

2019-003601

Klamath County, Oregon



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04/03/2019 01:12:29 PM

Fee: \$122.00

After Recording Return To:

David M. Cowan
7647 Libby Rd. NE
Olympia, WA 98506

Returned at Counter

GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR ACCESS

THIS GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR ACCESS (this "Agreement") is made as of the last date executed by a Party hereto (the "Effective Date") between **David M. Cowan and Theresa E. Cowan**, husband and wife ("Grantor"), and **Bly Water and Sanitary District** ("Grantee"), with Grantor and Grantee individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

- A. Grantor is the sole owner of certain property located in Klamath County, Oregon, as more particularly described in **Exhibit A** attached hereto and made part hereof (the "Grantor Property").
- B. Grantee desires to construct a Municipal Well in proximity to the Grantor Property (the "Project").
- C. Grantee has requested, and Grantor has agreed to grant to Grantee, a thirty foot (30') wide non-exclusive easement across the Grantor Property for purposes of providing pedestrian and vehicular access, ingress and egress to the Project.
- D. Grantee has requested, and Grantor has agreed to grant to Grantee, a ten foot (10') wide non-exclusive easement across the Grantor Property for purposes of routing under-ground water mains, AC electrical power and communication signaling to/from the Project in support of the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby confirmed, Grantor hereby grants and conveys Grantee the right-of-way easements described below, subject to the terms of this Agreement:

1. Easement & Entitlements:

(a) **Easement:** Grantee shall have a non-exclusive easement for the purposes of constructing and maintaining a roadway providing pedestrian and vehicular access, ingress and egress to the Project, together with under-ground utility routing in support of the Project (collectively, the "**Project Easement**") on, along, over, under and across a thirty (30) foot wide portion of the Grantor Property as more particularly described in **Exhibit B**. The Project Easement shall run with the land.

(b) **Roadway:** Grantee shall have the right to construct, reconstruct, replace, remove, maintain, operate and use from time to time a permanent gravel road ("**Access Road**") on, along, over, and across the Project Easement.

(c) Utilities: Grantee shall have the right to erect, construct, reconstruct, replace, remove, maintain, operate and use from time to time below-ground utility infrastructure in support of that certain municipality well consisting of below-ground water mains, AC electrical power and communication signaling, together with all necessary and proper below-ground conduits, piping, vaults, etc. (collectively, "Well Infrastructure Facilities") under and across a portion of the Project Easement and more particularly described in Exhibit D.

2. Use of Project Easement:

(a) Access: Grantor and Grantee shall have the right to permit its respective principles, employees, agents, contractors, lessees and invitees to use the Access Road in common. No Party shall obstruct or interfere unreasonably with the free flow of pedestrian and vehicular traffic over the Project Easement lands, except to the extent deemed necessary for reasonable repair and maintenance, or as may be necessary from time to time for security purposes, or to prevent a dedication thereof, or the accrual of any rights to the public therein.

(b) Construction: Grantee shall construct and maintain the Access Road in consideration of storm water flows with use of east-west ditching parallel to the Access Road surface together with north-south culverting perpendicular to and under the Access Road surface, all of sufficient sizing to reasonably drain surface water flows to lower elevations under adverse storm conditions. The Well Infrastructure Facilities shall be installed in compliance with all applicable codes and in accordance with relevant industry standards. Grantee shall install two (2) connecting four inch (4") diameter by 10 foot (10') long schedule 40 PVC (or heavier walled) conduits capped on both ends (the "Co-located Utility Conduits") perpendicular to and under the Well Infrastructure Facilities, at locations specified by Exhibit C.

(c) Maintenance: At all times Grantee shall maintain the graveled Access Road surface and drainage ditches in reasonable condition at Grantee's expense. Grantor reserves the right to conduct additional maintenance as so deemed to be required at Grantor's sole discretion and performed at Grantor's sole expense.

3. Permitting: Grantee hereby warrants and represents that it has secured, or will secure at all times, all necessary permits and approvals for the construction associated with the Project Easement including without limitation the Access Road and Well Infrastructure Facilities. In the event Grantee fails to secure any such permitting or approvals, Grantee is responsible for remedy at its sole cost and expense and will further indemnify, defend and hold Grantor harmless in connection with any such permitting defects.

