

CITY OF BUCKLEY, WASHINGTON

RESOLUTION NO. 23-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON APPROVING A LATECOMERS AGREEMENT BETWEEN THE CITY AND MARVIN R AND SANDRA K SUNDSTROM FOR PARTIAL REIMBURSEMENT FOR THE COST OF CONSTRUCTING A REQUIRED PUBLIC UTILITY IMPROVEMENT.

WHEREAS, the Buckley Municipal Code and the State Environmental Policy Act may require private development to make infrastructure improvements; and

WHEREAS, Chapter 35.91 RCW provides that, at the owner's request, a municipality 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. The owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality; and

WHEREAS, BMC 14.14 describes the process for a property owner or developer to request the execution of a latecomer agreement with the City Council for water, sewer and/or stormwater facilities to provide for the partial reimbursement of the cost of constructing the water, sewer and/or stormwater natural gas facilities; and

WHEREAS, Marvin R and Sandra K Sundstrom completed construction and extension of sewer utilities along Sheets Road from Ryan Road to the Sundstrom Property located at 877 Sheets Road Buckley, WA 98321 at the applicant's expense; and

WHEREAS, as a result of installing this required improvement Marvin R and Sandra K Sundstrom have submitted a proposed latecomers agreement, including a description of the methodology and the pro rata share for each property to the City seeking to be partially reimbursed for the cost of constructing the improvement; and

WHEREAS, the City accepted the improvement as complete on December 7, 2021; and

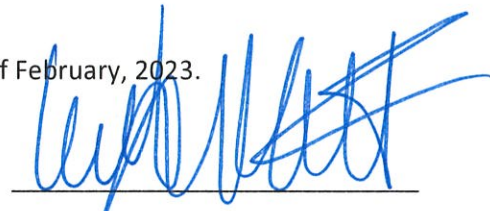
WHEREAS, the City Engineer reviewed and approved the method of assessment and cost of construction on December 7, 2021; and

WHEREAS, the City Engineer sent appropriate notice to all affected property owners via certified mail on January 4, 2023; and

WHEREAS, the City Council provided notice of a public hearing on January 11, 2023 and on January 18, 2023, and conducted a public hearing on the proposed latecomer's agreement on January 24, 2023; and continued the public hearing to February 14, 2023; and

NOW THEREFORE BE IT RESOLVED the City Council of the City of Buckley hereby approves the Sundstrom Latecomers Agreement with Exhibits attached hereto and incorporated by this reference as if set forth in full.

Introduced, passed and approved this 14th day of February, 2023.


Beau Burkett, Mayor

ATTEST:



Treva Percival, City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

POSTED: February 15, 2023

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02/27/2023 09:24:39 AM \$212.50
AUDITOR, Pierce County, WASHINGTON

Return Address:
City of Buckley
City Clerk
P.O. Box 1960
Buckley, WA 98321

Above this line reserved for recording information

LATECOMER'S AGREEMENT FOR SANITARY SEWER

Reference # (if applicable):	N/A
Additional page:	
Grantor:	City of Buckley
Grantee:	Marvin R. & Sandra K. Sundstrom
Additional on page:	
Legal Description / STR:	Section 11, Township 19, Range 06, Quarter 24
Assessor's Tax Parcel ID#:	0619116001

This Latecomer's Agreement for Sanitary Sewer (the "Agreement") is made and entered into this 14th day of February 2023, by and between the City of Buckley, a municipal corporation of Pierce County, Washington ("City") and Marvin R. & Sandra K. Sundstrom, residents of the City, whose address is 877 Sheets Road, Buckley, WA 98321 ("Developer").

WHEREAS, pursuant to **Chapter 14.14** of the Buckley City Code, the City has by Resolution No. 23-01 adopted by the City Council of the City on the 14th day of February 2023, approved the execution of this Agreement with the Developer for the sanitary sewer facilities (the "Facilities") described in this Agreement; and

WHEREAS, the Developer has offered and the City has agreed to accept the bill of sale in the form (the "Bill of Sale") attached as Exhibit A hereto with respect to the Facilities as part of the utility systems of the City.

NOW THEREFORE, IN CONSIDERATION OF THE CONDITIONS AND COVENANTS HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. DEVELOPER

As of the date hereof, the Developer is the record owner of real property legally described on Exhibit B attached hereto. The real property described is also known as residential property 877 Sheets Road.

II. FACILITIES

The Facilities which have been constructed by the Developer are as described in the attached Exhibit A as originally permitted on February 3, 2021, the originals of which are on file at the office of the City Engineer. The Facilities have been constructed in accordance with the ordinances and requirements of the City governing the construction specifications for Facilities of such type, and have been approved by the City Engineer.

