

RESOLUTION NO. 5234-15

RESOLUTION GRANTING CLEAN WATER SERVICES AN EASEMENT FOR WATER QUALITY PRESERVATION AND STORM AND SURFACE WATER DRAINAGE FOR PROPERTY LOCATED AT BROWN'S FERRY PARK

WHEREAS, the City of Tualatin is developing a segment of the Tualatin River Greenway Trail for which adequate area for mitigation plantings required by Clean Water Services regulations does not exist in the vicinity where the path is being constructed, and adequate area for mitigation plantings does exist on nearby property along the Tualatin River in Brown's Ferry Park; and

WHEREAS, the City and Metro jointly own Brown's Ferry Park including property located at 19020 SW 50th Avenue (Map 21E19DA, Tax Lot 10400) in Clackamas County; and,

WHEREAS, Section 50 of the City Charter, known as the Parks Charter Amendment, applies to the transfer, sale, vacation or major change in use of city parks. Under Charter Section 50 (b), the City is authorized to grant easements without voter approval so long as the easements "do not cause or constitute a major change in use of the park." Under the Charter, a "major change" is defined as "a change in use of a park, or part thereof, from a recreation or preservation use to non-park use unrelated to public recreation or preservation." The CWS easement is not a "major change" as the recreation and preservation values of the area subject to the easement remain unchanged. The CWS easement ensures preservation of the area for park uses and granting the easement is required in order to allow the City to expand recreational opportunities by constructing the trail. Granting the CWS easement enhances the parks preservation and recreational values and is wholly consistent with the Parks Charter Amendment; and

WHEREAS, Metro, co-owner of the property, provided written approval for the City to grant an easement for off-site corridor mitigation.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, CITY OF TUALATIN, OREGON, that:

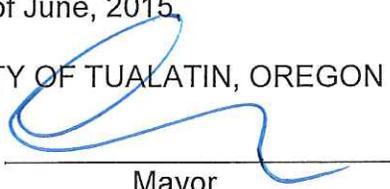
Section 1. The City of Tualatin finds it necessary to grant the Clean Water Services an easement across the property, which is in a form similar to that set forth in Exhibit 1, which is attached and incorporated herein.

Section 2. The City Manager is authorized to execute the Easement for Water Quality Preservation and Storm and Surface Water Drainage and is authorized to make changes to Exhibit 1 to effectuate the granting of the easement to Clean Water Services in a form mutually acceptable.

Section 3. This resolution is effective upon adoption.

Adopted by the City Council this 8th day of June, 2015.

CITY OF TUALATIN, OREGON

BY 

Mayor

APPROVED AS TO FORM

BY 

City Attorney

ATTEST:

BY 

City Recorder

RETURN TO: Clean Water Services
Mail Stop 10
2550 SW Hillsboro Highway
Hillsboro, OR 97123

Project: 15-000332
Tax Lot No.: Map R21E 19 D4, Tax Lot 10400
Square Feet: 71,297

EASEMENT FOR WATER QUALITY PRESERVATION AND
STORM AND SURFACE WATER DRAINAGE

GRANTOR'S NAME: City of Tualatin

ADDRESS: 18880 SW Martinazzi Ave, Tualatin, OR 97062-7062

GRANTOR, owner of the property described herein, has the authority and does hereby grant, convey and warrant unto Clean Water Services, GRANTEE, a non-exclusive perpetual easement in gross to use the real property described in Exhibit A and as depicted on Exhibit B attached hereto and by this reference incorporated herein (Easement Area) for water quality preservation and storm and surface water drainage, provided GRANTEE uses natural storm and surface water drainage systems. This easement includes the right to access the above described easement over and across the land of the GRANTOR for the purpose of maintenance of the easement and any natural storm and surface water drainage systems therein. This easement shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns. GRANTEE shall not have any responsibility for pre-existing environmental contamination or for environmental contamination caused by GRANTOR or any third party of the Easement Area.

The consideration for this grant is **nonmonetary**.

Additional terms and conditions set forth below are hereby agreed to and binding upon the parties to this easement:

1. No structure shall be erected on the Easement Area without the written consent of the GRANTEE, except GRANTOR is expressly granted the right to erect any and all facilities related to the Tualatin River Greenway Trail Project, as more particularly described in the Connect Oregon V grant application (hereafter "Tualatin River Greenway Trail Project").
2. One purpose of this easement shall be to preserve water quality by maintaining native vegetation and habitat conditions within the Easement Area. GRANTOR agrees that any vegetation planted by GRANTEE within the Easement Area shall not be removed, destroyed, mowed, altered or sprayed with biocides. GRANTOR may make additional plantings of Oregon native species within the Easement Area and may prune planted vegetation.

