



RESOLUTION 2022-047

AUTHORIZING GRANTING EASEMENTS TO THE WILLAMETTE WATER SUPPLY SYSTEM COMMISSION

WHEREAS, the Willamette Water Supply System Commission is an intergovernmental entity formed by Tualatin Valley Water District, the City of Hillsboro, and the City of Beaverton in connection with the Willamette Water Supply System, which includes intake and transmission facilities, a water treatment plant, and reservoir; and

WHEREAS, a portion of this system, including a water treatment plant and water pipelines, is located within the City of Sherwood; and

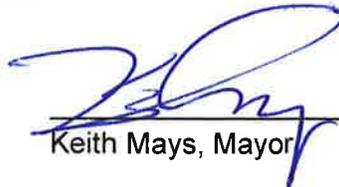
WHEREAS, the Commission has requested easements across a piece of City-owned property (tax lot 2S130AB12600) located off SW Roy Rogers Rd., consisting of a permanent water facilities easement (approx. 7,418 sq ft) and temporary construction (approx. 615 sq ft) and restoration monitoring (approx. 1,974 sq ft) easements, as depicted on the attached Exhibit A.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to take all steps necessary and appropriate to grant easements in a form substantially similar to the attached Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 29th of June 2022.



Keith Mays, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

AFTER RECORDING RETURN TO:

Tualatin Valley Water District
Attn: District Recorder
1850 SW 170th Avenue
Beaverton OR 97003

UNTIL A CHANGE IS REQUESTED
SEND TAX STATEMENTS TO:

No change in tax statements

File #: PLM_4.3-012
Map and Tax Lot #: 2S130AB12600

This space is reserved for recorder's use.

WATER SYSTEM FACILITIES EASEMENT

This Water System Facilities Easement (“Easement Agreement”) is made this _____ day of _____, 20____, by and between The City of Sherwood, a Municipal Corporation, (“Grantor”) and Willamette Water Supply System Commission, an Oregon intergovernmental entity (“Grantee”).

Grantor and Grantee agree as follows:

1. **Grant of Permanent Easement.** Grantor hereby grants to Grantee, its successors, and heirs a perpetual and non-exclusive easement on, over, under, in, and through a portion of that certain real property described in Exhibit A,(the “Property”), for the purpose of constructing (including performing pre-construction activities), operating, maintaining, repairing, replacing, and modifying underground water pipelines, other water facilities, all appurtenances incident thereto, and related surface improvements (“Water System Facilities”) as follows (collectively, the “Permanent Easement Areas”):
 - 1.1. **Facilities Easement Area.** The Facilities Easement Area is the portion of the Property where Grantee will construct the Water System Facilities as depicted on Exhibit B.
 - 1.2. Intentionally left blank.
 - 1.3. Intentionally left blank
2. **Grant of Temporary Easement(s).** Grantor also hereby grants to Grantee, its successors, and heirs temporary easement(s) on, over, and under a portion(s) of the

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Property to allow complete construction of the Water System Facilities that will occupy the Facilities Easement Area as follows (collectively, the “Temporary Easement Areas”):

2.1. Temporary Construction Easement Area. The Temporary Construction Easement Area (“TCE Area”) is that portion(s) of the Property to which Grantee requires access for construction (including pre-construction activities) of the Water System Facilities, as depicted on Exhibit B.

2.2. Intentionally left blank.

2.3. Temporary Restoration Monitoring Easement Area. The Temporary Restoration Monitoring Easement Area is a portion of the Property to which Grantee requires access after construction of the Water System Facilities for the purpose of performing environmental monitoring and restoration maintenance activities, as depicted on Exhibit B.

3. Right of Entry and Use; Term. Subject to the terms of this Easement Agreement, Grantee shall have the right to enter upon and use the Permanent Easement Areas and the Temporary Easement Areas, to have reasonable access thereto, and to allow any of its contractors or subcontractors to do the same.

3.1. Grantee’s right to enter or to use the Permanent Easement Areas and the Temporary Easement Areas shall commence upon the date of Grantor’s execution of this Easement Agreement, provided Grantee has complied with any state or federal requirements necessary to take possession (“Effective Date”).

3.2. Grantee’s rights to enter or to use the TCE Area shall terminate 42 months after the Effective Date.

3.3. Intentionally left blank.

3.4. Grantee’s rights to enter or to use the Temporary Restoration Monitoring Easement Area shall terminate 78 months after the Effective Date.

