

6P  
30N13



0239396620200953520060060

\$138.00

11/12/2020 02:42:04 PM

D-E Cnt=1 Stn=2 COUNTER3  
\$30.00 \$16.00 \$62.00 \$10.00 \$20.00

Metro  
600 NE Grand Ave.  
Portland, OR 97232

**Grantor Name and Address**

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

**Grantee Name and Address**

**After recording return to:**

Gary Shepherd  
Office of Metro Attorney  
600 NE Grand Ave.  
Portland, OR 97232

*Aaron Parker*  
*City of Oregon City*

**Send tax statements to:**

No change

Map No.: 32E05A  
Tax Lot: 01200  
Planning No.: SP-17-0029

**EASEMENT AGREEMENT  
City of Oregon City, Oregon  
Public Access Easement**

THIS AGREEMENT is between Metro, a municipal corporation ("Metro") and the City of Oregon City ("City"), a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the "City").

**RECITALS**

- A. Metro is the recorded owner of property commonly known as 32E05A/01200, County of Clackamas, State of Oregon (Metro property) recorded as document no. 2015-013311 in Clackamas County deed records.
- B. Metro applied for and the City issued site plan and design review application approval for a public nature park project at Metro's Newell Creek Canyon Natural Area (the "Development").
- C. The Notice of Decision in case file SP-17-0029 – Condition of Approval No. 8 – requires Metro to construct two hammerhead turnarounds with associated barrier and sign improvements at the dead ends of Otter Lane and Beaver Lane and thereafter to convey a public access easement for each hammerhead turnaround and associated barrier and sign improvements (referred to as "hammerhead" or "hammerheads").

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the City and Metro agree as follows:

**1. Covenant to Maintain and Repair.** Except when damage is caused by the City, its employees, contractors, or agents, in which case the City is responsible to promptly repair said damage to its prior condition, Metro shall, at its sole expense, itself or through qualified independent contractors, at all times maintain the two hammerheads adjacent to the dead end right of ways of Otter Lane and Beaver Lane in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, guidelines, and land use approvals.

**2. Easement.** Metro hereby grants an easement area for permanent public access and use of the hammerheads for turnaround purposes described as that area over which the existing two hammerheads were constructed pursuant to City approval and as depicted in Exhibit A. Except for infrastructure, including barriers and signs, related to the hammerheads and use thereof, no building, structure or utility (except as provided for below) shall be placed upon, under, or within the hammerheads and easement area without written permission from the City.

City's easement is subject to encumbrances of record and must be exercised consistent with pre-existing easement rights over the easement area, including but not limited to those held by Portland General Electric (PGE). Metro expressly disclaims any representation or warranty as to encumbrances or rights of third parties affecting Metro property that may conflict or interfere with the rights granted herein, or that Metro holds all rights necessary or incident to the use of the Easement.

**3. Signage.** The City shall have the right to install traffic and parking control signs on the subject property at any time in the future. City shall notify Metro of intent to install signage at least 30 days prior to beginning work, and agrees to work with Metro in good faith on installation details of such signage. Maintenance responsibility for the signs shall be with the City.

**4. Failure to Perform Covenant.** If the City, in its sole discretion, determines that Metro is not in compliance with the covenant described in Sections 1 and 2, except in the case of an emergency, the City or its designee shall give Metro written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the City's satisfaction within 180 days after the date of such notice, or such other time as the City may, in its sole discretion, determine, the City, its employees, independent contractors and designees may exercise their right under the Easement described in Section 2 of this Agreement to enter the property to perform any and all work required to bring the hammerheads into compliance with this Agreement.

**5. City Under No Obligation.** Metro, for itself and its successors and assigns determines that the City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the rights under Section 4 of this Agreement to perform the work required of Metro, or to perform other maintenance or repair of the hammerheads. Metro also agrees that none of the City, as well as its departments, employees, independent contractors and/or designees shall have any liability to Metro or any of Metro's successors or assigns in connection with the exercise or nonexercise of such rights, the maintenance or repair of the hammerheads, or the failure to perform the same.

**6. Metro Obligations.** In addition to the covenants and easement described above, Metro agrees to the following additional obligations.

- a. Prior to final approval of the Development, Metro shall sign and notarize this document and provide to the City to execute, process and record this document in the deed records of Clackamas County. The City shall provide a copy of the recorded document to Metro.
- b. Upon sale or transfer of the Development, or any portion thereof, Metro shall inform the purchaser of the obligations required under this Agreement.

7. **Reimbursement.** If the City exercises its rights under Section 4 and enters the Development pursuant to the Easement described in Section 2 of this Agreement, Metro shall reimburse the City for all of its costs and expense incurred in connection therewith within thirty (30) days after receipt of an invoice. If Metro fails to pay the invoices amount within such period, such amount shall thereafter accrue interest at the statutory rate.
8. **Indemnification.** Within the limits of the Oregon Tort Claims Act and the Oregon Constitution, Metro agrees to indemnify, defend (with legal counsel reasonably acceptable to the City) and hold harmless the City, its employees, independent contractors and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from Metro's failure to perform its obligations under this Agreement or the exercise of the City rights under this Agreement.
9. **Run with the Land.** The parties' rights and obligations contained herein shall run with the land and shall be binding upon Metro and its successors and assigns. Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.
10. **Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.
11. **Assignment.** The obligations of Metro under this Agreement may not be assigned except in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations).
12. **Authority.** The individual executing this Agreement on behalf of Metro represents and warrants to the City that he or she has the full power and authority to do so and that Metro has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

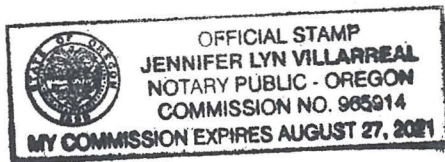
IN WITNESS WHEREOF, Metro and the City have executed this instrument on the date first written above.


**Metro,**  
an Oregon municipal corporation

  
Marissa Madrigal  
Chief Operating Officer

STATE OF OREGON, County of Multnomah) ss.

The foregoing instrument was acknowledged before me this 1 day of Sept., 2020,  
by Marissa Madrigal, Chief Operating Officer, Metro.



  
Notary Public for State of Oregon  
My Commission Expires: 8/27/21

**City of Oregon City,**  
an Oregon municipal corporation

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON, County of Clackamas) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ (name), \_\_\_\_\_ (title),  
City of Oregon City.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Accepted on behalf of the City of Oregon City:

  
By: Anthony J. Konkol III, City Manager

  
By: John M. Lewis, Public Works Director

  
Attest: Kattie Riggs, City Recorder

## EXHIBIT A – Sketch of Easement Area

Easement Area – hammerhead turnaround #1  
serving Otter Lane

Easement Area – hammerhead turnaround #2  
serving Beaver Lane

