 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 performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

15.4. 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.

15.5. Representation. This Agreement was prepared by the City. Each party represents that it has had an opportunity to consult with its own legal counsel prior to executing this Agreement. MRSD waives any claim that any term or condition herein should be construed against the drafter of the Agreement. This Agreement shall be construed as if it had been prepared by both parties.

15.6. Entire Agreement. This Agreement (including any and all exhibits attached to it) 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.

15.7. Time of Essence. MRSD and the City hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision contained in this Agreement. Unless otherwise specified herein, in computing any period of time described in this Agreement, whenever a date for an action required to be performed falls on a Saturday, Sunday, or a state or federal holiday, then such date shall be extended to the following business day.

15.8. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if any dispute arises between the parties concerning the meaning or interpretation of any provision of this Agreement or to enforce this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorney fees and disbursements, whether incurred in mediation or arbitration, at trial or on appeal, or in any bankruptcy proceeding; provided, however, the amount recoverable for attorney fees shall be calculated based on the lowest partner-level hourly rate charged by any attorney representing either of the Parties.

15.9. 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.

15.10. Captions. The captions of the sections and paragraphs in this Agreement are used solely for convenience and are not intended to limit or otherwise modify the provisions of this Agreement.

15.11. 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 is governed by and should be interpreted in accordance with the laws of the state of Oregon.

15.12. Counterparts. 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. Execution of this Agreement by the parties hereto may be evidenced by the transmission of electronic copies (including copies executed by .PDF or DocuSign), which shall have the same effect as an original.

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, 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 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.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature specified below.

CITY OF MOLALLA:

MOLALLA RIVER SCHOOL DISTRICT:

Signature

Signature

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Legal Description of the Property

Lots 4, 5, 6, 7, 8, and 9, Block 3, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Block 4, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Block 5, Lots 4, 5, 6, 7, 8, and 9, Block 6, in Gregory's First Addition to Molalla, in the County of Clackamas and State of Oregon.

Together with all public streets and alley ways bordering on/and running through said lots and blocks above described heretofore vacated by the Common Council of the City of Molalla, as shown by Ordinance No. 81, Recorded July 16, 1924.

Depiction of the Property



425 S Molalla Ave, TL52E09CC07200, Parcel 01098680

4926-9932-0657.13

Exhibit B

Depiction Hezzie Lane Vacation

That portion of the undeveloped Right of Way known as Hezzie Lane from the north boundary of North Valley Drive to the south boundary of Lynn Lane as depicted below.



Exhibit C

Depiction of Contemplated Fox Park Partition



425 S Molalla Ave Partition Boundary

Exhibit D

Depiction of Easement Area



EXHIBIT E

Form of Easement and Maintenance Agreement

[to be attached]

Exhibit F
Existing Utilities