4. Restrictions on Grantee. Grantee shall maintain reasonable access, if required, for Grantor to the Property during pre-construction activities, construction, operation, maintenance, repair, replacement, or modification of the Water System Facilities.

5. Non-Exclusive Grant; Use of Easement Areas. Grantee’s right to use the Permanent Easement Areas and the Temporary Easement Areas shall be non-exclusive for the purposes stated herein, and Grantor may use the Permanent Easement Areas and the Temporary Easement Areas for any purpose, except to the extent such use violates an express term of this Easement Agreement or otherwise prevents Grantee from exercising its rights under this Easement Agreement.

5.1. Except as provided in Section 6.1, Grantor shall provide a written request to Grantee to use the Permanent Easement Areas and the Temporary Easement

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Areas so that Grantee's rights described in Section 3 are not impaired and remain in accordance with all applicable laws, rules, and regulations. Grantor must notify Grantee of planned improvements in the Permanent Easement Areas and the Temporary Easement Areas and request the location of the Water System Facilities from Grantee to ensure proper vertical and horizontal distance from Grantee's Water System Facilities. Grantor must submit to Grantee all design and construction plans, drawings, specifications, reports, and/or other applicable information related to Grantor's planned improvements, describing proposed work with sufficient detail. Grantee must approve in writing in advance and construction shall require Grantee's inspection and approval.

- 5.2. Grantor and Grantor's contractors and agents assume full responsibility in the event the Water System Facilities are damaged or impaired by their actions, in which case Grantor and Grantor's contractors and agents shall immediately notify Grantee of the damage or impairment and indemnify Grantee from all expenses, costs, damages, or impacts associated with such damage or impairment. Grantee reserves the right to make necessary repairs or remedies with its own forces or contractors with the cost to be reimbursed by Grantor or Grantor's contractors and agents, as applicable. Notwithstanding the foregoing, Grantor shall not be required to indemnify Grantee as stated in this paragraph for any expenses, costs, damages, or impacts resulting from a third-party use of the Permanent Easement Areas and the Temporary Easement Areas to which Grantee consented.

6. Grantor's Rights and Restrictions.

6.1. Grantor's Rights and Outright Permitted Uses.

- 6.1.1. Grantor shall retain the right to make full use of the Property outside the Permanent Easement Areas and the Temporary Easement Areas, provided that such use does not interfere with Grantee's rights under this Easement Agreement or endanger Grantee's Water System Facilities.
- 6.1.2. Agricultural use within the Permanent Easement Areas and the Temporary Easement Areas is permissible provided such use conforms to Section 6.2. below.
- 6.1.3. Notwithstanding any other provisions of this Easement Agreement, Grantor reserves use of the Permanent Easement Areas and the Temporary Easement Areas as described in this Section, provided that the exercise of such rights does not impair, injure, or interfere with, now or in the future, any of Grantee's rights under this Easement Agreement, including, but not limited to, Grantee's rights to perform pre-construction activities, construction, operation, maintenance, repair, replacement, or modification of the Water System Facilities and to have reasonable access.

- 6.1.3.1. Grantor must request Water System Facilities location information from Grantee prior to excavation or installation of any facilities to ensure proper vertical and horizontal distance from the Water System Facilities.
- 6.1.3.2. Landscaping, paved parking lots, and driveways must be located at least five (5) feet above the Water System Facilities.
- 6.1.3.3. Fences and gates (Grantor must provide Grantee means to unlock gates that otherwise prevent Grantee's access to the Water System Facilities) within the Facilities Easement Area shall have an embedment depth of less than twenty-four (24) inches.
- 6.1.3.4. Irrigation, storm drain, or sewer piping crossing above the Water System Facilities shall have a twenty-four (24) inch minimum vertical clearance and cross at substantially right angles to the Water System Facilities; storm drain or sewer structures shall be located outside the Facilities Easement Area.
- 6.1.3.5. Residential level (200 amp or less) electrical service line(s) crossing above the Water System Facilities with a twenty-four (24) inch minimum clearance (electrical line is required to be placed in a non-conductive conduit for a minimum length of twenty (20) feet centered over the Water System Facilities and crossing at substantially right angles to the Water System Facilities).
- 6.1.3.6. Electrical line(s) parallel to the Water System Facilities must be ten (10) feet from the centerline and if placed within fifteen (15) feet of the Water System Facilities shall be placed in a non-conductive conduit.

