


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 8, 2021

AGENDA ITEM:	
Maplewood Crossing (PA20-064) – Access Agreement	
PREPARED BY:	DIRECTOR APPROVAL: 
Ken McIntyre, Development Services Manager	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Access Agreement	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

Keystone Land, LLC is seeking construction plan approval for the plat of Maplewood Crossing, located at 4205 71st Ave NE. There is currently no public sewer available within the project's frontage, so the project proposes a sewer extension through a City-owned parcel located immediately south and east of the site (see Exhibit 'A' in the attached Access Agreement for reference). The City-owned parcel is located at 4123 71st Ave NE, and is occupied by the City's Sunnyside water reservoir. The proposed sewer route extends through the eastern portion of the parcel, around the Sunnyside Well Treatment Facility site and outside of the well-protection zone.

The Public Works Department has reviewed the request, coordinated the proposed route with the applicant and had the access agreement prepared by the City Attorney's office. The access agreement provides the applicant with the ability to construct the sewer connection, requires restoration of the property following construction, indemnifies the City from legal claims related to the sewer construction and requires the contractor to carry insurance.

Public Works recommends that the City Council authorize the Mayor to execute the access agreement.

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor execute the access agreement with Keystone Land LLC.
RECOMMENDED MOTION: I move to authorize the Mayor to sign and execute the agreement.

Access Agreement

This 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 29050200200300, as depicted in **Exhibit A** (the “Project Site”); and

WHEREAS, the City owns and operates the tax parcel ID 29050200206500, as depicted in **Exhibit A** (the “City Parcel”); and

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

WHEREAS, the City will allow the Developer to install the sewer main within the City Parcel 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 City Parcel as depicted in **Exhibit B** for the purpose of constructing and installing a sewer main. The Developer will have ingress and egress rights across adjacent portions of the City Parcel to access the installation area
2. Termination. This Agreement, and all rights granted hereunder, shall terminate automatically upon the City’s acceptance of the work as contemplated in Section 6.
3. Safety Measures. The Parties acknowledge that even if the City Parcel is closed for the duration of this Agreement, members of the public could foreseeably still enter the City Parcel. 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.
4. Restoration of Property. The Developer shall restore the installation area, as well as any other portion of the City Parcel affected by the work contemplated herein, as near as reasonably possible to its condition prior to commencement of such work.

5. 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.

6. 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.

7. 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 7 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 7. This waiver has been mutually negotiated by the parties.

_____ (City Initials)

 (Developer Initials)

8. 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.

9. 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: Keystone Land LLC
Attn: Paul Leavitt
13805 Smokey Point Blvd, STE 102
Marysville, WA 98271
- b. City: Director of Public Works
Public Works Department

City of Marysville
80 Columbia Avenue
Marysville, WA 98270

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
16. Venue. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

17. 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.

18. 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.

19. 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 13th day of OCTOBER, 2021.

