

RESOLUTION NO. R2016-012

A RESOLUTION of the City Council of the City of Tumwater, Washington, approving and authorizing the Mayor to execute a Development Agreement for Tyee Drive Extension and amending the Development Agreement by and between the City of Tumwater and Tumwater Investment Group LLC, for the 27 acre property located at the northwest corner of Interstate 5 and Israel Road approved by Resolution No. R2015-017 with BJR Holdings II, LLC (“BJR”) (“Agreement”).

WHEREAS, at RCW 36.70B.170 through .210, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, BJR owns approximately 27 acres of real property located in Tumwater, Washington, within the area known as the Littlerock Neighborhood, as described in Exhibit A to Agreement; and

WHEREAS, The City of Tumwater’s Capital Facilities Plan includes the extension of the public street known as Tyee Drive from its current terminus to the southerly limits of the Property, as described in Exhibit B to Agreement; and

WHEREAS, BJR will construct Tyee Drive from its current terminus to the southerly limits of the Property in order to provide access to the real property; and

WHEREAS, The City of Tumwater, desires to share in the cost of the extension of Tyee Drive, to the extent that the extension benefits other properties and the City’s transportation system; and

WHEREAS, Resolution R2013-011 adopted by the Tumwater City Council on September 3, 2013 approved a development agreement between the City and Tumwater Investment Group LLC (Development Agreement), which was formally executed on October 9, 2013; and

WHEREAS, on August 19, 2014, Tumwater City Council passed Resolution R2014-017, amending the Development Agreement, however, the amended Development Agreement was never formally executed by Tumwater Investment Group LLC and the City repealed said Resolution; and

WHEREAS, the City has previously adopted Resolution No. R2015-017 approving the first amendment to development agreement by and between the City of Tumwater and Tumwater Investment Group LLC, for the 27 acre property

located at the northwest corner of I-5 and Israel Road (collectively, the Development Agreement and 1st Amendment referred to herein as “Prior Agreement”); and

WHEREAS, the City and BJR wish to amend the Prior Agreement to amend Section 9.e. providing for BJR to retain ownership of a 2.5 acre tree tract (“Amendment to the Prior Agreement”); and

WHEREAS, pursuant to RCW 36;70B.200, on July 28, 2016, the City Council Public Works Committee held a public hearing, after public notice as required by law, on the Agreement including the Amendment to the Prior Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUMWATER AS FOLLOWS:

Section 1. Approval and Authorization. After reviewing the Agreement including the Amendment to the Prior Agreement and considering all of the testimony and information presented at the public hearing, the City Council finds that the Agreement, including the Amendment to the Prior Agreement, is consistent with the criteria set forth in RCW 36.70B.170 and approves the Agreement attached as Exhibit A hereto. The Mayor is authorized to execute the Agreement with BJR and to take all further and necessary action required by the Agreement.

Section 2. Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

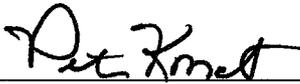
Section 3. Severability. The provisions of this Resolution are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Resolution or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the Resolution, or the validity of its application to other persons or circumstances.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption and signature as provided by law.

~ Signatures on following page ~

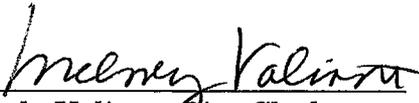
RESOLVED this 2nd day of August, 2016.

CITY OF TUMWATER



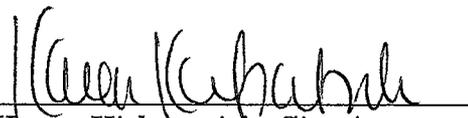
Pete Kmet, Mayor

ATTEST:



Melody Valiant, City Clerk

APPROVED AS TO FORM:



Karen Kirkpatrick, City Attorney

CITY OF TUMWATER
PUBLIC WORKS DEPARTMENT
555 ISRAEL ROAD SW
TUMWATER, WA 98501

DEVELOPMENT AGREEMENT

REFERENCE NUMBERS(S) OF RELATED DOCUMENTS

Resolution No. R2016-012
Exhibit A – Development Agreement

(ADDITIONAL REFERENCE NUMBERS ON PAGE)

GRANTOR(S) (LAST, FIRST, MIDDLE INITIAL)

Tumwater, City of Tumwater

(ADDITIONAL GRANTORS ON PAGE)

GRANTEE(S) (LAST, FIRST, MIDDLE INITIAL)

