

RESOLUTION NO. 17-03

CITY OF BUCKLEY, WASHINGTON

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON APPROVING A LATECOMER'S AGREEMENT BETWEEN THE CITY AND JULIE AND SHAUN SUTTER 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, Julie & Shaun Sutter recently completed construction and extension of sewer utilities along Ryan Rd. from Davis Street to the Sutter Property located at 2063 Ryan Rd, Buckley, WA 98321 at the applicant's expense; and

WHEREAS, as a result of installing this required improvement Julie & Shaun Sutter have submitted a proposed latecomer's 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 April 3, 2017; and

WHEREAS, the City engineer reviewed and approved the method of assessment and cost of construction on April 3, 2017; and

WHEREAS, Julie and Shaun Sutter sent appropriate notice to all affected property owners on April 5, 2017; and

WHEREAS, the City Council provided notice of a public hearing on April 12, 2017, and conducted a public hearing on the proposed latecomer's agreement on April 25, 2017; and

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

Introduced, passed and approved this 25th day of April, 2017.


Pat Johnson, Mayor

ATTEST:



Joanne Starr, City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

Posted: April 27, 2017

Above this line reserved for recording information

LATECOMER'S AGREEMENT FOR SANITARY SEWER

Reference # (if applicable):	N/A (unless previous recording)
Additional page:	
Grantor:	City of Buckley
Grantee:	Julie & Shaun Sutter
Additional on page:	
Legal Description / STR:	Section 11, Township 19, Range 06, Quarter 12
Assessor's Tax Parcel ID#:	0619111034

This Latecomer's Agreement for Sanitary Sewer (the "Agreement") is made and entered into this ____ day of _____, 2017, by and between the City of Buckley, a municipal corporation of Pierce County, Washington ("City") and Julie & Shaun Sutter, a resident of the City, whose address is 2063 Ryan Rd, Buckley, WA 98321 ("Developer").

WHEREAS, pursuant to **Chapter 14.14** of the Buckley City Code, the City has by Resolution No. 17-03 adopted by the City Council of the City on the ____ day of _____, 2017, 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 2023 Ryan Road.

II. FACILITIES

The Facilities which have been constructed by the Developer are as described in the attached **Exhibit A** as originally permitted on October 18, 2016, 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. Parcels 0619111034, 0619111027, and 0619111033 are each assigned one ERU per parcel in reserve for future connection subject to payment of City fees; are excluded from the benefit boundary; are exempt from future latecomer fees; and are included only for calculating the pro rata share applicable to the benefit boundary.

IV. LATECOMER FEE

For a period of **twenty (20)** years from the date that the Agreement and Bill of Sale are 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 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 \$6,035.09. 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 \$90,526.35.

Prior to recordation by the Developer as described in Section VI, the City shall mail to the property owners of the parcels listed in **Exhibits C and D** (as reflected in the records of the Pierce County Assessor's Office) notification of the allocation of costs to be levied against the properties which are payable prior to connection to the Facilities. The property owner shall have the right to a review of the costs with the Director of Public Works if a written request is received by the Director within twenty one (21) days from the date of mailing of the notice for the purpose of requesting an adjustment in the allocation of the charge to the property.

The review shall be conducted within fourteen (14) days of the City's receipt of the written request. If the Director of Public Works does find cause for adjustment in the allocation of the charge to the benefited property(s), such adjustment will be made and the Developer will be notified of the adjusted amount(s) prior to recordation. The Director's determination on review shall be final, and may only be appealed to the Superior Court of the County in which the property is located. The resulting adjusted Exhibits C and D shall govern reimbursement amounts to be received by the Developer. If the adjustment results in an increased

reimbursement amount to other parcels, the notification process in this Section V shall be repeated.

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.

If for any reason the City fails to obtain a Latecomer Fee before a property owner connects to the Facilities then the City is not liable for payment to the Developer.

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, but such recordation shall only be made after expiration of review period specified in Section V.

