

DEFERRED IMPROVEMENT AND NO PROTEST AGREEMENT

This Deferred Improvement and No Protest Agreement (“Agreement”), is entered into between the City of North Bend, a Washington municipal corporation (“City”), and [Name] (“Owner”), collectively the “Parties.”

I. FINDINGS OF FACT

The following recitals, set forth as “WHEREAS” clauses, constitute findings of fact in support of this Agreement and are fully incorporated herein:

WHEREAS, the City is a Code City organized under Chapter 35A.12 of the Revised Code of Washington (“RCW”) and possesses the legal authority to require dedication of frontage improvements necessitated by development of private property adjacent to such frontage; and

WHEREAS, on February 18, 2020, the City Council of the City of North Bend adopted Ordinance No. 1715 establishing a Complete Streets Policy, codified in North Bend Municipal Code (“NBMC”) Chapter 12.02; and

WHEREAS, NBMC 12.02.030 requires that the City incorporate complete streets infrastructure into:

[e]xisting public and private streets to create a comprehensive, integrated, connected transportation network for North Bend that balances access, mobility, health and safety needs of pedestrians, bicyclists, transit users, motorists, emergency responders, freight and users of all ages and abilities, ensuring a fully connected, integrated network that provides transportation options. “Complete streets infrastructure” means design features that contribute to a safe, convenient, or comfortable travel experience for users, including but not limited to features such as: sidewalks; shared use paths; bicycle lanes; automobile lanes; paved shoulders; street trees and landscaping; planting strips; curbs; accessible curb ramps; bulb outs; crosswalks; refuge islands; pedestrian and traffic signals, including countdown and accessible signals; signage; street furniture; bicycle parking facilities; public transportation stops and facilities; transit priority signalization; traffic calming devices such as rotary circles and surface treatments such as paving blocks, textured asphalt, and concrete; narrow vehicle lanes; raised medians; and dedicated transit lanes[; and]

WHEREAS, the City has identified the North Bend Way Corridor Project (“Project”) as the initial project to be completed within the Complete Streets Policy, NBMC Chapter 12.02, and has therefore acquired a Complete Streets Grant through the Washington State Transportation Improvement Board for \$300,000 for the design of the Project; and

WHEREAS, the Project consists of the following five segments: the Western city limits to South Fork Snoqualmie River (Tollgate); the South Fork Snoqualmie River to Park Street Roundabout (West Downtown); the Park Street Roundabout to Cedar Falls Way Roundabout (East Downtown); the Cedar Falls Way Roundabout to SE 140th Street (Tanner Trail); and the SE 140th Street to 468th Avenue SE (East Commercial); and

WHEREAS, Owner owns real property located in the City, legally described in Exhibit A and depicted in Exhibit B hereto (“Property”); and

WHEREAS, Owner filed a complete land use application for the Property with the City, with a completeness determination date of _____ (“Application”); and

WHEREAS, Owner is required to construct frontage improvements as a condition of development of Owner’s Property and may pay for such frontage improvements prior to issuance of development permits associated with the Property or may, through this Agreement, defer payment of such frontage improvements until such time as the City commences the Project; and

WHEREAS, an Owner electing to defer payment for frontage improvements until such time as the City commences the Project shall enter into the Agreement herein and submit satisfactory security in the form of a letter of credit (“Letter of Credit”) or assignment of funds (“Assignment of Funds”) equal to the cost of frontage improvements adjacent to the Owner’s Property, which security shall fund the Project when the Project is ready for construction; and

WHEREAS, the Letter of Credit or Assignment of Funds shall be recorded against the title to the Property responsible for the frontage improvements and shall not be released until the frontage improvements associated with the Project have been constructed; and

WHEREAS, the City estimates the cost to each property owner for frontage improvements necessitated by the Project to be \$2,800 per lineal foot; accordingly, the requirement to dedicate 200 lineal feet for frontage improvements along North Bend Way will require a property owner to pay for or obtain a Letter of Credit or Assignment of Funds in the amount of \$560,000; and

WHEREAS, the City’s estimate of the cost to each property owner in the amount of \$2,800 per lineal foot is established and described in Exhibit C hereto (attach Excel SS); and

WHEREAS, the frontage improvements subject to deferral shall include overhead utility lines; curbs; gutters; sidewalks; roadway final improvements for bike and vehicle lanes; final striping and geometrics; and water and storm drain facilities (“Improvements”); and

WHEREAS, this Agreement shall not apply to frontage improvements equal and greater than 500 lineal feet, which improvements shall be made by property owners prior to issuance of land use approvals; and

WHEREAS, RCW 35.43.182 authorizes a property owner to waive the ability to protest formation of an improvement district;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

II. DEFERRED IMPROVEMENT

1. Owner shall pay to the City \$2,800.00 (two thousand eight hundred dollars) multiplied by [redacted] lineal feet for a total of \$ [redacted] (hereafter “Frontage Improvement Payment”). The Frontage Improvement Payment shall be due before issuance of the development permit for the development of the Property legally described in Exhibit A and depicted in Exhibit B hereto. The City agrees that payment of the Frontage Improvement Payment shall satisfy all of the Owner’s frontage improvement obligations for development of the Property; or
2. Should Owner elect to defer the Frontage Improvement Payment until such time as the City commences construction of the Project, Owner shall establish an escrow account with a financial institution (“Financial Institution”) that meets all of the following requirements:
 - a. The escrow account shall be established with a Financial Institution qualified to hold escrow accounts and to do business in the State of Washington;
 - b. The escrow account shall be in the form of an assignment of savings account (“Assignment of Funds”), or an irrevocable letter of credit (“Letter of Credit”) guaranteed by the Financial Institution in the amount of \$ [redacted] (hereafter “Account Sum”). Owner shall provide the City with the account number associated with the Assignment of Funds or Letter of Credit;
 - c. The Assignment of Funds or Letter of Credit shall bind Financial Institution and Owner, their heirs, executors, administrators, successors and assigns jointly and severally;
 - d. The Assignment of Funds or Letter of Credit shall prohibit any portion the Account Sum to be released without written authorization from the City;

