

ORIGINAL

After recording, return to:  
City of Portland  
Parks & Recreation Bureau  
1120 S.W. Fifth Avenue, 13<sup>th</sup> Floor  
Portland, Oregon 97201  
Attn: Janet Wright

P/05-3-02

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk  
Total : 69.00

2002-080420 05/03/2002 12:51:29pm ATSMF

A49	10	REC	SUR	DOR	OLIS	MRF99
		50.00	3.00	10.00	1.00	5.00

**TEMPORARY EASEMENT  
AND OPTION TO PURCHASE  
(Whitaker Ponds)**

DATE: 5-3-, 2002

PARTIES: **MULTNOMAH COUNTY SCHOOL DISTRICT NO. 1JT**, an Oregon  
municipal corporation (the "District"); and

**CITY OF PORTLAND, OREGON, acting through its PARKS &  
RECREATION BUREAU**, an Oregon municipal corporation ("Parks")

**RECITALS:**

WHEREAS the District is the owner of the land described in Exhibit A attached  
hereto and incorporated herein by this reference (the "District Property"); and

WHEREAS the District intends to grant a temporary, exclusive easement to use  
the land described on Exhibit B attached hereto (the "Easement Property") and which makes up a  
portion of the District Property for a public park and related uses, subject to the terms and  
conditions of this Easement Agreement (the "Agreement");

NOW, THEREFORE, the parties hereto agree as follows:

**AGREEMENTS:**

**Section 1. GRANT OF EASEMENT**

For valuable consideration, receipt of which is hereby acknowledged, District  
hereby grants to Parks a temporary, exclusive easement (the "Easement") on and over the  
Easement Property for park and recreational purposes for the term set forth in Section 2. The  
Easement Property may be used for the foregoing purposes and no other purpose. Use of the  
Easement Property shall be on a regular, continuous, basis benefiting Parks, its successors,  
assigns, lessees, invitees, guests, agents and employees.

In connection with the grant of the Easement, District hereby grants a temporary,  
nonexclusive easement for access to the Easement Property over a strip of land approximately  
10 feet in width, running more or less parallel to the eastern boundary line of Parcel A of the  
District Property, as more particularly shown on Exhibit C as the currently existing access road

10

(the "Access Easement"). The Access Easement shall terminate upon the earlier to occur of (i) Parks obtaining alternate access from a public street to the Easement Property over property located to the west of the Easement Property; and (ii) the Termination Date (as defined below).

Parks agrees that it shall not have or make any claim against District for damages on account of any deficiency in title or lack of access to the Easement Property.

## **Section 2. TERM OF EASEMENT**

The grant of privileges contained herein, if not sooner terminated as provided in 9.1, shall terminate on the earlier of (i) five (5) years after the date this Easement is recorded; and (ii) June 30, 2007 (the "Termination Date").

## **Section 3. MAINTENANCE AND REPAIR**

Parks shall be solely responsible for maintaining and repairing the Easement Property in a safe, clean and orderly condition. Any improvements located on the Easement Property shall be kept in good repair. The cost of all maintenance and repairs shall be borne exclusively by Parks. Such maintenance and repair shall be performed by Parks on a prompt, diligent, and regular basis. In the event Parks fails to perform its obligations under this Section 3, the provisions of Section 7 set forth below shall apply.

## **Section 4. CONDITION OF PROPERTY; RELEASE; DISCLAIMER; INDEMNITY**

**4.1 Condition of Easement Property.** Parks acknowledges and agrees that the Easement Property has been available for inspection by Parks before the date of this Agreement and that Parks has either inspected the Easement Property to its satisfaction or is purchasing the Easement Property without having inspected it and without relying on any representations of the District. PARKS ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE EASEMENT PROPERTY IN AS IS/WHERE IS CONDITION AND THAT THE DISTRICT AND THE DISTRICT'S AGENTS HAVE MADE NO REPRESENTATIONS AND HAVE EXTENDED NO WARRANTIES REGARDING THE EASEMENT PROPERTY. Parks is purchasing the Easement Property based solely on Parks' own independent examination, study, and inspection of the Easement Property and the zoning and other laws applicable to the Easement Property.

