

**CITY OF TUMWATER  
WATER MAIN OVERSIZING AGREEMENT  
WITH COPPER RIDGE, LLC  
FOR THREE LAKES CROSSING 16” WATER MAIN EXTENSION**

**THIS AGREEMENT** is made and entered into in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF TUMWATER, hereinafter called the “CITY”, and Copper Ridge, LLC hereinafter called “DEVELOPER”.

**WITNESSETH:**

**WHEREAS**, DEVELOPER has caused to be constructed and installed a sixteen-inch (16”) water main, approximately two hundred forty-four feet (244’) in length lying within public right-of-way, as shown on the approved engineering plans dated May 8, 2023 on file with the CITY, Permit No. TUM-22-1101, at the sole cost and expense of DEVELOPER; and

**WHEREAS**, the CITY acknowledges and agrees that the capacity of said water line in excess of eight inches (8”) benefits other existing and future users of the CITY’S water system; and

**WHEREAS**, the parties acknowledge that the reasonable cost borne by DEVELOPER in oversizing said water main from eight inches (8”) to sixteen inches (16”) is \$47,632.00; and

**WHEREAS**, by this Agreement it is the intent of the parties that in consideration of DEVELOPER’S conveyance and dedication of said water main and appurtenances to the CITY as a portion of its water utility, the CITY shall pay to DEVELOPER the sum of \$47,632.00, which amounts to the difference in the cost for the oversizing of the water main on Henderson Blvd as part of Three Lakes Crossing more particularly set forth herein.

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

**Section 1. Conveyance Required.** DEVELOPER shall convey to the CITY, by way of a “Bill of Sale” form approved by City, the sixteen-inch (16”) water main, approximately two hundred forty-four linear feet in length lying along Henderson Blvd as shown on the approved engineering plans dated May 8, 2023, on file with the CITY, Permit No. TUM-22-1101.

**Section 2. Payment Terms.** Within thirty (30) days of said conveyance, the CITY shall pay over to DEVELOPER the sum of Forty-Seven Thousand Six Hundred Thirty-Two Dollars and 00/100 (\$47,632.00) as total consideration from the CITY for the utility oversizing which benefits other utility users of the CITY’S system. The parties agree that the CITY is under no obligation for any additional costs related to the oversizing beyond the \$47,632.00.

**Section 3. Prevailing Wages.** RCW 39.12 requires prevailing wages be paid on all public works. The DEVELOPER by executing this agreement hereby acknowledges and warrants that prevailing wages have or will be paid for any work that is subject to the requirements of RCW 39.12.

**Section 4. Hold Harmless Indemnification.** DEVELOPER shall indemnify and hold the CITY and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or DEVELOPER'S performance or failure to perform any aspect of this Agreement; provided, however that if such claims are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of DEVELOPER. DEVELOPER expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Title 51 RCW for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

**Section 5. Attorney fees and costs.** If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of the Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

**Section 6. Laws governing.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

**Section 7. Jurisdiction and Venue.** Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted and maintained only in any of the courts of competent jurisdictions in Thurston County, Washington.

**Section 8. Severability.** If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be

in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

**Section 9. Entire Agreement.** The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understanding not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

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

IN WITNESS WHEREOF, the parties have caused this contract to be executed the day and year first herein above written.

CITY:  
CITY OF TUMWATER  
555 Israel Road SW  
Tumwater, WA 98501

DEVELOPER:  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

\_\_\_\_\_  
Debbie Sullivan, Mayor

\_\_\_\_\_  
Signature (Notarized – see below)  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

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

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that \_\_\_\_\_(name) 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 \_\_\_\_\_(title) of Copper Ridge, LLC(company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
My appointment expires: \_\_\_\_\_