



CITY OF
TUMWATER

**PUBLIC WORKS COMMITTEE
MEETING AGENDA**

**Online via Zoom and In Person at
Tumwater City Hall, Council Conference
Room, 555 Israel Rd. SW, Tumwater, WA
98501**

**Thursday, October 19, 2023
8:00 AM**

1. Call to Order
2. Roll Call
3. Approval of Minutes: July 20, 2023 and August 3, 2023
4. Sanitary Sewer Lift Station Agreement with AMH Development, LLC (Jared Crews)
5. Right-of-Way License Agreement with Deschutes 106 LLC for the Falls Terrace Restaurant (Jared Crews)
6. Right-of-Entry & Maintenance Agreement for the Wildrick Property (Dave Kangiser)
7. Memorandum of Understanding Between the City of Tumwater and LOTT Clean Water Alliance Regarding a Purchase and Sale Agreement for Properties in the Deschutes Valley (Dan Smith)
8. Memorandum of Understanding Between the City of Tumwater and LOTT Clean Water Alliance Regarding a Purchase and Sale Agreement for the Henderson Property (Dan Smith)
9. Additional Items
10. Adjourn

Meeting Information

All committee members will be attending remotely. The public are welcome to attend in person, by telephone or online via Zoom.

Watch Online

<https://us02web.zoom.us/j/87483297321?pwd=SDdMRmtHOSUkPjaUtGU3dSZW1EZz09>

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Call (253) 215-8782, listen for the prompts and enter the Webinar ID 874 8329 7321 and Passcode 771989.

Public Comment

The public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. the day before the meeting. Comments are submitted directly to the Committee members and will not be read individually into the record of the meeting.

Post Meeting

Audio of the meeting will be recorded and later available by request, please email CityClerk@ci.tumwater.wa.us

Accommodations

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TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
July 20, 2023 Page 1

CONVENE: 8:00 a.m.

PRESENT: Chair Eileen Swarthout and Councilmembers Michael Althausser and Charlie Schneider.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Transportation and Engineering Director Brandon Hicks, Finance Director Troy Niemeyer, Water Resources and Sustainability Director Dan Smith, Assistant Transportation and Engineering Director Mary Heather Ames, Communications Manager Ann Cook, Community Engagement Specialist Marnie McGrath, and Administrative Assistant Bonnie Hale.

Others: Meridith Greer, Greer Environmental Consulting

**SERVICE PROVIDER
 AGREEMENT WITH
 STANTEC FOR THE
 PIONEER PARK
 RIPARIAN
 RESTORATION
 PROJECT
 AMENDMENT 2:**

Director Smith reported the proposed action is an amendment with Stantec for the Pioneer Park Restoration project.

Meridith Greer, Greer Environmental Consulting, reported the project area is located in the southwestern area of Pioneer Park where the park meets Deschutes River. The site is active with the river moving approximately 10 feet each year. Because of the location of the site, the river has encountered water quality impairments and movement of the river has created bank erosion and other problems. Movement of the river over the last eight years has been substantial when the project was initiated to identify some solutions to slow bank erosion and replant riparian areas. Ultimately, Deschutes River and Pioneer Park are at risk for high water temperature, fine sediment, and insufficient riparian areas with trees to create habitat for fish and wildlife as trees fall into the river. Pioneer Park is also very heavily used by the Tumwater community and others in Thurston County. Public risk is another consideration of the project. The river does not honor the location of trails and it is important to create options for park users. The park also experiences flooding and any solutions need to consider flooding occurrences.

The City received grant funds of \$450,000 from the Department of Ecology to complete design, permitting, and construction. The City contracted with Stantec to complete design and permitting. The grant timeline for completion of design, permitting, and construction was three years. The original timeline from October 2021 through October 2024 enabled completion of design. However, because the project is complicated and located within an active water body, staff sought feedback from permitting agencies to ensure the timeline was realistic. Last fall, staff met with Department of Ecology staff and the U.S. Army Corps of Engineers to review the project. The U.S. Army Corps of Engineers advised that any project involving in-water work would require a two-year permitting review process that would affect the three-year plan.

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Staff alternatively considered focusing only on bank stabilization and riparian restoration and installing large woody debris structures in place without any in-water work to meet the three-year deadline. Many stakeholders were involved in reviewing the project in February 2023. A consensus for the revised project scope was not achieved because most stakeholders did not believe the scope would restore normal river functions because of the lack of any in-water work. Staff revisited the scope to meet the goals of improving water quality and habitat while conforming to the requirements of the grant. Following negotiations between many parties, a new project scope was developed focusing on multi-benefits and solutions to increase river complexity. The Department of Ecology agreed to change the grant to cover design only affording time and flexibility to seek funding. Staff plans to apply for another grant for construction funding. Revision of the grant initiates a new timeline beginning in 2024 through 2027 to complete the project.

The next step is updating the service provider agreement with Stantec to account for the change in project scope, re-design, additional permitting, and extending the agreement to 2027. The amendment increases the budget by approximately \$50,000 to account for the changes. Staff and the Department of Ecology will work on amending the current grant agreement. Stantec and project stakeholders will work on updating the conceptual designs with staff applying for construction funding from the Department of Ecology in the fall.

Director Smith requested the committee recommend the City Council approve and authorize the Mayor to sign the Service Provider Agreement with Stantec for the Pioneer Park Riparian Restoration Project Amendment 2, extending time and increasing the budget to complete the design and permitting elements of the project.

Chair Swarthout mentioned the degree of erosion of the riverbank over the last several years and whether further delays in the project would contribute to more erosion affecting both the riverbank and Pioneer Park. Director Smith explained that each season of delay results in more erosion. Staff encountered project challenges after learning about the permitting window and considered ways to shift the design to implement some actions in the near-term to help reduce erosion. However, stakeholders preferred to move forward with a project holistically despite impacts to the shoreline in near-term to ensure the City is able to secure funding for construction from the Department of Ecology and permitting from the U.S. Army Corps of Engineers.

Councilmember Althausen asked whether the stakeholders support the second alternative despite concerns about the log strategy. Director Smith said the stakeholders represent a significant number of WRIA 13 members representing lead entity groups addressing salmon and in-water habitat

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improvements. Stakeholders were supportive of a more comprehensive approach versus a scope that limits the project to shoreline improvements as proposed by staff to overcome the permitting timeline. Stakeholders recognized the timing issues but agreed the results of the project with in-water work would be more beneficial for the river system.

Director Smith responded to questions about the extent of changes in the new project scope. Staff plans to retain the existing shoreline design to some degree with the addition of different methods to rechannelize some areas to redirect flows and reduce energy to minimize erosion as water moves through the channel. That work will entail in-water work requiring permitting through the U.S. Army Corps of Engineers.

Councilmember Althausen asked whether staff plans to take advantage of grant opportunities created by the Legislature when it increased the amount of funds available for salmon and habitat restoration projects. Director Smith affirmed Ms. Greer and staff plan to submit applications for other projects to take advantage of the funds.

Chair Swarthout asked whether any remediation would be necessary to remove the build-up of sediment near the entry area into the river. Ms. Greer said no dredging of the river is anticipated. Much of the fine sediment is pushed further downstream and settling above Tumwater Falls or traveling to Capitol Lake. The river is part of the normal sediment transport system. The intent of the project is restoration of natural processes to reduce the amount of fine sediment from the riverbank due to erosion by the river.

MOTION:

Councilmember Althausen moved, seconded by Councilmember Schneider, to recommend the City Council approve and authorize the Mayor to sign the Service Provider Agreement with Stantec for the Pioneer Park Riparian Restoration Project Amendment 2. A voice vote approved the motion unanimously.

**CAPITAL
FACILITIES PLAN
(CFP) 2024-2029:
WATER, SANITARY
SEWER, AND STORM
DRAIN BRIEFING:**

Director Smith briefed members on Water, Sanitary Sewer, and Storm Drainage Plans of the Capital Facilities Plan (CFP) for 2024-2029. The CFP is not a financial commitment but a plan of forecasted projects based on growth, funding, staffing capacity, and needs. Projects included in the CFP are generated from many different planning reports, basin assessments, anticipated growth in different areas of the City, and operational needs. The CFPs for utilities total 49 projects. The projects are not funded from the City's general fund as utility budgets fund the projects totaling \$123.2 million over the six-year plan.

For Water Fund projects, staff considers security, water quality, source development, mitigation, growth, operational issues associated with fire flow, water pressure, and infrastructure needs. The Water Fund supports infrastructure and programs that support the operation and expansion of the

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City's drinking water utility.

All Utility CFPs are enterprise funds. Revenues are generated through rates, connection fees, and utility taxes. The City also uses grants, loans, bonds, and other miscellaneous sources to fund projects.

The Water Fund includes 14 projects with two new projects. The Israel Road Linderson Water Main project will be completed this year, as well as the Trosper/6th Water Main Replacement & Extensive project. Those projects have been removed from the CFP.

The first new project is the Well 15 Improvements project under the category of security improvements. Well 15 is the City's second largest producer of potable water. The project includes some additional security, water quality protections, and auxiliary power. The project will begin in 2025 at a cost of \$950,000.

The second project is a planning project recommended by a homeland security evaluation and water system and sewer system planning processes. The project is a moderate seismic resiliency study to establish level of service goals for utility operations after a major seismic event, updating geotechnical hazard maps, developing processes for facility structural resilience evaluations on critical structures and distribution systems, and preparation of a critical interdependencies assessment. The project will result in the development of an implementation strategy, identifying all the recommendations for reducing vulnerabilities and mitigating risk for both water and sewer utilities. The study will be a multi-year study effort with the costs shared between Water and Sewer Utilities.

The remaining 12 projects focus on source development, growth, infrastructure maintenance, and programs and planning. Source development includes construction of infrastructure for the Brewery Wellfield to implement the water rights the City acquired several years ago. The City contracted with a consultant and the new Water Resources Program Manager will lead the project.

New source development is in progress. An agreement will be presented to the Council for a consultant to assist the City. Another project underway is the Southeast Reservoir and System Extension project located off 93rd Avenue. A three-million gallon reservoir will be installed off 93rd Avenue.

Two projects under the category of infrastructure maintenance include Capitol Boulevard and X Street Watermain and Resource Conservation & Sustainability with assistance of a consultant to review existing facilities for long-term operational sustainability. Programs and planning projects include ongoing and routine efforts.

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The Sanitary Sewer Fund is the City's wastewater service comprised only of the conveyance system with service provided the LOTT Clean Water System for wastewater treatment. The CFP includes projects focused on infrastructure replacement and expansion. Projects are funded from rates and connection fees, grants, revenue bonds, loans, and miscellaneous revenue sources. The CFP includes 14 projects with two projects completed. One project is related to the Capitol Boulevard/Trospen Road Improvements project. The second project completed is Resource Conservation and Sustainability Evaluation of the system for potential improvements.