**4.2 Release of Claims.** Parks acknowledges and agrees that it will not hold District liable for the condition of the Easement Property, whether known or unknown, currently existing or in the future, whether based on a claim in tort, contract, statute, (including any Environmental Law, as defined in Section 4.5 or otherwise. PARKS HEREBY RELEASES, WAIVES, AND RENOUNCES ANY CLAIMS (AS DEFINED BELOW) AGAINST DISTRICT RELATING TO THE EASEMENT PROPERTY, EXCEPT SUCH CLAIMS ARISING OUT OF THE NEGLIGENT ACTIONS OF THE DISTRICT OCCURRING AFTER THE DATE OF THIS EASEMENT.

**4.3 Hazardous Materials Indemnity.** In addition to the indemnity set forth in Section 6.2 below, Parks hereby agrees to indemnify, defend, and hold harmless District from

any liabilities, losses, expenses, claims, damages, fees or costs (the "Claims") arising out of or related to the existence of Hazardous Materials (as defined in Section 4.5) on the Easement Property, whether such Hazardous Materials now exist thereon or subsequently are released thereon or migrate thereto (the "Obligations"). The Obligations shall be binding on Parks' successors and assigns, and shall survive termination of this Agreement by merger with Parks' ownership of the fee interest in the Easement Property, but the Obligations shall terminate on the Termination Date, except for Claims arising out of or related to acts or omissions during the term of the Easement, for which Claims the Obligations shall survive termination of the Easement.

#### **4.4 Disclaimer of Warranties and Representations Regarding the Property.**

The District expressly disclaims any warranties or representations in any way relating to the Easement Property, whether express or implied, including any warranty of merchantability, or fitness for a particular purpose, and specifically including without limitation any warranty or representation in any way related to or arising from:

- (a) The stability of suitability of the soil on the Easement Property, or the availability or existence of any water, utilities, or access to public roads;
- (b) The presence or absence of any Hazardous Materials on the Easement Property or the Easement Property's compliance with any Environmental Laws (as defined in Section 4.5); or
- (c) Zoning, sensitive area, or other land use laws, rules, or regulations restricting the use, construction of new improvements (including dwellings), or the renovation, repair, improvement, or occupancy of the Easement Property or any existing improvements for any purpose.

**4.5 Hazardous Materials - Environmental Laws.** For purposes of this Agreement:

- (a) "Hazardous Materials" means and includes petroleum and petroleum byproducts, asbestos or any substance containing asbestos, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals now known or hereafter found to cause cancer or reproductive toxicity, pollutants, effluent contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any Environmental Laws.
- (b) "Environmental Laws" includes any present and future local, state and federal laws, regulations, rules, or ordinances relating to the environment and environmental conditions, including without limitation the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 741 et seq., the Clean Water Act, 33 U.S.C. §§ 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe

Drinking Water Act, 42 U.S.C. §§ 300f-300j, and all federal, state, or local regulations, orders and decrees now or hereafter promulgated thereunder.

## **Section 5. TAXES AND ASSESSMENTS**

Parks shall pay when due all real property taxes, assessments, or other charges, if any, against the land which makes up the Easement Property and any improvements now or hereafter located on the Easement Property.

## **Section 6. INSURANCE; INDEMNIFICATION**

**6.1 Insurance.** Parks and District acknowledge that the City self-insures against all activities, conditions, operations, and usages of the Easement Property. Parks agrees to insure the Easement Property and to indemnify the District against Claims, subject to the provisions of Section 6.2.

**6.2 Indemnification.** To the extent not prohibited by Article XI, Section 9 of the Oregon Constitution and Oregon law, Parks hereby agrees to indemnify, defend, and hold harmless District from any Claims arising out of or related to (a) any failure of Parks to perform its obligations under Section 3 hereof, or (b) the condition of, or any activities on, the Easement Property, unless such Claims arise from the negligent acts or omissions of the District. The promises and agreements contained in this Section 6.2 shall survive termination of this Agreement and the Easement by merger with Parks' ownership of the Easement Property, but shall terminate on the Termination Date, except for Claims arising out of or related to the acts or omissions of Parks during the term of the Easement, for which Claims the promises and agreements contained in this Section 6.2 shall survive.

## **Section 7. BREACH OF OBLIGATIONS**

In the event Parks shall fail to perform its obligations under this Agreement, the District shall be entitled to perform such obligations after 30 days' notice to Parks; provided that nothing contained herein shall be construed as creating an obligation of District to perform Parks' obligations hereunder. All of District's expenditures to correct Parks' failure to perform shall be reimbursed by Parks on demand with interest at the rate of 12 percent (12%) per annum from the date of expenditure by District. District shall also be entitled require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law and those rights of cure and reimbursement specifically granted under this Agreement.

## **Section 8. CONDEMNATION**

In the event that the Easement Property or a part thereof or any structure located thereon is taken by power of eminent domain, or is conveyed under threat of condemnation and such taking will render the Easement Property unusable for normal, regular, park activities, this Agreement and the Easement shall terminate. If such taking does not render the Easement Property unusable, this Agreement and the Easement shall continue in full force and effect. Parks shall be entitled to all proceeds from any such condemnation.



## **Section 9. LAND USE PROCEEDING; PUT OPTION**

**9.1 Land Division Approval.** Parks hereby agrees that, prior to the Termination Date, Parks will use its best efforts to (i) obtain access to the Easement Property from property adjacent thereto, and (ii) obtain a final decision regarding a lot line adjustment, subdivision, or partition of the Easement Property (the "Land Division Approval") creating a legal lot in accordance with the provisions of ORS Chapter 92 and the City of Portland subdivision regulations (the "Laws"). District and Parks shall share equally in the costs of the Land Division Approval. Notwithstanding anything to the contrary contained herein, if at any time during the third or fourth year of the term of this Easement, District determines that termination of the Easement is reasonably necessary in order to allow the District to sell the District Property, the District shall notify Parks that if the Land Division Approval is not finally obtained within one (1) year after the date of such notice, the Easement shall automatically terminate on the 365<sup>th</sup> day after the date of such notice; provided that in no event shall the giving of such notice extend the term of the Easement after the Termination Date. In the event of such termination, the Option (as defined in Section 9.2) shall also terminate.

**9.2 Options.** Provided the Easement Property then constitutes one or more lawfully created lots in accordance with the Laws and provided the Easement Property then has access to a public street that does not entail crossing property owned by the District, Parks shall have the option to purchase the Easement Property and the District shall have the option to require Parks to purchase the Easement Property (the "Option") for \$1.00 (the "Option Price"). The Option, if not sooner exercised, shall expire on the earlier of: (i) the Termination Date; and (ii) the date on which the District terminates the Easement pursuant Section 9.1 above. Either party may exercise the Option by delivery of written notice to the other party stating that the Option is exercised (the "Option Notice"). Upon delivery of the Option Notice, and provided the conditions set forth above have been satisfied, District shall be obligated to sell and Parks shall be obligated to purchase the Easement Property for the Option Price. Title to the Easement Property shall be conveyed by a statutory bargain and sale deed from District to Parks executed and recorded within 90 days after the date of the Option Notice. The provisions of Section 7 of this Agreement shall apply to the exercise of the Option.

## **Section 10. ATTORNEY FEES**

In the event of any litigation arising under this Agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court.

## **Section 11. EFFECT OF THE AGREEMENT**

The Easement granted hereunder shall run with the land as to all property burdened and benefited by such Easement. The rights, covenants and obligations contained in this Agreement shall bind, burden and benefit each party's successors and assigns.

