

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	2/19/2019	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Department:	Public Works	
Contact Name/Phone:	Steve Banham / 255-5512	
Council Committee Review:		
<input type="checkbox"/> Community Development	<input type="checkbox"/> Public Safety	
<input type="checkbox"/> Finance	<input checked="" type="checkbox"/> Public Works	
<input type="checkbox"/> Parks	<input type="checkbox"/> Other: _____	
Attachments:		
Latecomer Agreement		
Name of Agenda Item:		
Latecomer Agreement N Prairie 7 Sanitary Sewer Extension		
Summary Statement:		
On February 4, City Council held a Public Hearing for comments on the latecomer's application for N Prairie 7 Sanitary Sewer Extension. After hearing comments, the Council authorized the preparation of the final Latecomer's Agreement (attached).		
Recommended Action:		
Approve Latecomer's Agreement for N Prairie 7 and authorize Mayor's signature on agreement.		

AFTER RECORDING RETURN TO:

CARMICHAEL CLARK, PS
ATTENTION: ROBERT A. CARMICHAEL
P. O. BOX 5226
BELLINGHAM, WASHINGTON 98227

DOCUMENT TITLE:

Latecomer Agreement

REFERENCE NO. OF RELATED DOCUMENT:

GRANTOR(S):

City of Lynden

GRANTEE(S):

North Prairie LLC

ABBREVIATED LEGAL DESCRIPTION:

Additional Legal Description on page ___ of document

ASSESSOR'S TAX/PARCEL NUMBER(S):

400315 301409

400315 361401

400315 370443

LATECOMER AGREEMENT

THIS LATECOMER AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 2019, between the CITY OF LYNDEN, a Washington municipal corporation ("City") and NORTH PRAIRIE LLC, a Washington limited liability company ("Developer").

RECITALS:

WHEREAS, the City is a municipal corporation under the laws of the State of Washington, and is empowered to furnish water, sewer, and stormwater utility services, and street improvements, among other things, to property owners within and without the City in the manner provided by law; and

WHEREAS, sewer facility improvements were required for the North Prairie Phase 7 Plat pursuant to the City's General Sewer Plan 2016 Update adopted by Resolution 959; and

WHEREAS, the Developer entered into an Agreement to Construct Improvements with the City for the construction and installation of off-site sewer facility improvements extending south in Northwood Road to the "South Kamm Sewer" dated March 28, 2018; and

WHEREAS, the Developer has completed the construction and installation of sewer facilities, ("Facilities") as required in accordance with the plans and specifications approved by the City to provide sewer service to the area of the thirty-four (34) parcels, all as depicted on Exhibit B attached hereto; and

WHEREAS, the Facilities are a benefit to real property within the City identified on Exhibit A as Latecomer Assessment Roll and shown on Exhibit B Latecomer Area Map; and

WHEREAS, the Latecomer Parcels, also hereby designated as the "Assessment Reimbursement Area," have not contributed to the cost of the Facilities extension and will be responsible for latecomer reimbursement pursuant to this Agreement unless otherwise agreed to by Developer; and

WHEREAS, the Developer is entitled to reimbursement from future developers and real property owners seeking connection to such Facilities for the cost of such Facilities in excess of

Developer's fair pro rata share therefor, which costs have been determined as set forth below;
and

WHEREAS, the total cost of the Facilities was six hundred and seven thousand, seven hundred and twenty-six dollars (\$607,726) (including construction administrative costs) and the reimbursable portion of the cost of the sewer facilities is four thousand five hundred ninety-four dollars and 59/100 dollars (\$4,594.59) per acre on each Latecomer Parcel; and

WHEREAS, the City will collect charges from the owner(s) of the Latecomer Parcels and such charges are the sole source of funds from which reimbursement to Developer can and will be made, as and when the same are collected; and

WHEREAS, the City is permitted to enter into a Reimbursement Agreement with Developer under the provisions of Chapter 35.91 RCW and LMC 13.28; and

WHEREAS, the parties desire to enter into a written agreement with reference to the foregoing matter; and

WHEREAS, the foregoing recitals are a material part of this Agreement,

NOW, THEREFORE,

IN CONSIDERATION OF THE FOLLOWING terms and conditions, the City and the Developer agree as follows:

1. **Completion of Facilities.** The installation of the Facilities has been completed by Developer. The City has inspected and approves of the Facilities. Title thereto will be transferred to the City without cost to the City, and the Facilities will be a part of the City sewer system.

2. **Records/Costs.** Developer has obtained and submitted to the City accurate and engineer certified records of the actual cost of installing the Facilities in accordance with the Agreement. The City Public Works Director has reviewed and approved the costs of the Facilities as reasonable costs and the City accepts the reimbursable portion of such costs as eligible for reimbursement. The City agrees to reimburse Developer in the manner and on the terms and conditions set forth in this Agreement, for the Facilities, from funds received by the City from the owner(s) of each of the Latecomer Parcels. The amount of those payments will not exceed

principal amount of \$407,769.58; which is the total shown on Exhibit A less those parcels which have "Paid". Per City Ordinance 1572, all payments shall include interest from the date of recording this Agreement at an annually applied interest rate of % fixed; which is the Federal Reserve for one-year treasury bills on the secondary market as of the date of signing.

