

RESOLUTION NO. 1429

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN
AGREEMENT FOR PURCHASE OF RIGHT-OF-WAY WITH
JAMES SUTTON OF 4511 HAMRICK ROAD IN
LIEU OF CONDEMNATION PROCEEDINGS

Recitals:

- A. The City Public Works Department has been negotiating with Mr. James Sutton regarding the purchase of Right-of-Way for the south easterly corner of Hamrick and Beebe Road.
- B. The City's long term interest is to purchase enough right-of-way for a future signal pole when a signal is warranted at this intersection.
- C. The City and Mr. Sutton have agreed to the terms as stated in "Exhibit A" of this resolution.
- D. By signing the proposed agreement both parties will avoid the need for condemnation proceeding.

The City of Central Point resolves as follows:

Section 1. The agreement is set forth on the attached Exhibit "A".

Passed by the Council and signed by me in authentication of its passage this 16th day of July, 2015.


_Council President Bruce Dingler

ATTEST:


City Recorder

DEDICATION AGREEMENT / JAMES SUTTON

RECITALS

WHEREAS, James Sutton ("Sutton") is the owner of real property described more particularly in the attached EXHIBIT A (the "Property").

WHEREAS, the City of Central Point, a municipal corporation of the State of Oregon ("City") is conducting a street widening project along Beebe Road, which will include a new right turn lane, including curbs adjacent to the Property (the "Project").

WHEREAS, Sutton has agreed to dedicate land to the City for the Project in consideration for cash and other obligations on the part of the City.

WHEREAS, the parties desire to enter into this Agreement to set forth the obligations of the parties hereto.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Sutton's Obligations:

1. Sutton agrees to dedicate land to the City free and clear of any liens, encumbrances or encroachments, for right-of-way purposes, such land being more particularly described in the attached EXHIBIT B.

2. Sutton agrees to execute a Dedication Deed in substantially the form attached hereto as EXHIBIT B in order to effectuate the dedication of land.

3. Sutton agrees to execute a Consent to Annex agreement which provides that Sutton agrees to annex the Property subject to the condition that it cannot be annexed into the City without the Property owner's consent for a period of fifteen (15) years in substantially the form attached hereto as EXHIBIT C.

4. Sutton's obligations herein shall be binding upon his heirs, successors and assigns.

B. City's Obligations:

1. In consideration for the dedication of land described above, the City agrees to pay Sutton \$8,000.00 upon execution of the Dedication Deed.

2. As additional consideration for such dedication the City agrees to construct and install the following:

a. The City will construct a new 6-foot high block sound wall along Beebe Road as measured from the highest adjacent grade on the Property line. The 6-foot sound wall shall be installed along the north Property line and will measure approximately 167-feet in length, but in no case to extend into the 42" site vision line. The approximate location of the Beebe Road sound wall is depicted on the attached EXHIBIT D.

b. The City will remove all vegetation and other material that is in the City's construction and dedication area at the City's sole cost.

c. The City will remove and preserve the existing 40-foot chain link fence and posts at its sole cost. At Sutton's request, the City will relocate said fence to another location on the Property at City's cost. In the event no such request is made prior to or during construction of the Project, the City shall leave the removed fence at the Property and shall have no further obligations to relocate said fence.

d. The City will construct a 42-inch high block sound wall along Hamrick Road along the east Property line. Said wall will begin at the site vision line and continue to the south Property line. The height of said sound wall will be measured from the highest adjacent grade. See EXHIBIT D for the approximate location of the Hamrick Road sound wall.

3. The City shall install asphalt driveways on both Hamrick Road and Beebe Road in the locations in which said driveways currently exist, the approximate location of which is depicted on the attached EXHIBIT D. The driveways will extend five feet from the property line onto the Property.

4. As further consideration for the dedication, the City will install a new five-eighth (5/8) inch water meter. For six (6) years following execution of this Agreement, the City agrees to provide water to the Property at no charge, and the owner of the Property will not be subject to street/storm water fees. Following expiration of said 6-year period, the Property owner will be responsible to pay any and all charges for water, street fees and storm water fees to the Property.

5. The City shall have a plumber remove the current holding tank and pressure tank located on the Property and move them to the another location on the Property at City's sole cost.

6. The City will install a backflow prevention device, pressure reducing valve, and any other work associated with hooking up the existing dwellings on the Property to the domestic water service at City's sole cost and shall remove the existing structure surrounding the holding tank at City's sole cost.

C. Miscellaneous Provisions

1. Maintenance of Sound Walls. Upon completion of construction of the sound walls identified in Subsections B(2)(a) and B(2)(d) above, City shall be responsible to maintain

and repair said sound walls, except where such damage or destruction is caused by Sutton, his guests, tenants, successors and assigns; in such event Sutton, his guests, tenants, successors or assigns, shall be responsible to repair or replace said walls.

2. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one in the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts.

