



Gregory L. Geist
Director

November 7, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Declaration of Covenant of Maintenance, Release and Indemnity
Between Water Environment Services and the City of Oregon City

Purpose/Outcomes	Approval of this Agreement allows Oregon City to grant permission to use public right of way for WES infrastructure, and indemnifies City for such use.
Dollar Amount and Fiscal Impact	No immediate costs. Indemnity obligation at some point in the future might require expenditure of WES funds.
Funding Source	WES operating fund. No County general funds or property taxes are implicated by this agreement.
Duration	Permanent.
Previous Board Action/Review	None.
Counsel Review	This Agreement was reviewed and approved by County Counsel on October 30, 2019.
Strategic Plan Alignment	1) Build strong infrastructure: this enables continued existence of the security wall along Agnes for the Tri-City Plant. 2) Build public trust through good government: transparent and open statements by both WES and Oregon City regarding responsibilities and expectations for occupancy of the right of way.
Contact Person	Chris Storey, WES Assistant Director, 503-742-4543
Contract No.	N/A

BACKGROUND:

When Clackamas County Service District No. 1 (now Water Environment Services) constructed the Phase I improvements at the Tri-City Plant in 2011, the design at the time required construction of a security wall along Agnes Ave. between the public right of way and the new membrane bioreactor treatment train. The ultimate construction of the wall encroached slightly into the public right of way along Agnes Avenue.

The issue was identified at the time of construction, and the proposed remedy was for the City of Oregon City to grant permission of occupancy of the right of way, and receive assurances that the City would not be disadvantaged because of that permission. The WES staff on the project have retired and the City engineer on the project left the city without the final documentation being executed.

City Engineering Department leadership brought the issue to WES' attention, and the attached Declaration of Covenant of Maintenance, Release and Indemnity was negotiated to resolve the long-outstanding issue. No immediate payment or consideration is required. Rather, the

agreement contemplates WES being responsible for costs relating to its occupancy of the right of way, and indemnifying the City of Oregon City for actions relating to the same.

If approved by the BCC as the governing body of Water Environment Services, it would then be submitted to the City of Oregon City for final approval.

This Agreement was reviewed and approved by County Counsel on October 30, 2019.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Declaration of Covenant of Maintenance, Release and Indemnity between Water Environment Services and the City of Oregon City.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a long horizontal flourish extending to the right.

Greg Geist
Director, Water Environment Services

Attachments:

- Declaration of Covenant of Maintenance, Release and Indemnity
 - Exhibit A – legal property description
 - Exhibit B – Oregon City Resolution (to be attached upon adoption of Oregon City)
 - Exhibit C – site plan

AFTER RECORDING RETURN TO:

City of Oregon City, City Recorder
P.O. Box 3040
Oregon City, Oregon 97045-0304

City Resolution No.: _____ Public Works Permit No.: _____

Street Address: _____

Tax Map & Lot: _____ PROPERTY OWNER: _____

DECLARATION OF COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY

This COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY (“Covenant”) is made between

Water Environment Services, an ORS 190 Partnership hereinafter referred to as “Permittee”, and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the “City”).

RECITALS

A. Permittee is/are the owner(s) of certain real property located in the City of Oregon City, Clackamas County, Oregon, legally described on **Exhibit A** attached hereto and commonly known as the Tri-City Wastewater Treatment Plant located at 15941 Agnes Ave., Oregon City, OR (the “Property”).

B. Permittee has applied for City right-of-way permit (“Permit”) to maintain a permanent obstruction that is regulated and governed by Oregon City Municipal Code Chapter 12 *Streets, Sidewalks and Public Places*, Section 12.04.120 *Obstructions Permit required*.

C. The City has approved the Permit through adoption of **Resolution No.** _____ (**Exhibit B** attached hereto) allowing a wall along the west side of Agnes Avenue (“Obstruction”) within the public right-of-way as shown in the “Site Plan” **Exhibit C** attached to this Covenant. The Obstruction is solely for the Property, contingent on Permittee providing this maintenance covenant and release to the City for all activities undertaken pursuant to the Permit issued by the City pursuant to Oregon City Municipal Code section 12.04.120 *Obstructions Permit required*, which requires Permittee to maintain, and release the City from all damages resulting from, the approved permanent obstruction in the right-of- way.

D. To protect owners of neighboring properties, the City requires the Permittee to enter this Covenant as a condition to the City’s approval of building permits.

