

TEMPLATE ONLY – DO NOT HAVE NOTORIZED



**CITY OF BLAINE
PUBLIC WORKS DEPARTMENT**
1200 YEW AVENUE • BLAINE, WA • 98230
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PUBLIC FACILITIES CONSTRUCTION AGREEMENT

PROJECT TITLE:	_____	Comment [rnp1]: By City
AGREEMENT NO:	PFCA ___ - ___	Comment [RNP2]: By City
CITY PROJECT NO(S):	P ___ - ___	Comment [RNP3]: By City
PARTY NO 1:	The City of Blaine	
PARTY NO 2:	_____	Comment [rnp4]: By Project Proponent
	Addr 1 _____	
	Addr 2 _____	
	Addr 3 _____	
EFFECTIVE DATE:	YYYY MMM DD _____	Comment [rnp5]: By City
INSPECTION SERVICES DEPOSIT AMOUNT:	\$ _____	Comment [RNP6]: By City
INSPECTION SERVICES DEPOSIT BARS NO:	503 000 030 343 20 10 00	
PERFORMANCE SURETY AMOUNT:	\$ _____	Comment [RNP7]: By Civil Engineer and/or Electrical Engineer
PERFORMANCE SURETY BARS NO (IF CASH):	653 000 000 836 10 01 00	
DISTRIBUTION:	<input type="checkbox"/> City Clerk; Original No 1 <input type="checkbox"/> Party No 2; Original No 2 <input type="checkbox"/> Project Manager; copy <input type="checkbox"/> PWD Senior Accountant; copy <input type="checkbox"/> PWD project file; copy	

Party No 1 above (hereinafter “City”) is a municipal corporation of the State of Washington. Party No 2 above (hereinafter “Project Proponent”), is a <business type>] which will construct the paragraph I.A below-described facilities, and will legally own said constructed facilities until Project Proponent conveys said facilities to City per this Agreement. In consideration of the mutual covenants herein, the Parties do hereby agree as follows:

I. DESCRIPTION OF PROJECT:

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A. Project Proponent will construct and will dedicate to City for public use the following facilities:

Comment [rnp9]: All by Project Proponent

- ~ _____ ' _____ " sanitary sewer main with ___ each manhole(s) and ___ each cleanout(s), and
- ~ _____ ' _____ " water main with ___ each blow-off assembly(s) and ___ each fire hydrant(s), and
- ~ _____ ' _____ ' wide paved roadway, and
- ~ _____ ' _____ ' wide gravel/paved alley, and
- ~ _____ ' _____ ' wide sidewalk with rolled curb and gutter, and
- ~ _____ ' _____ " CPP storm sewer with ___ Type I/II catch basins, and
- ___ street lights, and
- ~ _____ ' # ___ primary with ___ transformers, and
- ~ _____ secondary conductor with ___ secondary pedestals, and
- etc,

all in accordance with City-approved civil engineer's name drawing set Job/Project _____ and City-approved electrical engineer's name drawing set Job/Project No _____.

B. Project Proponent agrees to start work within ___ days of City's *Notice to Proceed No 2* issuance date, and to complete the project within ___ days thereafter.

II. REPRESENTATIVES:

A. _____, PE is the responsible licensed civil engineer of record (hereinafter "Civil Engineer") and

Comment [rnp10]: By Project Proponent

_____, PE is the responsible electrical engineer of record (hereinafter "Electrical Engineer") for subject project.

Comment [rnp11]: By Project Proponent

B. Project Proponent hereby designates _____ as "Project Proponent's Agent" for all purposes required by this Agreement and warrants that this person has full authority to bind Project Proponent in all respects required by this Agreement.

Comment [rnp12]: By Project Proponent

C. City hereby designates _____ of its Public Works Department as "Project Manager" with full authority to exercise the same discretion as the Public Works Department Director under the ordinances of City, for the purpose of executing this agreement.

Comment [RNP13]: By City

III. DEVELOPER LATECOMERS REIMBURSEMENT AGREEMENT:

For construction exceeding \$5000, Project Proponent may apply separately to City to recover a pro rata share of the construction cost from subsequent users of the street or utility improvement. Such application must be made prior to final acceptance of construction by City. Application procedures, required information, and associated fees are set forth in Blaine Municipal Code (hereinafter "BMC") 13.12.040.

