

# CONSTRUCTION AGREEMENT

## STORM DRAIN RE-ALIGNMENT

### Justin Peterson & Town of Saratoga

"A Construction Agreement for the construction, placement and maintenance of certain public improvements necessary for the proper conveyance of storm water for the Town of Saratoga."

THIS CONSTRUCTION AGREEMENT (the "Agreement") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and among the Town of Saratoga ("Town") and, Justin Peterson ("Owner").

#### RECITALS

- A. Owner is the owner of record of certain real estate more particularly described as "LOTS 11 & 18 & ADJACENT VACATED ALLEY BLK 2 H & C ORIGINAL ADDN." (The "Property").
- B. The Town currently has a storm drain line located on the "Property".
- C. The Town currently has an easement to locate and maintain the storm drain line located on the "Property". This easement is attached hereto as Exhibit "B".
- D. Owner proposes that the storm drain line be relocated to the most southernly boundary of the "Property".
- E. The Town wishes to replace the storm drain due to its condition and age.
- F. Construction plans for the required improvements have been designed by EA Engineers and are attached hereto as Exhibit "C."
- G. The Town and Owner wish to secure their interest as they pertain to replacement and re-alignment of the storm drain improvements described herein. As well as the safety, security and best interest of future property owners, current residents and the public in general.
- H. The parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties and obligations herein set forth.

**NOW THEREFORE**, in consideration of the above recitals which are incorporated below, and the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Improvements. The parties agree to abandon the current storm drain line identified in Exhibit "C". They agree to install and re-align a new storm drain line within an easement on the southerly boundary of the Owner's property. The terms of cost, construction, and legal right to placement and maintenance are further described below.
  
2. Construction
  - a. The Owner's Responsibilities
    - i. Owner agrees to provide at their own expense to the town all required engineering, and survey data for the improvements identified in this agreement. This shall include and not be limited to alignments, profiles, onsite benchmarks and additional drawings that may be required by permitting agencies.
    - ii. Owner agrees to reimburse the Town for fifty percent (50%) of the parts and materials cost to complete the improvements. These shall include, 12" HDPE piping, catch basin(s), grout, pipe clamps, pipe bedding, pipe couplers, topsoil, grass seed, riprap and any additional materials required for the Town to comply with any BMP's required by applicable permitting agencies.
  
  - b. The Town's Responsibilities
    - i. The Town shall provide, all fuel, equipment and labor to construct all the new improvements identified in this agreement, as well as the removal and abandonment of existing facilities identified in this agreement.
    - ii. The Town agrees to pay for fifty percent (50%) of the parts and materials cost to complete the improvements. These shall include, 12" HDPE piping, catch basin(s), grout, pipe clamps, pipe bedding, pipe couplers, top soil, grass seed, riprap and any additional materials required for the Town to comply with any BMP's required by applicable permitting agencies.
    - iii. All construction shall be done in accordance with Wyoming Public Works Construction Standards.
    - iv. The Town shall remove the current storm drain line outfall fifteen (15) feet from the riverbank.
    - v. The Town shall remove the existing northernly catch basin within the Right-of-Way.
    - vi. The Town will stabilize sloped surfaces that are disturbed with applicable armoring practices. Riprap, boulder terracing etc. Disturbed surfaces on flat ground shall be finished with topsoil and seeded with applicable grass blend.
    - vii. Town agrees to acquire all state, local, and federal permits required for the project.

3. Maintenance

- a. All future maintenance, repair, replacement of the identified improvements shall be the sole responsibility of the Town.

4. Access

a. Construction Access

- i. Owner agrees to allow the Town access to the area shown as the construction site on the attached construction plans. The purpose is to remove the outfall of the existing storm drain, and construct the improvements described in this agreement.

5. Acceptance and Completion.

a. Acceptance and Payment

- i. Upon completion of construction and acceptance of site conditions by Owner. Owner shall reimburse the Town for its share of expenses as identified in this agreement.

b. Easement

- i. After execution of Section 4.a.i of this agreement, Owner and Town agree to amend the current easement "Exhibit B" in the form of "Exhibit D". This amendment shall remove the existing easement and grant the Town a new easement allowing access for repair, replacement and maintenance of all installed public infrastructure within a 15-foot-wide strip of land running east and west along the southerly boundary of the Owner's property.

c. Requirement of Recordation

- i. After the aforementioned easement is signed by both parties, the Town shall record the easement in the office of the Carbon County Clerk. The instrument number shall be kept on file with this agreement. Once the easement is recorded all the terms of this agreement shall be deemed to be satisfied.

