

AFTER RECORDING MAIL TO:

City Clerk, City of Walla Walla
15 N. 3rd Ave
Walla Walla, WA 99362

Filed for record at the request of the City of Walla Walla, a municipal corporation.

Parties: CITY OF WALLA WALLA and COTTONWOOD INVESTORS, LLC
Abbreviated Legal Description: (TRACT B SURVEY 2004-07272) PT TAX 37 & TAX 1
APN: 360604120029

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF WALLA WALLA
AND COTTONWOOD INVESTORS, LLC**

THIS AGREEMENT, made and entered into this _____ day of _____, 2024, by and between the City of Walla Walla, a municipal corporation, hereinafter referred to as "City", and Cottonwood Investors, LLC, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, per RCW 36.70B.170(1), a local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction or as part of a proposed annexation. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW; and

WHEREAS, the Developer has submitted a Development Agreement application to the City of Walla Walla for development of the Cottonwood Subdivision on the described property belonging to the Developer, commonly described as the land between Cottonwood Road and Kendall Road and located within the County of Walla Walla, Washington, and identified by Walla Walla County Assessor Parcel Number 360604120029. The Developer has petitioned or intends to petition for annexation of the described property to the City of Walla Walla. A general site depiction of the property is attached hereto as Exhibit A. A legal description for this property is attached hereto as Exhibit B.

WHEREAS, the City has determined that there are certain impacts as a result of development, and that the City has an obligation to ensure that the property is developed to the densities required by the Growth Management Act and the City of Walla Walla Comprehensive Plan; and

WHEREAS, the City and developer recognize that the development as provided for in this agreement are consistent with the Walla Walla Comprehensive Plan and further the objectives and goals of the Regional Housing Action Plan adopted by Ordinance 2021-23 and

the City Strategic Plan, Livability Objective 1; and

WHEREAS, the responsible official for the City of Walla Walla under Washington’s State Environment Policy Act issued a Mitigated Determination of Non-Significance upon the proposal on _____, 2024; and

WHEREAS, pursuant to RCW 36.70B.200, a public hearing was held on _____ before the Walla Walla City Council.

WHEREAS, the Walla Walla City Council has considered the application, the environmental documents, and has given careful review and consideration, and finds that good government and the best interests of the City of Walla Walla will be served by entering into this Development Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Purpose

The Developer desires to develop certain real property owned and controlled by the Developer, such real property consisting of approximately 104.6 acres of land, currently located in the City of Walla Walla Urban Growth Area, consisting of the parcel generally depicted in Exhibit A, attached hereto and incorporated by reference (the “Property”) for the development of no more than 257 lots for future construction of detached single family houses hereinafter described as the “Development”, in accordance with the development regulations designated in this Agreement. A legal description for this property is attached hereto as Exhibit B.

The Developer understands that the Walla Walla City Council will not consider annexation of the Property until this Development Agreement is fully executed and all relevant appeal periods for this Development Agreement approval have lapsed.

Pursuant to RCW 36.70B170, the parties hereto have agreed to enter into this Agreement to set forth the terms and conditions of the development in order to set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the Development for the duration specified in this Agreement.

In connection with the proposed Development, the Developer and the City recognize that the scope and term of the development(s) under this Agreement accomplish the statutory aims of comprehensive planning, and orderly development within the City, thus providing benefits to the citizens and residents of the City and provide public benefits through the construction of those public facilities described and identified in this Development Agreement.

This Agreement describes the plans of development and establishes standards, guidelines, and conditions that will apply to the Development to provide such predictability to the Developer with regard to future development plans. These standards are intended to provide certainty to the City in planning while permitting a certain degree of flexibility for the Developer in undertaking its Development.

In the Developer’s application for this Development agreement, it submitted plans, studies and other materials in support of the proposed Development. The documentation in

support of this Agreement is hereby adopted and incorporated by reference as part of the Agreement. A list of supporting documentation is attached hereto as Exhibit I. Should there be any conflict between these supporting documents and the terms and conditions of the Development Agreement, the Development Agreement shall prevail.

Section 2. The Development

The planned Development is for no more than 257 residential lots for future construction of detached single-family residences. The site consists of an approximately 104.6-acre parcel located north and east of Cottonwood Road and west of Kendall Road. The Developer proposes to fully develop this site with open space, multi-use paths, utility extensions, stormwater facilities, and other public improvements identified and described in further detail under Section 5, will be included as part of the Development. Such public improvements, once constructed, tested and approved by the City, will be dedicated to the City by the Developer.

Section 3. Certainty of Development Agreement

3.01 Vested Rights of Developer

During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Development described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits attached hereto, or as expressly consented thereto by the Developer. Notwithstanding, the City reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety as provided for in RCW 36.70B.170(4).

3.02 Changes in the Law

In the event that state or federal laws or regulations, enacted after this Agreement has been entered into, prevent or preclude compliance with one (1) or more of the provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations following modification procedures in Section 8 for an amendment or modification.

3.03 Emergency Situations

The City may suspend the issuance of building permits or other land use permits for the planned Development, if it finds that continued construction is not consistent with the terms and conditions of this Agreement and would place surrounding residents or the immediate community, or both, in a condition dangerous to their health or safety, or both, and provides notice to the Developer as soon as practicable. The City shall resume issuance of building permits or other land use permits as soon as the dangerous condition has been rectified, mitigated, or is no longer applicable.

3.04 Legal Interference

The Developer's obligations are specifically conditioned on Developer's right and ability to develop the property pursuant to the terms of this Agreement. If the development of the property is stopped, substantially delayed or curtailed for any reason not caused by the Developer, including but not limited to governmental action or third-party legal action, then all of the Developer's duties and obligations under this Agreement are suspended until such stoppage

is no longer in force or effect.

Section 4. Walla Walla Comprehensive Plan/Strategic Plan/Regional Housing Action Plan

This Development Agreement is intended to help fulfil the following policies and goals adopted by the City of Walla Walla.

4.01 Walla Walla Comprehensive Plan

Community Character Policy 1.1 Use the land use code and design guidelines to ensure that new development reinforces and is guided by the character of existing land use patterns and the architectural attributes of the applicable character areas.

Land Use Policy 1.1 Accommodate new residential and commercial development in areas with available infrastructure and services.

Land Use Policy 1.3 Encourage infill development that provides additional housing within the city.

Land Use Policy 1.4 Review new development proposals to ensure they support the objectives of the Comprehensive Plan such as land use, transportation, community character, historic preservation, and sustainability.

Land Use Policy 3.7 Support a variety of housing types such as tiny homes, duplexes, multi-family development, cottage housing, and single family residential, and manufactured homes and manufactured housing communities.

Land Use Policy 4.1 Balance commercial, industrial, and residential development with the conservation of natural resources and open space by directing growth to areas already served by infrastructure.

Land Use Policy 4.4 Ensure that new subdivisions and housing development retains natural qualities including topography, natural features, and native vegetation to minimize impacts to the surrounding ecosystem. Retaining or restoring riparian woody vegetation should be a priority.

Land Use Policy 5.2 Ensure that new subdivisions and housing are designed to accommodate pedestrian and bicycle access within the development and to nearby community facilities and amenities such as schools, parks, shopping areas, transit corridors, and employment centers.

Housing Element

“Walla Walla must ensure it has enough housing for all its residents. As the City grows it also plays a role in providing everyone who lives here access to a decent house that they can afford. There are many ways to do this but increasing the different types of housing is an important factor in meeting community needs. Policies enacted to create more housing must include measures that mitigate against the displacement of marginalized populations through redevelopment. This element examines the kind of housing Walla Walla has now, its needs for housing, and identifies how it can make sure there are enough homes for everyone in the future.”

Housing Goal 1: A broad range of housing choices is available to meet the needs of people of diverse socioeconomic status, housing type and age.

Housing Policy 2.1 Integrate housing for lower and moderate-income households and those with special needs into a variety of geographical locations throughout the city.

Environment and Natural Resources Policy 1.3 Ensure that buffers are adequately defined, regulated, and controlled to limit the disturbance of vegetation and disruption of ecological function.

Transportation Policy 5.2 Create a well-connected network of streets, paths, and transit service to provide active transportation options.

Capital Facilities and Utilities Policy 2.7 Ensure that facilities and infrastructure are designed and located with consideration of their impacts on community character.

