

A RESOLUTION APPROVING AN AGREEMENT FOR THE CONVEYANCE OF REAL PROPERTY BETWEEN THE CITY OF ALBANY, OREGON AND THE BOYS AND GIRLS CLUB OF ALBANY AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT AND RELATED DOCUMENTS.

WHEREAS, the Boys and Girls Club of Albany (hereafter, the "Club") owns certain real property in the City of Albany, Oregon, which is desirable for use as a public park; and

WHEREAS, the Club has offered to convey said real property as a donation to the City of Albany, Oregon (hereafter, the "City") for development and operation as a public park; and

WHEREAS, the City desires to accept this offer and intends to develop a park to benefit the entire community, as well as the members of the Club; and

WHEREAS, an Agreement for Conveyance of Real Property has been drafted, which memorializes the terms and conditions to which the parties have agreed;

NOW THEREFORE BE IT RESOLVED by the Albany City Council that the Agreement for Conveyance is approved and that the City Manager is hereby authorized to sign the Agreement and related documents.

DATED THIS 10th DAY OF DECEMBER 2007.



City Council President

ATTEST:



City Clerk

AGREEMENT FOR CONVEYANCE OF REAL PROPERTY

This Agreement is made and entered into this 11th day of December, 2007, by and between the **CITY OF ALBANY, OREGON**, a municipal corporation, (hereinafter referred to as "Albany") and the **BOYS and GIRLS CLUB OF ALBANY**, an Oregon nonprofit corporation (hereinafter referred to as "Club").

WHEREAS, the Club owns certain real property in the City of Albany, Linn County, Oregon, which is suitable for use by Albany as a park; and

WHEREAS, Albany desires to accept the Club's property on Oak Street for the creation of a public use park; and

WHEREAS, it is the intent of this Agreement to memorialize the terms under which the parties have agreed to the aforesaid purchase and sale:

AGREEMENT

Now, therefore, in consideration of the mutual promises contained herein, it is agreed as follows:

1. ***Conveyance of Oak Street Park Project Property.*** Upon approval of the City Council of Albany, Albany agrees to accept, and the Club agrees to convey that certain real property located in the City of Albany, Oregon, and more particularly described in Exhibit "1," attached hereto and by this reference incorporated herein.
2. ***Consideration for Conveyance.*** The Oak Street Park Project Property (hereinafter "Property") is being conveyed without additional consideration as a donation from the Club to Albany.
3. ***Covenants of Title.*** The Club agrees to convey Property by deed free of any encumbrances, except for rights of the public and governmental bodies as shown in Easements, Reservations and Restrictions of record and except the reserved mineral rights of Southern Pacific Transportation Company, if any, and except reserving to the Club the right of reversion in the event that the property is not available to the public for park use for a total of six (6) consecutive months. Upon occurrence of that event, title to the property shall immediately revert to the Club without any compensation to the City. The foregoing right of reversion shall be void and of no effect after December 31, 2037.

4. ***Additional Agreements.***

- 4.1 In addition to accepting conveyance of the Property described in paragraph 1 above, Albany agrees to develop the property as a public use park, to make the improvements described in the Site Plan (SP-15-00) approved by the City of Albany on March 28, 2001, not later than October 31, 2008, and to operate the property in accordance with the conditions of that approval.
- 4.2 Albany further agrees to enter into an Operating Agreement with the Club for the routine maintenance and operation of the Property. The Operating Agreement shall be negotiated with a good faith effort on an annual basis and shall govern items such as operation of the park, schedules of use, desired capital improvements, maintenance in excess of that which is the obligation of the City and any other operational matter. It is anticipated that the Boys & Girls Club will be a principal user of the facility and will be treated by the City as a priority customer in the scheduling of ball-field usage. At a minimum, Albany agrees to provide for basic utilities (water, sewer and garbage), mowing and cleaning of the property. The Club agrees to provide for operating costs above the basic costs as provided in the Operating Agreement.
- 4.3 Albany and the Club further agree that major capital improvements, in addition to those which are the City's responsibility under Section 4.1 above, will be negotiated on an individual basis.
- 4.4 Albany agrees to negotiate in good faith with J. Conser & Sons concerning reciprocal overflow parking as described in Albany Planning Commission Staff Report CP-02-05 and ZC-02-05 dated February 13, 2006.
- 4.5 Albany agrees to name the park Kinder Park.

5. ***Conditions.*** It is expressly agreed that each party's obligations hereunder shall be conditioned upon the occurrence of the following:

- 5.1 The City Council of the City of Albany and the Board of Directors of the Club must approve the terms of this Agreement.
- 5.2 The Club must transfer the Property free of any encumbrance excepting those described in Section 3 of this Agreement.

6. ***Closing.*** The transfer of the Property shall occur as soon as practical after execution of this Agreement but not later than January 31, 2008. The City shall pay for

closing costs, title insurance, and recording costs. The Club and Albany will each pay its own attorney fees related to this transaction.

7. ***Binding Effect/Assignment Restricted.*** This Agreement is binding upon all parties and shall inure to the benefit of the Club, Albany, and their respective heirs, legal representatives, successors, and assigns.

8. ***Attorney Fees.*** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

9. ***Notices.*** All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party as the address first set forth below. Any notices so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

To Albany: City of Albany
333 Broadalbin Street
P.O. Box 490
Albany, OR 97321

To Buyer: Boys & Girls Club of Albany
PO Box 691
Albany, OR 97321

10. ***Entire Agreement.*** This Agreement sets forth the entire understanding of the parties with respect to the conveyance of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

11. ***Applicable Law.*** This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

12. ***Disclaimer.*** The property described in this instrument may not be within a Fire Protection District Protecting Structures. The property is subject to land use laws and regulations which, in farm or forest zones, may not authorize construction or siting of a residence ***AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES.*** Before signing or accepting this instrument, the person acquiring fee title to the property

should check with the appropriate city or county planning department to verify approved uses and existence of fire protection for structures.

13. **Representation.** This Agreement is the subject of a negotiated transaction wherein both sides have had input into the terms hereof. As a consequence, the customary rule of contractual construction which resolves ambiguities against the drafter shall not apply. Albany has been represented in this transaction by the law firm of Long, Delapoer, Healy, McCann & Noonan, P.C., Attorneys at Law. Club has been represented in this transaction by the law firm of Evashevski, Elliott, Cihak, & Hediger, P.C., Attorneys at Law. Each party acknowledges that they have relied strictly on the advice and representations provided to them by their respective attorneys.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the date and year first above written.

CITY OF ALBANY, OREGON

By Wes Hare
Wes Hare, City Manager

BOYS & GIRLS CLUB OF ALBANY, AN OREGON
NON-PROFIT CORPORATION

By William O'Bryan
William O'Bryan, President