Councilmember Althaus asked whether solarization of infrastructure represents more of a funding challenge or a technological challenge in terms of generating sufficient power. Director Smith said the major challenge is the size of the solar array required in specific locations. Many of the sites are located in forested areas. Staff worked with a consultant on a Citywide analysis of facilities and operations. The analysis did not identify any cost efficiency or cost-effectiveness solutions that would achieve the power required.

The fund's portion of the Seismic Resiliency Plan is significantly larger than the Water Fund portion. The plan is estimated to cost approximately \$300,000 over a two-year period.

Another new project is the Kimmie Street Lift Station based on deficiencies identified in the 2015 Water System Plan. Next year, early initial evaluations are planned with design and permitting scheduled in 2025 with construction in 2026. The project is only a forecast at this time as staff is launching a review of the Sewer System Comprehensive Plan, which will inform the priority for the project and other projects.

Director Smith reviewed other projects in the Sanitary Sewer CFP:

- Annual Sewer Infrastructure Replacement Program
- Oversizing Program
- Regional Pump Station
- Old Highway 99 Extension: 79th Avenue To 88th Avenue
- City Operations and Maintenance Facility Relocation
- Streamland Estates Lift Station
- Lloyd Street Lift Station
- Comprehensive Plan Review/Update
- Enterprise Resource Planning Business System
- I-5 Sanitary Sewer Main Crossings Report

Director Smith reviewed the Storm Drain Fund. Projects are funded primarily from rates and grants. Bond and loans provide other sources of funds as needed. The projects collect and convey stormwater to reduce flooding in the City, treat water to improve water quality and habitat, and

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meet regulatory requirements of the City's stormwater permit. The Storm Drain CFP totals approximately \$30 million comprised of 21 projects. Of the total six-year plan, approximately \$20 million is forecasted from grants, bonds, and loans.

Two recently completed projects include the Lee Street Bioretention Retrofit in conjunction with the Capitol Boulevard/Trosper Road Improvements project. The Deschutes River Flood Reduction and Erosion Study was recently completed and will be presented to the committee at a future meeting.

New projects include:

- Land Acquisition - Wetland/Habitat Conservation - Land Acquisition was expanded to include habitat conservation due to the number of properties that might become available along the Deschutes River and Kirsop area wetlands to meet conservation goals. The scope of the project includes more funding.
- 2028 Stormwater Management Plan Update – preparation activities in support of the update of the Stormwater Management Plan in 2028
- E Dennis Outfall Retrofit – Staff identified an unmitigated and untreated outfall located off E Dennis Street collecting a significant portion of stormwater runoff from the Israel Road area. Some additional work involving programming and analysis will be required prior to construction of the project.

Director Smith responded to questions about the timing of the E Dennis Outfall Retrofit given the seriousness of no treatment of stormwater runoff in that area of the City. He explained that most of the City's stormwater outfalls do not treat stormwater. Some of the more significant outfalls in the City have been retrofitted for treatment. Staff continues to work on several significant outfalls that drain directly to Deschutes River. Staff continues to seek grants. Some conceptual designs have been completed for the larger outfalls. Some work is required prior to the work on the E Dennis Outfall Retrofit project to identify the needed level of treatment. Much of the timing involves the complexity of the project as well as staff capacity and current projects in progress.

Director Smith reviewed remaining projects on the list:

- Tumwater Valley Regional Facility
- Deschutes Habitat Restoration Projects
- Emerging Projects
- East Linwood Basin Outfall Retrofit
- Sapp Road Culvert Replacement
- Kirsop Road Stormwater Improvements
- 54th & Kirsop Road Flooding Reduction
- 66th Ave Culvert Replacement

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- North Custer Way Stormwater Redirection
- Beehive Industrial Area Stormwater Improvements
- City Operations and Maintenance Facility Relocation
- Golf Course Drainage System Repairs – the project involves the drainage system located throughout the golf course discharging directly into the Deschutes River. The system is part of the City’s stormwater system. Those areas have been delineated and are the responsibility of the Storm Drain Utility to maintain and convey.
- Enterprise Resource Planning Business System
- Capitol Boulevard Storm Upsizing
- Crites Stormwater Pond Improvements – Expansion of the facility and improvements
- 29th Avenue Swarthout Stormwater Improvements
- Tumwater Hill Basin Assessment
- Resource Conservation & Sustainability

Chair Swarthout noted that the Council received an email with respect to the storm drain project on the golf course and concerns that some of the area of the golf course could be lost due to drainage. Director Smith reported the site poses a number of challenges with some areas on the golf course experiencing sinkholes and other issues. Funds are available to address those stormwater projects at the golf course. The goal is protecting the course to the extent possible while ensuring the drainage system continues to convey and not undermine the golf course in other areas.

Director Smith said the department was able to balance all utility funds to ensure all funds maintain its operating reserve requirements. Rates for all utilities were increased as well as connection fees. Staffing capacity continues to pose a challenge and although consultant support is available, staff also manage consultant assistance. Inflation and market forces this year have challenged customers and the City with significant increases in labor and materials representing nearly 35%. For example, the Southeast Reservoir project cost has increased by 132% based on bidding results. Despite the increase in costs, staff proposes a water rate increase scenario of 5% to 6% per year with a drop in later years to 4.5%. The scenario also increases the connection fee rates from an existing 2% per year to 4.8% to match the proposed water rate increase. Staff proposes increasing the connection fee in later years to 8.5% to 10% because many of the projects are required to accommodate growth rather than a reflection of the current customer base.

Director Smith outlined the future review process of the CFPs with briefings and a public hearing scheduled by the Planning Commission. Utility CFPS will be presented to the committee if there are any major or significant changes based on feedback from the ongoing review process. The adoption of the CFP is scheduled before the end of the year.

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**SOMERSET HILL
FISH PASSAGE
BARRIER REMOVAL
PROJECT UPDATE:**

Ms. Greer provided an update on the status of the Somerset Hill Fish Passage Barrier Removal project. The project involves a culvert conveying Percival Creek under Somerset Hill Drive that was identified as a partial barrier to fish passage because of velocity. The site was identified because of issues associated with a sanitary sewer main that serves a housing complex. The area of the culvert and street has experienced a high level of erosion due to its location because of the slope. Some trees have eroded in the area and have fallen causing the potential of damaging the sewer main. The project was elevated for those reasons as well as to improve fish habitat and passage.

The project replaces a five-foot wide culvert. To reduce velocity and enable the stream to move naturally, the new culvert must be at least 24 feet wide. Water Resources & Sustainability has been working with Skillings Inc., to review alternatives for crossing structures that will work best for the site. The first option identified was a three-sided box culvert of 24 feet in width. Although the culvert would enable 100% fish passage, the culvert would not enable the stream to flow naturally. Staff is considering three alternatives Skillings identified. The second option is a steel plate arch culvert 24 feet wide. The culvert is 100% fish passable and is the lowest cost option. However, it would not enable the stream to move naturally and it does not include an option for a natural channel bottom. The last option is a pre-fabricated bridge. A bridge would be 100% fish passable and because of its size, stream movement would be natural. The last option is the preferred alternative of project stakeholders. The option is the most expensive for both design and construction.

Staff submitted a funding application to the Salmon Recovery Funding Board for funds for planning to design a prefabricated bridge. The grant would enable the design of the culvert replacement, stream realignment, and bank restoration and stabilization to protect trees and the sewer line. The funding request is for \$280,000 for a project that requires no match from the City. The project is ranked fourth of six projects under consideration by the Board. Based on funding anticipated for the watershed, staff does not believe the project would receive funding this fall; however, next steps include two approaches. Staff is seeking feedback from members on support for continuing to move forward to seek design funding for the prefabricated bridge option. Staff plans to resubmit a grant application to the Board in January 2024. Dependent upon the receipt of funding, The construction date would be 2027 or later.

Director Smith commented that staff is working to secure grants to fund the project. From a priority standpoint, the project was ranked higher because of bank stabilization, erosion, and the sewer main. Because of the outcome of assessments completed this year, more time is available to seek some funding because the project is no longer deemed an emergency.

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Ms. Greer noted the existing culvert is rated as a 66% fish passable barrier culvert. The Sapp Road culvert is 100% fish passage barrier and is a more competitive project to receive funding. The City is hindered in terms of project competitiveness because of the number of culverts across the state deemed full fish passage barriers. Based on the recent assessment, sewer infrastructure is not in eminent danger and staff can seek grant funding.

Chair Swarthout asked whether the potential of damage to sewer infrastructure would increase the competitiveness of the project for funding. Director Smith advised that engineering evaluations were conducted of the site by both consultants and the City's engineering team to assess the condition of sewer infrastructure. The consensus was that the site would need to be protected but the need was not eminent enabling time for staff to pursue funding.

ADJOURNMENT: **With there being no further business, Chair Swarthout adjourned the meeting at 9:19 a.m.**

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

**TUMWATER PUBLIC WORKS COMMITTEE
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August 3, 2023 Page 1**

CONVENE: 8:00 a.m.

PRESENT: Chair Eileen Swarthout and Councilmember Charlie Schneider.

Excused: Councilmember Michael Althausen.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Transportation and Engineering Director Brandon Hicks, Finance Director Troy Niemeyer, Water Resources and Sustainability Director Dan Smith, Assistant Transportation and Engineering Director Mary Heather Ames, Communications Manager Ann Cook, Utilities Operations Manager Steve Craig, Sustainability Coordinator Alyssa Jones Wood, and Administrative Assistant Cathy Nielsen.

**APPROVAL OF
MINUTES: PUBLIC
WORKS
COMMITTEE, JULY
6, 2023:**

MOTION: Councilmember Schneider moved, seconded by Chair Swarthout, to approve the minutes of July 6, 2023 as published. A voice vote approved the motion unanimously.

**AGREEMENT WITH
CLEARCREEK
CONTRACTORS FOR
THE PALERMO
LAGOON DREDGING
& MAINTENANCE
PROJECT
AMENDMENT #1:**

Manager Craig reported the request is for the committee's recommendation to the City Council to approve Amendment #1 for the Palermo Lagoon Dredging & Maintenance project.

The Palermo Lagoon is located at the end of M Street adjacent to the Tumwater Municipal Golf Course. The lagoon removes contamination from groundwater prior to entering the Deschutes River. The project scope included removing vegetation and accumulated sediments from the pond to restore it to its original design and operational ability. The project is funded by an agreement with the Washington State Department of Transportation for up to \$175,000.

