

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN EASEMENT AGREEMENT WITH LINN COUNTY FOR EXTENSION OF ELECTRICAL SERVICE AT LINN COUNTY'S WATERLOO PARK.

WHEREAS, Albany's Federal Energy Regulatory Commission license requires monitoring South Santiam River flows in order to determine allowable hydropower flow diversions into the Santiam-Albany Canal; and

WHEREAS, the United States Geological Survey (USGS) maintains a river flow monitoring station on the South Santiam River adjacent to Linn County's Waterloo Park; and

WHEREAS, for control of hydropower flow diversions, the Waterloo river flow needs to be transmitted to Albany's Diversion Dam Control Room for control of river flow diversions; and

WHEREAS, transmitting the river flow value will require installing new water level measuring and communication devices at the existing USGS station; and

WHEREAS, this equipment requires dependable 120-V electrical power; and

WHEREAS, the existing USGS Station is only served by a small solar panel which is inadequate for the needs of the new equipment; and

WHEREAS, the USGS and the Corps of Engineers has agreed to allow Albany to install the new equipment in existing gauging station; and

WHEREAS, Linn County has agreed to allow Albany to connect to their existing electrical service at the Park's Restroom for routing a new buried conduit to the USGS Station; and

WHEREAS, to permit the above work to proceed, Linn County is requesting that Albany enter into an easement agreement in return for connecting to their electrical service; and

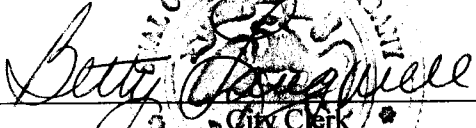
WHEREAS, the attached Easement has been reviewed by Linn County's Commissioners, and also Albany's City Attorney, both of whom are in agreement with its stated easement terms.

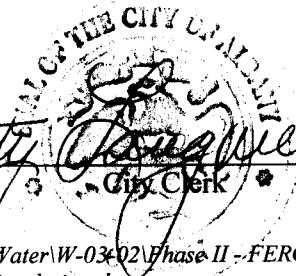
NOW, THEREFORE, BE IT RESOLVED, that the Albany City Council approves the attached easement agreement and authorizes the City Manager to sign on Albany's behalf.

DATED AND EFFECTIVE THIS 25TH DAY OF FEBRUARY 2009.


Mayor

ATTEST:


Betty Douglaswell
City Clerk





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I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk



AFTER RECORDING RETURN TO:

City of Albany
333 Broadabinsw
Albany, Or. 97321

SEND TAX STATEMENTS TO:

There is no change to where tax statements are sent.

EASEMENT

(Approved pursuant to Resolution and Order No. 2009-029)

THIS INSTRUMENT was entered into on May 13, 2009, by and between:

GRANTOR:	LINN COUNTY, a political subdivision of the State of Oregon (called "Grantor" or "County"); and
GRANTEE:	CITY OF ALBANY, a municipal corporation (called "Grantee" or "City").

In consideration of the total compensation of \$1 to be paid by Grantee, and for other valuable consideration, such as completing the surveying work required for Exhibit A of this grant of easement, LINN COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "Grantor" or "County", has this day granted a limited easement to the CITY OF ALBANY, a municipal corporation, hereinafter referred to as "Grantee" or "City", to use the following described real property (hereafter "the Burdened Property"):

See attached Exhibit A.

This easement is not an exclusive easement but is subject to the superior right on the part of the Grantor, it's invitees, successors, and assigns, of ingress and egress over the Burdened Property which right is expressly reserved. This easement is not appurtenant to any land of the Grantee, but is an easement in gross. This easement is not intended to inure to the benefit of the successors and assigns of the Grantee and such right to grant further access over this easement is expressly reserved.

In the event the City becomes insolvent, bankrupt or commits a breach of any of the agreements on its part to be done, kept or performed, then upon default or breach of covenant, and upon written notice given by the Linn County Parks and Recreation Director to the City Manager for the City of Albany of the intention of Linn County to nullify this contract, all of the rights, agreements, and privileges granted to City under this agreement shall cease and determine, and revert to and become reinvested in County as fully and completely as if this agreement had not been made.

