

RESOLUTION NO. 1505

A RESOLUTION ACCEPTING A TEMPORARY CONSTRUCTION EASEMENT FROM NOURI DEVELOPMENT, INC. IN TAX LOT 1N3E25B0800 FOR THE WATER POLLUTION CONTROL FACILITY CONVEYANCE PIPELINES

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City is currently constructing a new water pollution control facility northeast of the Troutdale Airport.
2. Raw sewage will be conveyed from the vicinity of the existing treatment plant in a conveyance pipe that goes northerly underneath I-84 and along Harlow Place and Graham Road to the new site.
3. Treated effluent will be conveyed from the new site in a conveyance pipe that goes southerly along Graham Road and Harlow Place to an outfall into the Sandy River.
4. The optimum location of the conveyance pipelines includes working within a portion of Tax Lot 1N3E25B0800 owned by Nouri Development, Inc.
5. The City has requested a temporary construction easement from Nouri Development, Inc., which has been granted subject to acceptance by the City in the proposed Resolution.

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

That the City accepts from Nouri Development, Inc. a temporary construction easement attached hereto and made a part hereof in Tax Lot 1N3E25B0800, as more particularly shown in Exhibits A and B thereto, for the water pollution control facility conveyance pipelines.

YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thalhofer, Mayor

Dated: 7-26-00


Debbie Stickney, City Recorder

Adopted: 7-25-00

Return To:
City Recorder
City of Troutdale
104 SE Kibling Ave.
Troutdale, OR
97060

TEMPORARY CONSTRUCTION EASEMENT

This Temporary Construction Easement Agreement ("AGREEMENT") is entered into by the Nouri Development, Inc. ("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 this Agreement under paragraph 10 (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. The purpose of this Agreement is to grant a temporary construction easement to GRANTEE for access and use of the Easement Area.

EASEMENT GRANTED

1. **Grant.** For valuable consideration that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a temporary construction easement for the Easement Area so that GRANTEE may construct components of a public sanitary sewer system.

2. **Limitations.** This Agreement shall terminate upon GRANTEE'S completion of construction of a new water pollution control facility and associated influent/effluent piping, but no later than January 31, 2002.

3. **Use and Access.** GRANTOR shall allow GRANTEE unrestricted access to the Easement Area at all times to properly construct its utilities.

4. **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.

5. **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 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.

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk

Total : 44.00

2000-106821 08/03/2000 10:35:03am ATLJH

A49	6	REC	SUR	DOR	OLIS
		30.00	3.00	10.00	1.00

6. **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.

7. **Integration.** This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this 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.

8. **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.

9. **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.

10. **Easement Area.** The Easement Area is defined by the legal description for Parcel I in Exhibit A and the map depicted in Exhibit B, both of which are attached hereto and made a part hereof.

CERTIFICATE OF GRANTOR

I, MOHSEN NOURI, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 30 day of June, 2000

[Signature]
Grantor's Signature
MOHSEN NOURI
Grantor's Typed or Printed Name
Title (if applicable)
1079 Country Corner
Address
Lake Oswego, OR 97034
City, State, Zip Code
635-8311
Telephone Number

STATE OF OREGON)
Clackamas) ss.
COUNTY OF ~~MULTNOMAH~~)

Personally appeared the above named Mohsen Nouri and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME [Signature]
Notary Public for Oregon
Commission Expires: 3.19.2001



(seal)

CERTIFICATE OF GRANTEE

I, Debbie Stickney 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 25 day of July, 2000, by Resolution No. 1505.

Dated this 26 day of July, 2000.

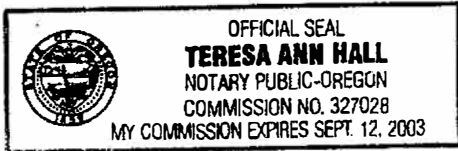
Debbie Stickney
City Recorder

(seal)

STATE OF OREGON)
) ss.
COUNT 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. Teresa Ann Hall
Notary Public for Oregon
Commission Expires: 9-12-03



(seal)

EXHIBIT A

Troutdale Water Pollution Control Facility
Conveyance Pipeline Easement's

City of Troutdale
January 13, 2000
Tax Lot No. 1N 3E 25B 00800

PARCEL I (TEMPORARY CONSTRUCTION EASEMENT)

A parcel of land lying in the D.F. Buxton D.L.C. No. 59, in the southwest one-quarter of Section 24, Township 1 North, Range 3 East of the Willamette Meridian, City of Troutdale, Multnomah County, Oregon, lying southerly of Harlow Road; said parcel being that portion included in a strip of land lying parallel with and 20.00 feet southerly of the following described centerline:

BEGINNING a point in N.W. Graham Road, from whence the southwest corner of said Section 24 bears, South 72°02'46" West, 1180.55 feet;

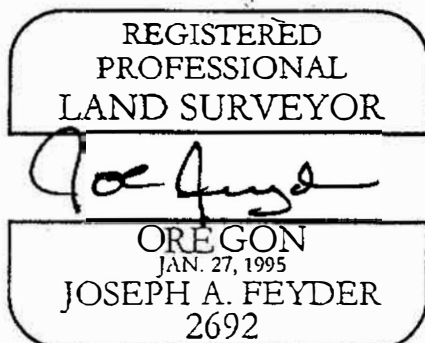
thence, along said centerline, the following four (4) courses:

- 1) South 01° 42' 06" West, 300.00 feet;
- 2) South 53° 19' 22" East, 128.00 feet;
- 3) South 84° 04' 01" East, 262.34 feet;
- 4) South 06° 27' 20" East, 100.00 feet to the point of termination of this centerline, from whence the N.E. Corner of the D.F. Buxton D.L.C. No. 59 bears North 55° 22' 50" West, 192.30 feet, as said D.L.C. Corner is shown in B.T. Book F, Page 211.

