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City Recorder
500 Klamath Avenue
Klamath Falls, OR 97601

State of Oregon, County of Klamath
Recorded 04/14/2003 2:50 p.m.
Vol M03 Pg 23368-74
Linda Smith, County Clerk
Fee \$ 51.00 # of Pgs 7

**EASEMENT AGREEMENT
(RIGHT OF WAY AND SLOPE)**

This Easement Agreement (this "Agreement") made and entered into as of the 18th day of March, 2003, by and between the City of Klamath Falls, Oregon, an Oregon municipal corporation ("City"), and Electro Scientific Industries, Inc., an Oregon corporation, its successors and assigns ("ESI").

By instrument dated June 20, 2000, and recorded on that same date at Volume M00, Page 22399 in the Records of Klamath County, Oregon, Klamath Cascade Group, LLC, an Oregon limited liability company ("KCG"), conveyed to City that certain right-of-way easement and permanent drainage easement over and across portions of Parcel 2 of Klamath County Land Partition ("Parcel 2") (the "Original KCG Easement"). On June 20, 2000, ESI acquired Parcel 1 of Klamath County Land Partition ("Parcel 1") from Klamath Community Development Corporation by instrument recorded June 20, 2000 at Volume M00, Page 22405. In 2001, ESI acquired from KCG the following portion of Parcel 2, abutting Parcel 1 (the "Added ESI Property") and added the same to said Parcel 1 by Property Line Adjustment (P.L.A. 5-01) completed by deed recorded at Volume M01, Page 33101:

A portion of Parcel 2 of "Land Partition 12-00" situated in the NE 1/4 S 1/2 of Section 18, Township 38 South, Range 9 East, Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Southwest corner of Parcel 1 "Land Partition 12-00" also being the center 1/4 corner of Section 18; thence South 87 degrees 53' 45" East along the South line of said Parcel 1, 810.00 feet to the Southeast corner of said Parcel 1; thence South 01 degrees 23' 04" West 53.78 feet; thence North 87 degrees 53' 45" West parallel to the said South line of Parcel 1, 810.15 feet; thence North 01 degrees 32' 23" East 53.78 feet to the point of beginning.

Parcel 1 plus the Added ESI Property, together, are referred to in this Agreement as the "ESI Property." Parcel 2 excepting the Added ESI Property is referred to as the "KCG Property."

In 2002, KCG and City amended, superseded and supplemented the Original KCG Easement as such related to the alignment of ESI Way over and across the KCG Property by instrument recorded on August 14, 2002, in the records of Klamath County, Oregon, at Volume M02, Page 45656, and provided for a supplemental permanent drainage easement by instrument recorded on that same date in the records of Klamath County, Oregon, at Volume M02, Page 45677, as modified by instrument recorded on October 15, 2002, in the records of Klamath County, Oregon, at Volume M02, Page 58619, and provided a permanent slope easement by instrument recorded on August 14, 2002, in the records of Klamath County, Oregon, at Volume M02, 45651, and a water pump station easement by instrument recorded on that same date in the

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records of Klamath County, Oregon, at Volume M02, Page 45662 (together, as supplemented, modified and amended, the "**Existing KCG Easements**").

The City has constructed a public roadway known as ESI Way, which includes the portion built on the ESI property and the portion built on the KCG Property ("**ESI Way**") pursuant to the Existing KCG Easements, and City continues to maintain said roadway. However the actual alignment of ESI Way is somewhat different from the proposed alignment in the Original KCG Easement and the Existing KCG Easements and involved the construction of certain fills, cuts, slopes and embankments on the ESI Property not expressly contemplated in the Original KCG Easement or the Existing KCG Easements. The parties now wish to supplement and amend the Original KCG Easement and the Existing KCG Easements, to the extent such relates to the ESI Property, to reflect the actual alignment of ESI Way as constructed on the ESI Property and to create certain permanent slope easements on the ESI Property related to said roadway as provided in this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency is hereby acknowledged, City and ESI hereby agree as follows:

1. Location and Use of Existing ESI Way Easement.

(a) **Location.** Upon the recording of this Agreement in the Records of Klamath County, Oregon, (i) the City's easement for the location of ESI Way on the ESI Property pursuant to the Original KCG Easement and the Existing KCG Easements shall be and become (and ESI hereby grants an easement to City for) the location of the portion of ESI Way as currently constructed on the ESI Property, as described on the attached Exhibit A; and (ii) the location of ESI Way on the ESI Property as described herein automatically shall (A) replace and supersede the prior description of the ESI Way easement in the Original KCG Easement and the Existing KCG Easements to the extent such relates to the ESI Property, and (B) extinguish all rights of City under the Original KCG Easement and the Existing KCG Easements to the extent such relate to the ESI Property and are inconsistent with the as built ESI Way as described in this Agreement.

(b) **Use of and Maintenance of ESI Way Easement.** ESI Way shall be used for public vehicular and pedestrian access and for the installation, maintenance, repair, replacement and use of public utilities. City shall maintain, repair and replace the public roadway and accessways constructed in ESI Way (or cause the same to be done). In connection with such use, City and others authorized to utilize the utility easement, may construct, reconstruct, maintain and repair the roadway or utilities situated in ESI Way.

