

Multnomah County Official Records
R Weldon, Deputy Clerk

2012-029904



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CITY OF PORTLAND
Office of the City Auditor
1221 SW Fourth Avenue, Room 140
Portland, OR 97204-1900

I hereby certify this Ordinance No. 180956 to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on February 17, 2012.

LaVonne Griffin-Valade
Auditor of the City of Portland
By *[Signature]*
Deputy

ORDINANCE No. 180956

*Authorize a contract between David M. Spiro & Elisabeth J. Grinspoon and the Bureau of Environmental Services for sanitary service to a pressure pipeline that discharges into the City's sewer collection and conveyance system. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. David M. Spiro & Elisabeth J. Grinspoon are purchasing a new single family residence on Lot 2, Krebs Addition of 3323 SW Cascade Terrace. The original approved agreement was with Ken & Candace Krebs, who is selling the property. This is to change the names of the property owners.
2. There is no gravity sewer available to this site. This area is served by a Septic Tank Effluent Pumping (STEP) system.
3. Per the DEQ administrative rules, the City is responsible for the operations and maintenance of the pump system for these properties.
4. The property owner will reimburse the City for these services because the level of service provided is greater than that provided to a typical property connected to the public gravity sewer system.
5. The City agrees to accept this sewer connection in accordance with the terms of the agreement attached.

NOW, THEREFORE, the council directs:

- a. The Director of the Bureau of Environmental Services is authorized to sign an agreement substantially in accordance with Exhibit A for the purpose described in Section 1.

Section 2. The Council declares that an emergency exists because the house is being purchased and failure to pass this ordinance as an emergency will delay their real estate transaction. Therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, **MAY 16 2007**
Sam Adams
Commissioner of Public Utilities

Sun Noble
April 23, 2007
ord

Gary Blackmer

Auditor of the City of Portland
By

Deputy



**SEPTIC TANK EFFLUENT PUMPING (STEP) SYSTEM
OPERATION AND MAINTENANCE AGREEMENT BETWEEN**

**DAVID M. SPIRO AND ELISABETH J. GRINSPOON
AND CITY OF PORTLAND**

This Agreement is between the City of Portland, hereinafter called "City", and David M. Spiro and Elisabeth J. Grinspoon, hereinafter called "USER", for the purposes set forth herein below. This Agreement relates to property located in the northeast quarter of Section 5, T1S, R1E, W.M., City of Portland, Multnomah County, State of Oregon, as more particularly described as Lot 2, Krebs Addition, and more particularly described in Document No. 2000-006931, recorded January 19, 2000, and Book 1483, Page 2564, recorded November 14, 1980, Multnomah County Deed Records.

I. PURPOSE AND INTENT

The purpose of this Agreement is for the City to provide sanitary sewage collection services for the benefit of the USER, who proposes to connect sanitary facilities on its property to a pressure pipeline that discharges into the City's sewer collection and conveyance system. These services include operation and maintenance services, engineering functions necessary to repair and replace components of the tank pumping, electrical and instrumentation systems, and regulatory management services necessary to protect the system and the environment. This Agreement is intended also to provide a means of compensating the City for services provided under this Agreement that are greater than the level of service provided to typical properties connected to the public sewer system.

II. CITY RESPONSIBILITIES

A. Operation and Maintenance Services

1. City will be responsible for the operation and maintenance of the STEP system sanitary sewer in accordance with City standards and regulatory agency requirements. The services for operation and maintenance will consist of the following:
 - a. Operation and maintenance of each STEP Unit, consisting of a septic tank effluent pump, pipes, valves and valve vault, the electrical system, and the control and alarm system, including routine inspection and engineering review and analysis.
 - b. Maintenance of the common public pressure pipeline.
 - c. The City will provide a reasonable and timely response for maintenance and operational services. It is anticipated that the following routine O&M tasks will need to be performed annually, and will be done normal work hours:
 - i. Pump out the septic tank to remove accumulated solids
 - ii. Pull and inspect the effluent pump
 - iii. Pull and clean the screen
 - iv. Exercise the isolation valve

- v. Inspect the discharge check valve for wear and proper functionality
 - vi. Check the alarm light for proper functionality
 - vii. Check power cords for wear or other problems
 - viii. Check electrical panels and breakers for wear and functionality
 - ix. Check communications equipment for proper functionality
 - d. Response to alarm conditions that are communicated to BES during normal work hours will be provided during the same workday, if possible. Response to alarm conditions that are communicated to BES outside of normal working hours will be provided during the next workday.
 - e. The City will maintain records of the costs for any repair and replacement work that is provided.
- 2. Non-routine maintenance and repair activities will not be undertaken without prior notification and consultation with USER, unless the City determines an emergency exists and prompt action is required. An emergency condition is defined in PCC 5.33.090.D.1.a as "...circumstances creating a substantial risk of damage, or threat to public health or safety that could not have been reasonably foreseen..."
 - 3. In the case of non-emergency, non-routine maintenance or equipment replacement that may be required the City will consult with the USER prior to undertaking such work, and the USER will have the opportunity to have any required work done by a qualified contractor, subject to the City's observation and acceptance of the final work.
- B. City retains the right to use contractors to perform any services described in this Agreement. In the event City uses contractors to provide services, the City's reimbursable costs under this Agreement will include all payments made by the City to contractors and all costs of contract administration incurred by the City. City's use of a contractor shall not foreclose USER from employing its own contractor for non-emergency, non-routine maintenance or equipment replacement pursuant to subsection II(A)(3) above.
 - C. City will review the USER's proposed design, will identify any changes required by the City, and will submit the design to the Oregon Department of Environmental Quality for approval.

III. USER RESPONSIBILITIES

- A. USER will be responsible for:
 - 1. Maintaining the septic tank (not including periodic pumping).
 - 2. Maintaining access to the tank by providing a minimum clear distance of 5-feet around any access openings and ports to the tank, and providing sufficient access for operation and maintenance personnel and equipment.

3. Maintaining the plumbing within all structures that discharge to the tank such that only sanitary sewage is allowed to enter the tank.
 4. Providing access on and across the USER's property for the City's operation and maintenance personnel, in accordance with standards specified by the City.
 5. Immediately notifying the Columbia Boulevard Wastewater Treatment Plant Console operator (phone number 503-823-2500) upon discovery that an alarm light activates.
- B. As a condition precedent to this Agreement taking effect, the USER shall grant the City an Easement exclusively for the operation and maintenance of the septic tank effluent pumping (STEP) system. The easement shall be in the form of the attached Exhibit B.
- C. USER shall layout the required elements for a STEP Unit to fit on the property to be served, and submit the site plan to the City for review. USER shall make any changes to the layout that may be required by the City or by Oregon Department of Environmental Quality.
- D. USER shall retain title to all elements of the STEP Unit that are located on private property up to the public right-of-way. USER's ownership shall include all replacement parts installed by City pursuant to City's operational services under this Agreement. If the City is negligent, the City is responsible for the costs.

IV. CHARGES FOR SERVICES PERFORMED

- A. The USER shall pay standard charges for sanitary sewer service at the then current City monthly sanitary sewage service rate as set in City's schedule of rates and charges.
- B. The USER shall also pay all costs associated with the STEP Unit including inspection, operation, maintenance, repair and replacement of any components located on the USER's property. Costs that are the responsibility of the USER will be billed to USER at the City's actual cost of parts and labor, and any costs expended on contractors. City will provide documentation of costs incurred by the City, including any costs associated with contractors, and will meet with USER to review those costs upon request. USER's obligation under this section includes reimbursing the City for any costs it incurs in providing upgrades or other changes to the STEP system to comply with changes in state or local standards and regulations applicable to STEP systems. The City, at its option, may require USER to pay City the estimated cost of such improvements prior to commencement of work on upgrades or other changes to the STEP system. If the actual cost of completing the work is less than the estimate, any unused portion of the deposit will be refunded to USER. If the actual cost of completing the work is greater than the amount deposited, USER shall reimburse the City for any remaining costs within thirty (30) days of being billed for those costs.

V. BILLING AND PAYMENT OF CHARGES

- A. Charges for standard sanitary sewer services provided by City to USER will be billed according to standard City procedures.
- B. Charges associated with the STEP system may be billed quarterly or at some other interval at the City's option. Payments to the City under this Agreement shall be due and payable within thirty (30) days of the date billed. Payments shall be considered delinquent if not paid within sixty (60) days of the date billed. Delinquent payments shall be subject to interest charges calculated from the date due to the date payment is received at the rate of one percent per month.

VI. PROTECTION OF SYSTEM AND PRETREATMENT

The USER shall assure that no flow, other than sanitary sewage that complies with City discharge standards, will be allowed to enter the septic tank.

VII. APPLICATION OF REGULATIONS

The City retains authority to enact and amend regulations applicable to STEP systems. Any such new or amended regulations shall apply to the USER's STEP system. The USER shall be responsible for all costs incurred by the City to bring USER's STEP system into compliance with regulations pursuant to section II(A)(3).

VIII. SEVERABILITY

In the event any of the provisions of this Agreement shall be held to be impossible, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto. One or more waivers by either party of any provision, condition, or covenant shall not be construed by the other party as a waiver of subsequent breach of the same by the other party.

IX. WAIVER OF CLAIMS

Any damage related to failure of the STEP system will be the USER's responsibility except that the USER does not waive claims based on negligence by the City or its contractors.

X. TERM OF AGREEMENT

- A. The term of this Agreement shall be five years from the date of execution. This Agreement shall be automatically renewed for one additional five-year term unless either party first terminates the Agreement as provided herein. Either party may terminate this Agreement at any time with six months prior written notice. This Agreement will be further extended if necessary to assure compliance with regulatory requirements.
- B. The City will release its easement for access to the described property when this agreement ends and the City no longer bears any responsibility for performance of operation or maintenance of the STEP system.
- C. Early termination will occur upon the following event(s).
 - 1. Agreement is terminated due to a default as described in Section XI.

XI. SUCCESSORS AND ASSIGNS

This Agreement, and the rights and obligations hereunder, may not be transferred or assigned to any other entity whatsoever, nor may any other entity succeed to any such rights and obligations without the City's written consent. The City shall not provide sanitary sewer service via the STEP system to any successor of USER without first entering into an agreement with such successor. USER agrees that it will notify any successor in interest of this limitation before conveying any interest in the property to such successor. The City will not unreasonably withhold consent to transfers or assignments. This agreement shall be recorded in the deed records for Multnomah County, Oregon.

XII. DEFAULT

A. Determination of Default

1. The following events shall constitute default by the USER:
 - a. Failure to make any payments for STEP system operations and maintenance services within sixty (60) days of when billed; or
 - b. Failure to perform any other obligation of the USER imposed by this Agreement, but only if:
 - i. The failure continues for a period of more than sixty (60) days after demand has been made on the USER to remedy the failure; and
 - ii. The USER fails to take reasonable steps to remedy the failure within that sixty (60) day period; or
 - c. Imposition of a receivership upon, or liquidation of, the USER; or
 - d. Written admission by the USER that the USER is unable to perform its obligations imposed by this contract.
2. The following events shall constitute default by the City:
 - a. Failure to perform any obligation of the City imposed by this Agreement, but only if:
 - i. The failure continues for a period of more than thirty (30) days after demand has been made on the City to remedy the failure; and
 - ii. The City fails to take reasonable steps to remedy the failure within that thirty (30) day period; or
 - b. Written admission by the City that the City is unable to perform its obligations imposed by this contract.

B. Remedies upon Default

1. The City and USER may exercise any remedy available at law or in equity.
2. Upon default by City, USER has the right to withhold payment for services received under this Agreement from the date of City's default until the default is cured.
3. Upon default by USER, City shall have no further obligation to continue providing inspection, operation, maintenance and/or engineering services hereunder and shall be entitled to collect damages to the extent permitted by law.
4. City shall have the right to terminate the connection between USER's property and the public sewer system if any charges remain unpaid more than sixty (60) days after the charges were billed to USER. Payments received from USER shall be applied first to USER's most recent charges.

XIII. NOTICES

All notices under this Agreement shall be in writing. Notices may be (i) delivered personally, (ii) transmitted by facsimile, (iii) delivered by a recognized national overnight delivery service, or (iv) mailed by certified United States Mail, postage prepaid and return receipt requested. Notices to any party shall be directed to the applicable address or facsimile number set forth below, or to such other address or facsimile number as either party may specify by notice to the other party.

If to the City:

BES Director
1120 SW 5th Room 1000
Portland, Oregon 97204
Fax (503) 823-6995
Attn: Dean Marriot

If to USER:

David M. Spiro and
Elisabeth J. Grinspoon
Property Owners of Lot 2 of Krebs Addition
3323 SW Cascade Terrace
Portland, Oregon 97205

XIV. GENERAL PROVISIONS

- A. Integration. This Agreement constitutes the entire agreement between the parties on the subject matter hereof, and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind. No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in this Agreement.
- B. Waiver and Amendment. No waiver of any portion of this Agreement and no amendment, modification or alteration of this Agreement shall be effective unless in writing and signed by the authorized representative of all parties. Acceptance or

acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement and no waiver by a party of any right under this Agreement will prejudice the waiving party's exercise of the right in the future.

- C. Interpretation of Agreement. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
- D. Choice of Law; Venue. This Agreement, and all rights, obligations and disputes arising out of this Agreement shall be governed by Oregon law. Venue for all mediation and arbitration shall be in Multnomah County, Oregon.
- E. No Third-Party Beneficiary. This Agreement is between the Parties and creates no third-party beneficiaries.

IN WITNESS WHEREOF, the City of Portland, acting by and through its Director of the Bureau of Environmental Services, pursuant to Ordinance No. 180956, and the USER, have caused this Agreement to be executed.

**THE CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL
SERVICES**

David M. Spiro and Elisabeth J. Grinspoon
3323 SW Cascade Terrace
Portland, OR 97205

Signature: William F. Ryan for *
Print
Name: DEAN MARLETT

Signature: David M. Spiro
Print
Name: David M. Spiro

Title: DIRECTOR

Signature: Elisabeth Grinspoon
Print

* SIGNATURE SUBJECT
TO COUNCIL AUTHORIZATION
ON MAY 9, 2007

Name: Elisabeth Grinspoon

Approved as to Form

R. A. Laster
Office of the City Attorney