



MONROE CITY COUNCIL

Agenda Bill No. 19-128

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| SUBJECT: | Authorize Mayor to Sign Outside Utility Extension Agreement for Monroe Estates Subdivision |
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|--------------|--------------|-----------------|-------------------|--------------------------|
| DATE: | DEPT: | CONTACT: | PRESENTER: | ITEM: |
| 06/11/2019 | Public Works | Scott Peterson | Scott Peterson | Consent Agenda #7 |

- Discussion:** 06/11/2019
Attachments: 1. Monroe Estates – Outside Utility Extension Agreement
2. Vicinity Map

REQUESTED ACTION: Move to authorize the Mayor to sign an Outside Utility Extension Agreement associated with the proposed Woods Creek Vista subdivision, in substantially the form presented to Council; and expressly authorize further minor revisions deemed necessary or appropriate.

POLICY CONSIDERATION

Monroe Municipal Code 13.08.240(B)(12) requires that outside utility extension agreements be approved by the Monroe City Council.

DESCRIPTION/BACKGROUND

In May 2018, Ingraham Development, LLC submitted the preliminary plat of Woods Creek Vista to Snohomish County. This 60.2 acre site will be developed into 103 lots and is located outside the City of Monroe but within the Monroe Urban Growth Area. The project proposes to utilize the City of Monroe’s water and sanitary sewer utilities.

The City of Monroe’s initial efforts to review this development began in March 2017 when the applicant submitted a pre-application request with Snohomish County. The applicant formally submitted the project with Snohomish County in May, 2018, of which the City of Monroe was again afforded the opportunity to provide comment on the proposed site development plans. City staff responded with comments on July 5, 2018, that included the requirement to execute a utility extension agreement with the City of Monroe pursuant to MMC 13.08.240. City staff worked with the developer’s land use consultant to prepare the Outside Utility Extension Agreement that is before Council for approval, which includes a pre-annexation agreement clause (see Section 7 of the Agreement). This document is in general conformance with the requirements of MMC 13.08.240. Please refer to Attachment 1.

IMPACT – BUDGET

The City will not incur out-of-pocket expenses. The developer will be responsible for the costs associated with this project, including permits, easements, licenses, other real property interests, design efforts and installation costs, and reimburse the city for any administrative, legal, or other professional costs.

TIME CONSTRAINTS

The developer requests approval of the Outside Utility Extension Agreement during this council meeting in order to keep progressing with their efforts in obtaining preliminary plat approval from Snohomish County. Additionally, this agreement will need to be authorized prior to any council action that would prohibit sewer extensions beyond City Limits.

ALTERNATIVES TO REQUESTED ACTION

1. Do not approve the Outside Utility Extension Agreement; and provide direction to the Mayor and City Staff to areas of concern.

AFTER RECORDING, RETURN TO:

City of Monroe
c/o City Clerk
806 West Main Street
Monroe, WA 98272

OUTSIDE UTILITY EXTENSION AGREEMENT

Grantors: JC Washington Investment LLC and Ingraham Development LLC

Grantee: City of Monroe

Legal Description: See Exhibit A

Assessor's Tax Parcel ID#: 280731-001-006-00 and 280731-001-013-00

Recording Number of Related Document(s):

THIS OUTSIDE UTILITY EXTENSION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2019 ("Effective Date"), by and between CITY OF MONROE, and JC Washington Investment LLC and Ingraham Development LLC (each an "Owner" and collectively, "Owners"), and the City of Monroe, a Washington municipal corporation ("the City").