3. GRANTOR agrees that there shall be no filling, excavating or dredging; no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the grade or topography of the Easement Area in any manner unless authorized by GRANTEE. Notwithstanding the foregoing, GRANTOR may conduct such activities related to the Tualatin River Greenway Trail Project.
4. GRANTOR agrees that any activities within the Easement Area which are, in the opinion of the GRANTEE, inconsistent with preserving the natural condition of the Easement Area are prohibited and may be subject to enforcement action, provided however that activities related to the Tualatin River Greenway Trail Project are explicitly allowed.
5. GRANTEE shall take action to enforce the terms of this easement. Enforcement shall include abatement of any prohibited condition or activity within the Easement Area by all means provided under Clean Water Services' Ordinances and Resolution and Orders, and federal and state laws.

CORPORATE, LLC, PARTNERSHIP,
TRUST OR OTHER LEGAL ENTITY
SIGN BELOW

CITY OF TUALATIN
(Entity name)

By: *Sherilyn Louder*
(Sign here for entity)

APPROVED AS TO LEGAL FORM
S-B
CITY ATTORNEY

Title: _____ City Manager

Date: 6/8/15

ACCEPTED

APPROVED AS TO FORM

By: _____
General Manager or Designee
Clean Water Services

District Counsel

NOTARIZE DOCUMENT BELOW

[Use this notary block if GRANTOR is an individual.]

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Notary Public

[Use this notary block if GRANTOR is an entity.]

STATE OF Oregon)

COUNTY OF Washington)

This instrument was acknowledged before me on June 8, 2015 (date)
by Sherilyn Lambus (name of person) as City Manager (title) of The City of Tualatin (name of entity).

Nicole Morris

Notary Public



Exhibit "A"

LEGAL DESCRIPTION

Tualatin Greenway Shared Pathway 21408260

Vegetated Corridor Expansion

May 7, 2015

Page 1 OF 1

Portions of that tract of land conveyed to Metro and the City of Tualatin per Document No. 2004-035406, Clackamas County Deed Records, located in the East half of Section 19, Township 2 South, Range 1 East, Willamette Meridian, City of Tualatin, Clackamas County, Oregon, being more particularly described as follows:

VC Enhancement Mitigation

BEGINNING at the Southwest corner of the Southeast quarter of the Northeast quarter of Section 19, Township 2 South, Range 1 East, Willamette Meridian; Thence along the West line of the Southeast quarter of the Northeast quarter of said Section 19 N 00°40'40" West, 83.32 feet to the Southerly bank of the Tualatin River; Thence Southeasterly along said Southerly bank 402.9 feet more or less; Thence leaving said Southerly bank of the Tualatin River South 07°26'50" West, 103.45 feet; Thence South 21°27'56" East, 15.64 feet; Thence South 02°18'04" West, 20.42 feet; Thence North 87°04'04" West, 175.41 feet; Thence North 81°34'16" West, 62.20 feet; Thence North 77°52'49" West, 136.74 feet to the Easterly right-of-way line of S.W. 50th Avenue; Thence along said Easterly right-of-way line North 00°40'40" West, 47.67 feet to an angle point; Thence along the Northerly right-of-way of said S.W. 50th Avenue North 89°22'15" West, 15.00 feet to the **POINT OF BEGINNING**.

Excepting therefrom that portion that lies within the existing trail.

Contains 43,915 square feet or 1.008 acres, more or less.