3. **Method of Reimbursement.**

A. **Benefited Property.** The properties benefiting from the installation of the Facilities as determined at the sole discretion of the City, and which did not contribute to the original cost thereof, are the parcels identified in Exhibit A as "Latecomer Assessment Roll" and are shown on the map provided Exhibit B.

B. **Charges.** Prior to allowing the Latecomer Parcels or any portion or future division of the Latecomer Parcels to connect to the Facilities or any lateral or branch connected thereto, the City shall collect the total fair pro rata share of the cost of installing such Facilities as a charge plus interest, as set forth in Section 2 herein, from the owner(s) of the Latecomer Parcels. Such reimbursement charges shall be in addition to all other City charges in effect at the time of seeking connection to such Facilities, including without limitation, general facilities fees. The Developer has agreed that the City shall not be required to collect any costs from Latecomer Parcels 12, 13, 14, 15, 32, and 33 listed on Exhibit A as "PAID" which have either already paid Developer or Developer has waived payment from said parcels.

C. **Segregation.** Upon application by affected property owners, the City Public Works Director shall further segregate reimbursement charges attributed to properties benefited by the Facilities for newly created legal parcels. In instances where newly created parcels are part of a development with new sewer facilities constructed to serve the development, the segregation shall occur before the new sewer facilities connect to the City's sewer system. The segregation shall be based upon the same factors applied when the assessments were originally established. All costs of such segregation shall be borne by the party requesting such segregation.

D. **Payment Procedure.** The City shall forward reimbursement funds referenced herein to Developer at Developer's address provided herein or to Developer's agent as authorized by Developer to the City in writing. As a condition of receiving such reimbursement funds, Developer or Developer's agent shall execute a receipt to the City, in a form acceptable to the City, for such reimbursement amounts so paid upon a receipt.

In the event of dispute as to the rightful party to receive such funds, City may pay the same to the Developer referenced herein or interplead such funds to the court; in either event, the City shall thereupon be relieved of any further obligation or of any liability hereunder as to such reimbursement funds so paid. The Developer shall indemnify the City for any costs, including attorney fees, incurred by the City in such interpleader action.

4. **City Authority; Effective Date; and Contract Duration.** The City is authorized to enter into this Agreement by virtue of the provisions of RCW 35.91 *et seq.*; and this Agreement shall remain in full force and effect for a period of twenty (20) years, beginning from the date of this Agreement.

5. **Limit of Reimbursement Right.** All of Developer's rights to reimbursement for sewer facilities shall terminate upon the expiration of the twenty (20) year contract term expressed in Section 4, regardless of the status of reimbursement at that time. Costs for the Facilities are specified in the Recitals and Section 2 of this Agreement.

6. **Extension of Contract and Reimbursement.** If a moratorium, phasing ordinance, concurrency designation, or other similar governmental action prevents making an application for or approval of any new development on or within the Latecomer Parcels for a period of six (6) months or more, this Agreement and the limits of Developer's reimbursement rights may be extended by the same amount of time as the moratorium, phasing ordinance, concurrency designation, or similar governmental action was effective, but only if an extension agreement specifying the amount of time is recorded with the auditor's office and notice is given to property owners who may be affected.

7. **Recording.** This contract shall be recorded in the office of the Whatcom County Auditor, Whatcom County, Washington, immediately upon execution by the City and the Developer.

8. **Agreement Implementation.** The City will use its best efforts to collect and distribute the funds pursuant to the process set forth in this Agreement. However, the City, its officials, employees or agents shall not be held liable or responsible for failure to implement any of the provisions of this Agreement unless such failure was willful or intentional.

9. **General.** This Agreement constitutes the entire agreement between the parties. The exhibits referred to herein are by this reference made a part of this Agreement as though set forth in full. This Agreement is binding upon the heirs, executors, administrators, successors and assigns, of each of the parties hereto.

10. **Assignment.** The Developer shall not assign the whole or any part of this Agreement without the prior written consent of the City, and in the event of such assignment shall notify the City of the name and address of the assignee.

11. **Contact Information.** Pursuant to RCW 35.91.020(6), every two (2) years from the date of this Agreement, Developer or its assign(s) shall provide the City with updated contact information for the Developer, including a contact name, address, and telephone number. If the Developer fails to comply with the notification requirements of this subsection within sixty days (60) of every two year anniversary as indicated above, then the City may collect any reimbursement funds owed to the Developer under this Agreement. The funds collected under this subsection must be deposited in the capital fund of the City.

