

**CITY OF PACIFIC
WASHINGTON**

ORDINANCE NO 1808

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH JOHN ABERNETHY, REPRESENTING THE ABERNETHY FAMILY REGARDING RELOCATION OF HOUSES AND CITY PERMIT ISSUANCE

WHEREAS, the Abernethy Family have purchased four(4) homes from King County to be relocated from White River Estates; and

WHEREAS, Abernethy has applied for four Relocation Permits from the City of Pacific which have been reviewed and are ready for issuance once the Abernethy's have created adequately sized lots to place the homes on; and

WHEREAS, Abernethy has applied for a Boundary Line Adjustment Permit (BLA-11-002) to accommodate permanent placement of the four homes, which will take a few weeks more to complete. Time is of the essence since conditions contained within the Purchase/Sale Agreement with King County mandate that the homes must be off County property no later than October 1, 2011; and

WHEREAS, Abernethy has submitted timely permit materials and Pacific staff is duly processing the permits in a timely manner; and

WHEREAS, Administrative issuance of the Relocation Permits prior to the formal completion of the Boundary Line Adjustment Permit process creates the necessity to develop and implement a Memorandum of Understanding between the City and Abernethy; and

WHEREAS, Abernethy is willing to provide the City with a financial surety that will guarantee completion of the project,

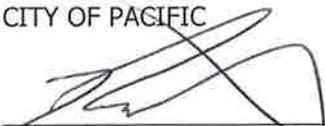
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The Pacific City Council hereby authorizes the Mayor of the City of Pacific to execute a Memorandum of Understanding (attached as Exhibit A) with Mr. John Abernethy, representing the Abernethy family.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five days after the date of publication.

CITY OF PACIFIC



RICHARD HILDRETH, MAYOR

ATTEST/AUTHENTICATED:



JANE MONTGOMERY, CITY CLERK

APPROVED AS TO FORM:



ALBERT A. ABUAN, CITY ATTORNEY



CITY OF PACIFIC

100 - 3RD AVENUE SOUTHEAST
PACIFIC, WASHINGTON 98047
CITY HALL (253) 929-1100
FAX (253) 939-6026

Abernethy/City of Pacific Escrow Instructions

August 23, 2011

Agreement as Escrow Instructions. The parties have deposited an executed copy of the Memorandum of Understanding, adopted by Pacific City Council by Ordinance No. 1808 on August 22, 2011 into this escrow and hereby instruct Escrow Holder that the terms and provisions of the MOU are fully incorporated herein. Escrow Holder accepts the Agreement, provided that it is understood and agreed that all responsibilities and duties of Escrow Holder are set forth in these Instructions and Escrow Holder shall have no concern or liability with other provisions of the Agreement, which may not be set forth herein. These Instructions do not cancel or supersede any terms of the Agreement which are not set forth herein, or in any amendment to these Instructions.

Cash: Abernethy has deposited the sum \$ 54,184.00 into this escrow for the satisfaction of items no later than December 31, 2011, described as:

- 1) Complete all procedural requirements; obtain all approvals, and record City of Pacific Boundary Line Adjustment Permit No BLA-11-002; and
- 2) Obtain all City of Pacific Building Permits, as adopted within the Pacific Municipal Code Title 17, required for relocation and landing of four (4) single family dwellings to Abernethy property identified with City of Pacific BLA-11-002.

A) Immediately upon receipt of the Notice of Default, Escrow Holder is to immediately, without the requirement for any further instructions **RELEASE THE DEPOSIT OF \$ 54,184.00 TO THE CITY OF PACIFIC.**

B) Immediately upon receipt of the Notice of Completion, Escrow Holder is to immediately, without the requirement for any further instructions **CANCEL THIS ESCROW AND RETURN THE INITIAL DEPOSIT OF \$ 54,184.00 TO ABERNETHY.**



**AUTOMATIC
FUNDS
TRANSFER
SERVICES**

151 S. LANDER ST., SUITE C
SEATTLE, WASHINGTON 98134-1889
(206)254-0975 (800)275-2033 FAX: (206)254-0968
Email: contracts@afts.com WEB: http://www.afts.com/contracts

HOLDBACK SERVICES AGREEMENT

1. **PURPOSE** of this agreement is to establish Automatic Funds Transfer Services (AFTS) as an agent for the purpose of holding funds for later disbursement according to an agreed upon contract by two parties. This is not an escrow agreement.

2. **SELLER/PAYEE:** **BUYER/PAYOR:**

Name _____
Name CITY OF PACIFIC
Address 100 3RD AVENUE SE
City PACIFIC State WA Zip 98047
Daytime phone 253-929-1110 Other Phone _____

Name _____
Name John R ABERNETHY
Address 410 5TH AVE SE
City PACIFIC State WA Zip 98047
Daytime phone 253-350-4771 Other Phone _____

3. **DOCUMENTS** enclosed are copies of the following
- Purchase and Sale Agreement, dated _____
 - Addendum to P&S, dated _____
 - Disbursement Instructions signed by both parties dated _____
 - Other, dated Memorandum of Understanding
 - Other, dated Instructions

Fill out one or both of the following.

