



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Encroachment Agreement for a new Sausalito-Marin City Sanitary District submersible pump station and a new building to house electrical switchgear, and relocation of an emergency generator with a fence in the City's right-of-way at the southeast corner of Bridgeway and Locust Street (DR/VA/EA 10-063).

### RECOMMENDED MOTION:

Approval of the attached resolution which approves an encroachment agreement for a new Sausalito-Marin City Sanitary District submersible pump station and a new building to house electrical switchgear and controls, and relocation of an existing emergency standby generator which would be screened with a fence in the City's right-of-way at the southeast corner of Bridgeway and Locust Street.

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### BACKGROUND AND DISCUSSION

The Sausalito-Marin City Sanitary District (the "District") is responsible for the collection, treatment and disposal of waste water from nearly all of the City of Sausalito. A combination of force mains and gravity sewers transport the sewage to the District's treatment plant near Fort Baker. The Locust Street Pump Station, which is located at the southeast corner of Bridgeway and Locust Street, was constructed in 1952 as part of the District's original sewage collection and interceptor facility. The Pump Station moves the majority of the sewage from the City and upstream communities toward the District's treatment plant.

The District has an ongoing effort to upgrade the sanitary sewer collection and treatment systems throughout the District. In a recent evaluation of pumping facilities conducted as a condition of a U.S. Environmental Protection Agency (EPA) Compliance Order on both the District and the City, the Locust Street Pump Station was identified as one of the District's most urgent rehabilitation projects. The District is proposing to upgrade and rehabilitate the existing pump station.

On May 12, 2010 the Planning Commission reviewed and approved Planning Commission Resolution No. 2010-18 for a Design Review Permit and Variances to replace the existing Sausalito-Marin City Sanitary District pump station with a new submersible pump station, construct an utility enclosure to house electrical switchgear and controls, relocate an existing emergency standby generator and install a screening fence at the southeast corner of Bridgeway and Locust Street as well as recommended

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City Council approval of an Encroachment Agreement to update the existing Encroachment Permit/Agreement for the underground and above ground facilities.

The Sanitary District is seeking City Council approval of an Encroachment Agreement in order to proceed with construction of the facilities.

**FISCAL IMPACT**

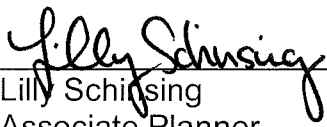
No fiscal impact.

**RECOMMENDATION**


The Planning Commission and staff recommend the City Council approve the attached resolution approving an Encroachment Agreement for a new submersible pump station and a new building to house electrical switchgear and controls, and relocation of an existing emergency standby generator which would be screened with a fence in the City's right-of-way at the southeast corner of Bridgeway and Locust Street.

**ATTACHMENT:** Draft Resolution Approving an Encroachment Agreement for Southeast corner of the 1300 Block of Bridgeway and Locust.

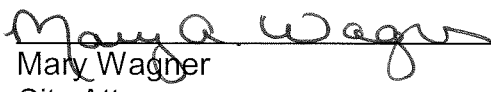
PREPARED BY:

  
\_\_\_\_\_  
Lilly Schinsing  
Associate Planner

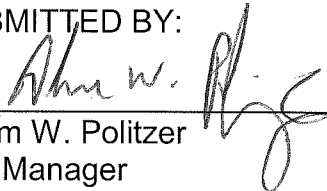
REVIEWED BY:

  
\_\_\_\_\_  
Jeremy Graves, AICP  
Community Development Director

REVIEWED BY:

  
\_\_\_\_\_  
Mary Wagner  
City Attorney

SUBMITTED BY:

  
\_\_\_\_\_  
Adam W. Politzer  
City Manager

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RESOLUTION NO. xxxx

**A RESOLUTION OF THE SAUSALITO CITY COUNCIL  
APPROVING AN ENCROACHMENT AGREEMENT FOR A NEW SUBMERSIBLE PUMP  
STATION AND A NEW BUILDING TO HOUSE ELECTRICAL SWITCHGEAR, AND  
RELOCATION OF AN EMERGENCY GENERATOR IN THE CITY'S RIGHT-OF-WAY AT THE  
SOUTHEAST CORNER OF BRIDGEWAY AND LOCUST STREET (EA 10-063)**

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**WHEREAS**, an application has been filed by the applicant, the Sausalito-Marín City Sanitary District, on behalf of the property owners, the City of Sausalito and Turney Street Properties LLC, requesting City Council approval of an Encroachment Agreement for the underground and above ground facilities (Bridgeway and Locust Street right-of-way and APN 065-032-03); and

**WHEREAS**, the Planning Commission found that, as conditioned, the proposed project complies with requirements of the General Plan and Zoning Ordinance; and

**WHEREAS**, on May 6, 2010, the Planning Commission approved Planning Commission Resolution No. 2010-18 which approved a Design Review Permit and Variance, and recommended City Council approval of an Encroachment Agreement for underground and above ground facilities at Bridgeway and Locust Street right-of-way and APN 065-032-03; and

**WHEREAS**, on August 11, 2010 the Sausalito-Marín City Sanitary District submitted revised drawings which complied with the conditions of approval in Planning Commission Resolution No. 2010-18; and

**WHEREAS**, on September 14, 2010 the City Council reviewed and considered the project plans for the proposed encroachment agreement titled "Locust Street Pump Station Improvements" and date-stamped received on August 11, 2010; and

**WHEREAS**, the City Council considered all written testimony on the subject application; and

**WHEREAS**, the City Council finds that proposed project is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

**NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Approval of Encroachment Agreement**

Based upon the findings provided in **Exhibit A**, the Encroachment Agreement provided in **Exhibit B** is approved to allow the improvements in the public right-of-way along the Bridgeway and Locust Street property frontage at the Southeast corner of the 1300 Block of Bridgeway and Locust.

**Section 2. Judicial Review**

The time within which judicial review of this decision may be sought is governed by the provisions of section 65009 of the Government Code, section 1094.6 of the Code of Civil Procedure and all other applicable law.

**THIS RESOLUTION WAS PASSED AND ADOPTED** at the regular meeting of the City Council of the City of Sausalito on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

AYES: Councilmember:  
NOES: Councilmember:  
ABSENT: Councilmember:  
ABSTAIN: Councilmember:

\_\_\_\_\_  
JONATHAN LEONE  
MAYOR OF THE CITY OF SAUSALITO

ATTEST:

\_\_\_\_\_  
City Clerk

Exhibit A: Encroachment Agreement Findings  
Exhibit B: Encroachment Agreement

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## EXHIBIT A

### ENCROACHMENT AGREEMENT FINDINGS SOUTHEAST CORNER OF THE 1300 BLOCK OF BRIDGEWAY AND LOCUST (EA 10-063)

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement at the southeast corner of the 1300 block of Bridgeway and Locust based upon the following findings:

- A) The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.

*The redesign of the facility will enhance the public streetscape with accessibility improvements. In addition, the removal of the structure out of bicycle pathway which will provide a safer and more accessible multi-use pathway. Therefore, the proposed encroachments will not diminish visual or physical enjoyment of the streetscape, and will in fact improve the streetscape.*

- B) The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.

*The removal of the existing structure out of bicycle pathway will provide a safer and more accessible multi-use pathway. The encroachment will not adversely affect the usability of adjoining parcels nor will create or extend an undesirable land use precedent.*

- C) The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.

*The encroachment of the utility enclosure and screening fence is necessary to provide support the sanitary sewer facility upgrade. The encroachment is necessary to the reasonable use of the property.*

- D) The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.

*The removal of the existing structure out of bicycle pathway will provide a safer and more accessible multi-use pathway. Therefore, the remaining encroachment will not adversely affect the public circulation.*

- E) The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.

*The value of the utility enclosure in the right-of-way would not preclude any improvement of the street in the future.*

**EXHIBIT B**

**CITY OF SAUSALITO  
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between **THE SAUSALITO-MARIN CITY SANITARY DISTRICT, ON BEHALF OF TURNEY STREET PROPERTIES LLC** ("Owners") of the property at **300 TURNEY STREET (APN 065-032-03)**, and the **CITY OF SAUSALITO**, a municipal corporation ("City").

**RECITALS**

The following Recitals are a substantive part of this Agreement:

A. A new submersible pump station and a new building to house electrical switchgear and controls, and relocation of an existing emergency standby generator which would be screened with a fence in the City's Right-of-Way at the southeast corner of Bridgeway and Locust Street require City Council approval of an Encroachment Agreement (EA 10-063). In accordance with Chapter 10.56 of the City's Municipal Code, the Planning Commission has reviewed the proposed encroachment and has recommended that the City Council approve the encroachment.

B. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owner the encroachments as shown in the attached site plan and in accordance with Titles 10 and 17 of the Sausalito Municipal Code under certain terms and conditions as set forth below.

