

## RESOLUTION NO. 2456

### A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY AND ACCESS EASEMENT FROM EAST COUNTY CHURCH OF CHRIST WITHIN TAX LOT 1N3E35CC-06300

#### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. East County Church of Christ is the owner of the real property at 1N3E35CC -06300.
2. The City of Troutdale owns and operates Reservoir #2 and Well #2 on the site abutting the church property to the north. Access to the reservoir and well site is across the church's parking lot.
3. The existing easement held by the City on the church's property no longer aligns with the current layout of the parking lot drive and the City's utilities.
4. The City and the church have negotiated a new easement with an alignment and dimensions appropriate for the current conditions and the City's needs.
5. As a condition of the agreement, the City will improve the portion of the church parking lot used for City access. The agreement also includes provisions establishing the church's and City's respective responsibilities for future maintenance and repair of the access.

#### NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City of Troutdale accepts the public utility easement from East County Church of Christ, included herewith as Attachment A, for access and for the construction, installation, operation, maintenance, repair, and/or modification of utility systems or components thereof.

Section 2. This resolution is effective upon adoption.

**YEAS: 5**

**NAYS: 0**

**ABSTAINED: 0**



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**Casey Ryan, Mayor**  
**Date: June 14, 2019**



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**Sarah Skroch, City Recorder**  
**Adopted: June 11, 2019**

After recording, return to:  
City Recorder  
City of Troutdale  
219 E. Historic Columbia River Hwy  
Troutdale, OR 97060

## **UTILITY AND ACCESS EASEMENT AGREEMENT**

This Public Utility and Access Easement Agreement ("AGREEMENT") is entered into by EAST COUNTY CHURCH OF CHRIST, ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the GRANTOR signs the Certificate of Grantor.

### **RECITALS**

**A.** GRANTOR owns the property described in Exhibits 'A' and 'B' of this Agreement under paragraph 11 (the "Easement Area"). GRANTOR also owns other real property adjacent to and in the vicinity of the Easement Area.

**B.** GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities.

**C.** USERS are the invitees, agents, suppliers, lessees, and employees of the GRANTEE.

**D.** The purpose of this Agreement is to grant a utility and access easement to GRANTEE for access and use of the Easement Area and to establish respective repair and maintenance obligations of the parties. It is mutually understood between the GRANTOR and GRANTEE that the GRANTEE will make repairs to the easement area.

**E.** This easement pertains to surface level, or subsurface problems and improvements related to the city's access to and use of potable water facilities and the improvements and actions required to address the oversights of the past. This easement, either exact or implied, will have no impact on any of the GRANTEE's buildings, structures or fences. Actions and improvements may abut the GRANTEE's buildings, but will not alter, or caused to be altered in the future, any existing structure or foundation of that structure. The existing roof overhangs on all of the buildings adjacent to this easement, and the hard framed canopy connected to the east side of the office building (converted house) are excepted from this easement and will not be disturbed by the upcoming project, nor any future projects.

### **EASEMENT GRANTED**

**1. Grant.** For good and valuable consideration that is acknowledged and received, including but not limited to GRANTEE's commitment to perform reconstruction provided in Section 4.1, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual nonexclusive easement for the Easement Area so that GRANTEE may construct, install, operate, maintain, repair, replace, or modify components of public and franchised utility systems including, but not limited to, water systems, storm sewer, sanitary

sewer, electricity, cable, telecommunications, and natural gas, and to access abutting properties via the Easement Area.

**2. Limitations.** GRANTOR shall not construct, install, nor place any structure or obstruction within the Easement Area that impairs GRANTEE'S use and access authorized below. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of structures or obstructions within the Easement Area shall be repaired or replaced by GRANTOR, or by the GRANTEE at the GRANTOR's expense, as determined by the GRANTEE. GRANTOR shall not plant any trees within 7.5 feet of the City's utilities.