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

Whenever any connection is made into the Facilities which is not authorized by the City, the City shall have the absolute authority to remove or cause to be removed such unauthorized connections and all connecting lines or pipes, located in the right-of-way. The City shall incur no liability for any damage to any person or property resulting from removal of the unauthorized connection.

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.

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
SIGNATURE PAGE TO LATECOMERS AGREEMENT**

BY CITY:

CITY OF BUCKLEY

By: _____

Name: _____

Its: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

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 _____, to be the free and voluntary act of such party for the uses and purposes therein mentioned in the instrument.

Dated: _____

Notary Public in and for the State of Washington,
residing at _____
My commission expires: _____

EXHIBIT B

PARCEL 0619111034
LEGAL DESCRIPTION

Section 11 Township 19 Range 06 Quarter 12: N 120 FT OF THAT POR OF E 1/2 OF NW OF
NE LY SLY OF SLY LI OF RYAN CO RD EXC E 465 FT THEREOF EXC POR ACQ PER
QUIET TITLE P CO #270260 SEG F 8663

EXHIBIT C

BENEFIT BOUNDARY MAP

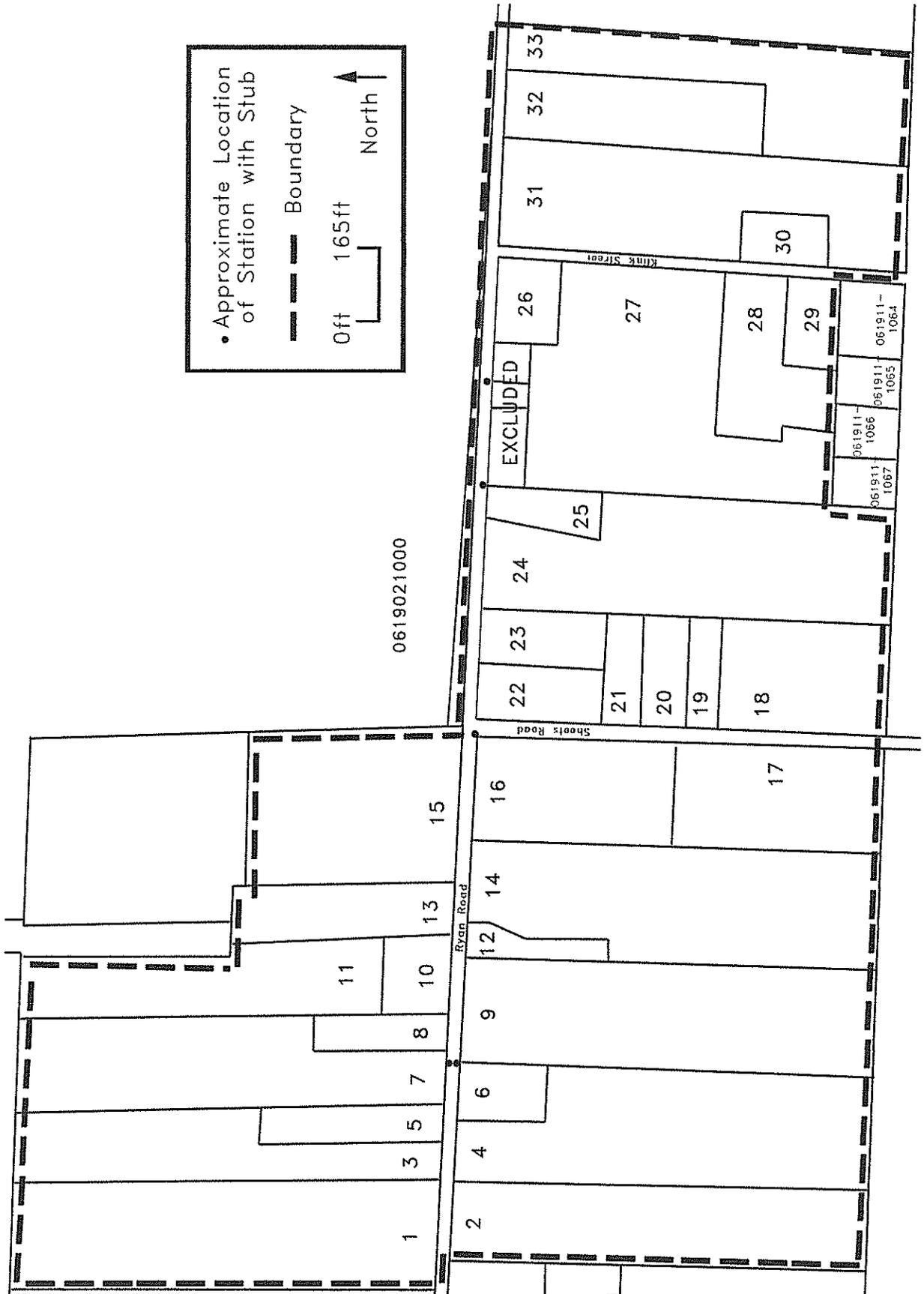


EXHIBIT D
BENEFIT BOUNDARY TABLE

Cost Breakdown

ROW/LDA permit	\$550.00
Contour Engineering for Plans	\$8,008.75
City of Buckley Engineering Fees	\$8,357.93