**NOW, THEREFORE**, Owner and City hereby agree as follows:

1. Description of Encroachments. The encroachments covered by this Agreement allow a new submersible pump station and a new building to house electrical switchgear and controls, and relocation of an existing emergency standby generator which would be screened with a fence in the City's Right-of-Way at the southeast corner of Bridgeway and Locust Street, as shown in the attached site plan (see **Exhibit 1**) which is incorporated herein (the "Encroachments").
2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.
3. Condition of Encroachments and Right-of-Way. Owner shall maintain all Encroachments and the City-owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer.
4. Removal or Relocation. Owner acknowledges and agrees that it shall remove or relocate the Encroachment(s) at its sole cost and expense if the Encroachment(s) interferes with any lawful governmental or proprietary purpose of the City of Sausalito; is detrimental to governmental activities; and/or the right of way or street is being vacated. If the Owner fails to remove the Encroachment(s) within the time specified by the City Engineer, City may cause the work to be done at the Owners' expense.

5. Taxes. Owner shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.
6. Indemnification. Owner hereby agrees to indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its elected and appointed officials, officers, employees, consultants, agents, volunteers and successors in interest from any and all claims, demands, causes of action, damages, liabilities and obligations arising from or in any way related to this Agreement and/or Owner's use of the right of way.
7. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice. Upon such termination, the Encroachment(s) must be removed as specified by and within the time required by the City Engineer. In addition, the City owned right of way must be restored to the condition required by the City Engineer. In the event that Owner fails to remove the Encroachment(s) and/or restore the right of way as required by the City Engineer within the specified time, City shall have the right to perform the work and charge Owner.
8. No Grant. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Owner any ownership interest in the right of way; nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.
9. Condemnation. If the right-of-way is taken totally by condemnation, this Agreement shall terminate on the date of the taking with no compensation to Owner therefore. If a portion of the right of way is taken by condemnation, then this Agreement shall remain in effect as to the part not taken.
10. Standard Conditions. Owner shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer, including the Conditions of Approval (see **Exhibit 2**) which are incorporated herein.
11. Compliance with Laws. Owner shall comply with all applicable laws, any permit issued by the City pursuant to this Agreement and any general or specific conditions required by the City Engineer.
12. Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit in the United States mail, postage prepaid, by register or certified mail, return receipt requested, addressed as follows:

**Owner(s):**

**Sausalito-Marin City Sanitary District  
P.O. Box 39  
Sausalito, CA 94965**

**Turney Street Properties LLC  
1306 Bridgeway  
Sausalito, CA 94965**

**City:**

**City Engineer  
420 Litho Street  
Sausalito, CA 94965**

13. Assignment. This Agreement is not assignable unless City consents in writing, which consent shall be withheld unreasonably. Such consent to assignment shall bind and insure to the benefit of the respective successors and assigns of the parties. This requirement for consent shall not apply to: (a) any disposition of all or a portion of the Property; or (b) any collateral assignment, security interest or pledge of this Agreement by Owner to any lender.
14. Waivers. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.
15. Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.
16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein.
17. Modification. This Agreement may not be amended unless made in writing and signed by each party.
18. California Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.
19. Attorneys' Fees. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants



allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

21. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

22. No Personal Liability. No member, official or employee of City shall be personally liable to Owners or any successor in interest in the event of any default or breach by City or on any obligation under the terms of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereto set their signatures as of the date first above named herein.

OWNERS:

CITY:

\_\_\_\_\_  
**Sausalito-Marin City Sanitary District**

\_\_\_\_\_  
Jonathan Leone, Mayor

\_\_\_\_\_  
**Turney Street Properties LLC**

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

\_\_\_\_\_  
Todd Teachout, City Engineer

\_\_\_\_\_  
Mary Wagner, City Attorney

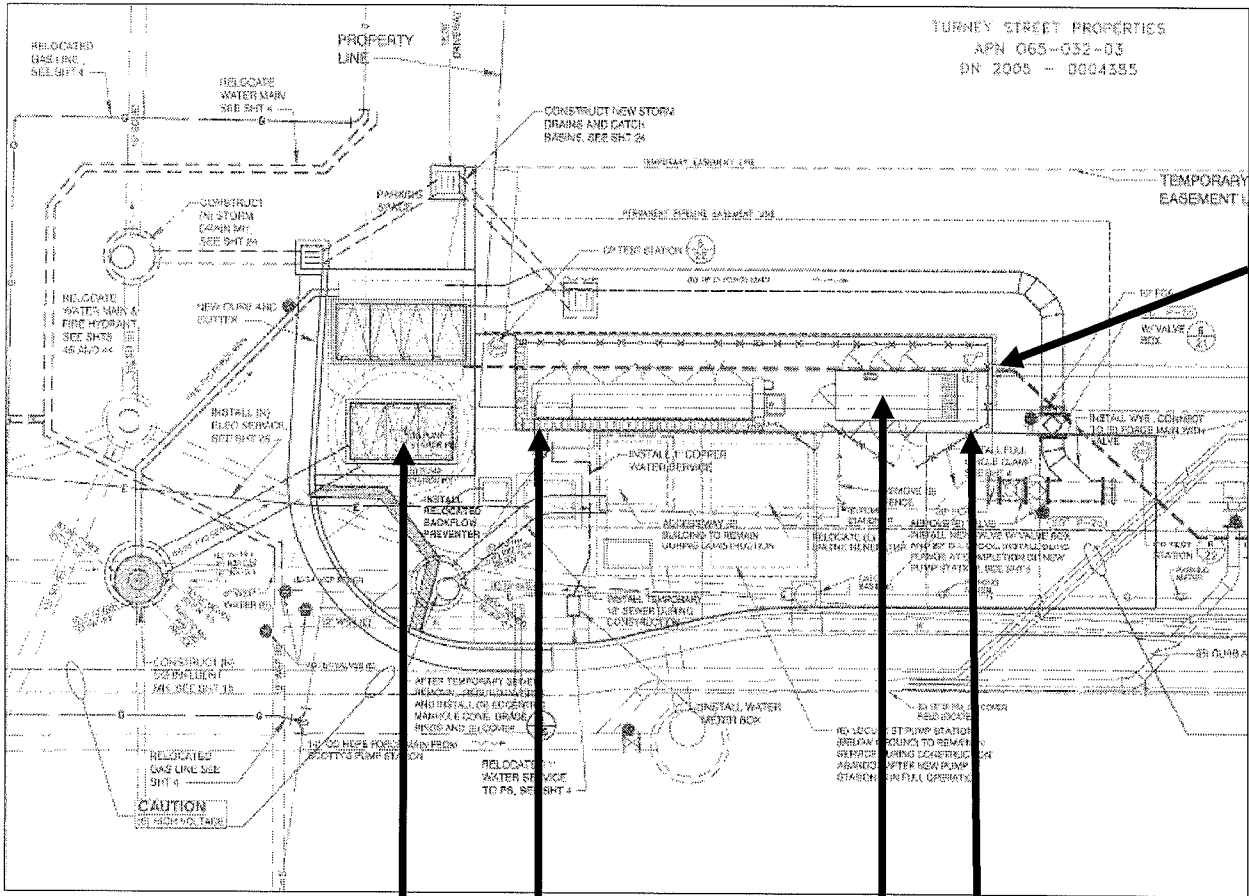
EXHIBITS:

1. Detail from "Locust Street Pump Station Improvements" and date-stamped received on August 11, 2010
2. Encroachment Agreement Conditions of Approval

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**EXHIBIT 1**

Detail from Site Plan Titled  
"Locust Street Pump Station Improvements"  
and date-stamped received on August 11, 2010



**PROPERTY LINE**

**ENCROACHMENT OF:  
SUBMERSIBLE PUMP**

**ELECTRICAL SWITCHGEAR BUILDING**

**EMERGENCY GENERATOR**

**SCREENING FENCE**

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## EXHIBIT 2

### ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

These conditions apply only to the project plans "Locust Street Pump Station Improvements" date-stamped received on August 11, 2010

1. The encroachment agreement is predicated on a new submersible pump station and a new building to house electrical switchgear and controls, and relocation of an existing emergency standby generator which would be screened with a fence in the City's Right-of-Way at the southeast corner of Bridgeway and Locust Street right of way as shown on the project plans titled, "Locust Street Pump Station Improvements" and date-stamped received on August 11, 2010
2. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or interior alterations and/or renovations not specified in the project plans, or alterations approved by the Community Development Director, shall be performed on the project site. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.
3. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
4. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.

#### **Advisory Notes**

Advisory notes are provided to inform the applicant of Sausalito Municipal Code requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

1. An approval granted by the City Council does not constitute a building permit or authorization for construction. Appropriate construction permit(s) issued by the Building Division must be obtained prior to construction.
2. All applicable City fees as established by City Council resolutions and ordinances shall be paid.
3. Pursuant to Municipal Code Chapter 8.54, applicants shall submit a Recycling Management Plan to the Community Development Department prior to the issuance of any construction permits, unless the requirement is waived pursuant to Section 8.54.050.

4. The Community Development Director may authorize minor alterations to the approved plans and conditions of approval in accordance with Section 10.50.180 of the Zoning Ordinance. Major changes and alterations to the approved plans and conditions of approval shall be reviewed and approved by the Planning Commission in accordance with Section 10.84.070(B)(2) of the Zoning Ordinance.