

## WILDRICK RIGHT-OF-ENTRY and MAINTENANCE AGREEMENT

THIS AGREEMENT, is dated this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between Linton Wildrick (herein referred to as "OWNER"), and the CITY OF TUMWATER (herein referred to as "CITY"), a Washington municipal corporation.

### RECITALS:

- A. **WHEREAS**, OWNER owns property, more particularly described in Exhibit A attached hereto and by this reference incorporated herein ("Property"), located at 1627 Linwood Avenue SW, to which the CITY requests access to assist in maintaining beaver mitigation devices and equipment affecting City rights-of-way and public properties;
- B. **WHEREAS**, it is the duty of the OWNER to permit adequate drainage sufficient to allow a natural drain way to accommodate ordinary high water, and impedance or obstruction of such flow imposes strict liability upon a downstream owner for damages to an upstream owner caused by obstructed floodwaters;
- C. **WHEREAS**, OWNER agrees to allow CITY access across and over the Property through the Right of Entry area depicted in Exhibit B, hereinafter referred to as the "Project Site".

**NOW, THEREFORE**, in consideration of the terms, covenants, and conditions contained herein, the parties agree as follows:

- 1. **Purpose.** CITY and its agents, designees and/or assigns shall have the right, at such times as deemed necessary by CITY, to enter upon the Project Site to construct, install, repair, replace, inspect, remove, and maintain beaver mitigation structures (culvert exclusion device, flexible leveler and beaver dam analogues) and all appurtenances thereto for the purpose of controlling impacts to City infrastructure and roads related to beaver activity ("Project"),.
- 2. **Access.** CITY shall have the right of access from CITY right-of-way across and over the Property described in Exhibit A to the Project Site described in Exhibit B to enable CITY to exercise its rights hereunder. Except in the event of an emergency, CITY shall attempt to notify OWNER at least 48 hours in advance of Project activity to coordinate access for vehicles and equipment. In the event of an emergency, the CITY shall notify OWNER as soon as possible after the Project activity. In the event the OWNER is unavailable to be present during beaver mitigation activities, CITY shall be present as an authorized agent as defined in the Hydraulics Project Approval (HPA) Permit attached as Exhibit C.

- 3. Permit Compliance.** It is the OWNER'S responsibility to obtain and maintain a HPA prior to conducting in-water activities. The CITY shall assist the OWNER in preparing the required documentation for the HPA for this Project and act as an Authorized Agent as defined in the HPA. The CITY and OWNER shall comply with all requirements of the HPA issued for the Project in accordance with WA Department of Fish & Wildlife regulations referenced in the HPA for in-water work including modification of beaver dams and beaver mitigation device installation and maintenance. The CITY cannot authorize dam modification or beaver management beyond what is addressed in the permit.
- 4. Maintenance.** The OWNER or designee shall monitor beaver activity for the duration of the permit coverage period and will be responsible for inspections and routine maintenance such as, ensuring unimpeded access to the beaver mitigation devices and debris removal. OWNER may request technical assistance from CITY at any time. CITY shall conduct maintenance to eliminate obstructions related to beaver activity and beaver management devices in the Public Right-of-Way along Linwood Avenue and maintain the beaver management device(s) in the Project area.
- 5. OWNER's Use of Project Site.** The parties acknowledge and agree that the access herein granted is non-exclusive, and the OWNER shall be entitled at all times to travel over the Project Site, and to conduct any and all activities which they may desire within the Project Site provided they do not interfere with the purpose of this Agreement and CITY's use of the Project Site. OWNER may undertake any ordinary improvements to the landscaping of the Project Site, provided that no obstructions shall be placed thereon, which would be unreasonably expensive or impractical for CITY to remove and restore.
- 6. Indemnification.** Each party, and its successors and assigns, shall release, indemnify, defend, and hold the other party, and its successors and assigns, harmless from and against any and all loss, costs, claims, suits, liabilities, causes of action, and expenses of any kind or nature (including reasonable attorneys' fees) arising out of, related to, or incurred by reason of its own negligence in the performance of rights and obligations hereunder. Performance under this agreement shall be exercised in accordance with the requirements of all applicable statutes, orders, rules, and regulations of any public authority having jurisdiction.

7. **Successors and Assigns.** The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns for the duration of this Agreement.
8. **Duration.** This Agreement shall be in full force and effect upon execution by the parties and shall remain in effect until the expiration of the HPA on April 19, 2026. The termination or extension of this Agreement may otherwise occur at any other time by signed agreement of both parties.

