

AGENDA ITEM NO. 4

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
rgellenbeck@ci.tumwater.wa.us
MATT WEBB, Development Services Engineer
mwebb@ci.tumwater.wa.us

SUBJECT: Pilot Extension Agreement, Water Main

1. References

- A. Proposed Water Main Extension Agreement
 - B. Vicinity Map
 - C. Exhibit A; Developer's Property Legal Description
 - D. Exhibit B; Route of Facility
 - E. Exhibit C; Assessment Map
 - F. Exhibit D; Assessment Roll
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2. Action Requested/Staff Recommendation

Staff requests that the Public Works Committee consider the Pilot water main extension agreement (see staff recommendation in item no. 4, below).

3. History and Facts Brief

The Pilot project constructed a 16-inch water main with appropriate appurtenances from the existing City water main located at the intersection of 83rd Avenue and Kimmie Street to their site at 2430 93rd Avenue SW within the existing rights-of-way. This improvement has been approved by staff and has been deeded to the City for ownership and maintenance responsibility. This water main extension benefited certain properties as shown on Exhibit C. The developer, Pilot Travel Centers, LLC, has requested that the City Council consider entering into an extension agreement for \$925,858.

4. Discussion and Alternatives

Installation of the water main extension described above was affected by adverse seasonal weather, groundwater, work scheduling, and traffic coordination difficulties. As a result, the facility's cost per linear foot was more than 1.3 times the amount indicated by the project's utility installation form.

Development services recommends approval of the Pilot water main extension 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 Pilot water main extension agreement; or
- recommend that the City Council approve the proposed Pilot water main extension agreement with modifications; or
- reject the proposed water main extension agreement, instruct staff to revise the report; or
- reject the proposed water main extension 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. In addition, the applicant will need to pay an additional \$432.00 for staff time over the 10 hours maximum as shown in Resolution No. R08016.

WATER MAIN EXTENSION AGREEMENT

This Agreement is entered into this 7th day of November 2008, by and between the City of Tumwater, a Municipal corporation, hereinafter referred to as the "City" and PILOT TRAVEL CENTERS LLC, a Delaware, Limited Liability Company, hereinafter referred to as the "Developer".

WHEREAS, the Developer has extended the City's water system to and along property owned by the Developer by construction of a 16" water 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 (DRC #05-061); 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 water 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

The Developer acknowledges that it is the owner of certain real property located in Tumwater, WA and legally described in Exhibit A ("Developer's Property") attached hereto and incorporated herein by this reference. Developer has extended a 16" water main together with all necessary appurtenances ("Facility") over the route described in Exhibit B ("Facility Route") attached hereto and incorporated herein by this reference.

2. Benefited Property

Certain real property, described in Exhibit's C and D attached hereto and incorporated herein by this reference ("Benefitted Properties"), 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 has prepared an assessment map and assessment roll, attached hereto as Exhibit's C and D containing the engineering and construction costs of the Facility including applicable sales tax, and the Benefitted Properties' pro rata share of the cost of said Facility. The Developer certifies that the total cost of engineering and construction of the Facility less the City's over sizing payment to the Developer of \$48,620.00 is equal to Nine Hundred Twenty Five Thousand Eight Hundred Fifty Eight and No/100 Dollars (\$925,858.00) ("Total Cost"). The City shall approve the Total Cost. If the actual total 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 which approval shall not be unreasonably withheld or delayed, 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 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:

$$\begin{aligned} &(\text{Total Cost}/2) / (\text{Length of Extension} \times 2) = \text{Frontage Assessment} \\ &(\text{Total Cost}/2) / (\text{Total Acres of Benefitted Parcels}) = \text{Area Assessment} \end{aligned}$$

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.

5.5 The City agrees that reimbursements it receives from latecomers will be promptly transferred to the Developer.

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

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.

