

# Latecomer Agreements Code

Code Amendments | July 2, 2018

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## Overview

Latecomer agreements allow a property owner to request that a municipality contract with them to extend street or utility improvements; the owner can recoup a portion of their costs to install the new facilities from others benefiting from the infrastructure extension. To be consistent with State laws recently amended in 2013 and 2015, Skagit County is considering amending its code to ensure it can respond to property owner requests for latecomer agreements for roads countywide, and for sewer in Edison where it is the primary service provider. Additionally, through State legislation, the County has the option to participate in or initiate latecomer agreements for roads or utilities.

A draft White Paper dated May 29, 2018 and presented at the Planning Commission's June 5, 2018 meeting provides a summary of the legislation and case studies and options for implementation in Skagit County. The previous report can be viewed on the Skagit County project website at <https://skagitcounty.net/Departments/PlanningAndPermit/latecomers.htm>. This paper being provided in advance of the July 10, 2018 workshop. The following sections provides responses to Planning Commission questions at the June 5, 2018 workshop, and a preliminary draft code for review.

## Responses to Planning Commission Study Session

### COSTS AND FINANCE

Planning Commissioners requested information about whether the eligible costs included finance considering the 15 or 20-year term of latecomer agreements. We could not find in the laws that finance is factored into the cost of the reimbursement. However, the City of Bellingham allows consideration of construction finance and bonding. Bellingham had the most detailed definition of costs compared to other ordinances reviewed for this effort including Clark and Pierce Counties, and cities of Everett, Lynwood, and Renton. Clark County similarly considers "[t]he cost of legal services and any other expenses incurred by the county in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds." We anticipate coordination with the Municipal Research and Services Center (MRSC) and County Prosecuting Attorney's office about this question as we continue to develop the draft code.

### EXAMPLES OF AGREEMENTS

As suggested at the June 5, 2018 meeting, it is useful to review example agreements to see how they were executed and what was considered. Latecomer's agreements were collected from Pierce County

and the City of Tumwater. They provide more detail about how the agreements work in specific cases. They largely follow the process in these communities' codes. See **Attachment A**.

## BLANCHARD-EDISON CASE STUDY CLARIFICATIONS

Planning Commissioners discussed if the Blanchard-Edison Water Association Case Study was accurately described as a latecomer agreement scenario or just a water line extension since multiple property owners were willing to connect up front, rather than a single developer or property owner ready to connect up front and others later, as is a more classic latecomer agreement situation.

Reviewing a draft Memorandum of Understanding (MOU) under consideration by the Blanchard Edison Water Association (BEWA) in October 2013, the Draft MOU anticipated that beyond the initial seven properties, other properties could benefit and could contribute to offset the initial water line construction. The draft MOU proposed that Blanchard-Edison Water Association create a latecomer agreement for a period of 15 years to protect those investing in the initial construction. However, concerns from both the BEWA and property owners around taking on debt to finance construction, and out of pocket expenses accrued prior to project construction, stalled progress. In summary, there were elements of the proposed water line extension referencing a future latecomer agreement, but the initial proposal with seven property owners related to a water line extension.

## Next Steps

Following the Planning Commission's review of the preliminary code, PDS will work with the Public Works Department and other Departments as appropriate to prepare refined draft code language to bring forward a proposal for a Planning Commission hearing in Fall 2018.

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# Preliminary Draft Code

## Chapter 14.43 Latecomer Agreements – Street and Utility

### 14.43.010 PURPOSE AND AUTHORITY.

A. Purpose: The purpose of this chapter is to encourage private and public construction of County street and utility system improvements by providing means for the recovery of the costs of installation through a charge to later users of the improvements who benefit from the improvement and did not previously contribute to the costs of such improvements.

B. Authority: This Chapter is established consistent with the authority established in state law in Chapters 35.72 and 35.91 Revised Code of Washington.

### 14.43.020 APPLICABILITY.

A. This chapter applies to all street system improvements and all utility system improvements where the construction of such improvements is the result of County ordinances that require such improvements as a prerequisite to property development as established in SCC 14.16 Zoning, Chapter 14.18 SCC Land Divisions, and Chapter 14.28 SCC Concurrency.

*DISCUSSION: Consider if there are other County Code chapters that establish streets and utilities as a prerequisite for development. The City of Bellingham's ordinance also lists the Comprehensive Plan.*

B. The County may contract with owners of real estate for the construction or improvement of street projects which the owners elect to install as a result of ordinances that require the projects as a prerequisite to further property development.

C. For those utilities operated by Skagit County, the County must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner's expense.

D. As an alternative to financing street and/or utility improvements under this chapter solely by developers or owners of real estate, the County may join in the financing of the improvements and may be reimbursed in the same manner as developers or owners of real estate who participate in funding the improvements.

1. If the County elects to join in the financing of street or utility system improvements under this chapter, it has the same rights to reimbursement as developers or owners of real estate who make contributions as authorized under this chapter and is entitled to a pro rata share of the reimbursement based on the respective contribution of the developer or owners of real estate and the County.

2. The County will consider the general benefit, county-wide priority of the proposed improvements, and the impacts of possible assessments upon benefited properties in considering whether or not to contribute County funding.

E. As an alternative to financing street and/or utility system improvements under this chapter in whole or in part by developers or owners of real estate, the County may create an assessment reimbursement area on its own initiative, without the participation of a private developer or owner of real estate, finance all of the costs of the street and/or utility system improvements, and become the sole beneficiary of the reimbursements that are contributed.

1. The County may establish an assessment reimbursement area under this subsection only in locations where the County's ordinances require utility or street improvements to be constructed as a prerequisite to further property development or redevelopment.
2. Such street and/or utility system improvements must be consistent with the County comprehensive plan, applicable municipal street or utility system plan, and applicable municipal street or utility standards.
3. The County will consider the general benefit, county-wide priority of the proposed improvements, and the impacts of possible assessments upon benefited properties in considering whether or not to initiate County funding and implementation of a latecomer agreement.

F. Where the County is not the primary provider of street or utility services, and intends to partially participate per subsection D or independently initiate an assessment reimbursement area, the County must enter into an interlocal agreement, or another instrument indicating roles and responsibilities, with the primary street or utility services provider. Such agreements are subject to approval by the Board of County Commissioners following a public hearing.

G. The Washington State Department of Transportation ("WSDOT") may, for State highways, participate with Owners or may be the sole participant in financing of improvement projects, in the same manner and subject to the same restrictions as provided for the County. The WSDOT shall enter into an agreement whereby the County would act as an agent of WSDOT in administering this Chapter.

#### 14.43.030 APPLICATION FOR LATECOMER AGREEMENT.

A. Any developer or owner of real estate using private funds to construct street system improvements and/or utility system improvements in the County may apply to the County for a latecomer agreement to recover a pro rata share of the costs of construction from other property owners that will later connect to or use the street and/or utility system improvements made by developer or owner of real estate.

B. In addition to the latecomer application, the applicant must apply for and obtain a construction permit and must meet all the design standards and requirements applicable to street and utility improvements contained in the Skagit County Code or County Ordinances.

C. The application for a latecomer agreement must be made before the street and/or utility system improvements proposed for construction are approved by the County through the issuance of a construction permit. Acceptance by the County means, for purposes of this section, the date the public facilities are conveyed to the County by a deed of conveyance or another equivalent written document. Application must be made on forms prepared by the public works department and must be accompanied by the County application fee set forth in SCC XXX. The application must contain the following information, which must be approved by a state of Washington licensed engineer:

1. A legal description of the developer's or owner of real estate's property.

2. A legal description of the properties within the proposed assessment reimbursement area together with the name and address of the owners of each property as shown in the records of the assessor's office of Skagit County.
3. Vicinity maps, stamped by a state of Washington licensed civil engineer or surveyor, depicting the developer's or owner's property, the proposed improvements, and the proposed assessment reimbursement area.
4. A detailed description of the county road or utility improvements which will be installed.
5. Statement from a state of Washington licensed contractor or civil engineer containing an itemized estimate of the total projected cost of construction.
6. The developer's or owner's proposed allocation of the cost of construction to the individual properties within the proposed assessment reimbursement area and the method used for such allocation.
7. Unless the County provides written notice to the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for a water or sewer facility, if required, or for a street improvement.
8. Applicable Fees per SCC 14.43.160.

D. The Skagit County Public Works Director may establish further guidelines and rules, regulations, policies, and procedures for all applications for latecomer agreements.

E. Pursuant to SCC 14.06.100, Determination of Completeness, the Public Works Department will provide the applicant written notice of whether the application is complete and, if incomplete, what must be done for the application to be considered complete. The applicant must respond within the time periods established in SCC 14.06.100. If the applicant fails to meet the required response time frame in SCC 14.06.100, the public works department may, in its discretion, reject the application as untimely.

#### 14.43.040 APPLICATION – REVIEW.

A. The Public Works Director or his/her designee must review all applications and must approve the application if following criteria are met:

1. The application is timely, complete and the application fee has been paid; and
2. The County's code or ordinances require the proposed improvements to be constructed as a prerequisite to further property development; and
3. The proposed improvements fall within the definition of street and/or utility system improvements as those terms are defined Chapter 14.04 SCC; and
4. The proposed improvements are consistent with the County's design standards, development regulations, comprehensive plan, utility plan, and/or transportation plan.

