

# WATER MAIN EXTENSION - PROPERTY OWNER/DEVELOPER CONTRACT

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CONTRACT BETWEEN  
THE CITY OF SEATTLE  
SEATTLE PUBLIC UTILITIES  
&  
\_\_\_\_\_

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This Property Owner Contract entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between The City of Seattle, Seattle Public Utilities, a municipal corporation of the State of Washington (hereinafter referred to as "Department") and \_\_\_\_\_ an/a \_\_\_\_\_ [individual, couple, corporation, firm, partnership, joint venture] existing and operating under the laws of the State of Washington (hereinafter referred to as the "Property Owner").

**WITNESSETH THAT:**

**WHEREAS** the Property Owner has proposed to design and install certain Improvements (as hereinafter defined) to the Department's water distribution system for the use and benefit of the Property (as hereinafter defined).

**WHEREAS** upon completion of installation of the water system improvements, the Property Owner agrees to convey all of said water system improvements to the Department.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION 1: The Project**

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**A. Property Benefited**

The properties are located in King County, Washington, commonly known as:

and see Parcel Number: \_\_\_\_\_

is the real estate that the Improvements to the Department's water distribution system are intended to be used by and to benefit.

**B. Improvements: WAC Reference # \_\_\_\_\_**

Property Owner will cause to be installed approximately \_\_\_\_\_ feet of \_\_\_\_\_ -inch diameter water mains and appurtenances in the locations and manner shown in the Plans approved by the Department prior to the Department providing water service to the Property. Other improvements include installation of:

The proposed improvements shall be installed within designated public rights-of-way, easements, or other approved rights-of-way and shall consist of the design specifications and engineering drawings on file with the Department, which by this reference, both are incorporated into this contract.

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## SECTION 2: Scope of Work

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**I.** The **Department agrees** to provide the following services and shall be compensated by the Property Owner at either an established standard charge or actual cost as specified in Section 3.

**A. Plan Review**

The Department shall assist the Property Owner or Property Owner's engineer upon request regarding:

1. The City of Seattle and the Department requirements and procedures for a Property Owner to design, install, and construct the improvements described in this contract.
2. Preliminary review of the proposed development and preliminary layout of the described improvements and rights-of way.
3. Review and approve the final construction plans.

**B. Right-of-Way**

The Department shall:

1. Review plans for right-of-way requirements.
2. Specify the required easements and conditions.
3. Process easement documents after verifying the legal descriptions and property ownership.
4. Record easements with King County.
5. Obtain franchise applications. Project owner is responsible for obtaining all permits for all work by SPU that will be performed within the parcel
6. The Department will obtain Right of Way Permit for water main work in non-incorporated properties within King County jurisdiction.
7. If project is in Seattle and is constructed through a Major Utility Permit (MUP) process, or constructed by SPU, obtain the relevant Major Utility Permit.

**C. Construction Support**

The Department shall provide for the connection of the water system improvements to the Department's water distribution system, including shutdown, dewatering, cutting and blocking existing pipes, connections and restoration of service following connection.

**D. Construction Inspection**

The Department shall:

1. Perform daily field inspection of the construction in progress, as required to assure that the construction of the installation is in accordance with the construction plans and the City of Seattle Standard Specifications for Road, Bridge, & Municipal Construction 2011 or the latest edition.
2. Perform pressure tests and water quality sampling tests required to assure that the quality meets the Department's water quality requirements, and may perform inspection of any re-testing which may be necessary, and perform water sampling of the completed installation after flushing and evaluation of the Department's bacteriological test and reports.

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3. Perform the final inspection of the installation and prepare the inspection report, setting forth any deficiencies that may exist.
4. Re-inspect any corrective work performed by the Property Owner, and prepare the as-built construction plans and records.

### **E. Administration**

The Department shall:

1. Perform the general administration of this contract.
2. Schedule a preconstruction meeting to discuss the construction phase with the Property Owner and his Contractor.
3. Examine the required documents to assure that the Department will have legal title to improvements and right-of-way and prepare a final recommendation of acceptance of the installation.
4. Accept the Transfer of ownership for the facilities upon completion of all the necessary requirements by the Property Owner and approval by the Department.
5. Release the Property Owner's bond pursuant to Section 5 and remit any overpayment of estimated charges pursuant to Section 3.