4.02 Regional Housing Action Plan:

The Regional Housing Action Plan (RHAP), adopted by the Walla Walla City Council via Ordinance 2021-23, states the need for additional housing, with the following:

“The Walla Walla Region should plan to add approximately 4,685 net new housing units over the next 20 years.” [... and] “Based on the residential capacity analysis and this housing needs assessment, the following conclusions are made: [...] Walla Walla UGA: the projected 20-year housing need of 3,570 dwelling units is below the potential UGA capacity of 3,740 dwelling units... It is recommended that the [City of Walla Walla ...] ensure that new housing density can be optimized within current UGA's...” (See page v, *Regional Housing Action Plan*)

The Regional Housing Action Plan also finds that an anticipated development of 3,570 dwelling units will be needed within the projected 20 years, of which 1,714 dwellings will come from infill redevelopment and 1,686 dwellings will come from vacant land. (See page 20, *Regional Housing Action Plan*)

4.03 Walla Walla Strategic Plan:

Livability – Strategic Objective 1, Address Housing Crisis in the Community

Section 5. Development Standards, Development Requirements, Mitigation Measures, and Approved Uses

5.01 Development of Annexed Area

This Agreement is prepared as part of a proposed annexation. This Agreement is a voluntary contract detailing the standards and conditions that will govern the development of real property at such time it is annexed into the city. Upon annexation, the Developer agrees that the real property described on the attached Exhibits A and B, in which the Developer has an interest, shall be developed in accordance with this Development Agreement, the Walla Walla Municipal Code, and specifically Titles 12, 13, 15, 19, 20, and 21, and the Development will meet the minimum density requirement of four (4) dwelling units per net acre, which includes no more than 257 lots for 257 detached single-family dwelling units.

5.02 Conceptual Layout

The Developer has prepared a conceptual layout of the Development. This conceptual

Development layout is attached hereto as Exhibit C and depicts the creation of 257 single-family residential lots from a multi-phase development. The conceptual layout may be modified during the subdivision approval process, but development at full build out of all phases shall not exceed 257 lots. A reduction of lots may be necessary or desirable to accommodate required on- and off-site stormwater facilities, on-site infrastructure, and to accommodate the potential market conditions and demand so long as the development meets the minimum net density requirements of four dwelling units per acre.

5.03 Preliminary Plat Phasing

The Developer agrees to build the development as depicted in the Phasing Plan attached hereto as Exhibit D.

5.04 Conceptual Open Space Plan

The Developer has identified open space as part of the development application showing the location of a park area, and a non-motorized multi-use trail system. This conceptual open space plan is attached hereto as Exhibit E. The Developer shall be responsible for installation of the park and trail as generally depicted in the conceptual open space plan. The park, trail, and amenities located within the park area shall be dedicated to the city when completed and approved by the City.

The park area shall include the following features, at a minimum, as approved by the City:

- a. Minimum 12-foot-wide asphalt paved trail structure.
- b. Amenities including sitting benches, waste receptacles, pet waste stations,
- c. Trail lighting, and
- d. Trees, landscaping, and irrigation.

The park area shall be landscaped with natural low-maintenance, drought-tolerant trees, grasses and plantings, including native plants, that are hardy in nature. Landscaping shall be irrigated to ensure the health of the vegetation. Parts of the trail system that pass through stormwater management facilities shall be located above the engineered highwater mark for the 10-year storm to avoid inundation with water. The city will maintain the areas that are dedicated to the city in a manner consistent with other city park facilities.

A final open space plan will be designed by the developer in consultation with and approved by the city. Steep slope areas outside of the active park and trail areas may be owned and maintained by a future Homeowners' Association. A Steep slope is greater than 5:1 slope. Determination of ownership and maintenance of the open space will be identified at preliminary plat.

5.05 Fire Flow Water

Water sources and facilities adequate for fire protection purposes shall be provided by the developer at each phase of the Development and built to city standards. (See WWMC 19.32.050). Based on water pressure and volume modeling, the developer shall ensure the required 1,750 gallon per minute fire flow availability within the Development, otherwise home construction must comply with International Fire Code, Appendix B, and WAC 246-290-230 as amended, relating to residential fire sprinkler system requirements.

5.06 Water/Sewer Utility Plan

The Developer shall provide for water and sewer facilities that are substantially similar to

the preliminary water and sewer utility plan dated July 2021. This preliminary water and sewer utility plan is attached hereto as Exhibit F. In accordance with WVMC 19.32.030, water distribution systems and water supply facilities shall be installed to provide potable water to each lot within the Development. Utility pipe sizing and locations shall be designed and installed to ensure adequate domestic and fire flow and pressure within the development.

5.07 Grading Plan

Grading within the proposed Development shall generally conform to the conceptual grading plans dated July 1, 2021, and the preliminary grading plan showing cut and fill cross sections. These conceptual grading plans are attached hereto as Exhibit G and may be modified as necessary to comply with local, state, and federal requirements.

A Construction Stormwater Pollution Prevention Plan (SWPPP) shall be prepared for all land disturbing activities in accordance with the latest version of the Stormwater Management Manual for Eastern Washington and be covered by a Construction Stormwater General Permit, that ensures compliance Chapter 13.16 Construction and Post-Construction Stormwater of the Walla Walla Municipal Code.

5.08 Drainage and Erosion of Existing and Proposed Slopes

Drainage and erosion of existing and proposed slopes at each phase of Development shall comply with WVMC Chapter 21.04 regarding critical areas for existing and proposed slopes and comply with the Best Management Practices and the recommendations in the submitted geotechnical reports.

5.09 Stormwater Management

The Developer shall provide for the management of stormwater from the proposed Development in accordance with City Codes, Standards, and the latest version of the Stormwater Management Manual for Eastern Washington.

As part of the preliminary plat application for the entire development, the Developer shall submit a comprehensive stormwater management plan that addresses all on-site stormwater (originating from within the development) and off-site stormwater (upstream drainage, e.g. Areas A, B, C, and D from the 12/22/2016 Aspect Report) for all phases of the Development.

The design and construction of all stormwater systems shall be subject to review and approval by the City and shall include provisions for access, sediment control, maintenance, and management and shall include a schedule for completion of the facilities tied to the development's construction phasing plan. Off-site stormwater management systems shall be constructed as part of Phase 3. Final plat approval for Phase 3 or any subsequent phases shall not be granted until the off-site stormwater systems are constructed and approved by the City.

The comprehensive stormwater plan shall additionally meet the following requirements:

- a. On-site stormwater systems shall retain the 25-year storm event and manage the 100-year storm event to mitigate against flooding of downstream properties.
- b. For the benefit of downstream properties, off-site stormwater shall be managed to mitigate flooding of downstream properties. Off-site stormwater management facilities shall be sized for the 25 and 100-year design storms. Discharges to the downstream Table Rock pond and associated piping system shall not exceed the

capacities reported in the 12/22/2016 Aspect report.

- c. An operations and maintenance plan shall be prepared and submitted for all proposed stormwater facilities.
- d. The comprehensive stormwater plan/system shall generally conform to PBS's "Cottonwood Development, Development Agreement - Applicants Proposal to the City of Walla Walla", (Section A. Storm Drainage) dated 3/2/2023 attached hereto as Exhibit H.
- e. The Developer shall work with Walla Walla County with respect to any infrastructure within the county jurisdiction (e.g. Kendall Road) and provide notice and opportunity to comment to the City.
- f. Subject to review and acceptance by the City, off-site stormwater management facilities shall be dedicated to the City. Access and maintenance easements shall be granted to the City to allow for maintenance in accordance with WWMC 13.16.050(B).
- g. The Developer shall provide a surety (letter of credit, cash deposit, bond, or other acceptable collateral) to the City in the amount of 180% of the estimated cost for the design and construction of all off-site stormwater facilities prior to final plat approval of the first phase of development. The purpose of the surety is to ensure the off-site facilities will be designed and constructed within the initial 20-year term of the agreement. The estimated costs shall include design, construction, inspection, and a 25% contingency. The surety amounts will be released upon completion of the stormwater facilities by the Developer and upon transfer of such facilities by dedication to the City.
- h. In conjunction with the frontage improvements on the north side of Cottonwood Road, the developer shall be required to manage off-site stormwater currently conveyed in the existing northside ditch along with the stormwater from the roadway frontage. Provisions shall be made for removal of sediment from offsite stormwater prior to comingling with roadway runoff.
- i. The Cottonwood Road/Kendall Road intersection drainage shall be evaluated, and any necessary improvements made to mitigate against flooding/overflows during the 25-year storm and damage to downstream properties during the 100-year storm event.
- j. If stormwater infiltration facilities are proposed in fill areas, the Developer shall identify those facilities and provide a geotechnical engineering report specifying construction requirements to ensure the performance of the intended function while also addressing settlement and failures. Additionally, the Developer shall provide inspection of these facilities during construction and assurance from a Washington State licensed professional geotechnical engineer that the facilities were constructed according to the specified requirements.