B. In the event any of the above criteria are not met, the Public Works Director or his/her designee must either condition approval as necessary to achieve conformity to such criteria or deny the application. The Public Works Director may deny a request for a Latecomers Agreement if it determines that the proposal would not be in the best interest of the County, or if the applicant proposing the agreement is ineligible, insists on terms that are unlawful or inequitable, or negotiates in bad faith. The final determination of the Public Works Director or his/her designee must be in writing.

### 14.43.050 PRELIMINARY DETERMINATIONS.

Upon approval of a latecomer application, the Public Works Department must formulate a preliminary assessment reimbursement area and preliminary assessment amount for each real property included in the preliminary assessment reimbursement area as follows:

A. For street system improvements, the assessment reimbursement area must be formulated based upon a determination of which parcels would require similar street improvements upon development or redevelopment.

B. For utility system improvements, the assessment reimbursement area must be formulated based upon a determination of which parcels in the proposed area would require similar utility system improvements upon development or redevelopment, or would be allowed to connect to or use the utility system improvements.

*DISCUSSION: Seattle Public Utilities allows the originating developer to partner with benefitting parcels. In the Latecomer Agreement, the originating developer can identify any benefitting parcel as exempt from future payment.*

C. Costs eligible for reimbursement include the sum of the direct construction costs incurred to construct the street and/or utility system improvements plus indirect costs.

1. "Direct construction costs" include but are not limited to all related design services, engineering, surveying, legal services, bonding costs, environment mitigation, relocation and/or new construction of private utilities as required by the County (i.e., power, telephone, cable and gas), relocation and/or installation of street lights, relocation and/or installation of signage, acquisition of right-of-way and/or easements, government agency fees, testing services, inspection, plan review and approval, labor, materials, equipment rental, and contractor and/or subcontractor fees or charges.

2. "Indirect construction costs" are limited to the County's latecomer administrative fees (SCC 14.43.160), construction interest, and developer or owner administrative costs.

3. "Construction interest" means the sum of money to be added to the direct construction cost and reimbursed to the developer or owners of real estate for the use of the developer's or owner's monies during the construction term. The interest rate must be one percent above the Federal Reserve Bank prime loan rate published most recently before the date of the public facilities construction agreement. Interest accrual begins on the date of execution of the public facilities construction agreement and will continue throughout the construction term. Construction interest must be computed utilizing the two-thirds rule; i.e., direct cost of construction x construction interest rate divided by 365 x the construction term expressed in days x 0.67 = construction interest.

4. "Developer administrative costs" means all indirect costs incurred by the developer or owner of real estate in the creation and execution of a public facilities construction agreement and managing the project; such as office supplies, mailings, clerical services, telephone expenses, accounting expenses, project oversight, and the like. Administrative costs must not exceed three percent of all direct construction costs.

5. Where the County creates an assessment reimbursement area on its own initiative per SCC 14.43.020.E, no County costs for improvements that benefit the general public may be reimbursed and no County costs for any portion of the utility system improvements that only

benefit property outside of the assessment reimbursement area may be reimbursed. The County is due reimbursement only for the costs of improvements that benefit that portion of the public who will use the developments within the assessment reimbursement area.

*DISCUSSION: State laws define the improvements and what is included in costs.*

- *Chapter 35.72 RCW-Eligible Street Costs: Street projects subject to reimbursement may include design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls, and other similar improvements. The reimbursement shall be a pro rata share of construction and reimbursement of contract administration costs of the street project.*
- *Chapter 35.91 RCW-Eligible Utility Costs: Engineering, construction, and construction management costs for storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances. The owner must provide a sufficient security to ensure completion, and must pay all of the municipality's costs of engineering, legal, and administrative costs. The method of cost apportionment cannot include the municipality's administrative and legal costs; however, the law indicates that for the purposes of the section of law "administrative costs do not include engineering and construction management costs" meaning engineering and construction management are part of the cost that is apportioned.*

*Bellingham allows construction interest to be part of the indirect construction costs; their model is used in this section. Clark County similarly allows "expenses incurred by the county in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds."*

D. A pro rata share of the cost of the improvements must be allocated to each property included in the assessment reimbursement area based upon the benefit to the property owner. The method or methods used to calculate the allocation of the assessment: **[see examples]**

**[Bellingham]** may be either front footage, number of units, square footage, zone and termini method, or other equitable method, as determined by the County.

**[Renton]** will be one (1) or more of the following methods, unless otherwise approved or directed by the City Council: 1. Front foot method. 2. Zone front foot method. 3. Square footage method. 4. Trip generation (traffic) method. 5. Other equitable method, as determined by the City. 6. Any combination of the above methods. The method(s) used and the dollar amount(s) will be included in the final utility or street latecomer's agreement.

**[Pierce County – Roads]** #The County shall determine the pro rata reimbursement share for the other affected property owners by selecting, or agreeing to, a method of cost apportionment based on the "benefit" of the County road improvements to the other affected property owners. #The County shall formulate or agree to an Assessment Reimbursement Area ("Cost Recovery Area") based on a selection of parcels that will be "benefited" in that they will require similar County road improvements as those improvements required of the Owner upon development. # For a parcel to be defined as a "benefited" property, it must be "zoned" such that a new development on the property would generate, at a

minimum, the same number of trips as generated by a single-family home, as designated by the most current edition of the Institute of Transportation Engineer's (ITE) Trip Generation Manual.

**[Pierce County – Sewer]** The applicant's proposed Tributary Service Area shall include all properties which may subsequently use or require service from the Improvements, including the Development, and including property that will receive service from sewer lines connected to the Improvements. Only those properties within a defined sewer sub-basin whose wastewater could flow to the Improvements in a manner in keeping with the County's USP, the Capital Facilities Plan, any approved Sewer Facility Plan, and Pierce County Sewer Standards shall be included in the Tributary Service Area. The feasibility of a property to receive service from the Improvements does not in and of itself prescribe inclusion in the Tributary Service Area. The size and limits of the Tributary Service Area must be reviewed and approved by the Department prior to Sewer Facility Plan approval. The Tributary Service Area map must be prepared and stamped by a registered professional engineer.

*DISCUSSION: State law indicates that a preliminary determination of assessment reimbursement areas should be made based on which parcels would require similar improvements when developed or redeveloped. The above examples list methods by which the reimbursement areas can be determined. More than one method is listed by Bellingham and Renton. Pierce County provides one method for roads and one method for sewer. Methods will be discussed with Skagit County Public Works staff prior to development of a public hearing draft code.*

#### 14.43.060 PRELIMINARY DETERMINATION NOTICE.

A. The preliminary assessment reimbursement area and the preliminary assessment amounts formulated by the Public Works Department must be sent by certified mail to the developer or owner initiating the latecomer agreement and the property owners of record within the preliminary assessment reimbursement area.

B. The developer or owners of real estate initiating the latecomer agreement or any property owner of record within the preliminary assessment reimbursement area may, in writing within 20 days of mailing the notice, request a hearing to be held before the Hearing Examiner pursuant to SCC 14.06 Permit Procedures to contest the preliminary assessment reimbursement area and/or preliminary assessment amounts. Notice of such hearing must be given to the developer or owners of real estate initiating the latecomer agreement and all property owners within the preliminary assessment reimbursement area and the hearing before the Hearing Examiner must be conducted as soon as is reasonably practical. The procedure contained in Chapter SCC 14.06 Permit Procedures must govern the hearing. After the hearing, the Hearing Examiner must develop a report with findings of fact, conclusions of law and recommendations to the Board of County Commissioners regarding establishing the assessment reimbursement area and the assessment for each property within the assessment reimbursement area. The Board of County Commissioners must consider the record developed before the Hearing Examiner and the Hearing Examiner's report. The Board of County Commissioners must allow public comment on the Hearing Examiner's report and, if a majority of the Board of County Commissioners finds the record insufficient, may add to the record. After considering the record, the Hearing Examiner's report and associated public comment, if any, the Board of County Commissioners may adopt or reject the Hearing Examiner's recommendations in whole or in part, or it may render its own findings and conclusions. Board

of County Commissioners is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area.

C. In the event no written request for a hearing is received within the allotted time, the determination of the Public Works Department will be final for latecomer agreements initiated by a developer or owner of real estate.

D. A preliminary assessment reimbursement area solely initiated by the County or where the County is participating in a latecomer agreement per SCC 14.43.020 is subject to noticing in Subsection A above. A public hearing before the [Hearing Examiner or Board of County Commissioners] is required where the County intends to participate or initiate and be the sole beneficiary of the reimbursement area. After due consideration of a latecomer agreement at a public hearing the decision of the Board of County Commissioners is final.

### 14.43.070 LATECOMER AGREEMENT.

A. Based upon the preliminary assessment reimbursement area and the preliminary assessment, if no hearing is requested, or based upon the Board of County Commissioners determination of the assessment reimbursement area and assessment if a hearing is requested under SCC 14.43.060.B or required under SCC 14.43.060.D, the Public Works Department must prepare and give to the applicant a latecomer agreement. The developer or owner of real estate must execute the latecomer agreement and return it to the Public Works Department for County signatures consistent with SCC 14.43.060 C or E.

B. A separate latecomer agreement must be executed for each of the following categories of improvement, as applicable: street system, stormwater system, sewer system, and water system.

