

AGENDA ITEM NO. _____

MEETING DATE: February 5, 2010

TO: JOHN DOAN, CITY ADMINISTRATOR
jdoan@ci.tumwater.wa.us

FOR: PUBLIC WORKS COMMITTEE
council@ci.tumwater.wa.us

FROM: ROGER E. GELLENBECK, Development Services Director
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MATT WEBB, Development Services Engineer
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SUBJECT: DRH Sewer Pump Station Agreement

1. References

- A. Vicinity Map
 - B. Proposed Sewer Pump Station Agreement
 - C. Exhibit "A" - Assessment Roll
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2. Action Requested/Staff Recommendation

Staff requests that the Public Works Committee consider the DRH sewer pump station agreement (see staff recommendation in item no. 4, below).

3. History and Facts Brief

The DRH project constructed a regional sewer pump station and 8" force main with appropriate appurtenances located on Tumwater Boulevard halfway between Henderson Boulevard and Bonniewood Drive. This improvement has been approved by staff and has been deeded to the City for ownership and maintenance responsibility. The facility is sized to serve the surrounding area. Parcels that use this facility will pay a proportional cost based on the capacity they utilize.

The developer, DRH, LLC, Steve Chamberlain, has requested that the City Council consider entering into an extension agreement for \$887,375.10.

4. Discussion and Alternatives

Latecomers are inherently difficult to verify actual costs. Development Services staff review of the DRH sewer pump station cost information revealed that:

A. Land Value

- 1. The pump station was constructed on 0.1297 acres attained from a 4.63-acre parcel that the applicant purchased for \$250,000

2. The applicant placed a value of \$254,450 on the 0.1297 acres
3. 0.1297 acres is 2.8 percent of 4.63 acres
4. 2.8 percent of the original \$250,000 purchase price is \$7,000

B. Costs of Improvements

1. The applicant is requesting a total latecomer of \$887,375.10
2. If the applicant's requested land value (\$254,450) is subtracted from the requested latecomer amount, the applicant's requested value of improvements are \$632,925.10
3. The applicant's post-construction utility installation form showed that the costs of pump station improvements were \$271,232
4. The requested improvement costs are more than 2.3 times the construction costs indicated by the project's utility installation form.

C. Summary of Staff Review

1. The total of the pro-rated land costs (\$7,000) and utility installation form costs for improvements (\$271,232.09) is \$278,232.09
2. \$887,375.10 is more than 3.1 times \$278,232.09

Development services recommends approval of the DRH pump station agreement only if the Public Works Committee finds, after consideration of developer and public testimony, that circumstances warranted the additional expense.

Alternatives for the Public Works Committee include:

- recommend that the City Council approve the proposed pump station agreement; or
- recommend that the City Council approve the proposed pump station agreement with modifications; or
- reject the pump station extension agreement, and instruct staff to revise the report; or
- reject the proposed pump station agreement, and take no further action.

5. Fiscal Notes

The applicants paid the required processing fee of \$720.00. The City will deduct 8% of the collected reimbursement amount as a fee for administering the terms of the latecomers agreement.

SANITARY SEWER PUMP STATION AGREEMENT

This Agreement entered into this 27th day of March 2007, by and between the City of Tumwater, a Municipal corporation, hereinafter referred to as the "City" and Steven L. Chamberlain, a single man, hereinafter referred to as the "Developer".

WHEREAS, the Developer has constructed a regional sanitary sewer pump 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 in the Public Works Department; and

WHEREAS, City and Developer wish to enter into this 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 is willing to accept the improvements 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 is willing to pay 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 pump station and force main together with all necessary appurtenances ("Facility") within the property described in Exhibit A attached hereto and incorporated herein by this reference.

2. Benefited Property

Certain real property, 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 agrees that all work performed in connection with the Facility shall be 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 shall accept ownership of said Facility and the Developer shall execute 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 or will be paid in full by the Developer. The Developer certifies that the total cost of engineering and construction of the Facility is equal to Eight Hundred Eighty Seven Thousand Three Hundred Seventy Five and 10/100 Dollars (\$887,375.10) ("Total Cost"). The City shall approve the Total Cost. If the actual cost of the Facility is different than the amount certified above, the Developer shall provide documentation to the City establishing the basis of any increased amount. In the event the City approves the increase, this increased amount shall be the Total Cost for purposes of calculating the Benefitted Properties' pro rata share.

5. Reimbursement

5.1 Any owner of the Benefitted Properties ("Latecomer") who did not contribute to the original cost of the Facility and who subsequently elects to connect to the Facility within fifteen (15) 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:

- ASSESSMENT FEE = (Total Pump Station Cost, \$887,375.10)/(Capacity of Pump Station, 500 gpm) = \$1,774.75/gpm

The decision of the Director of Development Services in determining or computing the amount due from any Latecomer shall be final and conclusive.

5.3 The Developer agrees to pay \$720.00 for an application fee to the City plus \$72.00 per hour after 10 hours prior to the execution of this Agreement and the City shall deduct eight percent (8%) of the collected reimbursement amount as a fee for administering the terms of Agreement.

5.4 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 official, 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, licensees, 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 35.91.020(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 two years 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 name, 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 to be the owner of such funds. The next date for Developer providing his name, address and telephone information pursuant to this paragraph is March 27, 2011.

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 this 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 and 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 for registered or certified, return receipt delivery to:

