



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 12, 2018

Board of County Commissioners
Development Agency Board

Members of the Board:

Approval of an Amendment to the Intergovernmental Agreement with
Water Environment Services and Transfer of Easements for
Wetland Mitigation Services and Option to Purchase Property

Purpose/Outcome	Execution of an amendment to the intergovernmental agreement (“IGA”) with Water Environment Services (“WES”) and easements required to be provided under the terms of the IGA.
Dollar Amount and Fiscal Impact	No Fiscal Impact. Approximately \$330,000 in value was exchanged from each agency to the other under the original IGA
Funding Source	No Fiscal Impact. The value provided by each agency to the other is equivalent.
Duration	Ten years from the effective date of the IGA or at the time the wetland mitigation requirements have been completed by WES, whichever is sooner. The easements to be accepted by WES are permanent.
Previous Board Action/Review	Original Intergovernmental Agreement with WES approved by the Board on July 27, 2017.
Strategic Plan Alignment	Grow a vibrant economy Build a strong infrastructure Honor, utilize, promote and invest in our natural resources
Contact Person	Dave Queener, Development Agency Program Supervisor 503.742.4322 Ron Wierenga, Water Environment Services, 503-742-4581

BACKGROUND:

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120th St and SE Capps Road;
- 2) Regional water quality treatment facility;
- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

On July 27, 2017, the Development Agency and CCSD #1 executed an IGA to facilitate the Carli Creek Project by accommodating the construction of a new stormwater pipeline to divert runoff currently discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is under contract to sell the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

CCSD #1 and the Development Agency identified a number of benefits in the coordination of these projects which will result in cost savings and efficiencies for both agencies. Accordingly, the Development Agency agreed to grant certain easements and transferred certain parcels of land to CCSD #1 in exchange for CCSD #1 incorporating and managing the wetland mitigation as part of the Carli Creek Project and granting an option to the Development Agency to allow them exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project.

On July 1, 2018, CCSD#1 assigned all of its rights and obligations under the IGA to Water Environment Services ("WES").

An amendment to the original IGA is necessary to properly identify the location of the boundary line of the Agency's property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property. The amendment will substitute Exhibit A, which illustrates the proper location of the boundary line.

Section 2 of the IGA requires the Agency to convey a 15-foot permanent pipeline, stormwater detention, and maintenance easement to WES, along with a second 15-foot permanent access easement. The Agency and WES now wish to complete these obligations and execute the easements.

This information has been reviewed by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners, in its capacity as the governing body of the Clackamas County Development Agency, approve the IGA amendment with Water Environment Services, and the conveyance of the easements described herein.

Respectfully submitted,

Dave Queener
Development Agency Program Supervisor

Attachments:
Amendment #1 to the Intergovernmental Agreement
Intergovernmental Agreement
Permanent Pipeline, Stormwater Detention and Maintenance Easement
Permanent Access Easement

**AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES AND
CLACKAMAS COUNTY DEVELOPMENT AGENCY FOR
CARLI CREEK RESTORATION AND MITIGATION**

THIS AMENDMENT (“Amendment”) is made and entered into by and between the Clackamas County Development Agency (hereafter called “Agency”), the urban renewal agency of Clackamas County, and Water Environment Services (hereafter called “District”), a municipal partnership entity formed pursuant to ORS Chapter 190, to update the descriptions of the easements associated with the stormwater pipeline and access road.

WHEREAS, the Agency and Clackamas County Service District No. 1 (“CCSD#1”) entered into a certain Intergovernmental Agreement, effective July 27, 2017 (the “IGA”);

WHEREAS, the IGA related to certain improvements associated with the Carli Creek Water Quality and Enhancement Project, as more particularly described in the IGA;

WHEREAS, after execution of the IGA, a question arose as to the location of the boundary line of the Agency’s property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property;

WHEREAS, the parties desire to revise the IGA to correctly reflect the location of the stormwater pipeline and access road easement; and

WHEREAS, on July 1, 2018, Clackamas County Service District No. 1 assigned all of its rights and obligations under the IGA to District.