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IV. PERMITS:

- A. Project Proponent agrees to pay to City deposit(s) for City-anticipated fees and expenses associated with the project as required by BMC.
- B. Construction within the public right-of-way that will result in a temporary closure of that right-of-way to either vehicular or pedestrian traffic will require Project Proponent to obtain an Excavation Permit and/or Obstruction Permit from City.
- C. Project Proponent is responsible for obtaining all necessary permits from other governmental agencies with jurisdiction prior to beginning construction.

V. EASEMENTS:

- A. City-Benefiting.
 - 1. Project Proponent-Dedicated. If any paragraph I.A-described facilities will ultimately exist within City-benefiting easement(s) that Project Proponent directly dedicates to City, then, before City will formally accept paragraph I.A-described constructed facilities, Project Proponent shall provide to City legal evidence that these easement(s) exist.
 - 2. Other Than Project Proponent-Dedicated. If any paragraph I.A-described facilities will ultimately exist within City-benefiting easement(s) that Project Proponent does not directly dedicate to City, then, before City will issue to Project Proponent a formal *Notice to Proceed* to begin construction on subject project site of those paragraph I.A-described facilities, Project Proponent shall obtain, and shall provide to City recorded legal evidence that these easement(s) exist.
- B. Other Than City-Benefiting. Project Proponent shall obtain easement(s) for the construction of and, if appropriate, the maintenance for the project prior to beginning construction.

VI. SURETY:

- A. Performance. Before City will issue to Project Proponent a formal *Notice to Proceed* to begin construction on subject project site of the paragraph I.A-described facilities, Project Proponent shall provide to City a performance surety.
 - 3. Purpose. To cover satisfactory performance and payment of subcontractors and suppliers during said performance surety obligation period.
 - 4. Obligation Period. Shall commence at City's *Notice to Proceed* effective date, and shall expire at City's *Deed of Conveyance* effective execution date.
 - 5. Obligation Value. Shall be 100% of Civil Engineer's and/or Electrical Engineer's written estimated total construction cost of the paragraph I.A-described facilities that Project Proponent will construct within existing public right-of-way(s) and/or existing City-benefiting easement(s). The cover page of this Agreement reflects this amount.
 - 6. Form. Project Proponent may use City's *Developer Constructed Public Facilities Performance Bond* form, City's *Developer Constructed Public*

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Facilities Assignment of Funds in Lieu of Performance Bond form, a letter of credit, a guaranty deposit made to City's Finance Director, or a third-party bond with City named as co-obligee as performance surety, or Project Proponent may deposit obligation value in cash at City Cashier's desk. If Project Proponent desires to use a third party bond, City must also approve the underlying contract.

- B. Maintenance. Before City will formally accept Project Proponent's constructed facilities, Project Proponent shall provide to City a maintenance surety.
1. Purpose. Said maintenance surety shall guaranty the correction of defects in materials and/or workmanship that City discovers during said maintenance surety obligation period.
 2. Obligation Period. Shall commence at City's *Deed of Conveyance* effective execution date, and shall expire no earlier than 365 calendars thereafter.
 3. Obligation Value. Shall be ten percent (10%) of the constructed facilities' *Deed of Conveyance* total value (see also paragraph XIII below).
 4. Form. Project Proponent may use City's *Developer Constructed Public Facilities Maintenance Bond* form, City's *Developer Constructed Public Facilities Assignment of Funds in Lieu of Maintenance Bond* form, a letter of credit, a guaranty deposit made to City's Finance Director, or a third-party bond with City named as co-obligee as performance surety. If Project Proponent desires to use a third party bond, City must also approve the underlying contract.
- C. Approval. All surety must meet with the approval of City's Attorney.

