

Agenda Summary

January 22, 2025

Agenda Item No. A - 7

Topic: Public Works Development Agreement-Spruce Peak Building-Parcel C

Summary: Enclosed please find a final draft of a proposed Public Works Development Agreement for the proposed project for your review and possible acceptance. The project requires the relocation of certain Town water and sewer infrastructure elements for the proposed building construction. The Agreement provides the Town's requirements to permit this relocations including the Offer of Dedication and Easement Deed, Final Design, Surety, Submittals, Maintenance and Protection of Flows, Construction and Quality Control, Certification and As-builts and Warrantee requirements.

Town Plan & Policy Impacts:

Sewage Disposal Policies;

1. Stowe's municipal wastewater treatment and associated allocations of plant capacity will be operated and expanded as appropriate in a manner that reinforces the land use economic development housing and natural resource protection goals and policies of the plan;
2. The allocation of wastewater treatment capacity shall be limited to properties located within the sewer service area;

Water System Policies;

1. The municipal water system will be operated and expanded as appropriate in a manner that reinforces the land use economic development housing and natural resource protection goals and policies of the plan;
2. The beneficiary of water line expansions should pay for the cost (e.g. developer property owner(s));

Fiscal & Human Resource Impact: Water allocations have been credited from MMC/SPR's remaining water allocations reserves created by our original "Big 3 Agreement". SPR has paid the 10% downpayment (\$35,952) for the Preliminary Sewer Allocation approved on 10/11/23. The balance (\$323,568) is payable prior to Final Allocation Approval and Water/Sewer Connection permits. HR impacts will include efforts associated with administering the requirements of the Agreement and periodic site visits to review the water and sewer installations during construction.

Recommendation: Move to approve the Public Works Development Agreement for the Spruce Peak Parcel C building water and sewer relocations and authorize the Town Manager to sign on behalf of the Town.

**PUBLIC WORKS INFRASTRUCTURE DEVELOPMENT AGREEMENT
(Parcel C)**

This Public Works Infrastructure Development Agreement (the “Agreement”) is made this January 8th, day of 2025 by and between **Spruce Peak Realty (SPR)** a Vermont limited liability company with a place of business in the Town of Stowe, County of Lamoille and State of Vermont and the **TOWN OF STOWE**, a Vermont municipality located in Lamoille County, Vermont (the “Town”), each acting by and through its duly authorized agent and hereinafter collectively referred to as the “Parties”.

WHEREAS, SPR is the owner of certain real property in the Town of Stowe (the “Property”), identified Lot 31 and Lot 51 on a plat entitled: Subdivision Plat 7320 Mountain Road, dated June 2005, last revised on 01/04/2024, recorded in Map Book 24 at Page 119 of the Stowe Land Records, (the “Property”); and

WHEREAS, on September 5th, 2023, the Town of Stowe Development Review Board (the “DRB”) conditionally approved construction of Parcel C on the Property (the “Project”), as shown on a plan entitled “Parcel C – Spruce Peak” prepared by Bull, Stockwell, Allen dated June 2023 and as evidenced by Notice of DRB Decision dated September 19th, 2023 recorded on Volume 1206 at Page 194 of the Stowe Lands Records; and

WHEREAS, the Town has established and operates a public water supply system (“Town Water System”), and a public sewer collection and treatment system (“Town Sewer System”), and the Project is located within the respective service areas of the Town’s Water System and the Town’s Sewer System; and

WHEREAS, SPR proposes to serve the water supply and sewage disposal requirements of the Project by connecting to the Town Water System and Town Sewer System and installing public water main and sewer collection system extensions through common/shared use portions of the Property to the proposed buildings as shown on the Site Utility Plan, Drawing C2.40 prepared by Civil Engineering Associates, Inc. dated 6/2/2023 (the “Project Water and Sewer System”); and

WHEREAS, the DRB, as a condition of approval, required that SPR enter into a Public Works Infrastructure Development Agreement with the Town regarding the design, construction, inspection, testing, commissioning and possible acceptance by the Town of the proposed Project Water and Sewer System and to irrevocably dedicate and execute and deliver to the Town, in a form acceptable to the Town and its legal counsel, all documents necessary to convey all of SPR’s rights, title and interest in and to: 1) the water main, valves and related appurtenances comprising the water system improvements, necessary to deliver Town water service to the service valves for each residential unit in the Project (but not the individual service connections from the water main to each unit) (the “Project Water System”) and, 2) the sewer pipes, manholes, connections and related appurtenances necessary to convey domestic sewage from each building in the Project (but not individual service laterals from each building to the sewer main) (the “Project Sewer System”).