6.2. Prohibitions on Grantor's Use of the Easement Areas.

- 6.2.1. Grantor shall not modify, alter, use, or allow the use by another, the Temporary Easement Areas without written permission from Grantee until such time as Grantee's right to access and to use those areas terminates pursuant to Section 3.
- 6.2.2. Within the Facilities Easement Area, unless otherwise approved in advance in writing by the Grantee, Grantor agrees to the prohibitions set forth in this section. Within the Facilities Easement Area, Grantor agrees that periodic easement encroachment review by Grantee may be performed, and Grantor agrees to remove any item unacceptable under this Easement Agreement or any other item deemed detrimental to the

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Water System Facilities in the reasonable discretion of the Grantee within thirty (30) days of notification by Grantor. Should Grantor fail to remedy the unauthorized encroachment in the time frame provided or in an emergency situation that requires immediate resolution, Grantee may remove said encroachment and charge the cost of such removal to Grantor on a time and materials basis.

- 6.2.2.1. Grantor agrees not to store any materials or personal property, including hazardous materials, fuel, oil, and chemicals on, over, under, or in, the Facilities Easement Area. Grantor agrees not to store personal property, including, but not limited to, derelict personal property such as refuse piles, equipment, or machinery in the Facilities Easement Area. Except as related to reasonable surface parking uses, Grantor shall not permanently store vehicles within the Facilities Easement Area.
- 6.2.2.2. Grantor agrees not to plant trees within the Facilities Easement Area.
- 6.2.2.3. Grantor agrees not to obstruct access to Grantee's above-ground Water System Facilities.
- 6.2.2.4. Grantor agrees not to install vegetation or plants with rooting depths or cultivation that requires any ground disturbance or excavation exceeding twenty-four (24) inches in depth within the Facilities Easement Area.
- 6.2.2.5. Grantor agrees not to change the grade or drainage patterns within the Facilities Easement Area or adjacent to the Facilities Easement Area by adding, removing, or displacing a total of six (6) inches of material to/from the surface. Grantee agrees to provide as-built drawings showing existing grades for elevation reference purposes. Grantor also agrees not to impair any lateral or sub-adjacent support for the Water System Facilities within the Facilities Easement Area.
- 6.2.2.6. Grantor agrees not to install or permit others to install within the Facilities Easement Area any utilities which require mechanical ground disturbance or excavation greater than twenty-four (24) inches deep.
- 6.2.2.7. Grantor agrees not to install or permit others to install within the Facilities Easement Area electrical utilities, service lines, or transformers above the 200-amp residential service level which require mechanical ground disturbance or excavation greater than twenty-four (24) inches deep.

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6.2.2.8. Without prior written consent of the Grantee, Grantor agrees not to place or permit others to place a load greater than H-20 loading (truck axle loading of 32,000 pounds or wheel loading of 16,000 pounds), as specified by the American Association of State Highway Transportation Officials, over the Water System Facilities.

6.2.2.9. Grantor agrees not to impound water or create ponds, reservoirs, structures, or facilities designed to hold water over the Facilities Easement Area.

6.2.2.10. Grantor shall not permit third parties to use any portion of the Facilities Easement Area in violation of the express terms of this Easement Agreement.

6.2.3. Intentionally left blank.

6.2.4. Intentionally left blank.

6.3. Restoration of Easement Areas Following Construction or Subsequent Maintenance Activities. At Grantee's sole cost and expense, and except where Grantee will construct above-ground components of the Water System Facilities or where otherwise agreed to, Grantee shall restore the Permanent Easement Areas and Temporary Easement Areas to a similar condition as existed in those areas prior to the commencement of such work performed by Grantee.

Following construction of the Water System Facilities, Grantee shall not fence or otherwise obstruct Grantor's free and open access to and travel upon the Property without written authorization from the Grantor, with the exception of security and silt fences during restoration and subsequent maintenance.