VII. INSURANCE AND INDEMNITY:

- A. Before City will issue to Project Proponent a formal *Notice to Proceed* to begin construction on subject project site of the paragraph I.A-described facilities, Project Proponent shall provide to City evidence of liability and property damage insurance that:
1. Covers all project construction within the public right-of-way, and
 2. Names City as additional insured, and
 3. Reflects the following minimum coverage limits:
 - a. Bodily injury: \$1,000,000 for each person.
 - b. \$1,000,000 for each accident.
 - c. Property damage: \$500,000.
- B. Project Proponent agrees that City will not be liable under any contracts to which Project Proponent is a party pertaining to the construction of the project. Project Proponent agrees to hold City, its elected official, employees and agents, harmless for all liabilities and claims arising out of, or related to, performance of work identified in this Agreement.

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VIII. DESIGN AND STANDARDS:

- A. Project Proponent will retain a licensed professional engineer(s) to design the project, prepare the necessary plans and specifications, establish the construction cost estimate, provide construction engineering, and prepare certified as-built drawings.
- B. Project Proponent shall comply with the following standards for design and construction of the project; deviation from standard plans will not be accepted unless authorized in advance in writing:
 - 1. Standard Specifications for Road, Bridge and Municipal Public Works Construction, current edition, jointly published by the Washington State Department of Transportation and the American Public Works Association.
 - 2. Standard plans and specifications provided by City.
- C. Before City will issue to Project Proponent a formal *Notice to Proceed* to begin construction on subject project site of the paragraph I.A-described facilities, Project Manager will review and approve all construction documents and indicate compliance with City standards by stamping and signing the originals. This approval extends only to conformance with City standards, not integrity of design. City reserves the right to require modification of the plans in the event of errors or mistakes in the drawings, or if it determines that a change is necessary for proper completion of the project. Project Proponent-initiated changes must be approved in writing by City prior to beginning the change.
- D. Project Proponent shall remove and correct at their expense any improvement not authorized or constructed in compliance with above listed standards.

IX. PERFORMANCE OF WORK:

- A. Project Proponent shall not perform work other than Monday through Friday between 7:00 AM and 7:00 PM, excluding City holidays, and 9:00 AM to 6:00 PM on Saturdays, except with prior written consent of City. (BMC 8.10.010 E.)
- B. Project Proponent shall coordinate and schedule utility connections, and/or activities that will interrupt utility services, with Project Manager at least seven (7) working days in advance. Utility connections and/or service interruptions are not authorized on Fridays. City requires hot taps to avoid outages to commercial and industrial customers.

X. NOTICE TO PROCEED PREREQUISITES:

- A. City will issue to Project Proponent a *Notice to Proceed* with the work on site only under the following prerequisites:
 - 1. All non-Construction Stormwater Pollution Prevention Plan project documents reflect either “NO APPARENT DEFECTS” or “DEFECTS NOTED RESUBMITTAL NOT REQUIRED” City Public Works Department representative-initialed/dated stamp on each drawing sheet or on cover of each

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- report, plan, and/or study (i.e., all documents are “approved”), and
2. Project Manager has received two (2) each copies of “approved” (see paragraph X.A.1 above) non-Construction Stormwater Pollution Prevention Plan project documents (one for City Public Works Department project file, one for City Public Works Department’s inspector), and
 3. Project Proponent and City have executed this *Public Facilities Construction Agreement*, and
 4. Project Manager has received evidence of this *Public Facilities Construction Agreement*-required surety and insurance, and
 5. Project Proponent representative(s) and Project Manager have attended a Pre-Construction Meeting, and
 6. Project Manager has received evidence that Project Proponent has paid any required deposits to City, and
 7. Project Proponent has applied for and obtained an Excavation Permit for work in existing public right-of-ways, and
 8. Project Manager has received Civil Engineer-prepared *Construction Stormwater Pollution Prevention Plan Implementation Compliance Certification per City Standard Erosion Control Note No 6*, and
 9. Project Manager has received one (1) each copy of “approved” Traffic Control Plan, if applicable to subject project.

XI. INSPECTION:

City will provide periodic inspection during construction to ensure that the work is satisfactory. Project Proponent shall pay for all reasonable direct costs incurred by City for inspection. Inspections by City shall not relieve Project Proponent of its responsibility to construct the project according to City standards. Project Proponent shall pay to the City Cashier the deposit amount noted on page 1 as a deposit/advance payment for construction inspection services. City will return to Project Proponent any amount of the deposit not actually expended for inspection purposes.