Grantor's grant of this easement, and Grantee's enjoyment of the easement, is conditioned on and subject to the following terms and conditions:

1. Grantee has no interest in the underlying fee simple title to Tax Lot 900.
2. Grantee accepts this easement subject to all encumbrances of record.
3. Grantee, it's employees, independent contractors and agents shall use the Burdened Property for the narrowly construed purpose of placing an underground electrical utility line(s) from the Claude Cox Day Use Restroom Facility in Waterloo Park to the gauging station for the sole purpose of providing electricity to the gauging station only (hereafter "underground electrical line"). Grantee agrees that the preceding

sentence contains the underlying particular purpose for the grant of easement, and accordingly, no permanent structure can be constructed on this easement. Such use of the Burdened Property is further defined as follows:

a. This use shall include the right to enter upon the real property herein described, and to maintain and repair such underground electrical line for the purpose of transferring electricity through and under the lands herein described, together with the right to excavate and refill ditches and/or trenches for the location of the said underground electrical line and the further right to remove under-growth if it is an obstruction interfering with the location and maintenance of said underground electrical line, except as may be otherwise herein limited.

b. This use does not include the right to remove trees and bushes, even if the trees and bushes are obstructions interfering with the location and maintenance of the underground electrical line, and this right is expressly reserved, unless the removal of one or more trees and bushes are necessary to construct or maintain the underground electrical line location within the boundaries of the easement location as shown on the attached map, then such trees and bushes may be removed by the City, provided the City agrees to purchase and plant 3 replacement trees for every 1 tree or bush removed, in an acceptable location within the park, and of an acceptable species, as determined by the Linn County Parks and Recreation Director.

c. This use does not include the right to place any additional public utility service lines in the ground, other than the underground electrical line to provide electricity to the gauging station only, except for the replacement of such underground electrical line, and these rights are expressly reserved. Grantee explicitly agrees that Grantor, at Grantor's expense, may use the location of the underground electrical line contained within the Burdened Property to place additional County public utility service lines, or to pull other County electrical lines within the electrical conduit of the City's underground electrical line, to provide utility services to other locations in the park.

d. This use does not include the right to use said underground electrical line for a purpose other to provide electricity to the gauging station and this right is expressly reserved. Grantee agrees that Grantor, at Grantor's expense, may utilize the underground electrical line in the future to provide a splice to, or otherwise connect to, at the gauging station, or along the easement strip that is the Burdened Property, the underground electrical line to extend County electrical utility service lines further into the park.

e. This use does not include the right to place anything above ground on the Burdened Property, including a power pole, power line, or any other fixture, without limitation, and these rights are expressly reserved.

4. The permanent easement described herein grants to the City, its employees, authorized agents or contractors, the perpetual right to enter upon said easement for construction, maintenance, evaluation and/or repair purposes during the hours when the park is normally open, or at other times as agreed by the Linn County Parks and Recreation Director, or in case of an emergency, as City may see fit, but only to satisfy said emergency.

5. This easement passes through a portion of Waterloo County Park, and may lie on the existing established roadway in the park, or future foot path or roadway not yet established in the park.

6. Upon performing any construction, maintenance, evaluation and/or repair, the City, at City's cost, without limitation, will return the Burdened Property to its original or better condition, as determined by the Linn County Parks and Recreation Director.

7. The easement shall follow the location as depicted on the map in Exhibit ~~A~~^B, attached hereto, and by this reference incorporated herein.

8. Grantee agrees to indemnify, defend and hold Grantor harmless from any loss, claim or liability to Grantor arising in any manner out of Grantee's, its employees, agents, independent contractors and/or invitee's (hereafter, collectively referred to as "Others") use of the easement strip. Grantee shall pay Grantor within 30-days' demand for any property of Grantor's damaged by Grantee's and/or Other's use of this easement. Grantee and Others assume all risk arising out of their use of the easement strip and Grantor shall have no liability to Grantee or Others for any condition existing thereon. Furthermore, Grantee agrees to indemnify, defend and hold Grantor harmless from any loss, claim or liability to Grantor and/or Others arising from park users, members of the public, or other persons, or entities, entering or damaging Grantee's property, whether real or personal, without limitation.

9. This easement is conditioned on Grantee's acceptance of and Grantee's and Other's continued compliance with all park policies, rules, regulations and vehicle traffic restrictions (now in place or that will be adopted in the future) while using the easement.

10. If the cost of electricity rises to a level of significance at any point in the future, as determined by the Linn County Parks and Recreation Director, the City agrees to pay a reasonable estimate of its pro-rata share of the electricity costs used by the City, provided the electricity costs will not be imposed retroactively for a period of more than one year.