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

EXHIBIT "A"

Developer's Property Legal Description

Section 16 Township 17 Range 2W
Quarter SW SE THAT PART LYING EASTERLY OF PRIMARY STATE
HWY NO. 1 & NORTHERLY OF LATHROP RD & THE LATHROP ROAD
INTERCHANGE; EXC PTN TAKEN FOR 93RD AVE. ASSESSOR'S TAX
PARCEL NUMBER 12716430300

EXHIBIT "B"

Route of Facility

The developer has extended the CITY's water system to the property owned by the developer by construction of a 16" water main together with all necessary appurtenances over the following described route:

Connecting to the existing City of Tumwater sewer system at the intersection of Kimmie Road and 83rd Avenue and extending a 16" water main southerly 5,250 feet more or less within Kimmie Road to the intersection of Kimmie Road and 93rd Avenue and thence extending a 16" water main westerly within 93rd Avenue 1,670 feet more or less to the west property line of the Pilot property.

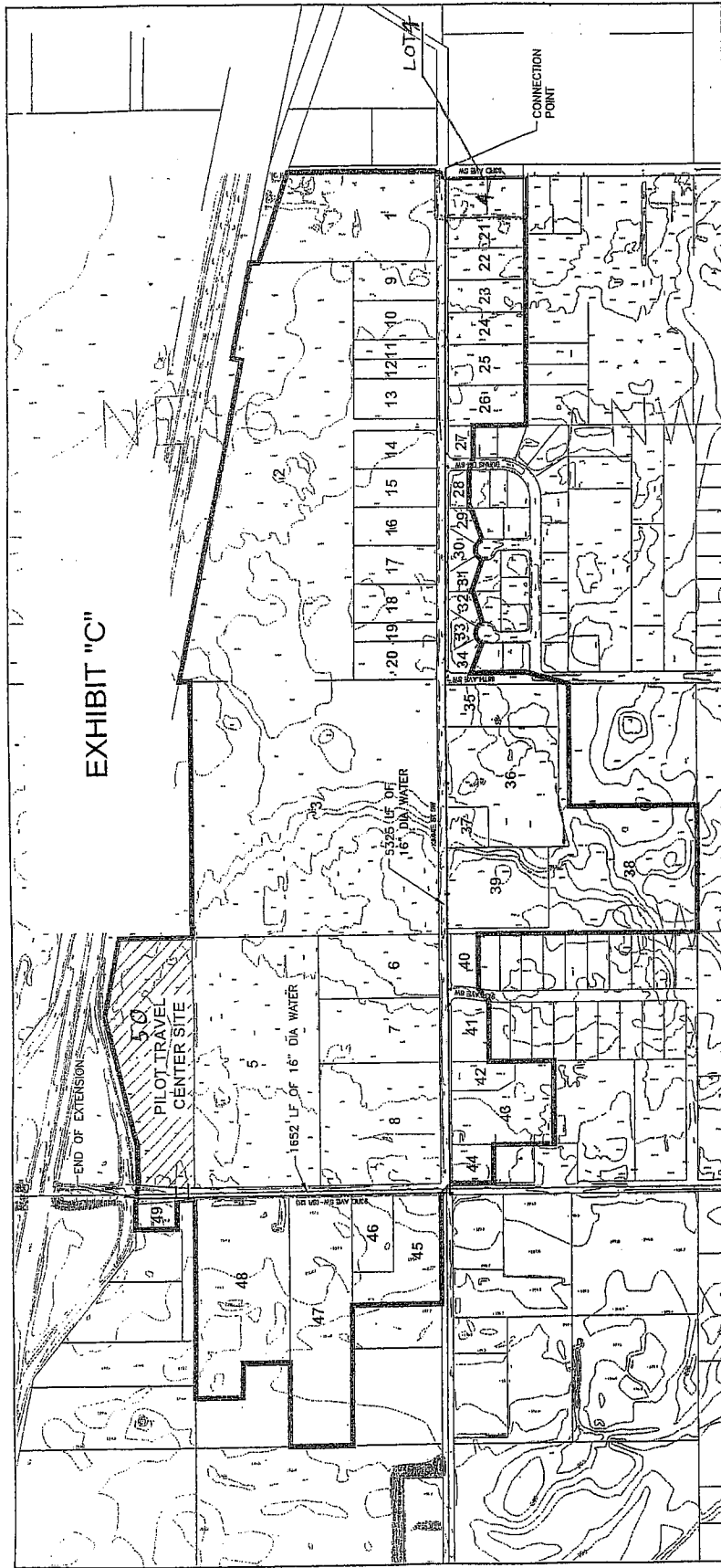


Figure 1
 Pilot Travel Center #151
 Off-Site Water Extension
 Tumwater, WA

Parametrix DATE: Jun 25, 2008 FILE: 06-12-08_503-501_P11_Landscape.dwg Fig. 1/14



EXHIBIT "D"