**Section 12. STATUTORY LAND USE 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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

**GRANTOR:**

MULTNOMAH COUNTY SCHOOL DISTRICT  
NO. 1JT

By: Lynn Ward  
Title: DEPUTY CLERK

**GRANTEE:**

CITY OF PORTLAND, OREGON, acting through  
its PARKS & RECREATION BUREAU

By: [Signature]  
Title: Commissioner

APPROVED AS TO FORM

Jeffrey L. Rogers  
CITY ATTORNEY

STATE OF OREGON                     )  
  )ss  
COUNTY OF MULTNOMAH         )

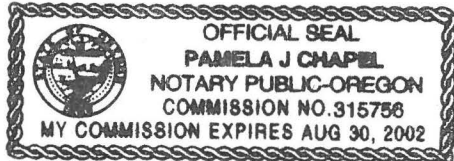
The foregoing instrument was acknowledged before me this 3 day of May, 2002, by Lynn Ward, DEPUTY CLERK of School District No. 1J, Multnomah County, Oregon, an Oregon municipal corporation, on behalf of the corporation.



Sharon R. Graham  
Notary Public for Oregon  
My commission expires: 01-24-2005

STATE OF OREGON                     )  
  )ss  
COUNTY OF MULTNOMAH         )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 2002, by Jim Francesconi, Commissioner of City of Portland, Oregon, acting through its Parks & Recreation Bureau, an Oregon municipal corporation, on behalf of the corporation.



*Pamela Chapel*

Notary Public for Oregon

My commission expires: 08/06/02

## EXHIBIT A

### Description of District's Entire Parcel

#### EXISTING PARCEL, WHITAKER PONDS

The following described real property, situated in the State of Oregon, County of Multnomah;

That portion of the Southeast quarter of Section 19, Township 1 North, Range 2 East of the Willamette Meridian described as follows;

Commencing at a 1/2" iron pipe marking the intersection of Northeast Columbia with N.E. 47<sup>th</sup> Ave and running thence North 01°23'29" East along the center of said 47<sup>th</sup> Ave, 1513.64 feet; Thence South 88°36'31" East, a distance of 629.94 feet to the true point of beginning of the tract herein described Thence South 00°01'33" East, a distance of 568.78 feet; Thence South 85°28'01" East, a distance of 34.90 feet; Thence South 00°05'35" West, a distance of 151.56 feet to a 5/8" iron bar w/aluminum cap marked "Pettijohn"; Thence South 00°31'18" West, a distance of 31.22 feet; Thence South 03°43'15" West, a distance of 54.34 feet; Thence South 00°16'48" West, a distance of 782.05 feet; thence South 79°32'53" East, a distance of 803.26 feet; Thence North 00°01'45" East, a distance of 129.83 feet; Thence South 80°10'25" East, a distance of 13.71 feet; Thence North 00°01'45" East, a distance of 729.86 feet to a 5/8" iron bar on the Northerly right of way line of N.E. Columbia; Thence North 79°28'42" West along said Northerly line, a distance of 186.12 feet; Thence North 00°01'45" East, a distance of 758.90 feet to the center of the Columbia Slough; Thence following said centerline, the following courses and distances North 75°24'44" West, a distance of 124.99 feet; Thence North 82°48'08" West, a distance of 143.82 feet; Thence North 82° 50'29" West, a distance of 234.32 feet; Thence North 87°13'57" West, a distance of 152.47 feet to the Point of Beginning.

Containing 26.86 Acres, more or less.



## **EXHIBIT B**

### **Description of Easement Property**

#### **Whitaker Ponds Easement Description**

The following described real property, situated in the State of Oregon, County of Multnomah;

That portion of the Southeast quarter of Section 19, Township 1 North, Range 2 East of the Willamette Meridian described as follows;

