


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: October 10, 2022**

<b>AGENDA ITEM:</b>	
Assignment and Assumption of Construction, Credit and Reimbursement Agreement for the Whiskey Ridge Sewer System with PNW Investors IV, LLC	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Jeff Laycock, Public Works Director	
<b>DEPARTMENT:</b>	
Public Works	
<b>ATTACHMENTS:</b>	
Assignment and Assumption Agreement Construction, Credit and Reimbursement Agreement (Original)	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
N/A	N/A
<b>SUMMARY:</b>	

Council approved a construction, credit and reimbursement agreement (attached) for the Whiskey Ridge Sewer System with PNW Investors, LLC on March 28, 2022. PNW Investors, LLC is no longer involved and a new entity of PNW Investors IV, LLC will be taking over the agreement. Per the terms of the original agreement, reassignment to any other party requires written consent of and notification to the City, which will be in the form of an Assignment and Assumption of Construction, Credit and Reimbursement Agreement, as attached.

<b>RECOMMENDED MOTION:</b> I move to authorize the Mayor to sign and execute the Assignment and Assumption of Construction, Credit and Reimbursement Agreement for the Whiskey Ridge Sewer System with PNW Investors IV, LLC.
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**ASSIGNMENT AND ASSUMPTION OF  
CONSTRUCTION, CREDIT AND REIMBURSEMENT AGREEMENT**

For Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, PNW INVESTORS, LLC, a Washington limited liability company (“Assignor”) does hereby assign and transfer to PNW INVESTORS IV, LLC, a Washington limited liability company (“Assignee”) the Assignor’s entire interest in, to and under that certain Construction, Credit and Reimbursement Agreement dated April 8, 2022, by and between PNW INVESTORS, LLC, and the CITY OF MARYSVILLE, a municipal corporation, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference (the “Agreement”).

For purposes of this Assignment, electronic signatures shall be deemed to be original signatures. In addition, if any of the parties sign facsimile copies of this Assignment, such copies shall be deemed originals.

This Assignment shall be effective from and after April 9, 2022.

**ASSIGNOR:**

**ON BEHALF OF PNW INVESTORS, LLC, A WASHINGTON LIMITED LIABILITY COMPANY**




\_\_\_\_\_  
Michael Reid, Managing Member

**ACCEPTANCE AND ASSUMPTION**


Assignee hereby accepts the above Assignment and assumes all of the rights and obligations of Assignor under the Construction, Credit and Reimbursement Agreement dated April 8, 2022 accruing on and after April 9, 2022.

**ASSIGNEE:**

**ON BEHALF OF PNW INVESTORS IV, LLC, A WASHINGTON LIMITED LIABILITY COMPANY**



\_\_\_\_\_  
Michael Reid, Managing Member



\_\_\_\_\_  
Tim Kaintz, Managing Member

**CONSENT**

The City of Marysville hereby consents to and accepts the above Assignment of the Construction, Credit and Reimbursement Agreement dated April 8, 2022 accruing on and after April 9, 2022.

**ON BEHALF OF THE CITY OF MARYSVILLE, WA, A MUNICIPAL CORPORATION:**

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Jon Nehring, Mayor

**EXHIBIT A**

**Construction, Credit and Reimbursement Agreement**

## CONSTRUCTION, CREDIT AND REIMBURSEMENT AGREEMENT

**This Construction, Credit and Reimbursement Agreement** (this “Agreement”) is hereby entered into by and between the City of Marysville (“City”), a municipal corporation, and PNW Investors, LLC (“PNWI LLC”), a Washington limited liability corporation, either one of whom may be referred to herein as “Party” or collectively as the “Parties.” This Agreement is executed as of the last date signed below.

### I. RECITALS

1. Pursuant to the Whiskey Ridge Subarea Plan, adopted pursuant to City Ordinance No. 2696 and the 2011 Sewer Comprehensive Plan, adopted pursuant to City Ordinance No. 2892, the City has (i) determined that there is a public need for a sewer lift station and force main in the Whiskey Ridge Subarea to serve future planned development (the “Whiskey Ridge Sewer Lift Station and Force Main”); and (ii) established a capital improvement plan to construct and operate the Whiskey Ridge Sewer Lift Station and Force Main pursuant to Capital Improvement Project No. PS-a.
2. The City has identified real property with a common address of 3920 Densmore Road, Snohomish County Assessor’s Parcel No. 005907000-24400, 23501, and 23505 (the “Colvin Property”), as the appropriate location for the Whiskey Ridge Sewer Lift Station; the legal description of which is attached hereto as Exhibit A and incorporated herein by reference.
3. The City elected to invest in the design of the Whiskey Ridge Sewer Lift Station and Force Main during Calendar Year 2022.
4. PNWI LLC has entered into agreements to acquire and develop certain real property within the area to be benefitted by the Whiskey Ridge Sewer Lift Station and Force Main, including the Colvin Property and other properties as set forth in this Agreement.
5. PNWI LLC has approached the City, pursuant to RCW 35.91.020, indicating that it is under contract to purchase and develop the Colvin Property, and such other properties within the benefitted area of the Whiskey Ridge Sewer Lift Station and Force Main and has proposed to construct the Whiskey Ridge Sewer Lift Station and Force Main in exchange for credit towards sewer capital improvement charges per MMC 14.07.100, and to construct certain sewer mains leading to/from said Whiskey Ridge Sewer Lift Station as discussed herein, for which PNWI LLC shall request reimbursement of such costs through a recovery contract per MMC 14.07.090.
6. The City has elected to participate in the financing of the Whiskey Ridge Sewer Lift Station and Force Main in accordance with RCW 35.91.020(1)(b). The City’s participation in financing the facilities is limited to providing design and engineering plans for the Whiskey Ridge Sewer Lift Station and Force Main, including monitoring construction to ensure compliance with the design and development standards.

7. The Parties enter into this Agreement to facilitate construction of the Whiskey Ridge Sewer Lift Station and Force Main pursuant to the terms and conditions herein under Chapter 35.91 RCW and applicable adopted City regulations.

## II. AGREEMENT

### A. Design and Engineering of Lift Station, Force Main and Gravity Main.

1. The City shall, at its expense (except as discussed in this Section II.A), design, engineer and approve plans for (1) the Whiskey Ridge Sewer Lift Station, and (2) Force Main, utilizing an engineer of its selection.

2. The performance specifications for the Whiskey Ridge Sewer Lift Station and the Force Main shall be designed and engineered to meet the City's long-term planning capacity requirements for the benefitted area set forth on the Map in Exhibit B hereto and incorporated herein by reference (the "Benefitted Area"; inclusive of PNWI LLC's development projects set forth in Section II.D.3 of this Agreement).

3. The Force Main shall extend Southerly from the Whiskey Ridge Sewer Lift Station within the Densmore Road right-of-way from the Whiskey Ridge Sewer Lift Station to a sewer manhole to be constructed within Densmore Road at the NE corner of Snohomish County Tax Parcel #005907000-30500 pursuant to City File No. PA20-0051 and No. G21-0048.

4. PNWI LLC shall, at its expense and in concert with the engineering for the Whiskey Ridge Sewer Lift Station and Force Main, design, engineer and submit for the City's approval, a primary gravity main (the "Gravity Main") to be located within Densmore Road and East Sunnyside School Road northerly from the Whiskey Ridge Sewer Lift Station. The northerly terminus of the Gravity Main shall be at the intersection of 87<sup>th</sup> Avenue NE and East Sunnyside School Road. The Gravity Main shall be sized and designed as such to provide adequate long-term capacity to service real property within the Benefitted Area that the City anticipates utilizing the Gravity Main, as recommended by RH2, Inc. in its August 21, 2021 analysis. All costs incurred by PNWI LLC in designing, engineering and pulling a permit for the Gravity Main shall be known as the "Gravity Approval Costs."

