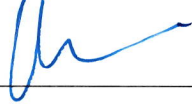


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: April 24, 2017

AGENDA ITEM:	
Revocable License to Enter Upon District Property for the State Avenue Widening Project from 100 th St NE to 116 th St NE between the City of Marysville and Snohomish County PUD	
PREPARED BY:	DIRECTOR APPROVAL:
Jeff Laycock, City Engineer	
DEPARTMENT:	
Engineering	
ATTACHMENTS:	
Revocable License to Enter Upon District Property	
BUDGET CODE:	AMOUNT:
30500030.563000, R1601	N/A
SUMMARY:	

The City of Marysville requires access onto Snohomish County PUD property in order to perform a survey and collect design information for the State Avenue Widening Project from 100th St NE to 116th St NE. Normally, a right-of-entry agreement would suffice for such action. However, the PUD requires use of their own form to grant access.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute a Revocable License to Enter Upon District Property between the City of Marysville and Snohomish County PUD thereby granting the City access to PUD property for purposes of collecting design information associated with the State Avenue Widening Project from 100th St NE to 116th St NE.



REVOCABLE LICENSE TO ENTER UPON DISTRICT PROPERTY

THIS REVOCABLE LICENSE TO ENTER UPON DISTRICT PROPERTY ("License") is entered into by and between PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, a Washington municipal corporation ("District") and the City OF MARYSVILLE, WASHINGTON, ("Licensee"). District and Licensee are sometimes referred to individually herein as "Party" and collectively as "Parties".

WHEREAS, the Licensee desires to enter on a portion of the Stanwood Local Area Office property located at 10308 State Ave, Marysville, Washington, legally described on Exhibit A attached hereto ("Property") for the purposes of completing a topographic survey, delineation of any sensitive areas within the property, and to gather subsurface soils information.

WHEREAS, the District is willing to grant the Licensee a Right of Entry to the Property for such environmental studies in accordance with the terms and conditions of this License.

NOW, THEREFORE, the Parties agree as follows:

1. Revocable License to Enter Upon Property.

a. District hereby grants the Licensee, its agents and/or contractors, a revocable license to access and enter upon the Property during daylight hours in order to perform and complete a topographic survey, delineation of any sensitive areas within the property, and to gather subsurface soils information.

b. In addition to all other terms and conditions of this License, the Licensee's license to enter upon the Property is subject to the following conditions and requirements: no improvements shall be constructed within the Property; no materials, vehicles or equipment shall be placed or stored on the Property; no construction activity shall be conducted upon the Property; no grading, filling, excavation, or other disturbance of the soils shall be permitted without District's prior written consent except for minimally invasive soil sampling to gather subsurface soils information; no liens or encumbrances shall attach to the Property.

c. The Licensee shall notify the District at least forty-eight (48) hours in advance of each entry by the Licensee within the Property.

d. The Licensee shall deliver to District accurate and complete copies of all reports, studies, and surveys obtained by the Licensee relating to the Property within fifteen (15) calendar days after receipt by the Licensee.

e. The District may revoke this License at any time by oral or written notification to Licensee

2. Compliance with Law.

a. Licensee shall conduct all activities under and pursuant to this License in full compliance with and shall not violate any and all applicable local, state and/or federal laws, regulations and permit(s).

b. The Licensee represents and agrees that it shall conduct all of its activities under and pursuant to this License the Property in full compliance with any and all applicable environmental laws. As used in this License, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

c. For the purposes of this Section and this License, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq., and shall include gasoline and other petroleum products.

3. Indemnification and Hold Harmless.

a. Licensee shall indemnify, defend, and hold District harmless from and against any and all liabilities, obligations, claims, damages, demands, penalties, causes of action, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, whether arising out of injury or death to persons or damage to the Property or adjoining property or loss of any personal property or otherwise (collectively, "Damages"), arising from and/or related to the activities of the Licensee and/or its consultants, agents, employees, contractors, and/or subcontractors on, about, or with respect to the Property, except: (i) to the extent such Damages arise from or relate to the acts and/or omissions of District and/or District's agents, employees, consultants, invitees, contractors and/or subcontractors; and (ii) to the extent such Damages arise from or relate to the acts and/or omissions of third parties not affiliated with the Licensee.

b. Licensee agrees to defend, indemnify and hold the District harmless from and against Damages associated with the removal or remediation of any Hazardous Substances that have been released onto or otherwise come to be located on the Property as a result of the Licensee's activities on the Property pursuant to this License.

c. Nothing contained in this section of this License shall be construed to create a liability or a right of indemnification in any third party.

d. The provisions of this section shall survive the expiration or termination of this License with respect to any event occurring prior to such expiration or termination.

4. Restoration. The Licensee shall upon completion of said activity mentioned herein, remove all debris and restore the surface of the property as nearly as possible to the condition immediately prior to the Licensee's entry thereon.

5. Term of License. The term of the License shall commence upon the date of mutual acceptance hereof by District and Licensee and expire at midnight June 30, 2017 unless sooner terminated/revoked by the District.

6. Severability.

a. If a court of competent jurisdiction holds any part, term or provision of this License to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this License did not contain the particular provision held to be invalid.

b. If any provision of this License is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

7. Non-Waiver of Breach. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this License shall not impair the right of the Party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either Party to insist upon strict performance of any agreement, covenant or condition of this Option Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

8. Integration and Supersession. This License sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements, which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided, and no amendment or modification of this License shall be effective unless reduced to writing and executed by the parties.

9. Governing Law and Venue. This License shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this License shall lie in the Superior Court of Washington for Snohomish County, Washington.

10. Authority to Bind Parties and Enter Into License. The undersigned represent that they have full authority to enter into this License and to bind the parties for and on behalf of the legal entities set forth below.

11. Counterparts. This License may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same License.

DISTRICT:

PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY, WASHINGTON

LICENSEE:

City of Marysville, Washington

BY: _____
Kelly McGill
Manager, Real Estate Services

By: _____
[PRINT NAME]

Date: _____

Date: _____

State of Washington
County of Snohomish

I, a Notary Public in and for the State of Washington, certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that (he/she) was authorized to execute this instrument and acknowledged as the _____ of _____ to be a free and voluntary act for the uses and purposes mentioned in the instrument.

Signature: _____
Print Name: _____
Dated: _____
Residing at: _____
My appointment expires: _____

State of Washington
County of Snohomish

I, a Notary Public in and for the State of Washington, certify that I know or have satisfactory evidence that Kelly McGill is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager Real Estate Services Public Utility District No. 1 of Snohomish County, Washington, to be a free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Signature: _____
Print Name: _____
Dated: _____
Residing at: _____
My appointment expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

The North 20 feet of the South 175 feet of the North 445 feet of the Southeast quarter of the Northwest quarter Between the Great Northwest Railroad right-of-way and State Road 99 (AKA State Avenue)

Parcel #: 30051600204800

Situate in the County of Snohomish, State of Washington.