Cannon Construction for Installation	\$91,715.00
TOTAL	\$108,631.68

Station	Stub Direction	Stub Size	Parcel No(s).	Property size (acres)	Zoning	Potential No. of Grinder Pumps	Latecomers Fee (per grinder pump, 1/18 of total)
16+65	North	2-inch	061902-3018	7.62	R-8000	5	\$30,175.45
16+65	South	2-inch	061911-2006	0.95	R-8000	1	\$6,035.09
			061911-2052	9.14	R-8000	5	\$30,175.45
26+65	South	2-inch	061911-2030	4.72	R-8000	3	\$18,105.27
34+10	South	2-inch	061911-5001	0.92	R-8000	1	\$6,035.09
			061911-1034	0.63	R-8000	1	\$6,035.09
37+10	South	1.25-inch	061911-1027	0.21	R-8000	1	\$6,035.09
			061911-1033	0.31	R-8000	1	\$6,035.09
Total						18	\$108,631.68

Stations and Stubs

Estimated Reimbursement Amount: 15 hook-ups x \$6,035.09= \$90,526.35

Property Owner Contact Information

Map No.	Parcel No.	Address	Owner	Owner's Mailing Address	Property size (acres)
1	061902-3021	XXX Ryan Road	Fetter Properties LLC	Fetter Properties LLC, 8001 S West Terrace Dr, Cheney, WA 99004	10.41
2	061911-2029	1695 Ryan Road	Lanphear	Michael & Lorinda Lanphear, 1695 Ryan Road, Buckley, WA 98321	6.65
3	061902-3023	XXX Ryan Road	Fetter	Josh Fetter, 8001 S West Terrace Dr, Cheney, WA 99004	14.73
4	061911-2011	1707 Ryan Road	Wittman	Cynthia Wittman, 1707 Ryan Road, Buckley, WA 98321	8.62
5	061902-3022	1722 Ryan Rd	Fetter	Jahnna & Josh Fetter, 8001 S West Terrace Dr, Cheney, WA 99004	1.59
6	061911-2006	1725 Ryan Road	McCormick	Kevin & Pam McCormick, 1725 Ryan Road, Buckley, WA 98321	0.95

