

After recording, return to:

City of Dayton
PO Box 339
Dayton, OR 97114-0339

SEWER PUMP STATION EASEMENT AND RIGHT OF WAY EASEMENT AGREEMENT

This reciprocal Easement Agreement ("Agreement") is entered into by and between Yamhill County, a political subdivision of the State of Oregon and the City of Dayton, an Oregon municipal corporation.

RECITALS

WHEREAS, Yamhill County (*hereinafter called "County"*) is the owner of record of certain real property referenced below (*hereinafter called Dayton Landing Property*).

"Dayton Landing Property":

Legal Description: Lot 22, 23 & 24, Original Town of Dayton plat, Yamhill County Deed Records.
Supplemental Reference: Tax Lot 4317DA-4500

Legal Description: Lot 3 & 4, Original Town of Dayton plat, Yamhill County Deed Records.
Supplemental Reference: Tax Lot 4317DA-4200

Legal Description: Lot 1 & 2, Original Town of Dayton plat, Yamhill County Deed Records.
Supplemental Reference: Tax Lot 4317DA-4400

Legal Description: Mill Block, Original Town of Dayton plat, Yamhill County Deed Records.
Supplemental Reference: Tax Lots 4316CB-100 & 200;

WHEREAS, the Dayton Landing Property is more commonly known as Dayton Landing Park;

WHEREAS, the City of Dayton, Oregon ("*City*") owns and operates a municipal sewer collection system which includes an existing sewer pump station located adjacent to the Dayton Landing Property;

WHEREAS, the existing sewer pump station has reached the end of its design life, and the City needs to replace the existing pump station in order to maintain the reliability of the City sewer system and to bring the City sewer system into regulatory compliance;

WHEREAS, the City has determined that it is not technically feasible to upgrade or replace the existing pump station in its current location due to the proximity to the pedestrian bridge across the Yamhill River and due to the alignment of the anticipated future ODOT vehicular bridge across the Yamhill River to connect Ferry Street with Kreder Road, and it was determined that the most cost effective location for construction of a new sewer pump station is on the northwesterly portion of the Dayton Landing Property;

WHEREAS, County and the Oregon State Marine Board have initiated preliminary discussions regarding potential improvements to Dayton Landing Park, including improvements to the boat ramp, the access roadway, parking areas, and other public park improvements;

WHEREAS, County is willing to grant the City perpetual easements for the construction, operation, and maintenance of a new sewer pump station and other underground City utilities to be located on the Dayton

Landing Property, subject to the terms of this Agreement and provided it is compatible with the potential future improvements to Dayton Landing Park;

WHEREAS, the City has determined that it is feasible to construct the above grade portions of the new sewer pump station and security fencing with a configuration which will not unduly conflict with the proposed layout for the potential future improvements to Dayton Landing Park, and that the utility improvements located outside of the Pump Station (as defined below) site and security fencing can be installed underground;

WHEREAS, a portion of the existing and anticipated future improvements to Dayton Landing Park will be located within public rights-of-way which are under the jurisdiction of the City;

WHEREAS, the City has statutory and constitutional authority to manage its right-of-way under the authority of the City Charter and state law, including the authority to authorize construction of the Dayton Landing Park improvements within said public right-of-ways; and

WHEREAS, the City is willing to grant County a perpetual easement to those portions of the City public right-of-way within the current Dayton Landing Park boundaries, specifically those portions of Ferry Street right-of-way easterly of 1st Street, Water Street right-of-way from Ferry Street to Mill Street, Alder Street right-of-way easterly of Water Street, and a portion of the Mill Street right-of-way (collectively the ROW), as further described herein, for the construction, operation and maintenance of existing and proposed new Dayton Landing Park improvements, including but not limited to access & parking improvements, curbs, restroom facilities and associated utilities & structures, subject to the terms of this Agreement.

TERMS

NOW, THEREFORE, County and the City agree as follows:

SECTION 1. Grant of Pump Station Easement to City of Dayton.