PILOT

WATER MAIN

<u>ENGINEER'S ESTIMATE</u>	\$ 772,400.00
<u>PROJECT COST</u>	\$ 974,478.00
<u>LESS CITY OVER SIZING</u>	\$ 48,620.00
<u>PROJECT COST</u>	\$ 925,858.00
FRONT FOOT CHARGE (50%)	\$ 462,929.00
AREA CHARGE (50%)	\$ 462,929.00
COST/LINEAR FOOT	\$ 35.41
COST/ACRE	\$ 1,960.23

MAP ID	ASSESSOR'S TAX PARCEL NUMBER	PARCEL AREA IN ACRES	PARCEL FRONT FOOTAGE	TOTAL FRONT FOOTAGE BENEFIT	TOTAL AREA BENEFIT	TOTAL BENEFIT	DATE PAID TO CITY
1	09520003000	9.71 AC	470.00 LF	\$ 16,640.66	\$ 19,033.88	\$ 35,674.54	
2	51850001200	35.97 AC	60.00 LF	\$ 2,124.34	\$ 70,509.64	\$ 72,633.98	
3	12716410000	39.09 AC	1,325.00 LF	\$ 46,912.50	\$ 76,625.57	\$ 123,538.07	
4	12715220100	1.00 AC	210.00 LF	\$ 7,435.19	\$ 1,960.23	\$ 9,395.42	
5	12716440200	20.00 AC	650.00 LF	\$ 23,013.68	\$ 39,204.69	\$ 62,218.37	
6	12716440400	4.77 AC	330.00 LF	\$ 11,683.87	\$ 9,350.32	\$ 21,034.19	
7	12716440100	5.18 AC	330.00 LF	\$ 11,683.87	\$ 10,154.02	\$ 21,837.88	
8	12716440101	9.13 AC	1,260.00 LF	\$ 44,611.13	\$ 17,896.94	\$ 62,508.07	
9	51850000100	2.00 AC	200.00 LF	\$ 7,081.13	\$ 3,920.47	\$ 11,001.60	
10	51850000200	2.00 AC	200.00 LF	\$ 7,081.13	\$ 3,920.47	\$ 11,001.60	
11	51850000300	1.00 AC	100.00 LF	\$ 3,540.57	\$ 1,960.23	\$ 5,500.80	
12	51850000300	1.00 AC	100.00 LF	\$ 3,540.57	\$ 1,960.23	\$ 5,500.80	
13	51850000400	2.08 AC	100.00 LF	\$ 3,540.57	\$ 4,077.29	\$ 7,617.85	
14	51850000500	2.01 AC	205.00 LF	\$ 7,258.16	\$ 3,940.07	\$ 11,198.23	
15	51850000600	2.00 AC	200.00 LF	\$ 7,081.13	\$ 3,920.47	\$ 11,001.60	
16	51850000700	2.00 AC	200.00 LF	\$ 7,081.13	\$ 3,920.47	\$ 11,001.60	
17	51850000800	2.00 AC	200.00 LF	\$ 7,081.13	\$ 3,920.47	\$ 11,001.60	
18	51850000900	2.00 AC	200.00 LF	\$ 7,081.13	\$ 3,920.47	\$ 11,001.60	
19	51850001000	1.00 AC	200.00 LF	\$ 7,081.13	\$ 1,960.23	\$ 9,041.37	
20	51850001100	2.00 AC	100.00 LF	\$ 3,540.57	\$ 3,920.47	\$ 7,461.04	
21	12715220503	1.59 AC	200.00 LF	\$ 7,081.13	\$ 3,116.77	\$ 10,197.90	
22	12715220501	1.59 AC	165.00 LF	\$ 5,841.93	\$ 3,116.77	\$ 8,958.71	