5. To facilitate the City's timely design and engineering of the Whiskey Ridge Sewer Lift Station and Force Main under this Section II.A, PNWI LLC shall perform the following surveys, tests, and studies (collectively known as "PNWI Costs Part A"):

- a. A survey of Densmore Road for construction of the Whiskey Ridge Sewer Lift Station and Force Main;
- b. A survey of East Sunnyside School Road to the intersection of 87<sup>th</sup> Avenue NE and East Sunnyside School Road for construction of the Gravity Main;
- c. Geotechnical evaluations and reporting as required by the City's chosen engineer, which may include, but not be limited to:

- i. Test drilling of three (3) deep wells to a depth of thirty (30) feet at locations identified by the City's chosen engineer for the Whiskey Ridge Sewer Lift Station;
  - ii. Test drilling of four (4) shallow wells to a depth of ten (10) feet north of the Whiskey Ridge Sewer Lift Station within Densmore Road and East Sunnyside School Road;
  - iii. Test drilling of five (5) shallow wells to a depth of ten (10) feet south of the Whiskey Ridge Sewer Lift Station within Densmore Road; and
  - iv. All geotechnical evaluations and reporting as required by this Section II.A.5.c shall be subject to change and prior approval as required by the City's chosen engineer to ensure adequate analysis and informational content.
- d. Prepare and submit a traffic control and detour plan to (i) identify a preferred short term detour route to enable East Sunnyside School Road between 87<sup>th</sup> Avenue NE and Densmore Road to be closed during construction of the Gravity Main to minimize costs for traffic control and construction; and (ii) timely engage with and seek the support of the applicable regulatory agencies (specifically, the City of Lake Stevens, Snohomish County and State of Washington DOT) regarding the same, which the City shall support where possible.
- e. Such other tests, surveys, studies, or reports as determined reasonably necessary by the City to facilitate timely design, engineering and approval of the Whiskey Ridge Sewer Lift Station and Force Main (herein known as "Miscellaneous Costs"). Any Miscellaneous Costs shall be pre-approved in writing by the City, confirming that such additional work is necessary and will be considered part of the PNWI Costs Part A.
- f. In addition to the above, those invoiced costs invested by PNWI LLC associated with the August 21, 2021 RH2 LLC preliminary assessment shall be part of the PNWI Costs Part A. A complete copy of these invoices will be provided to the City within thirty (30) days following acceptance of this Agreement by the City.

6. PNWI LLC shall maintain records of expenses and deliver to the City all receipts for PNWI Costs Part A prior to issuance of approved plans.

7. In consideration of reducing costs, eliminating duplicative work, and minimizing redundancies, the City will incorporate the following elements into the design, engineering and approval of the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main, as applicable:

- a. No asphalt overlay shall be required on Densmore Road following construction of the Gravity Main and Force Main for the following reasons: (i) nominal local vehicular traffic, and (ii) the City's long-term plan to convert Densmore Road to a

public multi-use trail pursuant to the Whiskey Ridge Subarea Plan. Instead, only a permanent asphalt patch over trenching along Densmore Road will be required.

- b. Plans shall include a full asphalt overlay on East Sunnyside School Road between 87<sup>th</sup> Avenue NE and Densmore Road.
- c. Due to the inability to provide for storm water retention/detention within the Lift Station Tract (defined in Section II.C), to the extent that the same is deemed necessary, the Parties agree to locate any necessary retention/detention addition within the "Colvin PRD" (both identified further below), at the discretion of PNWI LLC; and to incorporate same into approved storm water plans.

8. The City shall authorize the production of engineering plans and specifications for construction of the Whiskey Ridge Sewer Lift Station and Force Main in accordance with the schedule provided by RH2 LLC in Exhibit F of this Agreement, with the objective of completing approval of the construction plans for the Lift Station, Force Main on June 30, 2022 (the "Issuance Date"). The City shall provide PNWI LLC with notice not later than thirty (30) days prior to June 30, 2022 if, in its assessment, the Issuance Date for completion of engineering plan approval is not timely forthcoming. In such case, the Parties shall meet and confer in good faith within ten (10) calendar days of such notice to discuss (i) when the City anticipates issuing the approved plans, and (ii) agreement upon a revised schedule.

As individual plans or portions thereof are finalized by the City's engineer, the City shall release to PNWI LLC such details as will allow PNWI LLC to begin ordering materials prior to the beginning of construction.

9. PNWI LLC shall immediately authorize the production of engineering plans and specifications for construction of the Gravity Main, with the objective of applying to the City for approval of the Gravity Main on or before April 11, 2022. PNWI LLC's engineer shall coordinate the design and engineering of the Gravity Main with the Lift Station design engineering so as to facilitate the City's review and approval of the Gravity Main in a manner consistent with the Issuance Date.

#### **B. Construction.**

1. PNWI LLC shall, at its own expense and subject to the credit and reimbursement provisions of this Agreement, construct the Whiskey Ridge Sewer Lift Station and Force Main and Gravity Main according to plans approved by the City pursuant to Section II.A.

2. The City shall, at its own expense, retain a design engineer of its choosing for the duration of construction for monitoring, inspections, field changes, and acceptance of project elements as construction progresses.

3. All PNWI LLC's costs for construction for the Whiskey Ridge Sewer Lift Station and Force Main under this Section II.B shall be known as the "PNWI Costs Part B."



4. All of PNWI LLC's costs for construction of the Gravity Main under this Section II.B shall be known as the "Gravity Main Construction Costs."

5. PNWI LLC shall maintain records of expenses and deliver to the City all receipts for PNWI Costs Part B and Gravity Main Construction Costs within one hundred twenty (120) days following final inspection approval. PNWI LLC shall keep separate records of expenses and costs for (i) PNWI Costs Part B, and (ii) Gravity Main Construction Costs.

**C. Boundary Line Adjustment, Dedication, and Lift Station Property Valuation.**

1. PNWI LLC shall apply for a boundary line adjustment of the Colvin Property as part of a Planned Residential Development on the Colvin Property (the "Colvin PRD"), for the purpose of creating a "Lift Station Tract" to site the physical location of Whiskey Ridge Sewer Lift Station from the remainder of the Colvin Property. The Lift Station Tract shall be conveyed by statutory warranty deed to the City together with the Lift Station and the Force Main upon acceptance of the Whiskey Ridge Sewer Lift Station by the City. The physical area required for the Lift Station Tract shall be as generally depicted in the RH2, Inc. analysis dated August 21, 2021 as "Alternative 2", a copy of which is attached and incorporated herein as Exhibit C. The area to be boundary line adjusted for the Lift Station Tract shall generally conform to the map attached hereto as Exhibit D, subject to such minor adjustments as may be determined reasonably necessary to accommodate the approved construction plans for the Lift Station and the Colvin PRD.

2. The parties acknowledge that as part of the design, engineering and construction of the Whiskey Ridge Sewer Lift Station, minor amendment may be required to the approved dimensions of the Lift Station Tract; the Parties agree to cooperate in such regard. To the extent that the Force Main and Gravity Main are constructed within City-owned right of way, no dedication of real property will be required, as it is understood they are constructed on behalf of the City. If the design and construction of the Gravity Main developed by PNWI LLC requires it to cross property not owned by the City, PNWI LLC is required to obtain appropriate utility easements benefitting the City. In the event that any easements are required to facilitate such construction, they shall be provided by the City in a timely manner.

3. Prior to conveyance to the City, the City and PNWI LLC shall agree on a value for the Lift Station Tract property to be dedicated based on current average cost of acquisition of right-of-way within the City and as otherwise determined by an appraisal report by Valbridge Advisors, at PNWI LLC's expense. This value shall be strictly limited to the land within the Lift Station Tract and not any improvements thereon (i.e. the Whiskey Ridge Sewer Lift Station).

