

**CITY OF BELLINGHAM  
PUBLIC FACILITIES CONSTRUCTION AGREEMENT  
PFC2016-0038 MIDWAY W/O BAKERVIEW SPUR**

**WHATCOM TRANSPORTATION AUTHORITY**, a corporation (hereinafter the "Owner"), for the purpose of obtaining a Public Facilities Construction Permit ("Permit") to construct certain public facilities, hereby enters into this Public Facilities Construction Agreement ("Agreement") with the City of Bellingham, a Washington municipal corporation (hereinafter the "City").

**I. DESCRIPTION OF PROJECT:**

- A. The project ("Project") to be constructed by the Owner, and dedicated to the City for public use, consists of:

190 LF of parking and 359 LF of 8" CPP Storm Main, as further defined in the Project plans approved by the City pursuant hereto..

**II. OWNER'S REPRESENTATIVE:**

- A. The Owner hereby names the following person as the agent of the Owner for all purposes related to the Project (hereinafter the "Owner's Agent"): Peter L. Stark, General Manager.
- B. The Owner warrants that the Owner's Agent has full authority to bind the Owner in all respects related to the Project and all applicable governmental requirements imposed by any agency with jurisdiction.

- III. CITY'S PERMIT SUPERVISOR:** The City has designated Jessica Bennett, P.E., of its Department of Public Works as Permit Supervisor. The Permit Supervisor has full authority to exercise the same discretion as does the Director of Public Works under the ordinances of the City for the purposes of this Project.

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**IV. COSTS IMPOSED ON THE OWNER:**

- A. The ordinances of the City require, and the Owner agrees to pay, the following fees, charges and deposits associated with the Project:

Inspection Deposit	\$	4,000.00
Stormwater Permit Fee	\$	316.00
Storm Scan Deposit	\$	1,240.00
Easement Recording Deposit	\$	250.00

3141.31

1. Should the amount of cash deposit be larger than the expenses incurred by the City, the difference shall be returned to the Owner, but subject to any other outstanding financial obligations of the Owner to the City.
2. Should the amount of the deposit be less than the expenses incurred the difference shall be paid by the Owner.
3. Release of excess funds or billing for additional payment may be delayed several months after acceptance of the Project, to enable the City to account for all charges, but such a delay will not operate to relieve the Owner of its obligation to pay the amounts required.

- B. The Owner recognizes that, as plans are modified to meet changing conditions, required fees or deposits may change. The City's Permit Supervisor has authority to modify the fee schedule to the extent necessary, by written notification acknowledged by the Owner.

- V. DESIGN OF PROJECT BY OWNER'S PROFESSIONAL ENGINEER:** The Owner will retain a licensed professional engineer to design the Project, prepare the necessary plans, and provide construction engineering. The Permit Supervisor may waive the requirement of a licensed professional engineer.

**VI. DESIGN STANDARDS AND SPECIFICATIONS:**

- A. Owner shall use the following standards for design and construction of the Project; deviation from standard plans will not be accepted unless authorized in

advance in writing:

1. Standard Specifications for Road, Bridge and Municipal Public Works Construction (latest edition), published by the Washington State Department of Transportation.
2. American Water Works Association Standards.
3. Standard plans and specifications provided by the City.
4. Washington State Department of Ecology Design Manual.

- B. The City's Permit Supervisor will review the Project design, plans, and specifications, and when satisfied that the proposed work is in accordance with City standards, shall approve the plans by stamping and signing the original plan sheets. (This approval extends only to conformance with City standards, not integrity of design.) The City reserves the right to, at any time, require modification of the plans in the event of errors or mistakes in the drawings, or if new information becomes available which requires a change in the plans to properly accomplish the Project. Plan changes initiated by the Owner must be approved in writing by the City prior to commencement or alteration of the work.

**VII. INSPECTION OF THE PROJECT BY THE CITY:**

- A. The City will provide periodic inspection during construction to ensure that the work is satisfactory to the City. All reasonable direct costs incurred by the City in inspection shall be paid for by the Owner. Inspections by the City shall not relieve the Owner of its responsibility to construct the Project in full accord with the standards of the City.
- B. Sewer and storm pipes acceptance requires an initial television inspection by the City of all lines constructed for public ownership. Costs incurred for this inspection shall be paid by the Owner.