4. Expenses: All costs and expenses incident to the design, permitting, survey, erection, construction, reconstruction, replacement, removal, maintenance, operation and use of the Access Road, the Well Infrastructure Facilities and the Co-located Utility Conduits shall be borne by Grantee. Provided however, Grantor shall pay all costs and expenses for repair or replacement of the Access Road or Well Infrastructure Facilities damaged by the actions of Grantor, their heirs, successors, or assigns, agents, contractors for any third person on the premises with the authorization of Grantor. Grantee shall replace or repair any Co-located Utility Conduits and their contents damaged by Grantee activities at all times.

5. Co-located Utilities: Grantee acknowledges that Grantor reserves the right to install Grantor's utilities, at the Grantor's sole expense, across the width of the Project Easement. Grantor shall use the Co-located Utility Conduits for this purpose so as to have no impact on Grantee's utility operations. Grantor shall return the Access Road to the same good condition that existed before Grantor's utility installation, at Grantor's sole expense. In the event the Co-located Utility Conduits are insufficient for Grantor's needs, Grantor shall coordinate and execute Grantor's utility crossings after obtaining Grantee approvals for the work, which shall not be unreasonably withheld, and all installation costs shall be borne by the Grantor. Otherwise the Grantor shall not dig in the area where the Grantee's Well Infrastructure Facilities are located.



6. Indemnity: Grantee covenants and agrees that Grantee assumes all risks arising out of its use of Grantee Property and the Project Easement, and Grantor shall have no liability to Grantee or others for any existing condition thereon. Grantee shall, at all times, save and hold harmless and indemnify Grantor, its officers, partners, members, agents, lessees, contractors, employees and invitees from and against all losses, damages, expenses, claims, demands, suits and actions, including, but not limited to, all claims for personal injuries and property damage arising from its activities under this Agreement to the extent caused by Grantee, its officers, partners, members, agents, lessees, contractors, employees and invitees.

7. Ownership of Improvements: Grantee owns as personal property the Well Infrastructure Facilities improvements located in, on, under, over and across the Project Easement. Grantor shall have no obligation for payment of property taxes or other levies or assessments, if any, allocable to the Grantee's improvements. Grantor owns as personal property its utility improvements, when installed, located in, on, under, over, and across the Project Easement.

8. Agricultural Operations: Grantee acknowledges that Grantor conducts agricultural operations on the Grantor Property. Grantee shall utilize reasonable efforts to maintain fencing closure (one existing gate on Grantor Property) to retain livestock, if any, grazing near the premises. Grantor acknowledges that Grantee may be required to leave the entrance gate open during days of high construction activity and the Parties shall reasonably cooperate to meet mutual party needs.

9. Grantor Warranty of Title: Grantor covenants that it is the sole owner of the Grantor Property in fee simple and has the right to convey this easement and grant the rights in the Project Easement and no further consents are required by any other party.

10. Grantee Warranty of Authority and Performance: Grantee is a Klamath County, Oregon Special District duly formed and existing in good standing under the laws of the State of Oregon. Grantee covenants that it has full power to execute, deliver and carry out the terms and provisions in this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes the legal, valid and binding obligations of Grantee enforceable in accordance with its terms.

11. Material Consideration of Provisions: The provisions in this Agreement benefitting the Grantor were specifically bargained for. Grantee hereby acknowledges that Grantor has relied upon these provisions in agreeing to grant this easement, and also acknowledges that these provisions represent a material part of Grantor's consideration for granting this easement.

12. Successors: The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns and shall run with the land. This easement shall be recorded, and the terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns (including, without limitation, the respective successors in title to Grantor).

13. Jury Trial Waiver: To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this easement. Each Party further waives any right to consolidate, or to request the consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

14. Miscellaneous: This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. This Agreement, when executed, approved and delivered, together with all exhibits attached hereto, shall constitute the entire agreement between the Parties and there are no other representations or agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended or modified except by a written agreement signed by the Parties hereto. Each Party



agrees that it will without further consideration execute and deliver such other documents and take such other action as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. In the event of any inaccuracy in the description of any of the property described herein, Grantor and Grantee shall amend this Agreement to correct such inaccuracy in order to accomplish the intent of Grantor and Grantee. Grantor and Grantee agree that this Agreement shall be recorded in the Register of Deeds. If any terms or provisions of this Agreement are deemed to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Headings are included in this Agreement for the benefit of the reader and shall not be used to directly interpret its provisions. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

15. Notices: All notices, requests and communications ("Notice") under this Agreement shall be given in writing by first class certified mail, postage prepaid, return receipt requested, to the individuals and addresses indicated below. Any Notice provided for herein shall be deemed to be received five (5) business days after the date on which it is mailed. Any Party may, by proper written notice hereunder to the other Party, change the individual address to which such Notice shall thereafter be sent.