BJR Holding II, LLC

(ADDITIONAL GRANTEES ON PAGE)

LEGAL DESCRIPTION

(ABBREVIATED FORM: I.E. LOT, BLOCK, PLAT OR SECTION, TOWNSHIP, RANGE, QUARTER/QUARTER)

Section 03 Township 17 Range 2W Quarter SW NW BEG INT ELY LN
LITTLEROCK RD WITH S LN SW NW; ELY 646F TO SW COR HOWDESHHELL TR
#357937; NLY 75F ALG WLY LN HOWSEHELL TR TO NLY LN TR THOMPSON

3-17-2W N2 SW N OF ISRAEL RD WLY OF PSH #1 & ELY OF ELN FIL E #5202 35
& ELY LN EXT LESS

(ADDITIONAL LEGAL DESCRIPTION IS ON PAGE)

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

12703231900 and 12703320100

(ADDITIONAL PARCEL NUMBERS ON PAGE)

THE AUDITOR/RECORDER WILL RELY ON INFORMATION PROVIDED ON THIS FORM. COUNTY STAFF WILL NOT
READ DOCUMENTS TO VERIFY ACCURACY OR COMPLETENESS OF THE INDEXING INFORMATION PROVIDED.



**DEVELOPMENT AGREEMENT FOR TYEE DRIVE EXTENSION
AND
AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF TUMWATER AND TUMWATER INVESTMENT GROUP LLC FOR
THE 27 ACRE PROPERTY LOCATED AT THE NORTHWEST CORNER OF
I-5 AND ISRAEL ROAD AS APPROVED BY RESOLUTION R2015-017 WITH
BJR HOLDINGS II LLC**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 5th day of August, 2016, by and between the City of Tumwater, a Washington municipal corporation ("City"), and BJR Holdings II, LLC a Washington corporation ("BJR"). The Agreement relates to the future development of real property consisting of approximately 27 acres located in Tumwater, Washington, within the area known as the Littlerock Neighborhood, as described in Exhibit A ("Property") and includes the extension of the public street known as Tyee Drive from its current terminus to the southerly limits of the Property, as described in Exhibit B ("Project"). This Agreement also amends the Development Agreement by and between the City of Tumwater and Tumwater Investment Group LLC ("Prior Agreement") to amend Section 9.e. creating a 2.5 acre tree tract.

RECITALS

WHEREAS, the Washington State legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources; and

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, the City of Tumwater is a municipal corporation under the laws of the State of Washington with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens; and

WHEREAS, BJR has control of real property consisting of approximately 27 acres within the Littlerock Neighborhood located in Tumwater, Washington; and

WHEREAS, a development agreement sets forth the development standards and other provisions that shall apply to, and govern the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, a development agreement may be used to obligate a party to fund or provide services, infrastructure, or other facilities; and

WHEREAS, the City's Comprehensive Plan designates the extension of a minor arterial roadway (Tyee Drive) from Trosper Road to Tumwater Blvd parallel to and between Littlerock Road and Interstate-5, within the Littlerock Neighborhood; and

WHEREAS, the extension of Tyee Drive by BJR would provide benefits and necessary access to the Property as well as other properties within the Littlerock Subarea as well as to the City's transportation system and it also supports the development of other real property within the Littlerock Neighborhood; and

WHEREAS, the City's development standards require that real properties lying within the alignment of the future extension of Tyee Drive dedicate the necessary rights-of-way and construct Tyee Drive through the real property as a condition of development; and

WHEREAS, the alignment for the future extension of Tyee Drive includes extending within a public street right-of-way connecting the Property to the existing terminus of Tyee Drive and it is necessary for BJR to construct the extension of Tyee Drive thru this right-of-way in order to connect to existing Tyee Drive; and

WHEREAS, The City of Tumwater, desires to share in the cost of the extension of Tyee Drive, to the extent that the extension benefits other properties and the City's transportation system; and

WHEREAS, The City of Tumwater's Capital Facilities Plan includes the extension of Tyee Drive from the BJR Property to Israel Road, including the construction of a new roundabout at the intersection of Israel Road, which will complete this segment of Tyee Drive; and

WHEREAS, The City of Tumwater is currently under contract for the design of the extension of Tyee Drive from the BJR property to Israel Road and is committed to the construction of this segment of the Tyee Drive extension, the cost of which is to be borne by the City, to begin in the fall of 2016; and

