



RESOLUTION NO. 2013 - 11

A RESOLUTION REGARDING A STRATEGIC INVESTMENT PLAN PROJECT FOR CERTAIN SEWER SYSTEM IMPROVEMENTS; AND AUTHORIZING AN INTERIM SEWER PROJECT TO IMPLEMENT THE STRATEGIC INVESTMENT PLAN.

WHEREAS, the City of Lynnwood since its incorporation in 1959 has planned, constructed, and operated, separated sewage and storm water systems, and from time to time in its legislative discretion chosen to add to, modify, improve, and/or expand, the separated systems; and

WHEREAS, such changes to the separated sewage and storm water systems involve fundamental discretionary policy questions regarding the extent of, and funding for, capital improvements which City Councils, Mayors, Finance Directors, and Public Works Directors have grappled with for decades, and necessarily involve balancing the risks, advantages and costs of authorizing major, expensive capital projects with the consequence of increased utility rates burdening utility ratepayers; and

WHEREAS, these fundamental discretionary policy decisions include prioritization of capital projects and their costs, and are reflected in recent decades in the City's adopted Comprehensive Sewer Plan which has been revised and updated most recently in 2006 and 2012; and

WHEREAS, the sewer system and improvements thereto are designed for optimal and reasonably anticipated conditions; nevertheless extraordinary storm events involving heavy and intense rain can through infiltration and inflow result in storm water accessing sewer pipes during such storm events, and may overwhelm sewer infrastructure capacity; and

WHEREAS, the City's 2006 Comprehensive Sewer Plan identified the need for a new sewer lift station along the Scriber Creek sewer main that runs from north to south through the Casa del Rey Condominium development, and the 2006–2011 Capital Facilities Plan (CFP), and every subsequent CFP, have included a project titled "Lift Station 16 (New), SE2006052," as recommended by the Mayor and approved by the City Council, for the purpose of decreasing sewer flows in that sewer main and decreasing and/or hopefully eliminating future threats of sewer surcharges in that area; and

WHEREAS, Sewer Project SE2006052 is at 90% design and is a major sewer infrastructure project currently estimated to cost \$5,600,000, and appears it would be able to be funded from revenues under the revised water/sewer utility rate schedule for 2014-2019, if adopted by the City Council; and

WHEREAS, during approximately the last three years there have been some sewage backups, one or more which have occurred on the Casa del Rey real property (the "subject property"), caused at least in part by heavy and intense precipitation during extraordinary rain storm events, and these extraordinary rain storm events are, and do constitute, "Acts of God;" and

WHEREAS, the City of Lynnwood by and through its City Council has planned, designed, constructed, maintained, and operated, at its absolute discretion both the sewer infrastructure system and a storm water system; and

WHEREAS, under the legal doctrine of "*discretionary immunity*" the fundamental discretionary policy decisions in the creation, maintenance, operation, and subsequent modification, of the sewer infrastructure system and a separate storm water system cannot subject the City to any liability associated with such systems, and is a very strong defense against any forms of claims, and accordingly, the City does hereby not admit or otherwise acknowledge any systems liability; and

WHEREAS, there are many factors in determining the causes of sewer backups at, or adjacent to, the subject property, including factors involving private utility facilities and the use thereof; and

WHEREAS, the most efficient and cost effective approach to address these issues is to install an interim system of mechanisms which are likely to help minimize such problems (recognizing that there is no guarantee that any solution will prevent all sewer surcharges during storm events), rather than engaging in a protracted review and analysis of past factors; and

WHEREAS, as the City has already determined to address sewer capacity in the area around the subject property by its adoption of the CFP, and the actual work and expense invested to date in the planning and design of the major Sewer Project SE2006052, it is therefore appropriate to consider and take action on an interim sewer project to help address sewer capacity and other sewer system issues at the subject property pending the installation and completion of Sewer Project SE2006052; and

WHEREAS, in the recent past, the City has developed cooperative participation agreements with landowners and residents to plan, design, and construct, various water system infrastructure projects, and the current sewer infrastructure situation at, and adjacent to, the Casa del Rey residential buildings would benefit from a similar participation agreement; and

