

## SIDE SEWER REPLACEMENT AGREEMENT

**THIS AGREEMENT** is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and is by and between \_\_\_\_\_ ("Owner(s)"), private individual(s), and **THE CITY OF BELLINGHAM**, a Washington Municipal Corporation ("City").

### RECITALS

- A.** City has completed a study of infiltration and inflow of storm water into the City's sewer system. The study concluded that your neighborhood contributes a significant amount of infiltration and inflow per acre.
- B.** The City has determined that side sewer replacement is in the public's best interest by leading to a reduction in sanitary sewer overflows, a reduction in future capital costs, and increased system capacity.
- C.** To reduce the infiltration and inflow in your neighborhood, the City plans to replace the side sewers at some homes in the neighborhood, at no cost to the owners of the side sewers, and preclude the connection of roof drains and any other sources of storm water to the side sewers.
- D.** The Owner is willing to have the side sewer replaced in accordance with the terms and conditions of this Agreement.
- E.** The owner owns a residence ("Property") in Whatcom County, Washington, described as follows [use property address]:
- F.** It is anticipated that the City will contract with a private contractor in order to complete the work contemplated in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained in this Agreement, the Owner and City agree as follows:

### TERMS AND CONDITIONS

- 1. Ownership of the Real Property:** The Owner warrants that: (a) the Owner is the lawful owner of the real property; (b) the Owner has good right, title and authority to

authorize entry onto the Property for replacement of the side sewer; and (c) there are no outstanding rights which interfere with this Agreement.

**2. No Guarantee of Side Sewer Replacement:** This Agreement does not guarantee that any specific work will be done or that any specific side sewers will be replaced. Inclusion in the project is contingent on funding availability, participation of all neighbors on shared side sewers, participation of neighbors who have adjacent properties side sewers laid within their property and other project criteria. The City shall, at its sole discretion decide if the side sewer will be rehabilitated as part of this project.

The City may need to access and engage in construction activities on Owner's Property to install a side sewer on a neighboring property. Owner's inclusion in the project may be contingent upon Owner allowing City access and construction activities on Owner's Property in order to install a side sewer on a neighboring property.

**3. Side Sewer Replacement:** If a particular property is identified as appropriate for this project, the City shall replace the side sewer on the Property with a four-inch pipe ("Side Sewer"), at no cost to the Owner. The type, method of installation, and location of the pipe shall be determined by City.

City shall give the Owner advance notice of installation by written notice taped to the front door of the residence on the Property at least four days before the commencement of installation. The installation shall be performed in accordance with City standards for side sewer installation; provided however, that the Owner shall assume full responsibility for the Side Sewer upon completion of the project pursuant to Paragraph 7 below.

**4. Consent to Install Side Sewer:** The Owner authorizes and grants a license to City, its agents, and third-party contractors to enter upon the Property from 7:00 A.M. to 7:00 P.M (Pacific Standard Time) to install the Side Sewer and to perform all necessary work and inspection activities in connection with installation of the Side Sewer.

Owner shall inform the City, its agents, and contractors of all known safety hazards and private utility lines on the Property.

**5. Connection to Side Sewer:** City shall disconnect from the Side Sewer all drains that are not approved by the City for sanitary sewer flows or designed exclusively for sanitary flows where feasible and route these drains to appropriate discharge locations.

The Owner shall not connect Unauthorized Drains or allow the connection of Unauthorized Drains to the Side Sewer and shall refrain in the future from making or allowing such connections.

**6. Restoration and Operation:** Upon completion of the Side Sewer construction, the City shall use all reasonable efforts to restore the Property as near as possible to its condition prior to the Side Sewer installation.

After surface restoration, the Owner shall be responsible for maintenance, such as watering, weeding and trimming of restored landscaping. Upon surface restoration, the private property Owner assumes full and complete responsibility for, inspection, maintenance, and repair of the Side Sewer between the sewer building on the Property and the City owned sewer main.

The City makes no warranties of any type with respect to the Side Sewer and restoration work contemplated in this Agreement and the City specifically disclaims any implied warranties including, but not limited to, workmanship, fitness for a specific purpose, and merchantability.

**7. Indemnification:** The City shall defend, indemnify, and hold harmless the Owner for any and all claims of injury, damage, or loss by third parties during Side Sewer installation and surface restoration when such claims result from the actions of City officials or employees pursuant to this Agreement.

Upon surface restoration, the Owner assumes full and complete responsibility for any injury or loss that may occur to third parties or the Owner in relation to the Side Sewer and/or this Agreement. To this end, the Owner shall defend, indemnify, and hold harmless the City for any and all claims of injury, damage, or loss arising from the Side Sewer and/or this Agreement when such claims arise following surface restoration; provided, however, that nothing herein shall require the Owner to defend or indemnify the City for any claims based on the City's sole negligence.

**8. Binding Effect:** This Agreement shall be binding upon the parties, their heirs, representatives, assigns and successors in interest.

**9. Term of Agreement:** This Agreement shall remain in full force commencing on the effective date herein, and shall terminate on December 31, 2013, or upon completion of Side Sewer replacement and surface restoration plus 180 days thereafter, whichever occurs first.

The obligations and restrictions regarding unauthorized drains (Paragraph 5) and Indemnification (Paragraph 8) shall survive termination of this Agreement.

**10. Entire Agreement:** The entire agreement between the parties hereto is contained in this Agreement and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to the matters addressed herein. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Print Property Address

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Print Property Address

\_\_\_\_\_  
Print Name

**CITY OF BELLINGHAM:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelli Linville, Mayor

**Attest:**

**Departmental Approval**

\_\_\_\_\_  
Finance Director

**Approved as to form:**

\_\_\_\_\_  
Office of the City Attorney