

AGREEMENT TO CONSTRUCT IMPROVEMENTS

**CITY OF SEDRO-WOOLLEY
Sedro-Woolley, Washington**

Project Name: _____ Project No: _____

Applicant's Name: _____

Applicant's Address: _____

Type or Ownership (Corporation, Partnership, Sole Proprietor, or Joint Venture): _____

Estimate of Project Cost: _____

Type of financial surety Applicant intends to use: _____

Date of Acceptance of Application by City: _____ City Planner Initials: _____

The undersigned, this ____ day of _____, 20__ hereinafter referred to as "Applicant," hereby agrees to construct improvements which are subject to the approval of the City, and make the following representations and agreements, to-wit:

1. LOCATION OF IMPROVEMENT

The proposed improvement will be installed in approved easements and/or on approved public rights-of-way and shall be for the use and benefit of the property hereinafter legally described as follows:

Legal Description of Property:

The above described property is hereafter referred to as the "Property."

2. DESCRIPTION OF IMPROVEMENT

The proposed improvement will consist of: (Complete Description of Improvement)

and shall be installed in accordance with plans and specifications approved by the City, and in accordance with the standards and conditions set forth in the "Public Works Department

Standards” as adopted by the City of Sedro-Woolley, the terms and conditions of which are made a part hereof.

The above description of the improvement is hereafter referred to as the “Project.”

Applicant represents, guarantees, and warrants that the Applicant is the owner of the Property and that Applicant shall be responsible for construction of the Project in conformance with the terms of this Agreement.

3. PERMITS REQUIRED

Permits, approvals, or agreements are required by the City and sometimes other jurisdictions, prior to initiating any construction or demolition work. Work covered by this Agreement may require multiple permit authority review and approvals. Several types of permits and approvals require prior approval from authorities other than the City of Sedro-Woolley, before a building or other substantial permit can be issued. The Applicant is responsible for submitting timely application for and obtaining all required permits and approvals.

The following general categories describe the major permits, approvals, and agreements.

A. Environmental Review

An Environmental Checklist is required for this project: _____ (yes/no)

B. Permits required by City for Land Development Activities

- i. Master Permit.
- ii. Fill and Grade Permit. A Fill and Grade Permit is required for all significant land alterations, including stockpiling, which is not covered by other permits and agreements. The City must be contacted prior to any contemplated clearing or grading activities.
- ii. Right-of-Way Permit. A Right-of-Way Permit is required for any work within the road R/W which is not covered by other permits and agreements. Such work may include utilities work, road or lane closures, frontage improvements, access, and temporary uses.
- iii. Access Permit(s). Access Permits are required for all new or modified accesses to City Right-of-Way on City Streets with Collector or greater functional classification. Subdivisions do not require separate Access Permits for each residential driveway.
- iv. Water Availability. (Skagit Public Utility District No. 1)
- v. Sewer Availability. Sewer Availability must be verified by the Director of Public Works and the Sewer Department.
- vi. Haul Route. A dedicated haul route shall be identified, and any damage linked with the development activity shall be rectified the satisfaction of the Director of Public Works.
- vii. Other permits/approvals as required by the City.

C. Other Permits or Approvals from permitting agencies with jurisdiction.

Permits or approvals from agencies other than the City may be required. The Applicant will coordinate with the other agencies, and obtain all such permits. Copies of all permits from outside agencies shall be given to the City. Permits may include but are not limited to the following: Hydraulic Project Approvals (HPA) from the Department of Fish and Wildlife; Short Term Water Quality Modification Approval and/or Dam Safety Permit from the Department of Ecology; Section 404 Permit and Section 10 Permit/letter of permission from the US Corps of Engineers; Baseline General Permit to Discharge Stormwater Associated With Construction Activities (NPDES) and/or Waste Discharge Permits from the Department of Ecology; Developer/Local agency Agreement from the Washington State Department of Transportation. The City or regulating governmental agency shall be contacted for further details.