THEREFORE, the parties agree that the Agreement is amended as follows:

1. Exhibit A of the Agreement is hereby amended and replaced in its entirety with a revised Exhibit A-1 and Exhibit A-2, which are attached to this Amendment and fully incorporated herein.
2. Except as set forth herein, the Agreement is ratified and affirmed in all respects. No other amendment or modification of the IGA is intended or may be implied from the amendments set forth herein.

3. All terms not specifically defined herein shall be defined as set forth in the IGA.

IN WITNESS HEREOF, the Parties have executed this Amendment by the date set forth opposite their names below.

Clackamas County Development Agency

Water Environment Services

Chair

Chair

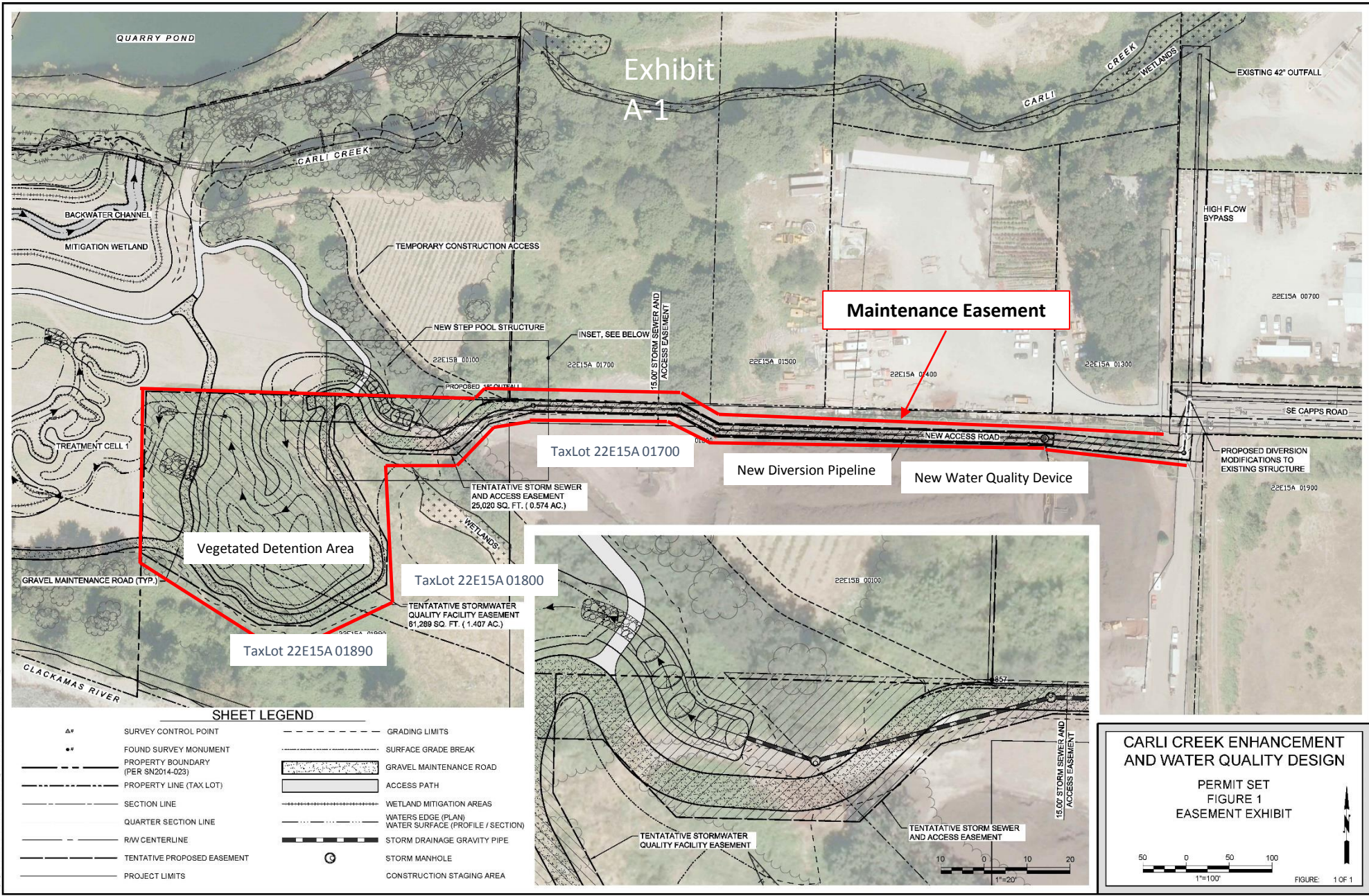
Recording Secretary

Exhibit List:

Exhibit A-1: Pipeline, Stormwater Detention, Maintenance, and Easement Map

Exhibit A-2: Access Easement Map

Exhibit A-1



Vegetated Detention Area

TaxLot 22E15A 01700

New Diversion Pipeline

New Water Quality Device

TaxLot 22E15A 01800

TaxLot 22E15A 01890

SHEET LEGEND

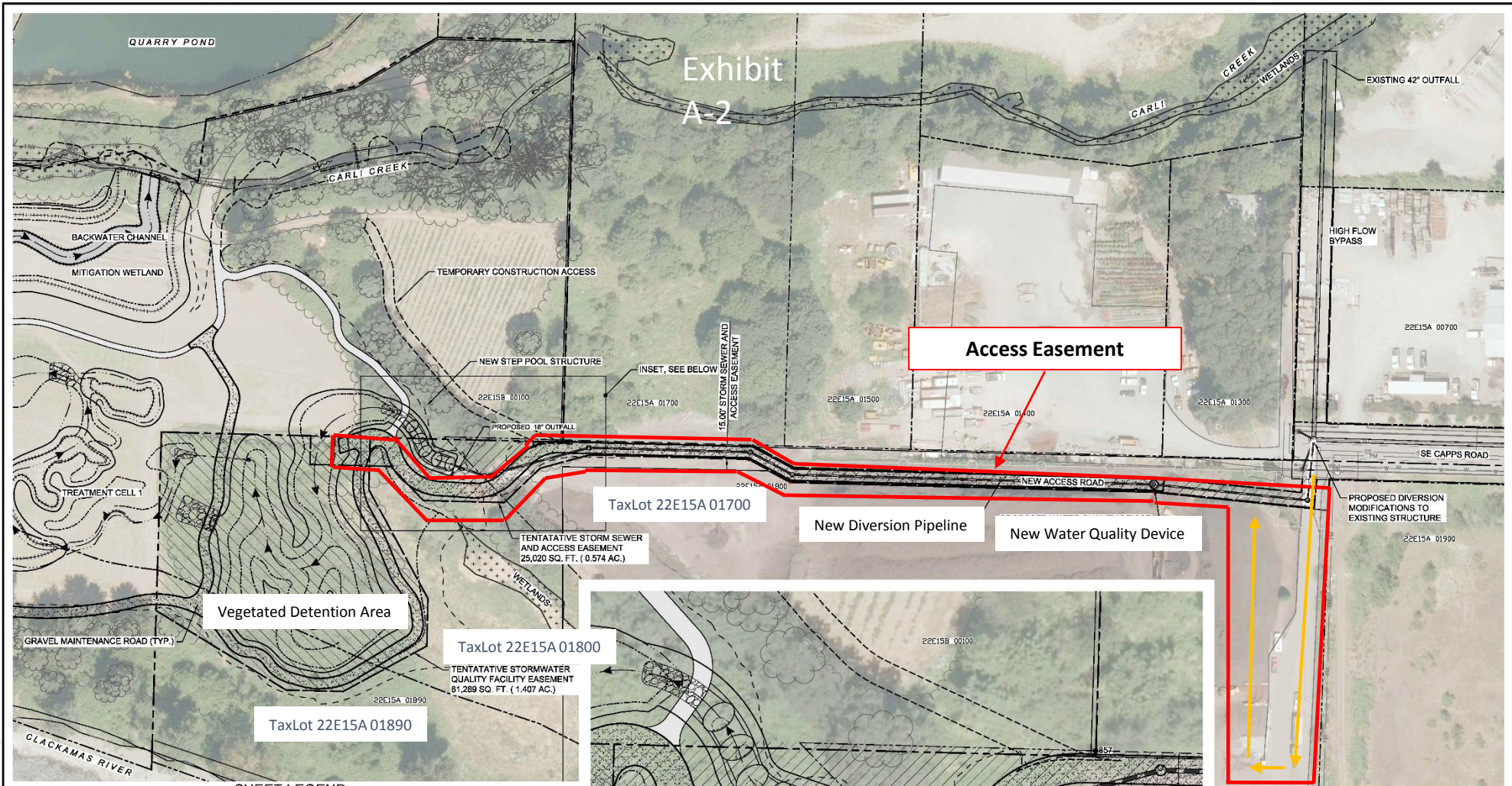
▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA

CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

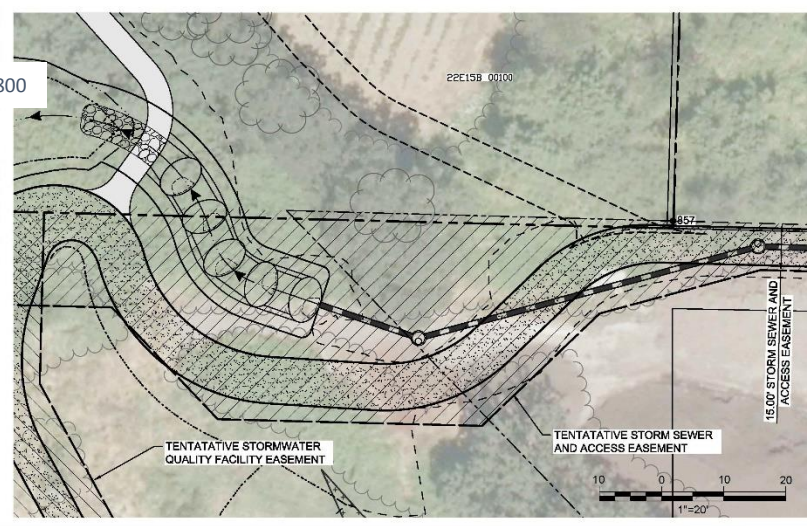
Project: March 15, 2018
 Drawing: 2018-11-15-2595-000_PDR-CARLI-CREEK-ENHANCEMENT-EXHIBIT.dwg

Exhibit A-2



SHEET LEGEND

△#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	- - - - -	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	▨	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	▭	ACCESS PATH
---	SECTION LINE	▨	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATER'S EDGE (PLAN)
---	R/W CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	○	STORM MANHOLE
			CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE 1 OF 1

Project: March 15, 2018
 C:\env\2017\1414-15655-000\POX\CAD\DWG\FIGURE\EASEMENT_EXHIBIT.dwg

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beavercreek Road Oregon City, OR 97045		
Grantee: Water Environment Services		
Address: 150 Beavercreek Road Oregon City, OR 97045		
After Recording Return to: Water Environment Services 150 Beavercreek Road Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		

PERMANENT NON-EXCLUSIVE ACCESS EASEMENT
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement for ingress and egress, in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

The Permanent Easement for ingress and egress is more particularly depicted in Figure “1” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor’s successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee’s exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

The ingress and egress (the "Access") is currently improved and utilized and extends over the Property. Grantor hereby conveys to Grantee the right to access the Easement Area and the right to develop, operate and maintain the Access as now located on the Property for the purposes described herein. Grantee shall be solely responsible for the cost of the maintenance of the Access. Grantee shall agree to relocate the Access within a reasonable time upon written request from Grantor. Grantor shall provide an alternative route of ingress and egress on the Property which is acceptable to Grantee. Grantee shall assume the costs of relocating and reconstructing the alternative route of ingress and egress. Grantee's consent with regards to the relocation of the Access shall not be unreasonably withheld.