- 1.1 Pump Station Easement. The County grants to the City an exclusive, perpetual easement on, under, over, across and along a portion of the Dayton Landing Property for the construction, reconstruction, repair, operation and maintenance of a municipal sewer pump station and associated utilities (the "Pump Station") as described in Exhibit A (legal description) and depicted in Exhibit B (map) (collectively the "Pump Station Easement Area").
- 1.2 The City may reasonably restrict access to the Pump Station Easement Area and is required to secure the Pump Station against unauthorized access, and will install a screened security fence around the above grade pump station improvements; provided, however, the City shall grant the County access to the Pump Station Easement Area upon not less than 24 hours prior notice, except in the event of an emergency, when 24 hours prior notice will not be required.
- 1.3 The parties acknowledge and agree that this Pump Station Easement is intended to and does constitute an encumbrance that runs with the land and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns.
- 1.4 The City is responsible for the construction, reconstruction, repair, operation, security, control and maintenance of the underground utilities and other improvements associated with the Pump Station and other City utility systems which are located in the Pump Station Easement Area, and to the extent allowed under state law agrees to defend, indemnify and hold County, its governing body, employees, agents, and insurers harmless from and against any and all claims, suits,

liabilities, and expenses that may be asserted against County arising out of City's use of the Pump Station Easement Area. In no event will the City be responsible for any claims, suits, liabilities and expenses arising out of County's negligence, willful misconduct, use or misuse of the Pump Station Easement Area.

SECTION 2. Grant of Utility & Access Easement to City.

- 2.1 **Utility & Access Easement.** The County grants to the City a non-exclusive, perpetual easement, on, under, across and along a portion of the Dayton Landing Property, for access to the Pump Station Easement Area, and for the construction, reconstruction, repair, operation and maintenance of underground utilities associated with the Pump Station as described in Exhibit C (legal description) and depicted in Exhibit D (map) (collectively the "Utility Easement Area").
- 2.2 Underground utilities associated with the Pump Station and City utility systems which are located in the Utility Easement Area shall be installed with a minimum of 30-inches of cover below the existing surface of the ground, to minimize potential impacts to future County improvements or County above-ground activities. All such utilities shall be placed underground to the extent feasible except for the following:
 - 2.2.1. Valve boxes for isolation valves, manholes on underground pipelines, etc. Valve boxes, manholes, junction boxes, etc. will be set flush with the surrounding grade, and will include a concrete collar around the valve box, manhole, junction box, etc. as required to prevent dislocation or damage to valve boxes under traffic conditions.
- 2.3 The parties acknowledge and agree that this Utility & Access Easement is intended to and does constitute an encumbrance that runs with the land and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns.
- 2.4 The City is responsible for the construction, reconstruction, repair, operation and maintenance of the underground utilities and other improvements associated with the Pump Station, the Utility & Access Easement and other City utility systems which are located in the Utility Easement Area, and to the extent allowed under state law agrees to defend, indemnify and hold County, its governing body, employees, agents, and insurers harmless from and against any and all claims, suits, liabilities, and expenses that may be asserted against County arising out of City's use of the Utility Easement Area. In no event will the City be responsible for any claims, suits, liabilities and expenses arising out of County's negligence, willful misconduct, use or misuse of the Utility Easement Area.

SECTION 3. Ownership of Pump Station & Underground City Utility Improvements.

- 3.1 The Pump Station and underground utilities and fencing to be constructed and installed by the City (collectively the City Facilities) will be City owned, operated and maintained, and the County shall have no obligation or liability, express or implied, to maintain or service the City Facilities
- 3.2 Ownership of the City Facilities does not include ownership or responsibility for any future sewer service line(s) connected to the City Facilities for service of the Dayton Landing Property. County is responsible for all maintenance of any such future utility service line(s) between the point of connection to the City Facilities and the City system and the point of use.

SECTION 4. Ownership of Dayton Landing Park Improvements.

- 4.1 The existing or future access, parking and other improvements associated with the Dayton Landing Park (County Facilities) are to be owned, operated and maintained by the County, and the City shall have no obligation or liability, express or implied, to maintain or service the

County Facilities except as specifically outlined herein for restoration work required following construction, reconstruction, repair or maintenance of City Facilities.

SECTION 5. Additional Easement Rights and Obligations for the Pump Station Easement Area and Utility Easement Area.

