



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD | OREGON CITY, OR 97045

February 6, 2020

**Stephen L. Madkour**  
 County Counsel

Board of County Commissioners  
 Clackamas County

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
 Assistants

Members of the Board:

Approval of an Assignment of Easement Agreement with  
Fischer's Forest Park Property Owners' Association for Lot 27 Fischer's Forest Park

<b>Purpose/Outcomes</b>	<i>Approval of an assignment agreement transferring a sewer easement from the County to Water Environment Services.</i>
<b>Dollar Amount and Fiscal Impact</b>	<i>No fiscal impact.</i>
<b>Funding Source</b>	<i>N/A</i>
<b>Duration</b>	<i>Perpetual until terminated by the Board.</i>
<b>Previous Board Action/Review</b>	<i>N/A</i>
<b>Counsel Review</b>	<i>January 29, 2020</i>
<b>Strategic Plan Alignment</b>	<i>1. This initiative supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.        2. This initiative supports the WES Strategic Plan to provide partner communities with reliable wastewater infrastructure to serve existing customers and support future growth.</i>
<b>Contact Person</b>	<i>Amanda Keller, Assistant County Counsel (x4589)</i>
<b>Contract No.</b>	<i>Easement No. 73 25894</i>

**BACKGROUND:**

In 1973, prior to the formation of Clackamas County Service District No.1 ("CCSD1"), sewer easements were granted to Clackamas County, for use by the Department of Utilities. However, since then, the County formed two service districts to provide wastewater services within the County, the Tri-City Service District ("TCSD") and CCSD1.

On November 3<sup>rd</sup>, 2016, TCSD and CCSD1 entered into an intergovernmental agreement ("IGA") to form a municipal partnership entity named Water Environment Services ("WES") that provides regional wastewater services within Clackamas County. As a part of that IGA, TCSD and CCSD1 agreed to transfer all real property assets, including easements, over to WES.

In order to allow for efficient administration of WES' business and resources in managing these easements, County staff recommends the County transfer the sewer easements it holds to WES.

**RECOMMENDATION:**

County Counsel staff recommends the Board of County Commissioners approve the assignment agreement transferring the sewer easement from Fischer's Forest Park Property Owners' Association for Lot 27 from the County to Water Environment Services.

Respectfully submitted,



Amanda Keller  
Assistant County Counsel

Attachments:  
Assignment Agreement

73-1001

Recd  
Make copy

Exhibit A

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that FISCHER'S FOREST PARK PROPERTY OWNERS' ASSOCIATION, an Oregon corporation, hereinafter referred to as the grantor, for the consideration hereinafter stated paid by CLACKAMAS COUNTY, OREGON, and the mutual benefits hereby gained, which consideration and benefits are hereby acknowledged and receipted by the grantor, does hereby grant, bargain, sell and convey unto Clackamas County, Oregon, a permanent easement and right to lay down, construct, reconstruct, replace, maintain, operate, inspect and perpetually care for a sewer and all related facilities through, under and along the following described real property in the County of Clackamas and State of Oregon:

Lot 27 Fischer's Forest Park on a duly recorded plat located in Section 32, Township 2 South, Range 3 East, Willamette Meridian, County of Clackamas, State of Oregon.

It is understood and agreed that no buildings shall be erected upon said easement premises without the written consent of Clackamas County, Oregon, and that the said County shall replace and restore as nearly as practicable the surface of said easement premises and any water lines, storm sewers or other improvements after construction and maintenance work on said sewer.

It is further understood that the construction by Clackamas County shall be done in such a way as to not interfere with any existing improvements on or under the aforesaid described real property.

The above conveyance of a permanent easement and perpetual maintenance of improvements by grantee is for so

long as said property is used for the stated purpose. When said easement is no longer so used, the interest of the grantee shall automatically terminate.

This instrument does not grant or convey unto Clackamas County, Oregon any right or title to the surface of the soil along the line of said sewer except for the purpose of laying down, constructing, reconstructing, replacing, maintaining, operating, inspecting and perpetually caring for said sewer and related facilities. This instrument gives immediate possession of the foregoing premises.

The true and actual consideration for this transfer is \$ - none - paid herewith, \$ - none - to be paid prior to construction, but is a gift to grantee from grantor.

The only other persons, firms or corporations known by grantor to have any interest in the foregoing premises are: none.

IN WITNESS WHEREOF, the grantor above named has heretofore set its hand and seal this 20<sup>th</sup> day of May, 1970.