**3. Use and Access.** GRANTOR shall allow GRANTEE unrestricted access to the Easement Area at all times to properly construct, install, operate, maintain, repair, replace, and/or modify its utilities, to access abutting properties, and to perform reconstruction and repair as described in Paragraph 4. Any loss, damage, or destruction caused by GRANTEE to GRANTOR's structures or other obstructions in the Easement Area as a result GRANTEE performing the aforementioned use and access actions, shall be the responsibility of GRANTEE.

**4. Reconstruction and Repair.**

**4.1** GRANTEE will, at its sole cost and expense, reconstruct pavement on GRANTOR's property to the horizontal limits of the Easement Area. Reconstruction shall consist of removal of existing asphalt, regrading and possibly removal of existing subsoil, the placement of 6 inches of base crushed rock compacted to 95% relative maximum density and 3 inches of asphalt pavement, or as designed by a Professional Civil Engineer. GRANTEE will coordinate scheduling work with GRANTOR but GRANTOR acknowledges that there may be some temporary inconvenience associated with the reconstruction, including loss of access in the immediate vicinity of the Easement Area.

**4.2** Thereafter the completion of the work, GRANTEE will repair any damage to the Easement Area, excepting damage to structures or obstructions as described above, caused by GRANTEE or USERS. GRANTOR will have no obligation to GRANTEE under this agreement to maintain or repair the Easement Area. This agreement does not relieve GRANTOR of any maintenance obligations that may otherwise be required by law, including snow and ice removal, dirt and debris removal (except for dirt, debris, trash and spoils associated with GRANTEE's, or GRANTEE's Customer's projects), parking lot block maintenance and parking stripe placement and maintenance.

**4.3** Temporary Construction Easements must be granted by the GRANTOR to allow for the construction of the improvements. Generally, the Construction Easement follows the same boundary lines as the Permanent Easement, but extends outwards an additional 15 feet to allow for the construction of improvements within the easement. The Construction Easement will not extend into or onto the GRANTEE's buildings and structures. Temporary fencing, door accesses, life and safety routs and resources will be retained, but maybe by sometimes temporary measures. The Temporary Construction Easement period begins with the contractor's Notice to Proceed, and self terminates at the contractor's Notice of Final Completion.

**4.4** The improvements provided for in Sections 4.1 and 4.2 shall be substantially completed on or before October 4, 2019, subject to force majeure delays. GRANTEE shall make diligent good faith efforts to minimize disruption and complete all reconstruction work within 60 days of commencement of construction. For each day past the 60 days allowed to achieve Substantial Completion, that the work remains unfinished, GRANTEE shall pay GRANTOR the sum of \$50.00 per day upon written demand from GRANTOR. The delay payment shall be in the form of a check and will have gone through the normal city payment processes. GRANTEE acknowledges that the city's payment process may take up to two weeks to complete.

**5. Binding Effect, Run with the Land.** This Agreement shall run with the land as to all real property burdened and benefited, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

**6. Attorney Fees.** In the event 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 any appeal therefrom. The term "action" shall be deemed to include an action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

**7. Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

**8. Integration.** This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this access easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein. Specifically, this Agreement shall supersede and replace that certain Utility Easement recorded May 10, 1974, Book 985, Page 278, Multnomah County, Oregon and that certain Easement Agreement recorded March 21, 1984, Book 1734, Page 1480, Multnomah County, Oregon.

**9. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, state of Oregon.

**10. Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions in this Agreement shall in no way affect the party's rights under the Agreement to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of the provisions in this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

**11. Easement Area.** As described in Exhibit "A" and shown on Exhibit "B" attached.

*[Signatures appear on the following pages.]*



CERTIFICATE OF GRANTEE

I, \_\_\_\_\_, Recorder of the City of Troutdale, hereby certify that the foregoing easement was accepted by the City Council of the City of Troutdale on the \_\_\_ day of \_\_\_\_\_, \_\_\_ by Resolution No. \_\_\_\_\_.