4. Any costs or expenses by PNWI LLC associated with the boundary line adjustment and appraisal contemplated in this Section II.C, or any amendment thereto, together with the value of the Lift Station Tract, shall be known as the "PNWI Costs Part C." PNWI LLC shall maintain records of expenses and deliver to the City all receipts for PNWI Costs Part C prior to dedication.

**D. Credits and Reimbursement.**

1. For purposes of receiving credit under MMC 14.07.100, PNWI LLC's eligible costs and expenses (collectively the "Eligible Expenses 1") shall be:

- a. PNWI Costs Part A;
- b. PNWI Costs Part B;
- c. PNWI Costs Part C;
- d. Application or permit fees associated with the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main;
- e. Costs of PNWI LLC associated with provision of financial security for construction and dedication of the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main;
- f. PNWI LLC's attorneys' fees associated with preparation, adoption and implementation of this Agreement, which shall be submitted to the City within thirty (30) days following mutual execution of this Agreement; and
- g. Any other normal and customary costs and fees allowed pursuant to MMC 14.07.100.

2. For purposes of receiving reimbursement under MMC 14.07.090, PNWI LLC's eligible costs and expenses (collectively the "Eligible Expenses 2") shall be:

- a. Gravity Approval Costs;
- b. Gravity Main Construction Costs;
- c. Application or permit fees associated with the Gravity Main;
- d. Costs of PNWI LLC associated with provision of financial security for construction and dedication of the Gravity Main; and
- e. Any other normal and customary costs and fees allowed pursuant to MMC 14.07.090.

3. Reimbursement of the Eligible Expenses 1 and Eligible Expenses 2 is conditioned upon:

- a. Construction of the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main according to plans and specifications approved by the City;

- b. Inspection and approval of the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main by the City;
- c. Transfer and convey the Whiskey Ridge Sewer Lift Station and the Lift Station Tract to the City upon acceptance by the City of the Whiskey Ridge Sewer Lift Station;
- d. Full compliance with PNWI LLC's obligations under this Agreement and with applicable City rules and regulations;
- e. Provision of security in form and content in accordance with applicable City regulations to facilitate construction of the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main, to the extent not already complete, and for other performance under this Agreement;
- f. Payment by PNWI LLC to the City of any City costs associated with the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main, including, but not limited to, engineering, legal, and administrative costs (except as contemplated by this Agreement, wherein the City has agreed to participate in the financing of the Whiskey Ridge Sewer Lift Station and Force Main pursuant to its authority under RCW 35.91.020(1)(b)), which shall be considered as part of PNWI Costs Part A and thus Eligible Expenses; and
- g. Verification and approval of all contracts and costs related to the Whiskey Ridge Sewer Lift Station, Force Main and Gravity Main.

4. This Agreement shall serve as the reimbursement agreement contemplated under MMC 14.07.100, for reimbursement of Eligible Expenses 1 to PNWI LLC associated with the Whiskey Ridge Sewer Lift Station and the Force Main (specifically, the expenses identified in Section II.D.1). Pursuant to MMC 14.07.100, PNWI LLC shall receive credits for all sanitary sewer capital improvement charges in accordance with MMC 14.07.100 for the following properties:

a. Colvin PRD (City File PREA21-048):

<u>Tax Parcel #:</u>	<u>Owner*:</u>	<u>Acres:</u>	<u>Zoning:</u>
005907000-23501	Samuel & Barbara Colvin	1.00	MR 6-18
005907000-23505	Samuel & Barbara Colvin	1.30	MR 6-18
005907000-24400	Samuel & Barbara Colvin	2.45	MR 6-18
<i>Total:</i>		4.75	

b. Nordstrom PRD (City File PA-2024):

<u>Tax Parcel #:</u>	<u>Owner*:</u>	<u>Acres:</u>	<u>Zoning:</u>
005907000-2501	D. Jason and Brenda Nordstrom		SF4-8

005907000-2502 Daniel Nordstrom SF4-8

Total: 6.25

c. 87<sup>th</sup> Assy PRD (City File No. PA-2041):

<u>Tax Parcel #:</u>	<u>Owner:*</u>	<u>Acres:</u>	<u>Zoning:</u>
005907000-18800	Roni Garner	4.51	SF4-8
005907000-18902	Roni Garner	1.21	SF4-8
005907000-17400	Roni Garner	4.73	SF4-8
005907000-17302	Roni Garner	1.17	SF4-8
005907000-16302	Elizabeth Cook	1.89	SF4-8
005907000-16304	Mark & Marci Miller	1.02	SF4-8
005907000-16305	Roberta K. Sage	2.25	SF4-8
005907000-16300	Charles & Marsha Murray	1.00	SF4-8

Totals: 17.78

\* Current Owners of Record as of the Effective Date of Agreement.

- d. In the event that, prior to construction and dedication of the Whiskey Ridge Sewer Lift Station, PNWI LLC acquires and proposes for development other real properties within the Whiskey Ridge Sewer Lift Station's benefitted area, this Agreement shall be amended to include said properties to the extent that any Eligible Expenses have not been reimbursed.

5. Upon acceptance of the Whiskey Ridge Lift Station and Force Main, PNWI LLC will submit a written request to the City for a recovery contract in accordance with MMC 14.07.090 and RCW 35.91.020 for all remaining Eligible Expenses 1 after the total amount of credits is determined under Section II.D.1. The City will process this request according to law. This recovery contract shall be substantially in the form provided in Exhibit E. Notwithstanding the form in Exhibit E, this recovery contract shall provide for extensions of the contract to the fullest extent contemplated by RCW 35.91.020(4).

6. PNWI LLC will apply for a separate recovery contract in accordance with MMC 14.07.090 and RCW 35.91.020 for recovery of all Eligible Expenses 2 (the "Gravity Main Recovery Contract"). The Gravity Main Recovery Contract shall be substantially in the form provided in Exhibit E. The Gravity Main Recovery Contract shall apply to all properties within the Benefitted Area utilizing or connecting to the Gravity Main for which credit was not received under Section II.D.4. Notwithstanding the form in Exhibit E, this recovery contract shall provide for extensions of the contract to the fullest extent contemplated by RCW 35.91.020(4).

**E. General Clauses.**

1. Authority. Each of the Parties covenant, represent, and warrant that such party has all authority necessary to execute this Agreement and to bind the party for which it is signing and that no consent or approval of any other person, entity, or third party is required or necessary for

this Agreement to be so binding. Upon full and mutual execution, this Agreement will be fully binding and enforceable in accordance with its terms.

2. Review of Cost Submissions. Any and all cost reports and expense submittals by PNWI LLC pursuant to this Agreement shall be deemed accepted and approved by the City thirty (30) days after submittal unless, prior to expiration of this time period, the City indicates in writing (i) that certain costs and/or expenses are being disputed, and (ii) provides an itemized list of the costs and/or expenses being disputed and a detailed explanation for why each such item is in dispute. The Parties shall meet and confer within ten (10) calendar days of any such disputed list being provided to PNWI LLC to discuss resolution.

3. Cooperation. The Parties agree to execute and deliver all necessary documents and to cooperate and perform all additional actions that may be reasonably necessary to carry out the provisions of, and to give full force and effect to, the terms and intent of this Agreement.

4. Joint Effort. This Agreement was mutually negotiated and has been prepared through a joint effort of the Parties and shall be not be construed more severely against one party than against the other party.

5. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to conflict of law principles. Any dispute regarding this Agreement shall be heard in the Superior Court for Snohomish County.

6. Severability. Should any part of this Agreement be declared invalid, illegal, or unenforceable in any respect, such declaration shall not affect the validity, legality, or enforceability of any remaining terms of the Agreement, which shall remain in full force and effect. It is hereby declared the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part or parts that may later be determined to be invalid, illegal, or unenforceable.