WHEREAS, The City of Tumwater, assesses transportation impact fees on any development activity where such activity requires the issuance of a building permit in accordance with the impact fee schedule established by resolution of the City Council and such fees are to be collected at the time of issuance of the building permit; and

WHEREAS, the actual impact on the city's transportation system will not occur until such time as the project is complete and operational; and

WHEREAS, this agreement provides certainty on the City's ability to collect the transportation impact fees at a time certain after the issuance of the building permit; and

WHEREAS, on September 3, 2013 the City approved Resolution No. R2013-011 entering into a Development Agreement by and between the City of Tumwater and Tumwater Investment Group LLC, for the 27 acre property located at the northwest corner of I-5 and Israel road (R2013-011); and

WHEREAS, in December 2014, BJR Holdings II, LLC purchased the Property including all rights and obligations under the Prior Agreement; and

WHEREAS, on November 2, 2015 the City approved Resolution No. R2015-017 which amended R2013-011 and among other things added a new Subsection, 9.e which required that a tree tract of approximately 2.5 acres shall be preserved and dedicated to the City on the southern portion of the subject property; (R2013-011 and R2015-017, referred herein collectively as the "Prior Agreement") and

WHEREAS, the City and BJR desire to leave the ownership of the Tree Tract with BJR; and

WHEREAS, after a public hearing held on July 28, 2016, on resolution R2016-012, based on the staff report, testimony and other evidence provided, the City Council finds the Agreement, including the Amendment to the Prior Agreement, supports the public health, safety and welfare and the best interests of the citizens of Tumwater, and authorizes the Mayor to sign this Agreement with BJR;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. The Property. The Property is legally described in Exhibit A attached hereto and incorporated herein by this reference.

Section 2. The Project. The Project consists of the construction of the extension of Tyee Drive from the existing southerly terminus to and thru the Property for a length of 2,419 feet in conformance with the Agreement, and as shown in Exhibit B.

Section 3. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement, and shall

continue in force until such time as BJR and the City have fulfilled their obligations as part of this Agreement.

Section 4. Development Standards. The Project shall comply with the development standards in effect at the time of engineering plan submittal including the requirements of the Tumwater Development Guide, except as may be otherwise modified by this agreement.

Section 5. Construction of the Project.

A. The Project shall be constructed as a public roadway connecting to the existing Tyee Drive to the north at the location identified in, and in general conformance with, the attached Exhibit B. BJR shall comply with all of the City's requirements and regulations in regards to application and permitting for approval and construction of the Project.

B. BJR shall construct, or have constructed, the Project to the City's Development Standards except that the required frontage improvements on the east side of the roadway adjacent to Interstate-5 will be limited to curb and gutter and a planter strip. Sidewalks will not be required along the east side of the roadway as part of this project or as a condition of the future development of the Property. The Project shall be constructed in conformance with the Project plans approved by the City in the issuance of the development permits necessary to perform the work.

Section 6. Costs.

A. BJR shall initially bear all costs for the planning, permitting, design, and construction of the Project in conformance with Exhibit B and the plans and specifications for the Project that are approved as part of the project approval.

B. The City shall reimburse BJR for the actual costs of the portion of the Project extending the length of the frontage of Parcel No. 12703240100 (BJR Parcel), approximately 330 feet in length, as shown in Exhibit C. A good faith estimate of the costs for completion of this work is included as Exhibit D.

C. The City shall reimburse BJR for the actual costs of construction of the portion of the Project that will serve as bike lanes (a five foot wide strip of roadway adjacent to the outside curb and gutter) and the curb and gutter to be constructed on the east side of the road for the total length of the Project as depicted in Exhibit E. A good faith estimate of the costs for completion of this work is included as Exhibit F.

D. Following the completion of the Project, BJR shall submit a cost verification statement to the City showing the final actual costs connected therewith. The cost verification statement shall include an itemized listing of the quantities of materials used and the associated costs and evidence of payment. The cost verification statement shall be submitted to the City within 30 days of the completion of the Project.

E. The City shall reimburse BJR for the actual costs incurred for the portions of the Project as specified herein, as determined by the City in accordance with the cost verification and contractor bid prices, including any change orders necessary as part of the construction. The City shall reimburse BJR within 45 days of receipt of the cost verification statement, complete with all supporting documentation.