4. FEES AND CHARGES

- A. An initial plan review fee shall be paid by the Applicant to the City. The initial fee, calculated by the City, is \$_____.
- B. All costs incurred by the City on the Project shall be borne by the Applicant. The fee to cover all of the City's costs shall be based upon approved fee rates and of actual time and expenses and shall include without limitation inspection, engineering, legal, administrative, financial, or any other services performed by or for the City in connection with the Project. The fee shall be adjusted by the City if actual costs incurred indicate that the deposits will not cover all costs. The fee shall be paid to the City in consideration of administering this "Agreement to Construct Improvements" contract.
- C. This Agreement shall not provide any vested rights to a particular general facilities charge. Any general facilities charges due and owing shall be paid at the rate in effect at the time each individual building/lot actually connects to the City system.

5. PAYMENT OF FEES

The Applicant shall pay all fees required by state and local agencies and the City of Sedro-Woolley. City fees shall be paid at the time designated.

All of the charges detailed herein shall be and become a lien on the property described in Section A hereof. Applicant has signed, contemporaneously herewith, a Deed of Trust applicable to the Property to secure performance of the obligations herein. Said Deed of Trust shall be substantially in conformance with Exhibit A hereto and shall be subject to approval by the City Attorney.

6. PROFESSIONAL QUALIFICATIONS

Professionals in the technical fields of engineering, architecture or surveying who prepare or are

responsible for the preparation of plans, drawings, specifications, calculations, technical reports, etc., for the process of obtaining required permits or approvals shall currently be licensed or registered in the State of Washington.

7. STANDARD SPECIFICATIONS

All work and materials shall conform to the latest edition of the most current editions of: the STANDARD SPECIFICATIONS FOR ROAD, BRIDGE AND MUNICIPAL CONSTRUCTION and APWA SUPPLEMENT as prepared by Washington State Department of Transportation, City of Sedro-Woolley Ordinances, City of Sedro-Woolley "Public Works Department Standards," and according to the recommendations of the manufacturer of the material concerned. All work and materials shall be subject to the approval of the City.

8. PLANS AND SPECIFICATIONS

The Applicant shall submit three sets of the complete plans and specifications, prepared in accordance with the "Public Works Department Standards," for the project to the City for preliminary review. The plans shall be stamped "PRELIMINARY" and sealed by a Professional Engineer licensed in Washington. After the City's preliminary review, the Applicant shall submit the corrected plans and specifications for the Project to the appropriate State Agencies for final review and action, if required. After approvals have been received, the Applicant shall submit a final set of Construction Contract Documents including reproducible plans to the City. A set of these plans stamped "APPROVED" shall be made available to the Applicant.

9. COMPREHENSIVE PLAN

Applicant shall check the Project for compliance with the City's Comprehensive Plan(s). If the project is not in compliance the City's Comprehensive Plan(s), an engineering report is required. The report will consider the impact upon the City's utilities and transportation systems. In certain cases, the Project may require an addendum to, or to be incorporated in, the City's Comprehensive Plan(s).

10. EVIDENCE OF INSURANCE

The Applicant or the Applicant's Contractor shall take out and maintain during the life of this contract Public Liability Insurance for bodily injury and property damage liability as specified in Section 1-07.18 of the APWA Supplement to the WSDOT Standard Specifications and as modified herein. The policy shall include without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities (X.C.U.) and contingent liability, including products and completed operations and blanket contractual liability, as shall protect the Applicant or the Applicant's Contractor, the City and the City's Engineer. The Applicant shall have the City and the City's Engineer specifically added additional named insureds in said policies, all at no cost to the City or City's Engineer. The above insurance shall cover the City, City's Engineer, Applicant and Subcontractors for claims or damages for bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this contract whether such operations be by themselves or by any subcontractor or anyone

directly or indirectly employed by either or them and the Applicant agrees, in addition to indemnify and save harmless the City and City's Engineer, either or both, from all suits, claims, demands, judgments, and attorneys fees, expenses or losses occasioned by the performance of this contract by the Applicant or Contractor, and subcontractor, or persons working directly or indirectly for the Applicant or Applicant's Contractor, or on account of or in consequence of any neglect in safeguarding the work or failure to conform with the safety standards for construction work adopted by the Safety Division of the Department of Labor and Industry of the State of Washington.