IN WITNESS WHEREOF, the Grantors and Grantees sign this Easement.

This easement is granted pursuant to Resolution and Order No. 2009-029, dated 5/13/2009.

Signed and Dated by Grantor this 13th day of May, 2009.

GRANTOR:

LINN COUNTY, a political subdivision of the State of Oregon,
by and through the BOARD OF COUNTY COMMISSIONERS FOR LINN
COUNTY:


Roger Nyquist, Chairman

OPPOSED

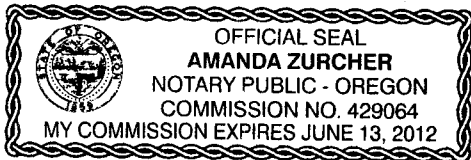
John K. Lindsey, Commissioner


William C. Tucker, Commissioner

STATE OF OREGON) ss
County of Linn)

This instrument was acknowledged before me on May 13th, 2009, by Chairman Roger Nyquist, ~~John K. Lindsey~~ and William C. Tucker, as Commissioners of the Board of County Commissioners for Linn County.


Notary Public of Oregon
My Commission expires: June 13, 2012



Signed and Dated on behalf of Grantee this 26 day of February, 2009.

GRANTEE:

CITY OF ALBANY, a municipal corporation:

By: Wes Hare
Wes Hare, City Manager

ATTEST:

Margaret Langwell
City Clerk

STATE OF OREGON) ss
County of Linn)

Personally appeared before me on February 26, 2009, the above-named Wes Hare, who, being first sworn, stated he is the City Manager, and who stated he signed the foregoing instrument on behalf of the City Council, and has the authority to do so, and he acknowledged the foregoing instrument to be the voluntary act and deed of the Albany City Council.