4. **SELLER/PAYEE FUNDS TO BE HELD IN THE AMOUNT OF \$** _____

5. **BUYER/PAYOR FUNDS TO BE HELD IN THE AMOUNT OF \$** 54,184⁰⁰

6. **ASSIGNMENTS** of buyer's or seller's interest may be accepted and acted upon with no liability on AFTS' part.

7. **RESPONSIBILITIES** on AFTS' part are limited to using reasonable care in proper accounting for funds. AFTS has no responsibility to determine the sufficiency of correctness of any document or payment, the performance of any document condition or obligations or recording any documents.

8. **DISBURSEMENTS** will be made according the addendum or contract provided at the time this agreement is entered into. Only written disbursement changes agreed to and signed by both parties will be accepted and acted upon by AFTS.

10. FEES will be paid as follows:

ONE-TIME ACCEPTANCE CHARGE.....

- \$60.00 for holdbacks under \$2,000 -- to be deducted from funds at setup
- \$75.00 for holdbacks 2,000 or more -- to be deducted from funds at setup

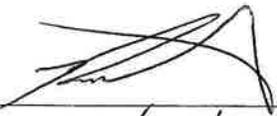
DISBURSEMENT FEES.....

Each check disbursement\$25.00 Taken at time of disbursement from funds held

These fees are subject to change on 30 days notice. Parties agrees to pay additional reasonable fees for additional services as required.

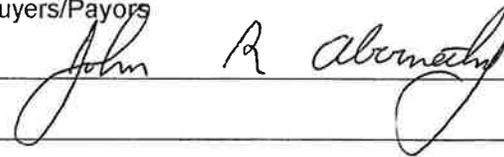
We do not deposit funds into an interest bearing account. All holdbacks MUST be bi-lateral agreements with all parties agreeing to the disbursement instructions. AFTS reserves the right to refuse to accept any holdback contract at any time. There is no annual fee for any holdback contracts. There is no time limit for any holdback contract.

Sellers/Payees

 _____ - Mayor

Dated 8/23/11 _____

Buyers/Payers

 _____

Dated _____

AFTS Contract Services Representative

Dated _____



206-254-0975 x237
shirley.colson@afts.com

Shirley Colson
Contract Servicing

Fax 206-254-0968 • Toll Free 800-275-2033
www.afts.com • 151 S Lander Suite C, Seattle, WA 98134-1889

ORDINANCE NO. 1808

ATTACHMENT A

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF PACIFIC AND JOHN ABERNETHY REPRESENTATIVE**

A. PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to establish a mutually agreeable framework for cooperatively addressing the terms of the understanding between the City of Pacific (Pacific) and John, Naomi, Don, Cynthia Michael and Barbara Abernethy plus Mary K. Scott (collectively known as Abernethy application for four (4) City of Pacific Building Relocation permits and a proposed Boundary Line Adjustment (BLA), City of Pacific Permit # BLA-11-002.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The proposed King County Flood Control Zone District Right Bank Set back levy project will preserve Pacific residential property values and the respective Pacific residents' investments. However, demolition of the single family homes purchased in White River Estates Subdivision for those stated purposes can disrupt the neighborhood, lower property values and

By relocating the structures within a close proximity to their current locations, rather than demolishing them can result in less disruption to the existing neighborhood; continue to keep the homes on the tax roles, and help the City meet its required Growth Management Act density requirements; and

To that end, King County formally bid 11 homes that were purchased over various times for possible relocation earlier in 2011. Abernethy purchased four (4) of those homes and now must relocate those structures off of the King County properties no later than October 1, 2011.

All parties to the MOU agree that it is to their mutual interest and benefit to work cooperatively to implement measures that are related to the boundary line adjustment of property owned by Abernethy (now known as 410 5th Avenue SE, King County Parcel No 3621049054 and the timely relocation of the four (4) single family dwellings, now owned by Abernethy from the lots in White River Estates Subdivision.

C. ALL PARTIES AGREE:

Time is of the essence since as a condition of the sale of the homes to Abernethy, all structures would need to be relocated off King County property no later than October 1, 2011; and

The City of Pacific requires a Demolition Permit for the removal of structures within the City to assure compliance with the Pacific Municipal Codes and the safety and repose of the community. King County has secured demolition permits for the properties addressed as 349; 353; 363 and 367 White River Drive; and

In order to relocate a structure in the City of Pacific, a Relocation Permit, accompanied by Permit fees, is required to be obtained prior to initiating work. Abernethy has applied for four (4) Relocation Permits for the houses addressed as 349; 353; 363 and 367 White River Drive.

