

RESOLUTION NO. 5745-23

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT AND MUTUAL RELEASE AND LEGAL DOCUMENTS NECESSARY TO ACQUIRE PROPERTY FOR THE BOONES FERRY CORRIDOR PHASE 3 IMPROVEMENT PROJECT

WHEREAS, the City identified the need to improve traffic flow and bicycle and pedestrian safety along Boones Ferry Road from Tualatin-Sherwood Road to Avery Street as a high-priority project.

WHEREAS, the City has identified the need to acquire certain properties in order to facilitate the construction of the Boones Ferry Road Corridor and Bike Lane Project ("Project");

WHEREAS, the City has negotiated property transactions with willing sellers to acquire right-of-way, public utility easements, and temporary construction easements (Phases 1-2 of the Project);

WHEREAS, Herbert and Sandra Lafky own the real property at 9160 SW Avery Street ("the Property");

WHEREAS, the City desires to purchase portions of the Property in furtherance of its Boones Ferry Corridor Sidewalk and Bike Lane Project, consisting of a 1,233 square foot right-of-way dedication (Phase 3 of the Project);

WHEREAS, the Lafkys allege that contractors working on behalf of the City trespassed on the Property on two separate occasions ("the Trespasses");

WHEREAS, the Lafkys desire to sell the 1,233 square foot portions of the Property necessary for the City to complete Phase 3 of the Project in accordance with the terms of the Settlement Agreement; and

WHEREAS, execution of the Settlement Agreement will allow the City to complete the Project and resolve all demands and claims between the City and the Lafkys.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Manager is authorized to execute the Settlement Agreement and Mutual Release, attached hereto as Exhibit 1.

Section 2. The City Manager is authorized to execute all documents necessary to acquire the 1,233 square foot right-of-way dedication as set out in Exhibit A of the Settlement Agreement.

Section 3. This resolution is effective upon adoption.

INTRODUCED and ADOPTED by the City Council this 11th day of December, 2023.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

BY _____
City Attorney

ATTEST:

BY _____
City Recorder

EXHIBIT 1

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "**Agreement**"), dated this ____ day of November, 2023 (the "**Effective Date**"), is by and between Herbert and Sandra Lafky (the "**Lafkys**") and the City of Tualatin (the "**City**") (together, the Lafkys and the City are the "**Parties**"; singularly, a "**Party**").

RECITALS

A. The Lafkys own the real property at 9160 SW Avery Street in Tualatin, Oregon (the "**Property**").

B. The City desires to purchase portions of the Property in furtherance of its Boones Ferry Corridor Sidewalk and Bike Lane Project, consisting of a 1,233 square foot right-of-way dedication (the "**Taking**") further described in Exhibits A and B.

C. The Lafkys allege that contractors working for or on behalf of the City trespassed on their Property on two separate occasions (the "**Trespasses**"), and submitted ORS 30.275 tort claim notices to the City detailing the Trespasses on September 15 and October 5, 2023, respectively.

D. This Agreement fully resolves the issues regarding the City's Taking on the Property as well as the Trespasses.

AGREEMENT

For good and valuable consideration of the mutual promises and obligations contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals and exhibits attached thereto are necessary for a full comprehension and understanding of this Agreement. They are contractual in nature and are incorporated in this Agreement by reference.

2. **Payment.** The City shall pay to the Lafkys the total amount of Fifty-Eight Thousand Dollars (\$58,000.00) ("**Settlement Payment**") within two weeks of full execution of this Agreement via a check made out to "Olsen Barton LLC Oregon IOLTA Trust for Lafkys" and directed to Brian J. Best, Olsen Barton LLC, 4035 Douglas Way, Suite 200, Lake Oswego, OR 97035.

3. **Driveway Approach.** City shall construct a west-end driveway approach in conformance with the attached plan sheets set forth in Exhibit C.

4. **Fencing and Landscaping.** City shall not be responsible for the replacement or repair of any fencing or landscaping removed as a consequence of the Taking.

5. **General and Miscellaneous Provisions.**

(a) **Mutual Release.** Upon payment of the Settlement Payment as provided in Section 2 of this Agreement, the Parties shall hereby unconditionally release each other, as well as their respective officials (including appointed and elected officials), employees, contractors, attorneys, agents, assigns, heirs, and beneficiaries from all demands, liabilities, claims, actions, defenses, or counterclaims of any and every nature arising from or relating to the Taking and the Trespasses, including those claims actually asserted and those that could have been asserted.

