

MEMORANDUM

TO: Mayor and City Council

FROM: Faye Stewart, Public Works & Development Director

SUBJECT: ACCEPTANCE OF LULU'S DOG PARK DONATION TO CITY OF COTTAGE GROVE FROM STEPHEN & MARY NISEWANDER

DATE: April 18, 2018

Background


On December 5, 2017 Stephen and Mary Nisewander submitted a formal proposal to donate LuLu's Dog Park to the City of Cottage Grove. The City Manager shared the proposal with the City Council and received support to proceed with preparing the documents necessary to accept the donation. Legal Council prepared the attached Donation Agreement, Statutory Warranty Deed, and the Dog Park Easement.

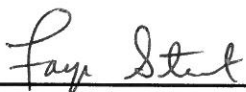
Recommendation

Staff recommends City Council pass a motion accepting the donation of LuLu's Dog Park to the City of Cottage Grove and direct the City Manager to sign the donation agreement and Mayor Gowing to sign the easement.

Cost

The cost is \$7,677.10 for reimbursed expenses and Lane County recording fees.


Richard Meyers, City Manager


Faye Stewart, Public Works &
Development Director

AGREEMENT FOR DONATION OF LULU'S DOG PARK

**Between the City of Cottage Grove
and Stephen and Mary Nisewander, Property owners**

WHEREAS, Stephen Edward Nisewander and Mary Lou Nisewander, trustees of the Stephen and Mary Nisewander Trust dated April 11, 2013 (Owners) own real property located at 1104 East Main Street, Cottage Grove, Oregon 97424, Exhibit A ; and

WHEREAS, Owners and the City of Cottage Grove (City) entered into a Memorandum of Agreement on _____, 2018 regarding certain conditions of the property where Owners converted a portion of their property into a dog park, open for public use; and

WHEREAS, Owners' property is divided into two separate portions with one portion identified as LuLu's Car Wash (Car Wash) and the other portion identified as LuLu's Dog Park (Dog Park), both as more specifically detailed on the attached Exhibit A;

WHEREAS, Owners would like to donate the Dog Park plus an additional 40' x 109.8' easement strip of the Car Wash property for so long as the easement areas is used as part of the Dog Park to City under the following terms and conditions; and

WHEREAS, the land for LuLu's Dog Park is to be considered a donation to the City of Cottage Grove. The value of the land based on Lane County Department of Assessment and Taxation is \$229,262.00. For tax purposes the value of the donation is distributed as follows: (a) Stephen & Mary Nisewander – 70%; (b) Tyler and Maia Johnson – 15%; and (c) Stephen Jae Nisewander – 15%.

NOW THEREFORE, the parties agree to as follows:

A. Owners Obligations.

1. Owners agree to donate the Dog Park to City by statutory warranty deed, to be completed and recorded at the time the survey is recorded, in the form attached as Exhibit B and incorporated herein by this reference, reserving to Owners an easement for a drain line and settling tank.
2. Owners agree to grant City an easement in the form attached as Exhibit C and incorporated herein by this reference, for the exclusive use of the 40' x 109.8' portion of the Car Wash property for so long as the easement area is used as part of the Dog Park.

B. City Obligations. City agrees to the following:

1. The Dog Park and easement area shall be used as a dog park for a minimum of five (5) years from the effective date of this Agreement.
2. The Dog Park and easement area shall be known as "LuLu's Dog Park" for so long as it remains a dog park.
3. City will reimburse Owners in the amount of \$7,677.10, which was the cost incurred by Owners in the construction of the existing Dog Park.

C. Attorney's Fees. If this Agreement gives rise to a lawsuit or other legal proceedings between any of the parties hereto, the prevailing party shall be entitled to recover actual court costs and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

D. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one in the same Agreement. The parties agree that signatures transmitted by electronic mail or facsimile are equivalent to original signatures for the purposes of this Agreement.

E. Governing Law. This Agreement shall be governed by the laws of the State of Oregon.

F. Indemnification. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, each party shall indemnify and hold the other, its heirs and assigns, harmless from claims of injury to person or property as a result of the negligence of indemnifying party, its officers, employees, or agents, relating to the indemnifying party's obligations under this Agreement.

CITY:

_____ Date: _____

Name: _____

Title: _____

OWNERS

_____ Date: _____
Stephen Nisewander

_____ Date: _____
Mary Nisewander

EXHIBIT A

Car Wash Property Legal Description Post Boundary Line Adjustment

A parcel of real property situated in Cottage Grove, Oregon and more particularly described below:

The South 120 feet of the parcel conveyed to Stephen Edward Nisewander and Mary Lou Nisewander, trustees of the Stephen and Mary Nisewander Trust dated April 11, 2013 and described in Deed No. 2014-006755, Lane County Deeds and Records, Lane County, Oregon.

Dog Park Property Legal Description Post Boundary Line Adjustment

A parcel of real property situated in Cottage Grove, Oregon and more particularly described below:

The North 180 feet of the parcel conveyed to Stephen Edward Nisewander and Mary Lou Nisewander, trustees of the Stephen and Mary Nisewander Trust dated April 11, 2013 and described in Deed No. 2014-006755, Lane County Deeds and Records, Lane County, Oregon.