COVENANT

NOW, THEREFORE, Permittee covenants as follows:

In consideration of the issuance of the City Resolution and Permit, the undersigned (“Permittee”) hereby covenants and agrees to the following terms:

1. **Covenant to Maintain, Repair and Remove.** Permittee shall, at their sole expense (no cost to the City), themselves or through qualified independent contractors, at all times maintain the Obstruction in safe condition and good repair, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City) for the general public or remove the Obstruction as directed by the City (the City may at any time for any reason provide a thirty (30) day notice for removal of the Obstruction). Permittee or their representatives, shall obtain proper permits or approvals from the City and shall notify the City in writing 24 hours prior to any construction or repair activities for Obstruction. Furthermore, in the event Permittee fails to comply with this Covenant, Permittee hereby agrees that the City may remove or maintain said Obstruction immediately. Permittee agrees to reimburse City for costs incurred by City when complying with this Covenant as described in Section 3 below.

2. **Failures to Perform Covenant.** Except in the case of emergency, if the City determines that Permittee is not in compliance with the Covenant described in Section 1, the City or its designee shall give the Permittee written notice to perform maintenance or repair or removal work specified in the notice. If such work is not performed to the City's satisfaction within 30 days of notice, Permittee hereby grants to the City, their employees, independent contractors and designees the right to perform any and all work required to bring said Obstruction into compliance with Section 1 and Permittee hereby agrees to reimburse City for performing work as described in Section 3 below. Permittee agrees that the City or its designee may perform any emergency repair work, as determined by City, without prior notice to Permittee and that Permittee will reimburse City for emergency work as described in Section 3 below.

3. **City Under No Obligation.** The City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Covenant, including the right under Sections 1 of this Covenant, to perform the work required of the Permittee or to perform any other maintenance or repair of the Obstruction. In addition, neither the City, nor any of its departments, employees, independent contractors and/or designees shall have any liability to Permittee in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Obstruction, or the failure to perform the same.

4. **Reimbursement.** If City exercises its right to maintain or repair or remove the Obstruction pursuant to Section 1 and/or Section 2, Permittee shall reimburse the City for all reasonable costs and expenses incurred in connection therewith within 30 days of receipt of an invoice. If any Permittee fails to pay invoiced amount within such period, such amount shall thereafter accrue interest at a per annum rate equal to prime rate of U.S. Bank (or its successor) plus five percent (5%). Such amount, together with any interest that has accrued, shall be a lien on the Property, which may be foreclosed in accordance with ORS Chapter 88. If Property is owned by more than one person, then each such Permittee shall be jointly and severally liable for payment of the amounts provided for in this Section 4.

5. **Liability Coverage.** Owners agree to maintain appropriate insurance liability coverage, naming the City as additional insured, per current City policy limit minimums and/or will maintain sufficient self-insurance to indemnify the City for any damages resulting from any condition or activity whether known or unknown, anticipated or unanticipated, during the time of this agreement.

6. **Release.** Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Permittee does hereby release and forever discharge the City of Oregon City, and its City Commissioners, officers, agents, volunteers and employees (collectively “**Indemnitees**”) from all claims, liability, loss and demands of whatever kind or nature, either in law or in equity, arising from or related to Permittee’s activity described above and/ or otherwise authorized by the Permit. Without limiting the generality of the foregoing, Permittee understands and agrees that this Covenant discharges each of the Indemnitees from any liability or claim that Permittee may have against any of them with respect to any bodily injury, personal injury, illness, death, or property damage that may arise from or relate to Permittee’s activity described above and/or otherwise authorized by the City’s Decision. Permittee hereby expressly and specifically assumes the risk of injury or harm or damage to person or property with respect to the activity described above or otherwise authorized by the Permit.

7. **Indemnity.** Permittee hereby agrees to indemnify, defend (with legal counsel acceptable to the Indemnitees) and hold the Indemnitees harmless from all claims, liability, loss, damage, cost or expense that the Indemnitees may sustain or incur arising from or relating to Permittee’s activity described above and/or otherwise authorized by the Permit. The foregoing indemnity shall include but not be limited to any claims, liability, loss, damage, cost or expense due to any bodily injury, personal injury, illness, death, or property damage arising from or related to Permittee’s activity described above and/or otherwise authorized by the Permit.

8. **Run with the Land.** The parties’ rights and obligations contained herein shall run with the land and inure to the benefit of, and shall be binding upon, the City and Permittee and their respective successors and assigns (including, without limitation, subsequent owners of the Property or lots in the Property and any homeowner’s association owning common areas in the Property).

9. **Interpretation.** The undersigned agrees that this Covenant is intended to be as broad and inclusive as is permitted by the laws of Oregon, and that if any portion of this Covenant is held invalid, it is agreed that the remaining portion shall continue in full force and effect.

10. **Enforcement.** Reserved.

