

8
2011-5- After Recording Return To:
Kelly Burgoyne

Clackamas County Official Records
Sherry Hall, County Clerk

2010-071516



\$102.00

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11/09/2010 08:09:43 AM

D-E Cnt=1 Stn=9 DIANNAW
\$40.00 \$16.00 \$16.00 \$10.00 \$20.00

GRANTOR: METRO
600 NE Grand Avenue
Portland, OR 97232-2736

GRANTEE: City of Oregon City
625 Center Street
Oregon City, Oregon 97045

Until a change is requested, all tax statements should be sent to:

METRO
600 NE Grand Avenue
Portland, OR 97232-2736

After Recording Return to:

City of Oregon City
625 Center Street
Oregon City, Oregon 97045

PERMANENT PARK USE EASEMENT AGREEMENT

Recitals

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26, Metro acquired approximately 39.25 acres of real property, known as Canemah Bluff ("the Metro Property"), in Oregon City, Oregon; and

WHEREAS, a portion of the Metro Property is located immediately adjacent to the neighborhood park known as Canemah Children's Park ("Canemah Park"), which park is owned by the City of Oregon City ("the City"); and

WHEREAS, a portion of the Metro Property consisting of 51,566 square feet and legally described and depicted in Exhibit A, ("Canemah Park Property"), is located adjacent to Canemah Park, and is of interest to the City as an access point serving both Canemah Park and the larger Metro Property; and

WHEREAS, in March of 2003, Metro entered into the Canemah Park Property Intergovernmental Agreement, Metro Contract No. 924863 ("IGA"), providing for master planning by the City of the Canemah Park Property; and

WHEREAS, the IGA provides that, upon approval by the Metro Council of a resource management plan for the Canemah Park Property, the City will assume development, management, maintenance and operation responsibility for the Canemah Park Property; and

WHEREAS, the IGA requires, and the City has prepared, a park master plan, attached as Exhibit B; and

WHEREAS, Metro adopted the Canemah Neighborhood Park Master Plan on October 7, 2004 by Resolution and authorized the amendment of the IGA agreement to provide for a perpetual term; and

WHEREAS, funds have been obtained through a Local Government Grant for the construction of the park as indicated in the master plan and it is timely to execute an easement consistent with the Canemah Neighborhood Park Master Plan; and

WHEREAS, Metro and the City wish to enter into this Agreement for a permanent park use easement including the responsibilities and obligations of the parties with respect to the allowable uses, management, maintenance, and operation of the Canemah Park Property in conjunction with Canemah Park and the remainder of the Metro Property;

Now Therefore,

METRO, a municipal corporation and political subdivision of the State of Oregon ("Grantor" or "Metro"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does grant, subject to the terms hereof, to City of Oregon City, a municipal corporation ("Grantee" or "City"), a PERMANENT PARK USE EASEMENT ("Easement" or "Agreement") for the purposes outlined in this Easement, over and across the Canemah Park Property, fully described and depicted in Exhibit A, attached hereto.

1. **RIGHTS GRANTED.** Metro hereby grants to the City, its successors and assigns, an appurtenant easement to allow permanent use by the City of the Canemah Park Property for parks and recreation use. The Easement shall be for the purpose of providing for the construction, development, installation, maintenance, repair and replacement of improvements ("Park Improvements") on Metro Property, and the recreational use of the Canemah Park Property thereafter for a public park, in accord with the Master Plan approved by the Metro Council on October 7, 2004 via Council Resolution No. 04-3501. The design and construction of the Park Improvements on the Canemah Park Property, including a basketball court, landscaping and a path, must be coordinated with and approved by Metro, which approval shall not be unreasonably withheld or delayed.

2. **CONSTRUCTION ACCESS RIGHTS.** The City and its agents and contractors shall confine construction operations within the bounds of the Canemah Park Property. While construction work is in progress, the City and the City's contractors shall make every effort to maintain the site in a neat and orderly condition. All refuse, excess fill material, etc., shall be removed as soon as practicable. Should the site not be maintained in a safe and satisfactory condition to Metro, Metro may cause the work to stop until the cleanup portion of the work has been done to the satisfaction of the Metro. Construction access outside the Canemah Park Property is prohibited without written permission from Metro.