Excepting therefrom all that portion of said strip lying within the right-of-way of Harlow Road, and lying out side the D.F. Buxton D.L.C. No. 59.

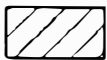
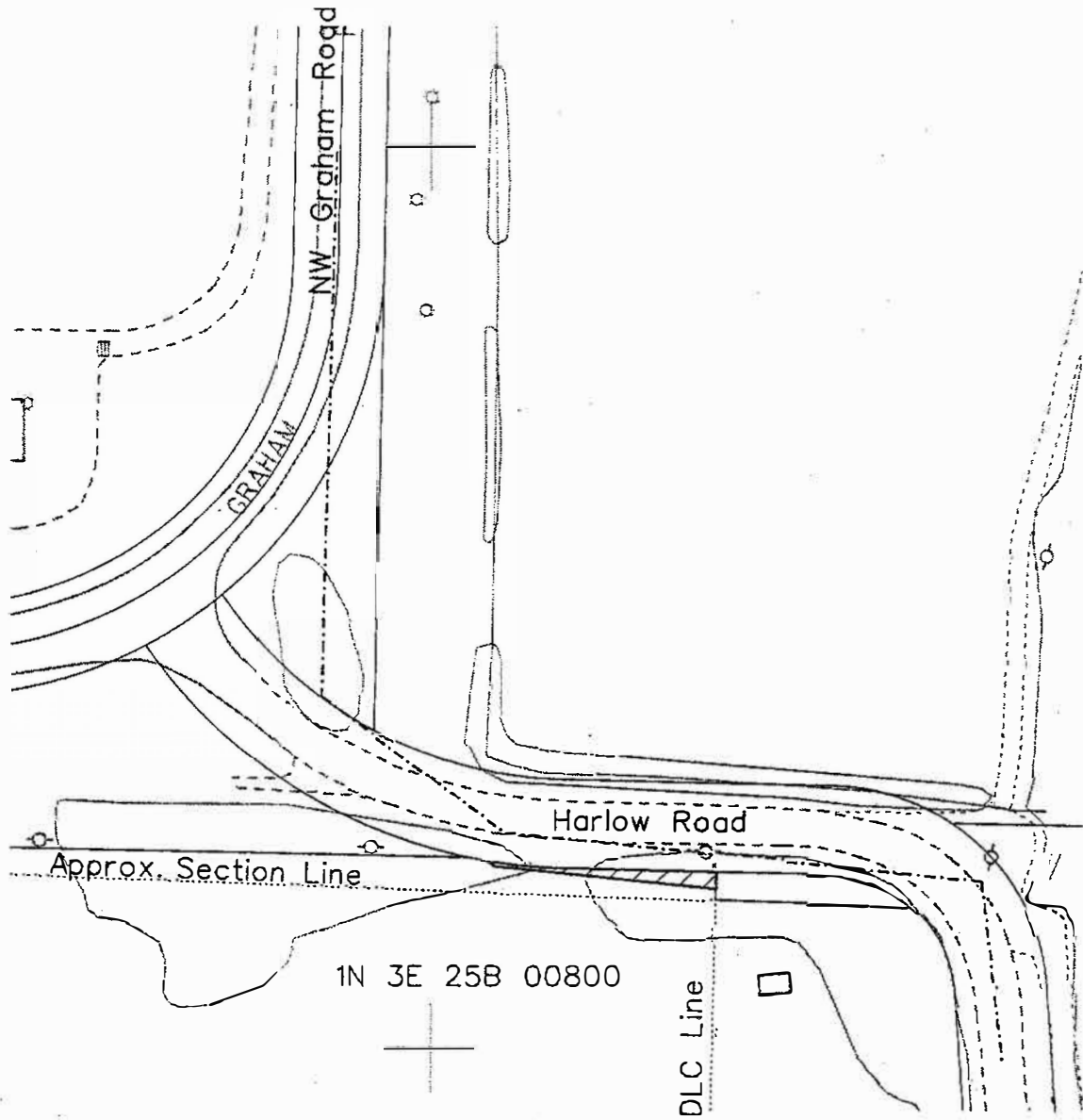
The area of land to which the Parcel I description applies contains 609 square feet (0.014 acres) more or less.

This legal description along with the basis of bearing thereof, is established from a record of survey recorded under Survey Number 53899, Multnomah County Survey Records.



EXPIRES: 12/31/01

EXHIBIT B



Temporary Easement

1"=100'

Troutdale Water Pollution Control Facility
Conveyance Pipeline Easement's
City of Troutdale, OR