7. Binding Effect. The terms, warranties, and releases contained in this Agreement shall run with the land described in this Agreement and shall inure to the benefit of, and shall be binding upon, each of the Parties to this Agreement and to each of their related entities, parent companies, subsidiaries, affiliates, divisions, owners, members, partners, shareholders, officers, directors, employees, agents, heirs, attorneys, assigns, successors (including without limitation any future owners or tenants of the real property described in this Agreement), marital communities, insurers, sureties and bonds.

8. Counterparts; PDF Signatures. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. A PDF or electronically transmitted signature on this Agreement shall be binding as an original.

9. Entire Agreement and Integration. This Agreement and the exhibits attached hereto contain the entire agreement and understanding between the Parties with regard to the subject

matter hereof and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral. The Parties acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty as an inducement to execute this Agreement not otherwise contained herein. This Agreement may not be supplemented, modified, or amended in any manner except by written agreement executed by the Parties.

10. Assignment. Any and all rights PNWI LLC has under this Agreement may be assigned in whole or in part to any other party with the written consent of and prior notice to, the City. The consent of the City to the assignment will not be unreasonably withheld.

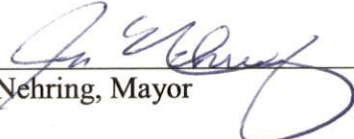
11. Third-Party Beneficiaries. The City and PNWI are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

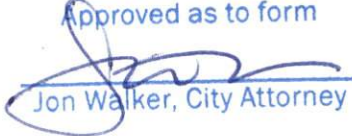
12. Construction and Headings. The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or affect the interpretation or construction of any term or provision of this Agreement.

13. Mediation. If a dispute as to this Agreement should arise, and the Parties are unable to resolve the same pursuant to any other provisions herein, the Parties shall participate in mediation prior to filing any lawsuit in a court of competent jurisdiction. The Parties shall select a mutually agreeable mediator, or if the Parties cannot agree, shall each select a mediator who will be tasked with choosing a neutral mediator on their behalf. The duty to engage in mediation shall be initiated by the written demand of either Party, and shall occur no later than 30 days after such demand, or the soonest date available thereafter for the chosen mediator.

**WHEREAS, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE LAST DATE EXECUTED BELOW.**

**ON BEHALF OF THE CITY OF MARYSVILLE, WA, A MUNICIPAL CORPORATION:**

  
\_\_\_\_\_  
Jon Nehring, Mayor

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

**ON BEHALF OF PNW INVESTORS LLC, A WASHINGTON LIMITED LIABILITY COMPANY:**

  
\_\_\_\_\_  
Michael Reid, Its Managing Member

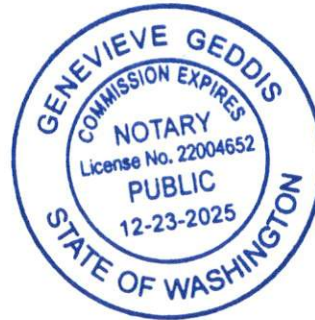
State of Washington  
County of Snohomish :

On this 8 day of April, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared before me Jon Nehring, in his capacity as the City Mayor of the City of Marysville, WA that executed the foregoing instrument, and acknowledged that she signed the same as a free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument.

SUBSCRIBED AND SWORN to before me this 8 day of April, 2022.

G. Geddiss  
Name: Genevieve Geddiss

NOTARY PUBLIC in and for the State of  
Washington, residing at Lake Stevens, WA  
My commission expires 12-23-2025  
State of Washington  
County of Snohomish :



On this 30 day of MARCH, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared before me Michael Reid, to me known to be the Manager of PNW Investors LLC that executed the foregoing instrument, and acknowledged that he signed the same as a free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

SUBSCRIBED AND SWORN to before me this 30 day of MARCH, 2022.

Janina Meeks  
Name: JANINA MEEKS

NOTARY PUBLIC in and for the State of  
Washington, residing at MONROE, WA  
My commission expires 03-04-2025



**EXHIBIT A:**

**LEGAL DESCRIPTION OF COLVIN PROPERTY**

Street Address of Properties: 3920 Densmore Road, Marysville, Washington 98270

Legal Description of Properties:

Snohomish County Tax Parcel #0059070002-3501 (comprising approximately 1.00 acres) and Snohomish County Tax Parcel #0059070002-4400 (comprising approximately 2.45 acres) and Snohomish County Tax Parcel #0059070002-3505 (comprising approximately 1.30 acres) and together legally described as:

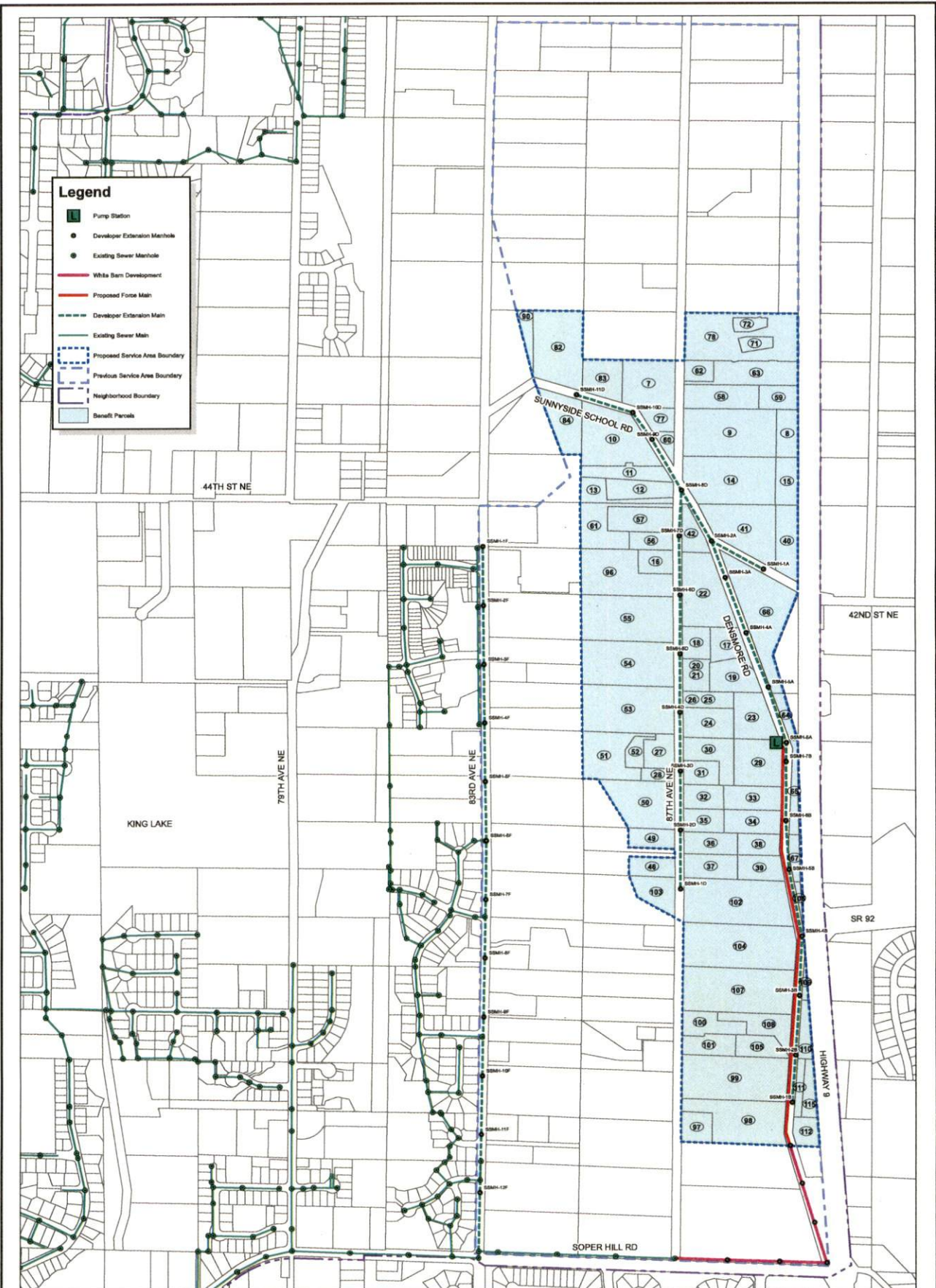
Tracts 235 and 244, Sunnyside Five Acre Tracts, as per plat recorded in Volume 7 of Plats, Page 19, records of Snohomish County, State of Washington.