3. Indemnification. The parties hereby agree to indemnify, defend, hold harmless and protect the other party from and against any and all claims (including without limitation any claim for damage to property or injury to death of any persons, liens, or encumbrances asserted by any third person) that relate to the obligations under this Agreement, where such claims were caused by the negligence of the other party.

4. Notices. All notices, demands, consents, approves or other communication that are required or desired to be given by either party to the other under this Agreement shall be in writing and shall be (a) hand-delivered or (b) sent by first class mail addressed to the party at the address set forth below or at such other address as such party shall have last designated by notice to the other. Notices shall be deemed given when delivered or when placed in the mail. Notice addresses for the parties are as follows:

To City: Chris Clayton
City of Central Point
140 S. Third Street
Central Point, OR 97502

To Sutton: James Sutton

5. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors and assigns.

6. Assignment. This Agreement shall be freely assignable.

7. Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

8. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties.

9. **Entire Agreement.** This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

10. **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

11. **Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

12. **Further Assurances.** From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement

13. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

15. **Venue.** This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal or state courts in *, Oregon.

16. **Attorney Representation.** The undersigned acknowledges (a) that he has read this Agreement in its entirety, (b) that he has had full opportunity to study and review this Agreement, (c) that this Agreement was prepared by Sydnee B. Dreyer, an attorney with the law firm of Huycke O'Connor Jarvis, LLP, as the attorney for the City of Central Point, (d) that Ms. Dreyer does not represent Mr. Sutton and he has not relied in any way upon any legal advice or actions of Ms. Dreyer in entering into this Agreement, (e) that Mr. Sutton understands that he should consult with independent legal counsel, and that he has the right to consult with independent legal counsel respecting his rights and duties under this Agreement, (f) that he has had full opportunity to review and discuss this Agreement with independent legal counsel and tax and other advisors, and (g) that he has been provided all information related hereto as has been requested.

IN WITNESS WHEREOF the parties have executed this Agreement this ___ day of July, 2015.

CITY OF CENTRAL POINT

By:

*

JAMES SUTTON

F:\95085\DEDICATION AGREEMENT - JAMES SUTTON.DOC

EXHIBIT "A"
(Land Description Map Tax and Account)

BEGINNING AT A POINT ON THE EAST LINE OF DONATION LAND CLAIM NO. 55, TOWNSHIP 37 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON, SAID POINT BEING 1249.14 FEET NORTH OF THE SOUTHEAST CORNER OF SAID CLAIM; THENCE WEST, PARALLEL WITH THE SOUTH BOUNDARY OF SAID CLAIM, 220.0 FEET, TO THE EAST LINE OF TRACT DESCRIBED IN VOLUME 284, PAGE 213, JACKSON COUNTY, OREGON, DEED RECORDS; THENCE NORTH, ALONG SAID LINE, 156.0 FEET, TO THE NORTH LINE OF TRACT DESCRIBED IN VOLUME 279, PAGE 180, SAID DEED RECORDS; THENCE EAST, ALONG SAID LINE, 220.0 FEET, TO THE EAST LINE OF SAID CLAIM NO. 55; THENCE SOUTH, ALONG SAID CLAIM LINE, 156.0 FEET, TO THE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

Map No.: 372W01C 1700
Tax Account No.: 1-019549-1

AFTER RECORDING RETURN TO:

City of Central Point
140 S 3rd Street
Central Point OR 97502

DEDICATION OF RIGHT OF WAY

KNOW ALL MEN BY THESE PRESENTS that James W Sutton, a single man, as owner / Grantor does hereby dedicate to the public of THE CITY OF CENTRAL POINT, a municipal corporation of the State of Oregon the following described tract for public use for street right-of-way purposes,

SEE EXHIBIT "A2" ATTACHED HERETO

AND MADE A PART HEREOF and Further delineated on attached Exhibit "B"

IN WITNESS HEREOF, signed this _____ day of _____, 2015.

James W. Sutton

STATE OF OREGON

COUNTY OF JACKSON

This instrument was acknowledged before me this day _____ of _____, 2015 by James W. Sutton

Notary Public for Oregon

My commission expires

The City of Central Point, a municipal corporation of the State of Oregon, hereby accepts such grant of street right of way on behalf of the public.

City of Central Point

IN WITNESS HEREOF, signed this instrument this _____ day of _____ 2015.

By:

Title:

STATE OF OREGON)

) SS.