11. **Authority.** In the event the undersigned is a limited liability company, corporation or other organization, the individual signing below represents and warrants he/she has authority to execute this Covenant on behalf of such organization.

12. **Binding Effect.** The indemnity described in Section 7, shall be binding upon Permittee’s agents, guests, licensees, heirs, personal representatives, executors, successors and assigns.

13. **Jurisdiction.** In the event of any dispute between the undersigned and any or all of the Indemnitees, such dispute shall be governed by Oregon law and the exclusive jurisdiction for such dispute shall be the State courts for the State of Oregon, and the exclusive venue for such dispute shall be Clackamas County, Oregon.

14. **Compliance with Laws.** Permittee shall comply with all laws, ordinances and regulations, and the terms of any permit issued by the City, applicable to Permittee in connection with Permittee's activity described above.

IN WITNESS WHEREOF, the PERMITTEE has executed this instrument this _____ day of November, 2019. The person(s) whose name(s) is/are subscribed to the instrument acknowledge that he/she/they executed the instrument in his/her/their legally authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

[Signature Page(s) Follow]

PERMITTEE: Water Environment Services

As shown on Page 1 (name of organization or individual property owner(s))

Signature No. 1

Signer's printed name

Title (if applicable)

STATE OF OREGON)

)

County of _____)

This record was acknowledged before me on (month & day) _____, 2019

by _____, as _____

Signer's printed name

Title (write "N/A" if not applicable)

of _____.

Name of Corporation on whose behalf record is executed (write "N/A" if not applicable)

Stamp notary seal:

WITNESS my hand and official seal.

Signature of Notary Public

My commission expires: _____

Accepted on behalf of the City of Oregon City:

By: John M. Lewis, Public Works Director

Attest: Kattie Riggs, City Recorder

Insert exhibits on separate subsequent sheets.

Exhibit A is a legal description of the subject property provided by a professional land surveyor, stamped with their seal, and having a 1/8th-inch or larger font size (8.5-inch by 11-inch page).

Exhibit B is the signed Resolution having a 1/8th-inch or larger font size (8.5-inch by 11-inch page is preferred).

Exhibit C is a site plan having a 1/8th-inch or larger font size (8.5-inch by 11-inch page).

NOTE:

Please remit the required processing and recording fee with this document submittal.

Photostatic copies of reduced tax maps may not meet the above described map requirements – verify with the Clackamas County Recorder.

All pertinent documents must be approved and processed by the City of Oregon City prior to the recording of partition & subdivision plats by the Clackamas County Surveyors Office – allow ample time for the City to process this document.

EXHIBIT A

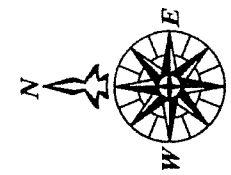
SN2008-317 sheet 2 of 3

Clackamas County Surveyor
 Received 10-10-08
 Accepted for filing 11-3-08
 Survey Number SN2008-317