*\*\*\*Signatures on the following page\*\*\**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

City

Owner

\_\_\_\_\_  
Debbie Sullivan, Mayor  
555 Israel Road SW  
Tumwater, WA 98501  
Date signed:

\_\_\_\_\_  
Linton Wildrick  
1627 Linwood Ave. SW  
Tumwater, WA 98512  
Date signed:

ATTEST:

\_\_\_\_\_  
Melody Valiant, City Clerk

AS APPROVED TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

State of Washington    )  
                                      ) ss  
County of \_\_\_\_\_)

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, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the

\_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_(Signature)

Notary Public in and for the State of Washington

My appointment expires \_\_\_\_\_

State of Washington    )  
                                      ) ss  
County of \_\_\_\_\_)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ [Name of Person] 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: \_\_\_\_\_

\_\_\_\_\_(Signature)

Notary Public in and for the State of Washington

My appointment expires \_\_\_\_\_



## EXHIBIT A – PROPERTY

The following legal descriptions represent the parcels through which the OWNER authorizes the CITY to access under this Right of Entry Agreement:

### **Wildrick Property**

**Parcel No. 80700000100**

1627 Linwood Avenue SW

Tumwater, WA 98512



## EXHIBIT B – PROJECT SITE

The following description represents the general location of beaver activity Project Site within the Wildrick Property:

The Northwest corner of the property in the riparian area of the unnamed tributary of Percival Creek.





## EXHIBIT C - HYDRAULICS PROJECTS APPROVAL PERMIT



### HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: April 21, 2021  
Project End Date: April 19, 2026

Permit Number: 2021-6-169+01  
FPA/Public Notice Number: N/A  
Application ID: 24690

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
City of Tumwater ATTENTION: David Kangiser 555 Israel Rd SW Tumwater, WA 98501-6515	City of Tumwater Stormwater Program ATTENTION: Dave Kangiser 555 Israel Rd. SW Tumwater, WA 98501

**Project Name:** Linwood Ave Beaver Management  
**Project Description:** The project is to notch an existing beaver dam and install a flexible leveler and culvert protection device.

#### PROVISIONS

- 1. TIMING LIMITATION:** Work for this project may occur at any time of year.
- 2. INVASIVE SPECIES CONTROL:** Follow Method 1 for low risk locations (i.e. clean/drain/dry). Thoroughly remove visible dirt and debris from all equipment and gear (including drive mechanisms, wheels, tires, tracks, buckets, and undercarriage) before arriving and leaving the job site to prevent the transport and introduction of invasive species. You can find this and additional information in the Washington Department of Fish and Wildlife's "Invasive Species Management Protocols", available online at <https://wdfw.wa.gov/species-habitats/invasive/prevention>.
- 3. APPROVED PLANS:** You must accomplish the work per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife, entitled "WDFW Flex Leveler.pdf" received on 3/30/2021, except as modified by this Hydraulic Project Approval. You must have a copy of these plans available on site during all phases of the project construction.

Approved actions under this HPA are:

1. Installation of pond water level control device.
2. Maintenance of these devices (cleaning).
3. Periodic notching of beaver dam.
4. Optional removal of these devices if intended results are not achieved.

**4. NOTIFICATION:** You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work. The notification must include the permittee's name, project location, starting date, and the Hydraulic Project Approval permit number.

**5. FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

#### **STAGING, JOB SITE ACCESS, AND EQUIPMENT**

6. Limit the removal of native bankline vegetation to the minimum amount needed to construct the project.



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7. Limit the use of equipment waterward of the ordinary high water line to hand tools only.
8. Use tarps or other methods to prevent treated wood, sawdust, trimmings, drill shavings and other debris from contacting the bed or waters of the state.
9. Do not use wood treated with oil-type preservatives (creosote, pentachlorophenol) in any hydraulic project. You may use wood treated with waterborne preservatives (ACZA, ACQ) provided the wood is approved by the Western Wood Preservers Institute for use in the aquatic environment. Any use of treated wood in the aquatic environment must follow guidelines and best management practices available at [www.wwpinstitute.org](http://www.wwpinstitute.org).

