

## ENVIRONMENTAL MITIGATION AGREEMENT (NE Fir Street Laterals)

This Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of April, 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

Sheri Terjeson and James Stringfellow ("Terjeson/Stringfellow"), who own fee title to 421 NE Fir Street (Lot 5) and 441 NE Fir Street (Lot 4), Stevenson, Washington 98648, and Teresa Daugherty, who owns fee title to 451 NE Fir Street, Stevenson, Washington 98648 (collectively "Property Owners") and Van Pelt & Van Pelt Construction, Inc., WA UBI No. 601713827 ("Contractor").

### RECITALS

WHEREAS, the Property Owners have submitted a building permit application for the relocation of sewer lateral from 451 NE Fir Street ("Daugherty Property") which will cross the properties located at 441 NE Fir Street and 421 NE Fir Street ("Terjeson/Stringfellow Properties") (collectively the Daugherty Property and the Terjeson/Stringfellow Properties may be referred to as "the Properties").

WHEREAS, an application for improvement has been submitted to allow the Property Owners to reroute the sewer service lateral from 451 NE Fir Street along the western property line of the Terjeson/Stringfellow Properties for connection to the main sewer line on NE Fir Street ("the Work"). The cost of the Work is set forth in the March 23, 2023 quote from Contractor attached hereto as **Exhibit 1**. The Work is further detailed in plans prepared by Van Pelt Inc, dated March 6, 2023 ("the Plans"). The Work does not include any connection of a lateral from the Terjeson/Stringfellow Properties to the main sewer line ("Excluded Work") – all such costs shall be the sole responsibility of Terjeson/Stringfellow.

WHEREAS, the portion of the Work located in the City Right of Way will be conveyed to the City upon completion of construction. The portion of the Work on private property will remain owned and maintained by the Property Owners. The City will not participate in ownership, maintenance, repair, or replacement of any part of the Work located on the Properties.

WHEREAS, the Property Owners will draft, sign, and record a utility easement of sufficient width to allow maintenance, repair, and replacement, as needed, between the Property Owners; which shall be recorded with the Skamania County public records.

WHEREAS, the Property Owners have agreed to engage Contractor to perform the Work according to the Plans. The Work shall be done at the cost and expense of Terjeson/Stringfellow based on the terms of this Agreement and any agreement between the Terjeson/Stringfellow and Contractor. Upon completion and acceptance of the Work by the City, the City will reimburse Terjeson/Stringfellow the amounts recited in **Exhibit 1** for the Work.

WHEREAS, the City finds the Work as being necessary to mitigate environmental impacts related to maintaining the sewer service line in an 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. This Agreement is not, and shall not be construed as, a voluntary agreement pursuant to RCW 82.02.020.

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

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

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

#### ARTICLE I INCORPORATION INTO AGREEMENT

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

##### 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 Owners and Contractor conveying that portion of the Work in the City's Right of Way to the City, the engineer shall certify in writing the construction and installation of the Work complies with accepted civil engineering practices and is 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 or void 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 required in the City of Stevenson Engineering Standards.
- (C) Reimbursement. Upon completion and acceptance of the Work, the City shall reimburse Terjeson/Stringfellow for the amounts recited in **Exhibit 1**. Reimbursement shall be made within thirty (30) days of approval of the Work by the City of Stevenson.

##### 2.02 PROPERTY OWNERS' AND CONTRACTOR'S OBLIGATIONS

- (A) Design: Terjeson/Stringfellow, at their sole cost and expense, shall be responsible for designing and preparing the Plans and any specifications associated with the Work. All plans, specifications, and calculations shall be submitted for review. 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 Owners 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: Terjeson/Stringfellow, 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: Terjeson/Stringfellow 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. Terjeson/Stringfellow 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 Owners and Contractor acknowledge they have reviewed and agree to be bound by all applicable requirements of the City codes and standards.
- (G) Warranty. Terjeson/Stringfellow 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.

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 the Policy cannot be canceled or materially altered except after 30 days advance written notice to the City.
- (C) Contractor shall provide a Certificate of Insurance evidencing the City is a named Additional Insured on the general liability policy.

2.04 CONVEYANCE OF THE WORK TO THE CITY. Upon completion and approval of the Work, the Contractor shall convey that specific portion of the Work in the City Right of Way to the City. This Agreement does not address the installation of a sewer lateral connecting 441 NE Fir Street and/or 421 NE Fir Street to the sewer main in the City Right of Way. 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.