*DISCUSSION: To be determined if fiber optics can be included in applicable systems.*

### 14.43.080 RECORDING.

The provisions of the latecomer agreement are not effective as to any owner of real estate not a party thereto until it is recorded with the Skagit County auditor, with notice to title of each property within the assessment reimbursement area. The County must record the latecomer agreement with the Skagit County auditor within 30 days of final execution of the latecomer agreement; provided, that the developer or owners of real estate initiating the latecomer agreement must have an independent duty to review the auditor's records to confirm that the latecomer agreement has been properly and timely recorded.

### 14.43.090 CONSTRUCTION – FINAL COSTS – CONVEYANCE.

A. After the latecomer agreement has been signed by all parties and all necessary permits and approvals, including a construction permit, have been obtained, the applicant must construct the improvements and, upon completion, request final inspection and acceptance of the improvements by the County, subject to any required obligation to repair defects. All construction, inspection and testing must conform to the County's design and construction standards.

B. Full compliance with all conditions below is required to finalize a latecomer's agreement for utilities:

1. Construction of the water or sewer facility according to plans and specifications approved by the County;
2. Inspection and approval of the water or sewer facility by the County;

3. Transfer to the County of the water or sewer facility, without cost to the County, upon acceptance by the County of the water or sewer facility;
4. Full compliance with the owner's obligations under the contract and with the municipality's rules and regulations;
5. Provision of sufficient security to the County to ensure completion of the water or sewer facility and other performance under the contract;
6. Payment by the owner to the County all the County's costs associated with the water or sewer facility including engineering, legal, and administrative costs; and
7. Verification and approval of all contracts and costs related to the water or sewer facility consistent with Subsection (C).

*DISCUSSION: Subsection A is applicable to streets and utilities. Subsection B addressing utilities is based on specific requirements in RCW 35.91.020 and example language from the City of Renton. Parallel language is not found for streets under Chapter 35.72 RCW.*

C. Within 120 days of completion of construction, the developer or owners of real estate that are party to the latecomer agreement must provide the County with documentation of the actual costs of the improvements and a certification by the applicant that all such costs have been paid. The final cost of the improvements must be reviewed against the preliminary assessments established by the County. Upon a showing of good cause, the agreement must be modified to include cost overruns up to a maximum of 10 percent. If actual costs are less than the public works director's estimate by 10 percent or more, the public works director must recalculate the charges, reducing them accordingly. For any revisions under this section, the public works director must cause a revised list of charges to be recorded with the Skagit County auditor, with a notice to title on each property within the assessment reimbursement area.

*DISCUSSION: Determine if cost overruns will be added into the cost. Clark County does not allow an increase in cost to be part of the cost, but does allow a reduction in cost if costs come in lower.*

D. After the requirements of subsections (A) and (B) of this section have been satisfied, the developer or owners of real estate that are party to the latecomer agreement must provide the County with an appropriate deed of conveyance or other equivalent instrument approved by the County Prosecuting Attorney's office that effectively transfers ownership of the improvements to the County, together with any easements needed to ensure the County's right of access for maintenance of the improvements. Title to the improvements must be conveyed to the County clear of all encumbrances.

D. No connection to, or other use of, the improvements will be allowed or permitted until the County has officially accepted the construction and title to the improvements has been conveyed to the County.

#### 14.43.100 INCOMPLETE OR DEFECTIVE WORK.

A. Prior to executing a latecomer agreement, the County must require provision of sufficient security to the County to ensure completion of street or utility to County standards.

B. The County may terminate a latecomer agreement if the developer or owners of real estate that are party to the latecomer agreement fails to commence or complete construction within the time and manner

required in the construction agreement for the improvements. In the event of termination, the County must record a release of latecomer agreement in the county auditor's office.

C. The developer must be responsible for all work found to be defective within one year after the date of acceptance of the improvements by the County. SCC XXX contains provisions for the public works director to require a performance bond for the improvements.

#### 14.43.110 PAYMENT OF LATECOMER ASSESSMENTS – REMITTANCE TO DEVELOPER.

A. Upon recording, the latecomer agreement and assessment is binding upon all properties located within the assessment reimbursement area. Assessments must be paid to the County in one lump sum, including interest through the date of payment, as follows:

1. Assessments for street improvements must be paid prior to the development or redevelopment of property if at the time of development or redevelopment the property owner is not required to construct similar street improvements because they were already constructed by the developer or owners of real estate that are party to the latecomer agreement.
2. Assessments for utility system improvements must be paid prior to connection to or use of the utility system improvements.

B. The County will pay over to the developer or owners of real estate that are party to the latecomer agreement the amounts due within 60 days of receipt.

C. When the assessment for any property has been paid in full, the Public Works Director or his/her designee must record a certification of payment that will release the property from the latecomer agreement.

D. The latecomer charge must be in addition to the usual and ordinary charges, including connection charges, system development charges, and any other fees or charges which must be paid by persons applying for County services.

#### 14.43.120 SEGREGATION.

The Public Works Department must, upon the request of any property owner within the assessment reimbursement area, segregate the assessment. The segregation must be based upon the same factors applied when the assessments were originally established. The property owner seeking segregation of the assessment must pay an administrative fee to the County based upon a segregation fee schedule to be established by the Public Works Department.

#### 14.43.130 TERM OF DEVELOPER REIMBURSEMENT AGREEMENTS.

A. For street system improvements, each latecomer agreement must be valid for a period of 15 years from the date of its recording, unless earlier terminated as provided in subsection (C) of this section or extended per subsection (D).

B. For utility system improvements, each latecomer agreement must be valid for a period of 20 years from the date of its recording, unless earlier terminated as provided in subsection (C) of this section or extended per subsection (D).

C. The latecomer agreement may provide for an extension of the standard reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

D. See SCC 14.43.100 for termination.

#### 14.43.140 REMOVAL OF UNAUTHORIZED CONNECTIONS OR TAPS.

Whenever any tap or connection is made into any utility improvement without payment of the assessment being made as required by this chapter, the Public Works Department is authorized to remove and disconnect, or cause to be removed and disconnected, such unauthorized tap or connection including all connecting tile or pipe located in the right-of-way and to dispose of such unauthorized material without liability. The owner of the property where the unauthorized connection is located is liable for all costs and expenses of any type incurred to remove, disconnect, and dispose of the unauthorized tap or connection.

#### 14.43.150 INTEREST ON ASSESSMENT.

Each assessment established under this chapter must bear interest from the date of recording of the latecomer agreement or notice of assessment at an interest rate fixed at the federal reserve rate for a two-year treasury note, as determined on the date of recording the latecomer agreement or notice of assessment.

#### 14.43.160 COUNTY FEES.

The developer must pay the following fees:

A. Application Fee. The application fee for each latecomer agreement is **XXX**.

B. Administrative Fee. In addition, the County must charge a fee for administering the latecomer process equal to **one percent** of the estimated cost of construction.

C. Recording Fee. Further, for every separate parcel of property within the applicant's proposed assessment reimbursement area, the County must charge a recording fee of **\$XXX** per parcel.

D. The application fee and the recording fee will be adjusted annually to reflect inflationary costs. The adjusted fees must be calculated by adjusting upwards or downwards in accordance with the change in the Consumer Price Index for All Urban Consumers, Seattle-Tacoma-Bremerton, Washington, based on the report released prior to January 1st of each year. The fees established by this formula must be rounded up or down to the next \$10.00.

E. The application fee must be paid upon application for a latecomer agreement with all remaining fees paid prior to, and as a condition of, the County's mailing of the preliminary determination notices.

*DISCUSSION: This is based on Bellingham's approach to fees. To be discussed with Public Works and other Departments.*

#### 14.43.170 MAPPING

Assessment reimbursement areas shall be mapped by the County and maintained as part of Skagit County iMap or its successor program.

### 14.43.180 APPEAL.

Except for the determination of the preliminary assessment reimbursement area and preliminary assessment as provided by SCC 14.43.050, a developer or owner of record of property located within the assessment reimbursement area may appeal the interpretation, implementation, and/or decisions of the Public Works Department concerning any aspect of this chapter to the Hearing Examiner as provided by SCC 14.06. The appeal must be filed within **XX** days of the date of the action or decision being appealed.

### 14.43.190 ENFORCEMENT OF LATECOMER OBLIGATIONS.

A. In processing and imposing obligations in this chapter for reimbursement of developers, the County in no way guarantees payment of assessments by latecomers, or enforceability of assessments, or enforceability of the latecomer agreement, or the amount(s) thereof against such persons or property. Nor will the offices or finances of the County be used for enforcement or collection of latecomer obligations beyond those duties specifically undertaken by the County herein. The County must not be responsible for locating any beneficiary or survivor entitled to any benefits by or through a developer reimbursement agreement.

B. Every two years from the date the latecomer agreement is executed, a developer entitled to reimbursement under this chapter must provide the public works department with information regarding the current contact name, address, and telephone number of the person, company, or partnership that originally entered into the latecomer agreement. If the developer fails to comply with the notification requirements of this subsection within 60 days of the specified time, then the County may collect any reimbursement funds owed to the developer under the latecomer agreement. Such funds must be deposited in the capital fund of the County.

### 14.43.190 EFFECT OF ANNEXATION

Annexation to a city or town of all or a portion of a reimbursement area shall not affect liability for pro rata reimbursement share charges of properties so annexed nor responsibilities of an Owner under the latecomer agreement. The County, with respect to portions of the property not constructed, must cease unless a supplemental contract/agreement is made with the annexing city or town assuring reimbursement of County funds expended on the construction of improvements.