(a) If to Grantor:
David M. Cowan
7647 Libby Rd. NE
Olympia, WA 98506

(b) If to Grantee:
Bly Water and Sanitary District
61138 Highway 140E
P.O. Box 72
Bly, OR 97622

16. Dispute Resolution: Any controversy or claim between the parties arising out of or relating to this Agreement, or the breach, termination or invalidity hereof, shall be settled by a single arbitrator conducting final and binding arbitration in Klamath County, Oregon (or such other location agreed to by Grantor and Grantee under the rules of the Arbitration Services of Portland ("ASP") in effect on the Effective Date. If the parties shall fail to select a mutually acceptable arbitrator within ten (10) days after a written demand for arbitration is made, then the parties stipulate to arbitration before a single arbitrator selected according to the ASP. The interpretation and construction of this Agreement shall be governed by the internal laws of the State of Oregon without respect to its conflict of laws principles. Judgment upon any award issued by an arbitrator hereunder may be entered in any court having jurisdiction thereof. Upon a showing of potential for substantial and irreparable injury, the arbitrator or an appropriate court (at the aggrieved Party's election) shall have power to order protective or conservation measures to be taken to preserve the respective rights of either Party. The prevailing party shall be entitled to reimbursement by the other Party of such Party's attorneys' fees and costs and expense of arbitration.

Exhibit A

An area of land in Section 29, Section 32, Section 33 and Section 34 of Township 36 South, Range 14 East, and Section 3 and Section 5 of Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon. Being more particularly described as follows:

Parcel 2 of Land Partition 36-18, Klamath County Records.

A handwritten signature in black ink, appearing to read "DMC / rec", is located at the bottom left of the page.

Exhibit B

An area of land in Section 34 of Township 36 South, Range 14 East, and Section 3 of Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon. Being a portion of Parcel 1 of land partition 12-02 as recorded in the plat records of Klamath County, Oregon. Being more particularly described as follows:

Beginning at the South 1/4 corner of Section 34, of Township 36 South, Range 14 East; Thence along South line of Township 36 South, North 89°52'00" West 2199.07 feet to the True Point of Beginning, also being the Southwest corner of the land described in microfilm volume M75, page 3519; Thence, along the west line of the 30.00 foot access and utility easement benefiting Bly Water District as described in said deed microfilm record South 00°21'16" East 30.00 feet to the Southwest corner of said access and utility easement; Thence South 89°38'44" West 329.63 feet; Thence 67.12 feet along a 130.00 foot radius curve to the right, the long chord of which bears North 75°33'51" West 66.37', to a point of reverse curvature; Thence 51.63 feet along a 100.00 foot radius curve to the left, the long chord of which bears North 75°33'51" West 51.06 feet to the North West Corner of Section 3, also being the South East corner of parcel 1 of land partition 36-18; Thence along the East line of Section 33, North 00°21'16" West 30.00 feet; Thence leaving said East line of Section 33, 67.12 feet along a 130 foot radius curve to the right, the long chord of which bears South 75°33'51" East 66.37 feet, to a point of a reverse curvature; Thence 51.63 feet along a 100 foot radius curve to the left, the long chord of which bears South 75°33'51" East 51.06 feet to a point on the South line of Section 34, Thence along said South line North 89°38'44" East 329.63 feet to the True Point of Beginning.

Containing 0.31 acres more or less.

Exhibit C

An area of land in Section 33 and 34 of Township 36 South, Range 14 East, and Section 3 of Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon. Being a portion of Parcel 1 of land partition 12-02 as recorded in the plat records of Klamath County, Oregon being more particularly described as follows:

Beginning at the Northwest corner of Section 3 in said Township and Range, monumented with a 2 1/2 inch diameter stainless steel monument with brass cap marked T36S R14E S34 S33 S3 S4 T37S, also being the South East corner of Parcel 1 of land partition 36-18; thence northerly along the east line of Section 33 of said Township and Range 14.97 feet; Thence, leaving said east line and parallel with the south line of said Section 33, South 89°38'44" West 22.00 feet to the true point of beginning which is also, station 0+00 of the centerline of the 30.00 foot access and utility easement, benefitting Parcel 1 per Land Partition 36-18, as filed in Klamath County Records; Thence, along said centerline of easement, North 89°38'44" East 22.00 feet to the beginning of a curve to the right; Thence 59.37 feet along a 115.00 foot radius curve to the right, the long chord of which bears South 75°33'51" East 58.71 feet, to a point of reverse curvature; thence 59.37 feet along a 115.00 foot radius curve to the left, the long chord of which bears South 75°33'51" East 58.71 feet; Thence North 89°38'44" East 329.63 feet, to the West boundary of the easement described in M75, page 3519, as recorded in Klamath County Deed Records.

The following stations of said centerline easement have co-located utility conduits 10.00 feet on either side and perpendicular to said centerline;

Stations:

0+70.38

1+70.38

2+70.38

3+70.38

Containing 800 square feet more or less.



Exhibit D

An area of land in the Southwest quarter of Section 34, Township 36 South, Range 14 East, and the Northwest quarter of Section 3, Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon. Being more particularly described as follows:

Beginning at a brass cap marking the Southwest corner of said Section 34; thence North 00°21'16" West 13.68 feet along the West line of said Section 34 to the true point of beginning, also being on the East line of Parcel 1 of Land Partition 36-18; thence continuing along said East line North 00°21'16" West 10.55 feet; thence leaving said East line 105.05 feet along a 1507.00 foot radius curve to the right, the long chord of which bears South 69°51'05" East 105.03 feet; thence South 67°51'16" East 19.44 feet; thence North 89°38'44" East 326.84 feet to a point on the West line of that 30.00 foot access and utility easement described in Klamath County microfilm volume M75, page 3519; thence continuing along the West line of said access & utility easement South 00°21'16" East 10.00 feet to a point on the South line of said Section 34; thence along said South line South 89°38'44" West 328.83 feet; thence leaving said South line North 67°51'16" West 21.42 feet; thence 101.01 feet along a 1497 foot radius curve to the left, the long chord of which bears North 69°47'14" West 100.99 feet to the point of beginning.

Containing 4,513 square feet more or less.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed and delivered by their duly authorized representatives on the latest date set forth below the respective signatures of Grantor and Grantee on Pages 7, 8 and 9.



GRANTOR

By: 

Name: David M. Cowan

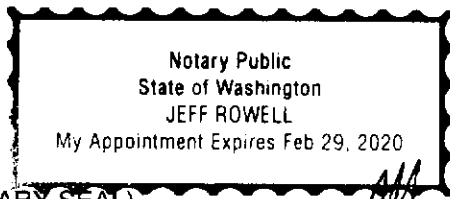
Title: Property Owner

Date: 3/28/19

STATE OF WASHINGTON

OLYMPIA

The foregoing instrument was acknowledged before me this 28th day of March, 2019
by David M. Cowan.



(NOTARY SEAL)


Notary Public

My commission expires: 2-29-20

GRANTOR

By: Theresa E Cowan

Name: Theresa E. Cowan

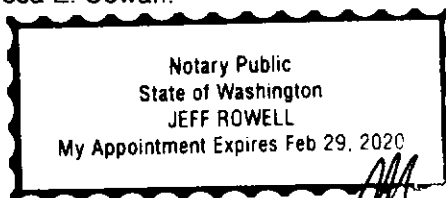
Title: Property Owner

Date: 3-23-18

STATE OF WASHINGTON

OLYMPIA

The foregoing instrument was acknowledged before me this 28th day of March, 2019
by Theresa E. Cowan.



(NOTARY SEAL)

[Signature]
Notary Public

My commission expires: 2-29-2020

GRANTEE

By: _____

Name: Steve Cornell

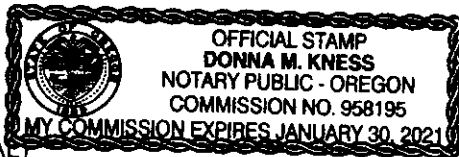
Title: President, Bly Water and Sanitary District

Date: 4-1-2019

STATE OF OREGON

BLY

The foregoing instrument was acknowledged before me this 1 day of April, 2019
by Steve Cornell.



(NOTARY SEAL)

Donna M. Kness
Notary Public

My commission expires: 1/30/21