7	061902-3018	XXX Ryan Road	Fetter	Josh Fetter, 8001 S West Terrace Dr, Cheney, WA 99004	7.62
8	061902-3012	1766 Ryan Rd	Swanson	James & Shirley Swanson, PO Box 519, Buckley, WA 98321	1.12
9	061911-2052	1763 Ryan Road	Manoharan	Thiagarajan & Amy Manoharan, 1763 Ryan Road, Buckley, WA 98321	9.14
10	061902-3014	1788 Ryan Road	Frisby	Kevin Frisby & Rebecca Esser, PO Box 1578, Buckley, WA 98321	1.21
11	061902-3017	XXX Ryan Road	Frisby	Kevin Frisby & Rebecca Esser, PO Box 1578, Buckley, WA 98321	4.86
12	061911-2053	1801 - 1803 Ryan Rd	Smurro	William & Patricia Smurro, 2595 Madrona Point Ln, Steilacoom, WA 98388-1425	0.69
13	061902-3015	1822 Ryan Road	Ziemer	Ronald & Susan Ziemer, 9109 166th St E, Puyallup, WA 98375	2.7
14	061911-2054	1805 Ryan Rd	Holz	Colleen Holz, 1805 Ryan Road, Buckley, WA 98321	9.15
15	061902-3024	1848 Ryan Road	Garner	Brian & Cynthia Garner, 22902 Connells Prairie Rd, Buckley, WA 98321	7.18
16	061911-2030	1875 Ryan Road	Weishaar	Zachary Parkin & Lauren Weishaar, 1875 Ryan Road, Buckley, WA 98321	4.72
17	061911-2014	XXX Sheets Road	Shannon	Kevin Shannon, 2430 Kibler Ave, Enumclaw, WA 98022-2403	4.67
18	061911-1009	XXX Sheets Road	Roffff	Larry & Geri Rohlff, 2524 208th Ave E, Lake Tapps, WA 98391-9061	4.36
19	061911-1017	XXX Sheets Road	Pacific Sunset LLC	Pacific Sunset LLC C/O W R Johnson, 10911 80th Pl NE, Kirkland, WA 98034-3501	0.72
20	061911-1018	622 Sheets Road	Pacific Sunset LLC	Pacific Sunset LLC C/O W R Johnson, 10911 80th Pl NE, Kirkland, WA 98034-3501	1.09
21	061911-1019	XXX Sheets Road	Bender	James & Connie Bender, 1915 Ryan Road, Buckley, WA 98321	0.76
22	061911-1016	1915 Ryan Road	Bender	James & Connie Bender, 1915 Ryan Road, Buckley, WA 98321	1.40
23	061911-1015	1949 Ryan Road	Steele	Mickey Steele, JR, 1949 Ryan Road, Buckley, WA 98321	1.47
24	061911-5002	1959 Ryan Road	Hoff	Timothy & Heather Hoff, 1959 Ryan Road, Buckley, WA 98321	8.89
25	061911-5001	1993 Ryan Road	Taylor	Dale & Renee Taylor, 1993 Ryan Road, Buckley, WA 98321	0.92
26	061911-1046	2093 Ryan Road	Martin	Beulah Martin, 2093 Ryan Road, Buckley, WA 98321	1.47
27	061911-1057	647 Klink St	Shamley	Joshua & Melonie Shamley, 647 Klink St, Buckley, WA 98321	10.64
28	061911-1058	671 Klink St	Slis	Brant & Shannon Slis, 671 Klink St, Buckley, WA 98321	2.94
29	061911-1059	681 Klink St	Kralovic	James & Karen Kralovic, 681 Klink St, Buckley, WA 98321-9587	1.00
30	061911-1063	662 Klink St	Panton	Donald Panton, 662 Klink St, Buckley, WA 98321-9587	1.00
31	061911-1062	652 Klink St	Lovejoy	Jody & Chelsea Lovejoy, 652 Klink St, Buckley, WA 98321	8.79
32	061911-1037	2147 Ryan Road	Vaders	Ricky & Dixie Vaders, 2147 Ryan Road, Buckley, WA 98321	4.00
33	061911-1038	2187 Ryan Road	Vaders	Ricky & Dixie Vaders, 2147 Ryan Road, Buckley, WA 98321	5.84