Dewatering of the root sediment was difficult and required additional time and resources. Additionally, the scope included importing sawdust material used to mix with material to stabilize waste for transport and disposal. Removing the sediment destabilized the saturated embankments of the pond resulting in some sloughing during the project. As sediment was removed from the lagoon embankment, sloughing increased resulting in the cessation sediment removal by approximately 50% of the original design to prevent further sloughing and to protect the integrity of the lagoon. Sufficient levels were restored enabling effective operation of the aeration pumps and treatment process. The pond is effectively operating as designed.

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Additionally, the south end of the lagoon was not accessible without affecting golf operations with no work on that end of the pond, which affected one of the three aeration pumps. Two of three aeration pumps are in service and operating.

The changes in scope were because of additional efforts to dewater and stabilize the sediment for transport and disposal and importing material to stabilize the embankment areas compromised during the project. The original contract cost was \$126,650. The amended contract cost increased by \$21,702.80 for a total contract of \$148,352.80 to complete restoration and operation of the lagoon.

Manager Craig invited questions.

Chair Swarthout asked whether the project was completed. Manager Craig explained that one additional task is pending. The pond includes a series of six monitoring systems used for monitoring the level of sediment. The systems are part of the mitigation project to monitor the operation and effectiveness of the pond. During the sloughing operation, one component of the system was affected. Staff is negotiating with the City's contracted survey services to restore the component or replace the component at its original elevation. The work performed by Clearcreek was completed.

Chair Swarthout inquired about the status of the third inoperable aeration pump. Manager Craig responded that the original design of the pond was based on two aeration pumps to treat groundwater effectively. The third pump was added as a redundant source for cycling and alternating needs. Today, the pond is operating as designed and is treating groundwater appropriately. Future maintenance will address the south section of the pond.

Chair Swarthout asked about the frequency of removing sediment from the pond. Manager Craig explained that the project closeout identified future tasks for maintaining the pond. The maintenance project is the first since the pond was constructed. Over the years and through several flooding events on the golf course, sediment had accumulated and created the need for the project. Staff plans to schedule additional future maintenance and review access improvements to ensure the pond is restored to its operational capability.

MOTION:

Councilmember Schneider moved, seconded by Chair Swarthout, to recommend the City Council approve Amendment #1 for the Palermo Lagoon Dredging & Maintenance Project for \$21,702.80. A voice vote unanimously approved the motion.

TUMWATER
CLIMATE WORK

Coordinator Jones Wood updated members on the status of the Climate Mitigation Work Program for 2023 and 2024.

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PROGRAM
DISCUSSION:

The City Council accepted the Thurston Climate Mitigation Plan in 2021. The plan includes greenhouse gas emission reduction goals of 45% by 2030 and 85% by 2050 based on 2015 baselines. Implementation of the strategies and actions in the plan can be implemented by one jurisdiction independently by all four jurisdictions together, or by one or more jurisdictions working together.

A new template work program for each jurisdiction was developed to communicate to the public all measures each jurisdiction is undertaking. Each jurisdiction plans to release the same template work program in the next several days outlining the work to be completed during specific timeframes.

The work program outlines approximately \$24 million in investments by the City of Tumwater between 2023 and 2024. Each City project manager assigned an action or a project aligning with the plan will be included within the implementation actions. While the impetus of some projects might not have involved the Thurston Climate Mitigation Plan, some components of some projects may benefit the Thurston Climate Mitigation Plan. Of the \$24 million, \$7.8 million is from awarded grants and nearly \$558,000 is pending a decision from funding agency. Most of the funding invested in the Thurston Climate Mitigation Plan implementation is from transportation and land use. One of the strategies in the Plan is increasing the efficiency of the transportation system with roundabouts identified as a strategy, as well as improving pedestrian and bicycle infrastructure. The City's \$12 million I-5/Capitol Boulevard/Trosper Improvement project achieves those specific strategies.

Coordinator Jones Wood outlined some of the activities planned over the next 18 months. Some of the energy strategies in the Thurston Climate Mitigation Plan include reducing energy use in existing residential buildings, in new construction or redevelopment, and converting to cleaner fuel sources. Some activities in 2023 and 2024 include submitting for the City's Sole Source Smart designation, a national program that is designed to reduce the solar soft costs for installing residential solar, adopting the new state building code requiring heat pumps in new construction, and continuing the LED lighting upgrades in City facilities.

Transportation and land use strategies include increasing urban density, increasing the efficiency of the transportation system, increasing the adoption of electric vehicles, and increasing the mode share for lower carbon forms of transportation, such as walking, biking, and transit. Projects scheduled in 2023 and 2024 include the Linwood Avenue Sidewalk project, trail improvements near the Palermo Wellfield, completion of an in-house fleet electrification plan, energy code adoption requiring EV charging, EV ready, and EV capable in new development, and other projects pending grant

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funding, such as an off-grid solar powered EV chargers at Pioneer Park.

Water and waste strategies include increasing the efficiency of water and wastewater infrastructure, reducing water consumption, diverting solid waste from landfills, and reducing consumption of carbon intensive goods and services. Water and waste projects in 2023 and 2024 include the investment grade audit of City facilities to include a water audit, composting at City events whenever feasible, composting at City facilities, and continued implementation of the compost procurement ordinance adopted by the Council in January 2023.

Agriculture, forest, and prairie strategies include reducing emissions from agricultural practices, supporting agricultural practices that sequester carbon, preserving tree canopy, and managing forests and prairies to sequester carbon. During 2023 and 2024 efforts include updating three sections in the code pertaining to trees, completing an inventory of all trees on City property, development of a maintenance plan and budget, and continuing work on the Habitat Conservation Plan and program.

Crosscutting strategies in the Plan involving many sectors are mostly focused on advocacy with the public and the Legislature. Work in 2023 and 2024 includes completion of the City's Sustainability webpage, improve and increase information available to the public on different sustainability topics, internships, guest lectures, and pursuing the City's legislative agenda.

Coordinator Jones Wood invited questions.

Councilmember Schneider commented on recent legislation pertaining to wildfire buffer zones. He questioned how the new law would affect the strategies. Coordinator Jones Wood said the new law will have some impact. The Community Development Department was tasked with reviewing the new legislation and how it might affect the Thurston Climate Mitigation Plan and the City's progress to date on revising urban forestry codes.

Councilmember Schneider asked whether the two-year grace period for not charging the public for EV charging would be available for the public at Pioneer Park as well. Coordinator Jones Wood advised that the City is offering free EV service at City Hall until the end of 2026. If the EV charging stations at Pioneer Park are funded by a grant, the City has committed to providing the EV stations to the public at no charge. The EV stations will be off-grid and solar-powered to reduce electricity usage.

Chair Swarthout commented on the challenges of encouraging the public to compost during City events. She asked about reducing the recycling options to composting and regular waste. Coordinator Jones Wood replied that the City is recruiting for volunteers for the Tumwater Brewfest. To date, two

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volunteers have signed up to serve as compost and recycling attendants during Brewfest. The intent is to offer three designated locations.

OTHER BUSINESS:

Chair Swarthout inquired about the status of the Trosper Road freeway off-ramp. Director Hicks said the northbound on-ramp opening was delayed and did not reopen at the same time as the off-ramp. The Trosper Road off-ramp is now open. The contractor was able to complete the work earlier than scheduled. Additionally, the City is completing the pavement maintenance project throughout the City. The project along Israel Road is under construction, and staff continues to work on the design of the new Operations and Maintenance Facility as well as for the Southeast Reservoir project. The department is very busy working on the capital program.

ADJOURNMENT:

With there being no further business, Chair Swarthout adjourned the meeting at 8:24 a.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

TO: Public Works Committee
FROM: Jared Crews, Engineer
DATE: October 19, 2023
SUBJECT: Sanitary Sewer Lift Station Agreement with AMH Development, LLC

1) Recommended Action:

Staff requests the Public Works Committee recommend the City Council approve and authorize the Mayor to sign the Sanitary Sewer Lift Station Agreement with AMH Development, LLC, which will assign additional fees for sewer connection on properties.

2) Background:

AMH Development, LLC constructed a sanitary sewer lift station as part of the Sienna II plat. RCW 35.91.020 allows the developer to enter into an agreement with the City to apply a charge for other properties connecting to the lift station that did not participate in the original construction. The agreement requires benefitting properties to pay a "fair share rate" to the original developer of the lift station upon connection to City sewer. This rate is calculated from the total cost of construction reported by the developer and divided evenly over the area served by the lift station.

3) Policy Support:

Not applicable.

4) Alternatives:

☐ Do not approve the Sanitary Sewer Lift Station Agreement.

5) Fiscal Notes:

None.

6) Attachments:

A. Sanitary Sewer Lift Station Agreement

SANITARY SEWER LIFT STATION AGREEMENT

This agreement entered into this _____ day of _____, 2023, by and between the City of Tumwater, a Municipal corporation, hereinafter referred to as the “City” and AMH Development, LLC, a Delaware limited liability company, hereinafter referred to as the “Developer”.

WHEREAS, the Developer has constructed a regional sanitary sewer lift station and force main together with all necessary appurtenances; and

WHEREAS, all improvements were constructed in accordance with the standards of the City and in accordance with the plans on file under Permit No. - TUM-18-0387;

WHEREAS, City and Developer wish to enter into the Agreement providing for the installation of the improvements and providing for reimbursement to the Developer of a portion of the costs of such improvements pursuant to RCW 35.91: and

WHEREAS, the City accepted the improvements on February 22nd, 2023 as part of the City’s sanitary sewer system and in return collect from future users of the improvements their pro rata share of the cost of the improvements to be reimbursed to the Developer; and

WHEREAS, the City has determined that the construction and installation of the improvements are in the public interest and the Developer has paid all the costs and expenses of the installation of the improvements.

NOW THEREFORE, in consideration of the mutual promises made herein, the City and Developer agree as follows:

1. Description of Facilities

Developer has constructed a regional sanitary sewer lift station and force main together with all necessary appurtenances (“Facility”) within the Facility or have been required to construct a portion of said Facility in the future as shown in Exhibit “A.”

2. Benefited Property

Certain real property described in Exhibit “B” and shown in Exhibit “C”, which is adjacent to or near Developer’s Property, will receive the benefit of the Facility, the owners of which may wish to use said

Facility or have been required to construct a portion of said Facility in the future.

3. Facility

3.1 The Developer has previously attested that all work performed in connection with the Facility is in full compliance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, policies, standards, and regulations.

3.2 The City has accepted ownership of said Facility and has the required documents necessary to place complete ownership of said Facility in the City. From the time of acceptance by the City, the Facility shall belong to the City and the City shall be responsible for its maintenance and operation and shall be entitled to all revenues derived from said Facility.

4. Cost of Facility

The Developer agrees that all expenses and claims in connection with the design, construction and installation of the Facility, whether for labor or materials, have been paid in full. The Developer has previously certified that the total cost of engineering and construction of the Facility is equal to Nine Hundred Eighty-nine Thousand Seven Hundred Fifty-Two and 68/100 Dollars (\$989,752.68) ("Total Cost).