(seal)

\_\_\_\_\_  
City Recorder

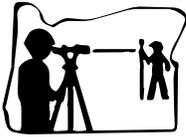
APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF MULTNOMAH        )

Personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.

BEFORE ME \_\_\_\_\_  
Notary Public for Oregon



# All County Surveyors & Planners, Inc.

PO Box 955 • Sandy, Oregon 97055 • Phone: 503-668-3151 • Fax: 503- 668-4730

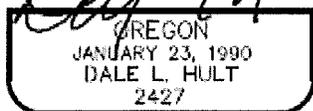
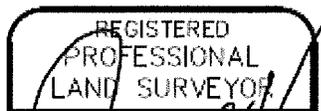
## EXHIBIT "A" A PORTION OF BOOK 906, PAGE 1493

MAY 29, 2019

A TRACT OF LAND, BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN BOOK 906, PAGE 1493, DATED JANUARY 24, 1973, MULTNOMAH COUNTY DEED RECORDS, SITUATED IN THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TROUTDALE, COUNTY OF MULTNOMAH, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BOOK 906, PAGE 1493, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF BOOK 985, PAGE 276, DATED APRIL 24, 1974, MULTNOMAH COUNTY DEED RECORDS; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID BOOK 985, PAGE 276, SAID LINE ALSO BEING THE NORTH LINE OF SAID BOOK 906, PAGE 1493 A DISTANCE OF 72.5 FEET MORE OR LESS TO A POINT THAT IS 72.5 FEET WHEN MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID BOOK 906, PAGE 1493, SAID POINT ALSO BEING PERPENDICULAR TO THE EASTERN FACE OF "BUILDING A"; THENCE SOUTHERLY ALONG THE LINE OF THE EASTERN FACE OF SAID "BUILDING A" A DISTANCE OF 136.8 FEET TO A POINT; THENCE WESTERLY PERPENDICULAR TO THE EAST LINE OF SAID BOOK 906, PAGE 1493 A DISTANCE OF 44.4 FEET TO A POINT; THENCE SOUTHERLY PARALLEL WITH THE EAST LINE OF SAID BOOK 906, PAGE 1493 A DISTANCE OF 45.2 FEET TO A POINT; THENCE EASTERLY PERPENDICULAR TO THE EAST LINE OF SAID BOOK 906, PAGE 1493 A DISTANCE OF 83.0 FEET TO A POINT THAT IS 34.0 FEET WHEN MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID BOOK 906, PAGE 1493, SAID POINT ALSO BEING PERPENDICULAR TO THE EASTERN FACE OF THE EASTERN FACING POSTS OF "BUILDING B; THENCE SOUTHERLY ALONG THE LINE OF THE EASTERN FACE OF THE EASTERN FACING POSTS OF "BUILDING B" A DISTANCE OF 118.5 FEET MORE OR LESS TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SE STARK STREET; THENCE EASTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 34.0 FEET MORE OR LESS TO THE SOUTHEAST CORNER OF SAID BOOK 906, PAGE 1493; THENCE NORTHERLY ALONG THE EAST LINE OF SAID BOOK 906, PAGE 1493 A DISTANCE OF 298.1 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 19,236 SQUARE FEET, MORE OR LESS.