Statutory Land Use Disclaimer: 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.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Chair

STATE OF OREGON)
) ss.
County of _____)

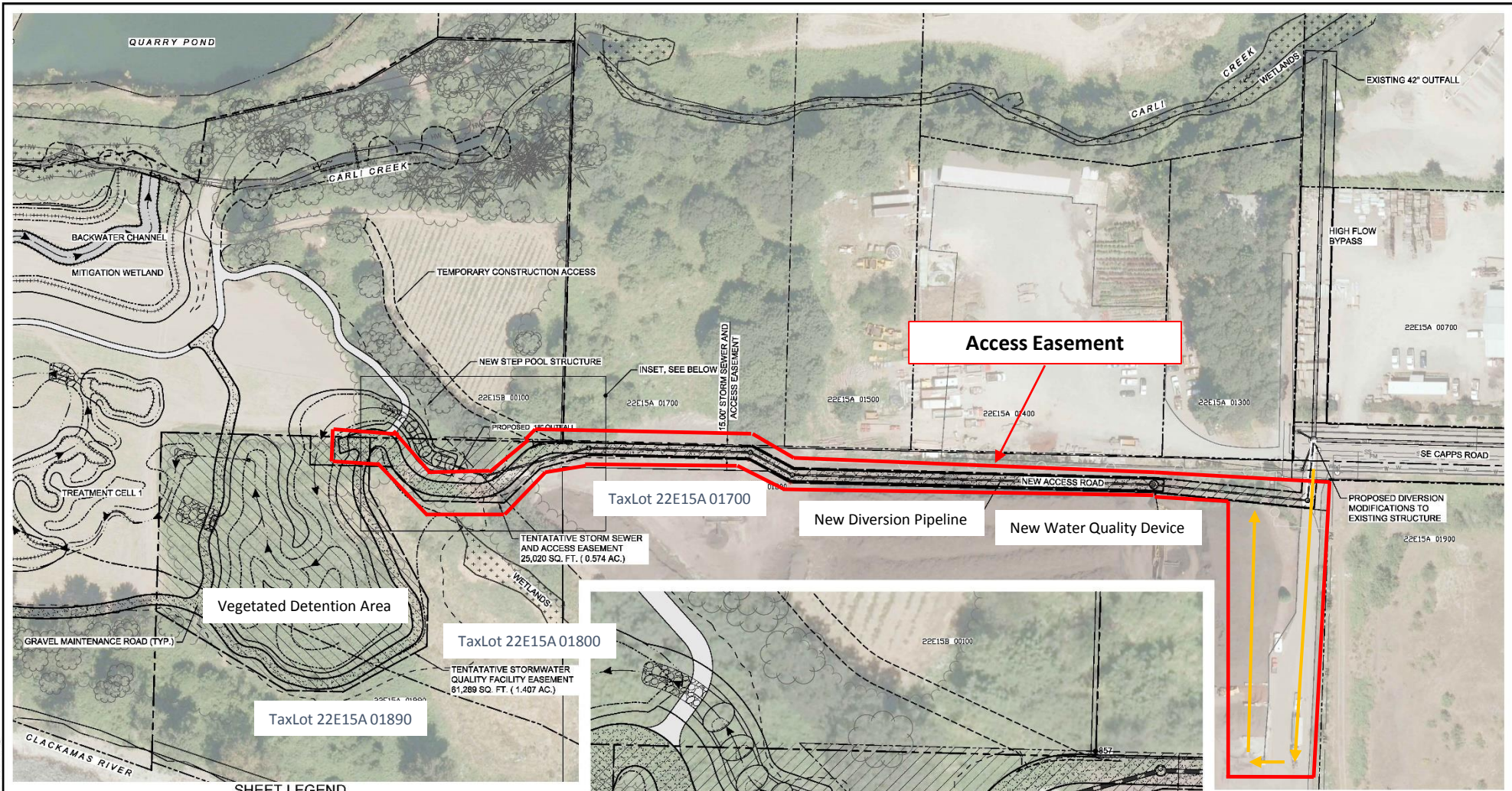
This instrument was signed and attested before me this _____ day of _____ 2018,
by _____ as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