5. Reimbursement

5.1 Any owner of the Benefited Properties ("Latecomer") who did not contribute to the original cost of the Facility and who subsequently elects to connect to the Facility within twenty (20) years from the date of this Agreement, shall not be permitted to connect to the Facility without first paying to the City, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, his or her pro rata share of the Total Cost of the Facility.

5.2 Reimbursement shall be collected by the City from those benefiting from using the Facility as provided above at the time

they connect to the Facility and in accordance with the following formula:

$$\text{ASSESSMENT FEE} = (\$989,752.68)/(1288 \text{ ERU's}) = \$768.44/\text{ERU}$$

- 5.3 The Developer agrees to pay \$800.00 for an application fee to the City for the review and processing of this application. Additional charges of \$95.00 per hour will accrue for review and processing exceeding 10 hours. These additional charges will be required to be paid before this Agreement is recorded.
- 5.4 The City shall deduct eight percent (8%) of all collected reimbursement amounts as a fee for administering the terms of the Agreement.
- 5.5 The City shall exercise its best efforts to collect all reimbursements herein described; however, the City assumes no obligation to collect any or all reimbursements herein described. The City does not agree to assume any responsibility to enforce this Agreement. This Agreement will be a matter of public record and will serve as a notice to all potential Latecomers. The Developer shall be responsible to monitor those parties using the Facility. In the event the City becomes aware of a Latecomer, it will use its best efforts to collect the Latecomer's Fee, but shall not incur any liability should it fail to collect such fee.

6. Indemnification

The Developer agrees to indemnify and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities including, without limitation, their respective agents, licenses, or representatives, arising from, resulting from, or connected with this Agreement or the construction or installation of the Facility.

7. Recordation

This Agreement shall be recorded at the sole cost of the Developer with the Thurston County Auditor's Office within thirty (30) days of execution of this Agreement by the parties.

8. Notice and Assignment

For the purpose of facilitating compliance with the requirements of RCW 35.91.202(3), the Developer hereby assigns to the City all of the Developer's right, title, and interest in and to any Latecomer's Fees in the event the City is unable to locate the Developer to tender the fees. The Developer shall be responsible for informing the City of its current and correct mailing address. Every year from the date the Agreement is executed a Developer entitled to reimbursement under this Agreement shall provide the City with information regarding the current contract names, address and telephone number of the person, company, or partnership that originally entered into the contract. If the Developer fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the City may collect any Latecomer's Fees owed to the Developer under the Agreement. The City will make a good faith effort to locate the Developer. In the event the City is unable to do so, the Latecomer's Fee shall be placed in the Capital Fund held by the City, and the City shall be deemed the owner of such funds.

9. General Provisions

- 9.1 Entire Agreement. This Agreement contains all of the agreements of the parties and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.
- 9.2 Modification. NO provision of the Agreement may be amended or added to except by agreement in writing signed by the parties.
- 9.3 Full Force and Effect. Any provision of this Agreement which is declared invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- 9.4 Successors In Interest. This Agreement shall inure and be for the benefit of shall obligate all of the parties respective successors in interest, heirs, beneficiaries or assigns.
- 9.5 Attorney Fees. In the event either party defaults on the performance of any terms in this Agreement, and this Agreement is placed in the hands of an attorney, or suit is filed, the prevailing party shall be entitled to an award of its reasonable attorney's fees, costs and expenses. The venue for any dispute related to this Agreement shall be Thurston County, Washington.

- 9.6 No Waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- 9.7 Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the state of Washington.
- 9.8 Authority. Each individual executing this Agreement on behalf of the City and the Developer represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Developer or the City.
- 9.9 Notices. All notices, requests, demands, and other communications called for by this Agreement shall be in writing and shall be deemed to have been given upon delivery if personally delivered (including delivery by confirmed telephone facsimile or overnight commercial delivery service with receipt) or delivery through the U. S. mail, first class, postage prepaid or registered or certified, return receipt delivery to:

City:

Finance Director
City of Tumwater
555 Israel Road SW
Tumwater, WA 98501

Developer:

AMH Development, LLC

Or at such other address as either party shall later provide to the other in writing from time to time.

- 9.10 Captions. The respective captions of the paragraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

DEVELOPER:

Debbie Sullivan
Mayor

Signature (Notarized – see below)
Printed Name:
Title:

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____(name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____(title) of AMH Development, LLC (company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

Notary Public in and for the State of Washington,

My appointment expires:_____

EXHIBIT "A" FACILITY

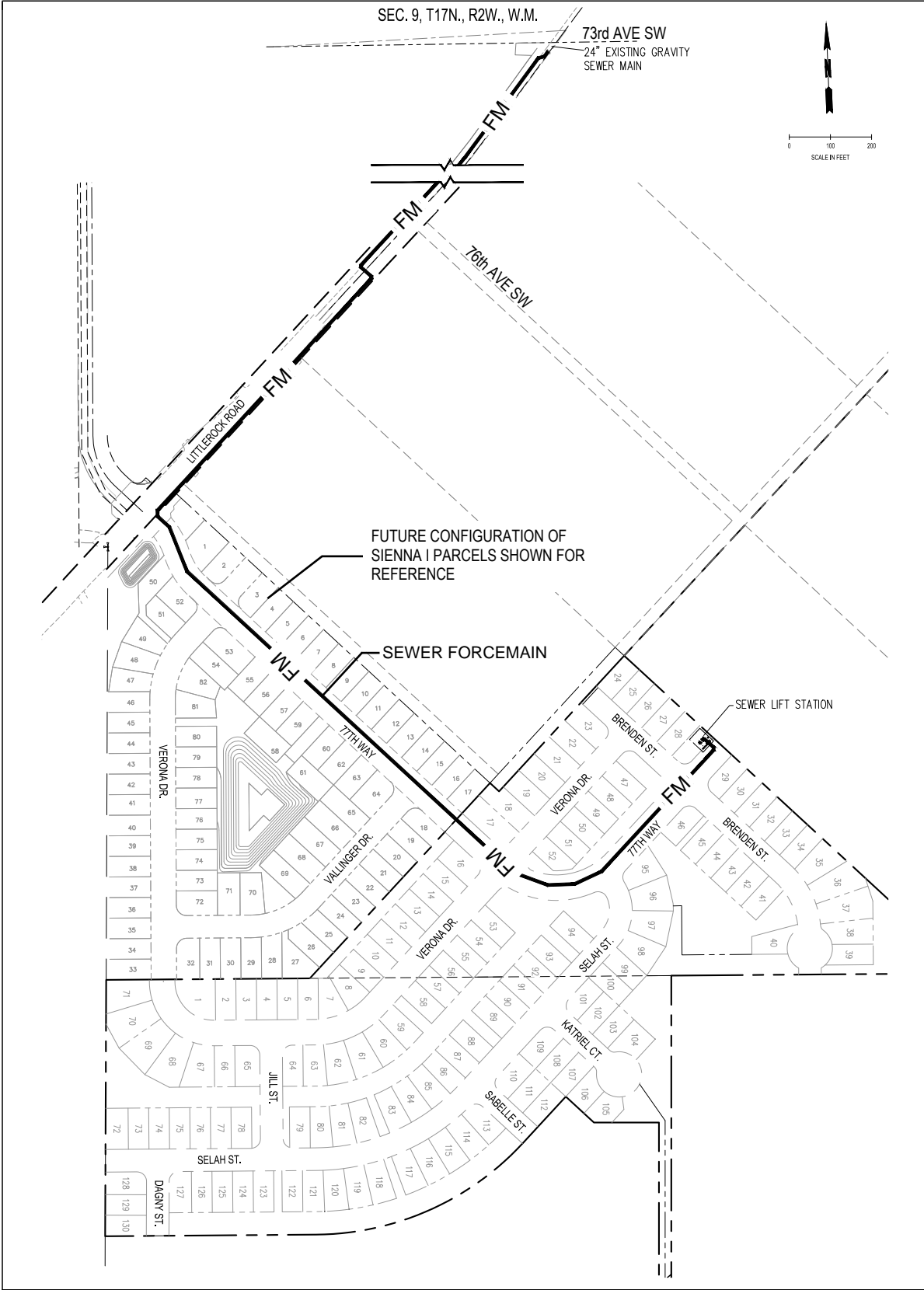


EXHIBIT "B"

Benefit properties.

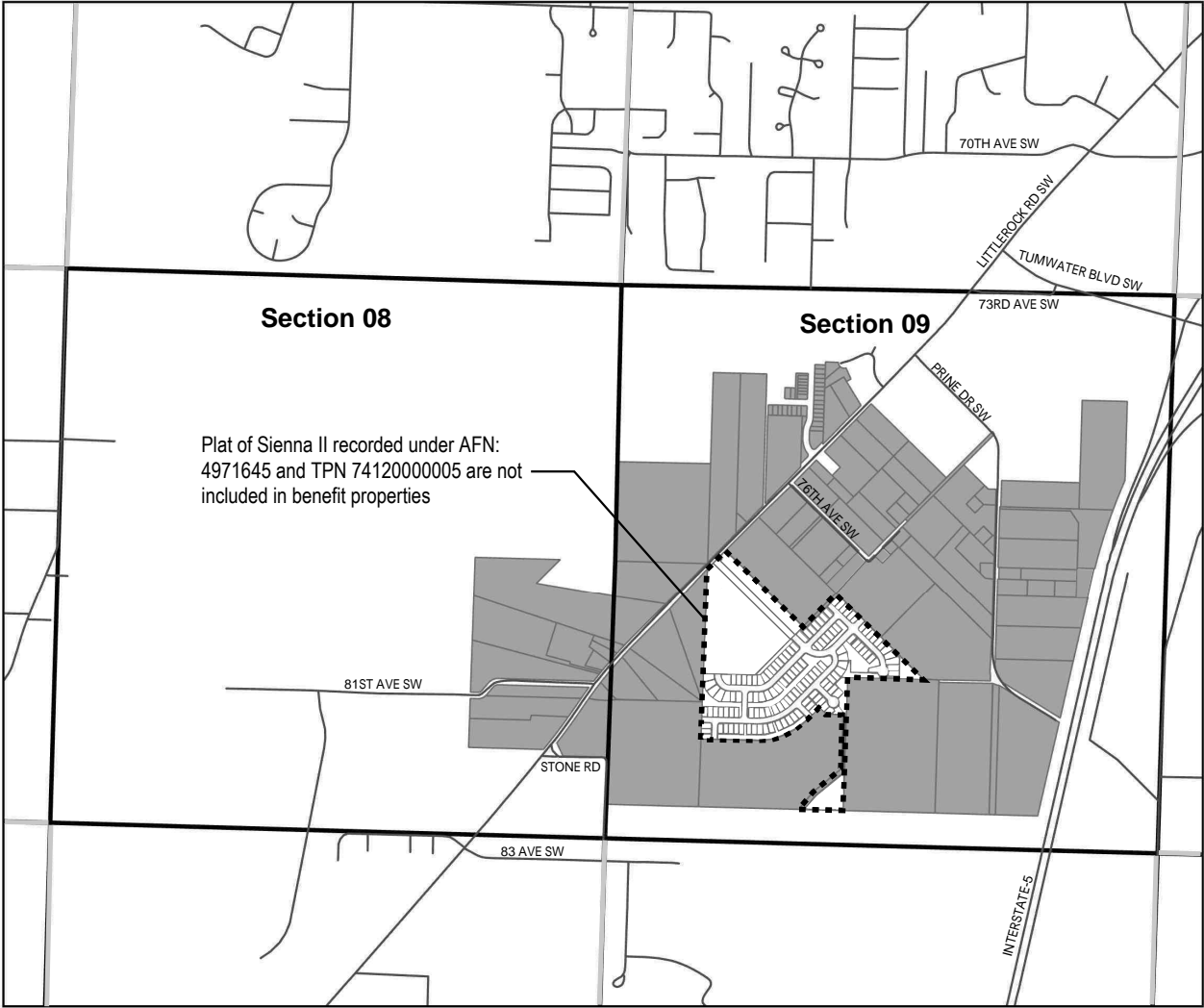
Section 08 and 09 of Township 17N Range 2W located in Thurston County, State of Washington
Except the Plat of Sienna II recorded under AFN 4971645 and TPN 74120000005.