- 5.1 The Easements shall include the right of the City, its employees, agents, contractors, consultants and assigns to enter upon the property adjacent to the Pump Station and Utility Easement Areas owned by the County at all times for purposes consistent with the Pump Station Easement and Utility & Access Easement granted herein. Except in the case of emergency, the City will provide the County with 3 business days written notice prior to performing excavation work in the Pump Station Easement Area or the Utility Easement Area. If the City commences excavation work in either the Pump Station Easement Area or Utility Easement Area when prior notice is not feasible because of an emergency, the City will notify the County as soon as feasible after the start of such work.
- 5.2 Following installation or restoration of any underground utilities in the Pump Station Easement Area or Utility Easement Area, the City shall remove all debris and leave the ground surface in a neat and presentable condition; Topsoil, grass and pavement shall be restored as near as feasible to as good a condition as the same were prior to any work done by the City.
- 5.3 To the extent allowed under state law, the City shall indemnify and hold harmless County including its employees, agents, contractors, subcontractors, consultants, heirs, and assigns from claims of injury to person or property, accidents, thefts or damages, as a result of the negligence by the City, its employees, agents, contractors, consultants and assigns for work done in the Pump Station Easement Area and Utility Easement Areas. In no event will the City be responsible for any claims, suits, liabilities and expenses arising out of County's negligence, willful misconduct, use or misuse of the Pump Station Easement Area.
- 5.4 The County reserves and retains the right to access and utilize the Utility Easement Area, and to construct improvements in the Utility Easement Area, provided that such access, use and improvements do not interfere with the City's access to and use of the Utility Easement Area.
- 5.5 The County agrees not to build, construct, or create, nor permit others to build or construct buildings or other structures, within the Pump Station Easement Area or Utility Easement Area in a manner which may interfere with the City's use of the Pump Station Easement Area or Utility Easement Area consistent with the easements granted herein. Subject to any existing private or franchise utilities or other structures already installed within the Pump Station Easement Area or Utility Easement Area as of the date of this Agreement, the County further agrees not to install or allow installation of private or franchise utilities within the Pump Station Easement Area or Utility Easement Area within 8 feet parallel with underground City utilities, provided however, right angle crossing are allowed.
- 5.6 The City, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said utilities, within and over the Pump Station Easement Area and Utility Easement Area.
- 5.7 The County shall be responsible for landscape and surface maintenance outside the Pump Station Easement Area.

SECTION 6. Grant of Dayton Landing Park Easement to County.

- 6.1 The City grants to County a non-exclusive, perpetual easement on, under, over, across and along a portion of the City ROW for the construction, operation and maintenance of existing and proposed new County park improvements to Dayton Landing Park, including but not limited to access & parking improvements, curbs, restroom facilities and associated utilities & structures, subject to the terms of this Agreement, and as described in Exhibit E (legal description) and depicted in Exhibit F (map) (collectively the "Dayton Landing Park Easement Area").
- 6.2 The parties acknowledge and agree that this Dayton Landing Park Easement is intended to and does constitute an encumbrance that runs with the land and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors and assigns.
- 6.3 The County is responsible for the construction, reconstruction, repair, operation and maintenance of those Dayton Landing Park improvements that are located within the Dayton Landing Park Easement Area and which encroach on the ROW, and to the extent allowed under state law agrees to defend, indemnify and hold City, its governing body, employees, agents and insurers harmless from and against any and all claims, suits, liabilities and expenses that may be asserted against City arising out of County or public use (for park purposes) of the Dayton Landing Park Easement Area or the Dayton Landing Park improvements that encroach on the ROW. In no event will the County be responsible for any claims, suits, liabilities and expenses arising out of the City or public's negligence, willful misconduct or misuse of the Dayton Landing Park Easement Area.
- 6.4 The City retains responsibility for the construction, reconstruction, repair, operation and maintenance of all of the City ROW located within the Dayton Landing Park Easement Area that is not impacted by Dayton Landing Park improvements, and to the extent allowed under state law agrees to defend, indemnify and hold County, its governing body, employees, agents and insurers harmless from and against any and all claims, suits, liabilities and expenses that may be asserted against County arising out of City or public use of the ROW (but not the Dayton Landing Park improvements) located within the City ROW and the Dayton Landing Park Easement Area.
- 6.5 County further agrees to cooperate with the City and any franchise utility company in the event that such franchise utility company needs access to the ROW or that portion of the ROW that is impacted by the Dayton Landing Park improvements to service, maintain, or repair franchise utilities, including removal of Dayton Landing Park improvements if required to provide access for such service, maintenance or repair. County is responsible for coordinating repair or replacement by the franchise utility company of Dayton Landing Park improvements within the ROW and Dayton Landing Easement Area when removal of said Dayton Landing Park improvements is required for franchise utility company service, maintenance or repair. City shall not be responsible for the cost of franchise utility company repair or replacement of Dayton Landing Park improvements. Except for the Dayton Landing Park improvements, County shall not be responsible for the cost of any other franchise utility company repair or replacement costs in the ROW or Dayton Landing Easement Area.
- 6.6 County agrees that, subject to the rules and regulations applicable to all County parks, and except as otherwise expressly provided herein, its use of the Dayton Landing Park Easement Area will not interfere with the City's use of the ROW for public, pedestrian, bicycle, vehicular or other travel in the ROW.