By [Signature]
PAUL LEAVITT (Name)
Its: VP (Title)
KEYSTONE LAND, LLC

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A

Property Depictions with Planned Sewer Extension

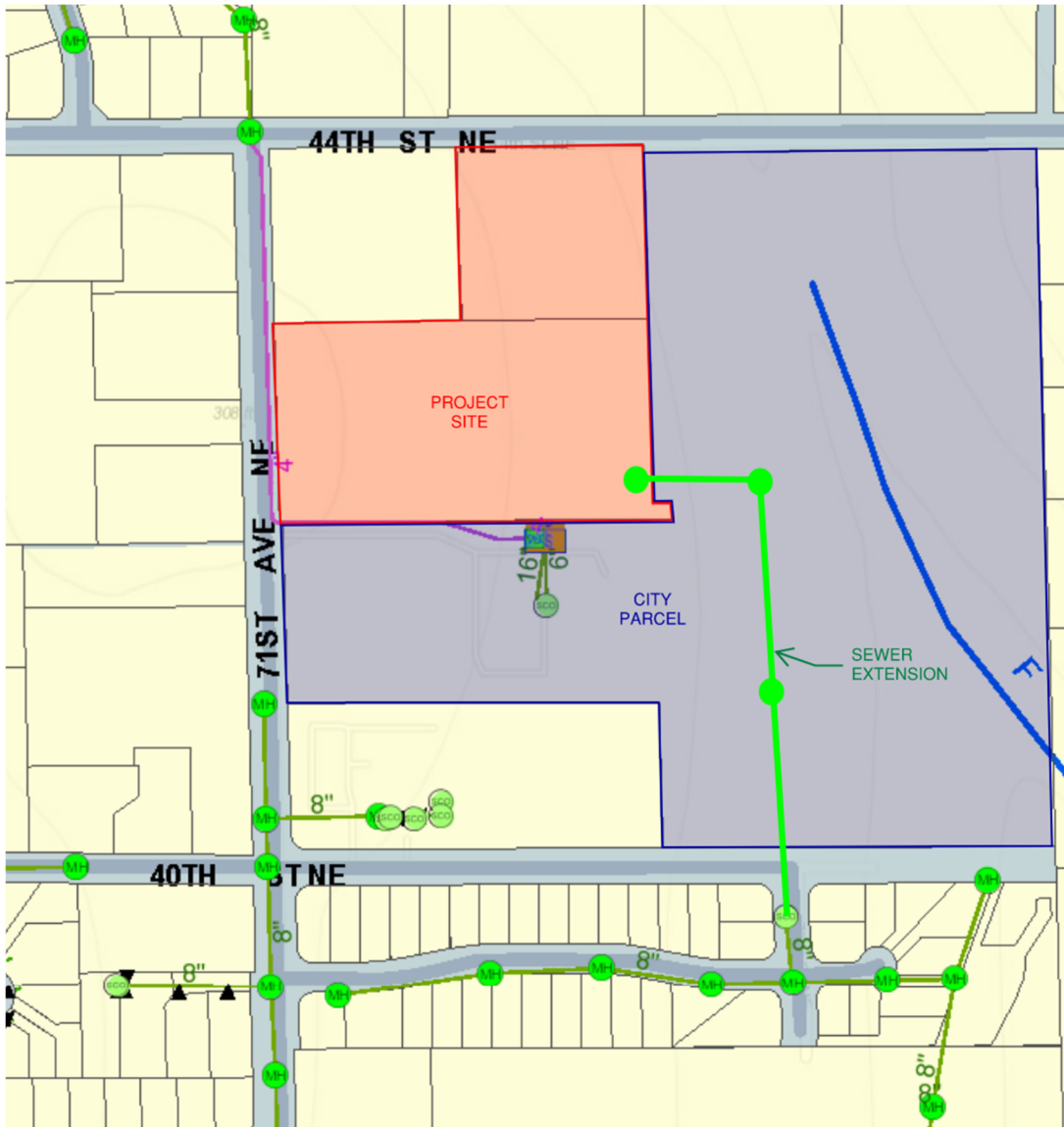
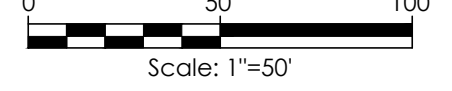
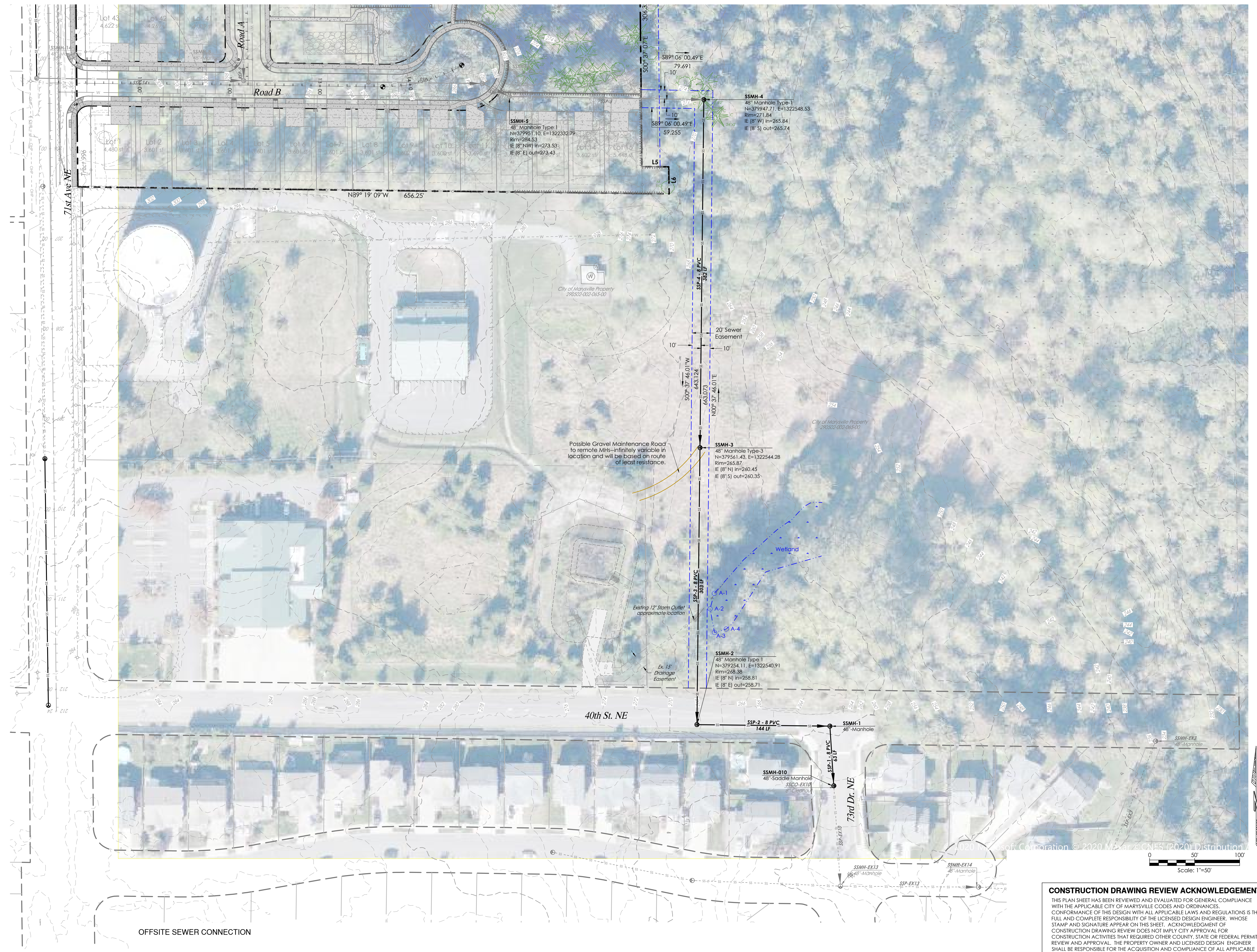