III. BENEFIT BOUNDARY

The properties benefited by the Facilities constructed by the Developer are shown on **Exhibits C and D** attached hereto. Any owner of real property legally described within the benefit boundary as shown on the attached Exhibits C and D (the "Benefit Boundary") shall pay as a condition for connecting to the Facilities an amount as identified in Section V. All property within the Benefit Boundary shall be subject to the connection fee as provided in this Agreement as a condition of issuance of the connection permit by the City. Parcel 0619116001 is excluded from the benefit boundary; is exempt from future latecomer fees; and is included only for calculating the pro rata share applicable to the benefit boundary.

IV. LATECOMER FEE/TERM

For a period of **twenty (20)** years from the date that the Bill of Sale is recorded, any owner (latecomer) of real estate located within the Benefit Boundary, and which owner has not otherwise fully contributed their pro rata share to the original cost of the Facility, shall pay to the City the amounts shown in Exhibit D attached hereto (the "Latecomer Fee"). The Latecomer Fee represents the fair and equitable pro rata share of the cost of construction of the Facilities payable by properties benefited by the Facilities. Payment of the Latecomer Fee is a condition of issuance of the connection permit by the City.

The twenty year term of this Agreement may be extended by written request of the Developer 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. RCW 35.91.020. Upon the extension of the reimbursement period pursuant, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under this Agreement shall be notified by the Developer of the extension.

The City shall reimburse the Developer within sixty (60) days of the date the City receives payment from an owner requesting connection to the Facilities.

V. AMOUNT OF REIMBURSEMENT; NOTIFICATION TO PROPERTY OWNERS

The Developer agrees that the amounts which the Developer receives from the property owners pursuant to Section III herein represents a fair pro rata share reimbursement for the Developer's construction of the Facilities. The specific amount of reimbursement will be the number of residential customer equivalents (RCE's) to be connected to the system under that specific permit multiplied by \$5,541. The estimated number of RCE's per parcel, along with the estimated

assessment, is shown in **Exhibit D** attached hereto. The estimated amount of reimbursement for sanitary sewer facilities is \$66,492.

VI. EFFECT OF AGREEMENT

The provisions of this Agreement shall not be effective as to any owner of real property not a party hereto unless this Agreement has been recorded in the office of the County in which the real property is located prior to the time such owner receives a permit to tap into or connect to the Facilities.

Nothing in this Agreement is intended to create a private right of action for damages against the City of Buckley for failing to comply with the requirements of this Agreement, RCW 35.91.020 or Chapter 14.14 BMC. Buckley, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of Buckley to comply with this Agreement, RCW 35.91.020 or Chapter 14.14 BMC does not relieve Buckley of any future requirement to comply with this Agreement, RCW 35.91.020 or Chapter 14.14 BMC. The Developer agrees to pay all fees for recording this Agreement with the County Auditor. The Developer shall provide the City with confirmation of recording,

The entire responsibility for notices, recordation and completion of this Agreement is upon the Developer.

VII. OWNERSHIP OF FACILITIES

By acceptance of the Bill of Sale, the City acknowledges and agrees that the Facilities have been accepted by the City as satisfactory and the City agrees that the Facilities have or will become a part of the municipal system of the City. All maintenance and operation costs of the Facilities shall be paid by the City.

VIII. UNAUTHORIZED CONNECTION

As authorized by RCW 35.91.040, whenever any tap or connection is made into the Facilities without such payment having first been made, the Buckley City Council may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile, or pipe located in the Facility right-of-way and dispose of unauthorized material so removed without any liability whatsoever.

IX. CURRENT ADDRESS & TELEPHONE NUMBER

Every two years from the date the latecomer agreement is executed, the Developer entitled to reimbursement under this section shall provide the City 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 sixty (60) days of the specified time, then the City may collect and reimbursement funds owed to the Developer under the latecomer agreement. Such funds shall be deposited into the capital improvement fund of the City.

X. COVENANT RUNNING WITH THE LAND

This Agreement shall be a covenant running with the land and be binding on the Developer, its successors, heirs and assigns and shall be binding on the legal owners of all properties within the Benefit Boundary and their successors, heirs and assigns.

XI. HOLD HARMLESS

The Developer will defend, indemnify, and save the City and the City's officials and agents harmless from all claims and costs of defense arising out of this Agreement as a result of Developer's actions, misconduct or breach of contract, including but not limited to attorney's fees, expert witness fees, and the cost of the services of engineering and other personnel whose time is reasonably devoted to the preparation and attendance of depositions, hearings, arbitration proceedings, settlement conferences and trials growing out of the demands and/or actions of property owners incurred in the performance or completion of this Agreement, except for injuries and damages caused by the sole negligence of the City

XII. CONSTITUTIONALITY OR INVALIDITY

If any section, subsection, clause or phrase of this Agreement is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Agreement, as it being hereby expressly declared that this Agreement and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, adopted and approved and ratified irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid or unconstitutional.