SECTION 7. Consideration.

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- 7.1 Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

SECTION 8. Termination.

- 8.1 If the Dayton City Council (the "Council"), shall at any time in the future permanently abandon and discontinue use of the City Facilities by a majority vote of the Council, the Pump Station Easement and the Utility & Access Easement granted herein will terminate and will no longer be in force and effect, and all the rights, title and interest of the City, its successors or assigns in and to said Pump Station Easement and Utility & Access Easement shall cease and be of no further force and effect. If the City permanently abandons the Pump Station Easement and the Utility & Access Easement as set forth above, the City will record a quitclaim deed or other instrument as applicable in the deed records of Yamhill County, to formalize the termination of all of the City's rights, title, and interest to the Pump Station Easement and Utility & Access Easement.
- 8.2 If the Board of Commissioners of Yamhill County ("BOC") shall at any time in the future permanently abandon and discontinue use of Dayton Landing Park as a public park by a majority vote of the BOC, the Dayton Landing Park Easement as herein granted will terminate and will no longer be in force and effect, and all the rights, title and interest of the County, its successors or assigns in and to said Dayton Landing Park Easement shall cease and be of no further force and effect. If the County permanently abandons the Dayton Landing Park Easement as set forth above, the County will record a quitclaim deed or other instrument as applicable in the deed records of Yamhill County, to formalize the termination of all of the County's right, title and interest to the Dayton Landing Park Easement.

SECTION 9. Condition of Property.

- 9.1 City and County make no representations or warranties whatsoever with respect to the condition of the Pump Station Easement Area, the Utility Easement Area or the Dayton Landing Park Easement Area, or the fitness or suitability for any particular use. City and County will use the areas listed above "as is" with all flaws and faults.

SECTION 10. Other Provisions.

- 10.1 Legal Effect. This Agreement is binding upon and inures to the benefit of all heirs, successors and assigns of County and City and runs with the land.
- 10.2 Provision Applicable Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Oregon.
- 10.3 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this Agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- 10.4 Severability. The determination that one or more provisions of this Agreement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this Agreement.
- 10.5 Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto.
- 10.6 Amendment or Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto.
- 10.7 Entire Agreement. This Agreement is the entire agreement between the parties with respect to its

subject matter and supersedes any other agreements or understandings that may exist between the parties.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this 12th day of January, 2017

STAN PRIMOZICH

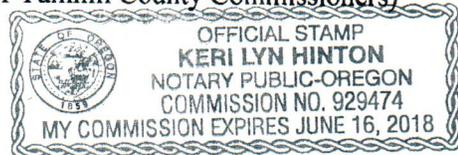
MARY STARRETT

RICHARD L. "RICK" OLSON

(Printed Name of Yamhill County Commissioners)

[Handwritten Signatures]
(Signature of Yamhill County Commissioners)

STATE OF OREGON)
) ss.
County of YAMHILL)



