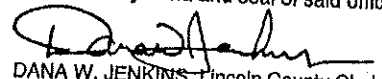


STATE OF OREGON } ss.
County of Lincoln

7 Pages

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon. WITNESS my hand and seal of said office affixed.


DANA W. JENKINS, Lincoln County Clerk



Doc : 200609509
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06/21/2006 02:31:23pm

After recording return to:

Devils Lake Water Improvement District
PO Box 974
Lincoln City, OR 97367

**EASEMENT AGREEMENT
FOR
ACCESS TO AND MAINTENANCE OF
"D" RIVER OUTLET CONTROL DEVICE**

City of Lincoln City, Grantor
to
Devils Lake Water Improvement District, Grantee

RECITALS:

A. Grantor is the record owner of real property in the SW 1/4 of the NE 1/4 of Section 15, T 7 S, R 11 W, W.M., Lincoln County, State of Oregon, described as Lot 1, Block 2, First Addition to Delake (Property). The Property is scheduled to be re-zoned so that it will be in the City's Park (P) Zone. In accord with Zoning Ordinance Sections 3.095(2)(g) and 3.096(2)(d), permitted uses in the P Zone include natural resource restoration and enhancement projects.

B. Devils Lake is a natural resource that benefits the City and the surrounding area. Devils Lake connects to the Pacific Ocean through the "D" River. As part of its work to restore and enhance Devils Lake, Grantee uses an outlet control device in the "D" River to control the level of water in Devils Lake. The outlet control device is in a part of the "D" River that is adjacent to the Property.

B. Grantee has requested that Grantor grant to Grantee an easement over a portion of the Property so that Grantee can gain access to the outlet control device and so that Grantee can use a portion of the Property as a staging area for Grantee's work involving the outlet control device. Grantor believes that Grantee's proposed use qualifies as a natural resource restoration and enhancement project and therefore is an allowed use in the P Zone, although Grantor has not made a formal determination to that effect.

C. Grantor is willing to grant the requested easement to Grantee, subject to the conditions and restrictions set out herein, with the whole consideration for Grantor's conveyance being Grantee's payment to Grantor of \$25,000, to be deposited into the City's Open Space Fund as a reimbursement for a portion of the purchase price the City paid for the Property, and other consideration set out herein.

AGREEMENT:

1. Grant of Easement. The Grantor, for the consideration stated in Section 2 of this Agreement, hereby grants to Grantee a permanent easement over the full width and length of the portion of the Property described as follows (Easement Area):

Beginning at the northwest corner of Lot 1, Block 2, First Addition to Delake, said point being a 5/8" iron rod marking the intersection of the east right of way line of Highway 101 and the north line of said Lot 1; thence, S 54 degrees 10' 00" E, 126.51 ft.; thence S 38 degrees 42' 16" W, 247.24 ft.; thence, West, 22.22 ft.; thence, N 54 degrees 41' 00" W, 83.19 ft. to the east line of Highway 101; thence, northeasterly along said line on a curve to the left, having a radius of 994.93 ft., the long chord of which bears N 32 degrees 59' 42" E for 261.01 ft., an arc distance of 261.76 ft. to the point of beginning.

Grantee's use of the Easement Area shall be only for the purposes, and shall be subject to the conditions and restrictions, set out in Section 3 of this Agreement.

2. Consideration for, and Commencement of, Easement.

a. Payment. Following execution of this Agreement, Grantee shall pay Grantor the sum of \$25,000 as consideration for the grant of the easement in Section 1 of this Agreement. The City shall deposit the amount paid into the City's Open Space Fund as a reimbursement for a portion of the purchase price the City paid for the Property.

b. Abandonment of Pre-Existing Easement Rights. Grantee hereby abandons the easement rights granted to Grantee by the Stipulated Judgment signed March 18, 1988 in Lincoln County Circuit Court Case No. 86-1356, recorded at Book 297, Pages 0316-0320, Lincoln County Deed Records.

c. Commencement of Easement Rights. Grantee's easement rights under this Agreement shall commence on Grantor's making of the payment to Grantee as provided for in subsection a. of this Section.

3. Use of Easement Area; Conditions and Restrictions.

a. Use of Easement Area. Grantee may use the Easement Area, as part of its work to restore and enhance Devils Lake, only as follows:

i. Access. For access to the "D" River outlet control device so that the District can operate, maintain, repair, replace, and otherwise service the outlet control device; and

ii. Staging Area. As a staging area for the District's work in operating, maintaining, repairing, replacing, and otherwise servicing the outlet control device.

b. Restrictions and Conditions.

i. *Compliance with Laws.* Grantee's use of the Easement Area shall be in strict compliance with all applicable City, County, State, and Federal laws and regulations. Grantee shall obtain all approvals and permits required under those laws and regulations for its use of the Easement Area, if any, and shall comply with all requirements and conditions of any such approvals and permits.