FISCHER'S FOREST PARK  
PROPERTY OWNERS' ASSOCIATION

By Roger E. Embury  
President

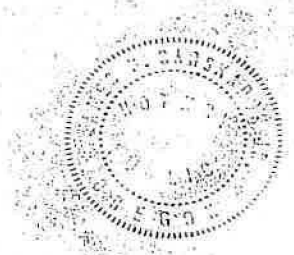


S. Clayton Smith  
Secretary

2

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

On this \_\_\_\_ day of May, 1970, before me personally appeared Roger E. Smelser and C. Clayton Teach, who being duly sworn did say that he, Roger E. Smelser, is the President, and he, C. Clayton Teach, is the Secretary, of Fischer's Forest Park Property Owners' Association, an Oregon corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and Roger E. Smelser and C. Clayton Teach acknowledged said instrument to be its voluntary act and deed.



*George D. Puppen*  
Notary Public for Oregon  
My Commission Expires 30 April 1972

STATE OF OREGON, }  
County of Clackamas, }

I, George D. Puppen, County Clerk, Ex-Officio Recorder of Conveyances and Ex-Officio Clerk of the Circuit Court of the State of Oregon, for the County of Clackamas, do hereby certify that the within instrument of writing was signed for and recorded in the records of

**DEED**  
1973 AUG 15 PM 2 45  
73 25894

of said County at

RECORDED OF  
CLACKAMAS COUNTY, OREGON  
GEORGE D. PUPPEN  
County Clerk

Recording Certificate

-3-  
3

L

## **ASSIGNMENT OF EASEMENT**

THIS ASSIGNMENT OF EASEMENT ("**Assignment**") is dated \_\_\_\_\_, 2020, by and between **Clackamas County**, a political subdivision of the State of Oregon ("**Assignor**"), and **Water Environment Services**, an intergovernmental entity formed pursuant to ORS Chapter 190 ("**Assignee**"), with reference to the following:

### **RECITALS:**

- A.** Assignor was the original recipient of a sewer easement identified as Document No. 1973-025894 recorded in the Clackamas County Deed Records on August 15, 1973 (the "Easement"), a copy of which is attached hereto and incorporated herein as **Exhibit A**.
- B.** The Assignee is the sewer utility within the applicable region of Clackamas County where the easement is located, whom both parties agree should be the holder of a sewer easement.
- C.** The Assignor desires to transfer the interest in the Easement to Assignee.

### **AGREEMENT:**

NOW, THEREFORE, for value, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Assignment**

Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title, and interest in and to the Easement. The Assignment shall be effective upon the last date of signature of the parties ("Effective Date").

#### **2. Assumption**

Assignee hereby accepts such assignment and agrees to be bound by and comply with all of the duties and obligations identified in the terms of the Easement from and after the Effective Date.

#### **3. Indemnification**

- 3.1** Assignor hereby agrees to indemnify Assignee for, defend Assignee against, and hold Assignee harmless from and against any and all liabilities, losses, costs, damages, expenses, claims, suits or demands resulting from Assignor's failure to perform any of its duties or fulfill any of its obligations under the Easement prior to the Effective Date.
- 3.2** Assignee hereby agrees to indemnify Assignor for, defend Assignor against, and hold Assignor harmless from and against any and all liabilities, losses, costs, damages, expenses, claims, suits or demands resulting from Assignee's failure



to perform any of its duties or fulfill any of its obligations under the Easement on and after the Effective Date.

**4. Further Assurances**

The parties agree to execute, acknowledge where appropriate and deliver such other or further reasonable instruments of assignment as the other party may reasonably require to confirm the foregoing assignment, or as may be otherwise reasonably requested by Assignor or Assignee to carry out the intent and purposes hereof.

**5. Binding Effect**

This Assignment shall inure to the benefit of, and be binding upon, each of the parties hereto and their respective successors and assigns.

**6. Counterparts**

This Assignment may be signed in one or more counterparts, each of which shall be deemed an original and all of which counterparts shall be deemed one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

**FOR ENTITY SIGNATURES:**

**ASSIGNOR: CLACKAMAS COUNTY**

**ASSIGNEE: WATER ENVIRONMENT SERVICES**

By: \_\_\_\_\_  
Chair Date

By: \_\_\_\_\_  
Chair Date

Witness: \_\_\_\_\_  
Date

Witness: \_\_\_\_\_  
Date

Approved As to Form:

  
\_\_\_\_\_  
County Counsel Date 1/29/20