On this 12th day of January, 2017, personally appeared before me, the above named persons, STAN PRIMOZICH, MARY STARRETT, RICHARD L. "RICK" OLSON, known to me to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

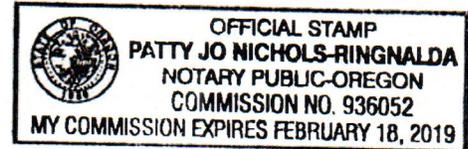
[Handwritten Signature]
(Notary Signature)

Notary Public for Oregon
My Commission Expires: 6-16-18

APPROVED:

[Handwritten Signature]
Dayton City Manager

1-4-17
Date



This instrument was acknowledged before me on the 4 day January 2017, by Scott Pingel
[Handwritten Signature]
(Notary Signature)

Notary Public for Oregon
My Commission Expires: 2/18/19

City Engineer (Initial) _____ (if modified)

Approved As To Form
by [Handwritten Signature]
Christian Boenisch
County Counsel
Yamhill County

Accepted by Yamhill County
Board of Commissioners on
1-12-17 by Board Order
17-14

EXHIBIT A

Legal Description For:
Sewer Pump Station Easement
Property vested in: Yamhill County

A tract of land situated in the southwest one-quarter of Section 16, Township 4 South, Range 3 West of the Willamette Meridian, in the City of Dayton, Yamhill County, Oregon, more particularly described as follows:

Beginning at the most Westerly corner of Lot 24, TOWN OF DAYTON, as platted and recorded in Deed Volume "G", Page 473, Yamhill County Records, said point being on the southeasterly right of way line of Ferry Street; and running thence:
North 51°45'00" East 18.46 feet along said right of way line;
thence leaving said right of way line South 71°01'21" East 15.80 feet;
thence South 56°15'39" East 106.66 feet to a point on the northeasterly line of said Lot 24;
thence South 38°14'47" East 5.41 feet along said northeasterly line to the most Easterly corner of said Lot 24;
thence South 51°45'00" West 60.00 feet along the southeasterly line of said Lot 24 to the most Southerly corner thereof;
thence North 38°14'47" West 120.12 feet along the southwesterly line of said Lot 24 to the Point of Beginning, containing 5019 square feet of land, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