The amount of such insurance shall be as follows: Bodily injury liability insurance in an amount not less than \$1,000,000.00 for injuries, including wrongful death, to any one person and subject to the same limit for each person, in an amount not less than \$1,000,000.00 on account of any one occurrence, and property damage liability insurance in an amount not less than \$1,000,000.00 for each occurrence.

The Applicant or Applicant's Contractor shall not cause any policy to be canceled or permit it to lapse, and all policies shall include a clause to the effect that the policy or certificate shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance or any other material change until notice has been mailed to the City stating when, not less than thirty (30) days thereafter, such cancellation or reduction or change shall be effective.

All certificates of insurance, authenticated by the proper officer of the insurer, shall state in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date, and the above-mentioned notice of cancellation clause. The City may accept insurance covering a Subcontractor in character and amounts less than the standard requirements set forth under this subsection where such standard requirements appear excessive because of the character or extent of the work to be performed by such subcontractor.

A Certificate of Insurance evidencing coverage and a copy of the endorsement naming the City and City's Engineer as additional insured must be submitted to the City prior to the commencement of the Contract.

11. PERFORMANCE BOND

For work within City owned property or right of way, the Applicant shall provide a performance bond or cash bond between Applicant and the City as specified in Division 9 and Section 1-03.4 of the WSDOT Standard Specifications. The bond shall be in an amount equal to 125% of the City's estimated cost of the project, or 125% of actual cost, if known, prior to the commencement of the work. Cash bond shall be approved by City Clerk and City Attorney.

The Performance Bond shall cover the faithful performance of the Applicant and the payment of all obligations arising thereunder in accordance with Section 1-03.4 of the APWA Supplement to the WSDOT Standard Specifications. This bond is submitted to comply with all requirements of RCW 39.08, as a statutory bond, and all the requirements of said statute are deemed incorporated herein by reference and shall control in case of any inconsistencies.

The Performance Bond shall require the Applicant to pay all persons furnishing labor and materials and shall hold the City harmless from any claims thereof, whether any such claims would arise under the public works lien statutes, or the mechanic lien statutes of the State of Washington and compliance with the formal requirements of either or both of said statutes shall not be a condition to recovery upon said bond.

12. PERFORMANCE BOND IN LIEU OF CONSTRUCTION

If the Director of Public Works / City Engineer or City Council grants to defer any portion of the construction improvements required as part of this Agreement to Construct Improvements, the Applicant shall furnish to the City a performance bond or cash bond between Applicant and the City. The performance bond shall be in an amount equal to 125% of Contract Construction Costs of improvements deferred. Cash bond shall be approved by the City Clerk and City Attorney.

The Performance Bond In Lieu Of Construction shall cover the faithful performance of the Applicant and the payment of all obligations arising thereunder in accordance with Section 1-03.4 of the APWA Supplement of the WSDOT Standard Specifications. This bond is submitted to comply with all requirements of RCW 39.08, as a statutory bond, and all the requirements of said statute are deemed incorporated herein by reference and shall control in case of any inconsistencies.

The Performance Bond In Lieu Of Construction shall require the Applicant to pay all persons furnishing labor and materials and shall hold the City harmless from any claims thereof, whether any such claims would arise under the public works lien statutes, or the mechanic lien statutes of the State of Washington and compliance with the formal requirements of either or both of said statutes shall not be a condition to recovery upon said bond.

The improvement shall be complete and accepted within two (2) years of the date of the execution of this bond.

13. MAINTENANCE BOND

The Applicant shall provide a maintenance bond or a cash bond in the amount of twenty-five percent (25%) of the contract construction costs or twenty percent (20%) of the original performance bond, whichever is more, for all bondable public and/or private improvements. Said bond shall guarantee maintenance for two (2) years after acceptance of the extension by the City and shall be in a form acceptable to the City.