XII. RESTORATION OF SITE:

Project Proponent agrees to restore all public and private property disrupted by the installation of the project to its original condition. The entire job site will be left with a neat appearance. Project Proponent will restore landscape including sod, seeding, or barking within seven (7) City business days of completing any excavation and fill unless otherwise approved by Project Manager.

XIII. DEED OF CONVEYANCE:

Before City will accept Project Proponent’s constructed facilities, Project Proponent shall convey (using City-provided *Deed of Conveyance* form) to City ownership of the aforementioned project facilities, free and clear of all encumbrances, together with rights-

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of-way and/or easements, including maintenance easements, for the paragraph I.A-described facilities.

XIV. CONSTRUCTED FACILITIES FINAL INSPECTION AND APROVAL:

- A. Project Ready for City Final Inspection and Approval. When Project Proponent believes, in its sole opinion, that its constructed paragraph I.A-described facilities are ready for City final inspection and approval, Project Proponent shall notify Project Manager in writing, with a copy to City Public Works Department Director.
- B. City Response to Project Proponent’s Request for City Final Inspection and Approval. City will endeavor to perform a final inspection within 24 hours, but not longer than five (5) City business days, of its receipt of Project Proponent’s request for final inspection. After City performs the final inspection, City will generate and deliver to Project Proponent within three (3) City business days a *Physical Deficiencies List*.
- C. Current *Physical Deficiencies List* Status.
 1. Identifies Defective and/or Incomplete Items. If the current City-generated *Physical Deficiencies List* identifies defective and/or incomplete items, Project Proponent shall remedy and/or complete, or provide 150% value surety to remedy and/or complete, those defective and/or incomplete items. If Project Proponent elects to physically remedy defects and/or complete incomplete items, then, once Project Proponent believes, in its sole opinion, that project is ready for City re-inspection and approval, Project Proponent shall notify Project Manager per paragraph XIV.A above. City will respond to Project Proponent’s request per paragraph XIV.B above.
 2. Identifies No Defective and/or Incomplete Items. If the current *Physical Deficiencies List* identifies no defective and/or incomplete items, then City has approved all facilities work.

XV. CONSTRUCTED FACILITIES FINAL ACCEPTANCE:

- A. City will accept Project Proponent-constructed paragraph I.A-described facilities only under the following prerequisites:
 1. The most current *Physical Deficiencies List* (see paragraph XIV above) for subject project either reflects no defective or incomplete items, or Project Proponent has provided to City 150% surety to remedy any outstanding defective or complete incomplete items, and
 2. Project Manager receives evidence that City has received payment for all outstanding project-related City-invoiced fees and charges, and
 3. Project Manager has received Civil Engineer’s certification that Project Proponent has constructed any non-public permanent stormwater management facilities per City-approved plan, and
 4. Project Manager has received evidence that recorded easements (see

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- paragraph V.A above) exist for those qualified paragraph I.A-described facilities, and
5. Project Manager has received copy of Project Proponent-executed *Deed of Conveyance* (see paragraph XIII above) for all paragraph I.A-described facilities, and
 6. Project Manager has received copies of all completed *Construction Stormwater Pollution Prevention Facilities Daily Inspection Logs*, and
 7. Project Manager has received maintenance surety (see paragraph VI.B above), and
 8. Project Manager has received one (1) full-size set of Mylar, one (1) full-size paper copy, and one (1) digital (CD) copy of City-approved Engineer-certified record drawings, and
 9. <Other>

Comment [rnp14]: By City

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CITY OF BLAINE:

Public Works Department Approval

By: _____
Printed Name of Director Signature

City Manager Approval

By: _____
Signature

State of Washington)
) ss
County of Whatcom)

I certify that I know, or have satisfactory evidence, that name of person is the person who appeared before me, and said person acknowledged that he / she signed this instrument, on oath stated that he / she was authorized to execute the instrument as the City Manager of the City of Blaine, and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated

(Seal or Stamp)

Signature
Notary Public in and for the State of Washington

My appointment expires