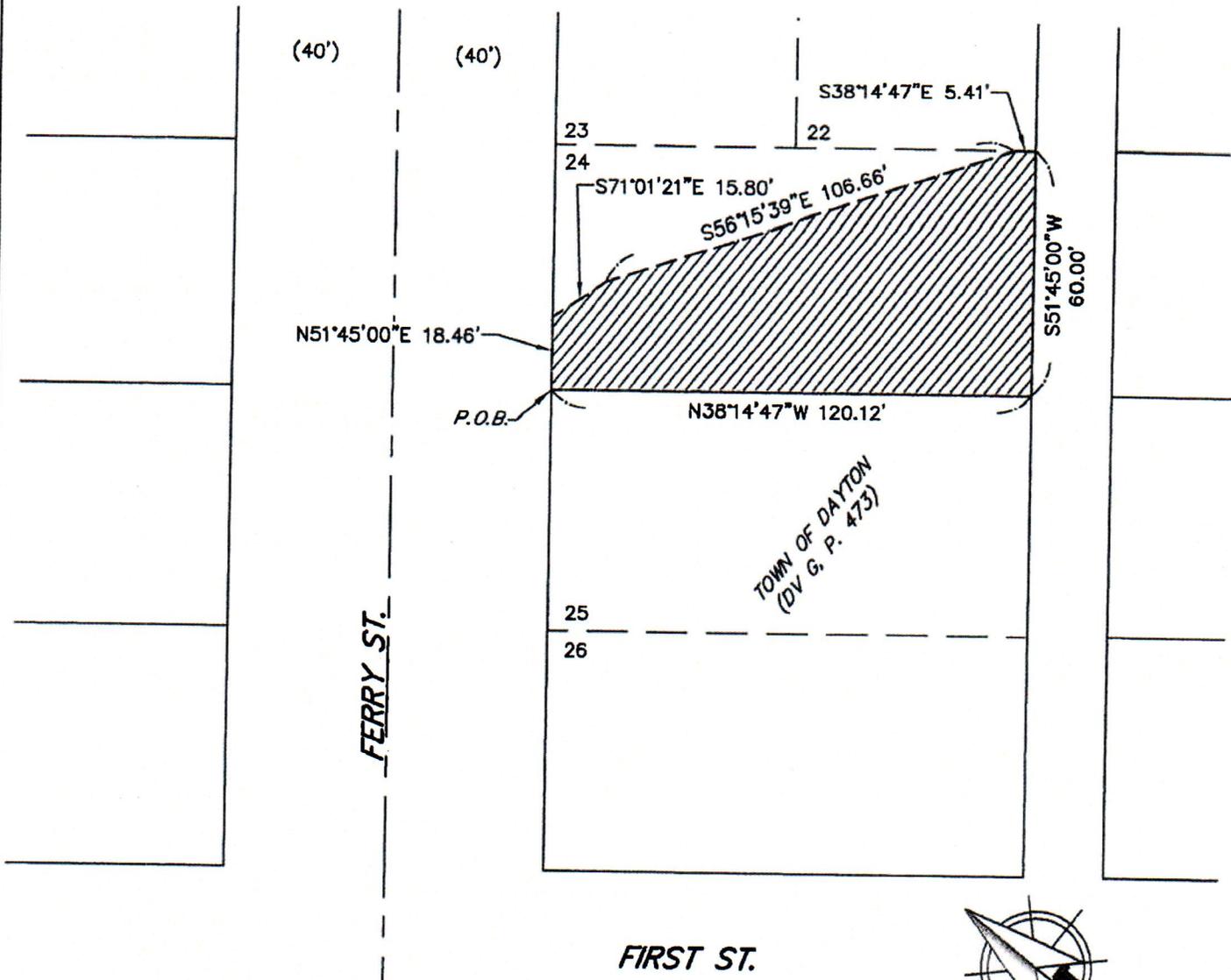
Gregory L. Wilson

OREGON
JULY 18, 1994
GREGORY L. WILSON
2687

EXPIRES: 6-30-18

B.O. 17-14

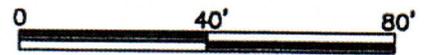
EXHIBIT B



TOWN OF DAYTON
(BY G. P. 473)



PUMP STATION EASEMENT (5019 SQ. FT.)



**PUMP STATION EASEMENT
TO CITY OF DAYTON**

**MAIN SEWER PUMP STATION
IMPROVEMENTS**

OWNER
NAME/
ADDRESS
YAMHILL COUNTY
434 NE EVANS ST.
MCMINNVILLE, OR 97128

TAX MAP: 4 3 17DA
TAX LOT: 4500
LOCATED IN:
THE SW 1/4 OF SECTION 16,
TOWNSHIP 4 SOUTH,
RANGE 3 WEST, W.M.,
IN THE CITY OF DAYTON,
YAMHILL COUNTY, OREGON