Exhibit B

**Until a change is requested,
tax statements shall be sent to:**
City of Cottage Grove
400 East Main Street
Cottage Grove, OR 97424

After recording return to:
City of Cottage Grove
400 East Main Street
Cottage Grove, OR 97424

**STATUTORY WARRANTY DEED
Oregon Revised Statutes (ORS) 93.850**

Stephen Nisewander and Mary Nisewander, Grantors, convey and warrant to the City of Cottage Grove, an Oregon municipal corporation, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

See legal description of the property in attached and incorporated Exhibit A. The property has a physical address of: 1104 East Main Street, Cottage Grove, Oregon 97424.

Excepting Grantors' reserved easement for placement of a drain line and settling tank located at _____, as further described on Exhibit A. Said reserved easement authorizes Grantors the right to maintain and repair said line and tank, as needed subject to at least twenty-four (24) hours prior written notices to Grantee.

Grantors warrant to Grantee that the property is free from encumbrances except as set forth in the list of title exceptions attached and incorporated as Exhibit B.

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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930,

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.

The true consideration for this conveyance is \$0.00

DATED: _____, 2018.

GRANTORS:

STEPHEN NISEWANDER AND MARY NISEWANDER

By: _____
Stephen Nisewander

By: _____
Mary Nisewander

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by Stephen Nisewander, Grantor.

Notary Public for Oregon

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by Mary Nisewander, Grantor.

Notary Public for Oregon

EXHIBIT A

Dog Park Property Legal Description Post Boundary Line Adjustment

A parcel of real property situated in Cottage Grove, Oregon and more particularly described below:

The North 180 feet of the parcel conveyed to Stephen Edward Nisewander and Mary Lou Nisewander, trustees of the Stephen and Mary Nisewander Trust dated April 11, 2013 and described in Deed No. 2014-006755, Lane County Deeds and Records, Lane County, Oregon.

Exhibit C

After recording return to:
City of Cottage Grove
400 E. Main Street
Cottage Grove, Oregon 97424

**Until further notice,
send tax statements to:**
City of Cottage Grove
400 E. Main Street
Cottage Grove, Oregon 97424

GRANTORS:

GRANTEE:

**CITY OF COTTAGE GROVE, OREGON
DOG PARK EASEMENT**

Stephen Edward Nisewander and Mary Lou Nisewander, trustees of the Stephen and Mary Nisewander Trust dated April 11, 2013, hereinafter referred to as "Grantors," own the real property described below and do hereby give and grant unto the City of Cottage Grove, a municipal corporation in Lane County, Oregon, hereinafter referred to as "Grantee," an exclusive perpetual easement to be used as a public dog park, including Grantee's right to construct a fence and all related Dog Park appurtenances, located on, across, under or over the surface of the following described real property:

EASEMENT AREA

The North 40 feet of the South 120 feet of the parcel conveyed to Stephen Edward Nisewander and Mary Lou Nisewander, trustees of the Stephen and Mary Nisewander Trust dated April 11, 2013 and described in Deed No. 2014-006755, Lane County Deeds and Records, Lane County, Oregon.

The true and actual consideration for this easement is other than money.

Grantee and its contractors, subcontractors, agents or employees shall have the right to enter and occupy the easement for the purpose of constructing, operating and maintaining the easement, including inspection, repair, replacement, removal or renovation of the dog park. Additionally, the general public shall have the right to enter and occupy the easement for the use and enjoyment of the dog park.

Grantee is responsible for the maintenance of the easement. It is understood that Grantee may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the easement if Grantee finds that the physical obstruction or use will interfere with Grantee's easement rights granted above, without recompense to the Grantors.

Donation of LuLu's Dog Park to the City Of Cottage Grove, Oregon.

Date: 12/5/2017

The current owners of LuLu's Dog Park located at 1104 East Main Street are donating the dog park land (1104 East Main Street rear fenced lot) to the city of Cottage Grove, Oregon.

1. Land: Approximately 109.8 ft X 239 ft 2017 Real Mkt Value \$271,242.00
2. Benches: \$560 mold plus \$165.00 per bench Total Value \$1,220.00
3. Fences:\$3032.00 for all fencing(some was donated & not charged) \$3032.00
4. Sprinkler System: Site one Landscaping (Materials only) \$1654.25
5. Gates: Two 38" man gates, One 10 ft Double swing gate-Jerrys \$298.85
6. Dog Waste Stations: Two waste stations plus bags \$597.00
7. Bulletin Board: lumber and assorted materials from Cascade \$875.00

Land Donation (Fair Market Value from Lane County Tax Statement) \$271,242.00

Park Material Costs paid for by the Nisewander Family \$7677.10

In exchange for this donation the city shall agree to the following items:

1. The dog park will continue to be known as LuLu's Dog Park.
2. The land will remain a dog park for a minimum of five years.

3. The car wash located adjacent to the dog park will have an easement for the drain line and settling tank located in the dog park. The car wash may have the tank pumped and line cleaned as needed for the car wash.
4. The city will repay the costs incurred in the building of the park to Steve & Mary Nisewander. (Total of items 2-7, \$7677.10)
5. The city will arrange for a lot line adjustment to divide the two properties into LuLu's dog Park and LuLu's Car Wash.

The value of the donation is based on the Lane County Property Tax value of the land using 2017 tax values. The dog park portion land tax value is \$271,242.00

For IRS purposes the tax deductible donation will be as follows:

Stephen & Mary Nisewander \$211,242.00
Tyler & Maia Johnson \$30,000.00
Stephen J Nisewander \$30,000.00

Sincerely,

Stephen & Mary Nisewander