

Order 117-06/07

Passage: 12/18/06 8-0 (Carr absent)

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONAHUE (1)
DAVID A. MARSHALL (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
EDWARD J. SUSLOVIC (A/L)

ORDER AUTHORIZING PURCHASE OF LAND
RE: 12 WELLWOOD ROAD

ORDERED, that a Purchase and Sale Agreement with Paul M. and Anne W. Olmstead for the purchase of a 40x 100 foot stormwater drainage easement on property located at 12 Wellwood Avenue, Portland, Maine for \$23,500, is hereby approved, substantially in the form below.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this 27th day of November, 2006, by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "**CITY**"), and **PAUL M. AND ANNE W. OLMSTEAD**, with a mailing address of 12 Wellwood Street, Portland, Maine 04103 (hereinafter referred to as "**SELLER**").

W I T N E S S E T H:

WHEREAS, SELLER is the owner of certain land located on and along Torrey Street, in the City of Portland, County of Cumberland and State of Maine and more specifically identified as of City of Portland Chart Block and Lot Number CBL 156-D-6; and

WHEREAS, the **CITY** desires to acquire an easement over said property;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE**

SELLER agrees to sell a 40 x 100 foot stormwater drainage easement in land situated at Torrey Street, Portland, Maine, more accurately identified as CBL 156-D-6 and more particularly delineated in Exhibit A attached hereto and made a part hereof and **CITY** agrees to purchase said easement in property in accordance with the provisions hereof.

2. **CONSIDERATION**

The consideration for the property shall be twenty three thousand five hundred dollars (\$23, 500.00).

3. **TITLE**

Title to the property shall be conveyed by good and marketable title acceptable to the City Manager, evidenced by warranty deed, and shall be free of liens or other encumbrances and leases or other rights of occupancy, except for utility easements and other encumbrances that do not impair the value of the property. However, should the title prove defective, then the **SELLER** shall have reasonable time after written notice of such defect or defects to remedy the title at his or her own cost and expense, after which time, if such defect or defects are not corrected so that there is merchantable title, then the **CITY** may terminate this Agreement and be relieved of all obligations hereunder.

4. **POSSESSION**

(a) Full possession of the property will be given at the transfer of title. The following items shall be pro-rated as of the transfer of title:

- Real estate taxes for the fiscal year in the City of Portland, and any other special assessments which may be due on the property.

5. **RISK OF LOSS**

The risk of loss or damage to the property by fire or otherwise, until transfer of title hereunder, is assumed by the **SELLER**. The above-described property is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated.

6. **CONTINGENCIES**

This Purchase and Sale Agreement is further subject to the following contingencies:

- a. Approval. Ratification of this Purchase and Sale Agreement by the City Council of the City of Portland, Maine shall be obtained on December 18, 2006 but in any event no later than January 31, 2007. In the event that the approval is not obtained for any reason, this Agreement shall be considered cancelled, null and void.

b. Appropriation. Appropriation of funds necessary to complete this Purchase and Sale Agreement by the City Council of the City of Portland, Maine must be completed by January 31, 2007. In the event that the appropriation of monies to purchase the property is not completed for any reason, this Agreement shall be considered cancelled, null and void.

7. CLOSING

The closing shall be held at City Hall, at a time agreeable to the parties. Time is of the essence in the performance of this Agreement.

8. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

9. ENTIRE AGREEMENT

This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes and prior Agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the property hereunder.

10. HEADINGS AND CAPTIONS

The headings and captions appearing herein are for the convenience of reference only and shall not in any way, affect the substantive provisions hereof.

11. GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

12. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

FOR THE CITY: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

FOR SELLER:
Mr. Mike Olmstead
12 Wellwood Road
Portland, ME 04103

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Joseph E. Gray, Jr.
City Manager

Witness

Seller

Witness

Seller