

**ENVIRONMENTAL MITIGATION AGREEMENT  
(Extension of Sewer Line on NW Iman Cemetery Road)**

This Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of March, 2023 by and between the City of Stevenson, a municipal corporation duly organized and validly existing under the laws of the State of Washington ("City"),

and

Adam Miller, who owns fee title to 195 NW Iman Cemetery Road, Stevenson, Washington 98648 ("Property Owner") and Gorge Dirt Works, LLC, WA UBI No. 603 400 979, WA Contractors License No. GORGEDW861LF ("Contractor").

**RECITALS**

WHEREAS, the Property Owner has submitted a building permit application for the construction of a single family residence at 195 NW Iman Cemetery Road ("the Property").

WHEREAS, as a condition of approving the building permit, the City requires the Property Owner to extend a section of the City's sewer line from the existing manhole at Angel Heights and Iman Cemetery to the intersection of Iman Loop and Iman Cemetery ("the Work"). The Work is further detailed in the Iman Cemetery Road Sewer Line Extension engineering plan prepared by Pioneer Surveying & Engineering, Inc. dated October 11, 2022 ("the Plans").

WHEREAS, the Property Owner has agreed to engage Contractor to perform the Work according to the Plans. The Work shall be done at the cost and expense of the Property Owner based on the terms of this Agreement. Upon completion and acceptance of the Work by the City, the City will reimburse the Property Owner for the verified costs and expenses associated with the Work.

WHEREAS, the City finds the Work as being necessary to mitigate environmental impacts related to the development of the real property and to relocate and reconstruct a service line in the area that poses a future risk to public health and safety.

WHEREAS, this Agreement is entered pursuant to chapter 43.21C RCW, the State Environmental Policy Act ("SEPA") and SMC Title 18, Environment. This Agreement provides for the mitigation of existing, known and anticipated environmental impacts which are associated with the construction of the single family residence. This Agreement is not, and shall not be construed as, a voluntary agreement pursuant to RCW 82.02.020.

WHEREAS, the City and Property Owner have determined it is in their interest to work together to eliminate potential public health and safety issues.

WHEREAS, Property Owner and Contractor hereby agrees to comply with all requirements of the City's construction standards and any other City resolutions, ordinances, policy or master plan.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the City, Property Owner and Contractor mutually undertake, promise and agree for themselves, their successors and assigns as follows:

**ARTICLE I  
INCORPORATION INTO AGREEMENT**

SECTION 1.01. The foregoing recitals are hereby ratified and conformed as being true and correct and are hereby made a specific part of this Agreement.

**ARTICLE II  
CONSTRUCTION OF UTILITY IMPROVEMENT**

SECTION 2.01. CITY'S OBLIGATIONS.

- (A) Inspection, General: The City, at its sole cost and expense, shall retain or use the services of a Washington State registered professional engineer for the purposes of inspecting and supervising the construction and installation of the Work to insure compliance with accepted civil engineering practices and the approved Plans. Prior to Property Owner and Contractor conveying the Work to the City, the engineer shall certify in writing the construction and installation of the Work complies with accepted civil engineering practices and are in substantial conformance with the approved Plans. The City is obligated to make inspections of all the construction work performed by the Contractor and permitted by the City under the terms of this Agreement. Such inspections shall not be construed to constitute any guarantee on the part of the City as to materials or workmanship, nor shall any inspection relieve the Contractor of the responsibility for the proper construction of the Work in accordance with the requirements of the approved Plans nor shall any inspections, if undertaken, abrogate the Contractor's one (1) year warranty to the City as to the quality and condition of the materials and workmanship as set forth below.
- (B) Inspection, Special: When required, the Contractor shall retain the services of licensed inspectors for any special inspections, including but not limited to testing of materials and compaction, as outlined in the Plans.
- (C) Reimbursement. Upon completion and acceptance of the Work, the City shall reimburse the Property Owner for all verified costs to undertake and complete the Work, including engineering and project management costs which may have occurred prior to this Agreement but related to the Work. The City shall reimburse the Property Owner 68% of project costs excluding costs associated solely with City or Property Owner portions of the Work.

## SECTION 2.02 PROPERTY OWNER AND CONTRACTOR'S OBLIGATIONS

- (A) Design: The Property Owner, at his sole cost and expense, with the aid of a Washington State registered professional engineer, shall be responsible for designing and preparing the Plans and any specifications associated with the Work. All plans, specifications, and calculations submitted for review shall be sealed and signed by a Washington State registered professional engineer. No work shall commence until the Plans and any specifications are approved in writing by the City and a construction permit issued.
- (B) Construction and Installation: The Property Owner and the Contractor, at their sole cost and expense, shall construct and install the Work in accordance with the approved Plans and specifications.
- (C) Compliance with Applicable Laws: The Work shall be performed in accordance with all requirements of the regulatory agencies which have jurisdiction over the subject matter of this Agreement as well as all applicable Federal laws, State statutes, County and City ordinances. The requirements of this paragraph shall govern, regardless of any errors or omissions in the approved Plans and specifications.
- (D) Approvals and Permits: The Property Owner or its agents, at their sole cost and expense, shall be fully responsible for obtaining all required approvals from all governmental agencies and for obtaining all necessary construction permits for the Work contemplated in the approved Plans and specifications.
- (E) Accuracy of Information: The Property Owner and Contractor shall furnish to the City accurate information with regard to all matters under this Agreement, including, without limitation, information contained in the Plans and specifications. The Property Owner and the Contractor shall be jointly and severally responsible for errors or changes in the information furnished to the City under this Agreement.
- (F) Compliance with City Code: Property Owner and Contractor acknowledge they have reviewed and agree to be bound by all applicable requirements of the City codes and standards
- (G) Warranty. The Property Owner and Contractor jointly and severally warranty the Work shall be performed in a good and workmanlike manner and in accordance with

all recognized industry standards. The warranty shall be for labor and materials for a period of one (1) year from the date the City accepts the Work as completed.