3. **LIMITATIONS.** Except as specifically authorized by this Easement, and as set forth in the Master Plan approved by the Metro Council, Grantee may make no permanent improvements to the Canemah Park Property, and may make no other use of the Canemah Park Property without the prior written approval of Grantor. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Canemah Park Property, no Hazardous Substances may be used, handled, stored or transported on, to or from the Canemah Park Property by Grantee. Under no circumstances shall any use be made of, or conduct occur on, the Canemah Park Property which would cause the Canemah Park Property, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any applicable environmental law.

4. **OBLIGATIONS.** The City will manage, maintain and program the Canemah Park Property. The City shall develop and implement, at the City's sole expense, a resource management memorandum for the Canemah Park Property. This management plan may be part of an overall master plan or management plan for the Canemah Neighborhood Park. The resource management plan shall set forth the types and levels of programmed and public use, and improvement standards for the Canemah Park Property. The resource management plan shall include, but is not limited to trash collection to keep the area free from litter, and a repair and replacement schedule to maintain paths and recreation facilities in a timely manner.

The Native Plant Restoration area depicted in Exhibit A shall be planted exclusively with vegetation native to the Willamette Valley and include no greater than 5% basal area of trees and shrubs. Given the sensitive nature of the habitat area, Metro will review the Canemah Park planting plan to assure that nuisance plants are not included in the development and that proposed vegetation is compatible with the scenic area of the Canemah Bluff. Upon completion of the development project, Metro shall solely be responsible for the maintenance of the Native Restoration Area. The City shall be responsible for maintenance of all developed planting beds, trees, grass, and like landscaped areas from the time they are installed. Future development or modifications to the Canemah Park Property shall be coordinated with and approved by Metro.

Dog use of the Canemah Park Property shall be consistent with City's dog use policy in developed parks. The City shall support signage and design clearly communicating that all dogs, pets and like animals are prohibited on Metro property outside the Canemah Park Property. City shall provide and maintain pedestrian access to Metro natural area property at points approved by Metro at all times the City Park is open.

Access to the Canemah Park Property for the purposes of development of the Master Plan, ongoing maintenance and patron use shall be from 4th Avenue only. Prior to implementing construction, The City shall install temporary fence on the south and east sides of the Canemah Park Property to limit disturbance to the sensitive prairie areas and protect Natural Area patrons from entering construction areas. The City shall maintain temporary fence until the time the City Park is opened to the public.

5. DAMAGE. Grantee shall compensate Grantor for all damages to Grantor's real and/or personal property improvements caused by the Grantee's use of the Easement. In the event that the damages relate to destruction of habitat and native vegetation or landscaping material, Grantee shall restore the vegetation and landscaping to its condition and size prior to such damage on a two to one ratio as to the acreage damaged, as well as replace, as applicable, any sidewalks, pavement, curbs, driveways, signs, irrigation systems, or other improvements damaged beyond ordinary wear and tear. Grantee shall perform any work in the Canemah Park Property in a prompt and workmanlike manner.

6. CONSTRUCTION LIENS. The City shall indemnify Metro against any and all liens attaching against the Metro Property and related to or arising out of the City's, its contractors' and agents' activities on the Metro Property, and shall obtain the immediate release of said liens. If the City fails to obtain the immediate release of said liens, Metro may pay to have said liens released and charge the cost to do so to the City. Said charges shall bear interest at the rate of 15% or the highest legal rate of interest, whichever is less.

7. WORKERS' COMPENSATION INSURANCE. The City shall obtain and maintain in force workers' compensation insurance for all of the City's employees entering the Metro Property. The City shall ensure that all employees of the City's agents and contractors obtain and maintain in force workers' compensation insurance for all of their employees entering the Metro Property.

8. RELEASE OF LIABILITY. Metro shall have no liability to the City for, and the City hereby releases Metro from, any loss, damage or injury suffered by the City on account of any act or omission of Metro or its contractors or licensees, except loss, damage or injury caused by the willful misconduct or gross negligence of Metro or its officers or employees, and then only to the extent of actual and not consequential damages. Except as provided in Section 9 below, the City shall have no liability to Metro for, and the Metro hereby releases the City from, any loss, damage or injury suffered by Metro on account of any act or omission of the City or its contractors or licensees, except loss, damage or injury caused by the willful misconduct or gross negligence of the City or its officers or employees, and then only to the extent of actual and not consequential damages.