6. Timeline.

- a. The timeline of this agreement shall begin upon the approval of the Town Council and by the signing of the Mayor. Construction may begin as early as fall of 2023 and be completed no later than July 15<sup>th</sup>, 2024. If construction has not begun and an extension of this timeline cannot be agreed upon by the parties this contract shall be fully terminated on October 1, 2024.

7. Remedies. In the event Owner, its heirs, successors and assigns, subsequent owners of the Property or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included in this Agreement. The Town may, terminate this agreement in accordance with Section 7 of this Agreement and/or file a claim

upon the financial assurances in Section 2 of this Agreement. This Agreement shall be enforceable in the courts of the State of Wyoming and the venue shall be the 2<sup>nd</sup> Judicial District of the State of Wyoming, Carbon County, Wyoming, by either Town or Owner, or by any successor or successors in title or interest or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and obligations contained herein, and may include an action for specific performance, breach of contract, reformation and/or rescission.

8. Right to Cure. In the event of a material breach of this Agreement, the parties agree that Town and Owner, shall have thirty(30) days after delivery of notice of said breach to correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty(30) day period, if the defaulting party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

9. Termination or Rescission. The Town Council may terminate or rescind this Agreement if—after compliance with the requirements of the Saratoga Town Code, Wyoming State Code and the requirements of this Agreement—the City determines that Owner is in breach of this Agreement and failed to cure in accordance with paragraph 8.

10. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or Town is delayed for causes which are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes, war or similar causes, the time for such performance shall be extended by the amount of time of such delay.

11. Title and Ownership of Property. Owner hereby warrants and covenants that it is the sole Owner of the Property and that at the time of the execution and recordation of this Agreement. Owner further agrees that any attempt to convey any portion of the Property prior to the recordation of this Agreement will result in a termination of this Agreement.

12. Modifications. This Agreement may be modified only by the permission of the Town Council.

13. Miscellaneous.

a. Waiver

- i. A waiver by Town of any default by Owner of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of

Town or apply to any subsequent breach of any such or other covenants and conditions.

b. Notices

- i. Any and all notices, demands, requests and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To Town: Town of Saratoga  
c/o Administrator, Planning & Zoning Department  
P.O. Box 486  
Saratoga, WY 82331  
(307) 326-8335

To Owner: Justin & Shelly Peterson  
3340 Rookery Rd.  
Fort Collins, CO 80528  
(303) 901-1308

or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

14. Attorney Fees. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

15. Time is of the Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

16. Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including Town's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation

of the property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefitted and bound by the conditions and restrictions herein expressed.

17. Wyoming Governmental Claims Act. The Town is protected by the Wyoming Governmental Claims Act, Wyo. Stat. 1-39-101, *et seq.* Town of Saratoga does not waive its governmental immunity by entering into this lease agreement, and fully retains all immunities and defenses available under W.S. § 1-39-104(a) and all other immunities provided by law with respect to any action based on or occurring as a result of this lease agreement.

18. Final Agreement: This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner and The Town relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner and Town, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to the Town, to a duly adopted ordinance or resolution of the Town.

19. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein, except that if any provision of this Agreement is held not valid which Owner deems essential to its development of the Property, Owner may, at its sole discretion, declare this entire Agreement null and void and of no force and effect and thereby relieve all parties from any obligations hereunder.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this agreement to be executed, on the day and first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Town of Saratoga, a Wyoming  
Municipal corporation

ATTEST:

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Town Clerk

STATE OF WYOMING )  
 ) ss.  
County of Carbon )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2023, before me, a Notary Public in and for said State, personally appeared Chuck Davis, known or identified to me to be the Mayor of the Town of Saratoga that executed the said instrument, and acknowledged to me that such Town of Saratoga executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Wyoming  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

OWNER:

Justin Peterson

Shelly Peterson

By \_\_\_\_\_,

By \_\_\_\_\_,

STATE OF COLORADO )  
 ) ss.  
County of Denver )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said State, personally appeared Justin & Shelly Peterson, known or identified to me to be The owner of the property that executed the instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Colorado  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_