**VIII. PUBLIC FACILITIES CONSTRUCTION PERMIT AND SECURITY:**

- A. The Owner must obtain the Public Facilities Construction Permit prior to the

commencement of construction. The Permit shall be the Owner's authorization to proceed with construction, and shall only be issued after the following steps have been satisfactorily completed:

1. Construction plans and specifications have been approved by the City's Permit Supervisor.
2. Required advance cash deposits, as stated in this Agreement, have been deposited with the City's Finance Director.
3. If required by the Permit Supervisor before beginning work, a bond has been submitted and approved as required by the City's Charter.
4. If Owner has submitted a latecomer application pursuant to Chapter 14.02 of the Bellingham Municipal Code, a latecomer agreement has been duly executed and recorded against all properties in the assessment reimbursement area.

B. The following security is required for this Project:

A plat or performance bond, on a form provided by the City, in the amount of \$85,500.00 which is 150% of the estimated cost of the project (which will include a guaranty of maintenance for one year after construction at 25% of the actual project cost).

In lieu of such bond or bonds, the City may, in its sole discretion, accept assignment of a bank account, a guaranty deposit made to the City's Finance Director or a third-party bond on which the City is named as co-obligee. All security must meet with the approval of the Mayor and the City Attorney. If a third party bond is used, the underlying contract must be approved by the City as well.

Any plat or performance bond required hereunder shall guarantee completion of the Project in accordance with this Agreement and applicable law. Any maintenance or guaranty bond required hereunder shall run for one year after

acceptance of the Project, or until released by the City, whichever is longer, and shall guarantee the City against defects in materials and workmanship in the Project to the extent of 25% of actual cost of the Project. This requirement will either reduce your bond amount down to 25% of the actual cost of the Project or it may require separate, additional bonding.

- IX. **TORT LIABILITY TO THIRD PARTIES:** The Owner agrees to defend, indemnify and hold the City harmless from any and all claims, demands, actions or liabilities of any kind arising out of the actions of the Owner, its agents or contractors in the construction or maintenance of the Project, and for all damages to third parties arising from negligence of the Owner, its agents or contractors in building the Project, that arise after the completion of the Project.
- X. **ATTORNEY FEES:** The Owner agrees to pay costs and reasonable attorney's fees incurred by the City in investigation and defense against any claim made by a third party against the City and arising from the Project.
- XI. **PROPERTY DAMAGE: RESTORATION OF SITE:**
  - A. The Owner agrees to repair or restore all public and private property damaged or disrupted by the installation of the Project, to its original condition upon completion, or at the City's option, reimburse the City for the cost of any such repairs or restoration undertaken by the City or its contractors at the City's sole discretion.
  - B. The entire job site shall be left with a neat and workmanlike appearance.
  - C. The Owner will provide landscape restoration including sodding, seeding, or barking as may be required by the City's Permit Supervisor. Landscape restoration shall follow installation of the various segments of the Project as closely as is practicable. When, in the opinion of the City's Permit Supervisor, landscape restoration has fallen behind installation of the segments of the

Project, the Permit Supervisor may halt all construction work until restoration work catches up..

**XII. PROSECUTION OF CONSTRUCTION WORK:**

- A. *Preconstruction Meeting; Forfeiture.* Owner shall schedule and attend a preconstruction meeting with the City within one year of the date of execution of this Agreement by the City. Failure to do so shall result in forfeiture of all of the Owner's rights under this Agreement regardless of any other provision herein, unless the City in its sole discretion grants an extension of time in the form of a written modification to this Agreement executed by both parties.
- B. *Permit Issuance; Notice to Proceed.* The City shall issue a Public Facilities Construction Permit at the preconstruction meeting, provided there is no reasonable basis to decline to issue said permit. The Public Facilities Construction Permit shall serve as Owner's notice to proceed with the work under this Agreement.
- C. *Commencement of the Work.* Owner shall commence construction of the work covered by this Agreement within 10 calendar days of issuance of the Public Facilities Construction Permit.
- D. *Physical Completion; Final Inspection.* Owner shall complete physical construction of the Project and schedule final inspection thereof within 365 calendar days of issuance of the Public Facilities Construction Permit.
- E. *Project Wrap Up.* Within 30 days of the date of the City's project-wrap-up letter, but prior to final Project acceptance, the Owner shall:
  - 1. Complete, repair or replace any incomplete or nonconforming work identified by the City during final inspection;
  - 2. Furnish a certified statement of the full cost of the Project using Public Works Cost Statement Form (upon request of the City's Permit Supervisor, the Owner shall furnish proof of the costs provided);

