

MEYERS ROAD EXTENSION IMPROVEMENTS AGREEMENT

This AGREEMENT is made by and between the CITY OF OREGON CITY, an Oregon municipal corporation, (the “City”) and OREGON CITY SCHOOL DISTRICT NO. 62, (“OCSD”) this _____ day of _____, 2015.

The City owns two parcels, approximately 9.1 acres total area, of real property located at 14491 and 14511 Meyers Road, Oregon City, Oregon, more specifically identified as Tax Lots 1401 and 1500 on Clackamas County Map 3-2E-09D, as shown on Exhibit 1 (the “Glen Oak Property”). The City’s Community Services Department has started the land use process for the Master Plan Design of a park on the Glen Oak Property.

OCSD owns approximately 10.5 acres of real property located at 14551 Meyers Road, Oregon City, Oregon, more specifically identified as Tax Lots 1400 on Clackamas County Map 3-2E-09D as shown on Exhibit 1 (the “OCSD Property”).

On June 10, 2015, the City’s Planning Commission approved a Type III Master Plan (CP 14-03), Detailed Development Plan (DP 14-04), Natural Resource Overlay District (NR 14-10) Quasi-Judicial Land Use Decision for the construction of a transportation and maintenance facility on the OCSD Property (the “Land Use Approval,” included with this Agreement as Exhibit 2).

Conditions 6, 7, 11, 13, 14, 15, 17, 18, 20, 22, 23, 24, 25, 26, 27, 31, 32, 33, and 34 of the Land Use Approval require OCSD to construct certain infrastructure improvements, including streets, water, sanitary sewer, and stormwater on the Glen Oak Property. The conditions also require OCSD to obtain public easements and right-of-way dedications for these proposed improvements. The improvements conditioned and located on the Glen Oak Property include:

1. The Meyers Road extension from the intersection of Meyers Road and High School Avenue to the westerly Glen Oak Property boundary, also being the westerly OCSD Property boundary.
2. Stormwater management facilities in the Meyers Road extension and along the westerly property boundary of Glen Oak Property to the discharge location at Caulfield Creek.
3. Water facilities in the Meyers Road extension including water service to Glen Oak Property.

Completing these improvements are also in the best interest of the City to ensure that the appropriate improvements will be available to serve not just the OCSD transportation and maintenance facility, but also the future park to be located on the Glen Oak Property, as well as future developments west of these properties.

This Agreement is intended to set forth the respective obligations of the City and OCSD in constructing these improvements.

NOW, THEREFORE, based on the foregoing recitals, the CITY and OCSD, hereby agree to the following:

A. Glen Oak Road Infrastructure Improvement Requirements:

1. The City Shall:

- a. Execute a deed of dedication for the Meyers Road Public Right-of-Way (ROW) being a minimum of a 93-foot wide ROW from the intersection of Meyers Road and High School Avenue to the westerly boundary of the future Glen Oak Property.
- b. Grant a permanent 15-foot public stormwater easement along the westerly property boundary of Glen Oak Property.
- c. Grant temporary construction and access easements on the Glen Oak Property as may be needed for OCSD and its contractors to stage, mobilize, and store equipment and material.

2. OCSD shall:

- a. Prior to the City's recordation of the deed of dedication and permanent easement, prepare and submit to the City all documents necessary for the City's required dedication and easement. The documents shall include the deed forms using the City's standard forms, legal descriptions of the dedication areas and sketches depicting the location of the dedications. OCSD shall also pay all applicable document recording fees.
- b. OCSD shall also be responsible for preparing and submitting to the City all documents necessary for the grant of temporary construction and access agreements, including easement forms, legal descriptions and sketches depicting the location of the easements.
- c. Prior to beginning any work on the Glen Oak Property, provide certificate of insurance per the requirements listed in Exhibit 3.
- d. Remove the existing house on the Glen Oak Property as shown on Exhibit 1. The removal shall include the structure, foundation, and all associated facilities and utilities, including decommissioning or removal of all septic systems and underground tanks. OCSD shall also apply for and obtain all applicable building demolition permit(s).
- e. Construct the complete Meyers Road typical section for the 93 feet wide ROW through the Glen Oak Property as shown on Exhibit 4. Both parties acknowledge that this requirement is substantially greater than what is required under condition of approval no. 22 of the Land Use Approval.

