



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No. 37-2014

A resolution of the City Council of the City of Milwaukie, Oregon, HEREBY AUTHORIZING THE CITY MANAGER TO ENTER INTO AN "AGREEMENT FOR PERMIT OF USE" WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT IN ORDER TO RECEIVE PERMISSION OF ACCESS TO RIVERFRONT PARK ACROSS THE TROLLEY TRAIL.

WHEREAS, the City is seeking to construct park and recreation improvements at its Riverfront Park along the Willamette River; and

WHEREAS, North Clackamas Parks and Recreation District owns and operates the Trolley Trail; and

WHEREAS, portions of the Trolley Trail run through the Riverfront Park; and

WHEREAS, the City desires to redesign the traffic access to Riverfront Park and such traffic access would cross that certain portion of the Trolley Trail; and

WHEREAS, the Parties desire to enter into an agreement to outline the rights and responsibilities of the parties with respect to such a change.

Now, Therefore, be it Resolved the City Manager has the Authority to enter into an "Agreement for Permit of Use" with the North Clackamas Parks and Recreation District in order to receive permission of access to Riverfront Park across the Trolley Trail.

Introduced and adopted by the City Council on 4/15/14.

This resolution is effective on 4/15/14.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

**AGREEMENT FOR PERMIT OF USE
BETWEEN
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
AND
THE CITY OF MILWAUKIE**

THIS AGREEMENT (this "Agreement") to permit the use of property for parks purposes, made and entered into on this 15th day of April in the year 2014 by and between North Clackamas Parks and Recreation District, a county service district formed under ORS 451 ("NCPRD"), and the City of Milwaukie, a municipal corporation (the "City").

RECITALS

WITNESSETH: That whereas City is seeking to construct park and recreation improvements at its Riverfront Park property along the Willamette River ("Riverfront Park"), which is within the boundaries of NCPRD;

WHEREAS, NCPRD owns and operates the Trolley Trail, a portion of which runs through Riverfront Park;

WHEREAS, the City desires to redesign the traffic access to Riverfront Park and such traffic access would cross that certain portion of the Trolley Trail as more fully described on Exhibit A hereto (the "Affected Area") and NCPRD is supportive of the City's vision for the site;

WHEREAS, the Parties desire to enter into this Agreement to outline the rights and responsibilities of the parties with respect to such a change;

NOW, THEREFORE, the NCPRD and the City for the considerations hereinafter set forth agree as follows:

ARTICLE 1 – NCPRD RESPONSIBILITIES

- 1.1 Access.** In accordance with applicable NCPRD ordinances, local, state or federal laws or statutes, ordinances, rules or regulations, NCPRD grants permission to the City to utilize the Affected Area in support of the provision of park services.
- 1.2 Term.** The permission granted is perpetual in duration and irrevocable for so long as the Affected Area is used in providing park services as described herein. If the City ceases to use Riverfront Park as a park amenity, the permission shall terminate upon 30 days written notice by one party to the other.

ARTICLE 2 – PERMITEE'S RESPONSIBILITIES

- 2.1 Trolley Trail Functionality.** City shall develop a construction plan, traffic flow plan, pedestrian access, crossing plan, or other such plan as reasonably determined is required by NCPRD staff to ensure that users of Trolley Trail users may safely and appropriately cross

the Affected Area. Such plans shall be submitted to NCPRD staff and approved by both parties before construction begins in the Affected Area. Approval by NCPRD shall not be unreasonably withheld or delayed.

2.2 Restrictions of Use. City agrees follow all legal requirements and to comply with any restrictions of use related to the Affected Area as required by this Agreement and the plans approved under paragraph 2.2.

2.3 Restoration of the Property Upon Termination. If the permission to utilize the Affected Area is terminated as set forth in Section 1.2 above, City shall either (i) restore the Affected Area to the same condition it was in when City first entered, at City's sole cost, or (ii) purchase the Affected Area and grant an easement to NCPRD for the continued used of the area in support of the Trolley Trail and related purposes.

2.4 Trail Use & Access. Once a plan has been developed pursuant to Section 2.1 and approved by the District, the City shall implement the plan. The City shall ensure that full functionality of the Trolley Trail is maintained, including but not limited to user crossings in a safe and responsible manner during and after construction activities, during and after normal park operating hours, during any maintenance activities, or otherwise unless mutually agreed to by the parties prior to such activity.

ARTICLE 3 – ADDITIONAL PROVISIONS

3.1. Consideration. NCPRD acknowledges and agrees that no consideration is required from City is the granting of this permission in light of City's support for the mission of the district in providing enhanced park and recreational opportunities to district residents.