### ARTICLE III GENERAL PROVISIONS

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.

3.02. ASSIGNMENT, CONVEYANCES OR TRANSFERS OF THIS AGREEMENT. The partial or full assignment, conveyance or transfer of Property Owners 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 Owners 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.

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 Owners:                      Sheri Terjeson/James Stringfellow  
1007 NW 103<sup>rd</sup> Street  
Vancouver, WA 98685

Teresa Daugherty  
PO Box 1007  
Stevenson, WA 98648

For the Contractor:                              Van Pelt & Van Pelt Construction, Inc.  
C/o Shawn Van Pelt  
255 NW Gale Street  
Stevenson, WA 98648

Any 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.

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

- (A) Property Owners 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 Owners 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 Owners or Contractor's assets.

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

3.05. REMEDIES. Should the Property Owners 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.

3.06 INDEMNIFICATION AND HOLD HARMLESS. The Property Owners and Contractor, collectively and jointly, agree to indemnify and hold harmless the City and its officials, elected or otherwise, employees, agents and successors from and against any and all claims, losses, damages, liabilities and the like, including reasonable counsel fees which either the Property Owners or Contractor may incur, suffer, sustain or be required to pay by reason of the Work resulting in injury, property damage, or death of any person or to any property whatsoever, caused or alleged to have been caused due to the Work described herein. In the event the City is named as a party or subject to any proceeding, including arbitration, arising from or related to the Work, the Property Owners and Contractor shall immediately defend the City and its officials, elected or otherwise, employees, agents and successors from and against any and all allegations, losses, costs, claims (even if such claims prove to be false, groundless or without merit), including demands, damages, expenses, attorney fees/costs, expert fees/costs or any liability of any nature.

3.07. 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 (including electronic communications) with respect to all matters

contained herein. All prior agreements between the City and the Property Owners 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 and experts) at arbitration or trial and through and including appeals.
- (G) No waiver by City of any breach of any term or condition of this Agreement, and no failure by City to exercise any right or remedy with respect of any such breach, shall constitute a waiver or relinquishment for the future, or bar any right or remedy of City with respect to any other breach of such term or condition or any breach of any other term of this Agreement. The receipt by City of any waiver of payment, any payment or any portion of payment required under this Agreement shall not operate as a waiver or an accord and satisfaction of the rights of City to enforce the payment or portion of a payment then or subsequently due, to terminate this Agreement or to invoke any other appropriate remedy which City may select as provided by this Agreement or by law.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year indicated below:

Property Owner – Sheri Terjeson

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Property Owner – James Stringfellow

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Property Owner – Teresa Daugherty

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Contractor – Van Pelt & Van Pelt, Inc.

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By: Shawn Van Pelt

Its: Authorized Representative

CITY OF STEVENSON:

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By Scott Anderson, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_

Robert C. Muth  
CITY ATTORNEY

THIS AGREEMENT HAS BEEN APPROVED BY STEVENSON CITY COUNCIL ON \_\_\_\_\_, 2023. THE CITY MAYOR IS AUTHORIZED TO EXECUTE THIS AGREEMENT.

THIS AGREEMENT HAS BEEN APPROVED BY SHERI TERJESON, ON APRIL \_\_\_\_\_, 2023.

STATE OF WASHINGTON )  
 ) SS:  
COUNTY OF SKAMANIA )

Before me personally appeared Sheri Terjeson 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 she 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 JAMES STRINGFELLOW, ON APRIL \_\_\_\_\_, 2023.

STATE OF WASHINGTON )  
 ) SS:  
COUNTY OF SKAMANIA )

Before me personally appeared James Stringfellow 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 TERESA DAUGHERTY, ON APRIL \_\_\_\_\_, 2023.

STATE OF WASHINGTON )  
 ) SS:  
COUNTY OF SKAMANIA )

Before me personally appeared Teresa Daugherty 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 she 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 VAN PELT & VAN PELT, INC., ON APRIL \_\_\_\_\_, 2023.

STATE OF WASHINGTON )  
 ) SS:  
COUNTY OF SKAMANIA )

Before me personally appeared Shawn Van Pelt, Authorized Representative for Van Pelt & Van Pelt, Inc., 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:

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