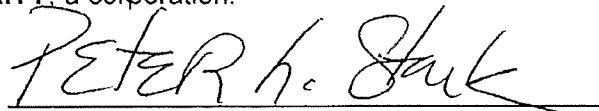
3. Furnish a complete set of duly certified standard as-built drawings, ("record drawings"), test results and other data pertinent to the Project improvements, which will show all facilities constructed together with all easements obtained and all other relevant details. In lieu of providing the record drawings to the City as provided in Section XIII.B. above, the City's Permit Supervisor may, in his or her sole discretion, accept a deposit in the amount of 150% of the estimated cost to prepare the record drawings. If the City accepts the deposit, the Owner agrees to provide the City the completed record drawings no later than ninety (90) days after the date the City accepts the deposit. The Owner shall defend, indemnify and hold the City harmless from any and all damages that may arise, directly or indirectly, from the delay in providing the record drawings. During the delay in providing the record drawings, the Owner agrees to provide the City and the general public any and all information that is contained in the record drawings in a manner consistent with how the City would provide the information if the record drawings were in the City's possession. The record drawings information shall be provided to the City and the public in a timely manner and at the Owner's sole expense.

- XIV. FINAL ACCEPTANCE OF THE PROJECT BY THE CITY:** Upon written final acceptance of Project construction by the City's Permit Supervisor, the Owner shall convey the Project improvements to the City and, if appropriate, grant an easement for maintenance thereof to the City, on forms provided by the City. Acceptance of the conveyance of the public improvements and grant of easement shall constitute completion of the Project for the purposes of:
- A. Computing the guarantee period, if one is required by this Agreement or the Permit.
  - B. Commencement, by the City, of its usual and customary maintenance of the Project improvements.

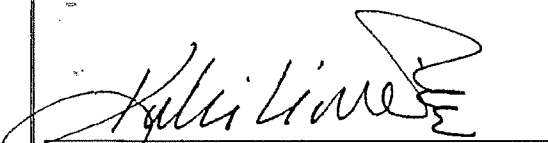
C. Commencement of sewer and water services, which will not be provided until the Project is finally approved.

**XIV. LIQUIDATED DAMAGES:** The Owner stipulates and agrees that timely and proper completion of the construction of public facilities is of great importance not only to the City but to the public at large and that computation of damages in the event of delay may be extremely difficult, if not impossible. Therefore, the Owner agrees to pay the City, not as a penalty but as liquidated damages, the sum of \$10.00 per day for failure to complete the physical work on time.

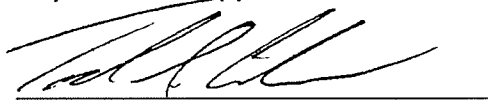
EXECUTED this 21st day of February, 2019, for the OWNER,  
WHATCOM TRANSPORTATION AUTHORITY, a corporation:

  
Peter L. Stark, General Manager

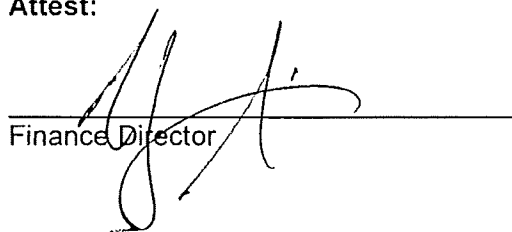
EXECUTED, this 2nd day of April, 2019, for the CITY OF BELLINGHAM  
by:

  
Mayor

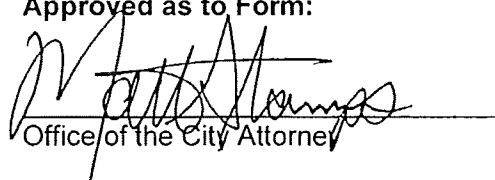
Departmental Approval:

  
Public Works Director  
HMB

Attest:

  
Finance Director

Approved as to Form:

  
Office of the City Attorney



**SURETY BOND, PUBLIC FACILITIES CONSTRUCTION**

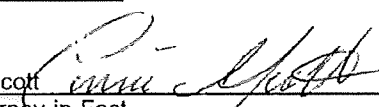
Travelers Casualty & Surety Co. of America a Surety Company licensed to do business in the State of Washington, the **SURETY**, on behalf of **WHATCOM TRANSPORTATION AUTHORITY** a corporation the **PRINCIPAL**, holds itself firmly bound unto the **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington, the **SECURED** as follows:

1. **THE PROJECT:** The Principal, entered into a Public Facilities Construction Agreement ("Agreement") with the Secured for construction of PFC2016-0038 MIDWAY W/O BAKERVIEW SPUR ("Project"). The Project is to be carried out in conformance with the Agreement and all applicable laws.
2. **FINANCIAL OBLIGATION OF THE SURETY:** The maximum financial obligation of the Surety under this Bond is \$85,500.00.
3. **CONDITION OF BOND:** The Surety agrees to either undertake and complete the Project, or pay the Secured sufficient funds to administer and complete the Project, including reasonable liquidated damages, attorney's fees and other reasonable costs incurred, on the happening of the following events:
  1. Failure of the Principal to complete the Project in accordance with good and accepted engineering practice;
  2. Any material breach of any of the provisions or representations of the Agreement or the Public Facilities Construction Permit issued pursuant thereto ("Permit"), both of which are incorporated herein by this reference;
  3. Any failure of the Principal to comply with the requirements imposed by law or by any governmental agency with jurisdiction; or
  4. For a period of one year after completion of the Project, the detection of any defect in workmanship or materials in the construction or design of the Project, to the extent of 25% of the Project cost.
4. **PERIOD OF OBLIGATION:** This obligation shall remain in full force and effect during the entire course of construction of the Project, for one year thereafter, and until affirmatively released, in writing, by the Secured.

EXECUTED this the 28th day of January, 2019,  
for the PRINCIPAL, WHATCOM TRANSPORTATION AUTHORITY a corporation:

  
Peter L. Stark, General Manager

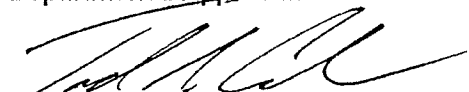
EXECUTED this the 28th day of January, 2019,  
for the SURETY:

Conni Scott   
Title: Attorney-in-Fact  
Address: 1420 Fifth Avenue, Suite 1500  
Seattle, WA 98101

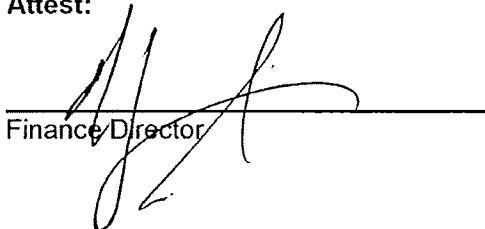
EXECUTED, this 2nd day of April, 2019, for the CITY OF BELLINGHAM  
by:

  
Mayor

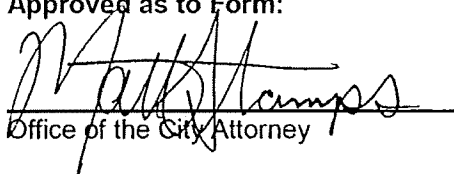
Departmental Approval:

  
Public Works Director  
HB

Attest:

  
Finance Director

Approved as to Form:

  
Office of the City Attorney



## POWER OF ATTORNEY

Farmington Casualty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.  
St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
Travelers Casualty and Surety Company  
Travelers Casualty and Surety Company of America  
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223791

Certificate No. 004412284

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Thomas Long, Vicki Holaday, and Conni Scott

of the City of Seattle, State of Washington, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 14th day of July, 2011.

Farmington Casualty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.  
St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
Travelers Casualty and Surety Company  
Travelers Casualty and Surety Company of America  
United States Fidelity and Guaranty Company



State of Connecticut  
City of Hartford ss.

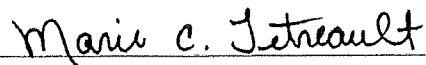
By: 

George W. Thompson, Senior Vice President

On this the 14th day of July, 2011, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
My Commission expires the 30th day of June, 2016.



  
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

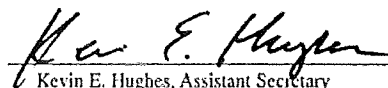
**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.