

**After recording Return To:
File at the request of:**

**Director of Public Works
City of Pacific
100 3rd Ave SW
Pacific, WA 9**

**CITY OF PACIFIC
_____ LATECOMER AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, by and between the CITY OF PACIFIC, a municipal corporation, hereinafter referred to as the “CITY”, and _____, a Washington [Corporation/LLC/Partnership], hereinafter referred to as “DEVELOPER”,

WITNESSETH:

WHEREAS, The CITY owns an operates a sewer utility system within the corporate limits of the CITY; and

DEVELOPER has received all necessary discretionary permits from the CITY for the construction of a [type of project] on [common property name/street address]; and

WHEREAS the DEVELOPER has constructed, under agreement with the CITY and pursuant to the Municipal Water and Sewer Facilities Act – Chapter 35.91 RCW, an extension and/or improvement to the CITY’s sewer facilities; this extension and/or improvement is depicted on **Exhibit “A,”** and is more fully described in **Exhibit “B,”** both of which exhibits are attached hereto and incorporated herein; and

WHEREAS the extension to said system depicted in “Exhibit A’ is located within the City’s existing water service area, and shall be subject to the City’s public works standards for performance and maintenance bond requirements; and

WHEREAS, the foregoing listed improvements to the CITY’s sewer system is capable of serving the needs of additional parcels now owned by the DEVELOPER and others; and

WHEREAS, the cost for the design and development of the extension and/or improvement depicted on Exhibit “A” under the provisions of the Municipal Water and Sewer Facilities Act is \$ _____, as more specifically itemized and described in **Exhibit “C,”** attached hereto and incorporated herein; and

WHEREAS the CITY has determined and the DEVELOPER has agreed that the fair pro rata share of the total project costs of said extension and/or improvement depicted on Exhibit

“A”, to be collected from the owner or owners of the benefited properties, and who connect to said extension shall be the amounts shown in **Exhibit “D,”** attached hereto and incorporated herein; and

WHEREAS the CITY and the DEVELOPER desire and intend by this Agreement to provide for the collection, under the provisions of the Municipal Water and Sewer Facilities Act – Chapter 35.91 RCW, of the fair pro rata share of the total project costs of said extension and/or improvement from the owner or owners of the benefited properties as described in **Exhibit “E,”** who did not contribute to the original cost thereof, except such owners for who the assessment fees have been waived or otherwise paid by the owner as set forth herein;

NOW, THEREFORE, in consideration of the mutual undertakings and covenants herein, the parties hereto agree as follows:

1. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.
2. The DEVELOPER shall transfer title to the sewer system improvements and or extensions shown in Exhibits “A” and “B”, free and clear of all encumbrances to the CITY. Such transfer shall be evidenced by a bill of sale, or other appropriate instrument approved by the City Attorney. Such bill of sale shall be executed and delivered by the DEVELOPER, together with a two year maintenance bond as described herein.
3. The DEVELOPER warrants that it is the owner in absolute title of said extension and improvements depicted in Exhibit “A” and “B”, and that the DEVELOPER has neither permitted nor suffered any person or other entity to connect to said extension prior to the date of this Agreement, that the sums for each parcel as shown on Exhibit “D” are fair share pro rata charges to be assessed against the owner or owners of each parcel within the benefited area, as shown on Exhibit “E” who subsequent to the execution of this Agreement connect to or use said extension and/or improvements for sewer service; and do further warrant that there are no persons, firms, corporations, or other entities who have filed or have the right to file a lien against said extension pursuant to the provisions of Title 60 RCW, other than those heretofore filed which have been satisfied. In the event that any lien or other claim against said extension are asserted after conveyance to the CITY, the DEVELOPER shall defend and save the CITY harmless from loss on account thereof, including reasonable attorney’s fees, costs, and expenses.
4. In consideration of the conveyance of the extension and /or improvements shown in Exhibit “A,” the City agrees to accept the same for ownership and maintenance as part of its sewage facility, after inspection and testing by the City Engineer and the City Engineer’s recommendation of acceptance, and delivery of a bill of sale and a two year maintenance bond described herein. Further, the CITY agrees to collect from the owner or owners of the parcels within the benefited area as shown on Exhibit “E” who subsequently connect to or use the sewer improvements or extension a latecomer’s charge (assessment fee) equal to the fair pro rata share of the total project costs as set forth in Exhibit “D” and described herein. The CITY shall charge, in addition to its usual and ordinary charges made against persons applying for service from said facility and in addition to the amount agreed to be collected by the CITY in this paragraph, a sum equal to fifteen percent (15%) of the assessment to be collected from the owner