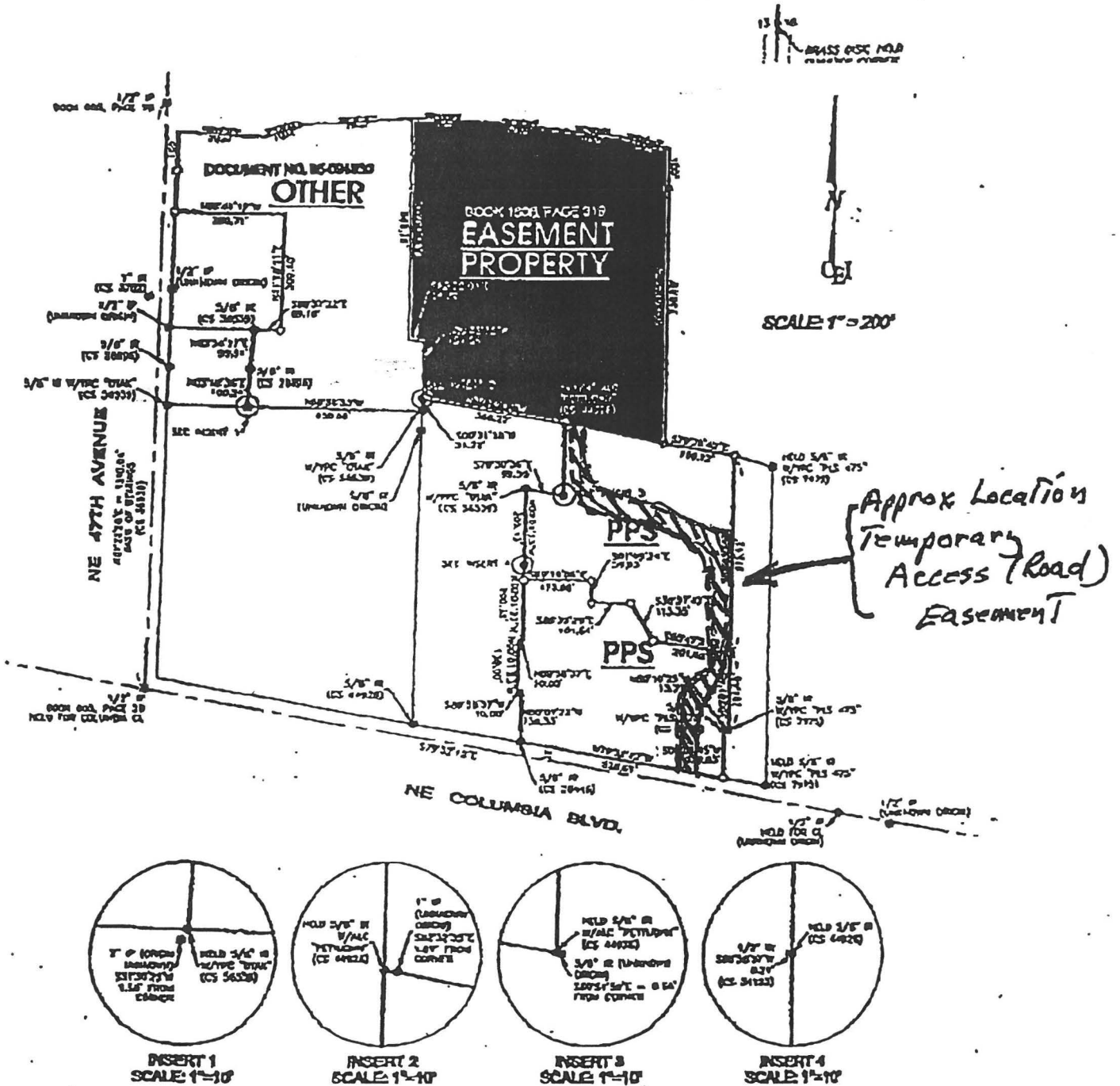
Beginning at a 1/2" Iron Pipe marking the intersection of Northeast Columbia with N.E. 47<sup>th</sup> Ave and running thence North 01°23'29" East along the center of said 47<sup>th</sup> Ave, 1513.64 feet; Thence South 88°36'31" East, 629.94 feet to the true point of beginning of the tract herein described; Thence South 00°01'33" East, a distance of 568.78 feet; thence South 85°28'01" East, a distance of 34.90 feet; thence South 00°05'35" West, a distance of 151.56 feet to a 5/8" iron bar w/Aluminum cap marked "Pettijohn" Thence South 79°28'42" East, a distance of 368.27 feet to a 5/8" iron bar w/aluminum cap marked "Pettejohn; Thence South 77°43'52" East, a distance of 257.05 feet; Thence North 00°01'45" East, a distance of 758.90 feet to the center of the Columbia Slough; Thence following said centerline the following courses and distances North 75°24'44" West, a distance of 124.99 feet; Thence North 82°48'08" West, a distance of 143.82 feet; Thence North 82°50'29" West, a distance of 234.32 feet; Thence North 87°13'57" West, a distance of 152.47 feet to the Point of Beginning.