**II.** The **Property Owner agrees** to perform the following services with respect to this Contract:

### **A. Design and Plans**

The Property Owner or their Engineer shall:

1. Develop a preliminary design of the facility and prepare preliminary plans that illustrate all existing and proposed improvements and right-of-way in accordance with the City's and the Department's standards and specifications.
2. Submit the required copies of the preliminary plans for the Department's review.
3. Submit the following information for each property that requires an easement:
  - A copy of a Vesting Deed, a Contract, or a current Title Report.
  - The name, mailing address and telephone number of a contact person.
  - Prepare property easement documents by providing scalable drawings and the legal description of all required easements. Provide a copy of the Plat Application, if applicable.
4. Revise the design and facility plans as required for the Department's approval.
5. Obtain all Grantor/Mortgagee signatures on easement documents, where easements are required.
6. Submit the final design and plans, including the original plan drawings on Mylar film along with signed and notarized easement documents as required, for the Department's review. Final plans shall become the property of the Department
7. If project is constructed through a SIP process, obtain a Right of Way Permit for constructing improvements within public rights-of-way.
8. If the project is constructed through a non SIP process, owner/developer is to obtain all relevant permits for that jurisdiction (The Department will obtain the Right of Way Permit for non-incorporated properties within King County jurisdiction.). Permits include site restoration and pavement restoration. Within Seattle the restoration permit shall be obtained before SPU applies for the MUP.

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## **B. Construction**

The Property Owner shall require their contractor to:

1. Attend the preconstruction meeting to discuss the construction phase of the installation.
2. Perform a location and grade survey by a licensed surveyor and provide grade sheets.
3. Construct the water system improvements under the direction of the Department's Construction Engineer.
4. Restore the site in accordance with the terms of the MUP and Restoration Permit.

## **C. Administration**

The Property Owner shall transfer ownership of the improvements to the Department by providing the following:

- An executed Transfer of ownership
- A completed certificate of cost for water main facility form
- Completed acknowledgement of Contribution for Water Main forms

## **D. Water Service**

The Property Owner shall:

1. Submit an application for water services 30 days prior to start of the water facility construction.
2. Submit new meter water service applications for the affected properties under the normal water service application process.

## **SECTION 3 - Payment of Standard Charges and Deposit of Estimated Charges**

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### **A. *The Property Owner shall make payment***

Of all standard charges and deposits for any pre-agreed upon and/or time and material (T&M) costs to the Department prior to the Department's preliminary design review. If the actual costs exceed the estimated charges deposited, Property Owner shall remit payment of the difference within 30 days of the billing date of the billing invoice from the Department. If the actual cost is less than the Property Owner's payment, the Department shall refund any overpayment within 90 days of the acceptance of the ownership of the facility.

### **B. *Invoices***

Invoices for charges incurred under this contract by the Property Owner that are not paid within 30 days of the date of the invoice shall incur interest at the rate of 12% per year. In the event payment collection efforts are implemented as a result of Property Owner's failure to pay, Property Owner shall pay all collection costs including but not limited to the Department's administrative costs, engineering costs, project termination costs, testing costs, and filing fees, and all attorneys' fees, costs of litigation, and any construction costs or other damages incurred by the Department as a result of Property Owner's failure to perform as required by this contract.

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## C. *Payment.*

The Property Owner shall pay the following charges:

Standard charges or Deposit Time and Material:

- \$ Plan review and administration
- \$ Water Main Connection
- \$ Water quality testing
- \$ Field in place density test per ASTM D 2922
- \$ Maximum dry density per ASTM 698
- \$ Construction Inspection

\$ \_\_\_\_\_ **GRAND TOTAL**

Please provide a billing address:

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Please provide contact information:

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## D. *Addition Payment Information*

1. Water services, including meters are under separate application and payment. Contact account executive at 206-684-5860 for water service details. To obtain developer discount for water service request voucher from SPU PM or resident engineer
2. The cost for processing the easement is not included in the above estimate and shall be billed separately.
3. Seattle Public Utilities will track separately the work covered by the Time and Material deposit. If the cost for the work exceeds the deposited amount, SPU will require the project Owner to deposit additional funds to cover the cost of the remaining work. If the money spent is less than the deposited amount, SPU will refund the balance as described in Section 3. If, in the opinion of the Department, excessive service is required for the Standard or Pre-agreed fee activities, the Property Owner shall pay the additional charges required for said additional services.
4. All payment shall be made directly to SPU Accounts Receivable (AR). Work shall not begin until all payments have been made to SPU. After the Contract is signed by the Developer and SPU, it will be forwarded to SPU Accounts Receivable for processing. SPU AR shall prepare an invoice and transmit it to the Developer, who then shall mail a payment check to SPU AR.

## **SECTION 4 - Insurance**

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The Property Owner's Contractor shall obtain prior to starting construction, and maintain continuously for the term of this contract, at its own expense, occurrence for Commercial General Liability insurance with endorsements, automobile liability and any other insurance required to indemnify for the activities and services of this Contract, including environmental or hazardous or materials claims.