RECORD OF SURVEY

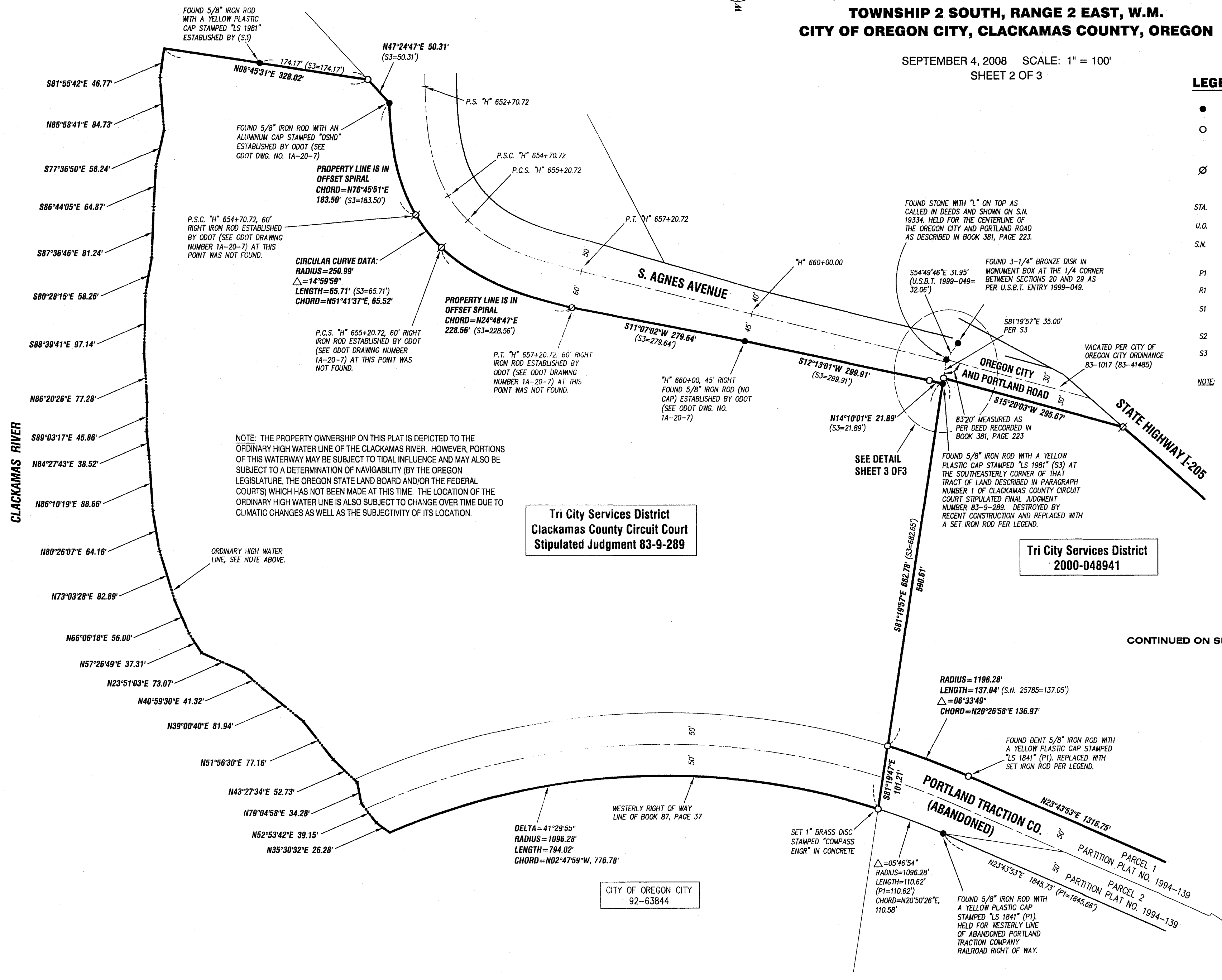
LOCATED IN THE S.W. 1/4 OF SECTION 20,
 S.E. 1/4 OF SECTION 20 AND THE N.W. 1/4 OF SECTION 29
 TOWNSHIP 2 SOUTH, RANGE 2 EAST, W.M.
 CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON

SEPTEMBER 4, 2008 SCALE: 1" = 100'
 SHEET 2 OF 3



LEGEND:

- DENOTES MONUMENT FOUND AS NOTED
 - DENOTES 5/8" DIAMETER BY 30" LONG IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING", UNLESS OTHERWISE NOTED, SET ON SEPTEMBER 4, 2008
 - ⊗ DENOTES 5/8" DIAMETER BY 30" LONG IRON ROD WITH AN ALUMINUM CAP STAMPED "COMPASS ENG." SET ON SEPTEMBER 4, 2008
 - STA. STATION
 - U.O. UNKNOWN ORIGIN
 - S.N. DENOTES SURVEY NUMBER ON FILE WITH CLACKAMAS COUNTY SURVEYOR'S OFFICE
 - P1 PARTITION PLAT NO. 1994-139
 - R1 DOCUMENT NUMBER 74-10037
 - S1 ODOT DRAWING NO. 1A-20-7 (CLACKAMAS RIVER-WEST LINN SECTION, EAST PORTLAND FREEWAY)
 - S2 S.N. 7103
 - S3 S.N. 19334
- NOTE: IRON PIPES NOTED ARE MEASURED INSIDE DIAMETER.



NOTE: THE PROPERTY OWNERSHIP ON THIS PLAT IS DEPICTED TO THE ORDINARY HIGH WATER LINE OF THE CLACKAMAS RIVER. HOWEVER, PORTIONS OF THIS WATERWAY MAY BE SUBJECT TO TIDAL INFLUENCE AND MAY ALSO BE SUBJECT TO A DETERMINATION OF NAVIGABILITY (BY THE OREGON LEGISLATURE, THE OREGON STATE LAND BOARD AND/OR THE FEDERAL COURTS) WHICH HAS NOT BEEN MADE AT THIS TIME. THE LOCATION OF THE ORDINARY HIGH WATER LINE IS ALSO SUBJECT TO CHANGE OVER TIME DUE TO CLIMATIC CHANGES AS WELL AS THE SUBJECTIVITY OF ITS LOCATION.