5.10 Transportation Improvements

The Developer shall be responsible for making specific transportation improvements as

well as contributions of capital to the City to be used for transportation mitigation measures for the development. It is understood by the parties that the contributions are intended to help fund improvements to mitigate traffic impacts generated by the development. The Developer has agreed to complete the transportation improvements or make capital contributions as indicated below.

- a. Frontage improvements on Cottonwood Road shall include street lighting, a bicycle lane, 6.5-foot-wide planter strip, and a 10-foot-wide multi-use path on Cottonwood Road for the full frontage of the subject property.
- b. Frontage improvements along Kendall Road shall include street lighting in addition to the frontage improvements required by Walla Walla County.
- c. The development shall install wayfinding signage and striping between the Cottonwood Subdivision and Eagle Crest Drive to promote a clear, continuous, convenient, and safe active (non-motorized) transportation route to and from the multiuse path along the Boulders Subdivision at the northeast corner of Cottonwood Road and Eagle Crest Drive to the Development.
- d. Wayfinding signs shall be installed to direct non-motorized users between the frontage improvements on Cottonwood Road and the multiuse path along the Boulders Subdivision. A 12-foot-wide multiuse path shall connect the bicycle lane and multiuse path on Cottonwood Road to Wenaha Drive to support connectivity through the Table Rock Subdivision.
- e. Replace the existing standard stop signs with flashing LED stop signs and add thermoplastic stop bars at the intersection of Cottonwood Road/Powerline Road/Langdon Road.

Additionally, the developer shall make capital contributions to the city based on the values of the following projects:

- f. As identified in Table 2 of the Developer's 8/21/2023 letter (prepared by PBS), the below mitigation measures and associated costs are the development's proportionate share of the identified transportation improvements.
 1. Add a northbound left turn lane at the intersection of Howard Street and 2nd Avenue/Abbott Road at the estimated cost of \$424,950.
 2. A non-motorized bridge across Russell Creek and complete sidewalk connections to the north of the creek to the existing sidewalk on Cottonwood Road. Proportionate share: \$161,381.
 3. Eastbound and westbound left turn lanes at the Howard Street/Cottonwood Road/Prospect Road/Reser Road intersection. Proportionate share: \$307,338.
 4. Traffic signal improvement at the intersection of 2nd Avenue/Tietan Street. Proportionate share: \$94,068.

5. Intersection improvement at the Fern Avenue/Abbott Road intersection. Proportionate share: \$193,052.

The total proportionate share capital contribution from the Developer for transportation improvements are therefore \$1,180,789 (2023 estimated cost dollars).

- g. The City desires flexibility in using the capital contribution from the Developer on one or multiple projects and at different times. Projects may differ from those described above. The full amount of the Developer's capital contribution for transportation mitigation may be paid by the Developer at any time upon execution of this agreement, but shall be required no later than prior to final plat recording of the Developer's first construction phase, or five years from the execution date of this agreement, whichever comes first. A 4% annual increase for inflation will be added to the 2023 estimated costs until such a time the capital contribution is made. Once the Developer has made the total capital contribution as required by this section, then Developer shall be thereafter fully relieved from any further responsibility for transportation improvements and particularly those transportation improvements as identified in subparagraph f (above) regardless of when and if such transportation improvements are required.

5.11 State Environmental Policy Act (SEPA)

The responsible official for the City of Walla Walla under Washington's State Environment Policy Act issued a Mitigated Determination of Non-Significance upon the proposal on _____, 2024, the terms of this Agreement identifies the mitigation required in this SEPA threshold determination. Nothing in this agreement shall impair the ability of the City to enforce mitigation measured identified in the Agreement through SEPA.

5.12 Developer's Obligations

Nothing in this Development Agreement shall be deemed to alter the obligation of the Developer to obtain all permits necessary before the commencement of each phase of the Development including but not limited to civil plan approval, final plat approval for each phase.

5.13 Preliminary Plat Conditions

The Developer understands that upon approval of this Agreement, the Developer is required to follow the preliminary plat approval process. Developer must apply for preliminary plat for the entire Property and any plat proposal must be consistent with this Agreement. The Developer shall seek approval from the City's Site Plan Review Committee to make minor adjustments to lot boundaries, infrastructure boundaries, and right of way locations as shown on the conceptual site plan during the preliminary plat review period, provided that the adjustments are in conformity with the terms of this agreement and does not exceed the maximum allowable lots of 257.

Any preliminary plat application will include, but is not limited to, the following general terms and conditions subject to Municipal Code provisions, as may be amended.

- a. Street Improvements (WWCC 19.32.020)

All Roadway improvements shall be designed and constructed per the AASHTO Policy on Geometric Design of Highways and Streets, Chapter 6, shall include sidewalk, curb and

gutter, drainage, street lighting. Any work within Walla Walla County right of way shall be specifically permitted by the county prior to any work occurring.

b. Water (WWMC 19.32.030)

Water supply facilities shall be installed to provide potable water to each lot within a development under this code in accordance with the policies of the Walla Walla comprehensive plan. Distribution mains and fire hydrants shall be installed in accordance with Chapter 19.34, Public Facilities Standard Plans, and shall be inspected and approved by the city engineer or designee prior to construction of street improvements.

c. Sanitary Sewer (WWMC 19.32.40)

Sanitary sewers shall be provided to each lot or unit within the development in accordance with the policies of the Walla Walla comprehensive plan. The sewer system shall be inspected and approved by the city engineer or designee prior to construction of street improvements. All required sanitary sewer lines and stormwater facilities located within the street improvement section shall be completed in accordance with Chapter 19.34, Public Facilities Standard Plans, and inspected and approved by the city engineer or designee prior to construction of street surface improvements.

d. Stormwater (WWMC 13.15 and 13.16)

Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be in effect to prevent storm water runoff from carrying soil and other pollutants into surface water or storm drains, said measures shall remain in place until completion of the development. The public right-of-way shall be kept clean. No tracking of mud and debris from the site onto the right-of-way will be allowed.

e. Warranty/Guaranty (WWMC 19.32.070)

Prior to acceptance of newly constructed public utilities, the Engineering Division must be provided with a two-year written warranty/financial guarantee. This warranty/guarantee ensures that all utilities and street improvements in the public right-of-way and/or public utility easements are not defective for a period of two years from final acceptance.

f. Record Drawings (WWMC 19.34.020)

Upon completion of public improvements and prior to the issuance of a Certificate of Occupancy, the Developer shall provide the City with record drawings signed and stamped by a registered state of Washington professional engineer.

g. Permits and Fees (WWMC 2.94.040, 13.03.645, & 13.04.035)

Prior to Engineering review of civil plans, the developer shall pay the plan review fees. Prior to the approval and issuance of civil plans, the developer shall pay inspection fees. All applicable permits shall be in order prior to any construction. All construction is to conform to City standards.

h. Material Testing

Materials to be used must be submitted to the City Engineer for approval prior to construction of improvements.

Developer shall be responsible for all materials testing meeting the frequency and methods as defined by the Washington State Department of Transportation Construction Manual for all work within the public right of way (i.e., roadway embankment, utility trench, crushed rock surfacing, Portland cement concrete, and hot mix asphalt). Testing shall be

performed by a qualified and certified materials testing firm and verification of said testing shall be submitted to the City Engineer in standard report form.

Section 6. Development/Permit Fees and Charges

The development/permit fees and charges for issuance of a building permit for residential structures as outlined in the Walla Walla Municipal Code are applicable to this Development and do not vest and are made and collected at the time the building permit is issued. When building permits are submitted for individual lot construction, the fees and charges in place at the time of building permit submittal apply. This includes Capital Facility Charges, Cottonwood Trunk system special charges, and other fees and charges in effect at the time of building permit submittal.