**CITY OF BUCKLEY
SIGNATURE PAGE TO LATECOMERS AGREEMENT**

BY CITY:

CITY OF BUCKLEY

By: 

Name: William Burkett

Its: Mayor

STATE OF WASHINGTON)

) ss.

COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that William Burkett 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 Mayor of The City of Buckley, to be the free and voluntary act of such party for the uses and purposes therein mentioned in the instrument.

Dated: 2/14/2023

Jane Percival

Notary Public in and for the State of Washington,
residing at Buckley, WA
My commission expires: 9/15/2026



**DEVELOPER
SIGNATURE PAGE TO LATECOMERS AGREEMENT**

BY DEVELOPER:

By: Marvin R. Sundstrom & Sandra K. Sundstrom

By: *Marvin R. Sundstrom*
Marvin R. Sundstrom

By: *Sandra K. Sundstrom*
Sandra K. Sundstrom

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Marvin & Sandra Sundstrom 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 Grantee of Parcel 0619116001, to be the free and voluntary act of such party for the uses and purposes therein mentioned in the instrument.

Dated: Feb. 23, 2023 Jessica Clark



Notary Public in and for the State of Washington,
residing at Buckley, WA 98321
My commission expires: May 15, 2023

SEWER SYSTEM BILL OF SALE

My commission expires: May 15, 2023

EXHIBIT B

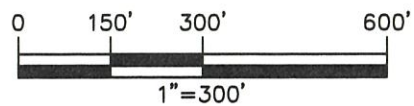
**PARCEL 061611-6001
LEGAL DESCRIPTION**

Section 11 Township 19 Range 06 Quarter 24: LOT 2 OF SHORT PLAT 2020-05-29-5001.

**EXHIBIT C
BENEFIT BOUNDARY MAP**



NOTE: CONNECTIONS AVAILABLE ON A
FIRST COME FIRST SERVED BASIS TO
MAXIMUM TOTAL OF 13 CONNECTIONS.



CITY OF BUCKLEY

SUNDSTROM LATECOMERS AGREEMENT

EXHIBIT C

EXHIBIT D

BENEFIT BOUNDARY TABLE

Cost Breakdown

City of Buckley Permits	\$ 550
Engineering (C.E.S. NW, Inc.)	\$ 8,684
Construction (Cannon Construction)	\$ 57,800
City of Buckley Engineering Fees	\$ 4,999
TOTAL	\$ 72,033

Properties within Benefit Boundary Area

Map No.	Parcel No.	Owner	Site Address	Mailing Address	Property (acres)	Services	Fee
1	061911-2030	Parkin Lauren & Zachary	1875 Ryan Road Buckley, WA 98321	1875 Ryan Road Buckley, WA 98321	4.72	2	\$ 11,082
2	061911-2014	Shannon Kevin K	XXX Sheets Road Buckley, WA 98321	2430 Kibler Ave Enumclaw, WA	4.67	2	\$ 11,082
3	061911-2046	Lawson Brenton J & Mallorie A	XXX Sheets Road Buckley, WA 98321	863 Sheets Road Buckley, WA 98321	8.74	1	\$ 5,541
4	061911-2045	Lawson Brenton J & Mallorie A	863 Sheets Road Buckley, WA 98321	863 Sheets Road Buckley, WA 98321	1.15	1	\$ 5,541
5	061911-6001	Sundstrom Marvin R & Sandra K	877 Sheets Road Buckley, WA 98321	877 Sheets Road Buckley, WA 98321	0.51	1	\$ 5,541
6	061911-1009	McCleary Patrick & Rebecca	XXX Sheets Road Buckley, WA 98321	23505 118th St Ct E Buckley, WA 98321	4.36	2	\$ 11,082
7	061911-1017	Pacific Sunset, LLC	XXX Sheets Road Buckley, WA 98321	c/o W R Johnson 10911 80th Place NE Kirkland, WA 98034	0.72	1	\$ 5,541
8	061911-1018	Pacific Sunset, LLC	622 Sheets Road Buckley, WA 98321	c/o W R Johnson 10911 80th Place NE Kirkland, WA 98034	1.09	1	\$ 5,541
9	061911-1019	Bender James F & Connie L	XXX Sheets Road Buckley, WA 98321	1915 Ryan Road Buckley, WA 98321	0.76	1	\$ 5,541
10	061911-1016	Bender James F & Connie L	1915 Ryan Road Buckley, WA 98321	1915 Ryan Road Buckley, WA 98321	1.40	1	\$ 5,541
	TOTAL				28.12	13	\$ 72,033

NOTE: CONNECTIONS AVAILABLE ON A FIRST COME FIRST SERVED BASIS TO MAXIMUM TOTAL OF 13 CONNECTIONS. INDIVIDUAL PROPERTIES MAY HAVE MULTIPLE SERVICES IN EXCESS OF THE NUMBER ESTIMATED IN THE TABLE.