Tri City Services District
 Clackamas County Circuit Court
 Stipulated Judgment 83-9-289

Tri City Services District
 2000-048941

CONTINUED ON SHEET 3 OF 3

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
 JULY 14, 1978
 DON DEVLAEMINCK
 1634

DATE OF SIGNATURE: 10/24/08
 EXPIRES 12/31/2009

Survey prepared by:
 Compass Engineering
 4105 International Way, Suite 501
 Milwaukie, Oregon 97222
 Phone: 503-653-9093
 6589 Bnd3.dwg (MMM)
 Job No. 6589 (Survey)

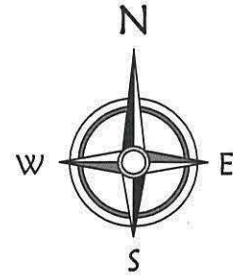
EXHIBIT C
PAGE 1 OF 2

TAX LOT 503
MAP 2-2E-20
TRI-CITY SERVICES DISTRICT

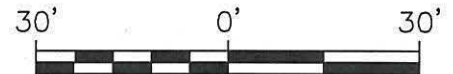
7' WALL ENCROACHMENT

S78°52'58"E
7.00'
EAST EDGE OF
WALL IS 0.7' EAST
OF RIGHT OF WAY

EAST EDGE OF WALL
COLUMN IS 6.0' EAST
OF RIGHT OF WAY



Scale: 1" = 30'



S. AGNES AVENUE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 14, 1978
DON DEVLAEINCK
1634

DATE OF SIGNATURE: 7/10/2012
EXPIRES 12/31/2013

EAST EDGE OF WALL
COLUMN IS 0.7' EAST
OF RIGHT OF WAY

EAST EDGE OF WALL
COLUMN IS 0.7' EAST
OF RIGHT OF WAY

N78°52'58"W
7.00'

TRUE POINT OF BEGINNING

THIS POINT IS LOCATED N14°10'01"E 21.89',
AND N12°13'01"E 299.91', AND N11°07'02"E
14.30' FROM POINT "A"

POINT "A"
SOUTHEASTERLY CORNER OF
TRACT DESCRIBED IN
PARAGRAPH NO. 1, CLACKAMAS
COUNTY CIRCUIT COURT
STIPULATED FINAL JUDGMENT
NO. 83-9-289.

POINT OF COMMENCEMENT
BRONZE DISK IN A MONUMENT BOX AT 1/4
CORNER BETWEEN SECTIONS 20 AND 29

STONE WITH "L"
N54°49'46"W
31.95'

N81°19'57"W
39.25'

N11°07'02"E 223.00'
S11°07'02"W 223.00'

6589 Exh7.dwg

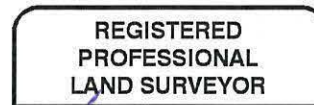
EXHIBIT C
PAGE 2 OF 2

WALL ENCROACHMENT

A 7.00 FOOT WIDE STRIP OF LAND SITUATED IN SECTION 20, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRONZE DISK IN MONUMENT BOX AT THE 1/4 CORNER BETWEEN SECTIONS 20 AND 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, W.M., AS PER U.S.B.T. ENTRY 2012-018, CLACKAMAS COUNTY SURVEY RECORDS; THENCE NORTH 54°49'46" WEST 31.95 FEET TO A STONE WITH "L"; THENCE NORTH 81°19'57" WEST 39.25 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "LS 1981" AT THE SOUTHEASTERLY CORNER OF THAT TRACT OF LAND DESCRIBED IN PARAGRAPH NUMBER 1 OF CLACKAMAS COUNTY CIRCUIT COURT STIPULATED FINAL JUDGMENT NUMBER 83-9-289; THENCE ALONG THE EASTERLY LINE OF SAID TRACT OF LAND DESCRIBED IN PARAGRAPH NUMBER 1 OF CLACKAMAS COUNTY CIRCUIT COURT STIPULATED FINAL JUDGMENT NUMBER 83-9-289 NORTH 14°10'01" EAST 21.89 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 12°13'01" EAST 299.91 FEET TO A 5/8" IRON ROD; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 11°07'02" EAST 14.30 FEET TO THE TRUE POINT OF BEGINNING OF THE STRIP TO BE DESCRIBED; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 11°07'02" EAST 223.00 FEET; THENCE LEAVING SAID EASTERLY LINE SOUTH 78°52'58" EAST 7.00 FEET; THENCE SOUTH 11°07'02" WEST 223.00 FEET; THENCE NORTH 78°52'58" WEST 7.00 FEET TO THE TRUE POINT OF BEGINNING.

BASIS OF BEARINGS: SN 2008-317



DATE OF SIGNATURE: 2/10/2012

EXPIRES 12/31/2013