*DISCUSSION: This is included in both Clark and Pierce County Codes applicable to roads.*

### 14.43.200 LIMITATION OF LIABILITY.

Nothing in this chapter is intended to create a private right of action for damages against the County for failing to comply with the requirements of this chapter. The County may not be held liable for failure to collect a latecomer assessment unless the failure was willful or intentional.

*DISCUSSION: This is based on multiple example ordinances.*

## Potential Amendments or Additions to 14.04.020 Definitions

Consider amending or adding definitions. Following are examples adapted from Bellingham:

- “Assessment” means an equitable pro rata charge to be paid by an owner of property within the assessment reimbursement area for the cost of private construction of public street and/or utility system improvements made pursuant to a construction agreement.
- “Assessment reimbursement area” means that area which includes all parcels of real property adjacent to street system improvements or likely to require connection to or service by utility system improvements constructed by a developer.
- “Construction term” means that period of time between the date of execution of the public facilities construction agreement and the date of acceptance of the project by the County or the construction completion date as set forth in the public facilities construction agreement, whichever occurs first.
- “Developer” means the individual or entity that contracts with the County for the construction of street and/or utility system improvements, where such improvements are a prerequisite for further development of real property owned by such entity or individual.
- “Direct connection” means a service connection, to be owned and maintained by the property owner and not the County, from existing or new utility improvements.
- “Latecomer agreement” means a written contract between the County and one or more developers or owners of real estate providing partial reimbursement of the cost of construction of street and/or utility system improvements to the developer by owners of property who connect to or use the improvements but who did not contribute to the original cost of construction.
- “Construction agreement” means any agreement entered into by an individual or entity with the County for the purpose of constructing public improvements that are required by the County to be constructed as a prerequisite to the development of real property.
- “Street system improvements” means public street and alley improvements made in existing or subsequently dedicated or granted rights-of-way or easements and any improvements associated therewith including but not limited to such things as acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, grading, paving, installation of curbs, gutters, storm drainage, pedestrian facilities, street lighting, bike lanes, and traffic control devices, relocation and/or construction of private utilities as required by the County (i.e., power, telephone, cable and gas), relocation and/or construction of street lights, traffic control devices, signage, and other similar improvements.
- “Utility system improvements” means public water, sewer and storm drainage system improvements including but not limited to the acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, testing, connection fees, and installation of improvements as required by the County and includes but is not limited to the following:
  - A. Water system improvements including but not limited to such things as treatment facilities, reservoirs, wells, mains, valves, fire hydrants, telemetry systems, pumping stations, and pressure reducing stations;

B. Sewer system improvements including but not limited to such things as treatment plants, gravity mains, lift stations, force mains, and telemetry systems;

C. Storm sewer system improvements including but not limited to such things as water quality structures and systems, detention and retention facilities, and stormwater collection and conveyance facilities.

## Chapter 12.64 Clean Water District—Edison Subarea

### 12.64.130 ASSESSMENTS, FEES AND OTHER CHARGES.

The Board of County Commissioners shall set annual assessments as part of the County's annual budget process. The recommended annual assessment amounts shall be determined by the Advisory Board and shall be based upon equivalent residential units (ERUs). The minimum of one (1.0) ERU shall be charged for each connected service. All residential customers shall be assessed one (1.0) ERU.

All Commercial customers (including the Edison School) shall be charged an assessment based upon flow and strength of flow. The charge for flow will be determined using the water usage records and will be ERU-based. The charge for strength of flow will be assessed using a surcharge for flow above predetermined residential-strength levels as determined by the Advisory Board.

The Advisory Board shall, through adopted policy, establish, adjust, and amend the amount of all fees and charges applicable to services within the Edison Subarea.

(1) Annual Assessments, once imposed on any property or building, shall continue until the serviced building is demolished, torn down, removed or no longer in existence or unless it can be shown by affidavit that the building could not be serviced because of lack of water. Discontinuation of the Annual Assessment shall be based upon a formal request to the Advisory Committee. Disconnection from the sanitary sewer system shall be in accordance with the requirements of Skagit County.

(2) Annual Assessment billings shall be mailed to the owner of record (noted as the taxpayer on the County Assessor/Treasurer's real property assessment roll) of the property on which the structure so served is located so far as the County may reasonably ascertain the same. Failure to receive such bills shall not relieve any person liable therefor from the obligation to pay the same or from paying penalty and interest charges, nor the property receiving such service, or capable of receiving such service, from such lien therefor as may thereafter attach to the property in the manner provided by law.

(3) All new residential connections shall pay, in addition to the other fees, a prorated share of the current year's annual assessment. This fee shall be paid in full prior to the commencement of services.

(4) All new commercial customers (including change in use customers) shall pay an advance assessment deposit equal to two (2) times the current residential annual assessment amount. Once flow and strength testing has been completed and the actual current-year prorated annual assessment for the commercial connection has been determined, any surplus deposit funds shall be refunded to the customer. This fee shall be paid in full prior to the commencement of service.

(5) All new commercial customers (including change in use customers) shall also pay a waste-testing fee, in an amount to be determined by Advisory Board Policy, to offset the actual cost of testing the waste

strength for the purpose of establishing the annual assessment amount for the new commercial customer. This fee shall be paid in full prior to the commencement of service.

(6) Capital Assessment Fee. Any property or portions thereof (excluding prepaid connections) desiring a new connection or an existing customer desiring additional flow, or an existing customer with a change in use shall be required to pay a Capital Assessment Fee as a precursor to receiving service. Such charge shall reflect an apportionment to the connector of a pro rata portion of the capital cost of installation of the permanent sewer system. The capital assessment fee shall be ERU-based and rounded to the nearest one-quarter ERU (1/4 ERU). Existing customers desiring additional flow or existing customers with a change in use shall pay a prorated capital assessment fee equivalent to the amount of additional flow.

(7) Latecomer's Fee. In addition to the Capital Assessment Fee, a latecomer's fee will be charged to all new customers (excluding prepaid connections) amounting to five (5) percent of the original Capital Assessment Fee for each year or portion thereof between the time of system construction (1999) and the latecomer service connection. If an owner of real estate or developer requests a latecomer agreement or if the Count creates a revised or new latecomer reimbursement area, the process shall follow SCC 14.43.

(8) Plan Review/Inspection. This fee shall be charged, as a precursor to the accepting of a new connection application, to cover the costs of plans review and inspection.

(9) Return Inspection Fee. If circumstances or conditions require return inspection(s) of completed septic tank installations and/or sewer connections, including appurtenances thereto, the owners or developers requesting a return inspection shall pay a return inspection fee.

(10) Additional Costs. Additional costs incurred by the Edison Subarea or its contractors over and above the minimum fee will be charged to the owner or developer on a time and materials basis. All additional fees must be paid in full prior to the Edison Subarea approving and allowing the use of the new sewer connections. (Ord. O20040001 (part))

Filed at the Request of  
and to be Returned to:

Kirk Veis  
Owens Davies, P.S.  
P. O. Box 187  
Olympia, WA 98507

### SANITARY SEWER EXTENSION AGREEMENT

<b>Grantor</b>	GEMINI CORPORATION, a Washington corporation
<b>Grantee</b>	CITY OF TUMWATER, a Municipal corporation
<b>Legal Description (Abbreviated)</b>	Beginning at the intersection of 79 <sup>th</sup> Avenue SE and "D" Road Plat of Bridlewood and extending eastward within the right-of-way of 79 <sup>th</sup> Avenue SE to the intersection of Parkridge Drive and connecting to an existing City of Tumwater sewer force main a distance of approximately 663 feet.
<b>Assessor's Tax Parcel ID No.</b>	12712320100; 12712310100; 12712320300; 12712340200
<b>Reference Nos. of Related Documents</b>	



## SANITARY SEWER EXTENSION AGREEMENT

This agreement entered into this 15<sup>th</sup> day of September 2004, between the CITY OF TUMWATER, a Municipal corporation, hereinafter referred to as the "CITY" and GEMINI CORPORATION, hereinafter referred to as the "DEVELOPER".