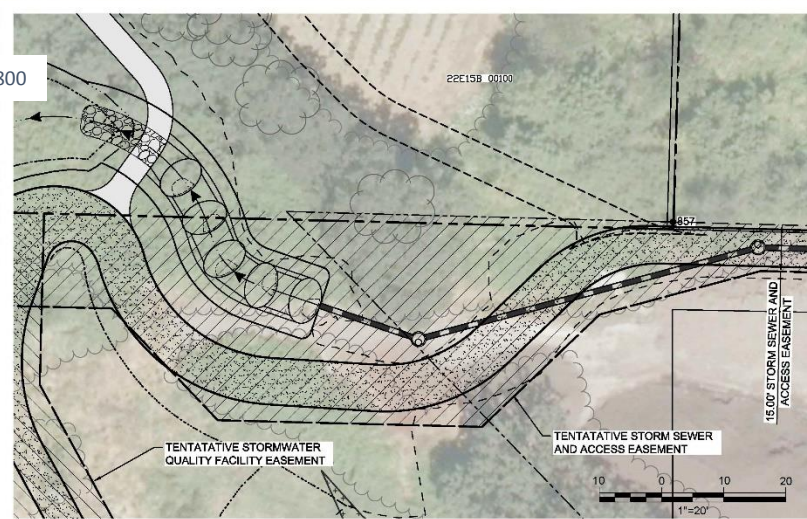
Chair

Date



SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	Ⓞ	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 20181414-15958-000_PDRCD0002.dwg/FIGURE/EASEMENT EXHIBIT.dwg

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beaver Creek Road Oregon City, OR 97045		
Grantee: Water Environment Services		
Address: 150 Beaver Creek Road Oregon City, OR 97045		
After Recording Return to: Water Environment Services 150 Beaver Creek Road Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		

**PERMANENT NON-EXCLUSIVE PIPELINE,
STORMWATER DETENTION, MAINTENANCE**
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement to lay down, construct, reconstruct, replace, operate, inspect and perpetually maintain a storm water pipeline and vegetated stormwater detention facility in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

The Permanent Easement described herein is more particularly depicted in Figure “1” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Except for the vegetated detention area covered by this Easement, Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor's successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee's exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

Statutory Land Use Disclaimer: 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.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Chair

STATE OF OREGON)
) ss.
County of _____)