3.2 Indemnification. Within the limits of the Oregon Tort Claims Act, the City agrees to indemnify, save harmless and defend NCPRD, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, of the City or City's officers, owners, employees, agents, or its subcontractors or anyone over which City has a right to control, arising from the use of the Affected Area.

3.3 Assignment. City shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the NCPRD, which may be granted or withheld in its sole and absolute discretion. NCPRD may assign this Agreement at any time.

3.4 Severability. If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

3.5 Integration. This Agreement contains the entire agreement between NCPRD and the City with respect to the Affected Area and supersedes all prior written or oral discussions or agreements.

3.6 Amendments. The NCPRD and the City may amend this Agreement at any time only by written amendment executed by the NCPRD and the City.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

CITY OF MILWAUKIE

NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT



William Monahan, City Manager

4/15/14
Date



Gary Barth, Director

4/1/14
Date

EXHIBIT A

Description of the Affected Area of the Trolley Trail

ENGINEERING PLANNING
FORESTRY
13910 S.W. Galbreath Dr., Suite 100
Sherwood, Oregon 97140
Phone: (503) 925-8799
Fax: (503) 925-8969
AKS Job #3836



LANDSCAPE ARCHITECTURE
SURVEYING
AKS Group of Companies:
SHERWOOD, OREGON
SALEM, OREGON
VANCOUVER, WASHINGTON
www.aks-eng.com

EXHIBIT A

Access Easement

A tract of land located in the Northeast One-Quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, City of Milwaukie, Clackamas County, Oregon and being more particularly described as follows:

Beginning at the northeast corner of Block 39 of the Plat of "Milwaukie", being a point on the southerly right-of-way line of Adams Street (35.00 feet from centerline); thence along said southerly right-of-way line and the westerly extension thereof South 81°53'00" West 290.00 feet to a point on the westerly right-of-way line of Highway 99E (40.00 feet from centerline); thence along said westerly right-of-way line South 08°07'00" East 40.39 feet to the **True Point of Beginning**; thence continuing along said westerly right-of-way line South 08°07'00" East 80.00 feet to a point; thence South 81°27'04" West 39.01 feet to a point on the easterly line of Document Number 70-27388; thence along said easterly line North 04°24'15" West 80.21 feet to a point; thence North 81°27'04" East 33.82 feet to the **True Point of Beginning**.

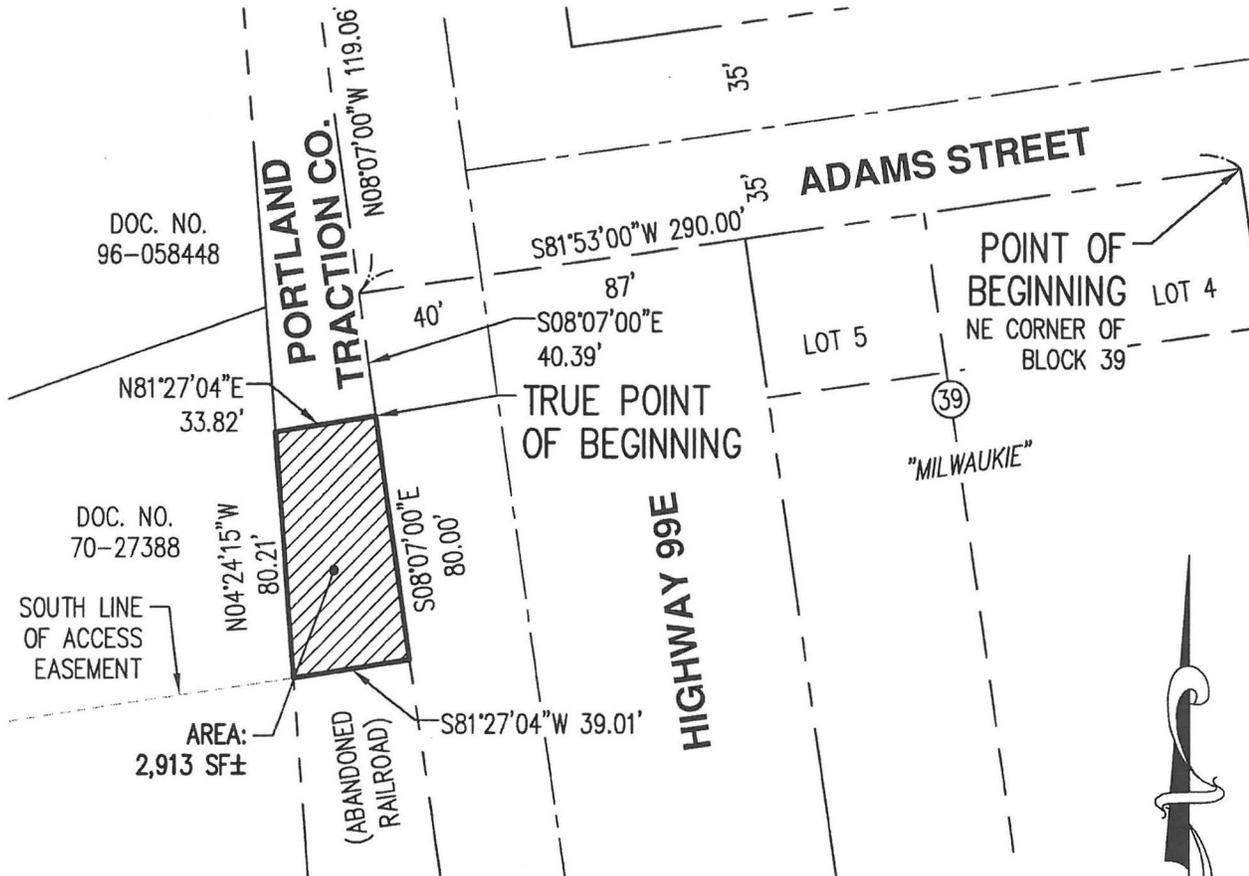
The above described tract of land contains 2,913 square feet, more or less.