The City will provide the landscaping plan for the swale system in the right of way on the Gen Oak Property side of the Meyers Road extension.

- f. Construct a domestic water service to the future Glen Oak Property, coordinating with the City's Glen Oak Property design consultants to determine the size of service and location. The connection of said water service shall be on the proposed 12-inch waterline in Meyers Road extension that is conditioned.
 - g. Design and construct a stormwater conveyance pipe on the Glen Oak Property with pipe outfall at Caufield Creek.
 - i. The stormwater conveyance pipe shall be designed and constructed to provide all necessary capacity for the needs of both the OCSD development and the future use of the Glen Oak Property needs.
 - ii. The design of the stormwater improvements, including the pipe outfall at Caufield Creek shall be coordinated with the City's Glen Oak Property design consultants.
 - h. Restore site to pre-existing or better condition, including seeding and planting as may be needed.
3. OCSD may request a System Development Charge (SDC) credit for transportation under Oregon City Municipal Code (OCMC) 13.20.040 SDC based on the portion of Meyers Road extension improvements that are being constructed outside of the section that is conditioned to be constructed. Any such request for credit must be submitted prior to the issuance of any building permit for this development in compliance with OCMC Chapter 13.20.

B. ADDITIONAL REQUIREMENTS

1. **Land Use Approval:** This Agreement in no way changes or replaces the terms or conditions of the Land Use Approval.
2. **Effective Date, Term and Modification:** This Agreement shall be effective upon signature by both parties and shall have a term of 2 years from the effective date. This Agreement may be modified or terminated prior to the termination date only upon the written agreement signed by the authorized representatives of both parties.
3. **Attorneys Fees:** In the event legal action is brought by the CITY or OCSD against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

4. **Remedies for Breach:** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.
5. **Controlling Law and Venue for Disputes:** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court for Clackamas County.
6. **Entire Agreement:** The CITY and OCSD acknowledge and agree that no promises or representations have been made that do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.
7. **Severability Clause:** The parties to this Agreement agree that if any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contract and shall in no way be affected, impaired or invalidated.
8. **Assignment:** OCSD may not assign all or any portion of its right and interest in and to this Development Agreement, whether by disposition of its property or otherwise, whether by direct or indirect assignment or transfer, by operation or law or by any stock sale, merger, consolidation or other means in any one or more transactions, without the prior written consent of the City, which consent shall not be unreasonably withheld.
9. **No Third Party Beneficiaries:** The parties listed above are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, assigns or provides any benefit or right, whether directly or indirectly otherwise, to third persons, including owners of property or ratepayers within TCSD.
10. **Compliance with Applicable Law:** The parties to this Agreement acknowledge and agree that their activities under this Agreement are subject to existing law and shall comply with all federal, state and local laws and regulations.
11. **Non-Waiver:** No waiver, consent, modification or change of the terms of this Agreement shall bind either party unless in writing and signed by any affected party. Any such waiver, consent modification or change, if made, shall be effective only in specific instances and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

CITY OF OREGON CITY:

David Frasher, City Manager

Date

John Lewis, Public Works Director

Date

OREGON CITY SCHOOL DISTRICT No. 62

Larry Didway, Superintendent

Date

Wes Rogers, Director of Operations

Date

Approved as to form:

City Attorney

Attachments:

Exhibit 1 – Site Map [Showing location of Glen Oak Property, OCSD Property, house to be removed and general location of road]

Exhibit 2 – Master Plan, Detailed Development Plan, and Natural Resource Review Land Use Decision (Type III) Approval by the Planning Commission, dated June 10, 2015 (CP 14-03: Master Plan; DP 14-04: Detailed Development Plan; NR 14-10: Natural Resource Review)

Exhibit 3 – Insurance Requirements

Exhibit 4 – Meyers Road Typical Section

GSB:7244511.1