SECTION 2.03. INSURANCE. Contractor shall provide evidence to the City of the following insurance:

- (A) General liability insurance shall be provided on an "occurrence" basis, in the following limits of liability as a minimum: (1) bodily injury, \$1,000,000 each occurrence and \$2,000,000 each aggregate, and (2) property damage, \$1,000,000 each occurrence and \$2,000,000 each aggregate.
- (B) All policies shall provide they cannot be canceled or materially altered except after 30 days advance written notice to the City and shall name the City as an additional insured.
- (C) Contractor shall provide a Certificate of Insurance evidencing the City is a named Additional Insured on the general liability policy.

SECTION 2.04. CONVEYANCE OF THE WORK TO THE CITY. Upon completion and approval of the Work, the Contractor shall convey the Work to the City. Delivery to and acceptance by the City Council of all documents and related materials required for the Work shall constitute final acceptance by the City of these improvements.

The City shall provide reimbursement to the Property Owner within 30 calendar days of final acceptance.

### ARTICLE III GENERAL PROVISIONS

SECTION 3.01. Nothing contained herein shall be deemed to waive or modify any other lawful code provision, ordinance, resolution or regulation of the City nor shall this Agreement be applied in a manner which causes the City to violate any bond covenant or obligation.

SECTION 3.02. ASSIGNMENT, CONVEYANCES OR TRANSFERS OF THIS AGREEMENT. The partial or full assignment, conveyance or transfer of Property Owner and Contractor's rights and/or obligations under this Agreement shall be prohibited unless and until all of the following conditions are met:

- (A) It is in writing in a form approved by the City Council;
- (B) The City consents in writing, which consent shall not be unreasonably withheld and is a party to said assignment, to the conveyance or transfer and the assignee, conveyee or transferee agrees to abide by all the terms and provisions of this Agreement;
- (C) The Property Owner and Contractor are not in default under this Agreement; and
- (D) Such rights and/or obligations are assumed in writing by an assignee or transferee in a form acceptable to the City.

SECTION 3.03. NOTICES. All notices hereunder must be in writing and shall be mailed as follows;

For the City of Stevenson:	City Administrator 7121 E. Loop Road Stevenson, WA 98648
----------------------------	--

For the Property Owner:	Adam Miller 5940 NE Simpson Street Portland, Oregon 97218
-------------------------	---

For the Contractor:

Dayne Connell  
Gorge Dirt Works, LLC  
PO Box 732  
White Salmon, WA 98672

Notice so addressed and sent by prepaid certified mail, with return receipt requested, shall be deemed validly given when deposited in the United States mail.

SECTION 3.04. DEFAULT. The occurrence of any of the following during this Agreement shall constitute a default:

- (A) Property Owner or Contractor's failure in the performance or observance of any of the terms and conditions of this Agreement; or
- (B) There shall be filed by or against Property Owner and/or Contractor in any court or other tribunal pursuant to any governmental requirement, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Property Owner or Contractor's assets.

In the event of Property Owner or Contractor's default under this Agreement, the City's obligations shall be voidable at the option of the City.

SECTION 3.05. REMEDIES. Should the Property Owner or Contractor be in default of this Agreement, it is agreed the City shall be entitled to any and all remedies under Washington State law, and in addition thereto, the City shall be entitled to any or all of the following remedies, which are cumulative:

- (A) Refusal to provide a final inspection or acceptance of the Work.

SECTION 3.06. MISCELLANEOUS PROVISIONS.

- (A) This Agreement constitutes the entire agreement between the Parties for all matters contained herein and shall supersede all previous agreements or representations either oral or written with respect to all matters contained herein. All prior agreements between the City and the Property Owner pertaining to any matters specifically covered by this Agreement are hereby canceled and declared of no force and effect to the extent they are in conflict herewith.
- (B) If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- (C) The headings and subheadings use throughout this Agreement are for convenience only and have no significance in the interpretation of the body of this Agreement, and the Parties hereto agree that they be disregarded in construing the provisions of this Agreement.
- (D) The recitals to this Agreement are true and correct and are hereby incorporated as an integral and material part of this Agreement.
- (E) The signature of any person to this Agreement shall be deemed a personal warranty by that person he or she has the power and authority to bind any corporation, partnership or any other business entity for which he or she purports to acts.
- (F) In the event of any disputes and/or litigation arising from this Agreement, the prevailing party shall be awarded reasonable attorney's fees and costs (including paralegal) at trial and through and including appeals.



STATE OF WASHINGTON        )  
  ) SS:  
COUNTY OF SKAMANIA        )

Before me personally appeared Adam Miller well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
For the State of Washington  
My Commission Expires:

THIS AGREEMENT HAS BEEN APPROVED BY GORGE DIRT WORKS, LLC, ON MARCH \_\_\_\_, 2023.

STATE OF WASHINGTON        )  
  ) SS:  
COUNTY OF SKAMANIA        )

Before me personally appeared Dayne Connell, Authorized Representative for Gorge Dirt Works, LLC, well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
For the State of Washington  
My Commission Expires: