

**RIGHT-OF-ENTRY AGREEMENT
JASON HERRERA**

THIS AGREEMENT, is dated this ____ day of _____, 2024, by and between JASON HERRERA (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, Thurston County tax parcel number 79900003403 more particularly described in Exhibit A attached hereto and by this reference incorporated herein (“Property”), Section 05 Township 17 Range 2W Quarter NW NE, SW NE Plat THURSTON COUNTY FARMS BLA-0203 PTN TR C Document 2/604 NKA LT 1 SURVEY 4443965 TESTAMENTARY DIVISION, across which the CITY requests access to install an instream flow control device to limit upstream impacts of an established beaver dam;
- B. **WHEREAS**, the CITY is responsible for purchasing equipment and supplies needed to install the flow control and beaver mitigation structures. OWNER shall not be billed for any labor or material costs associated with the City’s installation or removal of the structure(s);
- C. **WHEREAS**, OWNER is responsible to maintain the natural drainage of the waterway and shall not inhibit the flow of the watercourse through the Property by artificial means;
- D. **WHEREAS**, CITY is responsible for maintenance of the flow control and beaver mitigation structures based on routine inspections conducted by CITY or OWNER. OWNER shall communicate inspection findings to CITY at which time maintenance activities shall be coordinated between CITY and OWNER;
- E. **WHEREAS**, CITY and OWNER shall obtain the proper Hydraulics Projects Approval (HPA) Permit through Washington Department of Fish and Wildlife (WDFW) and adhere to all provisions therein;
- F. **WHEREAS**, OWNER desires 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 inspect, design, construct, reconstruct, operate, repair, replace, remove,

grade, excavate, and maintain any structures including, but not limited to, flow control, debris stockpiles, semi-buried or ground mounted facilities, water quality protection measures, erosion and sediment control structures, and all appurtenances thereto ("Project").

2. **Access.** CITY shall have the right of access from CITY right-of-way across and over the Property to the Project Site to enable CITY to exercise its rights hereunder to conduct activities in support of controlling impacts related to beaver activity. Except in the event of an emergency, CITY shall notify OWNER at least 48 hours in advance of Project activity to ensure any locked gates or restrictions to access are open upon arrival for project activities to take place. In the event of an emergency, the CITY shall attempt to notify OWNER the day of entry to conduct emergency activities.
3. **Permit Compliance.** The CITY shall comply with all requirements of the Project's Hydraulic Project Approval (HPA) from WDFW, described in Exhibit C, which regulates modification of beaver dams and installation of flow control devices. OWNER recognizes that any independent action to modify dam or manage beaver populations requires notifications and techniques pursuant with HPA Permit (APP ID 34974) and Owner is responsible for notifications to the CITY and WDFW. CITY cannot authorize dam modification or beaver management. OWNER will notify the CITY in the event OWNER engages in a reportable action according to the HPA Permit.
4. **Maintenance.** The CITY shall monitor and maintain the flow control structure(s). The CITY will be responsible for maintenance of the structure(s) based on routine monthly inspections conducted by CITY or OWNER. The OWNER may request technical assistance from CITY at any time. If, at any time, the structure(s) fail to meet the intended goal of maintaining water levels so the upstream culverts can be accessed for maintenance purposes, the CITY will remove the structure(s) and to the extent reasonably practicable return the Property to a condition similar to its condition prior to the Project.
5. **Obstructions; Landscaping.** CITY may from time to time remove vegetation, trees, or other obstructions within the Project Site, and may improve the Project Site to the extent reasonably necessary to carry out the purposes set forth above, provided, that following the completion of the Project activities, CITY shall, to the extent reasonably practicable, restore the Project Site to a condition similar to its condition prior to such work. 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. 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 unreasonably interfere with the CITY's use of said Project Site.
- 7. 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.
- 8. 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.
- 9. Duration.** This Agreement shall be in full force and effect upon execution by the parties and shall remain in effect for the duration of HPA Permit (APP ID 34974). The termination or extension of this Agreement may otherwise occur at any other time by signed agreement of both parties.

DATED this _____ day of _____, 2024.

CITY:

City of Tumwater
555 Israel Road SW
Tumwater, WA 98501

OWNER:

Jason Herrera
1819 Sawyer St. SE
Olympia, WA 98501

Debbie Sullivan, Mayor

Jason Herrera, Owner

**WASHINGTON NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)**

State of Washington

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: _____

(Seal or stamp)

Signature

Title

My appointment expires: _____

EXHIBIT A – HERRERA PROPERTY

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

Parcel No. 79900003403: Section 05 Township 17 Range 2W Quarter NW NE, SW NE Plat THURSTON COUNTY FARMS BLA-0203 PTN TR C Document 2/604 NKA LT 1 SURVEY 4443965 TESTAMENTARY DIVISION.



EXHIBIT B – PROJECT SITE



PROJECT SITE DESCRIPTION: Access is granted only to the furthest upstream beaver dam structure on Parcel 79900003403.