Section 7. Government Approvals

Should the Developer at any time require the approval of any governmental body or board, whether of local, regional, state, or federal jurisdiction, the Developer shall bear the sole cost and responsibility for obtaining the approval. The City, upon request by Developer, shall lend its full cooperation and affirmative support if it deems such would be in the interest of timely performance under this Agreement, and such cooperation and support would not compromise the responsibilities of the City, including its responsibilities to the Developer as set forth in this Agreement. Nothing contained herein is designed to relieve the Developer of the necessity of complying with the laws governing the permitting requirements, conditions, terms, or restrictions.

Section 8. Amendment or Modification

This agreement may be amended or modified in conformity with the requirements of RCW 36.70B.170-200, WWMC 20.34 and other applicable laws, rules, or regulations, and upon mutual consent of the parties, which mutual consent of the parties shall be evidenced by a written agreement therefore, signed by the parties hereto.

If the Developer proposes changes or adjustments to this Agreement or site plans associated with this Agreement, the Development Services Director after consultation with the Site Plan Review Committee established by WWMC 20.46 may approve minor adjustments. Minor adjustments are limited to ten percent (10%) deviations from the plan included in this Development Agreement. If the Development Services Director determines that the proposed changes to the Development Agreement and/or the plan associated therewith are major, then the Developer must undertake a process to amend this Agreement.

Any changes or adjustments to this agreement that don't qualify as minor adjustments must be approved by the Walla Walla City Council after the Walla Walla Hearing Examiner has conducted a hearing and made a recommendation to the Council.

Section 10. Periodic Review Required and Results of Periodic Review

10.01 Periodic Review

This Agreement shall be reviewed by the City periodically at least two years from the date of this Agreement is entered into, at which review the Developer, or successor in interest thereto, shall be required to demonstrate good faith compliance with this Agreement. The body

to conduct such a review shall be Site Plan Review Committee.

10.02 Compliance

If the SPRC has reason to believe that the Developer may not be complying with the terms of this agreement, written notice specifying non-compliance shall be given to the Developer and the Developer shall have sixty (60) days to bring the development into compliance. The SRPC will review the Developer’s written response. If the SRPC and the Developer do not agree or have a dispute about the compliance under this term, such dispute will be resolved pursuant to the dispute resolution procedure in Section 12.08 hereafter.

Section 11. Term and Early Termination

This agreement shall terminate twenty (20) years from the date of execution at which point any and all rights held by the parties hereunder shall terminate; provided however, if any of the phases of development have not been constructed by such date, the Developer may make a request to the City to extend this Agreement for one additional successive five-year term. Approval by the City shall not be unreasonably withheld.

This agreement may be terminated early only (1) by mutual agreement of the parties, (2) for impossibility of performance, or (3) to protect public health, safety or welfare. Any dispute regarding early termination shall be resolved pursuant to the dispute resolution procedure in Section 12.08 hereafter. Early termination of this agreement shall not relieve the Developer of any subdivision or permit conditions of approval or mitigation measures required through SEPA.

Section 12. General Provisions

12.01 Notices, Demands, and Communications

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by certified mail, postage prepaid, returned receipt requests, or delivered personally, to the principal offices of the City and Developer as follows:

City

City Clerk
City of Walla Walla
15 N. 3rd Avenue
Walla Walla, WA 99362

Development Services Director
City of Walla Walla
55 E. Moore Street
Walla Walla, WA 99362

Developer

Cottonwood Investors, LLC
P.O Box 1757
Walla Walla, WA 99362

Designated Contact Person
Land Development Manager
Development Manager
Larry Harding
269 Narcissa Place
Walla Walla, WA 99362

If the substitution of the above-referenced persons is needed, then notice shall be provided through one of the means identified above.

12.02 Non-liability of City, Officials, Employees, and Agents

No member, official, employee, or agent of the City shall be personally liable to the

Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

12.03 Enforced Delay

Developer agrees that it shall make no claims against City for damages, charges, interest, additional costs or fees incurred by reason of delays or suspension of work required under this agreement caused by the City, other parties under the City's control, or any other cause in the performance of its work required under this Agreement. Developer's sole and exclusive remedy for delays, stoppage, or suspension of the work is an extension of time equal to the duration of the delay, stoppage, or suspension to allow the Developer to complete its work required under this Agreement.

12.04 Titles of Parts and Sections

Any titles of the Parts, Sections, or Subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provisions.

12.05 Hold Harmless

The Developer shall indemnify and hold harmless the City and their officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by an reason of or arising out of the negligent act or omission of the Developer, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgement is rendered against the City, its officers, agents, employees, and/or any of them, or jointly against the City and the Developer and their respective officers, agents, and employees, or any of them, the Developer shall satisfy the same to the extent that such judgement was due to the Developer's negligent acts or omissions.

12.06 Third Party Legal Challenge

In the event any legal action or special proceeding is commenced by any person or entity other than a party to this 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 Developer. In such event, Developer 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 in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation; provided, however the Developer shall not be required to indemnify the City against any claims or damages directly attributable to actions by the City and its employees and representatives. The Developer 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.

12.07 Enforcement, Rights, and Remedies Cumulative

This Agreement shall be enforceable by the City, applicant, or successor-in-interest notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City which alters or amends the rules, regulations, or policies specified in this Agreement. Enforcement may be through any remedy or enforcement method or process, or combination thereof, allowed under law and/or equity. Except as otherwise stated in this Agreement, the rights and remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

12.08 Dispute Resolution

In the event that a dispute arises between the parties to this agreement at any time in the future, the parties agree to promptly meet and confer upon a process for attempting to resolve the dispute regarding compliance with the agreement or its interpretation. The process will include informal discussions and mediation if the parties believe that such mediation can be successful in resolving the conflict. At any time either of the parties may ask for the dispute to be submitted to arbitration pursuant to RCW 7.04A et seq. The parties will move forward promptly with arbitration. The parties will agree on an arbitrator who is an attorney familiar and versed in land use matters. The parties acknowledge that the attorney who acts as a hearing officer for the City would be eligible as a candidate to act as the arbitrator.

12.09 Applicable Law

This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. The venue for any legal action brought hereunder shall be the Superior Court of the State of Washington for Walla Walla County.

12.10 Severability

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding, or unenforceability.

12.11 Legal Actions

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of the Agreement, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney fees and costs incurred in the action.

12.12 Binding Upon Successors

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest to any of the parties hereto except pursuant to this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

12.13 Parties Not Co-ventures

Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers or principal and agent with one another, nor employees and/or employers of each other.

12.14 Warranties

The City expresses no warranty or other representation to the Developer other than those expressed within this Agreement, as to fitness or condition of the Property.

12.15 Reasonable Approvals

The approval of a party of any documentation or submissions herein called for shall not be unreasonably withheld unless the text clearly indicates a different standard. All such approvals shall be given or denied in a timely and expeditious fashion.

12.16 Recordation

Within five days after the effective date of this Agreement, or any modification, or the

cancellation thereof, the City Clerk shall have this Agreement, the modification, or cancellation recorded with the Auditor's Office of Walla Walla County.

12.17 Execution of Other Documentation

The City and the Developer agree to execute any further documentation that may be necessary to carry out the intent and obligations under this Agreement.

DATED this _____ day of _____, 2024.