Section 7. Prevailing Wages. BJR agrees to pay Prevailing Wages in the performance of all work on the Project to which the City is providing a financial contribution to reimburse BJR for actual costs, as specified herein.

Section 8. Transportation Impact Fees. Transportation impact fees shall be assessed for the development of the real property owned by BJR as set forth in TMC 3.50. These fees shall be calculated using the impact fee schedules in effect on the date of the application for the development activity on the property requiring a building permit. The payment of these fees by BJR shall be deferred until not later than 12 months following issuance of the building permit.

Section 9. Amendment to Prior Agreement Approved by R2013-011 and R2015-017. Section 9.e. of the Prior Agreement shall be amended to not require the dedication of the tree tract to the City as follows:

e) A tree tract of approximately 2.5 acres shall be preserved ~~and dedicated to the City~~ on the southern portion of the subject property as generally shown on Exhibit A and shall remain under the ownership of BJR.

All other provisions of the Prior Agreement not amended by this Agreement shall remain in full force and affect.

Section 10. Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws and regulations of the State of Washington. Venue shall be in Thurston County Superior Court.

Section 11. Defense of Claims. In the event any legal action or special proceeding is commenced by any person or entity other than a party to the Agreement to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to BJR. In

such event, BJR shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. BJR shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 12. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the successors in interest of BJR. The Agreement shall be recorded against the Property, and shall be a covenant and/or equitable servitude running with the land.

Section 13. Entire Agreement. The Agreement contains the entire agreement of the parties. There are no oral or written understandings not expressly included herein. No testimony or evidence of any such understandings or representations shall be admissible to determine Agreement terms.

Section 14. Severability. If any portion of the Agreement is declared unlawful, the remainder of the Agreement shall continue in full force and effect.

Section 15. No Third Party Beneficiary. The Agreement is entered into for the parties' sole benefit and their successors and assigns. No other person shall have any right of action based on the Agreement.

Section 16. Counterparts. The Agreement may be executed in several counterparts. All exhibits are terms of the Agreement as though fully recited herein.

Section 17. Bankruptcy. If the Agreement is affected by any future bankruptcy proceeding, upon Developer's request, the parties shall jointly apply to the Bankruptcy Court for withdrawal to Thurston County Superior Court for resolution of the matter.

Section 18. Non-Enforcement not Waiver. Failure by any party to enforce the Agreement shall not be construed as a waiver of any right to do so.

Section 19. Authority. The undersigned covenant and represent that they are fully authorized to enter into and execute the Agreement.

Section 20. Amendment. This Agreement may be modified only by written instrument authorized by the City Council and duly executed by the Mayor and BJR, and their successors and assigns.