14. EASEMENTS

The Applicant shall obtain all necessary rights of way, easements and limits of construction permits without cost to the City as specified in Section 1-07.24 of the APWA Supplement to the WSDOT Standard Specifications and as modified herein. The Applicant shall supply the City with the supporting data necessary to verify the location of the rights of way or easement. If legal services are required by the City in connection with the easement, other than formal review,

the cost of such services shall be reimbursed by the Applicant to the City on demand and before acceptance of the improvement. Where construction will take place on private property other than Applicant's, the Applicant shall obtain construction easements. At the completion of construction and prior to the City accepting the project, construction easements shall be released by the property owner, and final signed permanent easements shall be recorded in the City's name at the Skagit County Auditor's Office. Copies of the recorded easement shall be delivered to the City. The easement legal description shall be prepared and stamped by a licensed professional surveyor.

Whenever a City utility is to be laid underground through private property, a permanent easement of not less than twenty feet (20') in width shall be provided for one utility line. For more than one utility line, a permanent easement shall be provided with a width of not less than 10 feet on each side of each utility line to edge of easement, and minimum 10 feet of separation between each utility line. Easements shall be compatible with the City's Comprehensive Plan to ensure continuation of a utility.

The Applicant is responsible for any encroachments on right-of-way, public property, or surrounding private property. Without any cost to the City, the Applicant is required to remove or rebuild in an approved manner, any portion of the construction that may have been constructed over property or setback lines.

Where work is done on easements, the Applicant shall obtain a written statement of satisfactory restoration from each property owner involved, and furnish a copy of the statement to the City.

15. PERMITS AND BONDS

All permits and bonds necessary and effective during the prosecution of the work and subsequent guaranty period shall be obtained and paid for by the Applicant. The Applicant shall give all notices required by such permits and provide all bonding and insurance required by such permits.

The Applicant shall provide the City with a copy of all such permits before construction begins. The Applicant shall obtain and pay for all surveys, easements, rights-of-way, and franchises required for the works.

16. REGULATIONS

The Applicant shall give all notices and comply with all Federal, State, and local laws, ordinances, rules and regulations bearing on the conduct of the works as outlined in Section 1-07 of the APWA Supplement to the WSDOT Standard Specifications. The City will not consider any plea of misunderstanding or ignorance of such requirements.

17. COMMENCEMENT OF CONSTRUCTION

No work shall commence on improvement without construction plans stamped by the City as "APPROVED"

18. RESPONSIBILITY FOR PROJECT MANAGEMENT

The Applicant shall be responsible for Project management and coordination. Project management includes but is not limited to preparation of construction contract plans and specifications, bidding of construction contract, and overall coordination of utility and road locations, elevations and conflicts of said. The Applicant shall save the City harmless of any conflicts of dispute resulting from or in connection with the construction contract.

19. INSPECTIONS AND TESTS

Inspection and test of work and materials shall be strictly for the benefit of the City and nothing contained herein shall be construed to relieve the Applicant of his/her obligations under the Contract.

As a minimum, the following scheduled inspections and tests shall be conducted by the City:

1. Start of construction inspection.
2. Test inspections.
3. Final inspections.
4. End of Warranty Period inspection (to be conducted at least two weeks prior to expiration of Applicants maintenance bond).

Other scheduled inspections and tests may be required to comply with other sections of the Contract Documents, Engineers instructions, laws or ordinances. Some inspections and tests may be conducted by an authority other than the City.

The Applicant shall give the City 48 hours written notice prior to the time when the state of work is such that a scheduled inspection and test can be conducted.

20. CONNECTION TO THE CITY'S UTILITY SYSTEM

Not less than 48 hours prior to the time that said utility extension is partially or fully complete and connection to the City's system is desired, written application for permission to make the actual connection to the City's system at a specified time shall be made by Applicant or Contractor. All new connections to the existing system and all testing of the new line shall require authorization of the City and shall be conducted in the presence of the City's representatives.

21. AS-BUILTS

Before final acceptance, the Applicant shall provide the City of Sedro-Woolley with certified as-built mylars. In addition, all final as-built drawings shall be furnished in the current release of Autocad in a format, and submitted to the City on a computer disk. Refer to City As-Built Requirements.