CITY OF WALLA WALLA

By _____
Elizabeth F. Chamberlain, City Manager

ATTEST:

Lisa Neissl, City Clerk

COTTONWOOD INVESTORS, LLC

By: _____

Its: _____

STATE OF WASHINGTON)
) ss
County of Walla Walla)

I certify that I know or have satisfactory evidence that Elizabeth Chamberlain is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the City Manager of the City of Walla Walla 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

(Seal or stamp)

My appointment expires _____

STATE OF WASHINGTON)
) ss
County of Walla Walla)

I certify that I know or have satisfactory evidence that Lisa Neissl is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the City Clerk of the City of Walla Walla 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

(Seal or stamp)

My appointment expires _____

STATE OF WASHINGTON)
) ss
County of Walla Walla)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of the Cottonwood Investors, LLC 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

(Seal or stamp)

My appointment expires _____

Exhibit A – Site Depiction

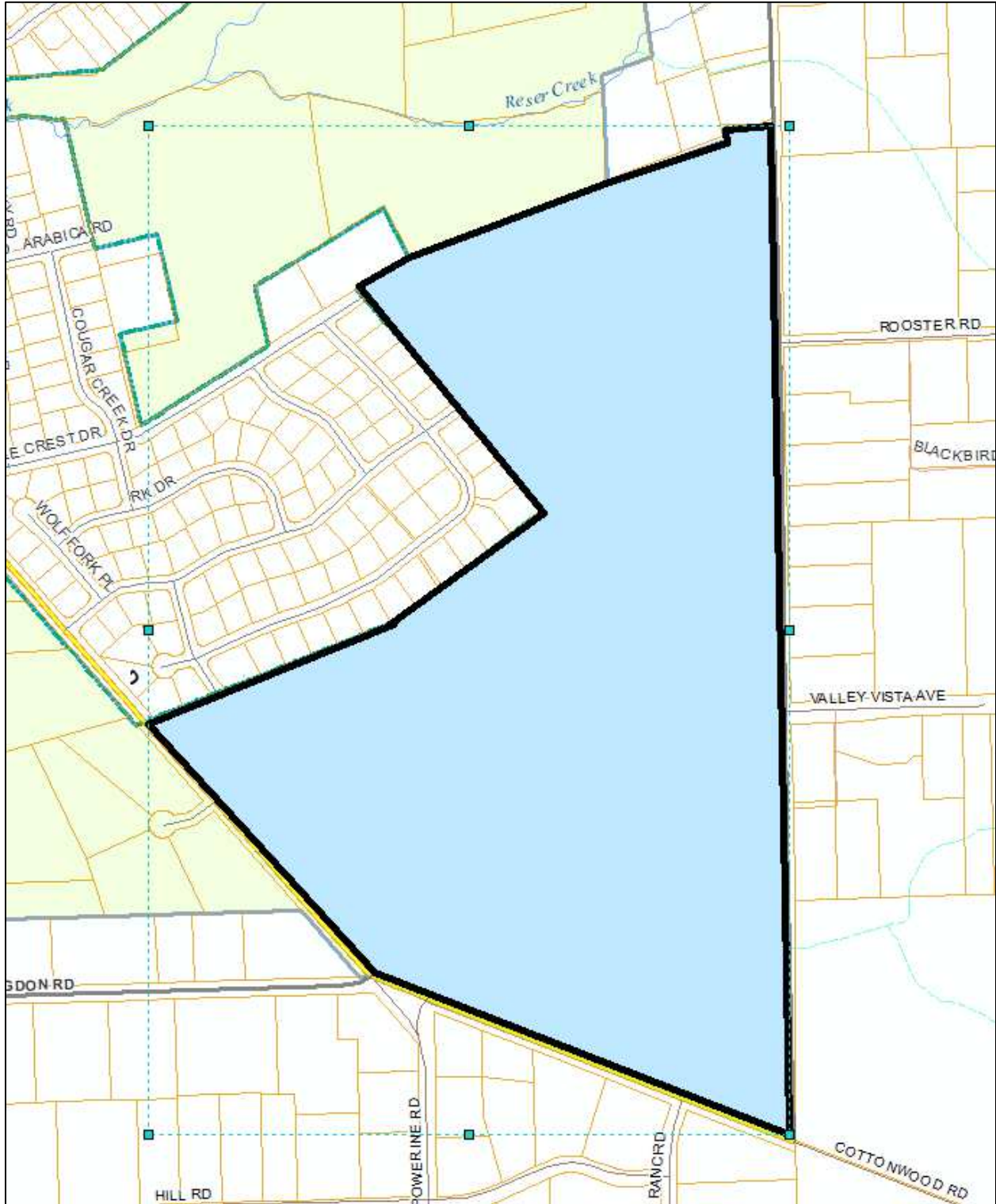


Exhibit B - Legal Description

TRACT B

A tract of land located in the Northeast Quarter of the Northwest Quarter and the Southeast Quarter of the Northwest Quarter and the Northwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter and the Northwest Quarter of the Southeast Quarter, all in Section 4, Township 6 North, Range 36 East of the Willamette Meridian and ALSO in the Southwest Quarter of the Southeast Quarter of Section 33, Township 7 North, Range 36 East of the Willamette Meridian, all in Walla Walla County, Washington, and described as follows:

Beginning at the most Northeasterly corner of Lot 52 of Tablerock Subdivision, as recorded in Roll File 6 at Page 46, records of Walla Walla County Auditor and run thence North 29°57'54" West, along the Easterly line of said Subdivision 60.03 feet to the Northeast corner thereof; thence North 58°28'16" East, along the South line of Parcel 2 of those lands surveyed in 1975 and recorded in Book 1 of Surveys at Page 123, aforesaid records, a distance of 486.53 feet to THE TRUE POINT OF BEGINNING for this description; thence continue along said South line North 58°28'16" East, a distance of 221.80 feet to the Southeast corner of said Parcel 2; thence North 70°07'58" East, along the Southerly line of Parcel 1 of the aforesaid Survey, 1209.93 feet to the Southeast corner of said Parcel 1; thence North 13°50'23" West, 43.54 feet; thence North 89°02'17" East, 136.45 feet; thence North 70°12'17" East, 23.98 feet to a point in the West right of way line of Kendall Road; thence along said West right of way line the following courses:

South 1°00'02" East, 773.12 feet;
thence South 0°20'07" East, 1341.18 feet;
thence South 0°39'30" East, 664.85 feet to a point on the South line of the Southwest

Quarter of the Northeast Quarter of aforesaid Section 4;
thence continue along said West right of way line South 0°32'39" East, 835.86 feet to its intersection with the Northerly right of way line of Cottonwood Road; thence along said Northerly right of way line the following courses:

North 68°12'08" West, 1362.65 feet;
thence Northwesterly, along a curve to the right, having a radius of 924.93 feet and through a central angle of 27°17'46", an arc distance of 440.65 feet;
thence continue along the Northeasterly right of way line of Cottonwood Road, North 40°54'22" West, 978.95 feet;
thence leave said right of way line and run thence North 68°49'08" East, 940.00 feet;
thence North 53°27'06" East, 657.48 feet;
thence North 37°47'45" West, 588.21 feet;
thence North 40°56'10" West, 450.00 feet to THE TRUE POINT OF BEGINNING.
Excepting therefrom any portion lying within Kendall Road