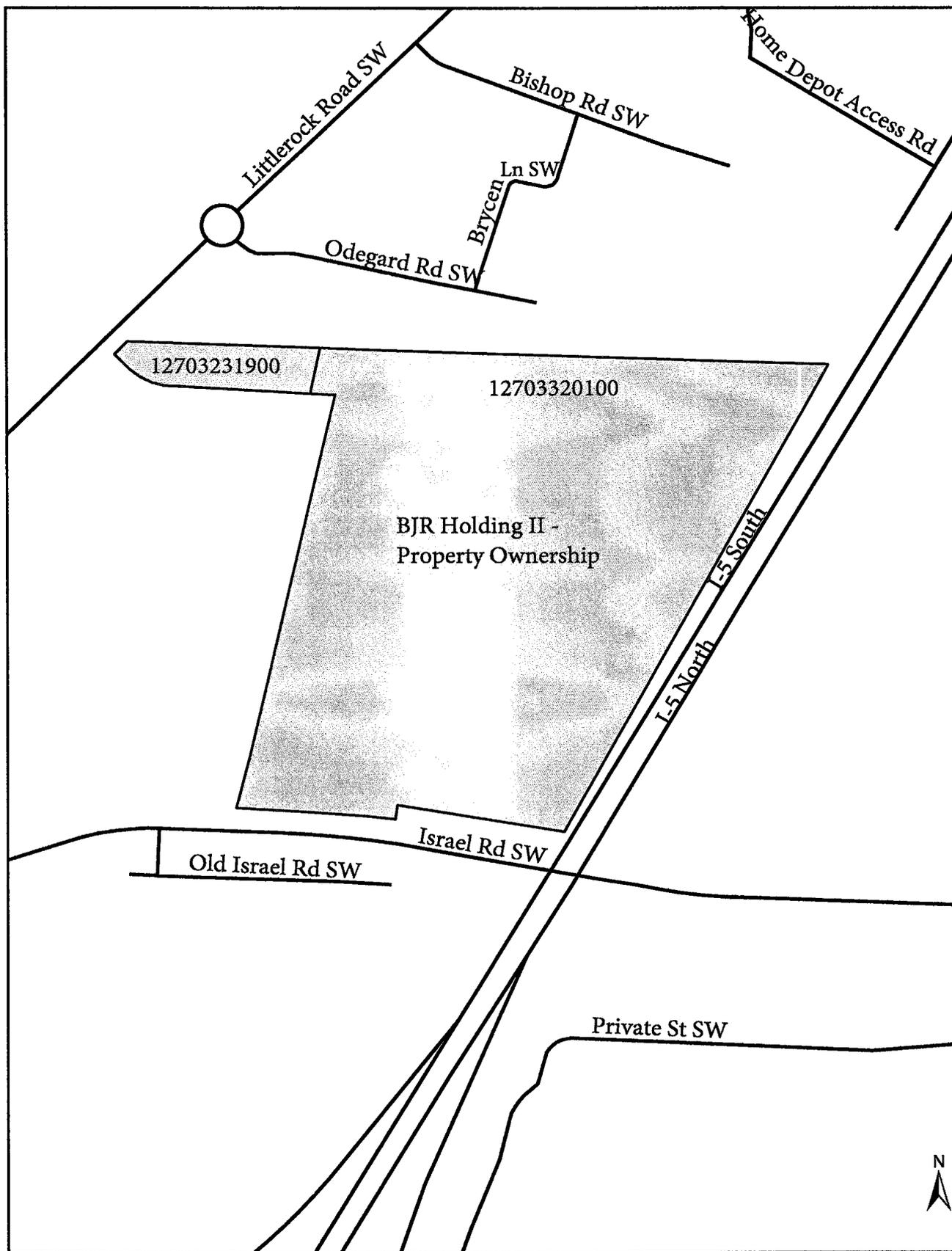
Section 21. Enforcement. Subject to the notice and cure provisions of this Section, in the event either party fails to satisfy any of its obligations under this Agreement, the other party shall have the right to enforce this Agreement by an action at law for damages or in equity for specific performance. The Parties acknowledge that damages are not an adequate remedy for breach by either party. In addition to the remedies set forth herein, in the event of a breach of this Agreement by BJR the City may enforce this Agreement under the enforcement provisions of the Tumwater Municipal Code in effect at the time of the breach. No party shall be in default under this Agreement unless it has failed to perform its duties or obligations under this Agreement for a period of thirty (30) days after written notice of default from the other party. A notice of default shall specify the nature of the alleged default and the manner in which the default may be cured. If the nature of the default is such that it cannot be reasonably cured within thirty (30) days, then a party shall not be deemed in default if the party commences a cure within thirty (30) days and, thereafter, diligently pursues completion of the cure.