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- (1) Commercial General Liability written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent, including premises/operations; products/completed operations; personal/advertising injury; contractual liability; and independent contractors liability. The minimum limits of liability for bodily injury and property damage shall be \$1,000,000 each occurrence and \$1,000,000 general, products/completed operations aggregate;
- (2) If any vehicle is used in the conduct of the Contractor's business, a policy of Business Automobile Liability written on an insurance industry standard form (ISO form CA 00 01) or equivalent, to include coverage for owned, non-owned, leased or hired vehicles. The minimum limits of liability for bodily injury and property damage shall be \$1,000,000 per accident;
- (3) If any work under this Contract will be performed by a resident of the State of Washington, Worker's Compensation for the State of Washington ("Industrial insurance") as required by Title 51 of the Revised Code of Washington. The Contractor waives, with respect to the City only, its immunity under Title 51 of the RCW;
- (4) The insurance as provided under items (1) and (2) above shall be (a) endorsed to include The City of Seattle, its officers, elected officials, employees, agents and volunteers as an Additional Insured (on ISO form CG2026 or equivalent), and (b) shall not be reduced or cancelled without forty-five (45) days prior written notice to the City;
- (5) The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and noncontributing with the Contractor's insurance.
- (6) Evidence of Insurance: Work will not be permitted until the City receives insurance documents as follows:
  - (a) a copy of the declarations pages of the policy
  - (b) the endorsement forms list, and
  - (c) the additional insured endorsement.

The declaration pages shall clearly show the policy effective dates, the policy number, policy limits, and the named insured. **Certificates of Insurance will not be accepted as evidence of insurance. CAM 2102**

- (7) Subcontractors: Contractor shall include all subcontractors performing any work included under this contract as an insured under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverage for subcontractors shall be subject to the requirements stated herein and applicable to their profession. Failure of the property owner or their Contractor to comply with any and all of the terms of the foregoing insurance provisions shall be considered a material breach of this contract

### SECTION 5 - Surety Instrument

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Prior to starting construction, the Property Owner shall furnish to the City a surety instrument (individual permit bond, security agreement, or irrevocable letter of credit) in a form acceptable to the City and in the amount of \$ TBD pursuant to the provisions of Ordinance No. 90047 (Street Use Ordinance). This surety instrument obligates the Property Owner to comply with all terms of the street use permit, pay the cost of inspection, remove any structure or obstruction which is not in accordance with said permit, reimburse the City for any and all expenses incurred, pay for any necessary restoration, and pay any and all costs and

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expenses incurred in connection with opening and working within the public street right-of-way, including costs related to the handling and disposal of Hazardous Substances, as that term is defined under the Model Toxics Control Act ("MTCA"), codified at RCW 70.105D, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et. seq.* ("Hazardous Substances"). Such surety instrument must be approved as to form and sufficiency by the City Attorney. Bond monies shall be released after all construction is complete, all punch list work items have been satisfactorily completed, and the Department's construction inspection personnel have issued a notice of completion.

Prior to starting construction, the Property Owner shall furnish to the City a surety instrument (performance bond, security agreement, or irrevocable letter of credit) in a form acceptable to the City and in the amount of \$ TBD pursuant to RCW Chapter 39.08. This surety instrument obligates the Property Owner to faithfully perform the stated contract work according to its terms, provisions, and stipulations and to comply with all the requirements of the laws of the State of Washington and the Charter and ordinances of The City of Seattle. Such surety instrument must be approved as to form and sufficiency by the City Attorney. Bond monies shall be released after all construction is complete, all punch-list work items have been satisfactorily completed, and the Department's construction inspection personnel have issued a notice of completion.

### SECTION 6 - Indemnity and Hold Harmless

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The Property Owner herein agrees to indemnify, defend, save, and hold harmless the Department claims, actions, costs, damages or expenses of any nature whatsoever (including, without limitation those relating to Hazardous Substances, and also including without limitation reasonable court costs, and attorneys' and consultants' fees) by reason of the acts or omissions of the Property Owner, its agents, contractors, licensees, invitees, or employees, in any way, directly or indirectly, connected with the performance or nonperformance of this Property Owner Contract. The Property Owner's obligation under this section 6 shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the Department, its authorized agents, employees, contractors or invitees. Solely for the purpose of effectuating the foregoing indemnity and not for the benefit of Property Owner's employees or any third parties, Property Owner expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. If it is determined by a court of competent jurisdiction that RCW 4.24.115 applies to this Property Owner Contract, then in the event claims or damages are caused by or result from the concurrent negligence of: (a) the Department, its agents, contractors, or employees; and (b) the Property Owner, its agents, contractors or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Property Owner or its agents, contractors or employees. This indemnity provision has been negotiated by the parties hereto and is understood and agreed to by the Department and the Property Owner herein. This indemnity clause shall survive the termination of this Property Owner Contract.