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Gregory L. Wilson

OREGON
JULY 19, 1994
GREGORY L. WILSON
2687

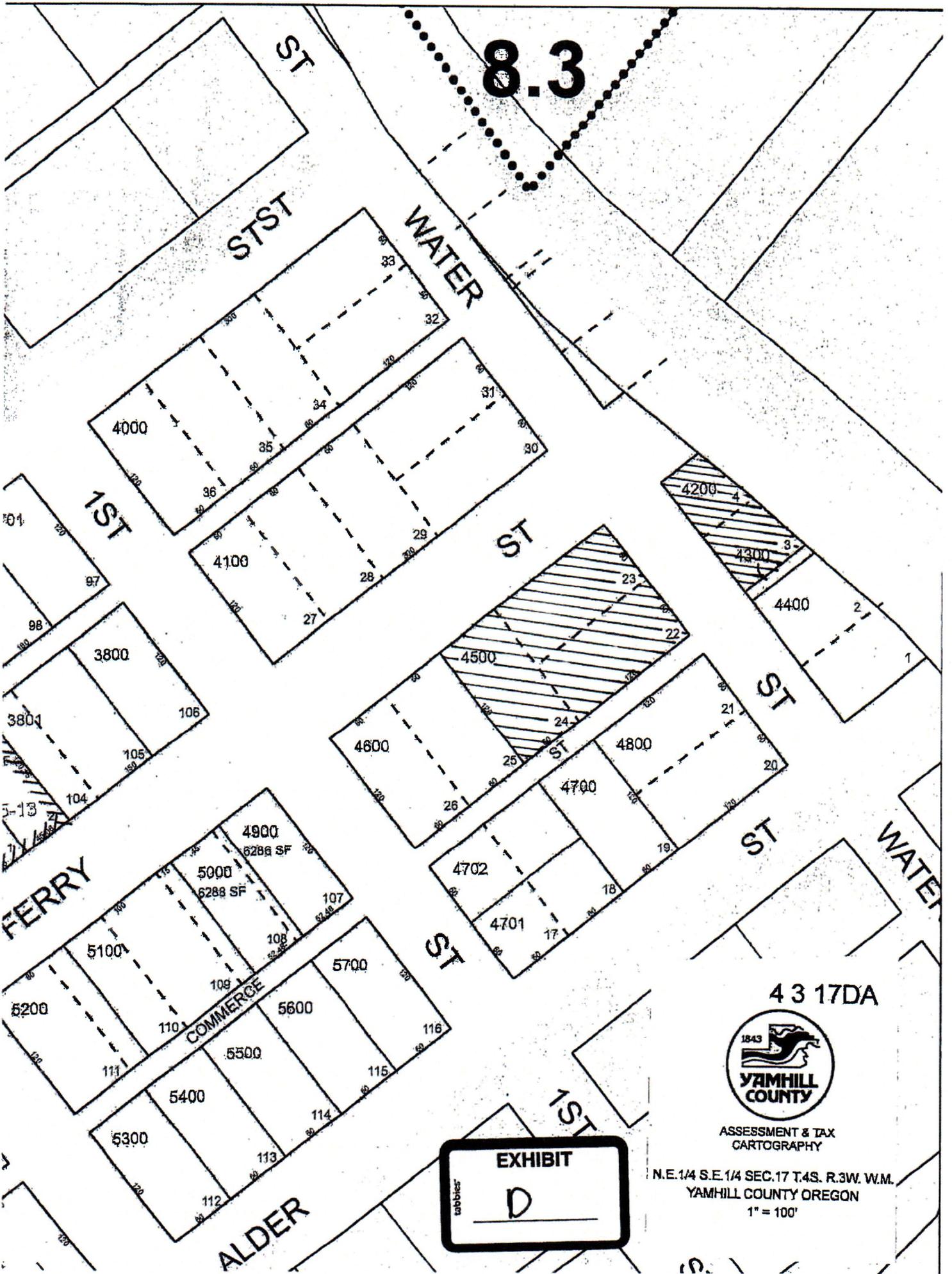
EXPIRATION DATE: 6/30/2018

BY G.L.W. DATE: 10-14-16

EXHIBIT C – Legal Description of Utility Easement Area

Lots 3, 4, 22, 23 & 24, Original Town of Dayton, Yamhill County deed records, incorporated herein by reference.

8.3



4 3 17DA



ASSESSMENT & TAX
CARTOGRAPHY

N.E. 1/4 S.E. 1/4 SEC. 17 T.4S. R.3W. W.M.
YAMHILL COUNTY OREGON
1" = 100'