WHEREAS, the City Council, upon recommendation of the Mayor, believes that it is in the best interest of the City and the general public, and is consistent with its duties and obligations to City utility ratepayers, to plan, design, construct, and maintain an adequate and functional sewer infrastructure, and to implement an interim sewer project to help resolve the sewer backups on the subject property pending installation and completion of Sewer Project SE2006052 as contained in the CFP; now, therefore

THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Authorization to Design and Construct an Interim Project. The Mayor is authorized to direct City staff to immediately begin to plan, design, obtain consultant and related professional services for, and construct an interim sewer project as generally described in Exhibit A hereto, and which is incorporated by reference herein, to include various facilities and mechanisms as determined in the discretion of the Public Works Director which may likely help resolve the sewage backup or capacity issues recently encountered by the subject property. The costs for such interim sewer project shall be paid from Utility Fund #411 in an amount not to exceed \$100,000.

Section 2. Requirements – Access, Inspection, and Property Easements and Rights Of Way.

During the planning and design of the interim project, the Public Works Director shall advise the Casa del Rey Homeowners Association, and any other property owners, and any other persons with possessory rights to the use and enjoyment of the subject property, of any legal documents, as prepared by the city attorney, that shall be required and which must be executed to allow access, inspection, and temporary or permanent easements and rights-of-way, as may be necessary to conduct and complete the interim sewer project on the subject property.

Section 3. Releases, Waivers, Easements, Financial Participation and Other Documents.

- a. Prior to the commencement of construction of the interim sewer project and as may be necessary and appropriate, the Casa del Rey Homeowners Association and/or each property owner and/or any person with possessory rights to use and enjoyment of the subject property shall execute and deliver to the City any and all legal documents for access, inspection, easements, and rights-of-way, as determined necessary by the City. Such legal documents shall be in a form approved by the city attorney.
- b. Prior to the operation of facilities and mechanisms constructed as part of the interim sewer project, the Casa del Rey Homeowners Association and/or each property owner and/or any person with possessory rights to use and enjoyment of the subject property shall have executed and delivered to the City a release and waiver of all

existing and potential claims against the City arising from sewer backups and from construction and operation of the interim project mechanisms. Such release and waiver of all claims shall be in a form approved by the city attorney.

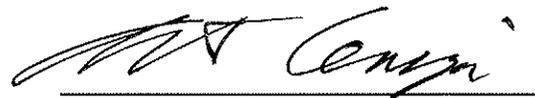
- c. Prior to the operation of facilities and mechanisms constructed as part of the interim sewer project, the Casa del Rey Homeowners Association and/or each property owner and/or any other necessary and appropriate persons with a financial interest in the subject property, shall have executed and delivered to the City a participation agreement(s) for 20% of the overall final total costs of the design, construction, estimated maintenance, and operations, of the interim sewer project, and that their respective percentage and dollar cost of the project allocated to their respective condominium unit(s) shall be as determined by the Casa del Rey Homeowners Association, provided, that the total aggregate percentage and dollar allocations for all units shall equal 100% of the 20% of the final total cost of the design, construction, estimated maintenance, and operations. of the interim sewer project allocated to private parties under the participation agreement(s).

Section 4. No Precedent. This Resolution is not, and shall not, be a precedent in regard to resolving any type of sewer, storm water, or water system backups and/or flooding situations, which may exist now or arise in the future. This Resolution is expressly confined to the facts associated with the subject property and immediately adjacent private properties, and also confined to the facts and context wherein a major Capital Facilities Plan sewer project has been planned and, but for a delay in final design, bond financing, and construction, will take approximately 24 months or more to complete. It may not be cited or referenced in any city proceedings of any kind, nor in any claim or cause of action against the City.

Section 5. Effective Date. This Resolution and the authorizations herein shall be in full force and effect immediately upon its adoption.

PASSED BY THE CITY COUNCIL, the 7th day of October, 2013.

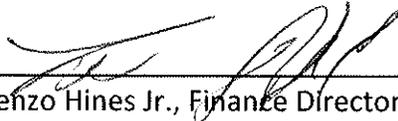
APPROVED:



Don Gough, Mayor

For Mayor per DSA 4-15-13

ATTEST/AUTHENTICATED:



Lorenzo Hines Jr., Finance Director

FILED WITH ADMINISTRATIVE SERVICES: 10/02/2013
PASSED BY THE CITY COUNCIL: 10/07/2013
RESOLUTION NUMBER: 2013-11