or owners of said properties connecting to or using said facility, which sum shall be used by the CITY to defray the cost of labor, bookkeeping, and accounting, pursuant to the terms of this Agreement.

5. The total project costs for said extension and/or improvements including costs eligible for reimbursement under this Agreement shall be as itemized in Exhibit "C." The eligible portion of the total project costs includes costs for design and engineering; surveying; construction; construction inspection; and construction contract administration incurred and paid by the DEVELOPER. The latecomer's charge (assessment fee) for each of the parcels in the benefited area as shown in Exhibit "E" shall be a fair pro rata share of the total project costs to the total area of the benefited properties, and shall be based on [description of cost allocation scheme.] The pro rata share of the total project costs to be assessed against each parcel in the benefited area shall be calculated by [multiplying etc., etc.]

6. The CITY agrees that it will not allow an owner of a parcel within the benefited area as shown in Exhibit ""E" to connect to the extension or otherwise utilize the system improvements as described herein without such owner or owners having first paid to the CITY the latecomers charge and such other charges as may be set forth in Exhibit "D." The CITY agrees that its officers, agents, and employees will use their best efforts to collect assessments under this Agreement. As part of those best efforts, the CITY agrees that it will take the following actions to help ensure the timely collection of assessments under this Agreement:

- 1.
- 2.
- 3.

If the CITY accomplishes the above-listed actions, DEVELOPER agrees that it will waive any liability for the negligent failure of the CITY, its officers, agents, or employees to collect an assessment from a developing property. Notwithstanding the foregoing, a failure to collect an assessment that is attributable to willful or intentional acts is excluded from the waiver provided herein and may be asserted as a basis liability on the part of the CITY, its officers, agents or employees and a violation of this Agreement.

7. The CITY shall pay to the DEVELOPER the sums agreed to be collected pursuant to the provisions of paragraph 4 above, within sixty (60) days after receipt thereof at the address of the DEVELOPER as set forth hereinafter, or at such other address as the DEVELOPER shall notify the CITY of by Certified Mail. If such payments are returned to the CITY unclaimed by the DEVELOPER, and if after an independent investigation the CITY is unable to locate the DEVELOPER, the CITY shall retain all sums then received in a separate fund for two years. The Developer or holder of the late comers agreement may receive the latecomer's fee without interest by applying to the City, after expiration of the two year period, the Developer's rights to the collected latecomer fee expires and the City shall be deemed owner of the funds. Every two years from the date of the execution of this agreement a property owner entitled to reimbursement under this agreement shall provide the City with information regarding the current contract name, address, and telephone number of the person, company, or partnership

that originally entered into this agreement. If the property owner fails to notify comply with the notification requirements within sixty (60) days of the specified time, then the City may collect any reimbursement owed to the property owner under the contract.

8. No assignment of this Agreement or any of the benefits hereunder by DEVELOPER shall be binding upon the CITY unless or until written notice of such assignment shall be given to the CITY and approval is given by the CITY, which approval shall not be unreasonably refused. In the event of the assignment or transfer of the rights of the DEVELOPER involuntarily, or by operation of law, then the CITY shall pay all benefits accruing hereunder, after notice, to such successor of the DEVELOPER as the CITY, in its sole judgment, deems entitled to such benefits. In the event conflicting demands are made upon the CITY for benefits accruing under this Agreement, then the CITY may, at its option, commence an interpleader action joining any party claiming rights under this Agreement, or other parties which the CITY believes to be necessary or proper parties, and the CITY shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the CITY shall be entitled to withhold its reasonable attorney's fees and costs from such payment.