7. Indemnification. To the extent permitted by the Oregon Constitution and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300), Grantee shall indemnify, defend, and hold harmless Grantor and its members, managers, employees, agents, and representatives (collectively, "Indemnified Parties") from and against any injury, expense, damage, liability, or claim, including, but not limited to, reasonable attorney fees, incurred by any Indemnified Party, arising directly or indirectly from the rights granted by Grantor to Grantee hereunder, or any act or omission by Grantee or any of Grantee's employees, agents, contractors, or representatives. Grantee assumes all risk arising out of its activities and use of Permanent Easement Areas and Temporary Easement Areas by it and the Grantee's employees, agents, contractors, or representatives.

8. Default and Remedies. Time is of the essence regarding the terms of this Easement Agreement. If Grantor or Grantee violate any of the terms, covenants, or conditions of this Easement Agreement, or fails to perform any of its obligations included in this Easement Agreement in a timely manner, the non-defaulting Party(ies) shall have the right to declare a default by written notice and seek available legal or equitable remedies in the Circuit Court of the State for Oregon in Washington County. Notice

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shall be given by first-class mail addressed to the parties as follows:

If to Grantor:
The City of Sherwood
Attn: Rich Sattler
22560 SW Pine Street
Sherwood, OR 97140

If to Grantee:
Willamette Water Supply System Commission
Attn: District Recorder
1850 S.W. 170th Avenue
Beaverton, Oregon 97003

The notice shall provide a detailed statement(s) of the alleged default. If the default is not cured within fifteen (15) days from the date of notice, or if the defaulting Party has not commenced to diligently commence cure for a matter that requires more than fifteen (15) days, then the non-defaulting Party(ies) may commence litigation and seek all remedies available at law or in equity. If any action for, breach of, or enforcement of the provisions of this Easement Agreement is commenced, the court in such action shall award to the party in whose favor a judgment is entered, at trial and on appeal, a reasonable sum including attorney's fees and costs (including judgment on any appeal). If the Easement Agreement is terminated as a result of litigation, Grantee shall, at its sole cost and expense, return the Permanent Easement Areas and Temporary Easement Areas to Grantor in a similar condition as existed prior to execution of the Easement Agreement.

9. **Binding Effect.** This Easement Agreement runs with the land and is binding upon, inures to the benefit of, and may be enforced by the Parties and their respective successors and assigns. Grantee may assign or transfer its interests without consent of Grantor. Grantee may use agents, employees, contractors, and other authorized persons for the purposes of exercising Grantee's rights and obligations under this Easement Agreement, provided no third-party beneficiary rights are created by this Easement Agreement and provided that Grantee is liable for the actions of such parties. This Easement Agreement shall be construed in accordance with Oregon law.
10. **Amendment.** This Easement Agreement may be amended only by an instrument in writing signed by both Grantor and Grantee. All approvals required hereunder shall be in writing.
11. **No Public Dedication.** Nothing in this Easement Agreement will be deemed to be a gift or a dedication of any portion of the Water System Facilities to the general public, for the use of the general public, or for any public purpose whatsoever, it being the intent of the parties that this Easement Agreement be strictly limited to and for the purposes expressed herein.

[Signatures follow on next page]

GRANTOR

[Title of Owner], _____

By: _____

Name: _____

Its: _____



GRANTEE

Willamette Water Supply System Commission,
an Oregon intergovernmental entity

By: _____

Name: David Kraska

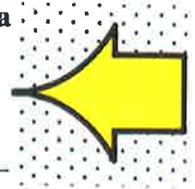
Its: General Manager

[Acknowledgments follow on next page]

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STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by
_____ as _____ of **The City of Sherwood, a
Municipal Corporation.**



NOTARY PUBLIC for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 20__, by
David Kraska as General Manager of **Willamette Water Supply System Commission**, an
Oregon intergovernmental entity.

NOTARY PUBLIC for Oregon
My Commission Expires: _____

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Easement Descriptions
WWSP PLM 4.3
Washington County, Oregon
May 13, 2020
Project No. 0458-020
Ref: 2S130AB12600

EXHIBIT A

Tract 1 (Permanent Easement):

A tract of land lying in the Northeast 1/4 Section 30, Township 2 South, Range 1 West of the Willamette Meridian, in Washington County, Oregon; being a portion of that property described in a Deed to The City of Sherwood, a Municipal Corporation recorded as Doc. No. 2003-150573, Washington County Deed Records; and being more particularly described as follows:

Beginning at **Point 'A'** being on the east Right-of-Way line of SW Roy Rogers Road, as established in the Right-of-Way Survey by Oregon Department of Transportation filed April 2002 as Washington County Survey Number 28,892, that is easterly 45.28 feet and perpendicular to centerline "L" station 203+81.73;

thence leaving said east line, North 23°48'58" East, 174.56 feet;

thence, North 66°11'02" West, 10.00 feet;

thence, North 23°48'58" East, 14.50 feet, more or less, to the north line of said City of Sherwood property;

thence along said line, North 89°28'46" East, 54.88 feet to **Point 'B'**;

thence leaving said line, South 23°48'58" West, 37.12 feet;

thence, North 66°11'02" West, 10.00 feet;

thence, South 23°48'58" West, 220.36 feet, more or less, to a point on the most westerly south line of said property;

thence along said line, North 53°59'44" West, 10.92 feet to a point on a curve, also being on the east Right-of-Way line of SW Roy Rogers Road;

thence along said curve to the left, having a radius of 1521.81 feet through a central angle of 01°47'30" (the chord of which bears North 00°08'29" West, 47.59 feet) an arc length of 47.59 feet to **Point 'A'** the Point of Beginning.

Containing 7,418 square feet, more or less.

Bearings based on Oregon Coordinate Reference System, Portland Zone.

Tract 2 (Temporary Construction Easement):

A tract of land lying in the Northeast 1/4 Section 30, Township 2 South, Range 1 West of the Willamette Meridian, in Washington County, Oregon; being a portion of that property described in a Deed to The City of Sherwood, a Municipal Corporation recorded as Doc. No. 2003-150573, Washington County Deed Records; and being more particularly described as follows:

Beginning at **Point 'B'** as established above in Tract 1, said point being on the north line of said City of Sherwood property;

thence along said east line, North 89°28'46" East, 32.93 feet;

thence leaving said east line, South 23°48'58" West, 36.00 feet;

thence, North 36°01'31" West, 34.70 feet;

thence, North 23°48'58" East, 5.00 feet to **Point 'B'** the Point of Beginning.

Containing 615 square feet, more or less.

Bearings based on Oregon Coordinate Reference System, Portland Zone.

Tract 3 (Long Term Monitoring Easement):

A tract of land lying in the Northeast 1/4 Section 30, Township 2 South, Range 1 West of the Willamette Meridian, in Washington County, Oregon; being a portion of that property described in a Deed to The City of Sherwood, a Municipal Corporation recorded as Doc. No. 2003-150573, Washington County Deed Records; and being more particularly described as follows:

Commencing at **Point 'A'** being on the east Right-of-Way line of SW Roy Rogers Road, as established in the Right-of-Way Survey by Oregon Department of Transportation filed April 2002 as Washington County Survey Number 28,892, that is easterly 45.28 feet and perpendicular to centerline "L" station 203+81.73;

Thence leaving said east line, North 23°48'58" East, 161.56 feet to the **True Point of Beginning**;

thence, North 66°11'02" West, 40.00 feet;

thence, North 23°48'58" East, 13.94 feet, more or less, to the north line of said City of Sherwood property;

thence along said line, North 89°28'46" East, 120.73 feet;

thence leaving said line, South 23°48'58" West, 63.69 feet;

thence, North 66°11'02" West, 70.00 feet to the **True Point of Beginning**.

Excepting therefrom those portions of tracts described above as Tract 1 and Tract 2.

Containing 1,974 square feet, more or less.

Bearings based on Oregon Coordinate Reference System, Portland Zone.



\\WCID\PROJECTS\0458-020\16\SURVEY\CAD\DWG_A_PHASE\0458-020X_PLM_4.3_EASEMENTS.DWG 2020-05-13 11:06 AM - KEL



0 15' 30'
SCALE: 1"=30'

SW ROY ROGERS ROAD

"L" LINE
(SN28892)