EXHIBIT "C"



Visual exhibit showing the benefit properties.

Legend
Benefit properties



TO: Public Works Committee
FROM: Jared Crews, Engineer
DATE: October 19, 2023
SUBJECT: Right-of-Way License Agreement with Deschutes 106 LLC for the Falls Terrace Restaurant

1) Recommended Action:

Staff requests the Public Works Committee recommend the City Council approve and authorize the Mayor sign the Right-of-Way Agreement with Deschutes 106 LLC for the Falls Terrace Restaurant, which allows private parking and a loading area in the City Right-of-Way.

2) Background:

Deschutes 106 LLC has applied for a right-of-way permit to reconstruct parking and sidewalk in front of the Falls Terrace Restaurant. Portions of the parking and building were originally constructed within City right-of-way. A right-of-way license agreement is required for use and maintenance of private utilities and structures located in City right-of-way.

3) Policy Support:

Not applicable.

4) Alternatives:

☐ Do not approve the Right-of-Way Agreement.

5) Fiscal Notes:

None.

6) Attachments:

- A. Right-of-Way License Agreement
- B. Area Exhibit

CITY OF TUMWATER RIGHT-OF-WAY LICENSE

THIS LICENSE is made and entered into this ____ day of _____, 2023, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as “Licensor” and Deschutes 106 LLC, a Washington Limited Liability Company, hereinafter referred to as “Licensee.”

WITNESSETH:

In consideration of the covenants, promises and terms contained herein, the parties hereby agree as follows:

1. **Licensed Premises.** The Licensor hereby licenses to Licensee and Licensee hereby licenses from Licensor the following described real property and attached Area Exhibit A, hereinafter referred to as the “Property”:

Section 26 Township 18 Range 2W Quarter NW SW Donation Land Claim
CROSBY DLC COM SE COR CUSTER & DESCHUTES WAY S03-29-10W
180F, S86-30-50E 55F, NLY ON DAVIDSON TRACT 80F, N86-30-50W 14F,
NLY

2. **Term.** The term of this license shall be five (5) years, commencing on the 1st day of August 2023 and terminating five (5) years thereafter on July 31, 2028, unless sooner terminated according to the provisions herein.

3. **Fee.** Licensee shall pay the Licensor for the use of said Property the sum of Four Hundred Sixty-Five dollars (\$465.00) total, for the five-year license period, to be paid in advance.

4. **Use of Property.** Licensee shall use the Property for the following purposes only:

Parking, dumpster access, loading and unloading of deliveries.

Prior to commencement of work to modify or change improvements within the licensed area, Licensee shall present, for City approval, a plan of the proposed modification or change to the improvements within the licensed area.

5. **Repairs and Maintenance.** Licensee agrees to accept all responsibility for maintenance of all improvements placed on the licensed Property by the Licensee and to keep the licensed premises and any such improvements thereon in a state of good repair and to maintain them at all times so as not to cause any safety hazard nor visual blight on the Property.

6. **Ownership of Improvements.** All improvements erected by Licensee on the property shall remain the property of the Licensee, and shall be removed by Licensee at the

termination of the license, at Licensee's cost and expense. It shall also be Licensee's obligation to return the Property to the condition in which it was received at the beginning of the license term.

7. **Compliance with Law.** In the use of the Property, Licensee shall fully comply with all applicable federal, state, county and municipal laws, ordinances and regulations.

8. **Assignment and Sublicense.** Licensee shall not assign or transfer its interest in this Property, or sublet the Property or any parts thereof, or permit the Property to be used for any purpose not permitted by this license, without prior written consent of the Licensors.

9. **Indemnification – Liability.** The Licensee shall defend, indemnify and hold the Licensors, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Licensee or on the Licensee's behalf out of issuance of this License, except for injuries and damages caused by the sole negligence of the Licensors.

10. **Insurance.**

A. Insurance Term

The Licensee shall procure and maintain for the duration of the License Term, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Licensee's behalf with the issuance of this License.

B. No Limitation

The Licensee's maintenance of insurance as required by the License shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the Licensors' recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Licensee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Licensors shall be named as an additional insured under the Licensee's Commercial General Liability insurance policy using

ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

D. Minimum Amounts of Insurance

The Licensee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.

E. Other Insurance Provision

The Licensee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Licensor. Any insurance, self-insurance, or self-insured pool coverage maintained by the Licensor shall be excess of the Licensee's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

The Licensee shall furnish the Licensor with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Licensee before issuance of the License.

H. Notice of Cancellation

The Licensee shall provide the Licensor with written notice of any policy cancellation, within two business days of Licensee's receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Licensee to maintain the insurance as required shall constitute a material breach of the License, upon which the Licensors may, after giving five business days' notice to the Licensee to correct the breach, immediately terminate the License or, at Licensors' discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Licensors on demand.

J. Public Entity Full Availability of Licensee Limits

If the Licensee maintains higher insurance limits than the minimums shown above, the Licensors shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Licensee, irrespective of whether such limits maintained by the Licensee are greater than those required by this License or whether any certificate of insurance furnished to the Licensors evidences limits of liability lower than those maintained by the Licensee.

11. **Termination.** Either party may terminate this license by furnishing to the other party, by registered mail, a notice of termination at least ninety (90) days prior to the intended date of termination. Licensee also acknowledges that Licensors hold the right-of-way in trust for the benefit of the public and Licensors may require full use of the right-of-way at any time for any reason. If Licensors require the removal of Licensee's improvements for any reason, at Licensors' sole discretion, Licensee shall remove its improvements with ninety (90) days of receipt of written notification from Licensors. If Licensee defaults in the payment of the license fee, or breaches any other covenant or condition of this license, Licensors may immediately declare a forfeiture of this license for such default, reenter the Property, and take possession of all property.

*** Signatures on Following Page ***

IN WITNESS WHEREOF, the parties hereto have executed this license as of the date first hereinabove written.

LESSOR:
CITY OF TUMWATER

LICENSEE:
(name)

Debbie Sullivan, Mayor

By: _____
Name: _____
Title: _____
Street: _____
City, State, Zip: _____
Phone: _____

Attest:

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

Melody Valiant, City Clerk

Approved as to Form:

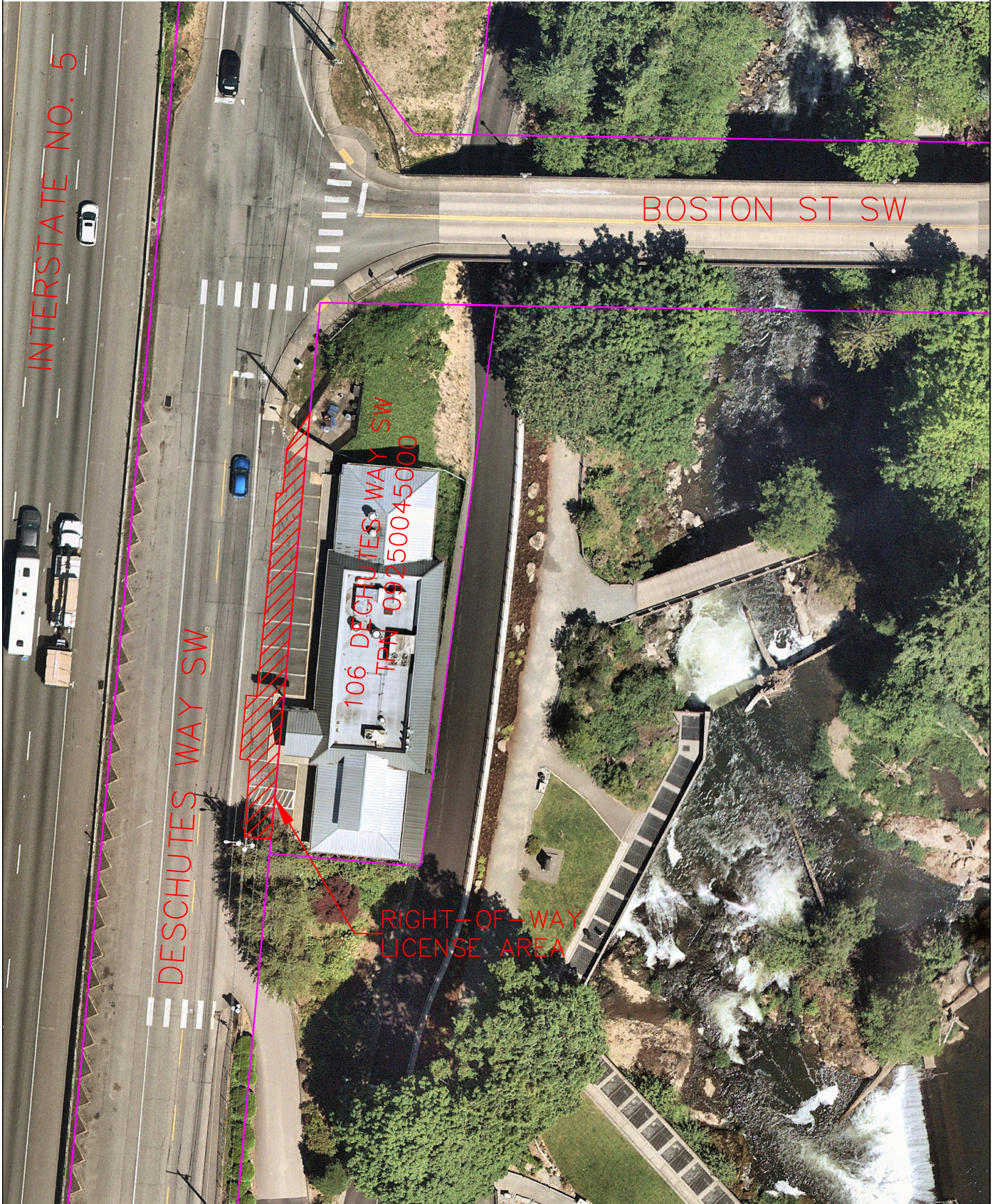
Karen Kirkpatrick, City Attorney

On this _____ day of _____,
2023, before me personally appeared _____
_____, to me
known to be the individual described herein
and who executed the within and foregoing
instrument and acknowledged to me that
he/she signed the same as his/her free and
voluntary act and deed for the purposes
therein mentioned.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my official seal the
day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires _____.