ii. *Storage in Easement Area.* Grantee shall not store any equipment, supplies, debris, dredged sand, or other materials in the Easement Area except with the advance written authorization of the Director of the City's Department of Parks and Recreation. Any such authorization shall identify what is authorized to be stored, the storage location, the timing and duration of the authorized storage, and any other conditions to which the storage shall be subject. Any such authorization shall be revocable by the Director, in the Director's discretion, on reasonable advance written notice to Grantee.

iii. *Protection of Property.* In exercising its rights hereunder, Grantee shall take such steps as are necessary or reasonably desirable to assure the protection of the land surface and subsurface of the Property, and of any vegetation thereon or therein, from any degradation or damage, assuring that Grantee and its authorized employees, agents, and contractors at all times conduct their activities in a manner such that the activities leave the Property, after any activity authorized hereby, in as good condition as prior to the activity. In the event Grantee or any of its authorized employees, agents, or contractors causes what the Director of the City's Department of Parks and Recreation determines to be a significant degradation or damage, Grantee shall restore the surface and subsurface area, including vegetation, to its prior condition, at the time and in the manner as directed in writing by the Director.

iv. *Non-Exclusivity of Easement.* Grantor's use of the Easement Area shall be non-exclusive of Grantor's use of the Easement Area for public park and recreation purposes. Grantor's use, however, shall not unreasonably interfere with Grantee's ability to carry out the access and staging functions described in subsection a. of this Section.

iv. *Protection of State of Oregon Easement Rights.* Grantee shall not use the Easement Area in a manner that is inconsistent with, and Grantee's use of the Easement Area shall be subservient to, the easement rights granted to the State of Oregon, by and through the State Highway Commission, by the Warranty Deed recorded at Book 127, Pages 178-179, Lincoln County Deed Records, to extend and maintain the slopes of cuts and/or fills for a distance of 40 feet from the eastern boundary of Highway 101, which easement rights overlap the Easement Area. In particular, Grantee's shall not use the Easement Area in a manner that removes or destroys lateral support to the Highway 101 right of way.

v. *Protection of Water Line Easement Rights.* Grantee shall not use the Easement Area in a manner that is inconsistent with, and Grantee's use of the Easement Area shall be subservient to, the water line easement rights created by the Easement recorded at Book 106, Page 382, Lincoln County Deed Records.

vi. *Future Relocation of Easement Area and Refinement of Easement Rights.* Grantor from time to time, on reasonable advance written notice to Grantee, may adjust the boundaries of the Easement Area and may impose refined limitations on Grantee's use of the Easement Area, provided that at all times, Grantee's easement rights must be sufficient to give Grantee the reasonable ability to carry out the access and staging functions described in subsection a. of this Section.

4. Indemnification. Grantee shall indemnify, hold harmless, and defend Grantor and Grantor's officers, agents, and employees against any and all claims of and liability to third parties, including but not limited to other governmental entities, and any expenses related thereto, arising out of the exercise of Grantee's rights hereunder by Grantee or by its officers, employees, agents, or contractors.

5. Termination. Grantor and Grantee may terminate this Agreement at any time by mutual written agreement, on such terms as are set out in the termination agreement.

6. Breach of Agreement and Remedies for Breach.

a. Breach by Grantee. If Grantee or any officer, employee, agent, or contractor of Grantee engages in any act that violates any provision of this Agreement or fails to take an action required by any provision of this Agreement, then Grantee shall be in breach of this Agreement if Grantee fails, within seven days after receiving written notice from Grantor specifying the breach, to commence and continue correction of the breach with diligence and promptness until the breach is corrected.

b. Grantor's Remedy for Breach.

i. *Correction by Grantor.* If Grantee has breached this Agreement as described in subsection a. of this Section, Grantor thereafter at any time may take such actions as are reasonably necessary or desirable to remedy the breach. Grantee thereafter, within 30 days after receipt of a written billing from Grantor documenting Grantor's cost to remedy the breach, shall reimburse Grantor for the cost.

ii. *Termination by Grantor.* If Grantee engages in repeated breaches of any provision of this Agreement, then Grantor may give Grantee written notice of Grantor's intention to terminate this Agreement if Grantee engages in a further breach of that provision. Thereafter, if Grantee engages in a further breach of that provision within five years after the written notice, Grantor may, by written notice to Grantee, terminate this Agreement.