WITNESSETH:

WHEREAS, Owners are the owners of record of certain real property located at 13706 Ingraham Road, in Snohomish County, and legally described as set forth on Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full ("the Property"); and

WHEREAS, the Property is not currently within the corporate limits of the City, but is located within the City's Urban Growth Area and its Potential Annexation Area; and

WHEREAS, Owners desire to connect to the City's sewer utility system(s), hereinafter referred to as "the Utility System", and the City is willing to allow such connection only upon such certain terms and conditions in accord with MMC Title 13, as now enacted or hereinafter amended, and as further set forth in this Agreement;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other consideration the receipt and sufficiency of which is hereby mutually acknowledged, Owners and the City (each a "Party" and collectively "the Parties") hereby agree and covenant as follows:

Section 1. Utility Extension Authorized. The City hereby authorizes Owners to extend sanitary sewer utility service to the Property from the existing City of Monroe Utility System line(s) located at Rustic View Road S.E. (the "Utility Extension"). The Utility Extension will involve the design, engineering, construction and installation of the facilities identified in Exhibit B, attached hereto and incorporated herein by this reference as if set forth in full (the "Capital Facilities").

Section 2. Costs. Owners shall pay all costs of completing the Utility Extension, specifically including without limitation all costs of designing, engineering, constructing and installing the Capital Facilities. All such design, engineering, construction and installation shall be performed in compliance with applicable City standards and in accordance with plans approved by the City's Public Works Department and City Engineer. Any and all costs incurred by the City in reviewing Owners' plans for and/or inspecting the construction and installation of the Utility Extension shall be promptly reimbursed by Owners.

Section 3. Permits; Easements. Owners shall secure and obtain, at Owners' sole cost and expense, any and all permits, easements, licenses and/or other real property interests necessary to construct and install the Utility Extension, including without limitation all necessary easements, excavation permits, street use permits or other permits required by the City and/or Snohomish County.

Section 4. Conveyance of Capital Facilities. Owners shall convey and dedicate to the City, at no cost, the Capital Facilities promptly upon the completion of construction and installation and approval and acceptance of the same by the City. As a prerequisite to such conveyance and acceptance, Owners shall furnish to the City the following:

- A. As-built plans or drawings of the Capital Facilities in a form acceptable to the City Public Works Department and City Engineer;
- B. Any necessary easements, permits, licenses and/or other real property interests for the continued operation, maintenance, repair or reconstruction of the Capital Facilities by the City, in a form approved by the City

Attorney;

- C. A bill of sale, in a form approved by the City Attorney, conveying the Capital Facilities to the City; and
- D. A bond or other suitable security, in a form approved by the City Attorney and in an amount approved by the City Engineer, ensuring that the Capital Facilities will remain free from defects in workmanship and materials for a period of two (2) years.

Section 5. Connection; Charges. Owners agree to pay, as a condition of connecting to the Utility System, all applicable connection charges and fees as established by City ordinance and/or resolution, including without limitation all such charges and fees required pursuant to Title 13 MMC.

Section 6. Service Charges. In addition to the charges and fees for connection required pursuant to Section 5, Owners agree to pay for utility service rendered to the Property according to the applicable rates for such service as such rates exist, or as they may be hereafter amended or modified.

Section 7. Annexation. The Parties mutually acknowledge that Owners' consent and waiver of objection to annexation of the Property to the City is an express condition of the City's willingness to approve the Utility Extension authorized hereunder. Without limitation of the foregoing:

- A. Owners understand that annexation of the Property to the City will result in certain legal consequences, including without limitation the following:
 - 1. Snohomish County ordinances, resolutions, rules and regulations will cease to apply to the Property upon the effective date of annexation;
 - 2. City of Monroe ordinances, resolutions, rules and regulations will begin to apply to the Property upon the effective date of annexation;
 - 3. Certain governmental services, such as police and utility service, will be provided to the Property by the City of Monroe upon the effective date of annexation;
 - 4. The property may be required to assume all or any portion of the existing City of Monroe indebtedness; and property tax rates and assessments applicable to the Property may be different from those applicable prior to the effective date of annexation;
 - 5. Zoning and land use regulations applicable to the Property after annexation may be different from those applicable to the Property prior to annexation; and
 - 6. All or any portion of the Property may be annexed and the Property may be annexed in conjunction with or at the same time as other property in the vicinity.
- B. With full knowledge and understanding of the consequences of annexation and with full knowledge and understanding of Owners' rights to oppose annexation of the Property to the City of Monroe, Owners agree as follows:
 - 1. Owners agree not to litigate, challenge or in any manner contest annexation of the Property to the City, including without limitation any such annexation that is initiated by the City.
 - 2. Owners agree to promptly sign a petition for annexation of the Property to the City as provided in

RCW 35A.14.120, as it now exists or as it may hereafter be amended, at such time as Owners are requested by the City to do so.