County of Jackson)

Personally appeared the above-named _____, and
acknowledged the foregoing instrument to be his/her voluntary act and deed and was
signed on behalf of the City of Central Point. Before me:

Notary Public for Oregon

My commission expires:

EXHIBIT "A2"

Property Description

City of Central Point

Assessor's Map No. 372W01C-1700 a portion of

This description is a portion of that tract described in Instrument No 87-16607 as recorded in the Official Records of Jackson County, Oregon, more particularly described as follows:

Commencing at the Southeast corner of Donation Land Claim No 55 in Township 37 South, Range 2 West of the Willamette Meridian, Jackson County, Oregon; thence North $0^{\circ}11'26''$ West, along the East line of said Claim, 1249.07 feet to the Southeast corner of that tract described in Instrument No 87-16607 as recorded in the Official Records of Jackson County, Oregon; thence South $89^{\circ}54'00''$ West, parallel with the South boundary of said Claim, 31.31 feet to the existing right of way of Hamrick Road; thence North $0^{\circ}15'01''$ West, along said right of way, 117.06 feet to the POINT OF BEGINNING; thence continuing North $0^{\circ}15'01''$ West, along said right of way, 17.00 feet to the South right of way line of Beebe Road; thence South $89^{\circ}33'59''$ West, along said Beebe Road right of way, 19.00 feet; thence South $24^{\circ}08'33''$ East, 18.57 feet; thence North $89^{\circ}33'59''$ East, parallel with said Beebe Road right of way, 11.48 feet to the POINT OF BEGINNING.


Containing 259 square feet, more or less.

Prepared By: Farber and Sons Inc
Farber Surveying
431 Oak Street
Central Point, OR 97502
(541) 664-5599

|draft document |

Date: June 11, 2015

EXHIBIT "B"

 DEDICATED RIGHT OF WAY

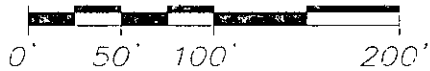
BEEBE ROAD

259 SQ FT

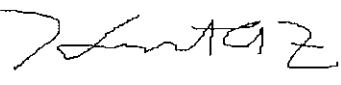
TAX LOT 1700

HAMRICK ROAD

SCALE: 1" = 100'



Prepared by:
FARBER & SONS, INC.
dba FARBER SURVEYING
431 Oak Street
Central Point, Oregon 97502
(541) 664-5599

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 26, 1985
HERBERT A. FARBER
2189

DATE: June 13, 2015

JOB NO. 2023-13

RENEWAL DATE 12-31-15

central point\city CP\beebe hamrick\microsurev\exhibit 061215 re base dwg

Exhibit C

CONSENT TO ANNEXATION AGREEMENT

This agreement, made and entered into this _____ day of _____, 20, by and between the City of Central Point, Oregon, an Oregon municipal corporation, hereinafter referred to as "City", _____ and _____, hereinafter referred to as "Owners".

Agreement

1. **Warranty of Ownership.** Owners hereby warrant that they are the owners in fee of the real property, _____ described as follows: See attached, Exhibit A

2. **Comprehensive Plan Amendment and Annexation.** Owners hereby give their continuing written and irrevocable consent to, and request for, the annexation of the property described above to City, and do hereby petition City for such annexation. In connection therewith, Owners certify that there are no electors residing on the subject property; Owners waive ORS 222.173, which limits the duration of the annexation agreement to one year, and agree to sign a separate document, as required by said statute, waiving said time until the property is annexed; and owners, consent and waiver are continuing and binding upon the heirs, successors and assigns of the owners, including, but not limited to, lessors, lessees, renters, and any other occupants of the property.

Owners agree to pay all costs in connection with the annexation, to be paid to the City upon request, and to participate fully in all City land use procedures necessary or advisable for the annexation, and the establishment of a zone for said property. Owners' cooperation shall include, but not be limited to, testifying and otherwise presenting evidence in favor of the annexation.

3. **Examinations and Inspections.** Owners grant to City, and any of its authorized-representatives, the right to go upon the property at all reasonable times to make such examinations and inspections as are reasonably necessary in City's opinion to determine that all terms and conditions hereof, and all City codes and ordinances, are being fully complied with by owner.

4. **City Codes and Ordinances.** From and after the date of the execution of this agreement, the property described herein and all structures and improvements situated thereon shall be subject to and shall comply with all City codes and ordinances, including, but not limited to, the City building, zoning, development and utility standards and procedures.

5. **Attorney Fees.** In the event of any suit, action, claim, or other legal proceeding to enforce any of the terms or provisions of this agreement, including rescission or declaratory judgment, the prevailing party in such action shall be entitled to recover its reasonable attorney fees incurred therein, including any appeal, in a sum to be determined by the Court.

EXECUTED IN DUPLICATE, each party retaining an original.

City of Central Point

Owners

Mayor

By

City Manager

By

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, known to me to be the Mayor for the City of Central Point, Oregon, and acknowledged the foregoing Consent to Annexation Agreement to be the voluntary act and deed of City of Central Point.

Notary Public for Oregon
My Commission Expires:

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, known to me to be the City Manager for the City of Central Point, Oregon, and acknowledged the foregoing Consent to Annexation Agreement to be the voluntary act and deed of City of Central Point.

Notary Public for Oregon
My Commission Expires:

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, and acknowledged the foregoing Consent to Annexation Agreement to be his voluntary act and deed.

Notary Public for Oregon
My Commission Expires:

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, and acknowledged the foregoing Consent to Annexation Agreement to be his voluntary act and deed.

Notary Public for Oregon
My Commission Expires:

Exhibit D

