



CITY OF BEND

TEMPORARY CONSTRUCTION ACCESS AGREEMENT

RECITALS

A. The City of Bend ("City") is constructing certain sewer improvements in connection with the Project Name ("Project").

B. As part of the Project, the City desires to install a pressure service connection on [PROPERTY ADDRESS], as shown on the City of Bend Standard Drawing S-9 ("Property" or "Premises"), owned by [NAME(S)] ("Owner"). Installation of the pressure service connection is contingent on approval of the Project by the Bend City Council.

C. A pressure service connection is required for the Property to connect to the City's sewer. Installing the pressure service connection contemporaneously with and as part of the Project will mitigate risks and complications associated with installing the pressure service connection after the Project is completed and save an estimated cost of \$7,500 to Owner in the event the Property connects to City sewer in the future.

D. Owner now wishes to allow the City to install the pressure service on the Property and agrees to let City enter onto the Property to complete the pressure service connection improvements on the terms and conditions described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants contained in this Temporary Construction Access Agreement ("Agreement"), and for good and valuable consideration, the receipt of which is hereby acknowledged, Owner and City agree as follows:

1. GRANT OF RIGHT TO ACCESS AND USE PREMISES

Owner hereby grants and conveys to City the non-exclusive right to enter upon and use the Property to install the pressure service connection in accordance with the terms and conditions set forth below. There is no monetary consideration for this Agreement. The consideration is the value of the improvements to be constructed by City and transferred to Owner upon completion.

2. PRESSURE SERVICE CONNECTION IMPROVEMENTS

Owner expressly authorizes City, its employees, and contractors to enter the Property for the following:

- Exploration and protection of existing utilities and structures on the Property;
- Excavation necessary to complete the pressure service connection installation;

- Staging of construction materials and/or equipment;
- Installation of pressure sewer service pipe and appurtenances;
- Surface restoration; and
- Any other work or activity that may be reasonably necessary to complete the installation of the Pressure Service Connection Improvements.

The above shall collectively be referred to as “Pressure Service Connection Improvements.” The Pressure Service Connection Improvements shall be at City’s cost.

Owner shall not in any way interfere with or impede City’s completion of the Pressure Service Connection Improvements on the Property.

3. TERM

The term of this Agreement begins when this Agreement is signed by both Parties and approved by the City’s legal counsel (the “Effective Date”). This Agreement terminates upon the City’s final completion and acceptance by the City of the Project Name (City Project No.), or after two years following the Effective Date, whichever occurs first. Notwithstanding anything to the contrary in Section 4, Owner may not unilaterally terminate this Agreement.

4. COMPLETION OF THE PRESSURE SERVICE CONNECTION IMPROVEMENTS

The City shall have the right, but not the obligation, to enter the Premises to complete the Pressure Service Connection Improvements following approval of the Project by the City Council.

Nothing in this Agreement shall be construed as an express or implied agreement to complete the Pressure Service Connection Improvements, and this Agreement is not a promise by the City to undertake or complete the same.

5. NOTICE

City or its contractor shall notify Owner before beginning work on the Property. Notification shall be made in person at the front door. If City or its contractor are unable to notify Owner in person, City or its contractor shall place a written notice in a conspicuous area, typically a door hanger on the front door.

6. SPECIAL CONDITIONS

City or its contractor shall not materially interfere with the operations of any users of or tenants on the Premises or with the use of property adjacent to the Premises by Owner, other users, invitees, or tenants thereof, except during times of excavation or construction activity and concrete curing. City shall not cause or allow any waste or damage to the Premises and shall not remove or demolish (in whole or in part) any existing improvements, trees, or vegetation on the Premises other than those identified in this Agreement or typical to complete improvements without the prior approval of Owner.

7. NO LIENS

The City shall not suffer or allow any liens to attach to all or any part of the Premises or any interest of City in the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, the City, any of

the City's contractors or anyone occupying or holding an interest of the City in all or any part of the Premises through or under the City.

8. INDEMNITY

To the extent permitted under the Oregon Tort Claims Act and the Oregon Constitution, the City will hold harmless Owner for injury to person or property as a result of the sole negligence or other misconduct of the City, its employees, contractors and/or agents while conducting the Pressure Service Connection Improvements on the Property.

9. TRANSFER OF OWNERSHIP

Upon the final completion and acceptance by the City of the Project Name (City Project No.), City will transfer title and ownership of the Pressure Service Connection Improvements to Owner by executing the Infrastructure Transfer Agreement in the form attached hereto as Exhibit A. Upon such transfer, the Pressure Service Connection Improvements shall be the sole responsibility of Owner.

10. GOVERNING LAW

This Agreement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions.

11. COMPLIANCE WITH LAW

The Parties shall comply with all applicable state, federal, and local laws and regulations, including any applicable health and safety laws.

12. DUTIES UPON TERMINATION

The City shall restore the Property to the condition prior to the work authorized by this Agreement.

13. SUCCESSORS

This Agreement shall bind, and inure the benefit of, the Owner and City and any and all of Owner's successors and assigns without modification or alteration in any respect, unless such modification or alteration is agreed upon by Owner and City.

14. SEVERABILITY

If any clause, sentence, or any other portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

15. AUTHORITY

If applicable, the individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein. Owner otherwise represents and warrants that Owner has the right to grant the rights and interest granted pursuant to the Agreement.

16. INCORPORATION OF RECITALS AND EXHIBITS

All recitals and exhibits are incorporated herein by reference and are made a part of this Agreement.

17. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties and supersedes all prior or contemporaneous agreements, written or oral. No subsequent modification or

amendment to this Agreement shall be effective unless in writing and signed by the parties hereto.

CITY OF BEND

OWNER

By: _____
Eric King, City Manager
Date: _____

By: _____
Name: _____
Date: _____

Approved as to Form:

By: _____
City Attorney's Office