EXHIBIT B

MAP OF ACCESS EASEMENT

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4,
SEC. 35, T1S, R1E, W.M., CITY OF MILWAUKIE,
CLACKAMAS COUNTY, OREGON



DOC. NO.
96-058448

DOC. NO.
70-27388

SOUTH LINE
OF ACCESS
EASEMENT

AREA:
2,913 SF±

SCALE 1" = 60 FEET



PREPARED FOR
CITY OF MILWAUKIE
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OR 97206

12-10-13

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/14

RIVERFRONT PARK
JOB NAME: ACCESS EASEMENT

JOB NUMBER: 3836

DRAWN BY: MSK

CHECKED BY: RDR

DWG NO.: 3836CXMP

AKS ENGINEERING AND FORESTRY, LLC
13910 SW GALBREATH DR
SUITE 100
SHERWOOD, OR 97140
PHONE: 503.925.8799
FAX: 503.925.8969

ENGINEERING · PLANNING · SURVEYING
FORESTRY · LANDSCAPE ARCHITECTURE

ENGINEERING PLANNING
FORESTRY

13910 S.W. Galbreath Dr., Suite 100
Sherwood, Oregon 97140
Phone: (503) 925-8799
Fax: (503) 925-8969
AKS Job #3836



LANDSCAPE ARCHITECTURE
SURVEYING

AKS Group of Companies:
SHERWOOD, OREGON
SALEM, OREGON
VANCOUVER, WASHINGTON
www.aks-eng.com

EXHIBIT A

Access Easement

A tract of land located in the Northeast One-Quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, City of Milwaukie, Clackamas County, Oregon and being more particularly described as follows:

