

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: April 26, 2021**

<b>AGENDA ITEM: Kiwanis Park Access Agreement</b>	
<b>PREPARED BY: Burton Eggertsen; Ken McIntyre</b>	<b>DIRECTOR APPROVAL:</b>
<b>DEPARTMENT: Legal/Public Works</b>	
<b>ATTACHMENTS:</b>	Park Access Agreement
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

Keystone Land, LLC, is developing a property located north of Kiwanis Park, and desires to extend sewer access to the new development through the park. The attached Park Access Agreement would provide Keystone with permission to temporarily access the park for the purposes of installing a sewer main to service the new development.

<p><b>RECOMMENDED ACTION:</b> Staff recommends that the Council consider authorizing the Mayor to execute the attached Park Access Agreement with Keystone Land, LLC.</p> <p><b>RECOMMENDED MOTION:</b> I move to authorize the Mayor to sign and execute the Park Access Agreement with Keystone Land, LLC.</p>
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## **Park Access Agreement**

This Park Access Agreement is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Keystone Land, LLC (the “Developer”).

### **RECITALS**

WHEREAS, the Developer is constructing a new development located at a property within the City which has the tax parcel ID 29050200201800; and

WHEREAS, the City owns and operates Kiwanis Park, which has the tax parcel ID 29050200205600, more thoroughly described in **Exhibit A** (the “Park”); and

WHEREAS, the Developer desires to construct a sewer main through the Park to service its development;

WHEREAS, the City will allow the Developer to install the sewer main within the Park according to the terms of this Agreement.

**NOW, THEREFORE**, the City and Developer agree as follows:

### **AGREEMENT**

1. Access. The City, in consideration of the covenants and agreements contained in this Agreement, to be kept and performed by the Developer, hereby grants to the Developer (and its employees, contractors, agents, permittees and licensees), the right, permit, license and easement to use and occupy that portion of the Park as described in Section 2 for the purpose of constructing and installing a sewer main.
2. Installation Area. The sewer main will be installed in that area of the Park as depicted on Sheet C7.1 of the construction plans, approved on February 6, 2019, a copy of which is attached hereto as **Exhibit B**. The Developer will have ingress and egress rights across adjacent portions of the Park to access the installation area.
3. Time to Complete Construction. The Developer will complete all work contemplated by this Agreement within ten (10) calendar days of notice of the Park’s closure (see Section 5). Failure to complete the work within this period of time will be considered a material breach of contract, upon which the City may, after giving five (5) business days notice to the Developer to correct the breach, immediately terminate the Agreement.
4. Termination. This Agreement, and all rights granted hereunder, shall terminate automatically upon the City’s acceptance of the work as contemplated in Section 9.
5. Park Closure. The City will close the Park to the public for the duration of the term of the Agreement, and will lock any gate access to the Park. The City notify the Developer when the Park closure commences.

6. Safety Measures. The Parties acknowledge that even if the Park is closed for the duration of this Agreement, members of the public could foreseeably still enter the Park. The Developer will therefore take all reasonable measures to minimize risk to the public, and will, at a minimum, cover any trenches with steel plates and place fencing around any potential public hazards while not performing work. The Developer will furthermore undertake any additional safety measures that the City, in its discretion, deems appropriate.

7. Restoration of Property. The Developer shall restore the installation area, as well as any other portion of the Park affected by the work contemplated herein, as near as reasonably possible to its condition prior to commencement of such work.

8. Permits. The Developer will obtain all necessary permits and will comply with all applicable local, state, and federal laws and regulations with regards to the work contemplated herein.

9. Acceptance; Correction. The City will inspect the Developer's work upon notice from the Developer that such work is completed. Upon determination and written notice by the City that the work contemplated herein is complete, the sewer main will become the property of the City. In the event the City determines that the work contemplated herein is not complete, the City will provide notice to the Developer of the deficiencies with the work, and the Developer will correct any such deficiencies as soon as is reasonably practicable.

10. Indemnification.

- a. Indemnification and Hold Harmless. The Developer shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Developer in the construction of the sewer main and/or in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the City, its officers, officials, employees, and volunteers, the Developer's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Developer's negligence.
- c. The provisions of this Section 10 shall survive the expiration or termination of this Agreement.
- d. The Developer hereby knowingly, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of the indemnity contained in subpart "a" of this Section 10. This waiver has been mutually negotiated by the parties.