9. FOR a period of 30 days, commencing approximately 30 days prior to the hearing date for the Latecomer's Ordinance, at the City's discretion, DEVELOPER agrees to employ, or pay the cost of employing, an individual that will serve as a point-of-contact and address property-owner questions regarding the Latecomer Ordinance and Agreement.

10. DEVELOPER agrees to defend, or pay the cost of such defense, and indemnify the City of PACIFIC against any lawsuits attacking the validity of this Agreement. Notwithstanding the foregoing, at any time after it becomes apparent that litigation may ensue, DEVELOPER, at its sole discretion, may inform the City in writing that DEVELOPER intends terminate this Agreement, at which time its obligation to defend, pay the cost of defense, or indemnify the City shall cease.

11. In the event that either party must commence any action at law or otherwise to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys fees and costs.

12. The CITY shall be entitled to rely with acquittance on the provisions of this Agreement with respect to the fairness of the pro rata charges, and upon the determination of the benefited properties as provided herein. The DEVELOPER agrees to indemnify, hold harmless, and defend the CITY in any challenge to the method used to calculate the pro rata share applied to parcels as set forth in this Agreement.

13. Nothing contained in this Agreement shall be construed so as to affect or impair the right of the CITY to regulate the use of its sewer system, of which the extension and/or improvements described herein shall be a part of. The imposition by the CITY of any such requirement shall not be deemed to be an impairment of this Agreement, even though it may be imposed in such a manner as to refuse service to an owner or owners of a parcel in the benefited area.

14. This Agreement shall become operative upon its recordation with the King or Pierce County Auditor at the expense of the DEVELOPER, and shall remain in force and effect for a period of fifteen (15) years after the date of such recording, or until the DEVELOPER, or its successor and assigns, shall have been fully reimbursed as described herein, whichever event occurs earlier.

15. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

16. This Agreement constitutes the final and complete agreement between the parties and cannot be changed or modified other than by a written agreement executed by both parties.

17. The _____ for the CITY shall have primary responsibility for administering this Agreement, and shall coordinate all communications between the DEVELOPER and the CITY.

18. Any and all notices affecting, or relative to, this Agreement shall be effective if in writing and delivered or mailed, postage prepaid, to the respective party being notified at the address listed with the signature of this Agreement. All communications shall be sent to the parties at the addresses listed below, unless notified to the contrary:

City – City of Pacific, 100 3rd Ave SE, Pacific, WA 98047

Owner -

19. Washington law shall govern the interpretation of this Agreement, without regard to Washington's choice of law statutes or common law. King or Pierce County shall be the venue depending upon the location of the system described in Exhibit "A", of any arbitration or lawsuit arising out of this Agreement.

20.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above written.

CITY OF PACIFIC

By: _____
Richard Hildreth, Mayor

DEVELOPER

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON |
COUNTY OF PIERCE/KING | ss.

I certify that I know or have satisfactory evidence that Richard Hildreth is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of PACIFIC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

STATE OF WASHINGTON

COUNTY OF _____

ss.

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the _____ of DEVELOPER to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20__.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

APPROVED AS TO FORM:

Al Abuan, City Attorney

EXHIBIT "A"
CITY OF PACIFIC
DEVELOPER LATECOMER AGREEMENT
DIAGRAM OF FACILITIES

**EXHIBIT “B”
CITY OF PACIFIC
DEVELOPER LATECOMER AGREEMENT
DESCRIPTION OF FACILITY IMPROVEMENTS AND/OR EXTENSION**

**EXHIBIT “C”
CITY OF PACIFIC
DEVELOPER LATECOMER AGREEMENT
FACILITY IMPROVEMENTS AND/OR EXTENSION COSTS**

EXHIBIT "D"
CITY OF PACIFIC
DEVELOPER LATECOMER AGREEMENT
COSTS ASSIGNED TO BENEFITED PROPERTIES

**EXHIBIT “E”
CITY OF PACIFIC
DEVELOPER LATECOMER AGREEMENT
DESCRIPTION OF BENEFITED AREA**