(b) **Prior Agreements; Survival.** This Agreement is the entire, full, and complete agreement of the Parties pertaining to the Parties' settlement and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar as the settlement is concerned. There are no representations, warranties, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement other than those that are expressed in this Agreement.

(c) **No Admission of Liability.** This Agreement is not and will not be construed as an admission of any legal liability on behalf of any of the Parties.

(d) **Modification or Amendment.** This Agreement may not be modified or amended, except in writing signed by all Parties hereto.

(e) **Governing Law and Venue.** This Agreement and any disputes arising therefrom shall be governed by the laws of the state of Oregon. Any action or proceeding arising out of this Agreement shall be brought and maintained through an action in Washington County Circuit Court, which shall award reasonable attorney's fees, costs, and expenses to the prevailing party in any such dispute.

(f) **Construction.** This Agreement shall not be construed more strictly against one Party than against another by virtue of the fact that the Agreement may have been drafted or prepared by counsel for one of the Parties, it being recognized that both Parties have contributed substantially and materially to the preparation of this Agreement.

(g) **Voluntary Action.** The Parties represent, warrant, and agree that they have thoroughly read and understood the terms of this Agreement and have voluntarily entered into this Agreement to resolve all claims relating hereto.

(h) **Further Action.** The Parties agree to take such action and execute such further documents, as may be reasonably necessary to execute the intent of this Agreement.

(i) **Representation on Authority of Parties/Signatories.** Each person or entity signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the others that the execution and delivery of this Agreement and the performance of such Party's obligations

hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

(j) Execution. This Agreement may be executed by facsimile, PDF, or email and/or in several counterparts, each of which shall be an original and all of which shall collectively constitute but one and the same instrument.

ACCEPTED AND AGREED AS OF THE EFFECTIVE DATE BY:

Dated: 12/4/2023

Herbert Lafky
Herbert Lafky

Dated: 12/4/2023

Sandra J. Lafky
Sandra Lafky

Dated: _____

The City of Tualatin

By: _____

Its: _____

Exhibit A

City of Tualatin
Boones Ferry Road

H. Alan & Sandra J. Lafky
Tax Lot 2S1W26AC 00100

RIGHT-OF-WAY DEDICATION

A tract of land lying in the northeast one-quarter of Section 26 in Township 2 South, Range 1 West of the Willamette Meridian, City of Tualatin, Washington County, Oregon and being a portion of that property conveyed to H. Alan Lafky and Sandra J. Lafky in that Quitclaim Deed – Statutory Form, recorded on December 19, 1989 in Document No. 89-61628, Washington County Deed Records, said parcel being that portion of said property more particularly described as follows:

Beginning at the southeast corner of said property, said point also being on the westerly right-of-way line of SW Boones Ferry Road; thence along said westerly right-of-way line and along the south line of said property South 89° 33' 26" West 7.07 feet; thence leaving said westerly right-of-way line and said south property line North 31° 27' 41" East 82.79 feet; thence North 13° 34' 39" East 22.90 feet; thence North 25° 18' 02" West 30.50 feet; thence North 84° 09' 48" West 21.85 feet; thence North 79° 30' 49" West 12.18 feet to the south right-of-way line of SW Avery Street; thence along said south right-of-way line North 89° 33' 26" East 27.98 feet to a point of curvature; thence on the arc of a 30.00 foot radius curve to the right, through a central angle of 121° 53' 49", an arc distance of 63.83 feet (the long chord of which bears South 29° 29' 40" East 52.45 feet) to said westerly right-of-way; thence along said westerly right-of-way line South 31° 27' 14" West 93.08 feet to the point of beginning.

The tract of land to which this description applies contains 1,233 square feet, more or less.