3. Owners hereby appoint the City of Monroe Mayor as Owners' attorney in fact to sign an annexation petition on Owners' behalf in the event that Owners shall fail or refuse to promptly sign a petition for annexation after being so requested by the City. Owners further agree that such signature shall constitute full authority from Owners for annexation as if Owners had signed the petition themselves.

C. This Agreement shall be deemed to be continuing; and, if the Property is not annexed for whatever reason including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexation. In the event that the Property is subdivided into two or more smaller lots, the purchaser of each subdivided lot shall be fully bound by the provisions of this Section.

Section 8. Termination for Noncompliance. In the event Owners fail to comply with any term or condition of this Agreement, the City shall have the right to immediately terminate utility service to Property in addition to any other available remedies and/or penalties.

Section 9. Specific Enforcement. In addition to any other remedy or and/or penalty provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

Section 10. Binding Covenant. This Agreement shall be recorded at Owners' expense with the Snohomish County Auditor's office, shall constitute a covenant running with the land, and shall inure to and be binding upon the current and future Owners of the Property, their heirs, successors and assigns.

Section 11. Attorneys' Fees. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other remedy provided by law or this Agreement.

Section 12. Agreement Contingent Upon Available Capacity. The City's obligation to allow the Utility Extension and connection with the Utility System as provided by this Agreement is expressly contingent upon the City having adequate capacity within the Utility System to provide service to the Property at the time such request for connection is made. If such capacity does not exist at such time in the City's reasonable determination, this Agreement shall become null and void.

Section 13. Boundary Review Board Approval. If this Agreement requires approval by the Snohomish County Boundary Review Board and has been executed prior to such approval, the Utility Extension authorized by this Agreement is expressly contingent upon receipt of such approval prior to such extension being made. If approval is denied, this Agreement shall become null and void. The City agrees that, at the request of Owners, the City will sign any necessary release of this Agreement prepared by Owners in the event this Agreement becomes null and void as provided herein.

Section 14. Integration; Amendment. This Agreement represents the entire understanding between the Parties regarding the subject matter hereof, and supersedes any prior oral agreements. Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a recorded, acknowledged writing mutually executed by the Parties.

Section 15. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The exclusive venue for any litigation arising out of, or in connection with, this Agreement shall be the Superior Court of Snohomish County, Washington.

Section 16. Counterparts. This Agreement may be signed in counterparts.

Section 17. Indemnification. Owners shall indemnify, defend and hold harmless the City, its officers, officials, and employees from and against any and all claims, losses, costs, suits and causes of action, including attorneys' fees, for any injury, damage, loss or expense arising out of or otherwise resulting from the design, engineering, construction and installation of the Capital Facilities and from any breach or violation of this Agreement by Owners. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 18. Regulatory and Legislative Authority Reserved. Nothing herein shall be construed as a waiver, abridgment or limitation of the City of Monroe's regulatory authority and/or the legislative discretion of the Monroe City Council, which are hereby expressly reserved in full. Without limitation of the foregoing:

18.1 Nothing herein shall be construed as excusing Owners from full compliance with all applicable City of Monroe zoning, permitting, licensing and land use approval requirements with respect to any future development of the Property subsequent to the Property's annexation to the City;

18.2 Nothing herein shall be construed as excusing Owners from full compliance with all applicable City of Monroe regulations, rules, standards and policies governing the Utility System, including without limitation all fees, charges, agreements, permits and approvals established therefore; and

18.3 Nothing herein shall be construed as requiring the City to initiate, approve and/or proceed with any annexation proposal, including without limitation any annexation of the Property.

Section 19. No Obligation. Nothing herein shall be construed as creating any financial obligation on the part of the City with regard to any annexation, construction of any utility facilities and appurtenances, or any other matter.

Section 20. Severability. If any sentence, section or clause of this Agreement is invalidated by a court or tribunal of competent jurisdiction, such invalidation shall not affect the validity of the remaining provisions hereof.