WITNESSETH:

WHEREAS, the DEVELOPER has extended the CITY's sanitary sewer system to and along property owned by the DEVELOPER by construction of an four-inch sanitary sewer force main, together with all necessary appurtenances over the following described route:

**BEGINNING AT THE INTERSECTION OF 79<sup>TH</sup> AVENUE S.E. AND "D" ROAD PLAT OF BRIDLEWOOD AND EXTENDING EASTWARD WITHIN THE RIGHT-OF-WAY OF 79<sup>TH</sup> AVENUE S.E. TO THE INTERSECTION OF PARKRIDGE DRIVE AND CONNECTING TO AN EXISTING CITY OF TUMWATER SEWER FORCE MAIN A DISTANCE OF APPROXIMATELY 663 FEET.**

WHEREAS, said sanitary sewer line passes by properties, the owners of which may wish to use said sanitary sewer or have been required to construct a portion of said sanitary sewer in the future: and

WHEREAS, the DEVELOPER has prepared a listing attached to this agreement and designated as Exhibit "A", a assessment map and a assessment roll, containing the construction costs and engineering cost of said sanitary sewer extension including applicable sales tax, and the pro rata share of the cost of construction of said sanitary sewer facility; and

WHEREAS, the CITY is willing to accept said sanitary sewer force main as part of the City's sanitary sewer system and in return collect from future users of said line their pro rata share of the cost of said line to be reimbursed to the DEVELOPER; THEREFORE, it is hereby agreed between the parties as follows:

1. The CITY shall accept ownership of said sanitary sewer force main and facilities and the DEVELOPER shall execute documents necessary to place complete ownership of said sanitary sewer facilities in the CITY. From the time of acceptance by the CITY, the facilities shall belong to the CITY and the CITY shall be responsible for their maintenance and operation and shall be entitled to all revenues derived from said sanitary sewer force main.
2. For a period of fifteen (15) years from the date of this agreement, the CITY shall collect from the owner(s) of identified adjacent property prior to allowing connection of said property to the sewer facility, the fair pro rata share of the cost of construction of this subject line and shall pay said sums to the DEVELOPER. Exhibit "A" has been prepared by the DEVELOPER, and shall be approved by the CITY as the fair pro rata share of the cost of construction and shall be recorded at the expense of the DEVELOPER.
3. Reimbursement shall be collected by the CITY from those benefiting from using said facility as provided above at the time they connect to the CITY sanitary sewer system and in accordance with the following formula:  
  

$$\frac{\text{Total Cost}/2}{\text{Length of Extension}/2} = \text{Frontage Assessment}$$

$$\frac{\text{Total Cost}/2}{\text{Total Acres of Benefited Parcels}} = \text{Area Assessment}$$
4. The DEVELOPER agrees to pay \$720.00 for an application fee to the City plus \$72 per hour after 10 hours prior to the execution of this agreement and the City shall deduct eight percent (8%) of the collected reimbursement amount as a fee for administering the terms of agreement.
5. The City shall exercise its best efforts to collect all reimbursements herein described, however, the City assumes no obligation to collect any or all reimbursements herein described.

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**EXHIBIT "A"**

**Sanitary Sewer Extension Agreement**

**Force Main Sanitary Sewer**

**Project Cost Summary**

Sewer Construction Cost	\$ 40,500.00
(Less City disallowance)	<u>\$ 31,333.33</u>
Net allowed construction cost	\$ 9,166.67
Sales Tax	\$ 733.33
Road Reconstruction Cost	\$ 16,010.38
(Less City disallowance)	\$ -4,130.38
Engineering & Surveying	\$ 5,080.66
City Fees	<u>\$ 7,760.00</u>
<b>TOTAL PROJECT COST</b>	<b>\$ 34,620.66</b>

**Latecomer Fee Basis**

The force main sewer will be assessed by the front footage of the property plus the area charge.

Front Footage Charge = (Total Project Cost÷2)/(Total Front Footage)

FFC = (\$34,620.66÷ 2)/(1,307 FT)

FFC = \$ 13.24 per LF

Area Charge = (Total Project Cost ÷ 2)/Total Area

Area Charge = (\$34,620.66÷ 2)/(40.22 Ac)

Area Charge = \$ 430.39 per acre



## EXHIBIT "A"

### Force Main Sewer Extension Agreement PROPERTY OWNERS LIST

1. #12712320100  
PLAT OF DESCHUTES RIDGE
2. #12712310100  
PLAT OF DESCHUTES RIDGE
3. #12712320300  
GRIZZLY RIDGE CORPORATION  
34 CAMINO  
SANTE FE, NM 87501
4. #12712340200  
GEMINI CORPORATION  
1868 STATE AVENUE SE  
OLYMPIA, WA 98506



79TH AVENUE SANITARY SEWER EXTENSION EXHIBIT "A"  
 LATECOMER AGREEMENT  
 05/25/2004

LCA ID	Tax Parcel Number	Owners Name	Mailing Address	Frontage (Ft)	Area (ac)	Frontage Assessment	Acreage Assessment	Total Assessment
1	12712320100	City of Tumwater Septic System		90	0.89	\$ 1,191.99	\$ 383.58	\$ 1,575.57
2	12712310100	City of Tumwater Septic System		325	8.92	\$ 4,304.40	\$ 3,838.74	\$ 8,143.14
3	12712320300	Grizzly Ridge Corp.	34 Camino, Sante Fe, NM	267	9.71	\$ 3,536.23	\$ 4,179.04	\$ 7,715.27
4	12712340200	Gemini Corporation	1868 State St NE	625	20.70	\$ 8,277.70	\$ 8,908.97	\$ 17,186.67 PAID
			<b>Totals:</b>	<b>1,307</b>	<b>40.22</b>	<b>\$ 17,310.33</b>	<b>\$ 17,310.33</b>	<b>\$ 34,620.66</b>
<b>CONSTRUCTION COST BREAKDOWN</b>								
		Sewer Construction	\$ 9,166.67					
		Sales Tax	\$ 733.33					
		Road Reconstruction	\$ 11,880.00					
		Surv./Eng.	\$ 5,080.66					
		City Fees	\$ 7,760.00					
		Sub-total	\$ 34,620.66					
		<b>Total front footage</b>	<b>1,307</b>					
		<b>Total acreage</b>	<b>40.22</b>					
		<b>50% Front foot assessment</b>	<b>\$ 13.24 per foot</b>					
		<b>50% Acreage assessment</b>	<b>\$ 430.39 per acre</b>					



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Page: 6 of 7

10/11/2004 01:27P

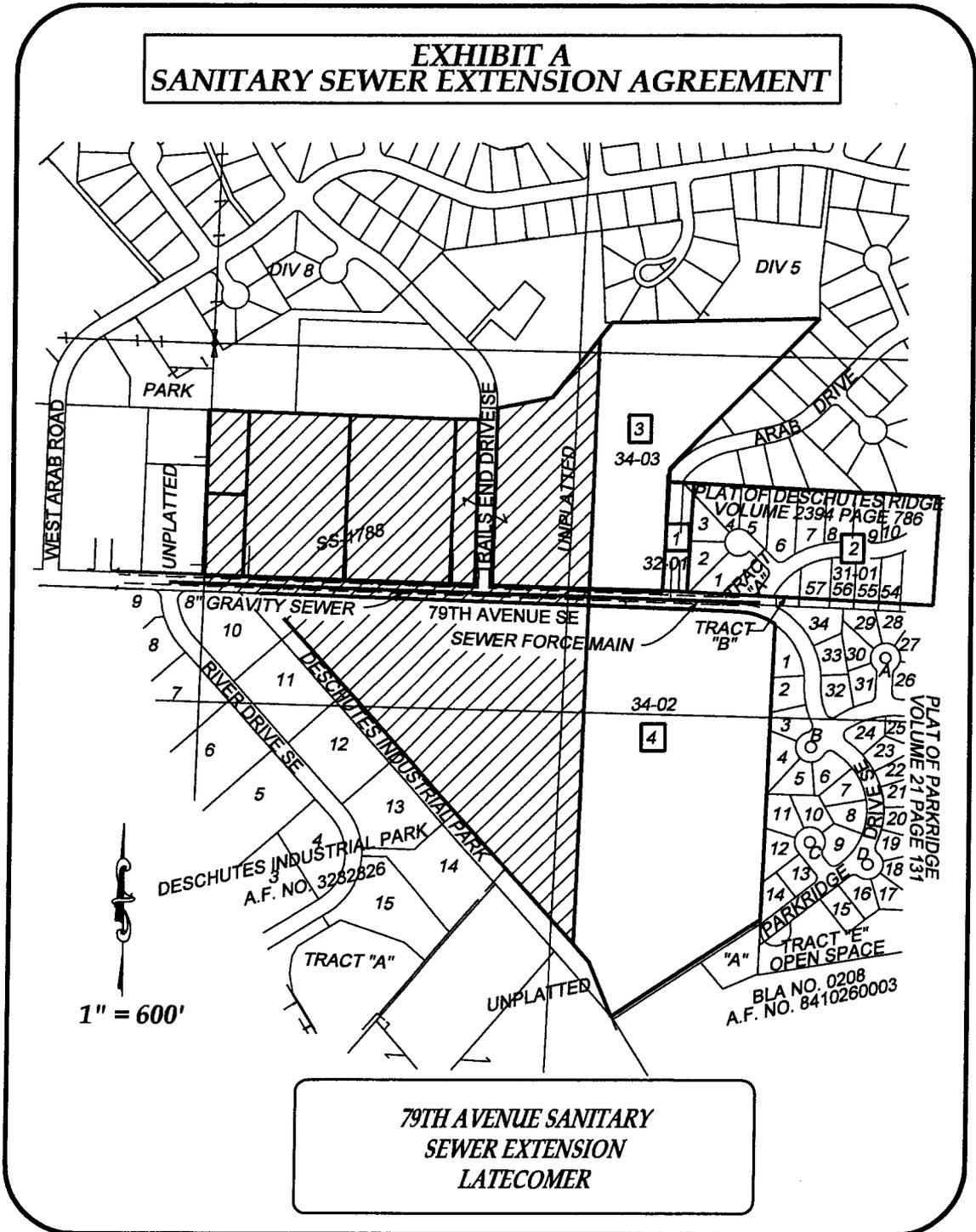
OWENS DAVIES

AGR

\$25.00

Thurston Co. Wa.