\_\_\_\_\_ (City Initials)

JKE (Contractor Initials)

11. Insurance.

- a. **Insurance Term.** The Developer shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the construction and installation of the sewer main and/or the performance of this Agreement.
- b. **No Limitation.** Developer's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Developer to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- c. **Minimum Scope of Insurance.** Developer shall obtain insurance of the types and coverage described below:
  - (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
  - (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Developer's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
  - (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. **Minimum Amounts of Insurance.** Developer shall maintain the following insurance limits:
  - (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
  - (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- e. **Other Insurance Provision.** The Developer's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City.

Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Developer'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 Developer shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Developer before commencement of the Services.
- h. **Notice of Cancellation.** The Developer shall provide the City with written notice of any policy cancellation within two business days of the Developer's receipt of such notice.
- i. **Failure to Maintain Insurance.** Failure on the part of the Developer to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Developer to correct the breach, immediately terminate the Agreement or, at its 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 City on demand, or at the sole discretion of the City, offset against funds due the Developer from the City.
- j. **Insurance to be Occurrence Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy. Professional liability insurance may be written on a "Claims-made" basis if it is maintained for a period of three (3) years following completion of the services.
- k. **City Full Availability of Developer Limits.** If the Developer maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Developer, irrespective of whether such limits maintained by the Developer are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Developer.

12. Notices. Receipt of any notice shall be deemed effective three (3) calendar days after deposit of written notice in the U.S. mail with proper postage and address. The proper addresses for each party are:

- a. Developer:

b. City: Director of Public Works  
Public Works Department  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

13. Disputes. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

14. Extent of Agreement/Modification. This Agreement, together with exhibits, attachments, and addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by a written supplemental amendment properly signed by both parties.

15. Severability.

- a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- b. If any part, term, or provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that part, term, or provision shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

16. Nonwaiver. A waiver by either party of a breach by the other party of any covenant or condition of this Agreement 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 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.

17. Fair Meaning. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. Venue. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

20. No Third Party Beneficiaries. This Agreement is not intended to and shall not be construed to give any third party any interest or rights with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

21. Counterparts. This Agreement 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 Agreement.


22. Authority. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the latest date written below.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF MARYSVILLE  
By \_\_\_\_\_  
Jon Nehring, Mayor

DATED this 22<sup>nd</sup> day of April, 2021.

KEYSTONE LAND, LLC  
By  \_\_\_\_\_  
Joseph Long  
Its: Executive Vice President

