

RESOLUTION NO. 11087

A RESOLUTION APPROVING PROPERTY EXCHANGE AGREEMENT - BEAR CREEK GREENWAY - WITH THE CITY OF MEDFORD AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

RECITALS:

- A. The City of Medford owns approximately 13.91 acres of undeveloped property along the Bear Creek Greenway commonly known as Township 37 South, Range 2 West, Section 12B, Tax Lot 600.
- B. The City of Central Point desires to take ownership of real property along the Bear Creek Greenway, which is within City limits, to allow the City to more efficiently manage and maintain greenway property in order to reduce fire risk, and ensure the greenway is an attractive, usable public amenity.
- C. The City of Medford has agreed to transfer the property to the City subject to a reservation of easement for the benefit of the City of Medford for the construction, operation, maintenance, repair and replacement of storm drainage facilities on that portion of the subject property located east of Bear Creek.

The City of Central Point resolves:

Section 1. The attached Property Exchange Agreement for Tax Lot 600 with the City of Medford (the "Agreement"), in substantially the form attached hereto as Exhibit "A" is approved.

Section 2. The City Manager is hereby authorized, on behalf of the City and without further action by the City Council, to execute the attached Agreement and to perform all necessary acts, sign all necessary documents, and complete any other necessary matters in order to effectuate this Resolution.

Passed by the Council and signed by me in authentication of its passage this 14th day of October, 2021.


Mayor Hank Williams

ATTEST:


City Recorder

Exhibit A to Resolution

PROPERTY EXCHANGE AGREEMENT
Bear Creek Greenway
Tax Lot 600

DATE: _____, 2021

BETWEEN: **City of Central Point, Oregon** (“Central Point”)
140 S 3rd Street
Central Point, Oregon 97502

AND: **City of Medford, Oregon** (“Medford”)
411 West 8th Street
Medford, Oregon 97501

RECITALS

A. Medford is the owner of certain real property located in Jackson County, Oregon, and commonly known as Township 37 South, Range 2 West, Section 12B, Tax Lot 600 (“the subject property”), a more particular description of the subject property is attached hereto as **Exhibit A**. The subject property is approximately 13.91 acres in size and is undeveloped.

B. Medford desires to convey the subject property to Central Point pursuant to the terms and conditions of this Agreement (“the subject property”) to allow for the efficient management and maintenance of the Bear Creek Greenway by both Central Point and Medford. The Bear Creek Greenway (“the Greenway”) includes Bear Creek, its adjacent riparian area and a 20-mile, paved, multi-use trail that links the cities of Ashland, Talent, Phoenix, Medford and Central Point. The subject property is located within the Greenway.

C. The parties acknowledge and agree that the subject property will be conveyed to Central Point subject to a reservation of easement for the benefit of Medford for the construction, operation, maintenance, repair and replacement of storm drainage facilities on that portion of the subject property located east of Bear Creek (“the Facilities Easement”).

AGREEMENT

In consideration of the mutual promises, covenants and undertakings of the parties herein contained, the parties hereby agree as follows:

1. Recitals. The parties acknowledge and agree that the Recitals set forth above are incorporated herein and deemed a material part of this Agreement.

2. Consideration. The parties acknowledge and agree that the consideration for this Agreement is as follows: (a) Central Point shall be responsible for the management and maintenance of the subject property upon Closing; and (b) Medford shall have no further management and maintenance obligations concerning the subject property post-Closing except as set forth in the Facilities Easement. Notwithstanding the foregoing, the parties acknowledge and agree that Central Point shall not be excluded from any funding opportunities from any source relating to the Greenway, including but not limited to funding for maintenance or capital improvement projects, because of this Agreement. In particular, Medford shall cooperate with Central Point for inclusion in Greenway funding mechanisms such as creation of a Greenway taxing district, grant funding or other agreements.

3. Title. Medford warrants and represents that Medford is the fee simple owner of the subject property and that it has the right and authority to convey the subject property to Central Point free and clear of any other claims of title and subject only to encumbrances of record. Medford shall convey title to the subject property by statutory bargain and sale deed in the form attached hereto as **Exhibit B**, properly executed and notarized conveying title to Central Point. Central Point, at Central Point's sole expense, shall obtain title insurance policies from First American Title Insurance Company, located at 1225 Crater Lake Avenue, Suite 101, Medford, Oregon, 97504 ("the Escrow Agent"). Upon complete execution of this Agreement, Central Point, at Central Point's sole expense, shall order preliminary title reports ("Title Report(s)") from the Escrow Agent with copies of the Title Reports being delivered to all parties. Central Point shall have 30 days from the date of Central Point's receipt of the Title Reports to notify Medford in writing of any exceptions unacceptable to Central Point ("Objection Notice"). Central Point shall have no obligation to close on the subject property if the parties are unable to resolve title issues concerning the subject property. Central Point's failure to issue an Objection Notice within the time allowed will be deemed as Central Point's acceptance of the exceptions to title set forth in the Title Report for the subject property.

4. As Is. Except as otherwise stated herein, the parties hereby acknowledge and agree that this is an "AS IS" transaction and, except as otherwise expressly stated herein, Medford makes no representations or warranties as to the condition of the subject property, any improvements thereon, if any, or their fitness for a particular purpose.

5. Due Performance. Due performance of the terms, conditions, and agreements of this Agreement to be performed by a party and the accuracy of the representations and warranties of each as of the Closing Date is a condition to closing by the other party. Such performance shall include, without limitation, execution, and delivery in proper form of all of the documents required hereunder to be delivered on the Closing Date and the rendering of all other performances and undertakings contemplated hereunder.