tabbies

EXHIBIT

 D

EXHIBIT E – Legal Description of Dayton Landing Park Easement Area

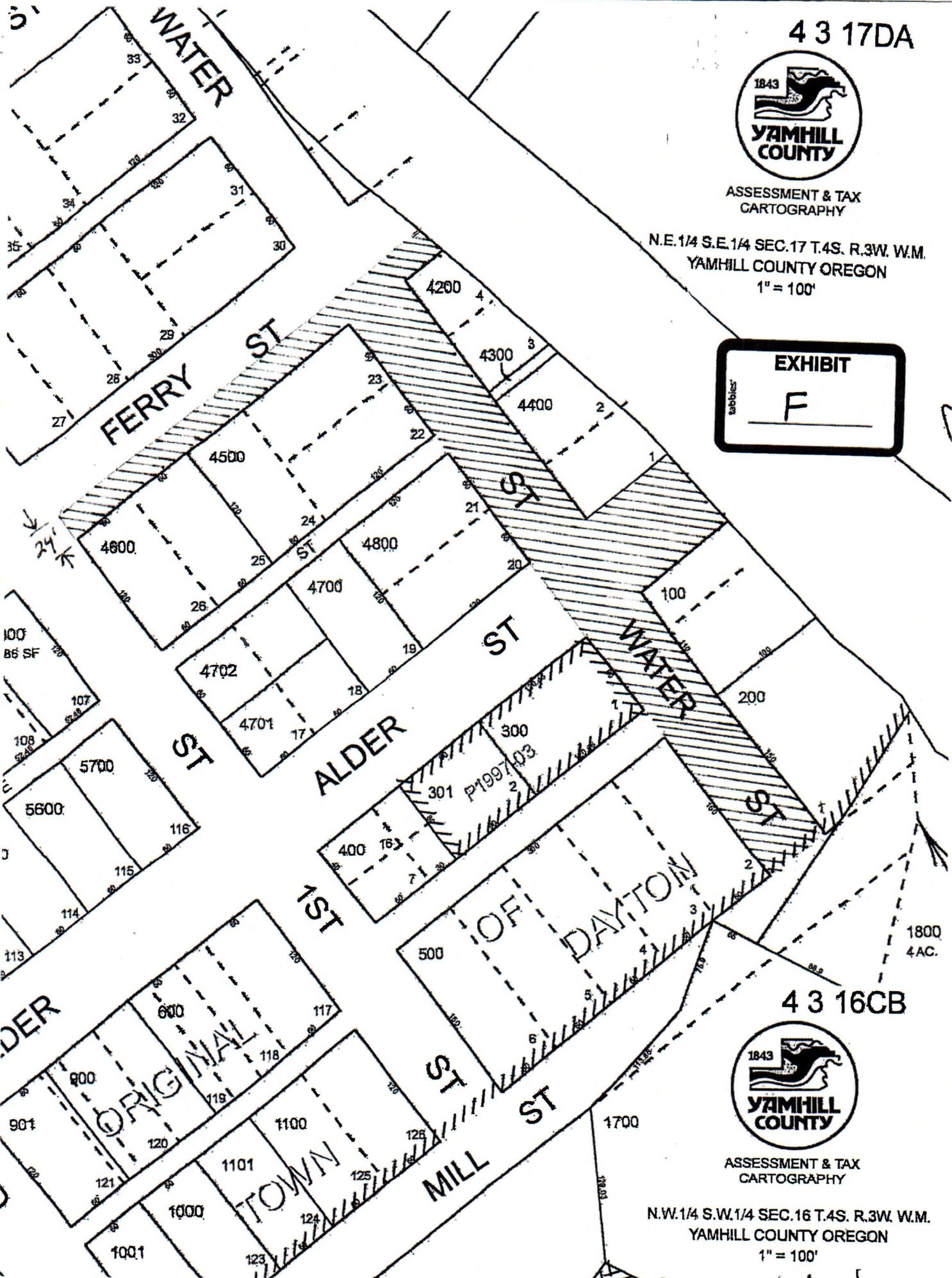
- Southerly 24 feet of the Ferry Street right-of-way from the easterly edge of the 1st Street right-of-way to the Yamhill River.
- Water Street right-of-way from the southerly the southerly edge of the Ferry Street right-of-way to the northerly edge of the Mill Street right-of-way.
- Alder Street right-of-way from the easterly edge of the Water Street right-of-way to the Yamhill River.

4 3 17DA



ASSESSMENT & TAX
CARTOGRAPHY

N.E. 1/4 S.E. 1/4 SEC. 17 T.4S. R.3W. W.M.
YAMHILL COUNTY OREGON
1" = 100'



4 3 16CB



ASSESSMENT & TAX
CARTOGRAPHY

N.W. 1/4 S.W. 1/4 SEC. 16 T.4S. R.3W. W.M.
YAMHILL COUNTY OREGON
1" = 100'

B.O. 17-14