ATTEST/AUTHENTICATED:  
\_\_\_\_\_  
\_\_\_\_\_, Deputy City Clerk

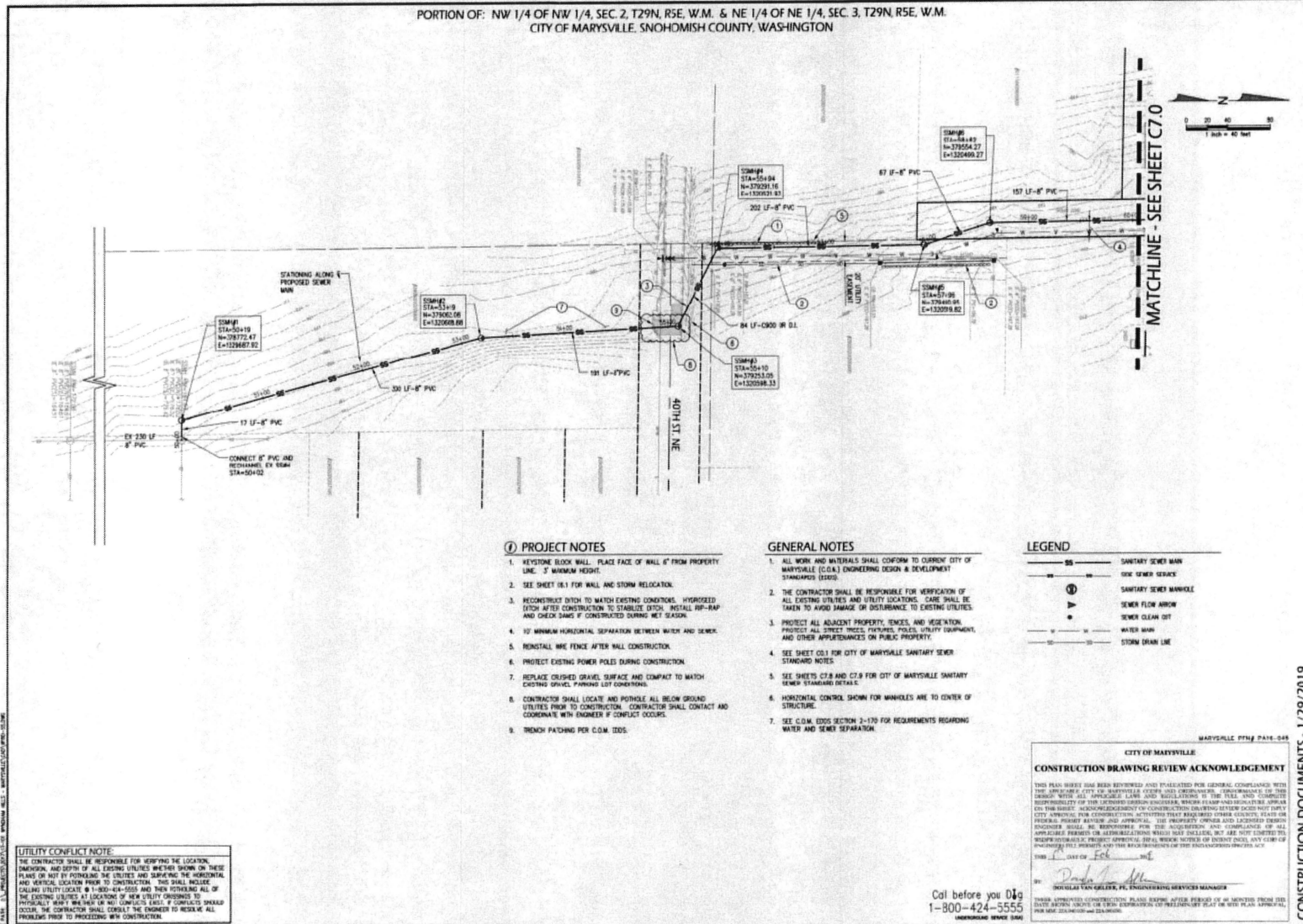
Approved as to form:  
\_\_\_\_\_  
Jon Walker, City Attorney

**Exhibit A**

Legal Description

SEC 02 TWP 29 RGE 05BEG NW COR W1/2 SW1/4 NW1/4 TH S01\*57 00E 59.2FT TO S LN  
MORGAN BRANCH RD TPB TH N89\*31 50E ALG SD S LN 180FT TH S01\*57 00E TO S LN  
SD SUB TH W ALG SD S LN TO SW COR THOF TH N01\*57 00WALG W LN SD SUB  
1236.4FT M/L TO TPB





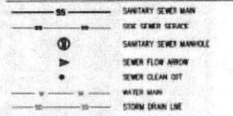
**PROJECT NOTES**

1. KEYSTONE BLOCK WALL. PLACE FACE OF WALL 6" FROM PROPERTY LINE. 3' MINIMUM HEIGHT.
2. SEE SHEET 01.1 FOR WALL AND STORM RELOCATION.
3. RECONSTRUCT DITCH TO MATCH EXISTING CONDITIONS. HYDROSEED DITCH AFTER CONSTRUCTION TO STABILIZE DITCH. INSTALL RSP-RAP AND CHECK DAMS IF CONSTRUCTED DURING WET SEASON.
4. 12' MINIMUM HORIZONTAL SEPARATION BETWEEN WATER AND SEWER.
5. REINSTALL WRE FENCE AFTER WALL CONSTRUCTION.
6. PROTECT EXISTING POWER POLES DURING CONSTRUCTION.
7. REPLACE CRUSHED GRAVEL SURFACE AND COMPACT TO MATCH EXISTING GRAVEL PARKING LOT CONDITIONS.
8. CONTRACTOR SHALL LOCATE AND MARK ALL BELOW GROUND UTILITIES PRIOR TO CONSTRUCTION. CONTRACTOR SHALL CONTACT AND COORDINATE WITH ENGINEER IF CONFLICT OCCURS.
9. TRENCH PATCHING PER C.D.M. IDES.