Situated in the County of Walla Walla, State of Washington

Exhibit C – Conceptual Layout

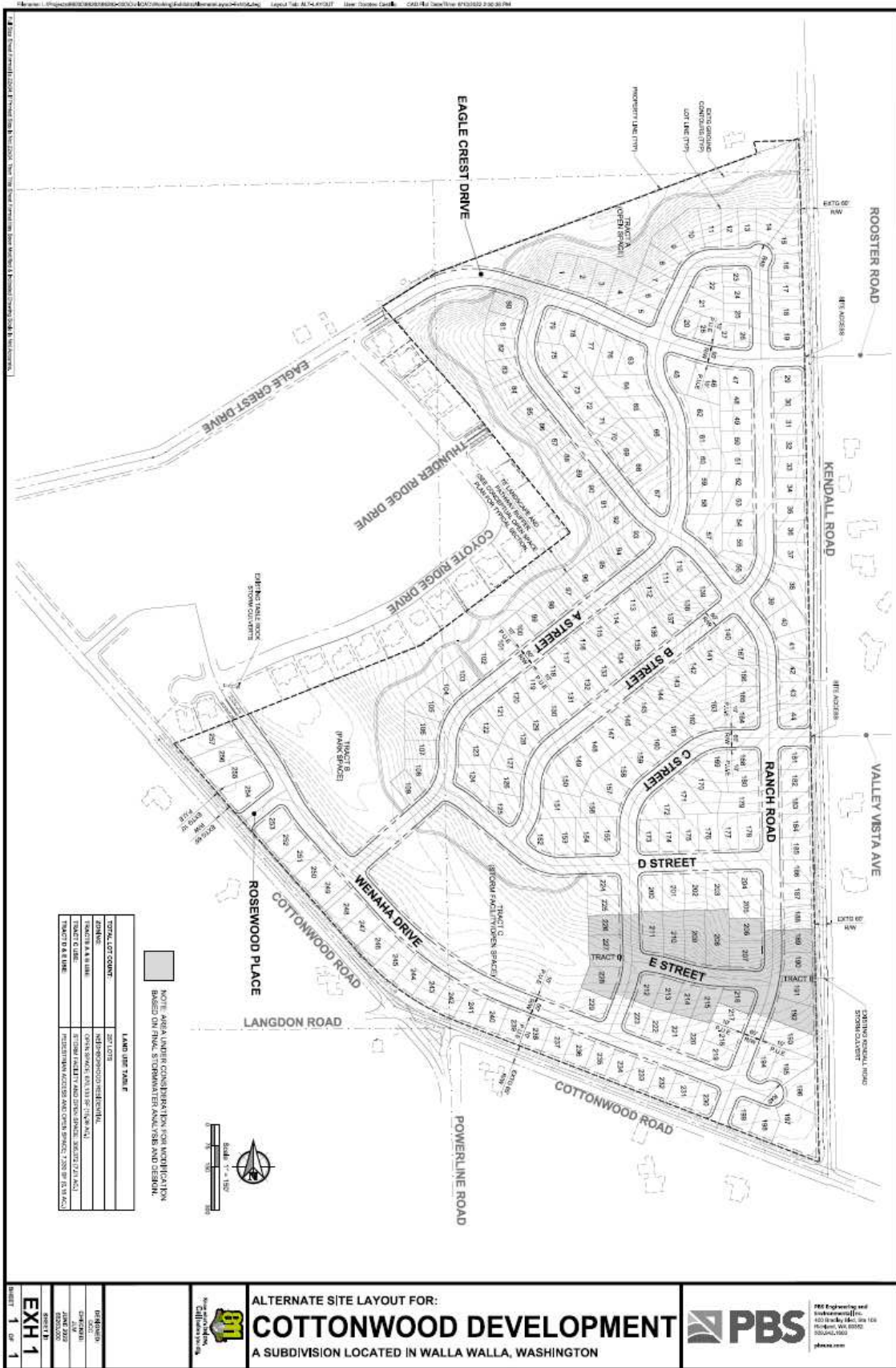
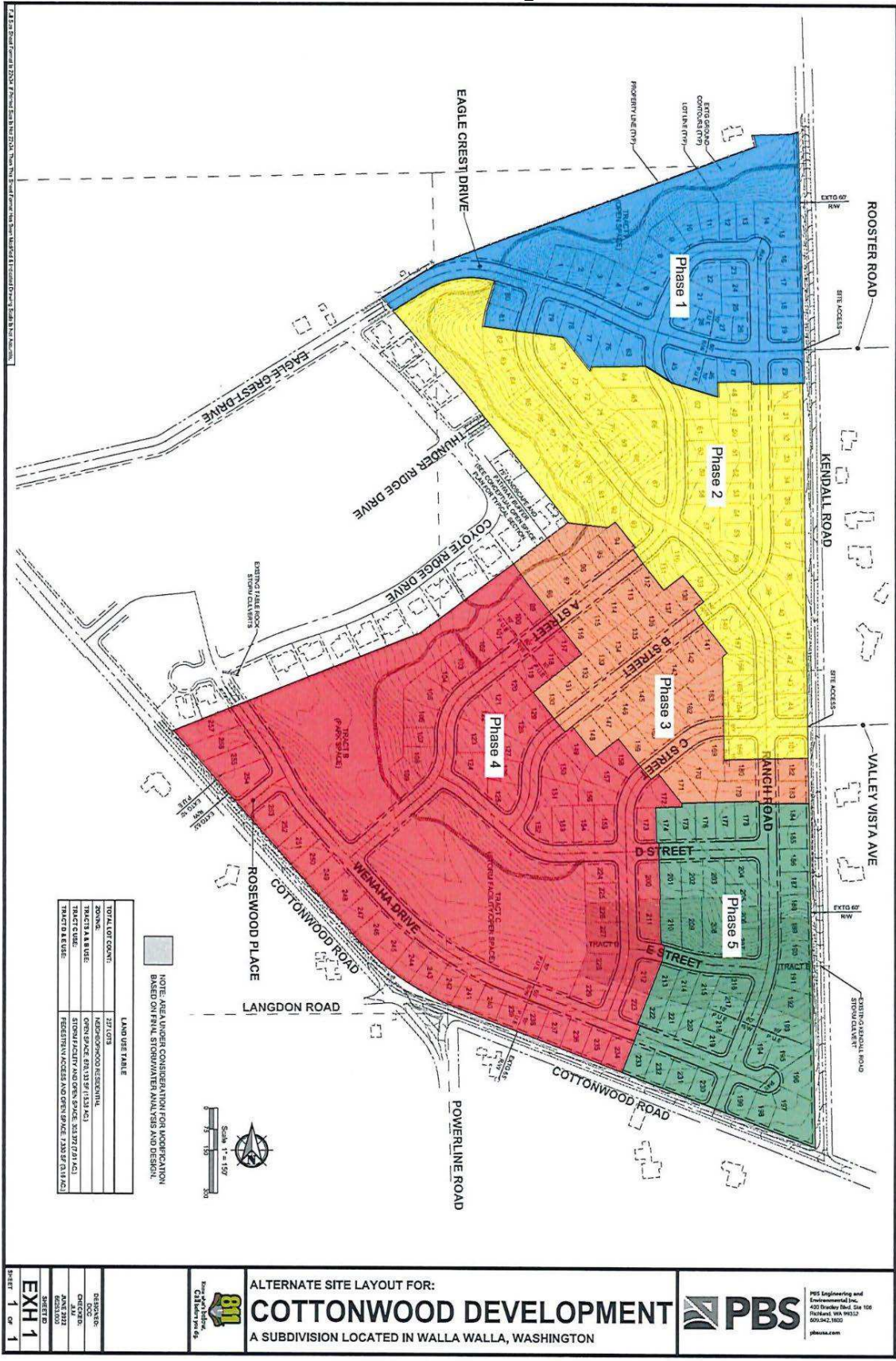


