

CITY OF FIFE, WASHINGTON

RESOLUTION NO. 1720

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE FOR INSTALLATION AND MAINTENANCE OF A STORM DRAINAGE LINE ACCROSS THE 26TH STREET RIGHT OF WAY

WHEREAS, Benaroya Capital Company, L.L.C. has constructed a private storm water drainage line across 26th Street East, to transfer storm drainage from parcels south of 26th Street East to private storm ponds on a Benaroya storm pond north of 26th Street East (the "Storm Line"); and

WHEREAS, Benaroya and the other parcel owners desire to maintain the Storm Line within the 26th Street Right of Way; and

WHEREAS, City staff has negotiated a license agreement, allowing Benaroya and the other parcel owners described therein to install and maintain the storm line subject to certain terms and conditions as described therein; and

WHEREAS, the City finds that such use in accordance with the terms of the License will not impair the public use and benefit of the 26th Street right of way; now therefore

BE IT RESOLVED that the Council hereby authorizes the city manager to execute the License for Use of City Right of Way for Installation and Maintenance of a Storm Drainage Line substantially in the form attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the Council hereby authorizes the city manager to execute other licenses for storm lines across 26th Street substantially in the form attached hereto as Exhibit A.

ADOPTED by the City Council at the open public meeting held on the 10th day of May, 2016.


Winston E. Marsh, Jr., Mayor

Attest:


Carol Etgen, City Clerk

Exhibit A

After Recording Please Return To:

Public Works Director
City of Fife
5411 23rd Street East
Fife, WA 98424

**LICENSE FOR USE OF CITY RIGHT OF WAY FOR INSTALLATION AND
MAINTENANCE OF A STORM DRAINAGE LINE**

Grantor: CITY OF FIFE, a municipal corporation

Grantee: BENAROYA CAPITAL COMPANY, L.L.C., a Washington limited liability company

Abbreviated Legal Description: Ptn NW of SE of Sec. 8 T. 20 N, R 4 E W.M.

Complete legal description is attached as Exhibits A of document

Tax Parcel No.: *Street Right of Way*

This License is made and entered by and between the City of Fife (the "City") and BENAROYA CAPITAL COMPANY, L.L.C. ("Licensee").

WHEREAS, Licensee owns the real property legally described as follows:

Parcels A-F of Fife Lot Line Adjustment No. LLA14-0003, recorded under Auditor's Recording No. 201509115001;

Lot 1 of Fife Lot Line Adjustment No. LLA08-0002 recorded under Auditor's Recording No. 200810085004; and

Parcel A of Fife Lot Line Adjustment No. LLA14-0001 recorded under Auditor's Recording No. 201410205004.

EXCEPT those portions conveyed to the City of Fife by statutory warranty deed recorded under Auditor's Recording No. 201411180636.

(the "Benaroya Property").

WHEREAS, Licensee has constructed private storm water drainage lines across 26th Street East at the locations legally described in Exhibit A and graphically depicted in Exhibit B attached

hereto, to transfer storm drainage from the Benaroya Property south of 26th Street East to private storm ponds on the Benaroya Property north of 26th Street East. (the “Storm Lines”).

WHEREAS, Licensee desires to maintain the Storm Lines within the 26th Street Right of Way.

WHEREAS, the City finds that such use in accordance with the terms of this License will not impair the public use and benefit of the 26th Street right of way.

NOW, THEREFORE, in consideration of the legal benefits and detriments that will arise therefrom, the parties agree as follows:

1. Grant of License. The City hereby grants to Licensee, a non-exclusive license, subject to the terms and conditions herein, to maintain, inspect, repair, remove and replace underground Storm Lines and pipes under and across the property legally described in Exhibit A attached hereto and graphically depicted in Exhibit B attached hereto (the “License Area”). Licensee’s use of the License Area, and any rights granted herein, shall at all times be subordinated to and subject to municipal infrastructure needs and uses, the general public travel and access uses and the public convenience.

2. Permits. All construction, and maintenance and repair activity by the Licensee in the License Area is subject to the City’s street obstruction and right of way use permit ordinances and all other applicable City ordinances and regulations. No construction, maintenance, or repair of Storm Lines located within the License Area shall commence until all required permits have been properly applied for and obtained from the proper City officials, and all associated permit fees have been paid.

3. Coordination of activities. Licensee shall coordinate its activities with other utilities and users of the License Area to avoid any unnecessary cutting, damage or disturbance to the public right of way.

4. Relocation. The City reserves the right to change, regrade, relocate, abandon, or vacate the 26th Street right of way within or near the License Area or to authorize any public works project deemed necessary for the public health, safety or welfare, located in or near the License Area at no expense or liability to the City. Except in cases of emergencies, the City will provide written notice to Licensee as soon as practicable, but at least sixty (60) days in advance of a requirement that relocation of Licensee’s Storm Lines must occur, as determined by the City Public Works Director. The City will provide to Licensee copies of the pertinent portions of the City’s plans and specifications for the public works project that requires relocation. Licensee promises to relocate, remove, or reroute its Storm Lines, as required by the City Public Works Director, at Licensee’s sole expense and liability.

Licensee shall complete the required relocation of its Storm Lines as soon as practicable and shall cooperate with the City in the coordination of construction events relating to relocation. Licensee promises that its required relocation shall be accomplished in a manner that accommodates and does not interfere with or unnecessarily delay the City’s public works project. In the event that Licensee fails or refuses to relocate its Storm Lines as required by the City, the City may protect, support, temporarily disconnect, remove or relocate any or all part of the Licensee’s Storm Lines without prior notice and charge Licensee for costs incurred.

5. Indemnification.

(a) General Indemnification. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with Licensee's use of Lease Area, including, but not limited to, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this License by the Licensee or on the Licensee's behalf out of issuance of this License, except for injuries and damages caused by the sole negligence of the City.

(b) Indemnification for Relocation. Licensee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting, directly or indirectly, from Licensee's failure to remove, adjust or relocate any of its facilities in the License Area in a timely manner in accordance with any relocation required by the City.

6. Successors and Assigns. The covenants contained herein are intended to and shall run with the land and shall benefit and bind the parties and their respective heirs, successors and assigns.

7. Attorneys' Fees and Expenses. In the event any Party brings a lawsuit to enforce or defend any rights herein, the prevailing party shall be awarded all costs and expenses and reasonable attorney fees.

Dated this _____ day of May, 2016

CITY OF FIFE, WASHINGTON

BENAROYA CAPITAL COMPANY, L.L.C.

By: _____
Subir Mukerjee City Manager

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

Gregory F. Amann
Assistant City Attorney

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that Subir Mukerjee is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the city manager of the City of Fife to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ of BENAROYA CAPITAL COMPANY, L.L.C. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____