EXHIBIT B

A PORTION OF SECTION 2, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.

LEGEND

- PROJECT BOUNDARY
- EXIST R/W LINE
- EXIST. PARCEL LINE
- BUILDING SETBACK
- PROPOSED CONTOUR MAJOR
- PROPOSED CONTOUR MINOR
- CONTOUR MAJOR, EXIST
- CONTOUR MINOR, EXIST
- EDGE OF PAVEMENT, EXIST
- CLEARING LIMIT
- EXIST POWERLINE
- EXISTING BUILDING
- PROPOSED PAVED AREA
- POWER POLE, EXIST
- REDI-ROCK WALL
- FENCE, EXIST
- "NO PARKING" FIRE LANE



CONSTRUCTION DRAWING REVIEW ACKNOWLEDGEMENT

THIS PLAN SHEET HAS BEEN REVIEWED AND EVALUATED FOR GENERAL COMPLIANCE WITH THE APPLICABLE CITY OF MARYSVILLE CODES AND ORDINANCES. CONFORMANCE OF THIS DESIGN WITH ALL APPLICABLE LAWS AND REGULATIONS IS THE FULL AND COMPLETE RESPONSIBILITY OF THE LICENSED DESIGN ENGINEER, WHOSE STAMP AND SIGNATURE APPEAR ON THIS SHEET. ACKNOWLEDGMENT OF CONSTRUCTION DRAWING REVIEW DOES NOT IMPLY CITY APPROVAL FOR CONSTRUCTION ACTIVITIES THAT REQUIRED OTHER COUNTY, STATE OR FEDERAL PERMIT REVIEW AND APPROVAL. THE PROPERTY OWNER AND LICENSED DESIGN ENGINEER SHALL BE RESPONSIBLE FOR THE ACQUISITION AND COMPLIANCE OF ALL APPLICABLE PERMITS OR AUTHORIZATIONS WHICH MAY INCLUDE BUT ARE NOT LIMITED TO: WSDW HYDRAULIC PROJECT APPROVAL (HPA), WSDOE NOTICE OF INTENT (NOI), ANY CORPS OF ENGINEERS FILL PERMITS AND THE REQUIREMENTS OF THE ENDANGERED SPECIES ACT. THIS DAY OF _____, 2021.

KEN MCINTYRE, P.E., DEVELOPMENT SERVICES MANAGER

THESE APPROVED CONSTRUCTION PLANS EXPIRE AFTER PERIOD OF 60 MONTHS FROM THE DATE SHOWN ABOVE OR UPON EXPIRATION OF PRELIMINARY PLAT OR SITE PLAN APPROVAL PER MMC 22A.040.020 & 22A.040.030.

CALL AT LEAST 2 BUSINESS DAYS BEFORE YOU DIG 1-800-424-5555

GENERAL NOTE:
It is the responsibility of the contractor and construction manager to ensure that all conflicts between plan sets are identified and resolved prior to commencement of construction activities. The contractor shall verify the location of all existing utilities prior to any construction. Agencies shall be notified within a reasonable time prior to the start of construction.

KEYSTONE LAND, LLC.
13805 Smokey Point Blvd, Ste 102, Marysville, WA 98271

MAPLEWOOD CROSSING
3000 71st Ave NE, Marysville, WA 98270

A PORTION OF SECTION 2, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.

OFFSITE SEWER CONNECTION

LAND TECHNOLOGIES
18820 Third Avenue, N.E.
Arlington, WA 98223
360-652-9727

PROJECT LEAD: Merie
CHECKED BY: Tyler
DRAWN BY: Tyler, Alex
DATE: June 21, 2021
REVISION 1: September 6, 2021
REVISION 2:
REVISION 3:
REVISION 4:
AS-BUILT:

STATE OF WASHINGTON
REGISTERED PROFESSIONAL ENGINEER

SHEET C30 of C37
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PA 20-064

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