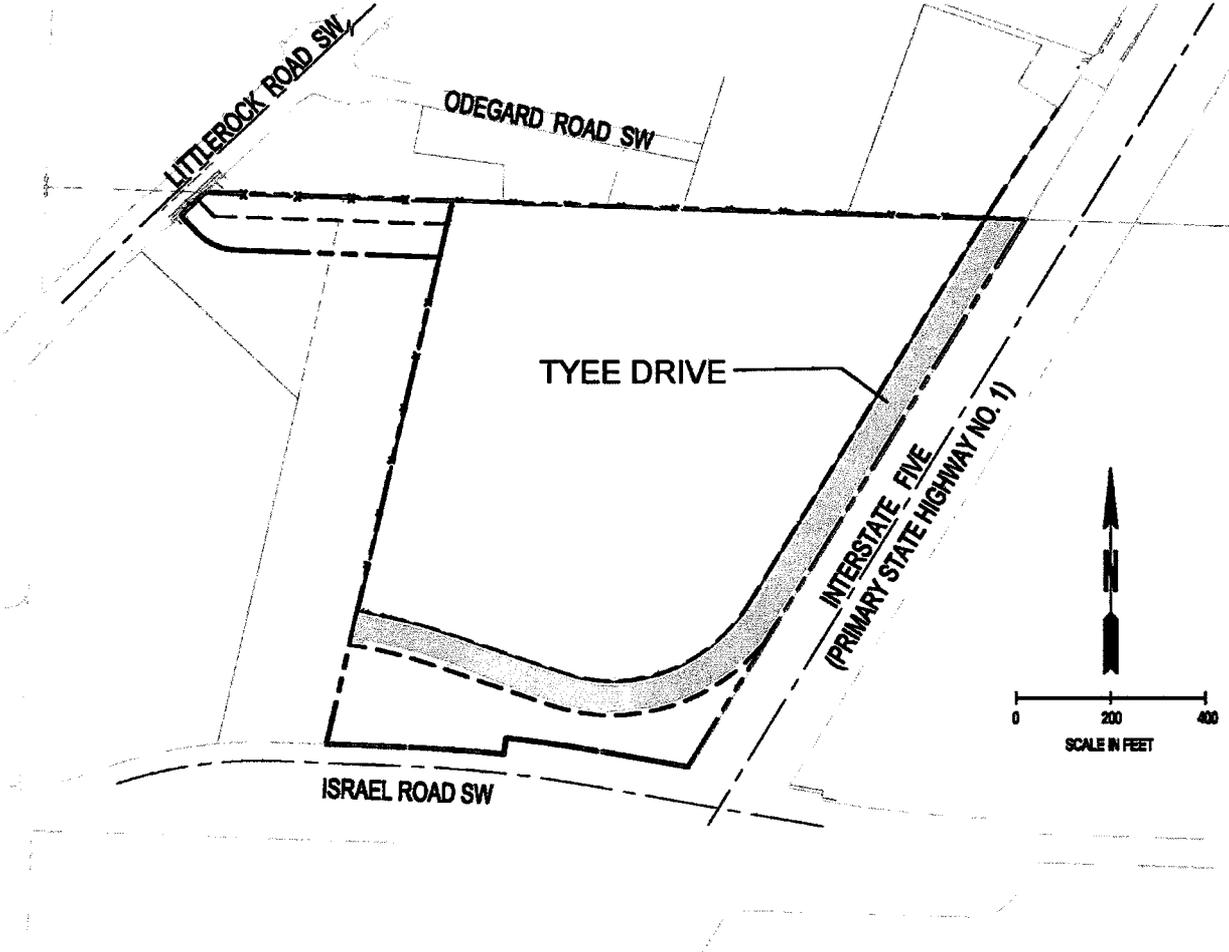
Section 22. Attorneys' Fees. In any action brought to enforce the Subject Agreement or for damages resulting from a breach thereof, the prevailing party as determined by the court, shall be entitled to recover its reasonable attorneys' fees.

