

Return Address:

Above this line reserved for recording information.

**PAYBACK AGREEMENT
DEVELOPER'S EXTENSION**

Reference # (if applicable):	N/A (unless previous recording #)	Additional on page: ____
Grantor :	City of _____	
Grantee :	1) <u>Legal name of Owner</u>	2)
Legal Description / STR:	(Section, Township Range)	Additional on page: ____
Assessor's Tax Parcel ID#:	(parcel #)	

This Agreement made and entered into this ____ day of _____, 200__, by and between the City of _____, a municipal corporation of Washington, hereinafter referred to the "CITY" and _____, whose address is _____, hereinafter referred to as the "DEVELOPER."

WHEREAS, pursuant to Chapter 35.91 RCW et seq., the CITY has by Resolution No. _____ adopted by the City Council of the CITY on the ____ day of _____, 200__, approved the execution of this Payback Agreement with the DEVELOPER above and referring to facilities described herein; and

WHEREAS, the above-described DEVELOPER has offered and the CITY has agreed to accept two bills of sale found as Exhibits A-1, water facilities, and A-2, sanitary sewer facilities, both attached hereto, 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

The above-described DEVELOPER is the record OWNER of real property legally described as shown on Exhibit B submitted by the DEVELOPER and attached hereto. The real property described is also known as the Plat of (_____, _____), _____ County, Washington.

Map showing said property is attached hereto as Exhibit C.

II. FACILITIES

The facilities which have been constructed by the DEVELOPER herein are as shown in the attached Exhibit A, incorporated herein by this references, and processed as Developer Public Facility Extension, Extension herein referenced as (Agreement)_____, originals 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. AREA OF FACILITY SERVICE BENEFIT

The properties benefited by the facilities constructed by the DEVELOPER are shown on Exhibits C and D, which are by this reference incorporated herein as if fully set forth herein. Any owner of real estate legally described within the benefit boundary as shown on the attached Exhibits C and D, 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.

IV. TERMS

For a period of _____ (15?) years from the date that the City formally accepts the developer's utility extension, any owner (latecomer) of real estate legally described in Section III, and which owner has not fully contributed their pro rata share to the original cost of the above-described facility, shall pay to the CITY the amounts shown in Exhibit D attached hereto. The charge herein represents the fair pro rata share of the cost of construction of said facilities payable by properties benefited. Such properties are shown in Exhibits C and D. Payment of the latecomers pro rata share is a condition of issuance of the connection permit by the CITY.

The CITY shall reimburse the DEVELOPER at six (6) month intervals any such amounts collected.

Upon the expiration of the 15-year term, after (INSERT THE DATE OF EXPIRATION), any moneys collected by the CITY will not be reimbursed to the DEVELOPER.

V. AMOUNT OF REIMBURSEMENT

Sanitary sewer collection facilities: The DEVELOPER, his successors, heirs and assigns, agrees that the amounts which the DEVELOPER is reimbursed from the property owners as specified in Section III of this Agreement, represents a fair pro rata share reimbursement for the DEVELOPER'S construction of the facilities described in Section II of this Agreement. The amounts per parcel are separately itemized as shown in Exhibit D attached hereto, and totaling to not more than \$ _____ in full amount.

Prior to recordation by the DEVELOPER as described in Section X, the CITY, shall mail to the property owners, as reflected in the records of the _____ County Assessors Office, as specified in Section III, notification of the allocation of costs to be levied against the properties which are payable prior to connection to the systems. The property owner shall have the right to a review of the costs with the Director of Public Works within 21 days from the date of said notice for the purpose of requesting an adjustment in the allocation of the charge to the property.

If the Director of Public Works, upon requested review by a notified property owner(s), 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 resulting adjusted Exhibits C and D shall govern reimbursement amounts to be received by the DEVELOPER.

VI. EFFECT OF AGREEMENT

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

If for any reason, the CITY fails to secure a latecomer payment for Owner's fair pro rata share of the cost of the facilities, before connection to the extension, the CITY is not liable for payment to the DEVELOPER.

The entire responsibility for notices, recordation and completion of this Agreement is upon the DEVELOPER, who agrees to do all and to hold the CITY harmless.

VII. OWNERSHIP OF FACILITY

The DEVELOPER has constructed the facilities described in Section II of this Agreement, which facilities have been accepted by the CITY as satisfactory.

The facilities have become a part of the municipal system of the CITY. All maintenance and operation costs of said facility shall be borne by the CITY, except as noted otherwise in (Agreement)_____.

VIII. UNAUTHORIZED CONNECTION

Whenever any connection is made into the facilities described in Exhibit A under this Agreement 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 facility's 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

The DEVELOPER shall keep a current record of his/her address and telephone number on file with the Director of Public Works of the CITY, and shall within 30 days of any change of said address and/or telephone number, notify the Director of Public Works of the CITY in writing. If the DEVELOPER fails to do so, the parties agree that the CITY may authorize connections resulting therefrom and not incur any liability for the non-collection and/or non-reimbursement of charges to the DEVELOPER under this Agreement.

X. COVENANT RUNNING WITH THE LAND

This Agreement shall be binding on the DEVELOPER, its successors, heirs and assigns and shall so be binding on the legal owners of all properties described within the benefit boundary of the area as shown in the attached Exhibits C and D, their successors, heirs and assigns. The DEVELOPER agrees to pay all fees for recording this Agreement with the County Auditor. The DEVELOPER shall make the actual recording and provide the CITY with confirmation thereof, but such recordation shall only be made after expiration of review period specified in Section V.

XI. HOLD HARMLESS

The DEVELOPER will 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 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 who's 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.

XI. 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 _____

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

DEVELOPER: _____

Signature

Signature

Title: _____

Title: _____

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this _____ day of _____, 200____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____, to me known as the Mayor and City Clerk, for the City of _____, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City of _____, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this _____ day of _____, 200____.

NAME

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

ON THIS _____ day of _____, 200____, before me, personally appeared _____ and _____, to me known to be the _____ and _____ of the Developer the party(ies) who executed - *the corporation/company that executed* the within and foregoing instrument, and acknowledged said instrument to be his/her/their *the* free and voluntary act and deed *of said corporation/company*, for the uses and purposes therein mentioned, *and on oath stated that they were authorized to execute said instrument.*¹

GIVEN under my hand and official seal this _____ day of _____, 200____.

NAME

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____

¹ The *ITALICS* indicated where the notary acknowledgement may be adjusted to accommodate a corporate consultant. See RCW 64.08.060 and RCW 64.08.070.

Exhibit A-1, water facilities [if this applies]

Exhibit A-2, sanitary sewer facilities [if this applies]

Exhibit B, legal description of properties

Exhibit C, map (showing facilities and benefited properties)

Exhibit D, document showing break-down of cost apportionment