EXCEPT the West 340 feet thereof as measured along the North line of said Tract 235.

Situate in Section 36, Township 30 North, Range 05 East, W.M., in Snohomish County, State of Washington.



**EXHIBIT B:**  
**MAP OF PROPERTIES BENEFITTED BY LIFT STATION**



J:\Data\REID\21-0211\GIS\Map\Figure 3 Alternative 2.mxd By:brookway Plot Date: 1/25/2022 Coordinate System: NAD 1983 StatePlane Washington North FIPS 4601 Feet

**NORTH**

**RH2**

1 inch = 300 feet

0 150 300 600 Feet

Map is not to scale  
If scalebar is not 2"

EST. 1889

**MARYSVILLE**

WASHINGTON

**City of Marysville**

**Proposed Whiskey Ridge Pump Station Collection System**

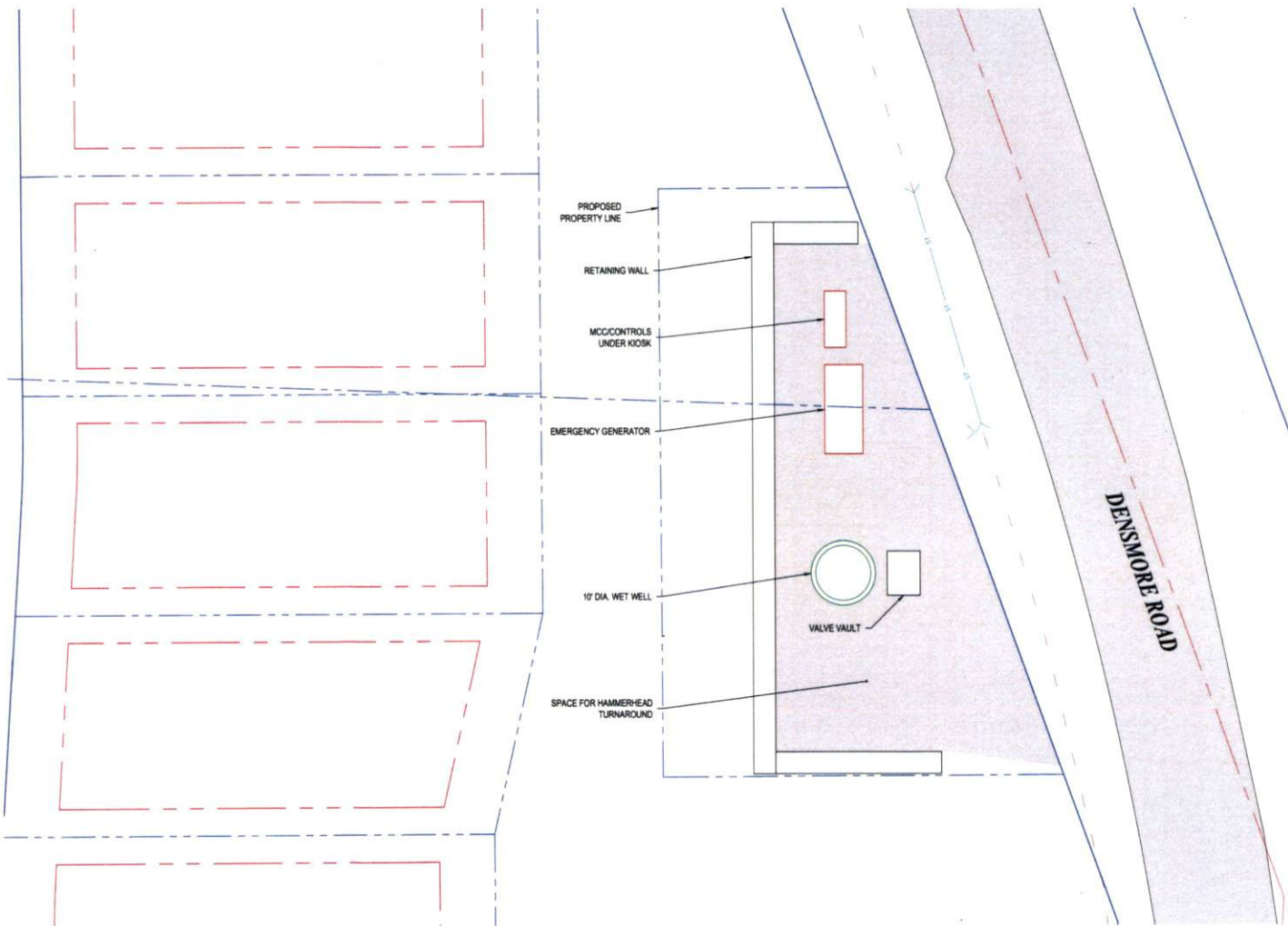
**Vicinity Map**

This map is a graphic representation derived from the City of Marysville Geographic Information System. It was designed and intended for City of Marysville staff use only. It is not guaranteed to survey accuracy. This map is based on the best information available on the date shown on this map.

Any reproduction or sale of this map, or portions thereof, is prohibited without express written authorization by the City of Marysville.

This material is owned and copyrighted by the City of Marysville.