22. FINAL ACCEPTANCE

Applicant agrees to execute a bill of sale prepared by the attorney for the City within sixty (60) days of the approved and completed improvement. Said bill of sale will provide for transfer of title of the constructed improvement from the Applicant to the City and will further include the following items and statements:

- a. Cost including administration, legal and engineering fees, for the improvement construction.
- b. That the Applicant owns without encumbrance the facilities which constitute the facilities and, therefore, is solely able to transfer title of the extension to the City, free and clear of encumbrances by warranty bill of sale. The Applicant will defend the title and right of possession of the City against all third party claims of title or encumbrance. The Applicant has the right to construct and install the facilities in and upon the land area in which it is installed.
- c. That all bills for labor and material have been paid.
- d. That the Applicant has the right to transfer said title and will warrant and defend the same against lawful claims and demands of all persons from two (2) years of the date of the bill of sale.
- e. Consideration will be recited that Applicant grants the improvement to the City for the consideration of incorporating the improvement in the overall system of the City.
- f. That the facility has been constructed in accordance with the City's specifications and this contract and is readily operable as an integral part of the roadway and utility system, as applicable.
- g. That all copies and warranties or guarantees from the Applicant, contractor, subcontractors, and suppliers specifically required under this contract have been delivered to the City.
- h. Applicant further warrants that for a period of two (2) years from the date of the bill of sale that the improvement will remain in perfect working order and condition except where abused or neglected by the City and the Applicant will promptly repair or replace at his/her own expense any work or material that may prove to be defective during said two-(2) year period of warranty.

23. LATECOMER AGREEMENT EXECUTION AND RECORDING

Following receipt of any required bill of sale, as heretofore described, the City may agree to execute and record a latecomer agreement for eligible projects subject to Chapter 15.40 of the Sedro-Woolley Municipal Code and other applicable ordinances and state statutes.

24. TIME FOR COMPLETION

The improvement shall be complete and accepted within one year of the date of approval of this Application by the City. If the Contract is not completed and accepted within one year from the date below, then the Applicant's rights under this Agreement shall cease and no additional services shall be connected, unless and until Applicant shall make a new Application or City consents to the renewal of the existing Application and Applicant shall pay the additional administrative, legal and engineering costs involved, for the renewal of the existing Application.

25. FAILURE TO COMPLY

Failure to comply with measures set forth herein shall result in revocation of permits and forfeiture of all rights to occupy or otherwise use the identified development. Should the City determine that the Applicant has failed to so comply, the City shall provide the Applicant with written notice of such failure, setting forth the specific item or items of failure, and provide the Applicant an opportunity to cure the defect of defects. All permits and rights shall be null and void if not cured within fifteen (15) calendar days of receipt of the notice from the City by the Applicant. The Director of Public Works shall determine if Applicant has cured such defect or defects and so notify the Applicant in writing within the fifteen (15) day opportunity to cure. The applicant may appeal the determination of the Director of Public Works in writing to the Mayor within five (5) days of receipt of such determination from the Director of Public Works. The Applicant shall set forth the specific item or items being appealed and shall have the opportunity to present information to the Mayor supporting such appeal. Within ten (10) days of receipt of the Appeal, the Mayor shall issue a written decision. The Mayor determination shall be final and binding. Nothing in this paragraph is intended as a waiver of either party's right to seek judicial review, as may be permitted by law, with regard to interpretation or enforcement of this Agreement after exhaustion of these administrative remedies.

26. ASSIGNMENT – BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned without the prior written consent of the City; provided that, such consent shall not be unreasonably withheld. This Agreement run with the land and shall be binding on the successors and assigns of the Applicant.

27. WAIVER

Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

28. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be Skagit County Superior Court.

29. COMPLETE AGREEMENT

This Agreement constitutes the complete agreement between the Applicant and the City. This Agreement may be modified in writing only, upon mutual agreement of the Applicant and the City.

30. AGREEMENT TO CONSTRUCT IMPROVEMENTS

I, _____, the Applicant of the herein described Property have read and accept the terms and conditions set forth in this application.

Applicant

CITY OF SEDRO-WOOLLEY

Upon compliance with the terms and conditions of this application by the above named Applicant(s), City of Sedro-Woolley will accept said improvements, and if applicable, furnish City utility services thereto.

CITY OF SEDRO-WOOLLEY
Sedro-Woolley, Washington

By: _____

Date: _____