The proposed relocation site for the four homes owned by Abernethy is known as 410 5th Avenue SE, King County Parcel No 3621049054 and is owned by Abernethy. The placement of these structures on the property requires a Boundary Line Adjustment Permit being issued by the City prior to the placement (or construction of) structures on said parcel. The City of Pacific has received and is processing proposed Permit No BLA-11-002 from Abernethy.

Pacific has received and is processing the BLA-11-002 application in a timely manner and Abernethy has been prompt in responding to comments and requirements from Pacific's review.

Because the normal timeline for approval and recording of the BLA would likely extend beyond the deadline set by King County for the removal of the four dwellings and would unduly delay the construction of the new foundations into the rainy season, Abernethy is requesting approval of the relocation permits prior to the final approval and recording of the BLA;

John Abernethy has been established as the project lead on behalf of the ownership group and is authorized to execute this agreement on their behalf;

The current PMC regulations do not allow construction or in this case, relocation of more than one house on a lot or parcel without special permits such as an ADU Permit, Pacific wishes to have guarantees in place to assure that the final projects are completed in a timely manner and that each of the four dwellings units are situated on their new lots in complete conformance with the subdivision, zoning and building codes in effect at the time of complete application for all required permits,

NOW THEREFORE, the City of Pacific and Abernethy do hereby agree that:

Section 1. The four (4) Relocation Permits submitted and reviewed by City staff appear to meet all requirements of Pacific and is ready to be issued upon execution of this MOU.

Section 2. Abernethy agree to post an Financial Surety in an amount sufficient enough to pay the costs associated with the permanent placement of the four (4) single family units in the event of Abernethy are not able to complete the project in a timely manner, with completion of the project to mean final inspection and timely manner to be as per the Uniform Building Code.

Section 3. Abernethy agrees to continue to take all steps to expeditiously submit the necessary materials that will result in an approved City of Pacific Permit No BLA-11-002.

Section 4: Abernethy agrees to engage the services of a surveyor to survey the final location of each dwelling prior to final inspection and to resolve any violations of setbacks or lot size or the code discrepancies to the satisfaction of Pacific and at no cost to the City.

IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. FREEDOM OF INFORMATION ACT (FOIA).

Any information furnished to State or local governmental agencies under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552 or 20 ILCS 140 et seq).

2. PARTICIPATION IN SIMILAR ACTIVITIES.

This instrument in no way restricts the Pacific or the Abernethy from participating in similar activities with other public or private agencies, organizations, and individuals.

3. COMMENCEMENT/EXPIRATION/TERMINATION.

This MOU takes effect upon the signature of the Pacific and Abernethy and shall remain in effect through December 31, 2011 at which time it will expire unless extended. This MOU may be extended or amended upon written request of either the Pacific or Abernethy and the subsequent written concurrence of the other. Either Pacific or Abernethy may withdraw from this MOU with a 30-day written notice to the other.

4. RESPONSIBILITIES OF PARTIES.

Pacific and Abernethy will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

5. PRINCIPAL CONTACTS.

The principal contacts for this instrument are:

Name	Jay Bennett	Name	John Abernethy
Organization	City of Pacific	Address	410 5 th Avenue SE
Address	100 3 rd Ave SE Pacific, WA 98047		Pacific, WA 98047
Phone Number	(253)929-1110	Phone Number	(253) 350-4771
Email	jbennett@ci.pacific.wa.us	Email	

6. MODIFICATION.

Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a multilaterally executed written modification, signed and dated by all parties, prior to any changes being performed.

7. THIS MOU REFLECTS AN ENTIRELY VOLUNTARY COMMITMENT BETWEEN THE PARTIES.

This MOU in no way obligates or restricts the activity of any party. No party shall have any right, power, or authority to create any obligation, express or implied, on behalf of any other party or parties.

8. AUTHORIZED REPRESENTATIVES.

By signature below the parties to this MOU certify that the individuals listed in this document as representatives of the parties hereto are authorized to act in their respective areas for matters related to this agreement.

9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties. Any modifications or amendments to this Agreement shall be in writing and shall be signed by each party.

DATED this 23rd day of AUGUST 2011

CITY OF PACIFIC

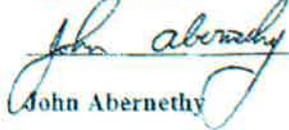


Richard Hildreth, Mayor

100 3rd Avenue SE

Pacific, WA 98047

ABERNETHY

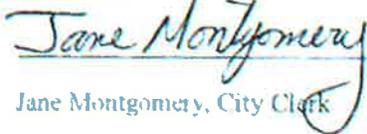


John Abernethy

410 5th Avenues SE

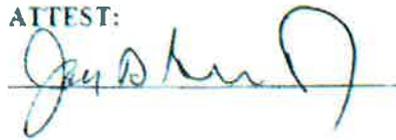
Pacific, WA 98047

ATTEST:



Jane Montgomery, City Clerk

ATTEST:



APPROVED AS TO FORM:



Al Ahuan, City Attorney