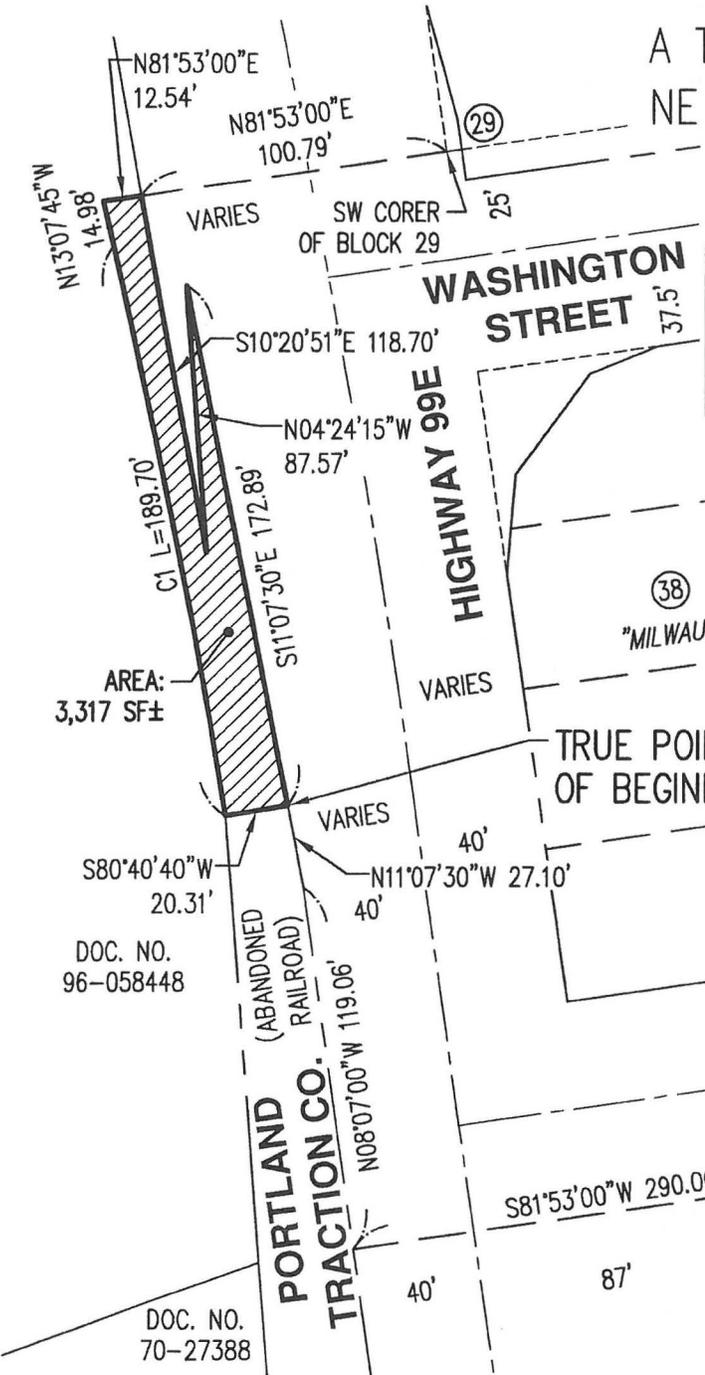
Beginning at the northeast corner of Block 39 of the Plat of "Milwaukie", being a point on the southerly right-of-way line of Adams Street (35.00 feet from centerline); thence along said southerly right-of-way line and the westerly extension thereof South 81°53'00" West 290.00 feet to a point on the westerly right-of-way line of Highway 99E (40.00 feet from centerline); thence along said westerly right-of-way line North 08°07'00" West 119.06 feet to an angle point; thence following said westerly right-of-way line, North 11°07'30" West 27.10 feet to the **True Point of Beginning**; thence South 80°40'40" West 20.31 feet to an angle point on the easterly line of Document Number 96-058448; thence following the easterly line of said Document Number 96-058448 along a curve to the left, being non-tangent to the last described course, with a Radius of 2855.00 feet, Delta of 03°48'25", Length of 189.70 feet, and a Chord of North 11°13'32" West 189.67 feet to a point; thence following said east line of Document Number 96-058448 North 13°07'45" West 14.98 feet to a point on the westerly extension of the south line of Block 29 of said Plat; thence along said westerly extension North 81°53'00" East 12.54 feet to a point on said westerly right-of-way line of Highway 99E (variable width right-of-way); thence along said westerly right-of-way line, South 10°20'51" East 118.70 feet to a point; thence along said westerly right-of-way line, North 04°24'15" West 87.57 feet to a point; thence along said westerly right-of-way line, South 11°07'30" East 172.89 feet to the **True Point of Beginning**.

The above described tract of land contains 3,317 square feet, more or less.



EXHIBIT B

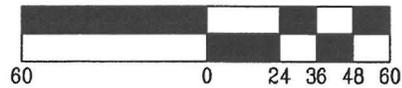
MAP OF ACCESS EASEMENT
 A TRACT OF LAND LOCATED IN THE
 NE 1/4, SEC. 35, T1S, R1E, W.M.,
 CITY OF MILWAUKIE,
 CLACKAMAS COUNTY, OREGON



CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	2855.00'	3°48'25"	189.70'	N11°13'32\"W 189.67'

PREPARED FOR
 CITY OF MILWAUKIE
 6101 SE JOHNSON CREEK BLVD.
 MILWAUKIE, OR 97206

SCALE 1" = 60 FEET



AREA:
 3,317 SF±

DOC. NO.
 96-058448

DOC. NO.
 70-27388

12-10-13

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JANUARY 11, 2005
 ROBERT D. RETTIG
 60124LS

RENEWS: 12/31/14

RIVERFRONT PARK
 JOB NAME: ACCESS EASEMENT
 JOB NUMBER: 3836
 DRAWN BY: MSK
 CHECKED BY: RDR
 DWG NO.: 3836CXMPL

AKS ENGINEERING AND FORESTRY, LLC
 13910 SW GALBREATH DR
 SUITE 100
 SHERWOOD, OR 97140
 PHONE: 503.925.8799
 FAX: 503.925.8969



ENGINEERING · PLANNING · SURVEYING
 FORESTRY · LANDSCAPE ARCHITECTURE