AREA EXHIBIT



TO: Public Works Committee
FROM: Dave Kangiser, Water Resources Specialist
DATE: October 19, 2023
SUBJECT: Right-of-Entry & Maintenance Agreement for the Wildrick Property

1) Recommended Action:

Recommend the City Council approve and authorize the Mayor to sign the Right of Entry Agreement for the Wildrick property.

2) Background:

Linwood Avenue near Isabella Bush Park has historically been closed during moderate to severe rain events due to street flooding caused by beaver activity in the roadside stormwater conveyance system. WRS Crews have worked with the neighboring property owner, Linton Wildrick, to mitigate the beaver activity using culvert exclusion devices and a flexible leveler that have shown to reduce the amount of time Linwood Ave. has been closed due to flooding. Routine maintenance is required for these devices and requires maintenance staff to enter Mr. Wildrick's property on occasion. A verbal agreement has been established between the City and Mr. Wildrick to conduct device installation and routine maintenance. This Right of Entry Agreement would formalize the agreement and allow WRS crews to access the site for maintenance purposes. Mr. Wildrick has been advised of our intention to formalize this agreement and has agreed to the terms.

The City and Mr. Wildrick have Hydraulics Projects Approval (HPA) Permits issued through the Department of Fish and Wildlife (DFW) for beaver mitigation work in the conveyance system.

3) Policy Support:

Create and Maintain a Transportation System Safe for All Modes of Travel

4) Alternatives:

- ☐ Continue to close Linwood Ave. when flooded.
-

5) Fiscal Notes:

Crews have already installed culvert exclusion devices and the flexible leveler. Cost estimates for the supplies are ~\$500.00. Ongoing maintenance activities are required for about 5 hours per year.

6) Attachments:

- A. Right-of-Entry & Maintenance Agreement for the Wildrick Property

WILDRICK RIGHT-OF-ENTRY and MAINTENANCE AGREEMENT

THIS AGREEMENT, is dated this ____ day of _____, 2023, by and between Linton Wildrick (herein referred to as "OWNER"), and the CITY OF TUMWATER (herein referred to as "CITY"), a Washington municipal corporation.

RECITALS:

- A. **WHEREAS**, OWNER owns property, more particularly described in Exhibit A attached hereto and by this reference incorporated herein ("Property"), located at 1627 Linwood Avenue SW, to which the CITY requests access to assist in maintaining beaver mitigation devices and equipment affecting City rights-of-way and public properties;
- B. **WHEREAS**, it is the duty of the OWNER to permit adequate drainage sufficient to allow a natural drain way to accommodate ordinary high water, and impedance or obstruction of such flow imposes strict liability upon a downstream owner for damages to an upstream owner caused by obstructed floodwaters;
- C. **WHEREAS**, OWNER agrees to allow CITY access across and over the Property through the Right of Entry area depicted in Exhibit B, hereinafter referred to as the "Project Site".

NOW, THEREFORE, in consideration of the terms, covenants, and conditions contained herein, the parties agree as follows:

- 1. **Purpose.** CITY and its agents, designees and/or assigns shall have the right, at such times as deemed necessary by CITY, to enter upon the Project Site to construct, install, repair, replace, inspect, remove, and maintain beaver mitigation structures (culvert exclusion device, flexible leveler and beaver dam analogues) and all appurtenances thereto for the purpose of controlling impacts to City infrastructure and roads related to beaver activity ("Project"),.
- 2. **Access.** CITY shall have the right of access from CITY right-of-way across and over the Property described in Exhibit A to the Project Site described in Exhibit B to enable CITY to exercise its rights hereunder. .Except in the event of an emergency, CITY shall attempt to notify OWNER at least 48 hours in advance of Project activity to coordinate access for vehicles and equipment. In the event of an emergency, the CITY shall notify OWNER as soon as possible after the Project activity. In the event the OWNER is unavailable to be present during beaver mitigation activities, CITY shall be present as an authorized agent as defined in the Hydraulics Project Approval (HPA) Permit attached as Exhibit C.

3. **Permit Compliance.** It is the OWNER'S responsibility to obtain and maintain a HPA prior to conducting in-water activities. The CITY shall assist the OWNER in preparing the required documentation for the HPA for this Project and act as an Authorized Agent as defined in the HPA. The CITY and OWNER shall comply with all requirements of the HPA issued for the Project in accordance with WA Department of Fish & Wildlife regulations referenced in the HPA for in-water work including modification of beaver dams and beaver mitigation device installation and maintenance. The CITY cannot authorize dam modification or beaver management beyond what is addressed in the permit.

4. **Maintenance.** The OWNER or designee shall monitor beaver activity for the duration of the permit coverage period and will be responsible for inspections and routine maintenance such as, ensuring unimpeded access to the beaver mitigation devices and debris removal. OWNER may request technical assistance from CITY at any time. CITY shall conduct maintenance to eliminate obstructions related to beaver activity and beaver management devices in the Public Right-of-Way along Linwood Avenue and maintain the beaver management device(s) in the Project area.

5. **OWNER's Use of Project Site.** The parties acknowledge and agree that the access herein granted is non-exclusive, and the OWNER shall be entitled at all times to travel over the Project Site, and to conduct any and all activities which they may desire within the Project Site provided they do not interfere with the purpose of this Agreement and CITY's use of the Project Site. OWNER may undertake any ordinary improvements to the landscaping of the Project Site, provided that no obstructions shall be placed thereon, which would be unreasonably expensive or impractical for CITY to remove and restore.

6. **Indemnification.** Each party, and its successors and assigns, shall release, indemnify, defend, and hold the other party, and its successors and assigns, harmless from and against any and all loss, costs, claims, suits, liabilities, causes of action, and expenses of any kind or nature (including reasonable attorneys' fees) arising out of, related to, or incurred by reason of its own negligence in the performance of rights and obligations hereunder. Performance under this agreement shall be exercised in accordance with the requirements of all applicable statutes, orders, rules, and regulations of any public authority having jurisdiction.

7. **Successors and Assigns.** The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns for the duration of this Agreement.
8. **Duration.** This Agreement shall be in full force and effect upon execution by the parties and shall remain in effect until the expiration of the HPA on April 19, 2026. The termination or extension of this Agreement may otherwise occur at any other time by signed agreement of both parties.

****Signatures on the following page****

DATED this _____ day of _____, 2023.

City

Owner

Debbie Sullivan, Mayor
555 Israel Road SW
Tumwater, WA 98501
Date signed:

Linton Wildrick
1627 Linwood Ave. SW
Tumwater, WA 98512
Date signed:

ATTEST:

Melody Valiant, City Clerk

AS APPROVED TO FORM:

Karen Kirkpatrick, City Attorney

State of Washington)
) ss

County of _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the

_____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____ (Signature)

Notary Public in and for the State of Washington

My appointment expires _____

State of Washington)
) ss

County of _____)

I certify that I know or have satisfactory evidence that _____ [Name of Person] is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

_____ (Signature)

Notary Public in and for the State of Washington

My appointment expires _____

EXHIBIT A – PROPERTY

The following legal descriptions represent the parcels through which the OWNER authorizes the CITY to access under this Right of Entry Agreement:

Wildrick Property

Parcel No. 80700000100

1627 Linwood Avenue SW

Tumwater, WA 98512



EXHIBIT B – PROJECT SITE

The following description represents the general location of beaver activity Project Site within the Wildrick Property:

The Northwest corner of the property in the riparian area of the unnamed tributary of Percival Creek.



EXHIBIT C - HYDRAULICS PROJECTS APPROVAL PERMIT



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: April 21, 2021
Project End Date: April 19, 2026

Permit Number: 2021-6-169+01
FPA/Public Notice Number: N/A
Application ID: 24690

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
City of Tumwater	City of Tumwater Stormwater Program
ATTENTION: David Kangiser	ATTENTION: Dave Kangiser
555 Israel Rd SW	555 Israel Rd. SW
Tumwater, WA 98501-6515	Tumwater, WA 98501

Project Name: Linwood Ave Beaver Management

Project Description: The project is to notch an existing beaver dam and install a flexible leveler and culvert protection device.

PROVISIONS

- 1. TIMING LIMITATION:** Work for this project may occur at any time of year.
 - 2. INVASIVE SPECIES CONTROL:** Follow Method 1 for low risk locations (i.e. clean/drain/dry). Thoroughly remove visible dirt and debris from all equipment and gear (including drive mechanisms, wheels, tires, tracks, buckets, and undercarriage) before arriving and leaving the job site to prevent the transport and introduction of invasive species. You can find this and additional information in the Washington Department of Fish and Wildlife's "Invasive Species Management Protocols", available online at <https://wdfw.wa.gov/species-habitats/invasive/prevention>.
 - 3. APPROVED PLANS:** You must accomplish the work per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife, entitled "WDFW Flex Leveler.pdf" received on 3/30/2021, except as modified by this Hydraulic Project Approval. You must have a copy of these plans available on site during all phases of the project construction.
- Approved actions under this HPA are:
1. Installation of pond water level control device.
 2. Maintenance of these devices (cleaning).
 3. Periodic notching of beaver dam.
 4. Optional removal of these devices if intended results are not achieved.
- 4. NOTIFICATION:** You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at HPAapplications@dfw.wa.gov; mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work. The notification must include the permittee's name, project location, starting date, and the Hydraulic Project Approval permit number.
- 5. FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

STAGING, JOB SITE ACCESS, AND EQUIPMENT

6. Limit the removal of native bankline vegetation to the minimum amount needed to construct the project.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: April 21, 2021
Project End Date: April 19, 2026

Permit Number: 2021-6-169+01
FPA/Public Notice Number: N/A
Application ID: 24690

7. Limit the use of equipment waterward of the ordinary high water line to hand tools only.
8. Use tarps or other methods to prevent treated wood, sawdust, trimmings, drill shavings and other debris from contacting the bed or waters of the state.
9. Do not use wood treated with oil-type preservatives (creosote, pentachlorophenol) in any hydraulic project. You may use wood treated with waterborne preservatives (ACZA, ACQ) provided the wood is approved by the Western Wood Preservers Institute for use in the aquatic environment. Any use of treated wood in the aquatic environment must follow guidelines and best management practices available at www.wwpinstitute.org.