On termination, all rights and obligations of Grantor and Grantee shall cease, except for those provisions, including but not limited to provisions about indemnification, remedies, and governing law and venue, which by their nature must survive termination in order to accomplish the intent of the parties concerning the effects of this Agreement. For purposes of this subsection, the breach of a provision of this Agreement shall be deemed to be repeated if it has occurred three times in any six calendar years.

c. Breach by Grantor. If Grantor or any officer, employee, agent, or contractor of Grantor engages in any act that violates any provision of this Agreement or fails to take an action required by any provision of this Agreement, then Grantor shall be in breach of this Agreement if Grantor fails, within seven days after receiving written notice from Grantee specifying the breach, to commence and continue correction of the breach with diligence and promptness until the breach is corrected.

d. Grantee's Remedy for Breach. If Grantor has breached this Agreement as described in subsection c. of this Section, Grantee thereafter at any time may take such actions as are reasonably necessary or desirable to remedy the breach. Grantor thereafter, within 30 days after receipt of a written billing from Grantee documenting Grantee's cost to remedy the breach, shall reimburse Grantee for the cost.

e. Specific Performance. In addition to Grantor's and Grantee's other remedies in case of breach of this Agreement, each shall have the right to a court judgment requiring specific performance by the other of its obligations.

f. Limitation of Remedies. The remedies set out in this Section and Grantor's right to indemnification set out in Section 4 shall be the parties' sole remedies for breach of this Agreement.

7. **Force Majeure.** Neither Grantor nor Grantee shall be responsible for a breach caused by fire, riot, weather, war, or comparable occurrence where the cause and the resulting breach was beyond the reasonable control of Grantor or Grantee. The party in breach, however, immediately shall make all reasonable efforts to minimize the effects of the breach and shall, on cessation of the cause, commence and continue correction of the breach with diligence and promptness until the breach is corrected.

8. **Assignment by Grantee.** Grantee shall not assign, sell, dispose of, or transfer its rights or obligations under this Agreement, in whole or in part, without Grantor's prior written consent. Unless otherwise agreed to by Grantor in writing, such consent shall not relieve Grantee of any obligations under this Agreement. Any consented-to assignee or transferee shall be bound by all provisions of this Agreement.

9. **Governing Law and Venue.** This Agreement shall be governed by and construed in accord with the laws of the State of Oregon. Any claim, action, suit, or proceeding between Grantor and Grantee that arises from or relates to this Agreement shall be brought and conducted

solely and exclusively in the Lincoln County Circuit Court and the Oregon appeals courts thereafter.

10. Merger. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

11. Waiver. No waiver or consent under this Agreement shall bind either party unless given in writing and signed by an authorized representative on behalf of the party giving the waiver or consent. The failure of either party to enforce any provision of this Agreement, except by such a signed and written waiver, shall not constitute a waiver of that or any other provision. Any waiver or consent shall be effective only in the specific instance and for the specific purpose given.

12. Amendments. This Agreement may be amended only by a written amendment signed by both parties.

13. Affect on Title. This Agreement affects the title and rights in relation to the Property, shall run with title to the Property, shall be binding on all successors in interest to the Property and on all successors in interest to the rights granted hereunder, and shall be recorded in the deed records of Lincoln County, Oregon. Grantor shall cause the recording to occur, at Grantor's expense.

14. Notice. Any notice required, provided for, or otherwise given under this Agreement shall be sufficient if actually delivered in writing to Grantor's City Manager or to Grantee's Manager and shall be deemed given on the date of actual delivery. Alternatively, notice shall be sufficient if in writing deposited in the United States mail, certified mail, return receipt requested, postage prepaid, and addressed to the following address or to such other address as requested by notice given in accord with this subsection:

If to Grantor: City Manager
 PO Box 50
 Lincoln City, OR 97367

If to Grantee: Devils Lake Water Improvement District
 PO Box 974
 Lincoln City, OR 97367

A notice so addressed and mailed shall be deemed given three days after mailing.

CITY OF LINCOLN CITY

DEVILS LAKE WATER IMPROVEMENT DISTRICT

By: *[Signature]*

By: *[Signature]*

Its: City Manager

Its: Lake Manager

STATE OF OREGON)
)ss.
County of Lincoln)

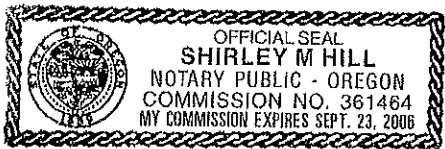
On this 9th day of May, 2006, before me personally appeared DAVID HAWKER, known by me to be the person whose name is subscribed to the within instrument, and acknowledged that he is the City Manager for the City of Lincoln City and is duly authorized to and did execute the within instrument for the purposes contained therein.



[Signature]
Notary Public for Oregon
My commission expires: 06/30/2009

STATE OF OREGON)
)ss.
County of Lincoln)

On this 28th day of April, 2006, before me personally appeared PAUL ROBERTSON, known by me to be the person whose name is subscribed to the within instrument, and acknowledged that he is the Lake Manager for the Devils Lake Water Improvement District and is duly authorized to and did execute the within instrument for the purposes contained therein.



Notary Public for Oregon
My commission expires: 9/23/06
[Signature]