CITY OF LYNDEN:

By: Scott Korthuis

Its: Mayor

DEVELOPER:

North Prairie LLC

By: Bob Libolt

Its: Managing Member

125 Rosemary Way

Lynden, WA 98264

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____
signed this instrument, on oath stated that (he/she) was authorized to execute the instrument
and acknowledged it as the _____ of the City of Lynden to be
the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this ____
day of _____, 2019.

Print Name: _____
NOTARY PUBLIC
My commission expires: _____

STATE OF WASHINGTON)
) §
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____
signed this instrument, on oath stated that (he/she) was authorized to execute the instrument
and acknowledged it as the _____ of the North Prairie LLC to
be the free and voluntary act of such party for the uses and purposes mentioned in the
instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this ____
day of _____, 2019.

Print Name: _____
NOTARY PUBLIC in and for Washington State.
My commission expires: _____

**EXHIBIT A
LATECOMER ASSESSMENT ROLL**

Parcel #	Tax ID No.	Owner	Address	Parcel Size (acres)	Assessment per Parcel
1	400315 270512	Layne & Lori LLC	1501 Badger Road	0.84	\$ 3,859.45
2	400315 283507	Whatcom County Fire District NO 21	4142 Britton Loop	1.3	\$ 5,972.96
3	400315 313508	Badger Storage LLC	582 Pangborn Road	2.39	\$ 10,981.06
4	400315 343502	Greg Collett	2909 260th Street	2.01	\$ 9,235.12
5	400315 361493	Greg Collett	2909 260th Street	2.42	\$ 11,118.90
6	400315 382494	Tim & Christina Bento, Loretta Davidson	1583 E Badger Road	4.13	\$ 18,975.64
7	400315 280485	American Reformed Church	PO Box 455	0.91	\$ 4,181.07
8	400315 280469	American Reformed Church	PO Box 455	1.13	\$ 5,191.88
9	400315 323471	Cornerstone School Society	8872 Northwood Road	4.65	\$ 21,364.83
10	400315 278455	Derek & Louise Willis	8848 Northwood Road	1	\$ 4,594.59
11	400315 311430	Cornerstone School Society	8872 Northwood Road	3.91	\$ 17,964.83
12	400315 370443	North Prairie LLC	125 Rosemary Way	3.98	\$ 18,286.46 PAID
13	400315 301409	North Prairie LLC	125 Rosemary Way	5.52	\$ 25,362.12 PAID
14	400315 361401	North Prairie LLC	125 Rosemary Way	13.24	\$ 60,832.33 PAID
15	400315 287388	Jason & Danielle Groeneweg	8803 Northwood Road	1.45	\$ 6,662.15 PAID
16	400315 272386	Randal & Nancy Troupe	8794 Northwood Road	0.38	\$ 1,745.94
17	400315 275353	Indian Joe Cemetery	PO Box 157	1	\$ 4,594.59
18	400315 333313	Leroy Lagerwey	8744 Northwood Road	27.84	\$ 127,913.30
19	400315 225347	Harriot Wagter	8747 Northwood Road	12	\$ 55,135.04
20	400315 181276	Arnold & Gretchen Van Dyken	1436 Kamm Road	0.64	\$ 2,940.54
21	400315 215325	Robert Wagter	8747 Northwood Road #B	0.52	\$ 2,389.19
22	400315 216312	Mark & Ginger Jones	1462 Kamm Road	0.87	\$ 3,997.29
23	400315 228277	Thomas & Katie VanWingerden	1472 Kamm Road	0.46	\$ 2,113.51
25	400315 140253	Virginia Bosman	1403 Kamm Road	0.52	\$ 2,389.19
26	400315 145224	Gary & Kalise Hastings	808 South Park Court	2.19	\$ 10,062.15
27	400315 160231	Theodore & Suzanne Linde	1421 Kamm Road	2.09	\$ 9,602.69
28	400315 185225	Joel & Amy Schouten	1429 Kamm Road	4.88	\$ 22,421.58
29	400315 195249	Meadowdale Water Assoc	6951 Hannegan Road Suite 3	0.18	\$ 827.03
30	400315 206250	Shawn & Jannette Van Dyken	1455 Kamm Road	1.19	\$ 5,467.56
31	400315 235231	Theunis & Silvia Van Berkum	1465 Kamm Road	8	\$ 36,756.69
32	400315 183163	James & Bertha Bosman Trust	1503 Liberty Street	14.64	\$ 67,264.75 PAID
33	400315 248165	James & Bertha Bosman Trust	1503 Liberty Street	4.69	\$ 21,548.61 PAID
34	400315 158281	Rachele & William Gorsuch	1420 Kamm Road	0.63	\$ 2,894.59
35	400315 166281	Jack & Wilva Foster	1434 Kamm Road	0.67	\$ 3,078.37
TOTAL				132.27	\$ 607,726.00
Assessment per Acre:				\$4,594.59	

Exhibit B

Latecomer Area Map