BEAVER DAM MANAGEMENT

10. Restrict beaver dam alteration to that necessary to alleviate flooding conditions.
11. When notching, the notch must not extend below the height of the accumulated sediment behind the dam.
12. Remove the dam materials gradually to allow the water to release slowly, not more than 1 inch drop in water level per hour.
13. During and immediately after notching, monitor upstream and downstream for stranded fish in isolated pools. Capture and safely move all stranded or isolated fish to the nearest free-flowing water.
14. To prevent bank erosion and flooding of adjacent properties, the breach in the beaver dam must not be wider than the original stream channel as measured by the Washington Department of Fish and Wildlife. The Washington Department of Fish and Wildlife may approve larger breaches on a case-by-case basis.
15. Do not disturb large woody material embedded in the stream bed or banks.
16. Install the water level control device so that during low flows (when beavers are more actively increasing dam height), the device passes flow to support fish passage downstream.
17. Install water level control devices in beaver ponds with pool depth of four feet or more. If the water level control device is installed in water shallower than four feet, the design must have an enclosure to protect the water intake from beaver activity.
18. Maintain the water level control device to ensure it functions as designed.
19. Maintain guards, grates, grills, fences, and other beaver exclusion devices to provide unimpeded fish passage and to prevent beavers from plugging the culvert or other water crossing structures.

DEMOBILIZATION AND CLEANUP

20. Upon completion of the project, restore the disturbed bed, banks, and riparian zone to preproject condition to the extent possible.
21. Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.
22. If removing the water level control device or exclusion fencing do not relocate the structures within waters of the state. Remove and dispose of the devices in an upland area above the limits of anticipated floodwater.

LOCATION #1: Site Name: Linwood Ave
1627 Linwood Ave. SW, Tumwater, WA 98512

WORK START: April 19, 2021

WORK END: April 19, 2026

WRIA

Waterbody:

Tributary to:

13 - Deschutes

Percival Creek

Budd Inlet



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: April 21, 2021
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<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	99	99	99	47.007160	-122.925277	Thurston

Location #1 Driving Directions

From I-5 exit 102 turn West on Tropser Rd. Turn right on Lake Park Dr. Go to the 'T' at Linwood Ave and turn left. Property is about 1/4 mile on the left.

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
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FPA/Public Notice Number: N/A
Application ID: 24690

MINOR MODIFICATIONS TO THIS HPA: You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

MAJOR MODIFICATIONS TO THIS HPA: You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

A. INFORMAL APPEALS: WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
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A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist Noll.Steinweg@dfw.wa.gov
Noll Steinweg 360-628-2173

for Director
WDFW



WASHINGTON STATE
Aquatic Protection Permitting System
(APPS)

Consent of Property Owner

Use this attachment only if the applicant is not the property owner. Complete one attachment for each property owner impacted by the project. Upload completed form(s) in APPS or mail to the WDFW address provided by APPS during your application process.

AGENCY USE ONLY

Date received:

APPS ID #:

☐ My project occurs on public lands (Complete only items #1 and #2 below).

1. APP ID# (See APPS application receipt)			
24690			
2. Business or Government Agency Name (if applicable)			
3. First Name	4. Middle Name	5. Last Name	
Linton		Wildrick	
6. Address 1			
1627 Linwood Ave. SW			
7. Address 2			
8. City	9. State	10. Zip	
Tumwater	WA	98512	
11. Primary Phone	12. Ext.	13. Mobile Phone	14. FAX
(360) 561-5691		()	()
15. E-mail			
driftdory@outlook.com			
16. Signature of Property Owner			
I consent to Washington Department of Fish and Wildlife staff entering the property where the project is located to inspect the project site or any work related to the project.			
Linton Wildrick			
Printed Name		Signature	
Date Signed: 4-1-2021			

Authorization of Agent

I hereby authorize the agent named below to act on my behalf in matters related to acquiring and executing activities associated with a Hydraulic Project Approval (WDFW permit).

Application ID: 24690

Agent Contact Information

Name: David Kangiser (please print)

Business Name: City of Tumwater (if applicable)

Email: dkangiser@ci.tumwater.wa.us

Phone: 360-754-4140

Applicant Contact Information

Name: Linton Wildrick (please print)

Business Name: _____ (if applicable)

Email: driftdory@outlook.com

Phone: 360-561-5691

Signature:  Date: March 31, 2012

If you do not want to upload this document to APPS, you need to submit this form to the following address:

Washington Department of Fish and Wildlife
PO Box 43234
Olympia WA 98504-3234

TO: Public Works Committee
 FROM: Dan Smith, Director of Water Resources & Sustainability Department
 DATE: October 19, 2023
 SUBJECT: Memorandum of Understanding Between the City of Tumwater and LOTT Clean Water Alliance Regarding a Purchase and Sale Agreement for Properties in the Deschutes Valley

1) Recommended Action:

Staff requests Public Works Committee recommend City Council approve and authorize the Mayor to sign the Memorandum of Understanding (MOU) Between the City of Tumwater and LOTT Clean Water Alliance (LOTT) Regarding a Purchase and Sale Agreement for Properties in the Deschutes Valley.

2) Background:

In late 2011, LOTT acquired former Brewery properties in the Deschutes Valley for projects proposed in LOTT's master plan intended for the construction and operation of a satellite reclaimed water treatment plant. During its most recent master plan update, LOTT identified preferred treatment alternatives for reclaimed water at existing facilities, and the Deschutes Valley properties are no longer needed. This MOU provides the City time to conduct a feasibility review and due diligence regarding a potential acquisition of the properties.

3) Policy Support:

1. Opportunity | We seize opportunities to improve our community's social, environmental, and economic well-being. We endeavor to realize positive opportunities in adverse situations and periods of change.
 2. Environment | We act to preserve and enhance the natural environment and the social fabric of our community.
 3. Be a Leader in Environmental Sustainability – Include environmental protection in City projects.
-

4) Alternatives:

☐ None. The intent of this project is to evaluate alternatives for Council consideration.

5) Fiscal Notes:

Staff will solicit consultant support to assist analysis of property, overall value, and synthesis of City priorities, including municipal access, habitat restoration, transportation, and community events. Professional Services are estimated to be less than \$50,000 and shall be funded by the Storm Fund and General Fund.

6) Attachments:

- A. Memorandum of Understanding Between the City of Tumwater and LOTT Clean Water Alliance Regarding a Purchase and Sale Agreement for Properties in the Deschutes Valley

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TUMWATER AND LOTT CLEAN WATER ALLIANCE REGARDING A PURCHASE AND
SALE AGREEMENT FOR PROPERTIES IN THE DESCHUTES VALLEY**

I. RECITALS

This Memorandum of Understanding ("MOU") is made and entered into this ___ day of _____, 2023 by and between the City of Tumwater ("City") and the LOTT Clean Water Alliance ("LOTT"), referred to collectively as "Parties" or "the Parties."

Whereas, LOTT owns property located at 4090, 4098, and 4114 Capitol Boulevard SE in Tumwater, parcels #09470021000, #09470045000, and #09470003000 (referred to herein as the Property), depicted in Exhibit A, that was originally purchased for the purpose of constructing a future reclaimed water satellite treatment facility; and

Whereas, LOTT has completed a master planning process and has determined that future treatment facilities at this location are not necessary; and

Whereas, the Property is located in the Deschutes Valley near historic and cultural landmarks, and is used for numerous annual public events of significant value to the community; and

Whereas, the City owns the adjacent public driving range and golf course and is developing a segment of the Deschutes Valley Trail along the Deschutes River which fronts the western boundary of this Property; and

Whereas, the City is exploring opportunities to enhance habitat and riparian areas along the Deschutes River, and has invested in such improvements immediately upstream and downstream from this Property; and

Whereas, the City has adopted the Tumwater Brewery District Plan with the goals to increase access, improve transportation options, expand economic opportunity, and improve the function and appearance of the built environment; and

Whereas, the Parties agree that City is in the best position to guide future use of the Property, and that City ownership of the Property provides the community the best opportunity to achieve the goals in the Tumwater Brewery District Plan; and

Whereas, the City is planning a major transportation improvement project referred to as the E Street Connection through and across this Property; and

Whereas, the City has expressed that acquisition of the Property would support these efforts and offer multiple community benefits; and

Whereas, the Parties wish to express their commitment to explore a sale of the Property provided certain conditions are met, which are generally described below; and

Whereas, said possible purchase and sale agreement will indicate in greater detail the conditions upon which the sale of the Property will take place;

Now, therefore, the Parties intend by this document to memorialize steps to be taken in preparation for entering into a possible purchase and sale agreement and their understanding concerning the general conditions necessary to enter into a purchase and sale agreement as further set forth below.

II. STEPS TO BE TAKEN IN PREPARATION FOR A POSSIBLE PURCHASE AND SALE

- A. The Parties will continue due diligence regarding the sale and purchase of the Property and the benefits provided therein.
- B. Following execution of this MOU, LOTT shall make available to the City copies of all existing studies, reports, surveys, soils tests, reviews, correspondence with all governmental entities, environmental checklists and reports, plans, and other printed or written material (all of which are collectively referred to as "Studies") prepared or received by, or on behalf of, LOTT with respect to the Property.
- C. The Parties will work together in good faith to identify a mutually approved third party property appraiser. LOTT will obtain and pay for the appraisal.
- D. The Parties agree to advance evaluation and discussion of a possible sale with staff and their respective governing bodies and determine the desire to move forward with a purchase and sale agreement by March 31, 2024.
- E. Should the City determine ownership of the Property is desirable, the City will provide LOTT a written Letter of Intent by March 31, 2024 stating its interest in acquiring the Property. Within 60 days of receipt of said Letter of Intent, the LOTT Board of Directors will consider action declaring the property surplus to LOTT's needs.
- F. The Parties will work together in good faith with the mutual goal of defining an acceptable sales price and financing plan acceptable to both Parties, as a basis for a possible purchase and sale agreement for the Property.
- G. The Parties will work together in good faith to develop a mutually acceptable agreement for access to the Property to facilitate the City's evaluation of the Property. This MOU does not grant access to the Property.