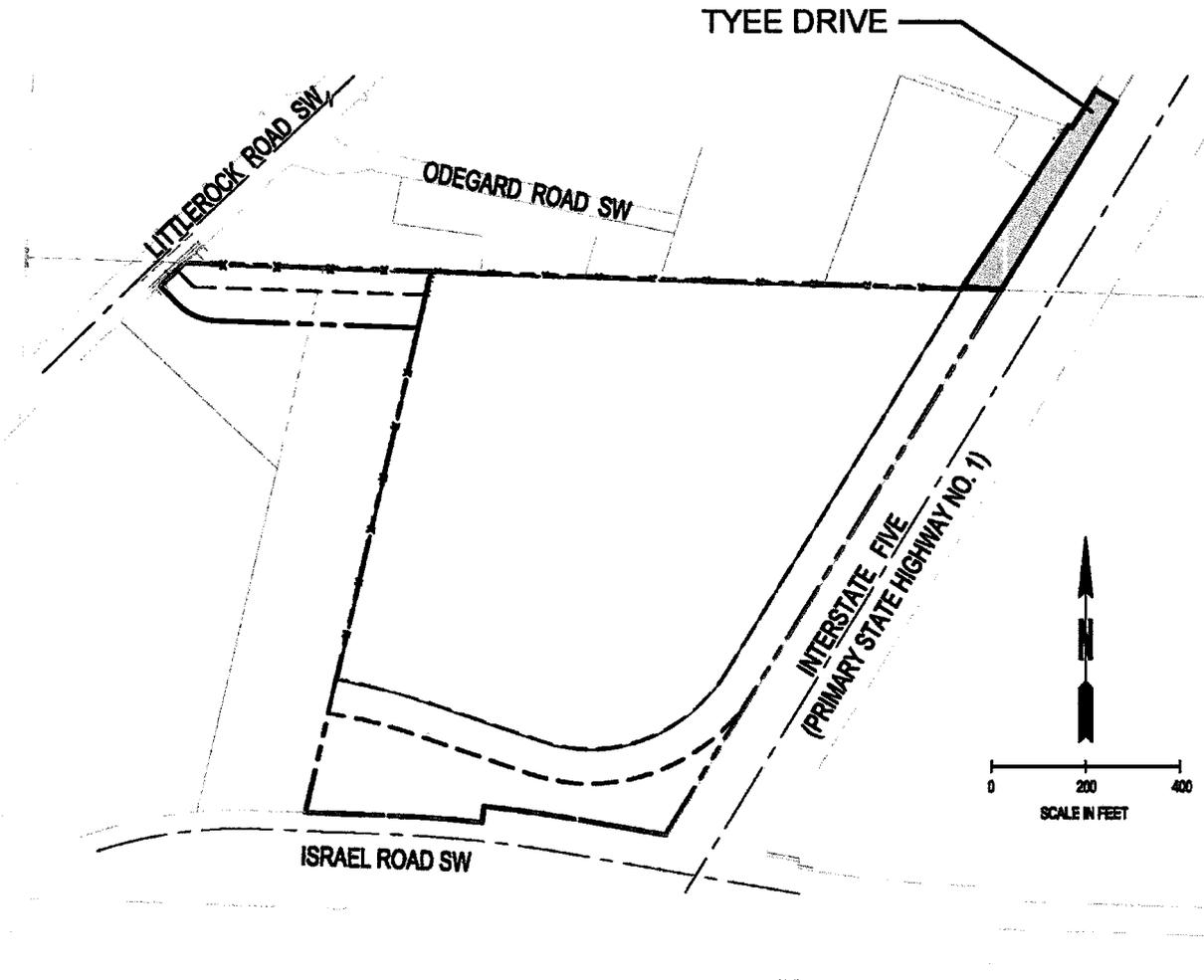
Section 23. Recording. The Agreement shall be recorded in Thurston County.

Dated this 17th day of August, 2016.

~Signatures on Following Pages~









Excavation & Utility Contractor
 P.O. Box 88
 Littlerock, WA 98556
 Phone (360) 704-7944
 Fax (360) 570-8392
schockandco@reachone.com

May 26, 2016

Tumwater Auto Center
Toyota of Olympia Project

Bike Lanes

Schedule of Costs

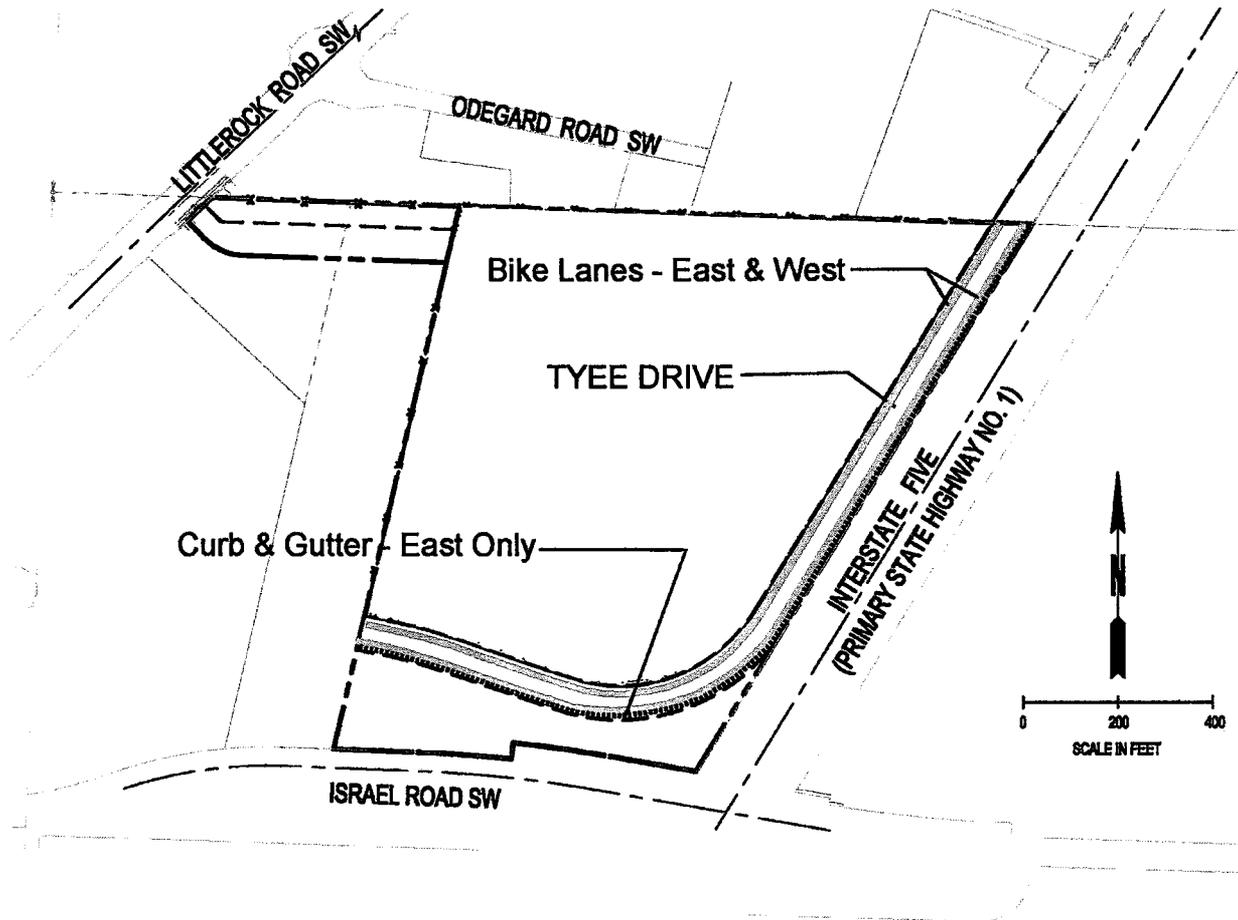
5' West Bike Lane, 5' East Bike Lane (including CSBC) and East Curb and Gutter; Tyee Drive