2. Slope Easement. ESI hereby grants and conveys to City on behalf of the public permanent slope easements for the cuts and fills, slopes and embankments constructed by City in the construction of ESI Way over the areas described on attached Exhibit B ("**Slope Easement Area**").

3. Existing Improvements. Notwithstanding anything to the contrary in this Agreement, to the extent there are accessways or improvements on the ESI Property on the effective date of this Agreement that may lie within the as built ESI Way or the Slope Easement Area, such accessways and improvements may remain in place. ESI and its successors and assigns and permittees shall have the right to use, operate, maintain, replace and improve such accessways and improvements, provided that no future improvement or reconstruction shall cause any such accessway or improvement to further encroach onto the as built ESI Way or the Slope Easement Area. For the purposes of this paragraph 3, the term "improvements" shall include, without limitation, any existing utility lines or facilities owned or installed by ESI or the provider of any utility service to or for the benefit of the ESI Property.

4. Indemnification. To the fullest extent allowed by applicable law, City agrees to indemnify, defend, hold harmless ESI for, from and against any loss, claim, or liability arising out of the use of the

easements granted herein. City assumes all risk arising out of the use of the Slope Easement Area and /or ESI Way, and ESI shall have no liability to City or any third party for any condition existing on the ESI Property.

5. **Binding Effect/Future Dedication.** The easements and rights granted herein shall run with the land and shall be binding upon the parties and upon their respective heirs, personal representatives, successors and assigns. The easements granted herein shall be perpetual, provided that, on request of City, the easements granted herein shall be superseded and replaced by a formal dedication of the Slope Easement Area and the as built ESI Way to the public consistent with this Agreement at no out-of-pocket cost to ESI.

6. **Restatement of Existing Easement/Counterparts.** This Agreement hereby supersedes, restates and amends the Original KCG Easement and the Existing KCG Easements to the extent such would otherwise burden the ESI Property. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Restated and Amended Easement Agreement as of the date first written above.

CITY:

CITY OF KLAMATH FALLS,
an Oregon municipal corporation

By: 

Printed Name: Jeff Ball

Its: City Manager

ESI:

ELECTRO SCIENTIFIC INDUSTRIES, INC.,
an Oregon corporation

By: 

Printed Name: Jack Isselmann

Its: General Counsel

ACKNOWLEDGED:

KLAMATH CASCADE GROUP, LLC,
an Oregon limited liability company

By: 

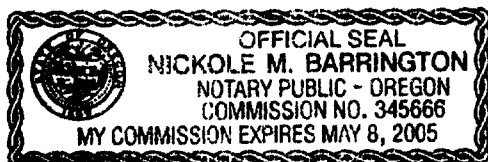
Printed Name: Robert Stewart

Its: Manager

23371

STATE OF OREGON)
) ss.
 County of Klamath)

This instrument was acknowledged before me on this 18th day of March, 2003 by
Teff Ball, as City Manager of THE CITY OF
 KLAMATH FALLS, an Oregon municipal corporation.



Nickole M. Barrington
 Notary Public for Oregon

STATE OF OREGON)
) ss.
 County of Klamath)

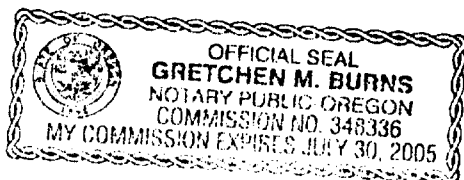
This instrument was acknowledged before me on this 17th day of March, 2003 by
Robert Stewart, as manager of KLAMATH
 CASCADE GROUP, LLC, an Oregon limited liability company.



Heather R. Criss
 Notary Public for Oregon

STATE OF OREGON)
) ss.
 County of Washington)

This instrument was acknowledged before me on this 21st day of March, 2003 by
Jack Isselmann, as General Counsel of ELECTRO
 SCIENTIFIC INDUSTRIES, INC, an Oregon corporation.



Gretchen M. Burns
 Notary Public for Oregon

**EXHIBIT A
TO
EASEMENT AGREEMENT
(City of Klamath Falls and ESI)**

ESI Way As Built Easement Area Description

GRANTOR:
ESI, INC.
13900 NW SCIENCE PARK DR.
PORTLAND, OR 97229
JUNE 27, 2001
PARCELS I AND II

PARCEL I (RIGHT-OF-WAY DEDICATION)

A PARCEL OF LAND LYING IN THE NORTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, THE NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, AND THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 18, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, SAID PARCEL ALSO BEING THAT PORTION WITHIN A STRIP OF LAND LYING ON THE LEFT AND RIGHT SIDE OF THE LINE DELINEATED BY FOLLOWING THE BELOW NOTED STATIONS AND OFFSETS OF THE CENTERLINE OF ESI WAY AS SAID CENTERLINE IS DESCRIBED BELOW.