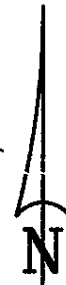
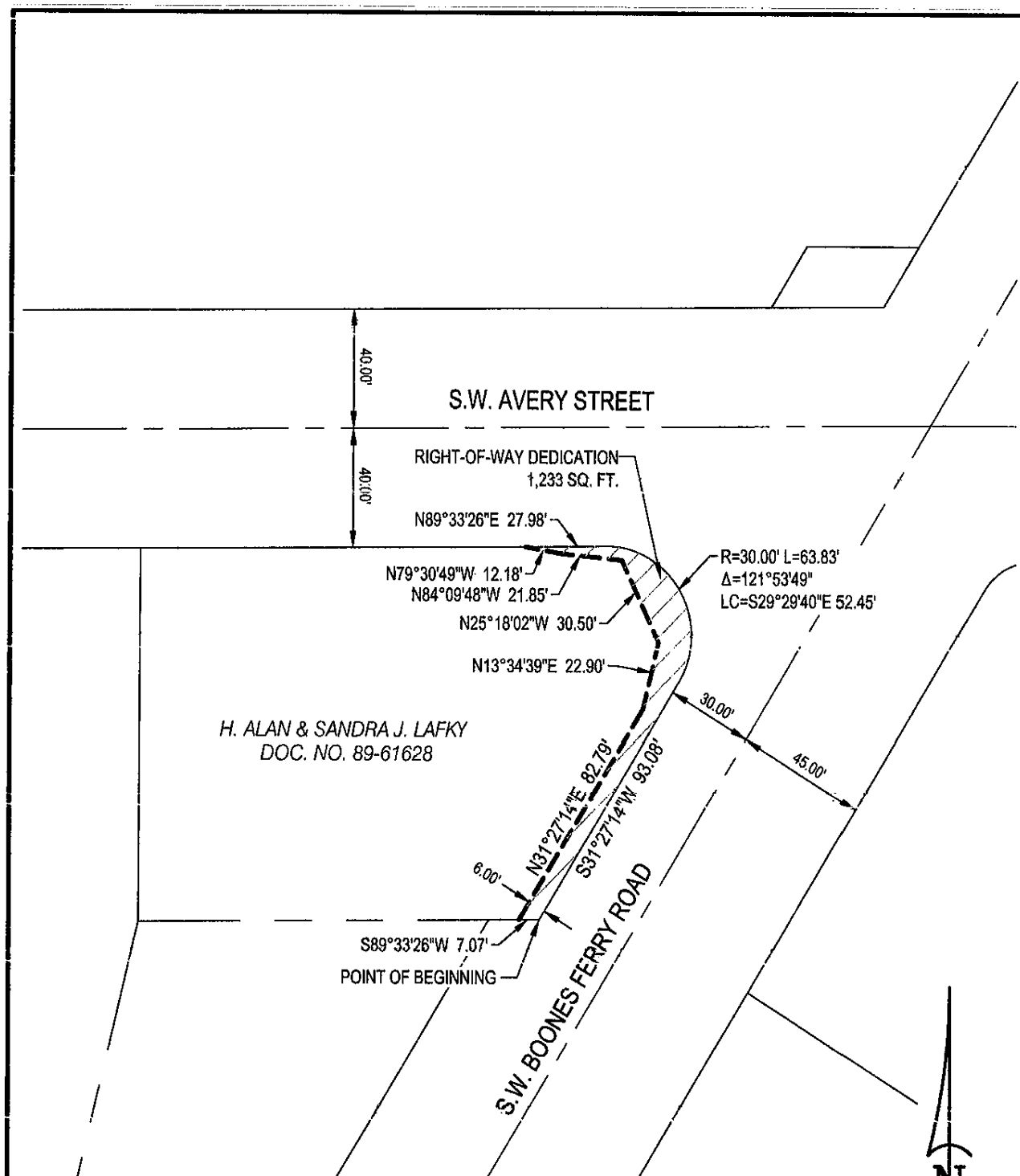
The bearings of this description are based on the Oregon Coordinate Reference System, Portland Zone.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally signed by Ngo Sue Tsoi
DN: cn=Ngo Sue Tsoi, o=Professional Land Surveyors of Oregon, ou=PLSO, email=ngo@plso.org, c=US
Ngo Sue Tsoi

OREGON
JULY 15, 2003
NGO SUE TSOI
58569LS

RENEWS: 6/30/2024



SCALE: 1"=50'

Otak

 808 SW 3rd Ave., Ste. 800
 Portland, Oregon 97204
 Phone: (503) 287-6825
 www.otak.com
 project: 19016.C

EXHIBIT B
 RIGHT-OF-WAY DEDICATION
 IN THE NORTHEAST QUARTER OF SECTION 26,
 TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN
 CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

AUGUST 31, 2023