9. INDEMNITY. To the maximum extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the City agrees to defend (using legal counsel reasonably acceptable to Metro), indemnify, and hold harmless Metro from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively, "Costs"), which may be imposed upon or claimed against Metro and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) the act, omission or negligence of the City or the City's officers, directors, agents, employees, invitees, contractors or subcontractors; (ii) the use, occupation, management or control of the Canemah Park Property or portions thereof by the City, whether or not due to the City's own act or omission and whether or not occurring on the Canemah Park Property; (iii) any breach, violation or nonperformance of any of the City's obligations under this Easement; and/or (iv) any damage caused by any of the City's officers, directors, contractors, subcontractors, employees, agents or invitees on or to the Canemah Park Property.

10. OWNERSHIP. Grantor represents and warrants that it holds fee simple title to the Canemah Park Property, and has the authority to enter into this Agreement and grant of the Easement. However, this Easement is granted expressly subject to encumbrances of record as of the date of execution set forth below and Grantor expressly disclaims any representation and warranty as to encumbrances and/or vested rights of third parties affecting Canemah Park Property that may conflict or interfere with the rights granted herein, or that it holds all rights necessary or incident to the City's use of the Easement.

11. COVENANTS. The rights granted herein shall be covenants running with the land and be binding upon and inure to the benefit of Grantor, and Grantee and their respective successors and assigns in perpetuity, except as otherwise set forth herein. Grantee covenants and agrees that, in the conduct of any and all of its activities and operations thereunder, it will comply strictly with all present and future rules and regulations of all federal, state, and local government bodies having jurisdiction over the activities occurring within the Canemah Park Property and if applicable, on adjacent real property owned by Grantor.

12. NOTICES. Grantor agrees to provide written notice of the existence of the Easement to any tenant, lessee, or assignee of Grantor who occupies the Property or acquires any interest in the Canemah Park Property from Grantor. All requests elections, notices and other communications to be given hereunder by either party to the other shall be in writing and sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

As to The City: Oregon City Community Development
Attn: Scott Archer
625 Center Street
Oregon City, Oregon 97045

As to Metro: Metro Natural Areas Program
Attn: Jim Desmond, Director
Metro Sustainability Center
600 NE Grand Avenue
Portland, OR 97232-2736

Changes of address may be accomplished for purposes of this section by giving the other party written notice of new address in the manner set forth above. Notices, elections and other communications shall be deemed effective upon receipt.

13. WAIVERS. No waiver made by Metro with respect to the performance, or manner or time thereof, of any obligation of the City or any condition inuring to Metro's benefit under this Easement shall be considered a waiver of any other rights of the Metro. No waiver by Metro of any provision of this Easement or any breach thereof, shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

14. COMPLIANCE WITH LAWS. The City agrees that it shall comply with all state, federal, and local laws applicable to the Canemah Park Property and the City's activities thereon.

15. NONEXCLUSIVE REMEDIES. The rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive. Except as otherwise limited or waived herein, said rights and remedies shall be in addition to and cumulative with any and all rights otherwise available at law or in equity, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach of any of its remedies for any other default or breach by the other Party.

16. MODIFICATIONS. Any modifications to this Agreement shall be made in writing and executed by both Parties.

17. ENTIRE AGREEMENT. This Agreement and the Exhibits hereto constitute the entire agreement

between the Parties, and supercede any and all other implied or express, oral or written agreements between the Parties with regard to this subject matter.

18. **TERM.** This Easement Agreement shall be perpetual. However, this Easement is granted on the express condition that the City use the Easement solely for the purposes stated herein. In the event the City uses the Easement for another purpose, then Metro may notify the City that it is in breach of this Easement, and the City shall have thirty (30) days to cure the breach by using the Canemah Park Property for the purposes stated herein. If the City fails to cure the breach within such 30-day period, then Metro may re-enter and terminate this Easement. In the event that the City fails to use the Easement for a continuous period of one (1) year at any time after the initial installation(s) authorized by this Easement, or, in the event the parties mutually agree to terminate this Easement, then Metro may re-enter and terminate this Easement. Additionally, on the 25th anniversary of the effective date of this Easement, and any time thereafter, Metro may re-enter and terminate this Easement.

THIS EASEMENT is executed this 28th day of October 2010.

METRO, GRANTOR

CITY OF OREGON CITY, GRANTEE

By: Michael J. Jordan
Name: Michael J. Jordan
Title: Chief Operating Officer

By: David W. Frasher
Name: David W. Frasher
Title: City Manager

APPROVED AS TO LEGAL SUFFICIENCY:

By: Edward J. Sullivan
Name: Edward J. Sullivan
Title: Oregon City Attorney

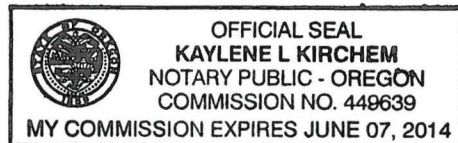
State of Oregon)
County of Multnomah) ss.