III. GENERAL CONDITIONS FOR PURCHASE AND SALE

- A. Term and Amendment. This MOU anticipates the Parties will determine feasibility and condition of sale and satisfactory use of the Property on or prior to June 30, 2024. If a purchase and sale agreement for the acquisition of the Property is not completed on or before that date (or an extension of that date agreed to by both Parties), this MOU will terminate. The Parties may mutually agree to extend this MOU beyond this date. Any amendment to this MOU must be in writing and mutually agreed to by both Parties.
- B. Legal and Regulatory Requirements. The Parties agree that any purchase and sale agreement arising from this MOU must be in accordance with all applicable laws and regulations, including those from the Washington State Auditor's Office. The purchase and sale agreement will account for the fair market value of the property, and ensure that LOTT is fully compensated for the value of property. The Parties further acknowledge there are several unique factors involving this Property which may detract from its fair market value, if not specifically considered in the appraisal under Section II C of this agreement, including potential environmental clean-up costs, status of railroad crossing authorization, environmental constraints, new easements and licenses which may encumber the Property, and access to the specific parcels.

- C. Consideration. The Parties will work together to determine the form and timing of consideration to be received by LOTT for the Property. This consideration could involve both cash and non-cash consideration, and could be transferred to LOTT at any point from the property being transferred and up to five (5) years thereafter, subject to legal and regulatory requirements. Any consideration that is exchanged after the date of the purchase and sale agreement shall also include applicable interest at a rate sufficient to ensure full value is received by LOTT for the Property.
- D. Easement. LOTT wishes to maintain an underground easement on the property for a future wastewater pipeline. The Parties agree to work to establish one or more easements as necessary to meet LOTT's current and future needs.
- E. Limitations. During the term of this MOU, LOTT shall not dispose of the Property to any entity other than the City without the written consent of the City, except as otherwise provided herein.
- F. Authority. Each Party and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this MOU and that its execution, delivery, and performance of this MOU has been fully authorized and approved, and that no further approvals or consents are required by either Party to enter into this MOU.
- G. Non-Binding Understanding. This MOU is intended only as a memorandum of understanding that will guide the acquisition of the Property by the Parties. Except for section III E, Limitations, it does not create a legally enforceable agreement. This MOU is not in itself an offer to sell or a commitment to purchase the Property. Rather, it is an expression of the Parties' intent to enter into negotiations for such a purchase.

IV. SIGNATURES

LOTT CLEAN WATER ALLIANCE

By: _____
 Matthew J. Kennelly, PE
 Executive Director

Date: _____

CITY OF TUMWATER

By: _____
 Debbie Sullivan, Mayor

Date: _____

Attest:

Approved as to Form:

By: _____
 Karen Kirkpatrick, City Attorney

EXHIBIT A
General Property Boundaries



PARCEL A

- 09470003000
- 18.53 Acres

PARCEL B

- 09470045000
- 19.28

PARCEL C

- 09470021000
- 7.00 Acres

TO: Public Works Committee
FROM: Dan Smith, Director of Water Resources & Sustainability Department
DATE: October 19, 2023
SUBJECT: Memorandum of Understanding Between the City of Tumwater and LOTT Clean Water Alliance Regarding a Purchase and Sale Agreement for the Henderson Property

1) Recommended Action:

Staff requests Public Works Committee recommend City Council approve and authorize the Mayor to sign the Memorandum of Understanding (MOU) Between the City of Tumwater and LOTT Clean Water Alliance (LOTT) Regarding a Purchase and Sale Agreement for the Henderson Property.

2) Background:

In 2006, LOTT acquired three properties adjacent to Henderson Boulevard for projects proposed in LOTT's master plan intended to support reclaimed water infiltration. During its most recent master plan update, LOTT identified preferred infiltration sites for reclaimed water, and the Henderson Boulevard properties are no longer needed. These MOUs provide the City time to conduct a feasibility review and due diligence regarding a potential acquisition of the properties.

3) Policy Support:

1. Opportunity | We seize opportunities to improve our community's social, environmental, and economic well-being. We endeavor to realize positive opportunities in adverse situations and periods of change.
 2. Environment | We act to preserve and enhance the natural environment and the social fabric of our community.
 3. Be a Leader in Environmental Sustainability – Include environmental protection in City projects.
-

4) Alternatives:

- ☐ None. The intent of this project is to evaluate alternatives for Council consideration.
-

5) Fiscal Notes:

Staff will solicit consultant support to assist analysis of property, overall value, and synthesis of City priorities, including municipal needs, water source development, and potential community access. Professional Services are estimated to be less than \$50,000 and shall be funded by the Water Fund.

6) Attachments:

- A. Memorandum of Understanding Between the City of Tumwater and LOTT Clean Water Alliance Regarding a Purchase and Sale Agreement for the Henderson Property

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TUMWATER AND LOTT CLEAN WATER ALLIANCE
REGARDING A PURCHASE AND SALE AGREEMENT FOR THE HENDERSON PROPERTY**

I. RECITALS

This Memorandum of Understanding ("MOU") is made and entered into this ___ day of _____, 2023 by and between the City of Tumwater ("City") and the LOTT Clean Water Alliance ("LOTT"), referred to collectively as "Parties" or "the Parties."

Whereas, LOTT owns property located at 7502, 7500, 6545 Henderson Blvd. SE parcels 12711110400, 12711110401, 12711140300 (referred to herein as the Property) that was originally purchased for the purpose of siting a future reclaimed water infiltration facility; and

Whereas, LOTT has completed a master planning process and has determined that future infiltration facilities at this location are not necessary; and

Whereas, the City has need for additional water well facilities and has water utility resources to support such development; and

Whereas, the City has needs to acquire land for future recreational purposes, and the City and potential partners have resources to support the development of such facilities; and

Whereas, the City has expressed that acquisition of the Property would support these efforts and offer multiple community benefits; and

Whereas, the parties need sufficient time to explore the feasibility of a purchase and future land uses, including completion of an appraisal to determine property values, the viability of potable production and treatment facilities, and the exploration of potential partners related to development and operation of a community recreational facility; and

Whereas, it is estimated that the parties need up to twelve (12) months to complete applicable appraisals and studies; and

Whereas, the Parties wish to express their commitment to explore a sale of the Property provided certain conditions are met, which are generally described below; and

Whereas, if during the feasibility period the parties mutually desire to proceed with purchase, a purchase and sale agreement will indicate in greater detail the conditions upon which the sale of the Property will take place.

Now, therefore, the Parties intend by this document to memorialize steps to be taken in preparation for entering into a possible purchase and sale agreement and their understanding concerning the general conditions necessary to enter into a purchase and sale agreement as further set forth below.

II. STEPS TO BE TAKEN ON DETERMINING FEASIBILITY OF A POSSIBLE PURCHASE AND SALE

- A. The Parties will continue due diligence regarding the sale and purchase of the Property and the benefits provided therein.
- B. Following execution of this Agreement, LOTT shall make available to the City copies of all existing studies, reports, surveys, soils tests, reviews, correspondence with all governmental entities, environmental checklists and reports, plans, and other printed or written material (all

of which are collectively referred to as “Studies”) prepared or received by, or on behalf of, LOTT with respect to the Property.

- C. The Parties will work together in good faith to identify a mutually approved third party property appraiser. LOTT will obtain and pay for the appraisal.
- D. The Parties agree to advance internal evaluation and discussion of a possible sale with staff and their respective governing bodies and determine the desire to move forward with a purchase and sale agreement.
- E. Should the City determine ownership of the Property is desirable, the City will provide LOTT a written Letter of Intent no later than October 31, 2024, stating its interest in acquiring the Property. Within 60 days of receipt of said Letter of Intent, the LOTT Board of Directors will consider action declaring the property surplus to LOTT’s needs.
- F. The Parties will work together in good faith with the mutual goal of defining an acceptable sales price and financing plan acceptable to both Parties, as a basis for a possible purchase and sale agreement for the Property.
- G. The Parties will work together in good faith to develop a mutually acceptable agreement for access to the Property to facilitate the City’s evaluation of the Property. This MOU does not grant access to the Property.

III. GENERAL CONDITIONS FOR PURCHASE AND SALE

- A. Term and Amendment. This MOU anticipates the Parties will determine the feasibility of the intended use of the property no later than October 31, 2024. If a purchase and sale agreement for the acquisition of the Property is not completed by or before January 31, 2025, this MOU will terminate. The Parties may mutually agree to extend this MOU beyond this date. Any amendment to this MOU must be in writing and mutually agreed to by both Parties.
- B. Legal and Regulatory Requirements. The Parties agree that any purchase and sale agreement arising from this Memorandum must be in accordance with all applicable laws and regulations, including those from the Washington State Auditor’s Office. The purchase and sale agreement will account for the fair market value of the property and ensure that LOTT is fully compensated for the value of property. The Parties further acknowledge there may be unique factors involving this Property not specifically considered in the appraisal under Section II B of this agreement which may impact the value of the Property.
- C. Consideration. The Parties will work together to determine the form and timing of consideration to be received by LOTT for the Property. This consideration could involve both cash and non-cash consideration and could be transferred to LOTT at any point from the date the purchase and sale agreement is executed up to five (5) years thereafter, subject to legal and regulatory requirements. Any consideration that is exchanged after the date of the purchase and sale agreement shall also include applicable interest, interest at a rate sufficient to ensure full value is received by LOTT for the Property.
- D. Easement. LOTT may desire to establish an underground easement on the property for a future utility line. The Parties agree to work to establish one or more easements as necessary to meet LOTT’s current and future needs.

- E. Limitations. During the term of this MOU, LOTT shall not dispose of the Property to any entity other than the City without the written consent of the City, except as otherwise provided herein. LOTT may enter into a secondary agreement with another entity should the agreement with the City not be consummated.
- F. Authority. Each Party and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this MOU and that its execution, delivery, and performance of this MOU has been fully authorized and approved, and that no further approvals or consents are required by either Party to enter into this MOU.
- G. Non-Binding Understanding. This MOU is intended only as a memorandum of understanding that will guide the acquisition of the Property by the Parties. Except for Section III E, Limitations, it does not create a legally enforceable agreement. This MOU is not in itself an offer to sell or a commitment to purchase the Property. Rather, it is an expression of the Parties' intent to enter into negotiations for such a purchase.

I. SIGNATURES

LOTT CLEAN WATER ALLIANCE

By: _____
 Matthew J. Kennelly, PE
 Executive Director

Date: _____

CITY OF TUMWATER

By: _____
 Debbie Sullivan, Mayor

Date: _____

Attest:

Approved as to Form:

By: _____
 Karen Kirkpatrick, City Attorney

EXHIBIT A
General Property Boundaries



PARCEL A:

- 12711140300
- 9.66 Acres

PARCEL B:

- 12711110401
- 0.55 Acres

PARCEL C:

- 12711140300
- 2.34 Acres