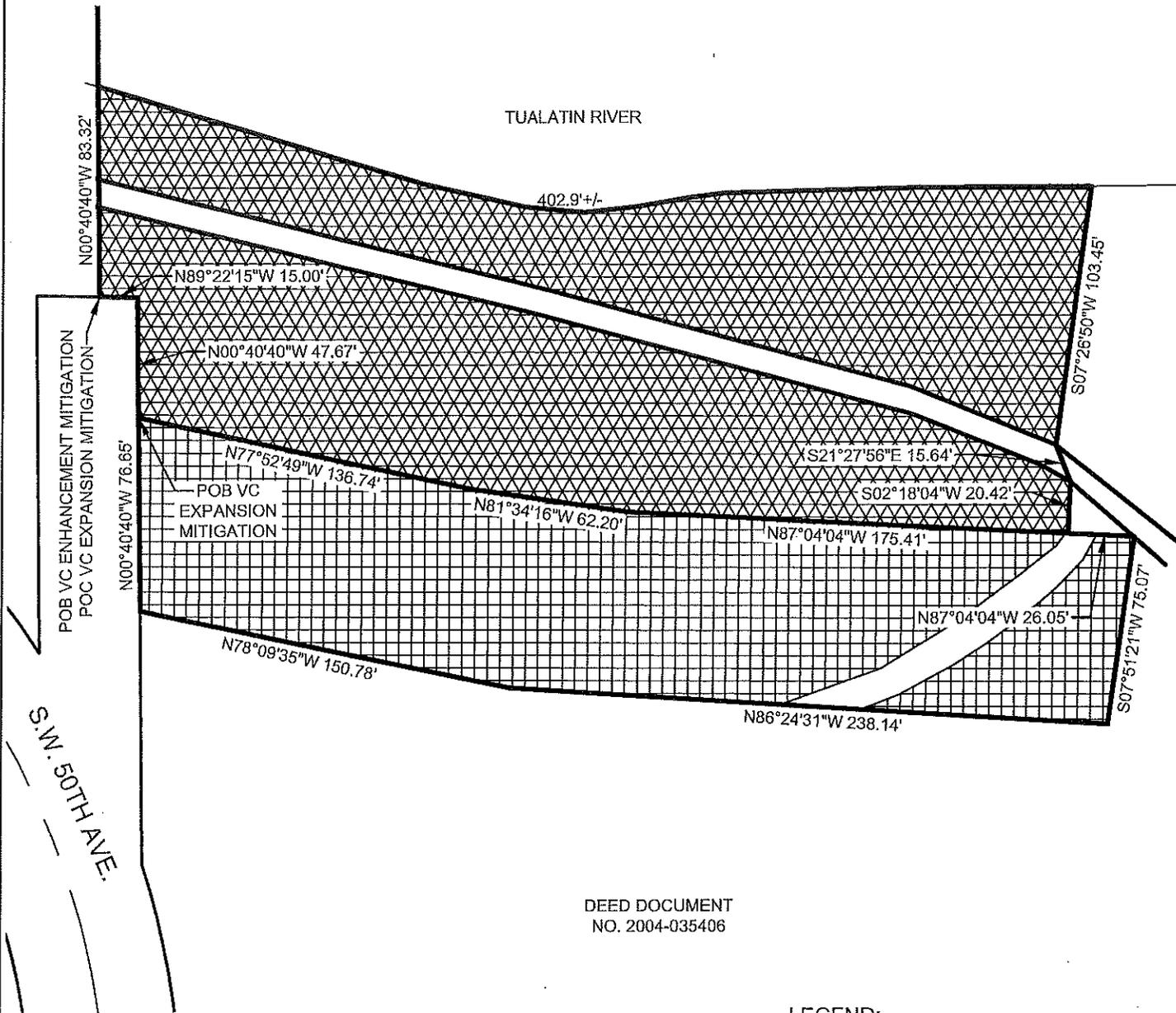
VC Expansion Mitigation

COMMENCING at the Southwest corner of the Southeast quarter of the Northeast quarter of Section 19, Township 2 South, Range 1 East, Willamette Meridian; Thence along the Northerly right-of-way line said S.W. 50th Avenue South 89°22'15" East, 15.00 feet to an angle point; Thence along the Easterly right-of-way line of said S.W. 50th Avenue South 00°40'40" East, 47.67 feet to the **POINT OF BEGINNING**; Thence continuing along said Easterly right-of-way line South 00°40'40" East, 76.65 feet; Thence leaving said Easterly right-of-way line South 78°09'35" East, 150.78 feet; Thence South 86°24'31" East, 238.14 feet; Thence North 07°51'21" East, 75.07 feet; Thence North 87°04'04" West, 201.46 feet; Thence North 81°34'16" West, 62.20 feet; Thence North 77°52'49" West, 136.74 feet to the **POINT OF BEGINNING**.

Excepting therefrom that portion that lies within the existing trail.

Contains 27,382 square feet or 0.629 acres, more or less.

EXHIBIT "B"



DEED DOCUMENT
NO. 2004-035406

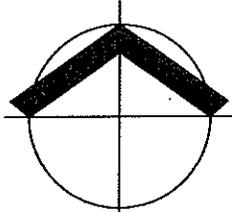
LEGEND:

 AREA OF VC ENHANCEMENT MITIGATION
43,915 SQUARE FEET OR
1.008 ACRES MORE OR LESS

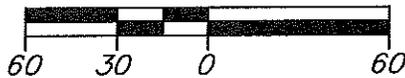
 AREA OF VC EXPANSION MITIGATION
27,382 SQUARE FEET OR
0.629 ACRES MORE OR LESS

POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



SCALE: 1"=60'



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardno.com

VC ENHANCEMENT AND EXPANSION MITIGATION

S19, T2S, R1E, WILLAMETTE MERIDIAN
CITY OF TUALATIN, CLACKAMAS COUNTY, OREGON

PROJECT NO. 21408260
DATE: 05/14/2015
BY: TLB
SCALE: 1"=60'
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