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto enter into this Agreement for the design, construction, inspection, testing, commissioning, ownership, operation, maintenance, repair, and/or replacement of the Project Water and Sewer System and their connections to the Town Water System and Town Sewer Systems. To that end, the Parties hereto stipulate and agree as follows:

1. Irrevocable Offer of Dedication and Easement Deed.

A. Prior to SPR's application for a Water/Sewer Construction permit from the Town, SPR shall deliver to the Town, at SPR's sole cost and expense, a fully executed Irrevocable Offer of Dedication together with a fully executed, recordable form Easement Deed, together with all necessary consents, releases or subordinations of any liens on the property, for the Project Water and Sewer Systems. The Easement Deed shall provide the Town with an access and construction easements and include bill of sale language conveying to the Town all of SPR's right, title and ownership interest in and to all materials and appurtenances incorporated into the Project Water and Sewer System components, to be transferred free and clear of any and all liens, encumbrances and rights of any kind and the warranty provisions contained herein. The easement shall authorize the Town to access the affected property to operate, maintain, repair, replace, reconstruct and upgrade the Project Water and Sewer System within the area of the easement, which shall be defined as 20' wide minimum centered on the Project Water and Sewer System and the water services to the individual water service valves and the sewer lateral connections.

B. The Town shall hold the original Irrevocable Offers of Dedication and shall have the right, but not the obligation, to accept the offered dedication and to record the Easement Deed, at any time in the future. For purposes of this Agreement, "acceptance" shall not be deemed to have occurred until the Town's Water and Sewer Commissions have voted to accept ownership of the Project Water and Sewer Systems.

2. Engineer of Record.

A. SPR shall retain, at its sole cost and expense, Civil Engineering Associates, Inc., as the Engineer of Record (the "EOR"), to complete the Final Plans required by Section 3 herein and perform resident engineering inspection of the construction, testing and commissioning of the Project Water and Sewer Systems. The resident engineering inspector (the "RE") assigned to the Project must be approved by the Town. Before the EOR or RE may be replaced with another EOR or RE, the proposed replacement must be approved by the Town and no work may be advanced until the EOR or RE is so approved. The Town's approval of any replacement EOR or RE shall not be unreasonably withheld or delayed, provided the proposed replacement EOR or RE has relevant knowledge, experience and background in public water and sewer system design, construction and testing.

B. The Town shall be directly copied on all work product produced by the EOR in connection with the Project Water and Sewer Systems, including but not limited to daily field reports, photographs, field measurements and testing results, as the same are generated and delivered to SPR. EOR shall provide both SPR and the Town periodic written confirmation that the Project Water and Sewer Systems have been constructed, installed, inspected and tested in accordance with the requirements of Sections 3 through 8 below.

C. The Town shall have the right but not the duty to inspect the work independently and shall advise SPR and the EOR regarding any work deemed by the Town to be unacceptable in a reasonable exercise of its judgment. SPR shall promptly fix or correct any aspect of the work deemed by the Town to be non-compliant with the requirements set forth below, to the Town's reasonable satisfaction and at SPR's sole cost and expense.

3. Final Plans.

A. Prior to SPR's application for a Water/ Sewer Construction permit from the Town, SPR shall submit to the Town for review and, if acceptable, approval, Final Water System Plans, Details and Technical Specifications (collectively the "Final Plans") for the Project Water and Sewer Systems, certified by the EOR.

B. Review and approval of the Final Plans by the Town is done in discharge of the Town's governmental responsibilities and in furtherance of the general public health, safety and welfare and the Town has and assumes no specific relationship with, or duty of care to, SPR or third parties by such review and approval nor is immunity thereby waived by the Town or any of its officers and employees.

C. Any changes proposed to the Final Plans must be reviewed and approved by the EOR and thereafter submitted to the Town for its review and, if acceptable, approval prior to any implementation of any such changes. SPR shall be responsible for all costs to uncover, test, examine and correct or reinstall any aspect of the construction not in compliance with the Final Plans as approved by the Town.

4. Surety.

Upon application of a Water/Sewer Construction Permit, SPR shall provide an Irrevocable Letter of Credit ("the Surety") in favor of the Town and acceptable to its legal counsel. Surety shall be held by the Town until the expiration of the two-year warranty period under Section 9 below. The amount of the Surety will be established by the Town's Water and Sewer Commissions on recommendation of the Town's Public Works Department based upon the estimated construction cost of the Project Water and Sewer System. Upon acceptance of ownership and recording of the Easement Deed(s), the Town's Water and Sewer Commissions may agree reduce the Surety amount to no less than 25% of the original Surety amount during the Warrantee Period.