Section 21. Expiration. This Agreement shall expire and shall become null and void if connection of the Property to the Utility System is not made within four (4) years from the Effective Date. The City agrees that, at the request of Owners, the City will sign any necessary release of the Agreement prepared by Owners in the event this Agreement expires. If connection of the Property to the Utility System is made within the four-year period, this Agreement will remain in effect and will not expire except as provided herein.

Section 22. Administrative Cost Recovery. No later than five (5) days after mutual execution of this Agreement, Owners shall remit to the City a one-time administrative fee in the amount of \$2,000.00 for reimbursement of the City's administrative, legal and other professional costs incurred in the drafting, negotiating, processing and administration of this Agreement.

Section 23. Warranty of Title. Owners represent and warrant that they are the lawful owners of the Property and are fully authorized to execute this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date hereinabove set forth.

City of Monroe Outside Utility Extension Agreement

OWNER:

[Handwritten Signature]

By: Jonathan Chou
JC Washington Investment LLC and
Ingraham Development LLC

CITY OF MONROE:

Geoffrey Thomas
MAYOR

ATTEST AND AUTHENTICATED:

By: _____
Elizabeth Adkisson, City Clerk

STATE OF WASHINGTON)
) ss
COUNTY OF King)

I certify that I know or have satisfactory evidence that Jonathan Chou is the person who appeared before me, and acknowledged that he signed this instrument, on oath stated it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed this 17th day of May, 2018.



[Handwritten Signature]

NOTARY PUBLIC in and for the State of Washington,
residing at Seattle, WA
My commission expires 11/17/21

I certify that I know or have satisfactory evidence that Geoffrey Thomas is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as MAYOR OF THE CITY OF MONROE to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

WITNESS my hand and official seal hereto affixed this ___ day of _____, 2018.

DATED: _____

(Signature of Notary)

(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____

EXHIBIT A

LEGAL DESCRIPTION

For APN/Parcel ID: 280731-001-006-00

Parcel A, Snohomish County Boundary Line Adjustment No. 13-109407 recorded under recording no. 201309260267 records of Snohomish County, Washington being a portion of the Southeast quarter of the Northeast quarter of Section 31, Township 28 North, Range 7 East of the Willamette Meridian and the Southwest quarter of the Northwest quarter of Section 32, Township 28 North, Range 7 East of the Willamette Meridian.

Situate in the County of Snohomish, State of Washington

For APN/Parcel ID: 280731-001-013-00

Parcel 1:

The East Half of the Southwest quarter of the Northeast quarter of Section 31, Township 28 North, Range 7 East of the Willamette Meridian
and the East half of the Southwest quarter of the Southwest quarter of the Northeast quarter of Section 31, Township 28 North, Range 7 East of the Willamette Meridian, Snohomish County, Washington.

Also known as Parcels 3, 4, 5, and 6 of Snohomish County survey recorded under Auditor's File No. 8004185006.

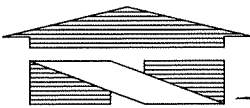
Situate in the County of Snohomish, State of Washington.

Parcel 2:

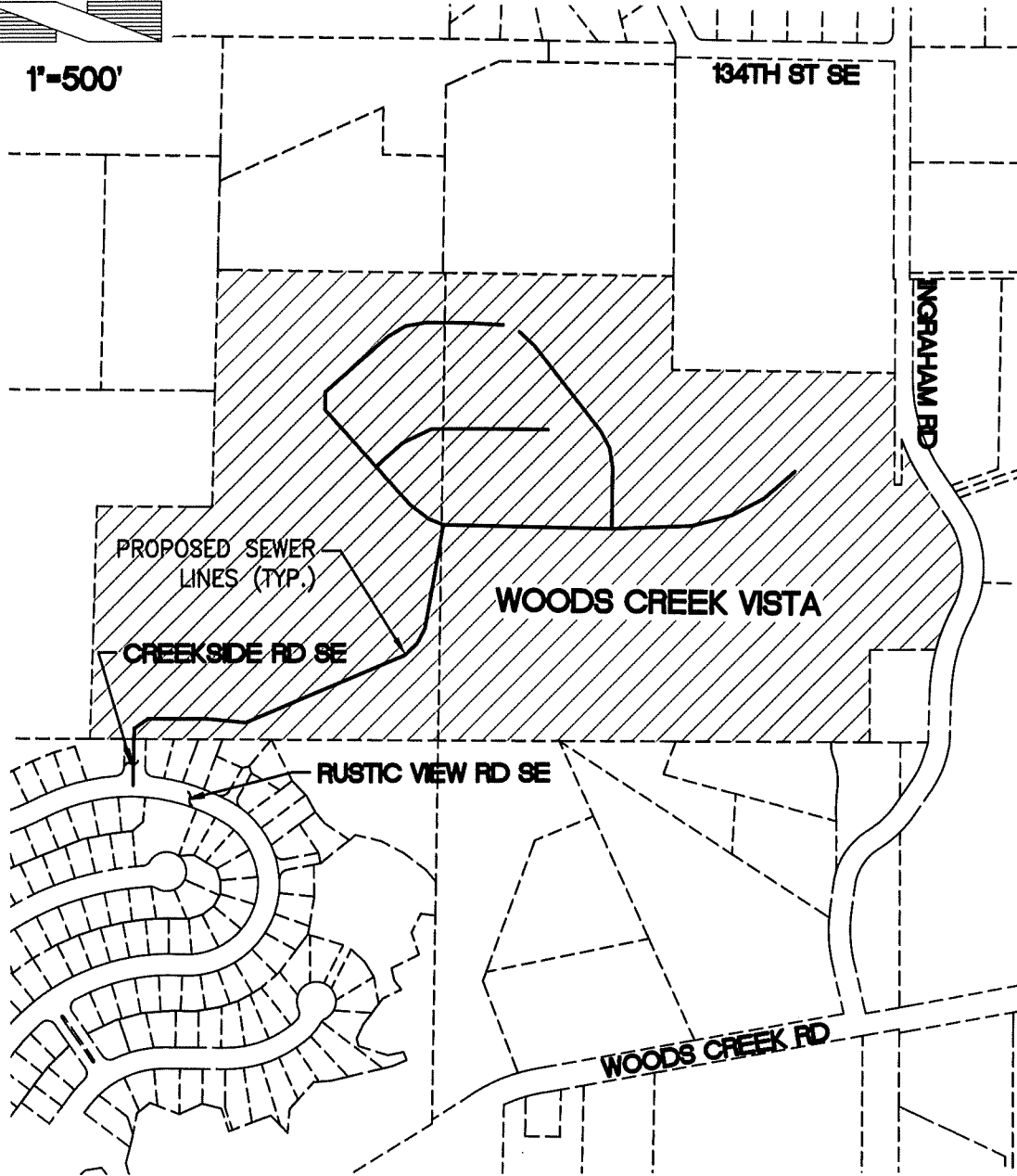
A non-exclusive easement for ingress, egress and utilities recorded on December 12, 1978 under Auditor's File No. 7812120176, being a portion of the Northeast Quarter of Section 31, Township 28 North, Range 7 East of the Willamette Meridian.

Situate in the County of Snohomish, State of Washington.

EXHIBIT 'B'



1"=500'



File:P:\18000s\18706\exhibit\Sewer Exhibit.dwg Date/Time:5/21/2019 11:18 AM VICENTE VARAS

SCALE:
HORIZONTAL 1"=500' VERTICAL N/A



18215 72ND AVENUE SOUTH
KENT, WA 98032
(425)251-6222
(425)251-8782 FAX

CIVIL ENGINEERING, LAND
PLANNING, SURVEYING,
ENVIRONMENTAL SERVICES

For:
WOODS CREEK VISTA

JOB NUMBER
18706

Title:
SEWER EXHIBIT

SHEET
1 of 1

DESIGNED VIV DRAWN VIV CHECKED APPROVED DATE 05/21/19



ATTACHMENT 2: VICINITY MAP