COMMENCING AT STATION 0+00 AT THE INTERSECTION OF SYKES BLVD. CENTERLINE AND ESI WAY CENTERLINE, SAID POINT BEARS SOUTH 23°32'00" EAST, 1206.80 FEET FROM THE CENTER-EAST ONE-SIXTEENTH CORNER OF SAID SECTION 18, EVIDENCED BY A ¾" IRON PIPE WITH 2" ALUMINUM CAP MARKED "L.S. 993"; THENCE SOUTH 71°07'11" WEST, 40.30 FEET TO STATION 0+40.30, SAID POINT BEING THE INTERSECTION OF THE CENTERLINE OF ESI WAY AND THE WESTERLY RIGHT-OF-WAY OF SYKES BLVD. AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID WESTERLY RIGHT-OF-WAY SOUTH 71°07'11" WEST 50.81 FEET TO A POINT OF CURVATURE AND STATION 0+91.11; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 59°38'39", AN ARC DISTANCE OF 312.30 FEET (THE LONG CHORD OF WHICH BEARS NORTH 79°03'30" WEST, 298.38 FEET) TO A POINT OF COMPOUND CURVATURE AND STATION 4+03.41; THENCE ALONG THE ARC OF A 1000.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18°43'15", AN ARC DISTANCE OF 326.74 FEET (THE LONG CHORD OF WHICH BEARS NORTH 39°52'33" WEST, 325.29 FEET) TO A POINT OF TANGENCY AND STATION 7+30.15; THENCE NORTH 30°30'56" WEST, 49.17 FEET TO A POINT OF CURVATURE AND STATION 7+79.32; THENCE ALONG THE ARC OF A 1000.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 10°11'14", AN ARC DISTANCE OF 177.80 FEET (THE LONG CHORD OF WHICH BEARS NORTH 25°25'19" WEST, 177.57 FEET) TO A POINT OF REVERSE CURVATURE AND STATION 9+57.12; THENCE ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 26°10'56", AN ARC DISTANCE OF 228.48 FEET (THE LONG CHORD OF WHICH BEARS NORTH 33°25'10" WEST, 226.50 FEET) TO A POINT OF REVERSE CURVATURE AND STATION 11+85.60; THENCE ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 47°53'42", AN ARC DISTANCE OF 417.96 FEET (THE LONG CHORD OF WHICH BEARS NORTH 22°33'47" WEST, 405.90 FEET) TO A POINT OF TANGENCY AND STATION 16+03.57; THENCE NORTH 01°23'04" EAST, 1096.43 FEET TO THE POINT OF TERMINUS AND STATION 27+00, SAID POINT BEARS SOUTH 58°51'25" WEST, 576.30 FEET FROM THE NORTHEAST ONE-SIXTEENTH CORNER OF SAID SECTION 18, EVIDENCED BY A ¾" IRON PIPE.

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**EXHIBIT A
TO
EASEMENT AGREEMENT
(City of Klamath Falls and ESI)**

ESI Way As Built Easement Area Description

BEARINGS ARE BASED UPON FOUND MONUMENTATION SHOWN ON LAND PARTITION NO. 12-00 AS FILED IN KLAMATH COUNTY RECORDS, KLAMATH COUNTY, OREGON.

<u>STATION TO STATION</u>	<u>LEFT O/S</u>	<u>RIGHT O/S</u>
16+30.72 TO 25+39.73	30.00'	
16+30.72 TO 25+90	40.00'	
25+39.73 TO 25+90		40.00'
25+90 TO 27+00	60.00'	60.00'

THE PARCEL OF LAND TO WHICH THIS DESCRIPTION APPLIES CONTAINS 29,310 SQUARE FEET MORE OR LESS.

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**EXHIBIT B
TO
RESTATED AND AMENDED
RIGHT-OF-WAY EASEMENT AGREEMENT
(City of Klamath Falls and ESI)**

Slope Easement Description

PARCEL II (PERMANENT SLOPE EASEMENT)

A PARCEL OF LAND LYING IN THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 18, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, SAID PARCEL ALSO BEING THAT PORTION WITHIN A STRIP OF LAND LYING ON THE LEFT AND RIGHT SIDE OF THE LINE DELINEATED BY FOLLOWING THE BELOW NOTED STATIONS AND OFFSETS OF THE CENTERLINE OF ESI WAY AS DESCRIBED ABOVE UNDER PARCEL I.

<u>STATION TO STATION</u>	<u>LEFT O/S</u>	<u>RIGHT O/S</u>
16+30.72 TO 16+84.45	68.00'	
16+84.45 TO 18+00	73.00'	
18+00 TO 18+80.15	76.00'	

EXCEPTING THEREFROM, PARCEL I AND ALL THAT PORTION OF SAID PARCEL LYING WITHIN THE EXISTING RIGHT-OF-WAY OF ESI WAY.

THE PARCEL OF LAND TO WHICH THIS DESCRIPTION APPLIES CONTAINS 8,015 SQUARE FEET MORE OR LESS.