Scott A. [Signature] 9/15/10
COMMUNITY SERVICES DIRECTOR

On this 28th day of October 2010, before me Kaylene L. Kirchem, the undersigned Notary Public, personally appeared Michael Jordan, as Chief Operating Officer of Metro, a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

Kaylene L. Kirchem
My commission expires: June 7, 2014

State of Oregon)
County of Clackamas) ss.



On this 15th day of September 2010, before me Nancy S. Ide, the undersigned Notary Public, personally appeared David W. Frasher, as City Manager of City of Oregon City, a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

Nancy S. Ide
My commission expires: 12-01-2013

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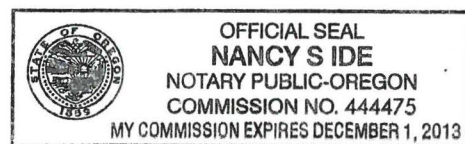
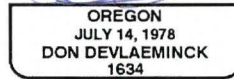
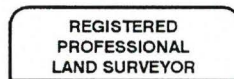


EXHIBIT "A"
SHEET 1 OF 2

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING LOTS 1 THROUGH 8, BLOCK "H", "FIRST ADDITION TO THE TOWN OF CANEMAH", A PLAT OF RECORD IN CLACKAMAS COUNTY, OREGON AND ALSO A PORTION OF PARCEL 1 AS DESCRIBED IN WARRANTY DEED TO METRO RECORDED AS DOCUMENT NUMBER 97-077678, CLACKAMAS COUNTY DEED RECORDS, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 4, BLOCK "H", "FIRST ADDITION TO THE TOWN OF CANEMAH"; THENCE ALONG A SOUTHWESTERLY PROJECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF THIRD AVENUE (FORMERLY CENTER STREET) 155 FEET; THENCE LEAVING SAID PROJECTION SOUTHEASTERLY TO A POINT ON THE WESTERLY LINE OF SAID BLOCK "H" WHICH IS LOCATED 140 FEET FROM SAID MOST WESTERLY CORNER OF LOT 4, BLOCK "H", "FIRST ADDITION TO THE TOWN OF CANEMAH"; THENCE NORTHERLY ALONG SAID WESTERLY LINE 140 FEET TO THE POINT OF BEGINNING.

CONTAINS 51566 SQUARE FEET, MORE OR LESS.