**EXHIBIT C:**  
**PRELIMINARY DESIGN OF LIFT STATION TRACT**



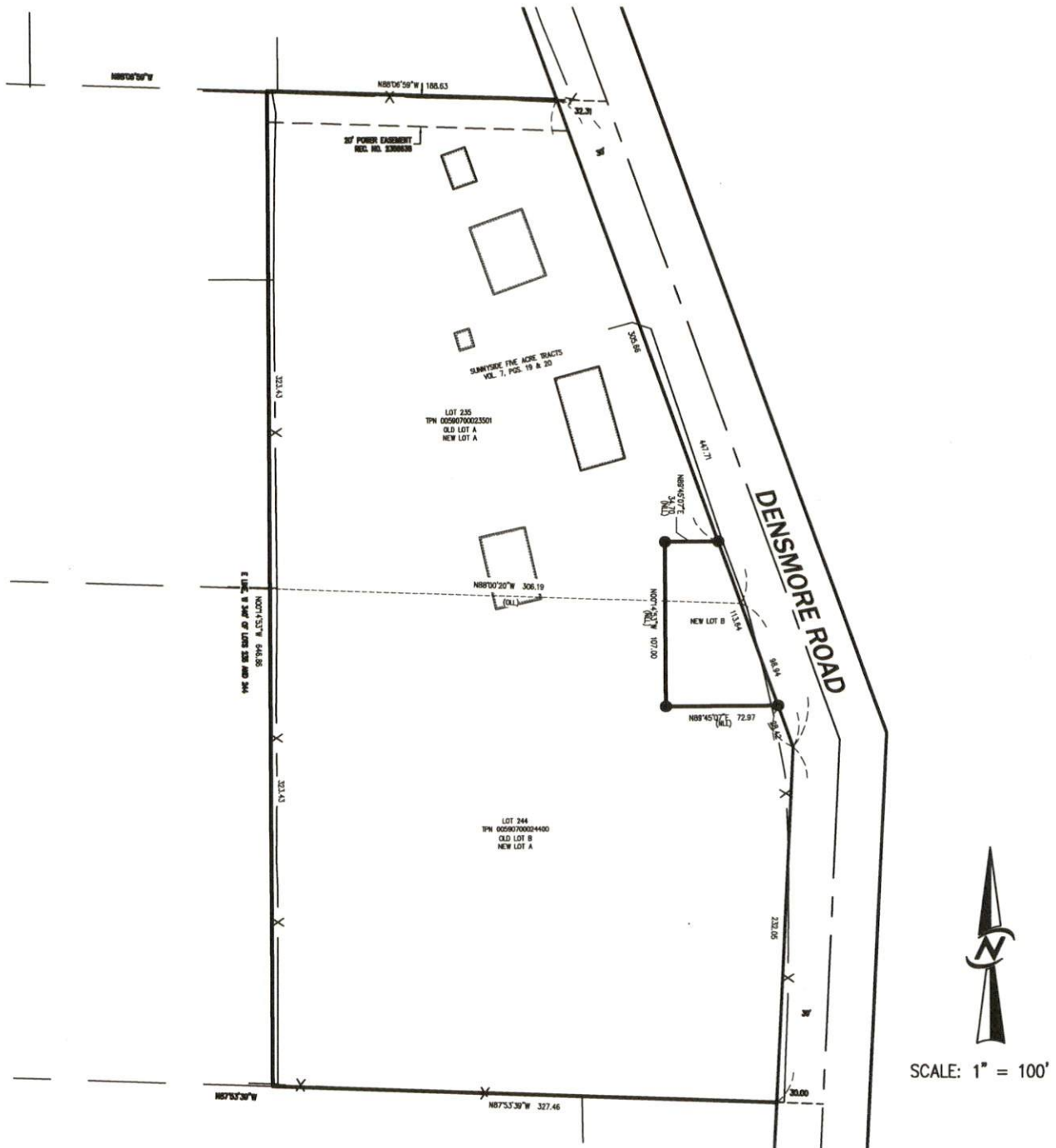
**WHISKEY RIDGE PUMP STATION PRELIMINARY SITE PLAN**

1" = 10'

<b>PRELIMINARY PROPOSED SITE PLAN</b>	
<b>WHISKEY RIDGE PUMP STATION</b>	
	<p>SCALE SHOWN</p> <p>1" = 10'</p> <p>SHOW FULL SCALE WHEN DIMENSIONS &gt; 10'</p>
<p>PLT DATE: 3/16/2011          FILE PATH: C:\GEMAR\GIS\KIP\00\krip0001.dwg</p>	

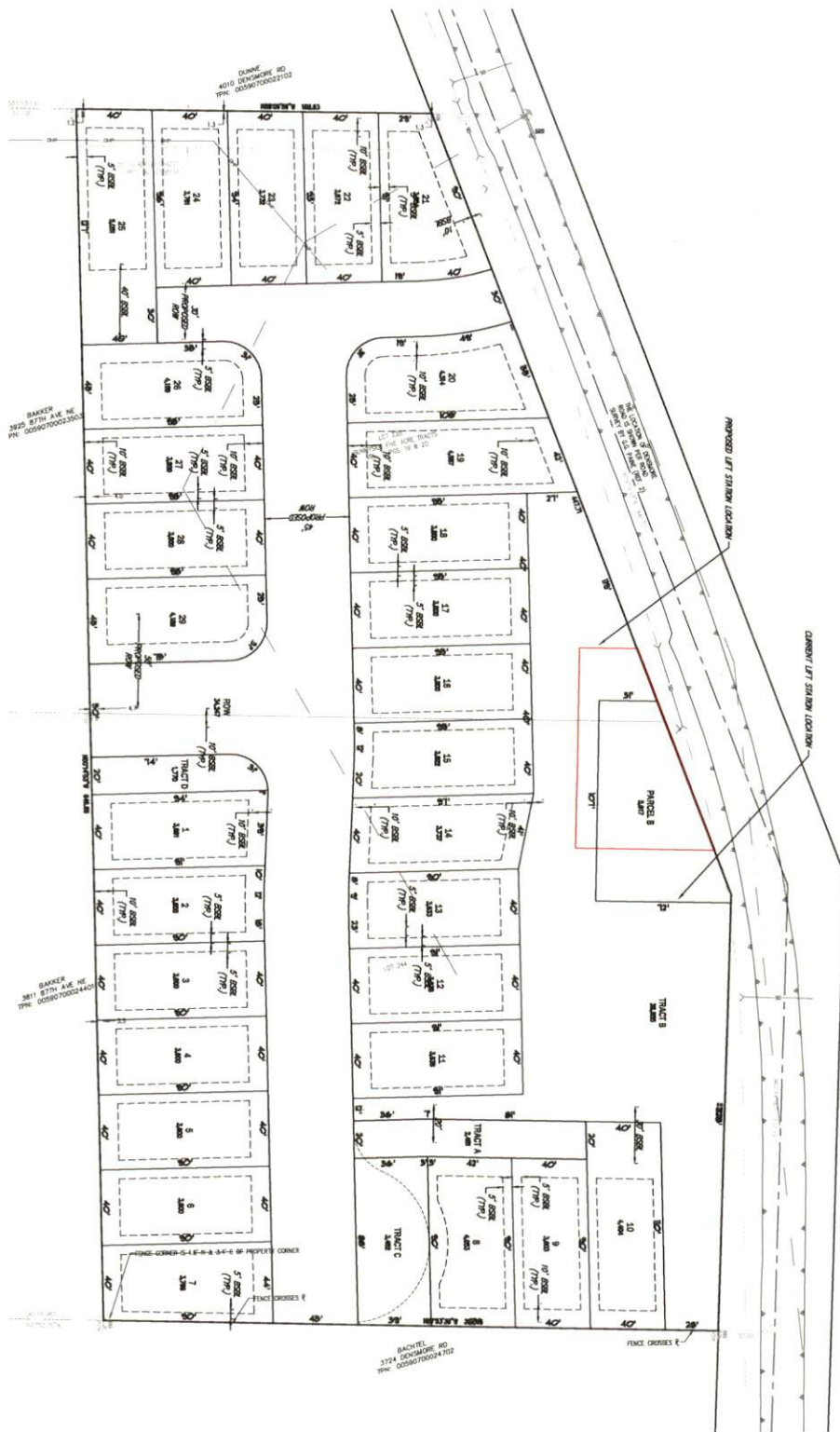
**EXHIBIT D:**  
**MAP OF BOUNDARY LINE ADJUSTMENT FOR CREATION OF LIFT STATION**  
**TRACT**

**EXHIBIT D  
MAP OF BOUNDARY LINE ADJUSTMENT  
FOR CREATION OF LIFT STATION TRACT**

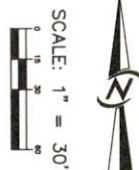


 <p><b>CORE</b> DESIGN</p> <p>12100 NE 195th St, Suite 300 Bothell, Washington 98011 425.885.7877</p>	<p>CIVIL ENGINEERING LANDSCAPE ARCHITECTURE PLANNING SURVEYING</p>
	<p>COLVIN BOUNDARY LINE ADJUSTMENT</p>

<p>A PORTION OF THE: NW1/4 OF THE NE1/4, SEC. 1, T. 29 N., R. 5 E., W.M.</p>
<p>TAX LOT NUMBERS: 00590700023501 AND 00590700024400</p>
<p>CITY OF MARYSVILLE, SNOHOMISH COUNTY, WASHINGTON</p>



SW 1/4 OF THE SW 1/4 SEC. 04, TWP. 29 N., RGE. 5 E., W.M.



