

SANITARY SEWER LIFT STATION AGREEMENT

This agreement entered into this _____ day of _____, 2023, by and between the City of Tumwater, a Municipal corporation, hereinafter referred to as the “City” and AMH Development, LLC, a Delaware limited liability company, hereinafter referred to as the “Developer”.

WHEREAS, the Developer has constructed a regional sanitary sewer lift station and force main together with all necessary appurtenances; and

WHEREAS, all improvements were constructed in accordance with the standards of the City and in accordance with the plans on file under Permit No. - TUM-18-0387;

WHEREAS, City and Developer wish to enter into the Agreement providing for the installation of the improvements and providing for reimbursement to the Developer of a portion of the costs of such improvements pursuant to RCW 35.91: and

WHEREAS, the City accepted the improvements on February 22nd, 2023 as part of the City’s sanitary sewer system and in return collect from future users of the improvements their pro rata share of the cost of the improvements to be reimbursed to the Developer; and

WHEREAS, the City has determined that the construction and installation of the improvements are in the public interest and the Developer has paid all the costs and expenses of the installation of the improvements.

NOW THEREFORE, in consideration of the mutual promises made herein, the City and Developer agree as follows:

1. Description of Facilities

Developer has constructed a regional sanitary sewer lift station and force main together with all necessary appurtenances (“Facility”) within the Facility or have been required to construct a portion of said Facility in the future as shown in Exhibit “A.

2. Benefited Property

Certain real property described in Exhibit “B” and shown in Exhibit “C”, which is adjacent to or near Developer’s Property, will receive the benefit of the Facility, the owners of which may wish to use said

Facility or have been required to construct a portion of said Facility in the future.

3. Facility

3.1 The Developer has previously attested that all work performed in connection with the Facility is in full compliance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, policies, standards, and regulations.

3.2 The City has accepted ownership of said Facility and has the required documents necessary to place complete ownership of said Facility in the City. From the time of acceptance by the City, the Facility shall belong to the City and the City shall be responsible for its maintenance and operation and shall be entitled to all revenues derived from said Facility.

4. Cost of Facility

The Developer agrees that all expenses and claims in connection with the design, construction and installation of the Facility, whether for labor or materials, have been paid in full. The Developer has previously certified that the total cost of engineering and construction of the Facility is equal to Nine Hundred Eighty-nine Thousand Seven Hundred Fifty-Two and 68/100 Dollars (\$989,752.68) ("Total Cost).

5. Reimbursement

5.1 Any owner of the Benefited Properties ("Latecomer") who did not contribute to the original cost of the Facility and who subsequently elects to connect to the Facility within twenty (20) years from the date of this Agreement, shall not be permitted to connect to the Facility without first paying to the City, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, his or her pro rata share of the Total Cost of the Facility.

5.2 Reimbursement shall be collected by the City from those benefiting from using the Facility as provided above at the time

they connect to the Facility and in accordance with the following formula:

$$\text{ASSESSMENT FEE} = (\$989,752.68)/(1288 \text{ ERU's}) = \$768.44/\text{ERU}$$

- 5.3 The Developer agrees to pay \$800.00 for an application fee to the City for the review and processing of this application. Additional charges of \$95.00 per hour will accrue for review and processing exceeding 10 hours. These additional charges will be required to be paid before this Agreement is recorded.
- 5.4 The City shall deduct eight percent (8%) of all collected reimbursement amounts as a fee for administering the terms of the Agreement.
- 5.5 The City shall exercise its best efforts to collect all reimbursements herein described; however, the City assumes no obligation to collect any or all reimbursements herein described. The City does not agree to assume any responsibility to enforce this Agreement. This Agreement will be a matter of public record and will serve as a notice to all potential Latecomers. The Developer shall be responsible to monitor those parties using the Facility. In the event the City becomes aware of a Latecomer, it will use its best efforts to collect the Latecomer's Fee, but shall not incur any liability should it fail to collect such fee.

6. Indemnification

The Developer agrees to indemnify and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities including, without limitation, their respective agents, licenses, or representatives, arising from, resulting from, or connected with this Agreement or the construction or installation of the Facility.

7. Recordation

This Agreement shall be recorded at the sole cost of the Developer with the Thurston County Auditor's Office within thirty (30) days of execution of this Agreement by the parties.

8. Notice and Assignment

For the purpose of facilitating compliance with the requirements of RCW 35.91.202(3), the Developer hereby assigns to the City all of the Developer's right, title, and interest in and to any Latecomer's Fees in the event the City is unable to locate the Developer to tender the fees. The Developer shall be responsible for informing the City of its current and correct mailing address. Every year from the date the Agreement is executed a Developer entitled to reimbursement under this Agreement shall provide the City with information regarding the current contract names, address and telephone number of the person, company, or partnership that originally entered into the contract. If the Developer fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the City may collect any Latecomer's Fees owed to the Developer under the Agreement. The City will make a good faith effort to locate the Developer. In the event the City is unable to do so, the Latecomer's Fee shall be placed in the Capital Fund held by the City, and the City shall be deemed the owner of such funds.

9. General Provisions

- 9.1 Entire Agreement. This Agreement contains all of the agreements of the parties and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.
- 9.2 Modification. NO provision of the Agreement may be amended or added to except by agreement in writing signed by the parties.
- 9.3 Full Force and Effect. Any provision of this Agreement which is declared invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- 9.4 Successors In Interest. This Agreement shall inure and be for the benefit of shall obligate all of the parties respective successors in interest, heirs, beneficiaries or assigns.
- 9.5 Attorney Fees. In the event either part defaults on the performance of any terms in this Agreement, and this Agreement is placed in the hands of an attorney, or suit is filed, the prevailing party shall be entitled to an award of its reasonable attorney's fees, costs and expenses. The venue for any dispute related to this Agreement shall be Thurston County, Washington.