Containing 10.98 Acres, more or less.

EXHIBIT C

CEF 706  
99-13604  
9/1/500

**WHITAKER HOLDING (LAKESIDE) SITE**



MULTNOMAH  
RECORDING SECTION  
501 SE HAWTHORNE #158  
PORTLAND OR 97214  
(503) 988-3034

Invoice # : 63033  
05/03/2002

GENERAL W/SURVEY	69.00
GENERAL W/SURVEY	64.00

	=====
Grand Total	\$133.00

Amount Due \$133.00  
on account with  
PORTLAND CITY OF-PARKS & REC

Thank You. Retain this  
receipt for your records.

## ORDINANCE NO: 176414

\* Authorize acceptance of a Perpetual Exclusive Easement and Put Option for the Whitaker Middle School Sports Field and a Temporary Easement and Option to Purchase the Whitaker Holdings site from Portland Public School District No. 1J. (Ordinance.)

The City of Portland ordains:

### Section 1. The Council finds:

1. The Council appropriated \$188,000 for consideration of a Perpetual Exclusive Easement and Put Option for the Whitaker Middle School Sports Field and a Temporary Easement and Option to Purchase the Whitaker Holdings ("Ponds") site granted from Portland Public School District No. 1J ("School District") to the City of Portland, Parks Department ("Parks").
2. The \$188,000 that has been appropriated as the consideration for the perpetual exclusive easement for the Whitaker Middle School Sports Field and the Temporary Easement and Option to Purchase the Whitaker Holdings ("Ponds") site is funded from the Parks Construction Fund (General Fund CIP).
3. The Whitaker Middle School Sports Field Easement consists of 2.95 acres of property located at 5700 NE 39<sup>th</sup> Avenue and identified as a portion of Tax Lot 4700, 1N1E13DD and more fully described in Exhibit A of this Ordinance.
4. The School District also agreed to enter into a Temporary Easement and Option to Purchase for the Whitaker Holdings ("Ponds") site located at 5135 NE Columbia Blvd., and further identified as that portion of Section 19, 1N2E WM containing 10.98 acres more or less, and more fully described in Exhibit B of this Ordinance.
5. The Council's intent in acquiring easement(s) for these sites is to secure them in perpetuity for park use by the public.
6. The Director of Parks estimates that the on-going maintenance cost of the Whitaker Middle School Sports Field will be \$16,700 per year. The O & M is not already included in the Parks 2001-02 budget, but ongoing funding capacity is available within the O&M set aside in the General Fund Forecast beginning in FY 2002-03.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Utilities is authorized to execute all documents necessary to close the transactions for the acquisition of both

easements and options, once such documents have been approved as to form by the City Attorney;

- b. The City Auditor is authorized to draw a warrant for \$188,000, payable to Portland School District No. 1J, to be exchanged for the easements and purchase options to the Properties described above;
- c. Upon delivery of the easement documents from the School District, Parks staff is directed to record the easements in the official deed records of Multnomah County. The easements shall be in a form approved by the City Attorney;
- d. The Director of Parks is directed to add the Property to the City's park inventory.
- e. In accepting responsibility for these Properties, the Council acknowledges the need to fund ongoing maintenance costs for the Whitaker Middle School Sports Field as estimated to be \$16,700 per year, and directs the Bureau of Financial Planning to transfer this funding allocation from the General Fund O & M set aside to the Parks ongoing budget starting in FY 2002-03.

Section 2. The Council declares that an emergency exists in order to avoid delay in acquiring the easements and providing the School District with needed cash; therefore, this Ordinance shall be in effect from and after its passage by the Council.

Passed by the Council, APR 24 2002

GARY BLACKMER  
Auditor of the City of Portland  
By /S/ Susan Parsons  
Deputy

Commissioner Francesconi  
Janet Wright  
April 17, 2002