23	12715220502	1.59 AC	165.00 LF	\$ 5,841.93	\$ 3,116.77	\$ 8,958.71	
24	12715220500	1.59 AC	165.00 LF	\$ 5,841.93	\$ 3,116.77	\$ 8,958.71	
25	12715220504	1.99 AC	165.00 LF	\$ 5,841.93	\$ 3,900.87	\$ 9,742.80	
26	12715220502	1.99 AC	210.00 LF	\$ 7,435.19	\$ 3,900.87	\$ 11,336.06	
27	37930000200	0.50 AC	210.00 LF	\$ 7,435.19	\$ 980.12	\$ 8,415.31	
28	37930000300	0.50 AC	170.00 LF	\$ 6,018.96	\$ 980.12	\$ 6,999.08	
29	379300002400	0.50 AC	200.00 LF	\$ 7,081.13	\$ 980.12	\$ 8,061.25	
30	379300002300	0.50 AC	100.00 LF	\$ 3,540.57	\$ 980.12	\$ 4,520.68	
31	379300002200	0.50 AC	225.00 LF	\$ 7,966.27	\$ 980.12	\$ 8,946.39	
32	379300001600	0.50 AC	100.00 LF	\$ 3,540.57	\$ 980.12	\$ 4,520.68	
33	379300001500	0.50 AC	90.00 LF	\$ 3,186.51	\$ 980.12	\$ 4,166.63	
34	379300001400	0.50 AC	230.00 LF	\$ 8,143.30	\$ 980.12	\$ 9,123.42	
35	12715320303	2.89 AC	110.00 LF	\$ 3,894.62	\$ 5,665.08	\$ 9,559.70	
36	12715320300	7.37 AC	215.00 LF	\$ 7,612.22	\$ 14,446.93	\$ 22,059.15	
37	12715320400	1.00 AC	415.00 LF	\$ 14,693.35	\$ 1,960.23	\$ 16,653.58	
38	12715320200	12.54 AC	215.00 LF	\$ 7,612.22	\$ 24,581.34	\$ 32,193.56	
39	12715320201	5.01 AC	30.00 LF	\$ 1,062.17	\$ 9,820.78	\$ 10,882.95	
40	63730000100	0.92 AC	270.00 LF	\$ 9,559.53	\$ 1,803.42	\$ 11,362.94	
41	63730000000	1.46 AC	325.00 LF	\$ 11,506.84	\$ 2,861.94	\$ 14,368.78	
42	12715330201	1.13 AC	150.00 LF	\$ 5,310.85	\$ 2,215.07	\$ 7,525.91	
43	12715330200	4.26 AC	280.00 LF	\$ 9,913.58	\$ 8,350.60	\$ 18,264.18	
44	12715330400	1.02 AC	200.00 LF	\$ 7,081.13	\$ 1,999.44	\$ 9,080.57	
45	12721110102	4.01 AC	250.00 LF	\$ 8,851.41	\$ 7,860.54	\$ 16,711.96	
46	12721110100	1.97 AC	215.00 LF	\$ 7,612.22	\$ 3,861.66	\$ 11,473.88	
47	12721110200	9.80 AC	325.00 LF	\$ 11,506.84	\$ 19,210.30	\$ 30,717.14	
48	12721110300	10.46 AC	490.00 LF	\$ 17,348.77	\$ 20,504.05	\$ 37,852.83	
49	12721120201	0.68 AC	200.00 LF	\$ 7,081.13	\$ 1,332.96	\$ 8,414.09	
50	12716430300	11.36 AC	350.00 LF	\$ 12,391.98	\$ 22,268.26	\$ 34,660.25	EXEMPT
TOTALS		236.16 AC	13,075.00 LF	\$ 462,929.00	\$ 462,929.00	\$ 925,858.00	