### EXHIBIT A SANITARY SEWER EXTENSION AGREEMENT



**79TH AVENUE SANITARY  
SEWER EXTENSION  
LATECOMER**



200509190754 13 PGS  
09-19-2005 11:53am \$44.00  
PIERCE COUNTY, WASHINGTON

**PIERCE COUNTY PUBLIC WORKS & UTILITIES  
ENVIRONMENTAL SERVICES  
9850 64TH ST W  
UNIVERSITY PLACE, WA 98467-1078**

**Document Title**

Agreement Between Pierce County and SBI Developing, L.L.C. for Installation of a Public Sanitary Sewer System Known as 22<sup>nd</sup> Avenue East Interceptor (aka Ridge at Southwood Division 1 Phase 1 Off-Site Public Sanitary Sewer Improvements)

**Grantor(s)**

SBI Developing, L.L.C.

\_\_\_\_\_ Additional Names on Page \_\_\_\_\_ of Document

**Grantee(s)**

Pierce County

\_\_\_\_\_ Additional Names on Page \_\_\_\_\_ of Document

**Legal Description**

Complete Legal Descriptions on Page 8 of Document

**Auditor's Reference Number(s)**

**Assessor's Property Tax Parcel/Account Number(s)**

See list on page 12 of document

**The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.**

**I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.**

\_\_\_\_\_  
**Signature of Requesting Party (Required for non-standard recordings only)**

Gpcovst.doc rev 4/02

For reference only, not for re-sale.

**AGREEMENT BETWEEN PIERCE COUNTY  
AND SBI DEVELOPING, L.L.C.** 05-52095

**FOR INSTALLATION OF A PUBLIC SANITARY SEWER SYSTEM KNOWN AS  
22<sup>nd</sup> AVENUE EAST INTERCEPTOR (A.K.A., RIDGE AT SOUTHWOOD DIVISION 1  
PHASE 1 OFF-SITE PUBLIC SANITARY SEWER IMPROVEMENTS)**

THIS AGREEMENT (herein known as "Agreement") is made and entered into this day by and between **PIERCE COUNTY**, a municipal subdivision of the State of Washington, herein known as "County", and **SBI Developing, L.L.C.**, a limited liability company, herein known as "Applicant"

**WITNESSETH**

WHEREAS, County operates a sanitary sewer utility that maintains and operates a public sanitary sewer system that collects, conveys, treats and disposes of wastewater and services portions of both incorporated and unincorporated Pierce County; and

WHEREAS, Applicant owns, or legally represents, certain real property in Pierce County, Washington, that was not served by the County's sewer system and is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (herein known as the "Property"); and

WHEREAS, Applicant requested that the Property be served by the County's sanitary sewer system and submitted plans to the County to connect to public sanitary sewer facilities adjacent to or near the Property; and

WHEREAS, County has approved and has on file the plans, specifications and estimated costs for construction of the public sanitary sewer facilities (herein known as the "Improvements") connecting the Property to the County's sewer system; and

WHEREAS, County determined that, in addition to the Property, there are other properties located in the vicinity of the Improvements which could be provided sewer service at some time in the future due to the installation of the Improvements and those other properties (herein known as the "Tributary Properties") are within a County approved sewerage sub-basin (herein known as the "Tributary Service Area") which includes the Property and is defined in Exhibit "B", attached hereto and incorporated by this reference; and

WHEREAS, Applicant will construct the Improvements in accordance with the approved plans and specifications; and

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WHEREAS, in exchange for the construction and dedication of the Improvements to the County, the County is willing to reimburse the Applicant for certain costs associated with construction of the Improvements by reimbursing a portion of the Connection Charges collected from the Tributary Properties as pro rata share costs of the installation of the Improvements, and

WHEREAS, County has the authority pursuant to the Pierce County Charter to enter into this Agreement to reimburse the Applicant for a portion of the cost of constructing the Improvements;

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND COVENANTS DESCRIBED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:**

1. Purpose. The purpose of this Agreement is to provide the legal framework and establish the procedures for reimbursing the Applicant some portion of the cost of constructing the Improvements to serve the Tributary Service Area, including the Property, from a portion of the connection charges received within the following fifteen (15) years from the properties within the Tributary Service Area that connect to the Improvements or sewers that are tributary to the Improvements.

2. Construction of Improvements By Applicant. Applicant will construct at its own expense, all the Improvements as shown on the sanitary sewer plans approved by the Wastewater Utility Manager on August 19, 2005. All construction will be in accordance with the approved sanitary sewer plans and all other applicable County, State, and Federal ordinances, statutes, or regulations. Applicant will construct the Improvements and upon final acceptance of the Improvements by the County, transfer the Improvements to the County free and clear of all liens and debts, for inclusion into the sewer system as a public facility, including any right, title and interest in any property upon which the Improvements are located.

3. Applicant's Connection Charges and Other Fees. In consideration of County's permission to allow Applicant to connect to existing County sewer facilities, Applicant agrees to pay in full all applicable estimated connection charges due the County prior to approval of the sewer plans. The estimated connection charge shall be calculated in accordance with the Pierce County Administrative Code Chapter 13.04 (or that section of the Pierce County Code governing the calculation of connection charges). The estimated Applicant's Area Charge for the Property shall be \$132,456.60.

The Applicant acknowledges that the County currently does not have final construction cost for a portion of the existing County sewer to which connection is proposed. In addition, the Applicant acknowledges that the estimated Applicant's Area Charge and Administrative Fee is subject to change. Should the final Applicant's Area Charge and Administrative Fee be greater than the estimated amount, the Applicant agrees to pay the County the difference within 15 days of receipt of notification from the County. Should the final Applicant's Area Charge and Administrative Fee be

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less than the estimated amount, the difference shall not be refunded to the Applicant by the County. In addition to the connection charge, the Applicant shall pay all other fees required by law, including but not limited to plan review fees, inspection fees, contract administration fees, side sewer stub charges, treatment plant capacity charges, and other administrative fees.

4. Eligible Construction Costs. The County and Applicant agree that the estimated Total Eligible Construction Cost for the Improvements to be constructed is \$976,851.21. Within 15 days of completion of construction of the Improvements and acceptance by the County, Applicant shall provide the complete and itemized copies of all invoices for costs related to construction of the Improvements.

The cost information provided by Applicant shall be reviewed by the County to determine the actual Total Eligible Construction Cost. Certification of the costs and authentication of the copies shall be made by the party providing the construction service and the Applicant. Costs not evidenced by an invoice shall not be included in the Total Eligible Construction Cost. Any costs not previously identified in the approved cost estimate submitted with the sewer plans and specifications shall not be included in the Total Eligible Construction Cost unless written authorization is received from the County. Construction costs which exceed the approved Engineer's Construction Cost Estimate shall not be included in the Total Eligible Construction Cost unless written authorization is received from the County.

5. Average Dry Weather Flow. The County and Applicant agree that the Average Dry Weather Flow (ADWF) that is anticipated to be generated by the Tributary Properties shall be 244,640 gallons per day, or 1,112 Residential Equivalents (R.E.'s). The County and Applicant further agree that the ADWF anticipated to be generated by the Property itself shall be 19,800 gallons per day, or 90 R.E.'s. Therefore, the total ADWF that is anticipated to be generated by all the properties with the Tributary Service Area shall be 264,440 gallons per day, or 1,202 R.E.'s.

6. Pro Rata Share. As the estimated Total Eligible Construction Cost to construct the Improvements is \$976,851.21, as stated in Section 4, and the total ADWF that is anticipated to be generated by all the properties with the Tributary Service Area is 264,440 gallons per day, or 1,202 R.E.'s, as stated in Section 5, the estimated Pro Rata Share per R.E. shall be \$812.69/ R.E.

7. Total Reimbursable Construction Costs. As the estimated Pro Rata Share is \$812.69/ R.E., as stated in Section 6, and the total ADWF that is anticipated to be generated by the Tributary Properties is 1,112 R.E.'s, the estimated Total Reimbursable Construction Cost shall be \$903,711.28.

8. County Agrees to Reimburse. The County agrees to reimburse the Applicant for the Total Reimbursable Construction Costs from a portion of the connection charges paid by the Tributary Properties that subsequently connect to the Improvements or sewers that are tributary to the Improvements until the Total Reimbursable Construction Cost has been paid in full or until the term of the Agreement expires. Except that all connection charges collected for properties

within the Tributary Service Area of this agreement shall first be subject to requirements from previously executed agreements.

Reimbursement payments made from the eligible portion of the connection charges collected from the Tributary Properties shall be made to the Applicant within sixty (60) days following collection of the connection charge by the County.

No interest shall be paid on any unpaid balances related to any amount in this Agreement for the term of the Agreement.

9. Tributary Service Area. The County, pursuant to applicable Administrative Code provisions, will collect connection charges and other applicable fees from property owners within the Tributary Service Area who subsequently connect their properties to the Improvement after its conveyance to the County (herein known as the "Tributary Properties"). Those charges and fees shall include, but not be limited to Area Charges, Front Footage Charges, Side Sewer Stub Charges, Treatment Plant Capacity Charges, plan review fees, inspection fees, and contract administration fees. Only portions of the Area Charges calculated pursuant to section 13.04.100 and collected by the County from the Tributary Properties shall be used to reimburse the Owner. The portion eligible for reimbursement shall be that portion of the Area Charge related to the Improvements (herein known as the "Pro Rata Share"). No other charges or fees collected from the Tributary Properties shall be utilized to reimburse the Owner.