Margaret Langwell
Notary Public of Oregon
My Commission expires Sept. 2, 2012

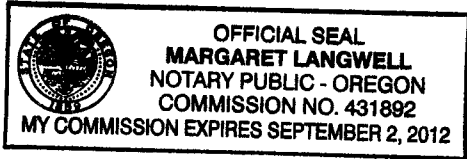


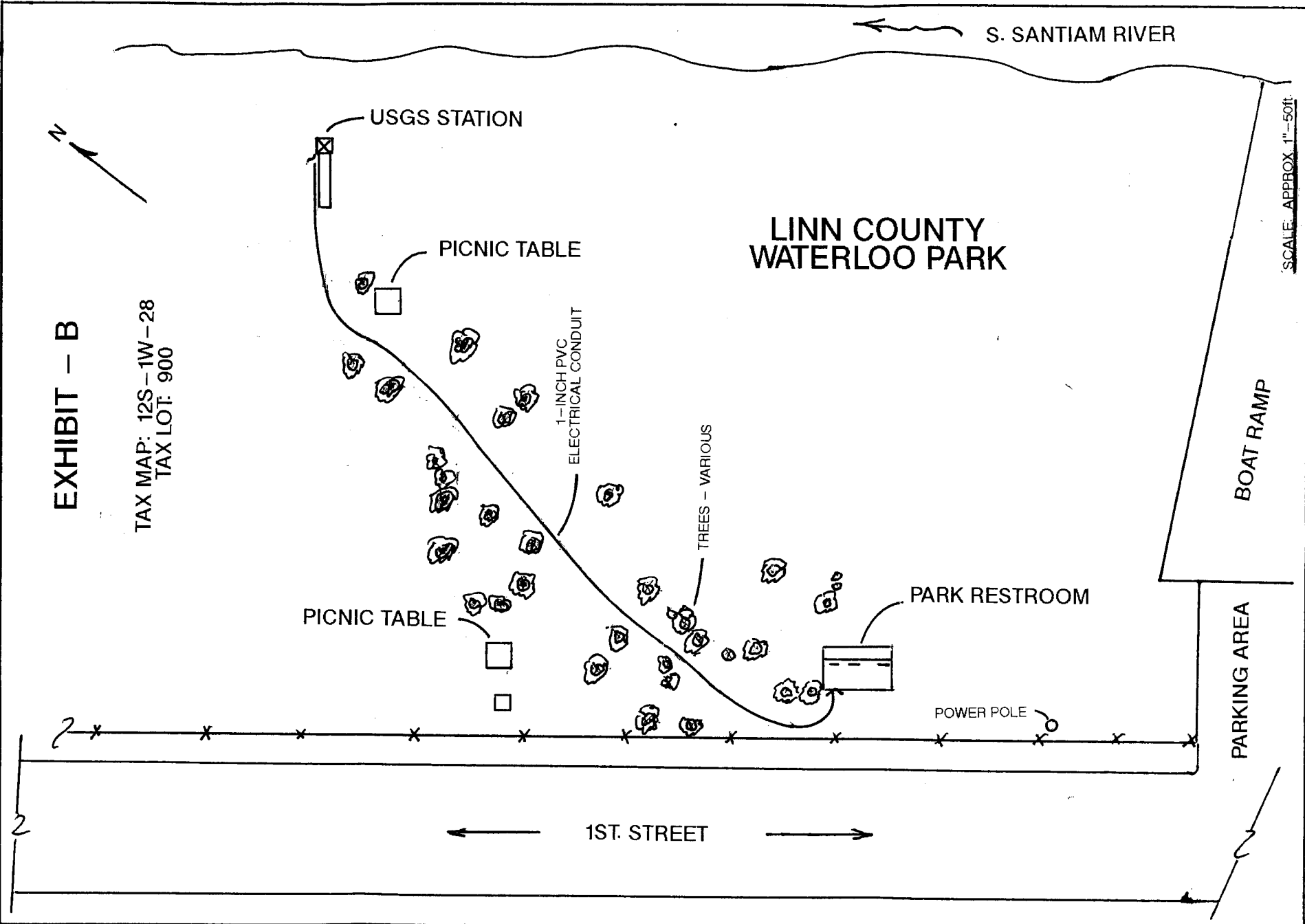
EXHIBIT A

The easement granted is 5 feet wide strip of land, specifically identified on the Map that is a part of this Exhibit A, and more generally contained within Tax Lot 900 on Linn County Assessor's Map 12S-1W-28 (identified as Tax Account No. 163770) which is described as follows:

Beginning at a point which is North 47° 18' West (equivalent to old bearing of North 48° West) 30 feet distant from the most northerly corner of Block 1 of the town of Waterloo, Linn County, Oregon, according to the duly recorded plat thereof, said point being on the north-westerly line of Kay Street; and running thence South 47° 18' East, along the southwesterly line of First Street and the Southeasterly extension thereof, a distance of 1,792.31 feet to a one inch iron bolt, which bears South 47° 18' East 547.51 feet from the most northerly corner of Block 44 of the Town of Waterloo; thence North 42° 42' East 417.29 feet to a ¼ inch iron rod; thence North 15° 43' 15" West 364.53 feet to a ½ inch iron rod making the most southerly corner of the Town of Concordia; thence North 41° 44' West (equivalent to old bearing of North 42° 45' West), along the southwesterly line of River Street in the Town of Concordia, a distance of 526 feet; thence South 48° 16' West (equivalent to old bearing of South 47° 15' West) 132 feet to the right or northeasterly bank of the South Santiam River; thence Northwesterly, down stream along said right bank to a point which would include Kay Street in the Town of Waterloo, if said Kay Street were extended across said River; thence South 42° 42' West (equivalent to old bearing of South 42° West) along the northeasterly extension of the northwesterly line of said Kay Street to the point of beginning; ALSO, all of Blocks 1, 11 and 12 in the Town of Waterloo, Linn County, Oregon, together with that portion of vacated Rudd Street lying between said Blocks 1 and 11, and that portion of vacated Davis Street lying between said Blocks 11 and 12; and containing in the aggregate 26.7 acres, more or less, of which 9.8 acres, more or less, lies within the South Santiam River, and 1.9 acres of which lies within existing roads and streets; and SUBJECT to the rights of the public in the use of said existing roads and streets.

EXHIBIT - B

TAX MAP: 12S-1W-28
TAX LOT: 900



LINN COUNTY
WATERLOO PARK

USGS STATION

PICNIC TABLE

1-INCH PVC
ELECTRICAL CONDUIT

TREES - VARIOUS

PICNIC TABLE

PARK RESTROOM

POWER POLE

BOAT RAMP

PARKING AREA

1ST. STREET

S. SANTIAM RIVER

SCALE: APPROX. 1" = 50ft.

Resolution No. 5754

Recorded Document Recorder File No. 5320