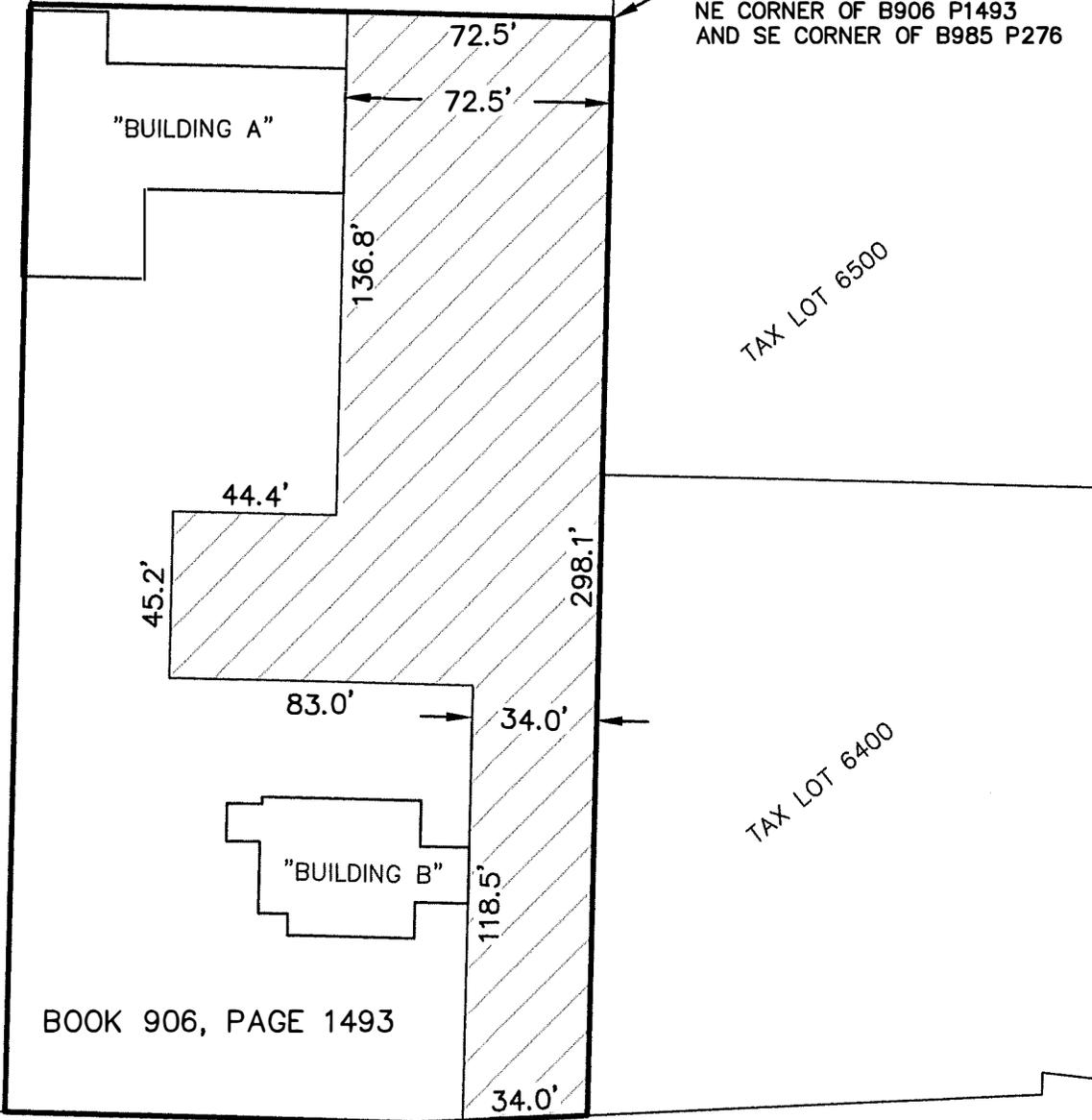
RENEWS 07/01/19

# EXHIBIT "B"

A PORTION OF BOOK 906, PAGE 1493

BOOK 985, PAGE 276

POINT OF BEGINNING  
NE CORNER OF B906 P1493  
AND SE CORNER OF B985 P276



SE STARK STREET

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 23, 1990  
DALE L. HULT  
2427

All County  
**Surveyors & Planners, Inc.**  
Surveying, Planning  
and Civil Engineering  
P.O. Box 955 Sandy, OR 97055  
Phone: (503) 668-3151  
Fax: (503) 668-4730  
Subject to General Conditions 2006 ©

SCALE : 1" = 50'



RENEWS 07/01/19

18-072 EASEMENT2.dwg  
DATE OF PLOT: 5/29/2018