- 9.6 No Waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- 9.7 Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the state of Washington.
- 9.8 Authority. Each individual executing this Agreement on behalf of the City and the Developer represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Developer or the City.
- 9.9 Notices. All notices, requests, demands, and other communications called for by this Agreement shall be in writing and shall be deemed to have been given upon delivery if personally delivered (including delivery by confirmed telephone facsimile or overnight commercial delivery service with receipt) or delivery through the U. S. mail, first class, postage prepaid or registered or certified, return receipt delivery to:

<u>City:</u> Finance Director City of Tumwater 555 Israel Road SW Tumwater, WA 98501	<u>Developer:</u> AMH Development, LLC _____ _____ _____
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Or at such other address as either party shall later provide to the other in writing from time to time.

- 9.10 Captions. The respective captions of the paragraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

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

DEVELOPER:

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 _____

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 AMH Development, 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:_____

EXHIBIT "A" FACILITY

SEC. 9, T17N., R2W., W.M.

73rd AVE SW
24" EXISTING GRAVITY
SEWER MAIN

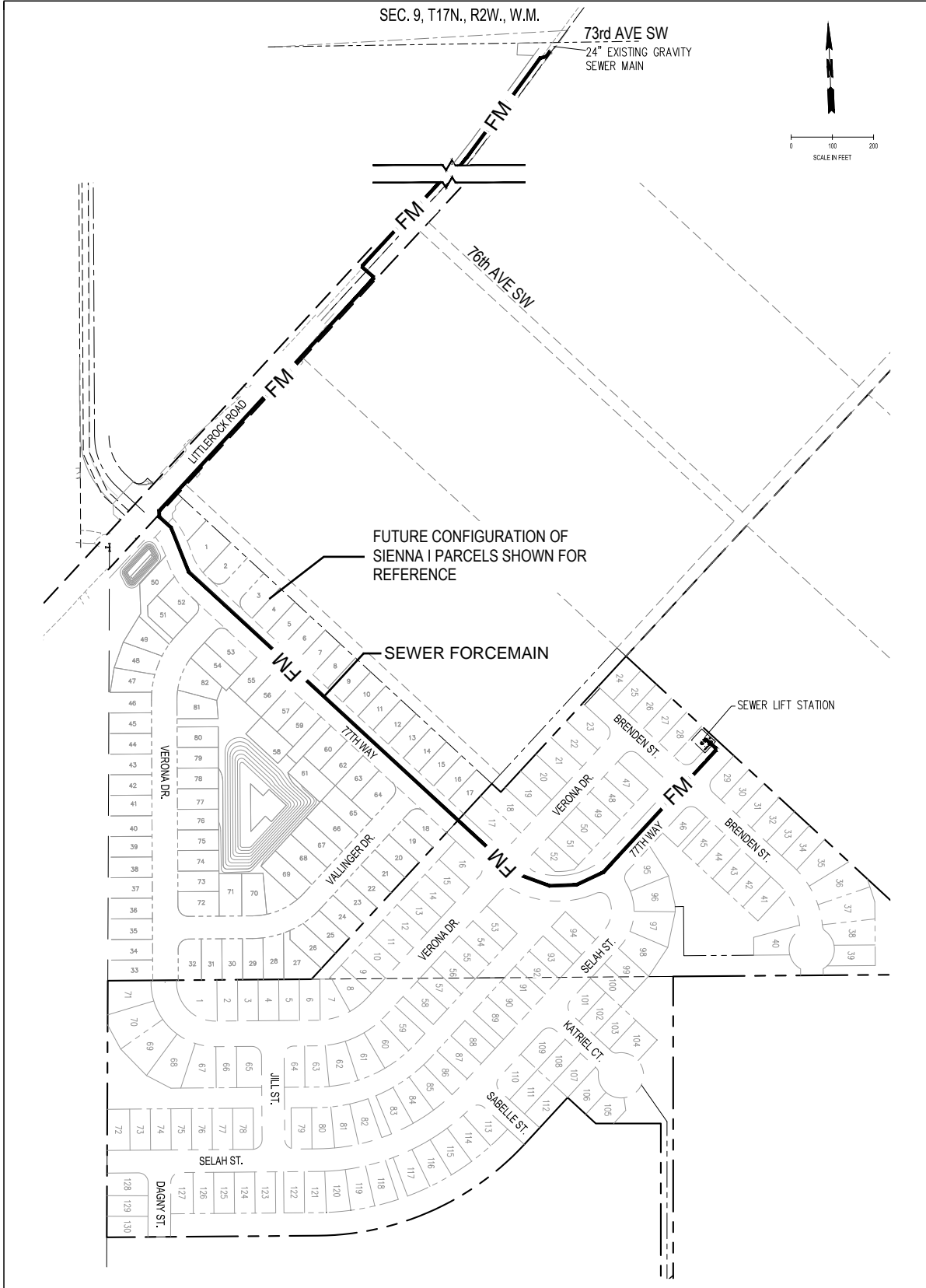
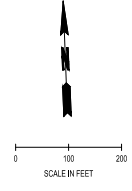


EXHIBIT "B"

Benefit properties.

Section 08 and 09 of Township 17N Range 2W located in Thurston County, State of Washington
Except the Plat of Sienna II recorded under AFN 4971645 and TPN 7412000005.

EXHIBIT "C"



Visual exhibit showing the benefit properties.

Legend

 Benefit properties