DATE OF SIGNATURE: 8/12/10
EXPIRES 12/31/2011

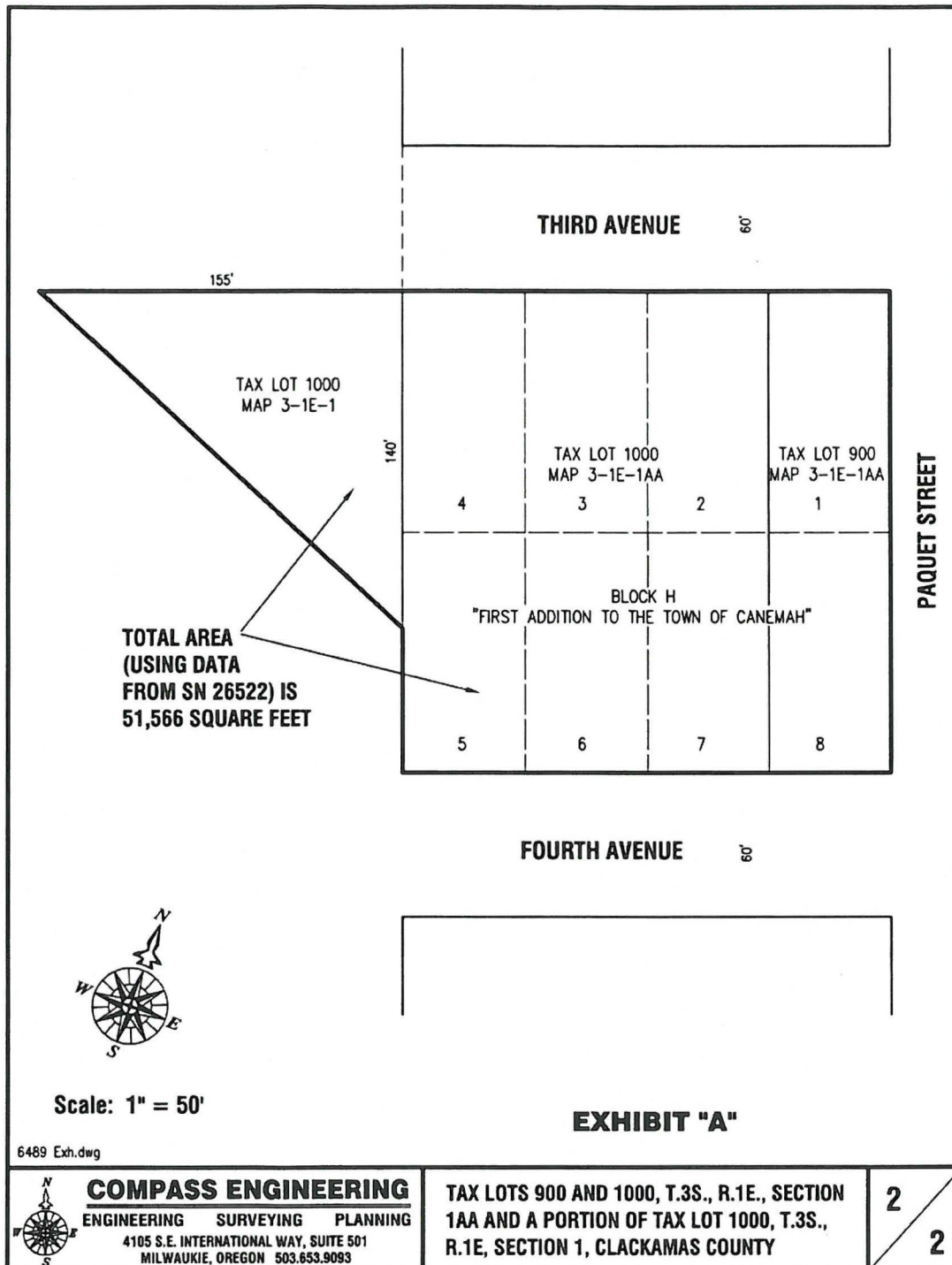
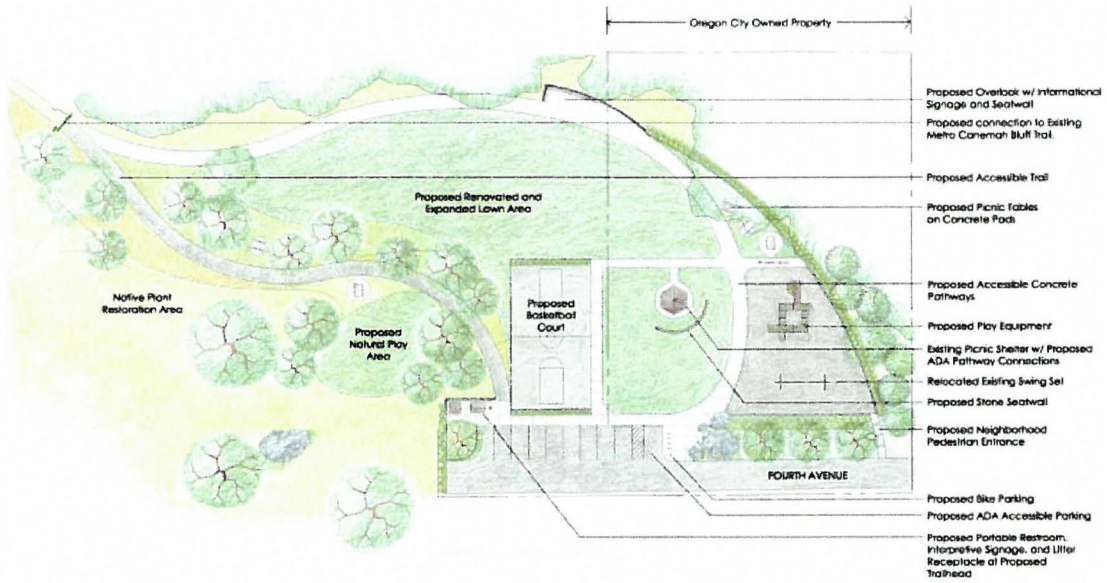


Exhibit B Improvements



Canemah Neighborhood Park Site Plan

City of Oregon City
Metro

Lango Hansen Landscape Architects