**GENERAL NOTES**

1. ALL WORK AND MATERIALS SHALL CONFORM TO CURRENT CITY OF MARYSVILLE (C.C.M.) ENGINEERING DESIGN & DEVELOPMENT STANDARDS (EDDS).
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION OF ALL EXISTING UTILITIES AND UTILITY LOCATIONS. CARE SHALL BE TAKEN TO AVOID DAMAGE OR OBSTRUCTION TO EXISTING UTILITIES.
3. PROTECT ALL ADJACENT PROPERTY, FENCES, AND VEGETATION. PROTECT ALL STREET TREES, FURNITURE, POLES, UTILITY EQUIPMENT, AND OTHER APPURTENANCES ON PUBLIC PROPERTY.
4. SEE SHEET C0.1 FOR CITY OF MARYSVILLE SANITARY SEWER STANDARD NOTES.
5. SEE SHEETS C7.8 AND C7.9 FOR CITY OF MARYSVILLE SANITARY SEWER STANDARD DETAILS.
6. HORIZONTAL CONTROL SHOWN FOR MANHOLES ARE TO CENTER OF STRUCTURE.
7. SEE C.D.M. EDDIS SECTION 3-179 FOR REQUIREMENTS REGARDING WATER AND SEWER SEPARATION.

**LEGEND**



**UTILITY CONFLICT NOTE:**  
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION, DEPTH, AND DEPTH OF ALL EXISTING UTILITIES WHETHER SHOWN ON THESE PLANS OR NOT BY PENETRATING THE UTILITIES AND SURVEYING THE HORIZONTAL AND VERTICAL LOCATION PRIOR TO CONSTRUCTION. THIS SHALL INCLUDE CALLING UTILITY LOCATE @ 1-800-424-5555 AND THEN RETRACING ALL OF THE EXISTING UTILITIES AT LOCATION OF NEW UTILITY PROPOSED TO PHYSICALLY VERIFY WHETHER OR NOT CONFLICTS OCCUR. IF CONFLICTS SHOULD OCCUR, THE CONTRACTOR SHALL CONSULT THE ENGINEER TO RESOLVE ALL PROBLEMS PRIOR TO PROCEEDING WITH CONSTRUCTION.

Call before you dig  
 1-800-424-5555  
 (WASHINGTON SERVICE LINE)

MARYSVILLE PTH# DATE-018  
 CITY OF MARYSVILLE  
**CONSTRUCTION DRAWING REVIEW ACKNOWLEDGEMENT**  
 THIS PLAN SHEET HAS BEEN REVIEWED AND EVALUATED FOR GENERAL COMPLIANCE WITH THE ORDINANCE CITY OF MARYSVILLE VECTOR ZONE ORDINANCE. COMPLIANCE OF THIS DRAWING WITH ALL APPLICABLE LAND USE REGULATIONS TO THE TITLE AND COMPLETE CONFORMANCE WITH THE CITY ENGINEERING STANDARDS, ORDINANCES AND REGULATIONS IS THE RESPONSIBILITY OF THE CONTRACTOR. THE CITY ENGINEER'S REVIEW OF THIS DRAWING IS LIMITED TO THE TECHNICAL ASPECTS OF THE DRAWING AND DOES NOT CONSTITUTE AN ENDORSEMENT OR GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM ALL AGENCIES AND AGENCIES INVOLVED IN THE PROJECT. THE CITY ENGINEER'S REVIEW OF THIS DRAWING IS LIMITED TO THE TECHNICAL ASPECTS OF THE DRAWING AND DOES NOT CONSTITUTE AN ENDORSEMENT OR GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON.  
 THIS IS A DATE OF: Feb 10 2019  
 BY: Douglas Van Guler  
 DOUGLAS VAN GULER, P.E., ENGINEERING SERVICES MANAGER

1. SET POINTS, ELEVATIONS, CITY OF MARYSVILLE	DATE
2. ANY STORM DRAINAGE, AND MAPS TO BE PLAN	DATE
3. RECORD PLANS FOR CITY ENGINEER REVIEW DATED 1/25/19	DATE
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