(6+207.89)
PC: 203+67.09

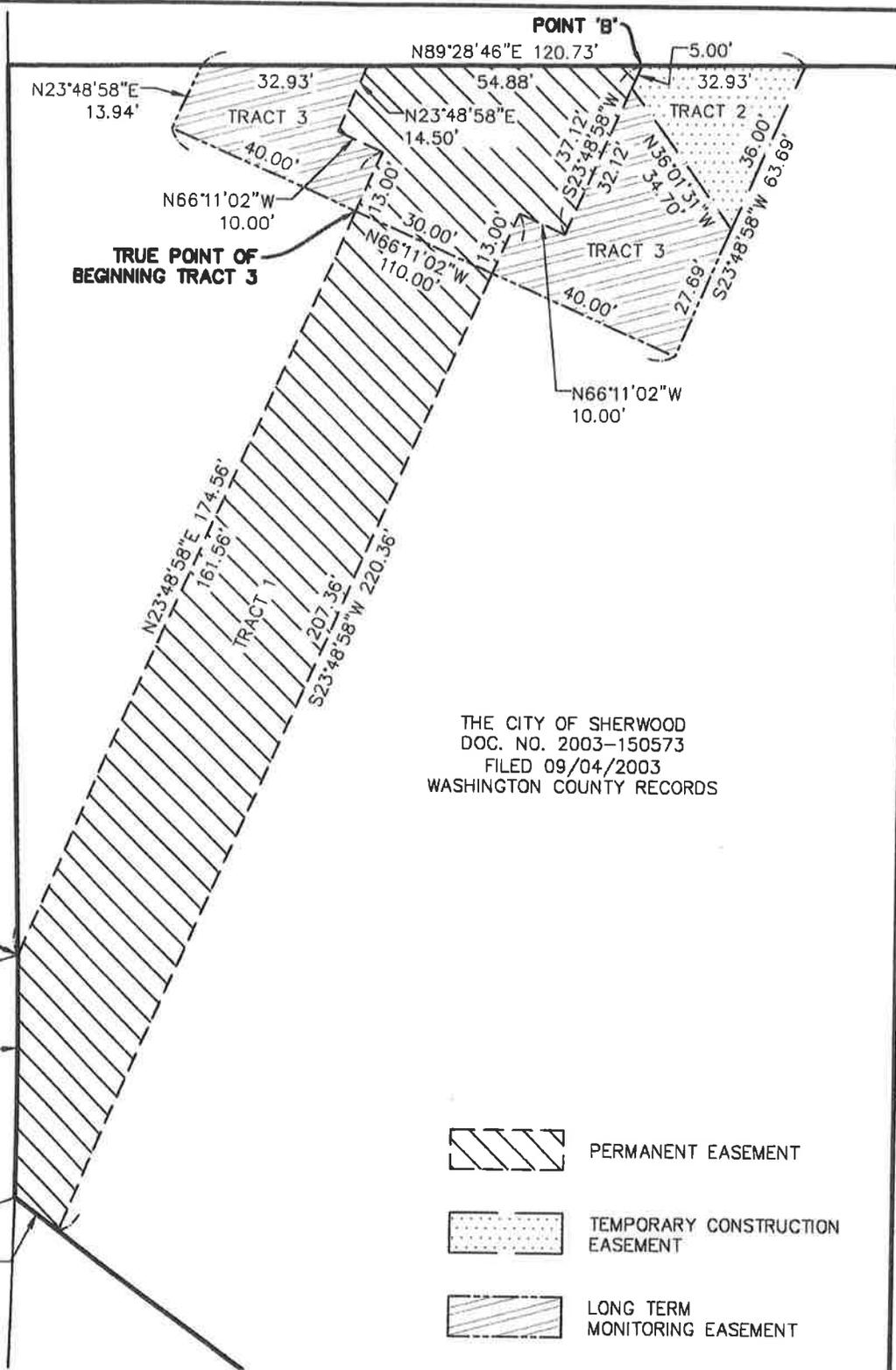
POINT 'A'

"L" 203+81.73 45.28'LT

R=1521.81'
Δ=1°47'30"
L=47.59'
CH.=47.59'
N00°08'29"W

"L" 204+27.90 45.28'LT

N53°59'44"W
10.92'



THE CITY OF SHERWOOD
DOC. NO. 2003-150573
FILED 09/04/2003
WASHINGTON COUNTY RECORDS

- PERMANENT EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT
- LONG TERM MONITORING EASEMENT

EXHIBIT B
PAGE 1 OF 1

LOCATED IN THE NE 1/4 OF SECTION 30
TOWNSHIP 2 S, RANGE 1 W, W.M.
WASHINGTON COUNTY, OREGON

DATE	05/13/2020
DRAWN BY	KEL
CHECKED BY	GRA
REVISION	0
JOB NO.	0458-020

WESTLAKE
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 884-0852
TIGARD, OREGON 97224 FAX (503) 824-0157