10. Term of Agreement. This Agreement and all obligations contained herein, shall terminate upon final payment of the Total Reimbursable Construction Cost to the Applicant pursuant to this Agreement, or at the end of fifteen (15) years from the effective date of this Agreement, whichever occurs first. The effective date of this agreement shall be the date the agreement is fully executed by the Applicant and Pierce County as evidenced on the signature page of the agreement.

11. Termination of Agreement Due to Expired Sanitary Sewer Plans. Upon execution of this Agreement, the Applicant must proceed with construction of the Improvements prior to the expiration of his/her approved sanitary sewer plans. Unless extended by mutual agreement between the County and the Applicant, should the Applicant's approved sanitary sewer plans expire prior to the initiation of construction of the Improvements this agreement shall be null and void.

12. Applicant's Warranty of Improvements. Applicant agrees and expressly warrants to the County that the Improvement will be installed pursuant to the approved design plans at the Applicant's expense, will function in a satisfactory manner and be in compliance with recognized engineering and construction standards. Applicant agrees to indemnify the County against any losses caused by faulty materials and/or poor workmanship incorporated in or relating to the improvements. Such warranty and indemnification shall be in effect for twelve (12) months commencing on the date of the County's acceptance of the Improvements as constructed. The

County may require that some portions of the Improvements, such as protective coatings, be warranted for terms longer than the standard twelve months. Any maintenance bond requirements shall be accordance with then current County ordinances and regulations. Applicant will assign to County all rights Applicant possesses, as against the contractor, subcontractors or any other person, firm, or corporation, contractual or otherwise, whether based on an express or implied warranty to recover damages relating to the Improvements.

13. Limitation of Assignment. This Agreement shall not be assignable by Applicant without the prior written approval of Pierce County.

14. Notice. Applicant shall be responsible for providing the County with its current address at all times during the term of this Agreement. All payments under this agreement shall be mailed to the Applicant using the most current address on file with the Pierce County Public Works and Utilities Department. Any change of address notice submitted by the Applicant shall be sent by means of Certified Mail, return receipt request, and shall be addressed as follows:

APPLICANT(S)  
SBI Developing, L.L.C.  
c/o Gary J. Racca, Managing Member  
12815 Canyon Road East, Suite M  
Puyallup, WA 98373

PIERCE COUNTY  
Pierce County Public Works and Utilities  
9850 64<sup>th</sup> Street West  
University Place, Washington, 98467-1078

15. No Waiver of Permits. Nothing in this Agreement shall be construed to waive any permitting or approval process otherwise required by any Federal, State or County agency in conjunction with development on the Property.

16. Indemnification. Applicant agrees to save harmless and indemnify the County, its appointed and elected officials and employees from and against all claims of loss and expense, including, but not limited to, damage to wastewater facilities, economic loss, environmental remediation, or claims by third parties for personal injury, death, or property damages arising from performance of the Applicant's obligations under this agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Applicant and the County with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, with respect to such subject matter. Any alteration or amendment or modification of this agreement shall be valid only if set forth in writing and signed by both parties hereto.

For reference only, not for re-sale.



Executed this 9<sup>th</sup> day of September, 2005.

**PIERCE COUNTY**

**APPLICANT(S)**

M. Peter Phibbs 08/29/05  
Deputy Prosecuting Attorney Date  
(as to form only)

SBI DEVELOPING, L.L.C.  
By: [Signature] 8/26/05  
Gary J. Racea Date

Its: Managing Partner

P. Kenney 9-2  
Budget and Finance Date

Address and Phone Number:

12815 Canyon Road East, Suite M  
Puyallup, WA 98373

Approved:

Tax Identification Number:

[Signature] 8/29/05  
Department Director Date  
(less than \$250,000)

#91-1733646

[Signature] 9/9/05  
County Executive Date  
(if \$250,000 or more)

SBI - 22nd Ave E RA.doc  
8/24/05

For reference only, not for re-sale.

**EXHIBIT "A"  
LEGAL DESCRIPTION**

**RIDGE AT SOUTHWOOD  
DIVISION I, PHASE I**

THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 18 NORTH, RANGE 3 EAST, W.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 3; THENCE S 1° 16' 58" W FOR 494.26' TO THE SOUTH LINE OF NORTH 15 ACRES OF NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3; THENCE N 88° 45' 27" W ALONG SAID SOUTH LINE FOR 498.43 FEET; THENCE N 1° 14' 35" E FOR 151.75 FEET; THENCE N 88° 41' 37" W FOR 33.79 FEET; THENCE N 1° 33' 41" E FOR 100.00 FEET; THENCE N 88° 41' 37" W FOR 390.00 FEET; THENCE N 1° 33' 27" E FOR 114.73 FEET; THENCE N 88° 26' 19" W FOR 149.99 FEET; THENCE N 1° 33' 41" E FOR 460.56 FEET; THENCE S 88° 45' 27" E FOR 8.71 FEET; THENCE N 1° 14' 33" E FOR 160.00 FEET TO THE NORTH LINE OF THE SOUTH 15 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3; THENCE S 88° 45' 27" E ALONG SAID NORTH LINE FOR 1065.32 FEET TO THE EAST LINE OF SAID SECTION 3; THENCE S 1° 50' 50" W ALONG SAID EAST LINE FOR 494.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THERE FROM THE EASTERLY 35.25 FEET

IN PIERCE COUNTY, WASHINGTON

For reference only, not for re-sale.

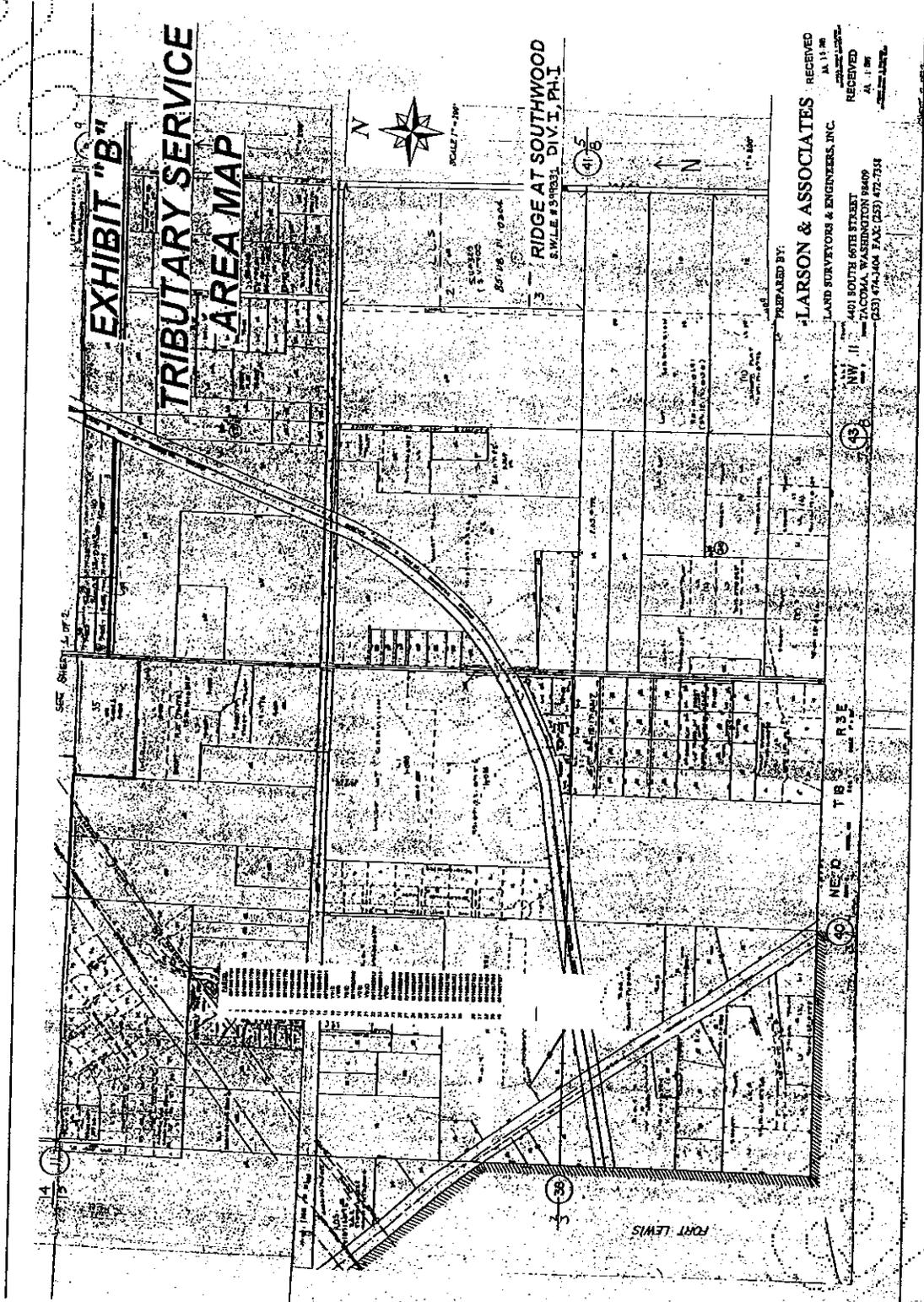
**EXHIBIT "B"**  
**TRIBUTARY SERVICE AREA**

See attached Tributary Service Area Map.

For reference only, not for re-sale.