6. Closing. Closing shall occur on or before December 1, 2021 ("Closing Date") at the offices of the Escrow Agent.

7. Closing Provisions.

7.1 Closing. This purchase and sale transaction shall be closed on or before the Closing Date, unless otherwise extended pursuant to mutual agreement of the parties, at the offices of the Escrow Agent.

7.2 Funds and Documents.

7.2.1 Central Point's Funds and Documents. On or before the Closing Date, Central Point shall cause to be delivered to the Escrow Agent on the Closing Date, each of the following:

(a) All funds required of Central Point for costs and expenses as set forth herein.

(b) All documents required pursuant to this Agreement, properly executed by Central Point.

7.2.2 Medford Documents. On or before the Closing Date, Medford shall cause to be delivered to the Escrow Agent on the Closing Date, all documents required pursuant to this Agreement, properly executed.

7.3 Costs of Closing. Central Point, at Central Point's sole expense shall be responsible for the following costs: (a) the Escrow Agent's fee; (b) all premiums for title insurance policies; (c) all recording and miscellaneous charges imposed by the Escrow Agent; and (d) all attorney fees incurred by Central Point with respect to preparing and negotiating this Agreement.

8. Council Approval. The parties acknowledge and agree that this Agreement is subject to approval by the following: (a) City of Central Point City Council; and (b) City of Medford City Council (collectively, "Governmental Approval"). In the event this

Agreement does not receive Governmental Approval, this Agreement shall terminate and be of no further force or effect.

9. Miscellaneous Provisions.

9.1 Conflict of Interests. No member, official or employee of Central Point or Medford shall make any decision relating to the Agreement which affects the member's, official's, or employee's personal interests or the interests of any corporation, partnership, or association in which member, official, or employee is directly or indirectly interested.

9.2 No Partnership. Nothing contained in this Agreement or any acts of the parties hereby shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties.

9.3 Notices. Notices under this Agreement shall be in writing and shall be effective when actually delivered by hand delivery, electronic correspondence or United States mail directed to the other party at the address set forth below, or to such other address as the party may indicate by written notice to the other:

Medford:

City of Medford
c/o Richard Whitlock
City Attorney
411 West 8th Street
Medford, Oregon 97501
richard.whitlock@cityofmedford.org

Central Point:

c/o Chris Clayton
City Manager
140 S 3rd Street
Central Point, Oregon 97502
chris.clayton@centralpointoregon.gov

and

Daniel O'Connor
O'Connor Law, LLC
670 G Street, Suite B
Jacksonville, Oregon 97530

dano@oconnorlawgroup.net

9.4 Amendment. This Agreement may be amended only by written instrument executed by the parties.

9.5 Representations and Warranties. All representations and warranties made herein shall survive Closing.

9.6 Entire Understanding. This Agreement, and the documents incorporated herein, consists of the entire Agreement between the parties with relation to the conveyance of the Tracts.

9.7 Time of Essence. Time is of the essence of this Agreement.

9.8 Applicable law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Jackson County.

9.9 Counterparts. This Agreement may be executed by the parties in separate counterparts, which together shall constitute one instrument. For the purposes of this Agreement, a facsimile or electronic copy of a signature shall have the same force and effect as an original signature.

9.10 Statutory 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 THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO

VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF MEDFORD:

Date: _____, 2021

By:
Its:

CITY OF CENTRAL POINT:

Date: _____, 2021

By:
Its:

EXHIBIT A

Beginning at the Northeast corner of DLC 58, the Northeast quarter of Sec 12, Twp 37 South of Range 2 West of WM, JCO; thence West 450 feet, more or less to the East line of Table Rock Road; thence South on the East line of said Table Rock Road 716.3 feet to the South line of the road to the Airport; thence West 784 feet to the true point of beginning; thence

South 32° 30' East 300 feet; thence
South 346.3 feet; thence
West 420 feet; thence
North 39° 21' West 775 feet; thence
East 750 feet to the point of beginning;

Beginning at the Southeast corner of DLC 56, Twp 37 South of Range 2 West of WM, thence North 89° 53' West 757.4 feet; thence South 200 feet to the true point of beginning. thence

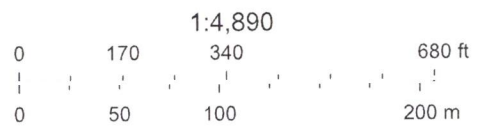
South 43° 30' East 470.0 feet; thence
South 49° 30' East 250 feet to the South line of the property described in Certificate of Title No. 4284 in the office of the Registrar of Titles of said County;.thence
North 89° 47' West 605.7 feet to the Southwest corner of the property described in said Certificate of Title; thence
North 38° West 897.6 feet to the most Westerly corner of the property described in said Certificate of Title; thence
South 89° 53' East 131.11 feet; thence
South 38° East 253.8 feet; thence
South 89° 53' East 357.48 feet to the true point of beginning. Excepting therefrom a forty-foot strip of which the Northeasterly side line is described as follows; to wit: Commencing at the true point of beginning of the premises hereby conveyed; thence
South 43° 30' East 470.0 feet; thence
South 49° 30' East 250.0 feet to the South line of property described in Certificate of Title.

Exhibit B



10/4/2021, 10:07:01 AM

 Tax Lots



Oregon Statewide Imagery Program (OSIP) - Oregon Imagery Framework Implementation Team

Jackson County - Public User

Data within this application may contain inaccuracies. Maps produced are not intended for legal purposes and do not substitute for a professional land survey. For more information, see ORS