CSBC (supply, place, and compact)	720 Tons @ \$34.00 per Ton	\$24,480.00
HMA	19,335 SF @ \$2.43 per SF	\$46,984.00
Curb and gutter	1,948 LF @ \$8.40 per SF	\$16,363.00
Stripe and signs		\$5,255.00

Subtotal:	\$93,082.00
Profit & Overhead (20%)	\$18,616.40
Total Costs:	\$111,698.40

If you have any questions or need clarification, please call me on my cell phone at 360-918-6204. You may also reach Dwight Simpson at 360-490-1111.

Lorenz Schock
 Schock & Company, Inc





Excavation & Utility Contractor
 P.O. Box 88
 Littlerock, WA 98556
 Phone (360) 704-7944
 Fax (360) 570-8392
schockandco@reachone.com

May 26, 2016

**Turnwater Auto Center
 Toyota of Olympia Project**

Tyee Drive Sta 44+69 to 48+76
 Schedule of Costs

**Kingswood
 Section**

Surveying		\$5,000.00
Clear, grub, and stripping		\$8,607.00
Rough grade		\$8,750.00
Sanitary sewer (labor and materials)		\$10,880.00
Dewatering at sanitary sewer 33%		\$18,150.00
Storm drainage		\$19,915.00
Water main 12" C-900 PVC		\$14,591.00
Sub grade at curb and gutter;	1,033 Tons @ \$28.00 per Ton	\$28,924.00
Curb and gutter	804 LF @ \$8.40 per LF	\$6,754.00
Valley gutter	64 LF @ \$32.10 per LF	\$2,054.00
Driveway approach	348 LF @ \$3.15 per LF	\$1,096.00
Sidewalk	2,381 SF @ \$2.53 per SF	\$6,024.00
Scuppers	15 each @ \$280.00 each	\$4,200.00
Joint utility trenching	408 LF @ \$30.00 per LF	\$12,240.00
Street lighting		\$38,813.00
Sub grade at HMA		\$5,790.00
HMA	13,603 SF @ \$2.43 per SF	\$33,055.00
Stripe and signs		\$4,580.00
Landscape		\$15,600.00
	Subtotal:	\$243,023.00
	Profit & Overhead (20%)	\$48,804.60
	Total Costs:	\$291,627.60

If you have any questions or need clarification, please call me on my cell phone at 360-918-6204. You may also reach Dwight Simpson at 360-490-1111.

Lorenz Schock
 Schock & Company, Inc