DATE	JANUARY 2022
DESIGNED	PRESTON J. LONGSON, P.E.
DRAWN	CHUCK FEMLING
APPROVED	PRESTON J. LONGSON, P.E.
	BENJAMIN MAZED, A.I.C.P. PROJECT MANAGER

**PRELIMINARY PLAT  
COLVIN PRD  
PNW INVESTORS, LLC**  
PO BOX 1930  
WOODRIDGE, WA 98072

**CORE DESIGN**  
ENGINEERING • PLANNING • SURVEYING

12100 NE 195th St, Suite 300  
Bothell, Washington 98011  
425.885.7877 Fax 425.885.7963

NO.	REVISION	DATE

PROJECT NUMBER  
**21397**

SHEET  
**C1.03**  
OF  
**XX**

**EXHIBIT E:**  
**RECOVERY CONTRACT TEMPLATE**



**After Recording Return to:**

CITY OF MARYSVILLE  
1049 STATE AVENUE  
MARYSVILLE, WA 98270

**CITY OF MARYSVILLE  
CONTRACT FOR RECOVERY OF UTILITY CONSTRUCTION COSTS  
CONTRACT NO. RC22-XXX**

THIS AGREEMENT, entered into by and between the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "City," and

Name:  
**Applicant Name**

Address:  
**Address - Line 1**  
**Address - Line 2**

hereinafter referred to as "Developer."

**WITNESSETH:**

WHEREAS, the Developer has constructed and installed a water system, including a(n) 8-inch line and appurtenances situated as follows:

**Approximately XXX LF of 8" ductile iron water main located at [LOCATION], to serve [PROJECT NAME & APN].**

WHEREAS, the Developer has conveyed said system by Bill of Sale to the City and the City has accepted ownership and maintenance of the same under its sole jurisdiction, subject to a one-year warranty by the Developer; and

WHEREAS, the parties desire to enter into a contract pursuant to Chapter 35.91 RCW providing for reimbursement to the Developer for its construction and installation costs by subsequent users of the system; NOW, THEREFORE,

IN CONSIDERATION of the covenants bargained for and given in exchange, the parties mutually agree as follows:

1. The Developer has furnished or shall furnish the City with record drawings of the installation of the above-referenced system on mylar, 24" x 36" in size, together with receipted bills showing that all charges and expenses incurred in connection with the installation have been paid.

RECOVERY CONTRACT - 1  
Form Rev. 9/2020

2. The Developer's costs for construction and installation of said utility lines and facilities, including engineering fees, were **\$XX,XXX.XX**, which have been paid in full by the Developer.

3. The real property described below (or described in the exhibit attached hereto) is benefited by the installation of said utilities, and is subject to the lien created by this Contract:

**[LEGAL (OR OTHER) DESCRIPTION]**

4. The proportionate share of the total cost of the utility lines which may be fairly attributed to serving and benefiting the above-described property, as a whole, rather than serving and benefiting the property of the Developer, is **\$XX,XXX.XX**.

5. For a period not to exceed twenty (20) years from the date of this agreement, the City agrees to require the owners of the above-described real estate who hereafter connect to the above-described utility system to pay a fair pro rata share of the cost referred to in paragraph 4 above. This fair pro-rata share shall be determined [PRO-RATA SHARE METHOD, AS DETERMINED BY THE CITY] This, however, does not include any other capital improvement charges levied by the City. No property extending beyond the terminus of the above-described system, as of the date said system has been accepted by the City, shall be served by said system unless there is an extension from said terminus which is constructed and financed in accordance with state and local laws and ordinances.

6. The fair pro-rata share is hereby established to be **\$XX.XX** per [METHOD OF PRO-RATA SHARE] of benefiting properties.

7. No person, firm or corporation shall be granted a permit or be authorized by the City to connect to or use the above-described utility system during said twenty-year period without first meeting the following conditions:

- a. If the property is not within the City limits, the owner thereof must sign an annexation covenant as required by City ordinance.
- b. Payment of all applicable connection charges, fees and assessments regularly imposed by City ordinance.
- c. Payment of the recovery charge referred to in this Contract.
- d. Compliance with all requirements for utility connections which are regularly imposed by City ordinance.

8. The City shall deduct a fee of \$100.00 for each utility connection, said fee to be kept by the City to cover the cost of administering this Contract. The City shall then disburse the remaining balance which is collected for each connection to the Developer within thirty (30) days of receipt thereof. If the Developer shall hereafter assign its rights herein, the City shall be provided with a signed copy of such assignment by the Developer. The Developer hereby waives any claim which it or its successors or assigns may have if the City negligently fails to collect a reimbursement charge from a property owner connecting to the utility system.

9. At the end of the twenty-year period, which shall commence upon the recording of this agreement, this agreement shall terminate in and of itself, notwithstanding that the full amount provided for herein may not have been recovered. Connection charges subsequent to the

RECOVERY CONTRACT - 2  
Form Rev. 9/2020

termination of this agreement shall be governed by ordinance of the City of Marysville, and all such charges shall be paid to the City for its use and benefit.

10. The provisions of this Contract shall not be construed as establishing the City as a public utility in the areas not already connected to the utility system; nor shall this Contract be construed as establishing express or implied rights for any property owner to connect to the City's utility system without first qualifying for such connection by compliance with all applicable City codes and ordinances.

11. The Developer agrees to hold the City harmless from any and all liability resulting from errors in the legal descriptions contained herein, and the City is relieved of all responsibility under this agreement for collecting on parcels not properly included in the legal descriptions set forth in Section 3 of this contract.

12. This Contract shall be recorded in the records of the Snohomish County Auditor, and it shall be binding upon the parties, their heirs, successors and assigns. The Developer agrees to reimburse the City for the recording fee and for all legal fees and other costs associated with the execution and recordation of the agreement.

13. Every two years from the date this contract is executed, the Developer must provide the City with information regarding Developer's current contract name, address, and telephone number. If the Developer fails to comply with the notification requirements of this paragraph within sixty days of the specified time, then the City may collect any reimbursement funds owed to the Developer under the contract. Such funds must be deposited in the City's capital fund.

ATTEST:

THE CITY OF MARYSVILLE:

By: \_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

DEVELOPER

By: \_\_\_\_\_  
CITY ATTORNEY

By: \_\_\_\_\_  
, OWNER

**For Mayor:**

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF SNOHOMISH        )

I certify that I know or have satisfactory evidence that JON NEHRING 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 Mayor of the City of Marysville, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
\_\_\_\_\_  
(Legibly print name of notary)  
NOTARY PUBLIC in and for the State  
of Washington, residing at  
\_\_\_\_\_  
My commission expires \_\_\_\_\_

**For Individual:**

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF SNOHOMISH        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that HE/SHE signed this instrument and acknowledged it to be HIS/HER free and voluntary act for the uses and purposes mentioned in the instrument.