5. Submittals.

SPR shall submitted to the Town, for its review and records, all finally shop drawings and submittal documents reviewed and approved by the EOR for all water and sewer system materials and components.

6. Maintenance and Protection of Flows Plan.

Prior to commencing construction of the Project Water and Sewer Systems, SPR's Contractor shall submit to the Town for its review and if acceptable approval, a Maintenance and Protection of Flows Plan (the "MPF Plan"). The MPF Plan shall demonstrate the intended methods and means of assuring adequate potable water supply and sewage waste disposal for any existing Town water customers potentially impacted by the construction of the Project Water and Sewer Systems. The MPF Plan shall include a detailed sequence of construction, interfaced with the proposed excavation, excavation bracing, foundation and other underground site construction. The MPF Plan shall also demonstrate the proposed methods and means of testing, flushing and disinfecting the Project Water System prior to the connection to the Town Water System.

7. Construction of the Project Water and Sewer System.

SPR shall have constructed, by a qualified Contractor experienced in public water and sewer construction and acceptable to the Town, at its sole cost and expense, the construction of the Project Water and Sewer System as depicted on the approved Final Plans, together with other improvements as may be necessary to facilitate municipal water and sewer service to the boundary of each lot within the Project. The construction

of the Project Water and Sewer System shall be commenced, prosecuted, advanced and completed in a timely, good and workmanlike manner by an adequately staffed and supervised work crew with appropriate knowledge and sufficient equipment to properly perform the work.

8. Certificate of Final Completion and As-Built Documents.

The EOR shall provide the Town, at SPR's sole cost and expense, a Certificate of Final Completion and As-Built Drawings, certified by the EOR, depicting all components of the Project Water and Sewer System and any other installed underground elements located within and directly abutting the easement area(s) irrevocably offered to the Town. The Certificate of Final Completion shall confirm compliance with the design documents, material specifications and test requirements referenced in the approved Final Plans. The As-Built Drawings shall provide the horizontal and vertical locations of all components of the Project Water and Sewer System and all other underground construction within and directly abutting the easement area, in a GIS compatible format, geo-referenced to 0.1' accuracy.

9. Warranty Period

A. Upon receipt of the Certificate of Final Completion and the As-Built Documents required by Section 8 acceptable to the Town, the Town shall consider its acceptance of the Project Water and Sewer Systems. For the purposes of this Agreement "acceptance" shall be deemed to have occurred when the Town's Water and Sewer Commission has voted to accept, upon recommendation of the Town's Public Works Department, ownership of the Project Water and Sewer Systems, and records the related Easement Deed(s) required by Section 1B in the Town of Stowe land records. Upon acceptance, the two-year warranty period shall commence.

B. During the two (2) year warranty period, SPR shall be responsible for all costs and expenses for the repair and/or replacement of any or all of the Project Water and Sewer System components determined by the Town during that period to be defective. Under the terms and conditions of the Surety, the Town shall be entitled to draw against the Surety for such costs and expenses in the event that SPR fails to make timely, repair and/or replacement of the Project Water and Sewer System or any components thereof, during the two (2) year warranty period.

C. At the end of the two (2) year warranty period, the Town shall prepare a final warranty report regarding the condition of the Project Water and Sewer System. Upon completion of any repairs and/or replacements noted in the final warranty report to the satisfaction of the Town, SPR shall be relieved of any further responsibility associated with the Project Water and Sewer Systems, the Surety will be released, and the parties' respective obligations under this Agreement shall be deemed satisfied.

10. Costs and Expenses.

SPR shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the required improvements by this Agreement and to any persons who may otherwise be entitled to assert a lien by virtue of 9 V.S.A. § 1921, et seq. or otherwise. SPR shall indemnify and defend the Town with respect to any such lien regardless of the merits of the claimed lien and shall immediately take all steps necessary to remove such lien (including the provision of alternative security for the claim).

11. Breach of Agreement.

Should either party to this Agreement commit a breach of the Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall have thirty (30) days to cure any claimed breach or, in the event that a cure cannot be accomplished within thirty (30) days, to initiate those actions necessary to cure any claimed breach within thirty (30) days and thereafter complete such actions with reasonable promptness. If a claimed breach is not cured within the times set forth above, the non-breaching party may commence a civil action and may request an order compelling the breaching party to cure the breach, as well as any other appropriate relief. In addition, the substantially prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees and other costs of litigation, including expert witness fees.