Exhibit D – Phasing Plan



811
 Cottonwood Development, LLC
 811
 SHEET NO. 1 of 1

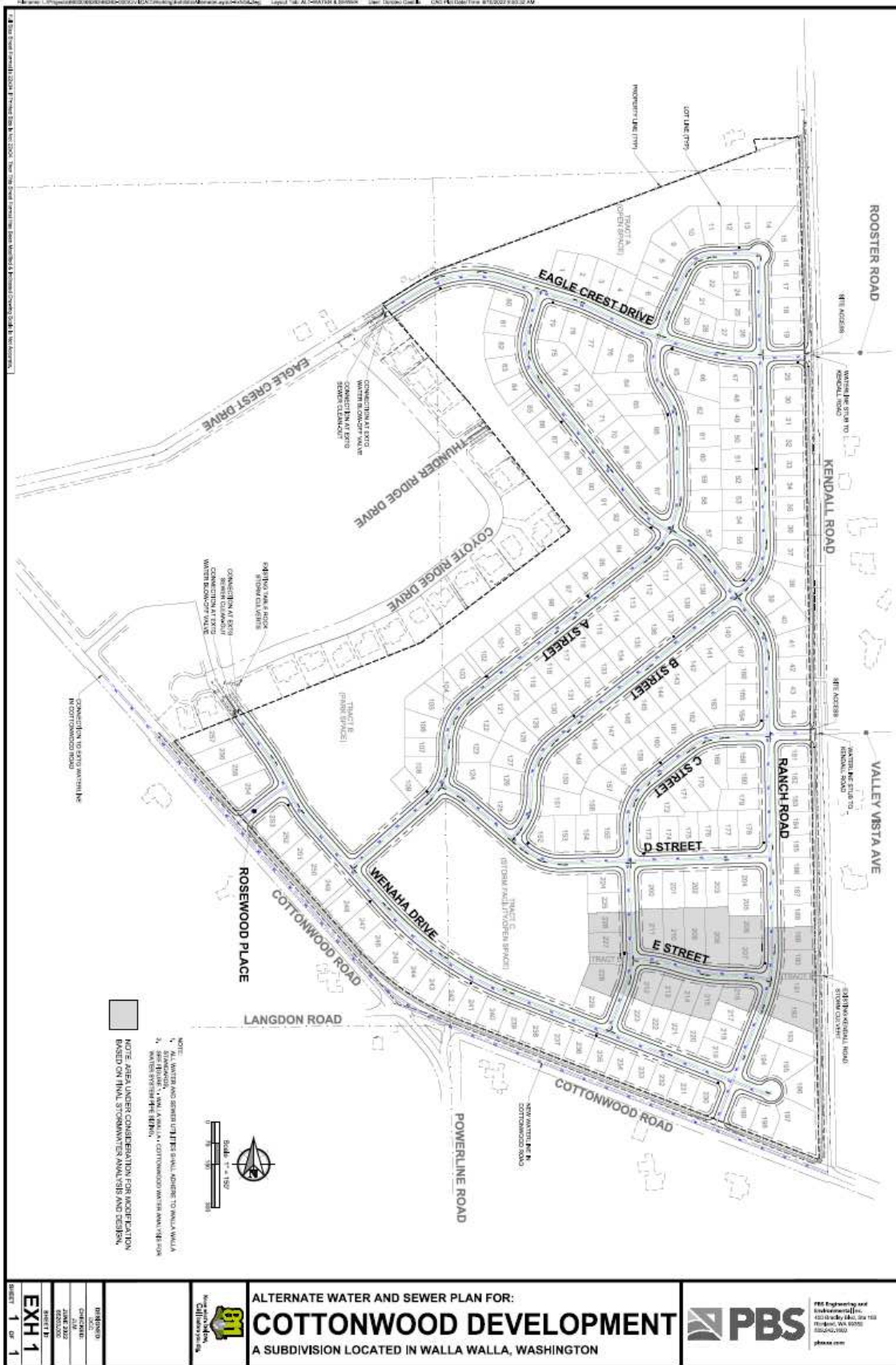
ALTERNATE SITE LAYOUT FOR:
COTTONWOOD DEVELOPMENT
 A SUBDIVISION LOCATED IN WALLA WALLA, WASHINGTON

PBS
 PBS Engineering and Environmental Inc.
 401 Stanley Blvd. Ste 100
 Richland, WA 99112
 509.943.1000
 pbs@pbe.com

Exhibit E – Conceptual Open Space Plan



Exhibit F – Water/Sewer Utility Plan



PROJECT	COTTONWOOD DEVELOPMENT
DATE	08/20/2024
BY	PHS
CHKD BY	PHS
DATE	08/20/2024
APP'D BY	PHS
DATE	08/20/2024
PROJECT NO.	2024-001
SHEET NO.	EXH 1
TOTAL SHEETS	1 OF 1

ALTERNATE WATER AND SEWER PLAN FOR:
COTTONWOOD DEVELOPMENT
 A SUBDIVISION LOCATED IN WALLA WALLA, WASHINGTON

PBS Engineering and Construction
 1010 10th Ave, Walla Walla, WA 99053
 509.245.1900
 pbsca.com

Exhibit G – Grading Plan (page 1 of 2)

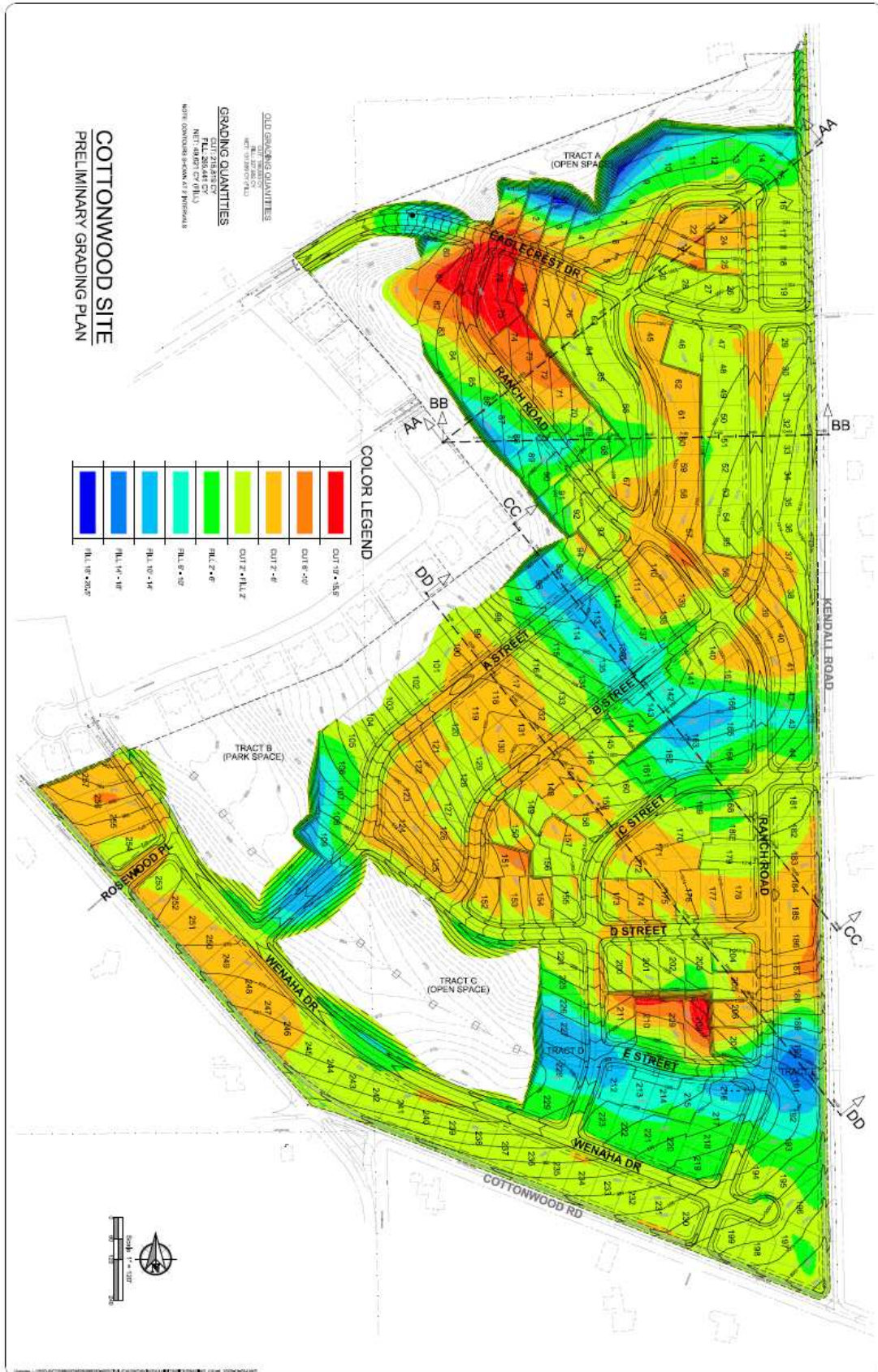


Exhibit G – Grading Plan (page 2 of 2)