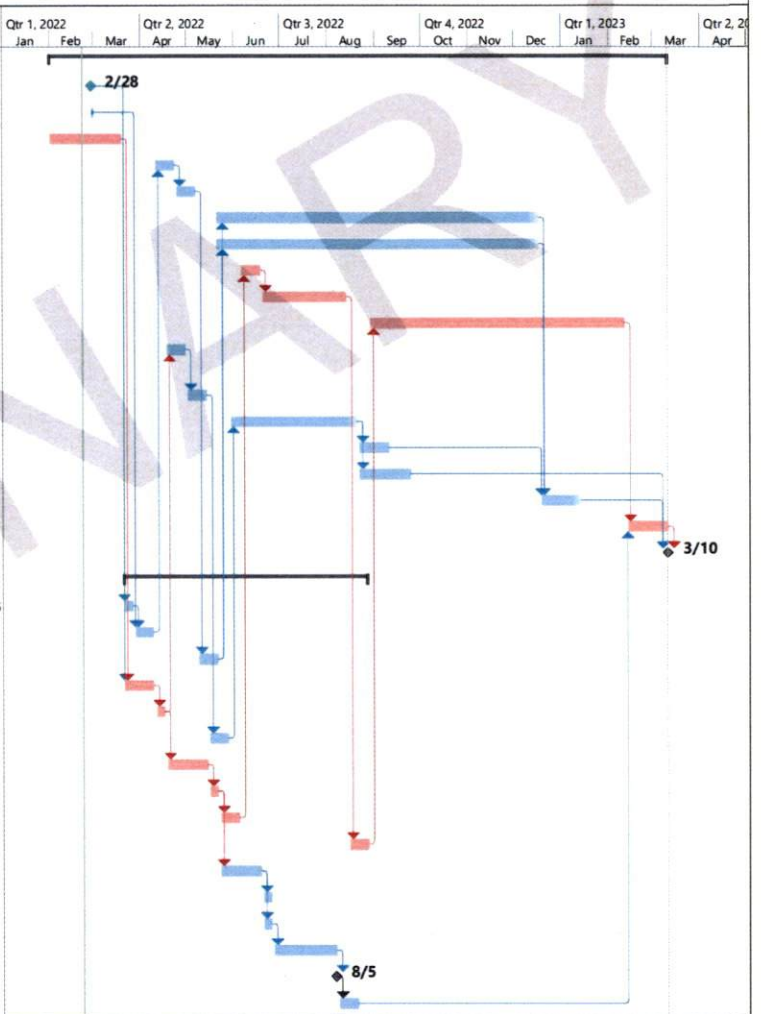
DATED this \_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
(Legibly print name of notary)  
NOTARY PUBLIC in and for the State  
of Washington, residing at  
\_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT F**  
**RH2 LLC SCHEDULE**

Whiskey Ridge Wastewater Pump Station Schedule

ID	Task Name	Duration	Start	Finish	Predecessors	Timeline																
						Qtr 1, 2022	Qtr 2, 2022	Qtr 3, 2022	Qtr 4, 2022	Qtr 1, 2023	Qtr 2, 2023											
						Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
1	<b>Developer Responsibilities</b>	<b>289 days</b>	<b>Tue 2/1/22</b>	<b>Fri 3/10/23</b>																		
2	Council Approval	0 days	Mon 2/28/22	Mon 2/28/22																		
3	Survey	1 day	Mon 2/28/22	Mon 2/28/22																		
4	Geotechnical Investigation	34 days	Tue 2/1/22	Fri 3/18/22																		
5	Solicit Bids and Sign Contract for Pumps and Emergency Generator	10 days	Mon 4/11/22	Fri 4/22/22	22																	
6	Preparation of Pumps and Emergency Generator Submittals	10 days	Mon 4/25/22	Fri 5/6/22	5																	
7	Pump Fabrication and Shipping	210 edays	Fri 5/20/22	Fri 12/16/22	23																	
8	Emergency Generator Fabrication and Shipping	210 edays	Fri 5/20/22	Fri 12/16/22	23																	
9	Solicit Bids and Sign Contract for Electrical and Control Panels	10 days	Mon 6/6/22	Fri 6/17/22	29																	
10	Preparation of Electrical and Control Panel Submittals	40 days	Mon 6/20/22	Fri 8/12/22	9																	
11	Electrical and Control Panel Fabrication and Shipping	120 days	Mon 8/29/22	Fri 2/10/23	30																	
12	Solicit Bids and Sign Contract for Pipe, Underground Structures, Valves, and Appurtenances	10 days	Mon 4/18/22	Fri 4/29/22	25																	
13	Preparation of Pipe, Underground Structures, Valves, and Appurtenances Submittals	10 days	Mon 5/2/22	Fri 5/13/22	12																	
14	Fabrication and Shipping of Pipe, Underground Structures, Valves, and Appurtenances	60 days	Mon 5/30/22	Fri 8/19/22	26																	
15	Installation of Underground Structures (Wet well, Valve Pit) and Site Work	15 days	Mon 8/22/22	Fri 9/9/22	14																	
16	Force Main Construction	25 days	Mon 8/22/22	Fri 9/23/22	14																	
17	Installation of Pumps and Emergency Generator	20 days	Mon 12/19/22	Fri 1/13/23	7,8,15																	
18	Installation of Electrical and Control Panels, Station Commissioning	20 days	Mon 2/13/23	Fri 3/10/23	11,36																	
19	Functional Completion	0 days	Fri 3/10/23	Fri 3/10/23	18,16,17																	
20	<b>RH2 Design</b>	<b>115 days</b>	<b>Mon 3/21/22</b>	<b>Fri 8/26/22</b>																		
21	Finalize Hydraulic Loading	5 days	Mon 3/21/22	Fri 3/25/22	2FS+15 days																	
22	Prepare Purchase Specification for Pumps and Emergency Generator	10 days	Mon 3/28/22	Fri 4/8/22	3,21																	
23	Submittal Review (Pumps, Generator)	10 days	Mon 5/9/22	Fri 5/20/22	6																	
24	30% Plans	15 days	Mon 3/21/22	Fri 4/8/22	3,4																	
25	30% Client Review and Comment	5 days	Mon 4/11/22	Fri 4/15/22	24																	
26	Submittal Review (Pipe, Underground Structures, Valves, and Appurtenances)	10 days	Mon 5/16/22	Fri 5/27/22	13																	
27	60% Plans	20 days	Mon 4/18/22	Fri 5/13/22	25																	
28	60% Client Review and Comment	5 days	Mon 5/16/22	Fri 5/20/22	27																	
29	Prepare Purchase Specification for Electrical and Control Panels	10 days	Mon 5/23/22	Fri 6/3/22	28																	
30	Submittal Review (Electrical Cabinets)	10 days	Mon 8/15/22	Fri 8/26/22	10																	
31	90% Plans	20 days	Mon 5/23/22	Fri 6/17/22	28																	
32	90% Client Review and Comment	5 days	Mon 6/20/22	Fri 6/24/22	31																	
33	Building Permit Preparation	5 days	Mon 6/20/22	Fri 6/24/22	31																	
34	Building Permit Review	30 days	Mon 6/27/22	Fri 8/5/22	33																	
35	Permit Approval	0 days	Fri 8/5/22	Fri 8/5/22	34																	
36	Final Plans and Specifications	10 days	Mon 8/8/22	Fri 8/19/22	35																	



Legend	Task	Manual Task	Manual Summary Rollup	Manual Summary	Start-only	Finish-only	External Tasks	External Milestone	Deadline	Critical	Critical Split	Progress	Manual Progress
	Project Summary	Manual Task	Manual Summary Rollup	Manual Summary	Start-only	Finish-only	External Tasks	External Milestone	Deadline	Critical	Critical Split	Progress	Manual Progress
	Split	Duration-only	Manual Summary	Manual Summary	Start-only	Finish-only	External Tasks	External Milestone	Deadline	Critical	Critical Split	Progress	Manual Progress
	Inactive Task	Manual Task	Manual Summary Rollup	Manual Summary	Start-only	Finish-only	External Tasks	External Milestone	Deadline	Critical	Critical Split	Progress	Manual Progress
	Inactive Milestone	Manual Task	Manual Summary Rollup	Manual Summary	Start-only	Finish-only	External Tasks	External Milestone	Deadline	Critical	Critical Split	Progress	Manual Progress
	Inactive Summary	Manual Task	Manual Summary Rollup	Manual Summary	Start-only	Finish-only	External Tasks	External Milestone	Deadline	Critical	Critical Split	Progress	Manual Progress

Tue 2/22/22