12. Indemnity.

SPR shall indemnify and hold the Town harmless from and against any and all liabilities, obligations, claims, suits, liens, judgments, damages, penalties, causes of action, losses and expenses, including reasonable attorneys' fees and litigation costs, arising in whole or in part, and in any manner, related to construction of the Project Water and Sewer Systems or its connection to the Town Water and Sewer Systems, including but not limited to any that cause a failure to maintain or protect public water flows or quality, uncontrolled sewage discharge, or that results in property damage or personal injury, including death.

13. Insurance.

SPR shall obtain and maintain throughout the term of this Agreement and any renewal thereof, a policy or policies of general liability insurance naming the Town of Stowe as an additional insured and indemnifying the Town against all claims and demands, except claims and demands based on the Town's gross negligence, for injury to or death of any person, and damage or destruction or loss of property, in an amount not less than Two Million Dollars (\$2,000,000) for each and every occurrence. Upon request, SPR shall furnish to the Town a Certificate of Insurance for the coverage and limits mentioned above. This obligation of SPR to maintain insurance shall expire upon expiration of the warrantee period.

14. General Provisions.

- (a) **Duly Authorized.** The Town and SPR represent and warrant that the execution, delivery and performance of this Agreement has been duly authorized by all necessary proceedings of the Town and SPR, as the case may be, and the persons signing this Agreement on their behalf have been duly authorized to do so, and by doing so, to bind the Town and SPR, as the case may be, to the terms and conditions hereof.
- (b) **Severability.** In case any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of the remaining provisions hereof.
- (c) **No Waiver.** No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Parties hereto may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring. Nothing in this Agreement shall be construed as limiting or

restricting the Town's right to pursue enforcement actions against SPR under the terms of any applicable Town Ordinance and/or any applicable municipal and state permits.

- (d) **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont. Any suit, action or proceeding against any party with respect to this Agreement or any judgment entered by any court in respect thereof, may be brought in the courts of the State of Vermont and each party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Each party hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in the courts located in the State of Vermont, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (e) **Counterparts.** This Agreement may be executed in any number of duplicate original counterparts, and each such counterpart is to be considered a duplicate original, each and all of which shall constitute one and the same Agreement.

15. Notices.

Any notices required by this Agreement shall be provided, via hand-delivery or first class mail, to the following addresses:

To the Town: Town of Stowe
 P.O. Box 730
 Akeley Memorial Building 67 Main Street
 Stowe, Vermont 05672

To Nicholas Mann Spruce Peak Realty, LLC
 7320 Mountain Rd.
 Stowe, VT 05672

16. Recording.

This Agreement will be recorded by the Town in the land records of the Town of Stowe and shall be binding upon the Parties hereto, and their respective affiliates, subsidiaries, successors and assigns, and references in this Agreement to any party shall be construed to include their respective successors and assigns. Any assignment, transfer or conveyance of the lands or any rights in the lands of SPR shall specifically reference this Agreement and shall bind the assignee or transferee to faithful performance of this Agreement as a successor or assign of SPR.

17. Entire Agreement.

This Agreement shall constitute the entire agreement between the Parties relative to the subject matter hereof, and supersedes all prior agreements, written or oral. This Agreement may be modified or amended only by mutual written consent of the Parties. If any provision of this Agreement shall be deemed invalid or unenforceable by a Vermont court of competent jurisdiction, the remainder of the Agreement shall continue in full force and effect.

18. Effective Date.

This Agreement shall become effective on the date that is the later of: (a) the date of the last party to sign this Agreement; or (b) the date that a Town zoning permit for the construction of the Project is issued in final form and is not the subject of an appeal.

Dated at Stowe, Vermont, this 8 day of January 2025.

TOWN OF STOWE

By: _____
Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF LAMOILLE, SS.**

On this _____ day of _____, 2025, personally appeared _____, Duly Authorized Agent of **TOWN OF STOWE**, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of **TOWN OF STOWE**.

Before me, _____
Notary Public
My commission expires: _____

SPRUCE PEAK REALTY, LLC

By: _____
Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF LAMOILLE, SS.**

On this 8 day of JANUARY, 2025, personally appeared SAMUEL GAINES, Duly Authorized Agent of **SPRUCE PEAK REALTY, LLC** to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of **SPRUCE PEAK REALTY, LLC**.



Before me, _____
Notary Public
My commission expires: 01/31/2025
0014462