Unofficial Document

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PREPARED BY:  
**LARSON & ASSOCIATES** RECEIVED  
 LAND SURVEYORS & ENGINEERS, INC. IN 11 88  
 401 SOUTH 66TH STREET  
 TACOMA, WASHINGTON 98409  
 (253) 474-3464 FAX: (253) 472-7354

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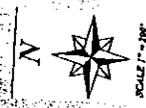
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NW 11

NE 20 TB R 3E

FORT LEWIS

RIDGE AT SOUTHWOOD  
 S.W. 1/4 S. 35 S. 10 W. DIV. I, PH. I

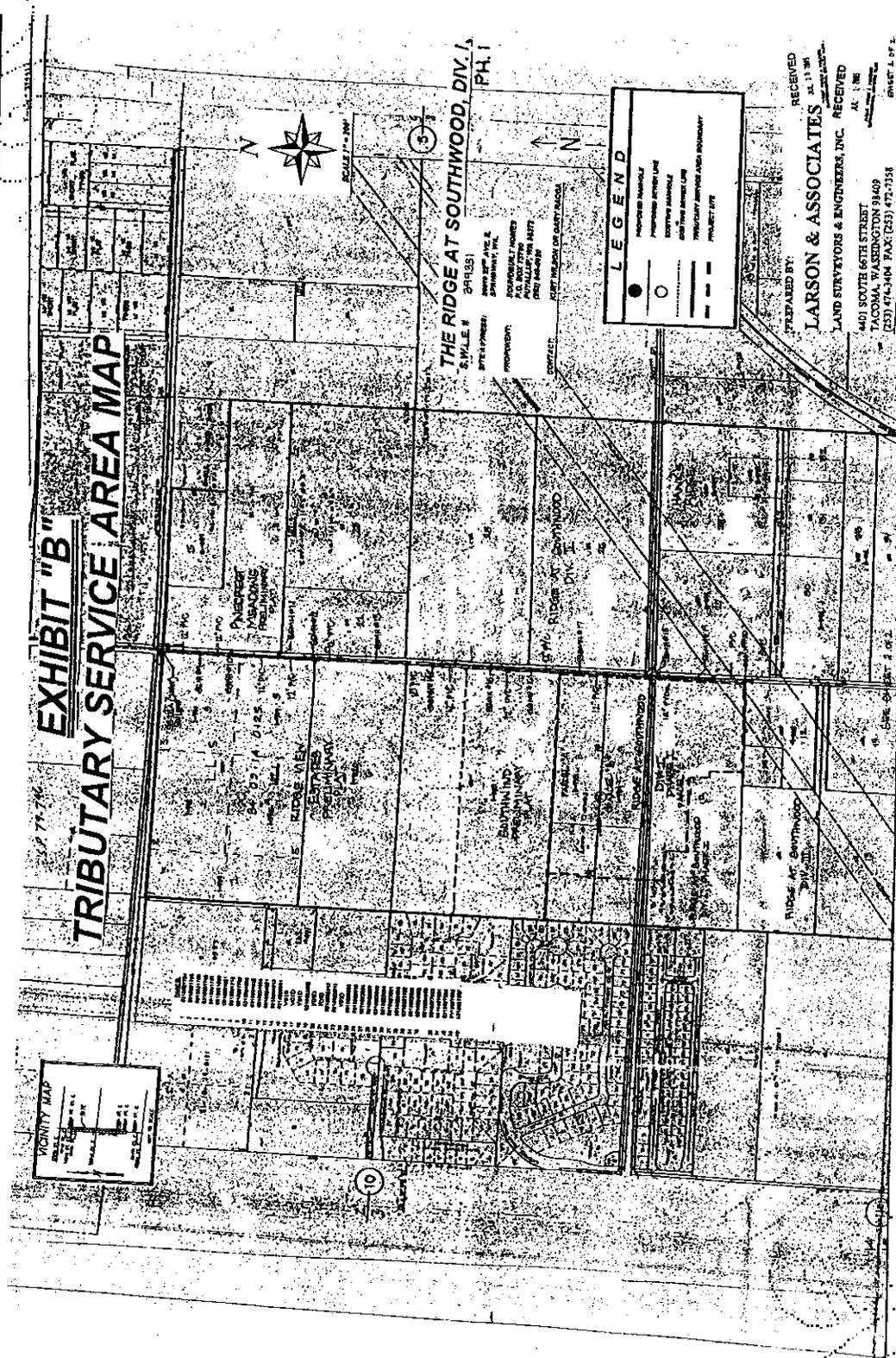


SCALE 1" = 200'

**EXHIBIT "B"**  
**TRIBUTARY SERVICE**  
**AREA MAP**

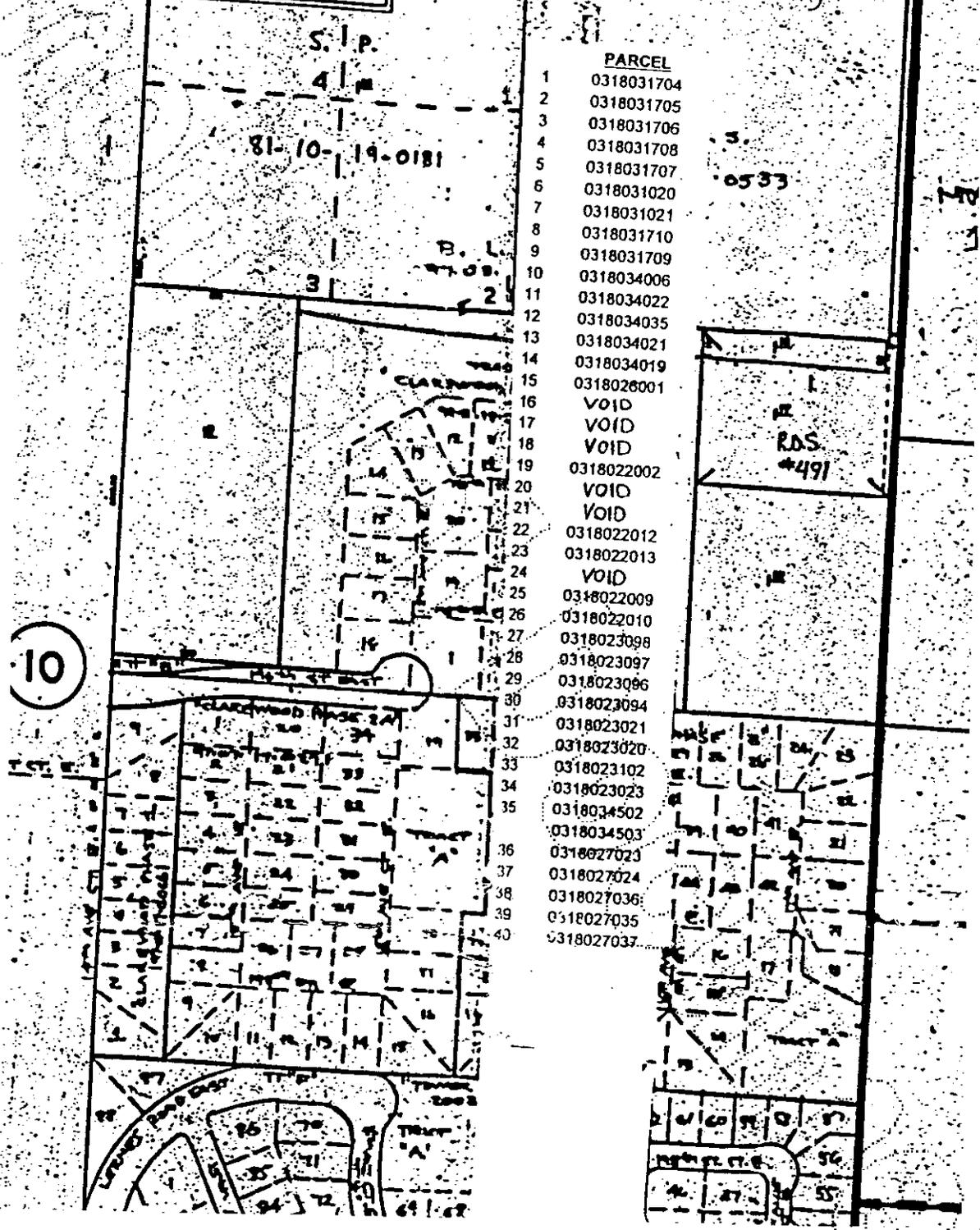
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# EXHIBIT "B" TRIBUTARY SERVICE AREA MAP



208th St. E. 200th St. E.  
NOT TO SCALE

# EXHIBIT "B" (Cont'd)



PARCEL	Parcel ID
1	0318031704
2	0318031705
3	0318031706
4	0318031708
5	0318031707
6	0318031020
7	0318031021
8	0318031710
9	0318031709
10	0318034006
11	0318034022
12	0318034035
13	0318034021
14	0318034019
15	0318028001
16	VOID
17	VOID
18	VOID
19	0318022002
20	VOID
21	VOID
22	0318022012
23	0318022013
24	VOID
25	0318022009
26	0318022010
27	0318023098
28	0318023097
29	0318023096
30	0318023094
31	0318023021
32	0318023020
33	0318023102
34	0318023023
35	0318034502
36	0318034503
37	0318027023
38	0318027024
39	0318027036
40	0318027035
	0318027037

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VOID