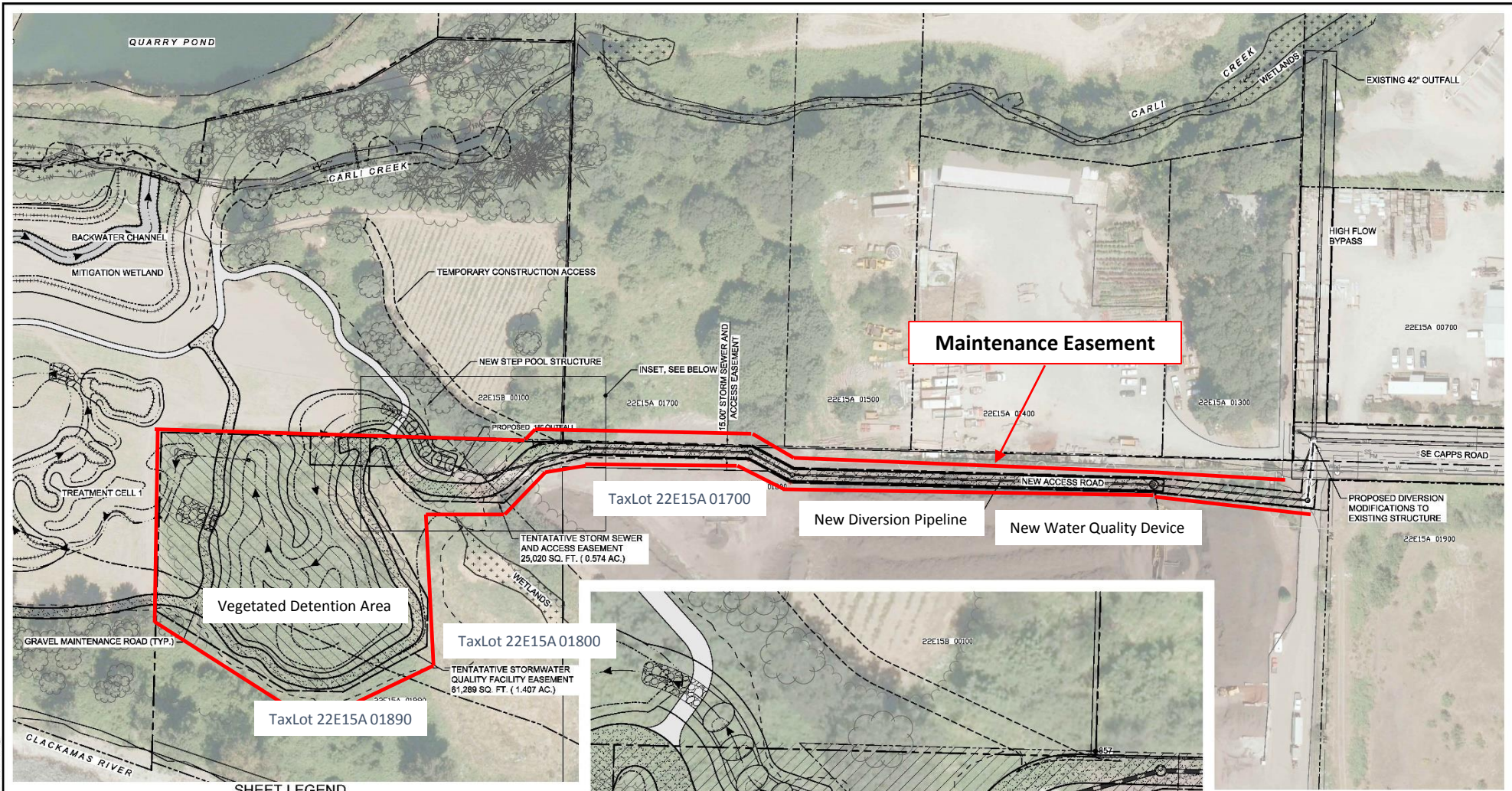
This instrument was signed and attested before me this _____ day of _____, 2018
by _____ as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

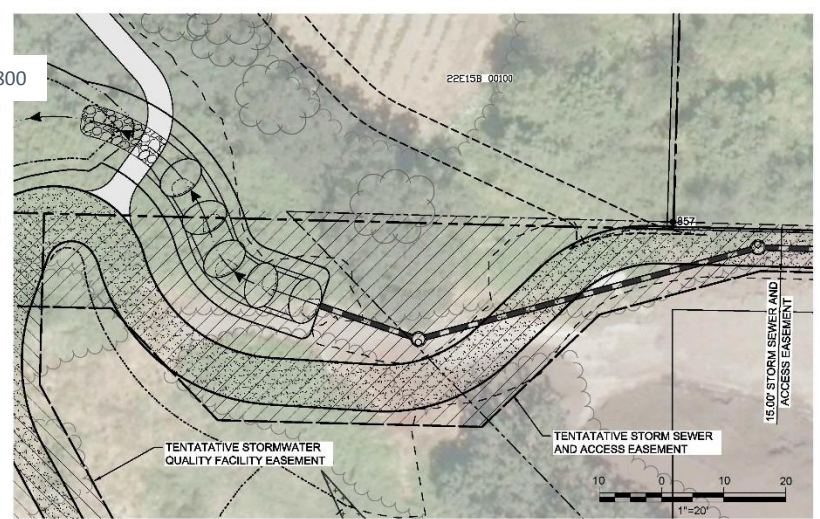
Chair

Date



SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 20181114-15958-000_PDRCD0001-FIGURE-EASEMENT_EXHIBIT.dwg