- e. The Assignment of Funds or Letter of Credit shall specify that, upon the City's written notice to Financial Institution that Owner has not remitted to the City the Account Sum or any portion thereof, Financial Institution shall remit to the City within five (5) working days of the City's written demand the Account Sum or such lesser amount as the City may specify. The Assignment of Funds or Letter of Credit shall further specify that Financial Institution shall have no duty or right to evaluate the correctness or appropriateness of the City's demand for the Account Sum or a portion thereof and that the Financial Institution shall not delay payment of the Account Sum or portion thereof to the City; and
- f. The Assignment of Funds or Letter of Credit shall remain in effect until the City determines in writing at in its sole discretion that the Improvements have been completed, or ten (10) years from full execution of this Agreement, whichever occurs first.

III. NO PROTEST

- 1. Pursuant to RCW 35.43.182, Owner specifically waives the right to protest formation of a local improvement district. This Agreement waives legal protest only to formation of a local improvement district and does not affect Owner's rights to comment upon the Improvements related Owner's Property, or object to the Owner's individual assessment for the Improvements related to Owner's Property. The City shall deliver a signed release of this Agreement to Owner after completion of Improvements adjacent to Owner's Property and after transmittal of the final assessment roll to King County.

IV. GENERAL TERMS AND CONDITIONS

- 1. Duration. This Agreement shall take effect on the date all Parties have signed below and shall be in effect for ten (10) years from the date of its execution.
- 2. Assignment. This Agreement shall bind and inure to the benefit of the Parties and their heirs, assignees, and successors in interest. Upon assignment and assumption of all obligations under the Agreement by any assignee, Owner shall be released from all Agreement obligations as to any Property assigned.
- 3. Indemnification and Hold Harmless. Owner shall indemnify and hold the City and its agents, employees, and/or officers harmless from, or shall process and defend at its own expense, all claims, damages, suits at law or equity, actions, penalties, losses, or costs of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Owner's performance or failure to perform any aspect of the Agreement. With respect to any such claim or suit brought against the City, Owner also waives its immunity under Title 51 RCW, the Industrial Insurance Act. This waiver is specifically negotiated between the parties.

4. Amendment in Writing. This Agreement may only be amended in writing, signed by all Parties.
5. Severability. If any term or provision of this Agreement, or its applicability to a particular situation, is found to be invalid, void or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement shall continue in full force and effect unless and to the extent the remaining provision, if implemented, would be inconsistent with or otherwise fail to carry out the mutual intent of the Parties.
6. No Joint Venture. Nothing in this Agreement is intended to create any type of joint venture or partner relationship between the Parties.
7. Dispute Resolution/Enforcement.
 - i. In the event of any dispute between the Parties arising out of the performance of this Agreement, the Parties shall first attempt to resolve the dispute through mediation prior to commencing litigation, using a mediator from Judicial Arbitration and Mediation Service (“JAMS”), or another mediator mutually agreed to by the Parties. The costs of the mediator shall be split equally between the Parties, and each Party shall bear its own costs to prepare for and participate in the mediation.
 - ii. Specific performance may be an appropriate remedy to enforce the terms of this Agreement.
 - iii. In the event mediation pursuant to subsection 8(i) is unsuccessful, the Parties may proceed to litigation to enforce the provisions of this Agreement. If the Parties proceed to litigation, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees.
8. Authority to Sign. The signatories to this Agreement represent that they have the full authority of their respective entities to commit to all of the terms of this Agreement, to perform the obligations hereunder, and to execute the same.
9. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original.
10. Notices. All notices, requests, demands and other communications required by this Agreement shall be in writing and, except as expressly provided elsewhere in this Agreement, shall be deemed to have been given at the time of delivery if personally delivered or three calendar days after the time of mailing if mailed by first class mail, postage prepaid.

Contacts with either Party shall be to the person identified below:

OWNER:

CITY:

[INSERT NAME & TITLE]

Mark Rigos, Director of Public Works

[INSERT ADDRESS]

City of North Bend

920 SE Cedar Falls Way

North Bend, WA 98045

11. Entire Agreement. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the Parties to supersede all prior agreements, whether written or oral.
12. Recording. This City shall record this Agreement with the King County Auditor.

I CERTIFY THAT I HAVE CAREFULLY READ THIS AGREEMENT, FULLY UNDERSTAND ITS TERMS, AND HAVE BEEN GIVEN THE OPPORTUNITY TO CONSIDER THE IMPLICATIONS OF THIS AGREEMENT. I ENTER THIS AGREEMENT OF MY OWN FREE WILL AND MY DECISION IS NOT BASED UPON REPRESENTATIONS OR ADVICE BY REPRESENTATIVES OF THE CITY.

OWNER:

CITY:

[NAME OF OWNER]

Rob McFarland, Mayor

Dated: _____

Dated: _____

[NAME OF OWNER]

Dated: _____

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that [NAME OF OWNER] is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: _____

(Stamp)

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that [NAME OF OWNER] is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: _____

(Stamp)

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

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STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me, Mayor Rob McFarland, known to me to be the Mayor of the City of North Bend, the municipal corporation that executed the foregoing instrument, and acknowledged such instrument in his capacity as the Mayor of North Bend to be the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

DATED: _____

(Stamp)

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____