### SECTION 7 - Additional Legal Costs

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In the event that this contract is referred to or placed in the hands of attorneys by the City for enforcement of any provision hereof, or if civil litigation is instituted with respect to enforcement of this contract, then, in either event, the Property Owner shall pay the City's attorneys' fees, court costs, and all expenses incurred by the City as a result of such enforcement.

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## **SECTION 8 - Warranty of Authority**

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The undersigned Property Owner warrants that the owners identified under Section 1 constitute the owners of all of the real property that is the subject of this contract and have the authority to execute this contract with respect to said real property. Upon request of the Department, the undersigned Property Owner agrees to provide evidence reasonably satisfactory to the Department (which may be a copy of title insurance, title report, deed or other document) establishing that the parties identified constitute the vested owners of all of such real property.

Failure of the undersigned Property Owner to provide the proof of vested ownership as requested by the Department will be deemed a material breach of this contract.

## **SECTION 9 - Limitation for Period of Acceptance**

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The installation shall be completed and accepted within twelve months of date of signature on this contract. If the installation is not completed and accepted within one year from the date of the Superintendent's signature set forth below, then the Property Owner's rights under this contract shall cease. The Property Owner shall make a new application or the Department may agree to the renewal of the existing contract. The Property Owner shall pay the additional costs incurred as a result of the new application or renewal of the existing contract involved, all as determined by the Department. Whenever a project is not begun or completed within the specified time frames, the following requirements shall be used for completing the project:

1. If the Department has approved the plans but construction has not started after six months, the Department will accept a revised updated plan from the Property Owner if the proposed water system change affects no property other than the Property Owner's.
2. If the Department has approved the plans but construction has not started after six months, the Department will require the Property Owner to submit a new plan whenever the proposed water system change affects properties additional to the Property Owner's property.
3. If the Department has approved the plans but construction has not started after twelve months, the Department will require the Property Owner to resubmit an updated plan and repay the fees (the difference between standard charges previously paid and the current standard charges) for the Department's plan review.
4. If the Department determines that completion of the installation is necessary to provide water service to other properties, the Department may give the Property Owner notice that construction of the installation must be commenced with sixty (60) calendar days of the notice by the Department to said Property Owner; and provided further that plans have been approved by the Department and submitted to said Property Owner and, if construction is not commenced within the time specified, then the Department shall retain all monies including bonds paid by the property Owner to the City under this contract.

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## **SECTION 10 - Disputes**

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Resolutions of disputes and disagreements related to construction inspections or interpretation of City or Department rules or regulations shall be in the sole discretion of the Managing Director of the Department.

## **SECTION 11 - Condition Precedent**

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Compliance with all the terms and conditions of this contract and all applicable resolutions and ordinances of the City shall be a condition precedent to the Department's obligation to accept the Transfer of ownership and a condition precedent to the Department's contract to provide water service to the real property that is subject matter of this contract, and, particularly, without limiting the above, the Department shall be under no obligation to allow connection to the water system of any portion of the real property described in this contract if there are any fees or costs due and owing to the Department arising from this contract or from regulations, resolutions or ordinances of the City. The Department shall not be obligated to provide water service to the property herein described if construction by third parties of facilities to be deeded to the City have not been completed and title accepted by the Department, if said facilities are deemed necessary by the Department to provide water service to the herein described property. The Department shall not be obligated to release bonds until all requirements are satisfied.

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## SECTION 12 - Final Acceptance

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The Department agrees to accept ownership of the installed water facilities at such time as all work which may, in any way, affect the water lines serving the installation has been completed and any damage to said water lines which may have been caused thereby has been repaired, a completed and executed Transfer of ownership in the form approved or furnished by the Department has been delivered to the Department, the Department has made final inspection and approved the installation as having been completed in accordance with the plans and specifications and the Department has issued a notice of completion. Acceptance of ownership of said installation shall be made in writing by the Department. Acceptance by the Department shall cause said installation to be subject to the control, use and operation of the Department, and all regulations and conditions of service and charges therefore as the City deems reasonable and proper.

There shall be no conditional acceptance, or acceptance for use and operation of the installed water facilities.

Such acceptance by the Department shall not relieve the Property Owner of the obligations to correct defects in labor and/or materials as heretofore provided and/or the obligation set forth in applicable paragraphs hereof.

Dated at Seattle, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Type or print name of Property Owner/Applicant

APPLICANT:

CITY OF SEATTLE,  
SEATTLE PUBLIC UTILITIES:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Elizabeth S. Kelly, P.E.  
Division Director  
Project Management & Engineering Division  
For Director, Seattle Public Utilities

Type or print name(s) of person signing

Title \_\_\_\_\_

Title \_\_\_\_\_

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Contract Reviewed By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Title \_\_\_\_\_