### BEAVER DAM MANAGEMENT

10. Restrict beaver dam alteration to that necessary to alleviate flooding conditions.
11. When notching, the notch must not extend below the height of the accumulated sediment behind the dam.
12. Remove the dam materials gradually to allow the water to release slowly, not more than 1 inch drop in water level per hour.
13. During and immediately after notching, monitor upstream and downstream for stranded fish in isolated pools. Capture and safely move all stranded or isolated fish to the nearest free-flowing water.
14. To prevent bank erosion and flooding of adjacent properties, the breach in the beaver dam must not be wider than the original stream channel as measured by the Washington Department of Fish and Wildlife. The Washington Department of Fish and Wildlife may approve larger breaches on a case-by-case basis.
15. Do not disturb large woody material embedded in the stream bed or banks.
16. Install the water level control device so that during low flows (when beavers are more actively increasing dam height), the device passes flow to support fish passage downstream.
17. Install water level control devices in beaver ponds with pool depth of four feet or more. If the water level control device is installed in water shallower than four feet, the design must have an enclosure to protect the water intake from beaver activity.
18. Maintain the water level control device to ensure it functions as designed.
19. Maintain guards, grates, grills, fences, and other beaver exclusion devices to provide unimpeded fish passage and to prevent beavers from plugging the culvert or other water crossing structures.

### DEMobilization and Cleanup

20. Upon completion of the project, restore the disturbed bed, banks, and riparian zone to preproject condition to the extent possible.
21. Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.
22. If removing the water level control device or exclusion fencing do not relocate the structures within waters of the state. Remove and dispose of the devices in an upland area above the limits of anticipated floodwater.

LOCATION #1: Site Name: Linwood Ave  
1627 Linwood Ave. SW, Tumwater, WA 98512

WORK START: April 19, 2021

WORK END: April 19, 2026

WRIA

Waterbody:

Tributary to:

13 - Deschutes

Percival Creek

Budd Inlet





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<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	99	99	99	47.007160	-122.925277	Thurston

### Location #1 Driving Directions

From I-5 exit 102 turn West on Tropser Rd. Turn right on Lake Park Dr. Go to the 'T' at Linwood Ave and turn left. Property is about 1/4 mile on the left.

### APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.



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Olympia, WA 98504-3234  
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**MINOR MODIFICATIONS TO THIS HPA:** You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

**MAJOR MODIFICATIONS TO THIS HPA:** You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

### APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

**A. INFORMAL APPEALS:** WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.





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A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist      [Noll.Steinweg@dfw.wa.gov](mailto:Noll.Steinweg@dfw.wa.gov)  
Noll Steinweg      360-628-2173

for Director  
WDFW



**WASHINGTON STATE**  
**Aquatic Protection Permitting System**  
**(APPS)**

**Consent of Property Owner**


Use this attachment only if the applicant is not the property owner.  
Complete one attachment for each property owner impacted by the project. Upload completed form(s) in APPS or mail to the WDFW address provided by APPS during your application process.

AGENCY USE ONLY

Date received:

APPS ID #:

☐ My project occurs on public lands (Complete only items #1 and #2 below).

<b>1. APP ID# (See APPS application receipt)</b>			
24690			
<b>2. Business or Government Agency Name (if applicable)</b>			
<b>3. First Name</b>	<b>4. Middle Name</b>	<b>5. Last Name</b>	
Linton		Wildrick	
<b>6. Address 1</b>			
1627 Linwood Ave. SW			
<b>7. Address 2</b>			
<b>8. City</b>	<b>9. State</b>	<b>10. Zip</b>	
Tumwater	WA	98512	
<b>11. Primary Phone</b>	<b>12. Ext.</b>	<b>13. Mobile Phone</b>	<b>14. FAX</b>
(360) 561-5691		( )	( )
<b>15. E-mail</b>			
driftdory@outlook.com			
<b>16. Signature of Property Owner</b>			
I consent to Washington Department of Fish and Wildlife staff entering the property where the project is located to inspect the project site or any work related to the project.			
Linton Wildrick			
Printed Name		Signature	
Date Signed: 4-1-2021			



### Authorization of Agent

I hereby authorize the agent named below to act on my behalf in matters related to acquiring and executing activities associated with a Hydraulic Project Approval (WDFW permit).

Application ID: 24690

#### Agent Contact Information

Name: David Kangiser (please print)

Business Name: City of Tumwater (if applicable)

Email: dkangiser@ci.tumwater.wa.us

Phone: 360-754-4140

#### Applicant Contact Information

Name: Linton Wildrick (please print)

Business Name: \_\_\_\_\_ (if applicable)

Email: driftdory@outlook.com

Phone: 360-561-5691

Signature:  Date: March 31, 2012

If you do not want to upload this document to APPS, you need to submit this form to the following address:

Washington Department of Fish and Wildlife  
PO Box 43234  
Olympia WA 98504-3234