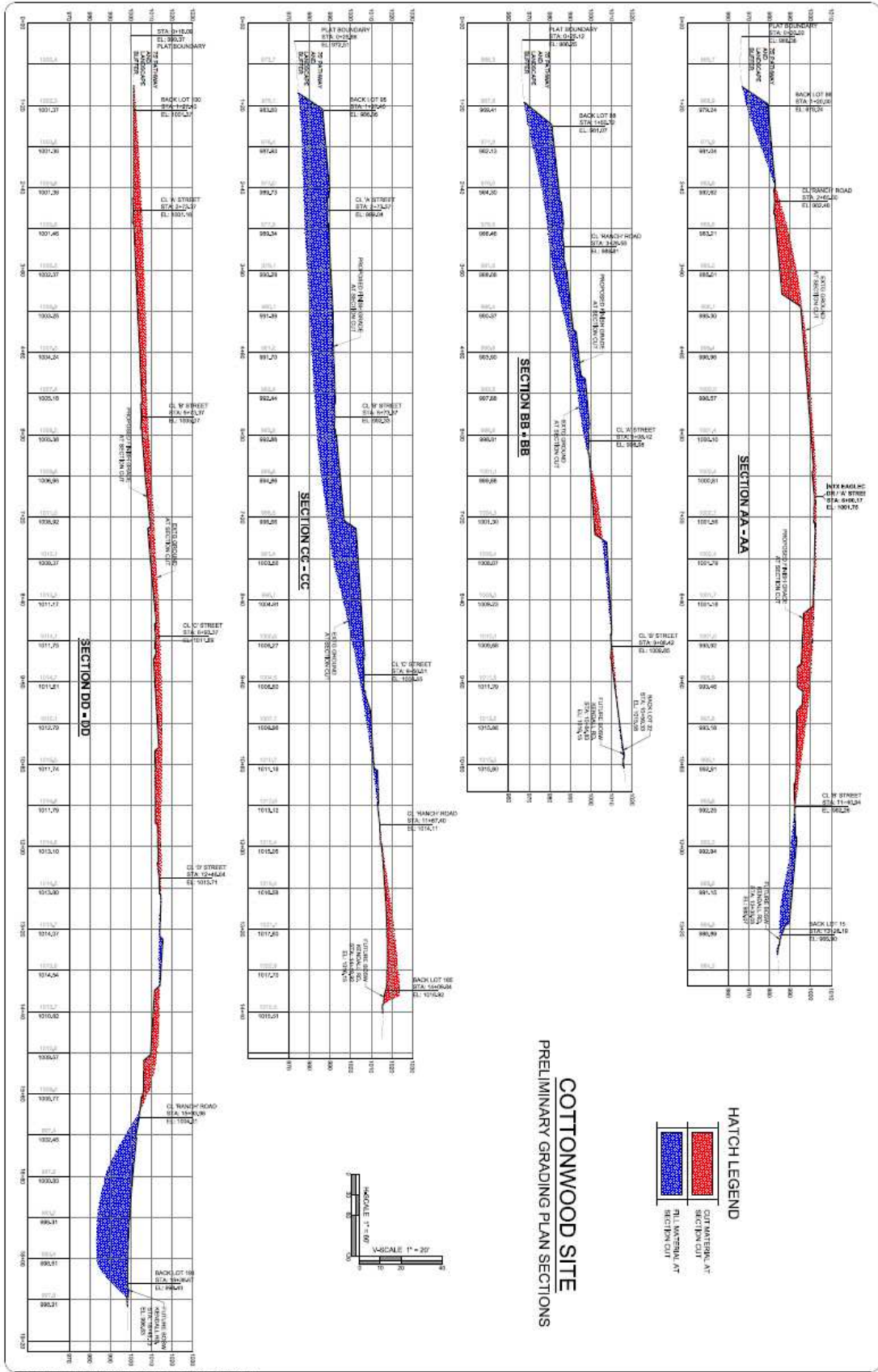


Exhibit H – Storm Drainage Narrative



Cottonwood Development

Development Agreement
Applicants Proposal to City of Walla Walla
PBS Project 66263.000

A. STORM DRAINAGE

Kendall Road Crossing

The Cottonwood Development will need to accommodate stormwater flow rates associated with an upsized culvert under Kendall Road. The culvert would be increased in size to prevent the impoundment of 10-acre feet of water during the 100-year storm event. While it is anticipated that some storage would continue to occur behind the Kendall Road culvert, the increased downstream flow rate to the Cottonwood project will be managed via the two infiltration and detention facilities and a bypass pipe. The lower pond will be constructed with a bypass system that will route flows in excess of the pond's capacity around the Table Rock detention facility.

Kendall Road will have a geotechnical evaluation completed with the reconstruction of the road and placement of the culvert to determine the bearing capacity of the existing soils to handle any stormwater impoundment behind the new culvert structure.

Cottonwood Road Northside Ditch

The Cottonwood project will construct frontage improvements along the north side of Cottonwood Road and will be required to manage stormwater currently conveyed in the existing northside ditch along with the stormwater from the roadway frontage. The proposed management concept includes filling the ditch with the frontage improvements and constructing a pipeline to convey the stormwater.

Subdivision Developed Runoff

The primary flow control methodology will be infiltration via surface pond or Underground Injection Control (UIC) device (drywell or perforated trench). Stormwater runoff from the new impervious surfaces such as drywell will be directed and infiltrated on site. The stormwater system will be designed in accordance with City of Walla Walla (City) standards. These facilities will be located in roadway areas and tracts throughout the project site. The stage/discharge rate for the UIC is based on the infiltration rate of the soils.

Stormwater From Individual Lots

Stormwater from individual lots will primarily be managed on site with infiltration facilities.

Detention

It is anticipated that portions of the project area will be routed to the infiltration/detention ponds for flow control. This will comingle on-site stormwater with off-site stormwater, which is not anticipated to be a problem provided that an acceptable discharge rate from the site is established. Given the high amount of off-site flow from Areas A and B, as well as the increased flow from an upsize of the Kendall Road culvert, further coordination may be needed to establish a target discharge from the project site. The proposed detention/infiltration ponds will significantly attenuate flows prior to discharge off site. The design of these facilities will ensure that combined flows from the Cottonwood project are attenuated to an acceptable level prior to return to the downstream conveyance system.

Exhibit I – Supporting Documentation (page 1 of 2)

The following documents were submitted by Cottonwood Investors, LLC or generated by the City's review of the proposal.

Conceptual Site Layout, dated July 2021

Open Space Exhibit, dated August 2021

Phasing Plan, dated July 2021

PBS, Development Agreement Application - Phasing Narrative, August 23, 2021

Conceptual water and sewer utility plan dated July, 2021

PBS, Preliminary Stormwater Drainage Report, Cottonwood Residential Development Property, dated August 20, 2021

Overall Grading Plan, dated July 2021

PBS, Reliance Letter: Aquifer Impact Evaluation, Aquifer Impact Evaluation Report Addendum No. 1, dated May 10, 2021, with attached Aquifer Impact Evaluation, dated October 1, 2019

PBS, Cottonwood Subdivision Traffic Impact Analysis, dated July 30, 2021

SEPA Environmental Checklist, dated July 12, 2021, signed July 30, 2021

PBS, Reliance Letter: Geotechnical Engineering Report, Geotechnical Engineering Report Addendum No. 1, dated April 23, 2021, with attached Geotechnical Engineering Report, dated May 31, 2019.

GRAM Northwest LLC, Cultural Resources Survey Report, April 2021

Land Title of Walla Walla County – Title Report, issued March 31, 2021

DKS Associates, Review of Cottonwood Subdivision Traffic Impact Analysis, dated October 4, 2021

PBS, Supplemental Traffic Information, Cottonwood Subdivision Traffic Impact Analysis, dated December 23, 2021

Aspect Consulting, Memorandum RE: Cottonwood Residential Development Independent Development Review, dated February 2, 2022

PBS, Letter, Re: Response to Comments, Application Nos. PDA021-001 and SEP-21-0026, Cottonwood Road Property, dated June 24, 2022

Alternate Site Layout, dated June 2022

Alternate Open Space Exhibit, dated June 2022

Exhibit I – Supporting Documentation (page 2 of 2)

Alternate Water and Sewer Plan, dated June 2022

Cottonwood Site Preliminary Grading Plan, dated January 20, 2022

Cottonwood Site Preliminary Grading Plan Sections, dated January 20, 2022

PBS, Critical Aquifer Recharge Area Hydrological Assessment, Cottonwood Residential Development, dated March 30, 2022

PBS, Traffic Impact Analysis Update Letter, Cottonwood Subdivision, dated June 8, 2022

PBS Cottonwood Development Offsite Stormwater Approach and Requirements, June 10, 2022

PBS, Geotechnical Engineering Letter, Cottonwood Road Property, dated June 10, 2022

Murray Smith and Associates, Cottonwood Development Water Analysis, dated June 21, 2022

PBS, Letter Re: Additional Transportation Information & Responses, Cottonwood Subdivision, dated February 8, 2023

PBS, Cottonwood Development, Development Agreement -Applicants Proposal to the City of Walla Walla, dated 3/2/2023.

Conson, Technical Memorandum, Updated Cottonwood Development Water Analysis, dated January 13, 2023

PBS, Letter Re: Additional Transportation Information, Cottonwood Subdivision, dated August 21, 2023

PBS, Memorandum, Re: Water System Pressure Response, PDA-21-0001, Cottonwood & Kendall Road, dated August 18, 2023