

LAKE WHATCOM WATER AND SEWER DISTRICT



DEVELOPER EXTENSION AGREEMENT
(DEA)

Contract #	#D08??
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Project Information			
Title	?????Project Name?????		
	Developer	Developer's Engineer	Developer's Contractor
Name			
Address	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
Phone #s	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>

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1. DEFINITIONS

- Construction - *Activities that execute or implement the design.*
- Design - *Plans, specifications, drawings, and other related documents, plus any other helpful visual or technical aids, such as graphics and mock ups, that communicate the details of the proposed facilities.*
- Developer - *Person/entity making application to construct water, sewer, and/or stormwater facilities.*
- Developer Extension Agreement (DEA) - *the contract between the District and the Developer to construct water and/or sewer facilities on property owned by the Developer, and in roads, easements, or other rights of way described in the approved application.*
- Developer's Contractor - *The entity selected by the Developer to perform construction.*
- Developer's Engineer - *The engineering entity preparing the design for the proposed facilities. The Developer's Engineer shall be qualified under Section 4.3 below, but shall NOT be the District's Engineer.*
- District - *Lake Whatcom Water and Sewer District.*
- District Engineer - *The professional engineer employed by the District that administers the Developer Extension Agreement.*
- Facility - *Water, sanitary sewer, and/or stormwater infrastructure and hardware; including but not limited to pipes and fittings, valves, pump stations, hydrants, associated electrical-mechanical devices, telemetry, buildings, and shelters.*
- Notice to Proceed with Construction - *A District generated document to the Developer that specifically authorizes the Developer to execute the District's Engineer's approved design at the site. Conversely, the Developer shall not install water and sewer utilities at the site without prior receipt of a Notice to Proceed with Construction.*
- Pre-paid Connection Certificate – *The certificate that the District issues when a Developer makes the required payment to reserve capacity in District-owned water and/or sewer facilities as part of a Developer Extension Agreement.*
- Connection Charge – *The current total monetary charge for general facilities charges, ULID or latecomer fees, as well as an administrative charge, which is paid to the District for system capacity. The connection charge is applicable for the calendar year issued, and thereafter shall be subject to such additional or higher fees as may thereafter be adopted by the District.*

2. LOCATION OF PROPOSED FACILITIES

Developer shall install the proposed water and sewer facilities on property owned by the Developer, and in roads and/or easements and/or other approved rights of way as described in an approved application for water and sewer. The water system shall..... The Application was approved for ?? water and sewer connections on ???DATE???.

The properties owned by the Developer to be used for these facility extensions have the following Whatcom County Tax Parcel number(s) (as of the date of this agreement):

<u>Tax Parcel Number</u>	<u>Owner</u>
#####	Name
#####	Address
#####	

3. COMPREHENSIVE PLAN

Developer represents that the proposed facilities are consistent with the District’s most current approved Comprehensive Plan.

4. FACILITIES DESIGN

4.1. Design Standards

The facilities shall comply with the District’s Design & Construction Standards in effect on the date the Notice to Proceed with Construction (NTPC) is issued by the District.. The District reserves the right to update the Design and Construction Standards at any time. The facilities shall also comply with Washington State Department of Health and Washington State Department of Ecology design standards and requirements. The Developer shall prepare all plans submitted in AutoCad Release 2002 or later format.

4.2. Design Standards Compliance Determination

The District Engineer retains exclusive and sole authority to determine when the Developer’s Engineer’s design complies with the Design and Construction Standards. The District Engineer is the Final Design approval authority. The Developer shall reimburse the District for costs incurred to review project Final Design. The Developer shall not commence construction until the District Engineer approves the design. It is the responsibility of the Developer to ensure that the plans prepared by the Developer’s Engineer conform in all respects to District specifications. Failure by the District to discover errors, omissions, or discrepancies in the plans shall not relieve the Developer of this responsibility.

4.3. Developer’s Engineer

4.3.1. Qualifications

Licensed Professional Engineer per RCW 18.43.

4.3.2. Authority

The Developer's Engineer shall design the facilities that are the subject of this Agreement, prepare and submit for approval any construction-phase revisions, and prepare record drawings of the completed facilities.

4.4. Changes

Failure of the District to require changes in the plans prior to approval of them shall not be deemed a waiver of the District's right to require such changes in the plans as the District may deem necessary during the course of work.

4.5. Ownership

The originals of all plans, including all electronic file media, prepared by the Developer's Engineer shall be delivered to the District upon completion of the project and shall become the property of the District. Neither Developer nor Developer's Engineer shall have any rights of ownership, copyright, trademark or patent in the plans.

4.6. Information Provided by District to Developer

The District shall make available to the Developer information it may have regarding existing utilities and obstructions. Such information is not guaranteed. Incompleteness or errors in this information shall not be the cause of a claim against the District or its consultants, nor shall it relieve the Developer of responsibility for repairing any damage its activities may cause to such utilities.

5. FACILITIES CONSTRUCTION

5.1. Prerequisites to Commencing Construction

- District Engineer approves the design (see Section 4.2).
- Developer reimburses District for design review costs (see Section 4.2 and Section 6.3).
- Developer delivers copy of insurance policy (see Section 7) to District.
- Developer delivers copies of easements (see Section 9) to District.
- Developer delivers copies of permits (see Section 10) to District.
- Developer pays developer conformance deposit (see Section 13) to District.
- Developer delivers performance bond (see Section 14) to District.
- Developer pays 25% of total amount of general facilities connection fees due (see Schedule A1) to District.
- Developer pays initial facilities inspection deposit (see Schedule A1) to District
- District issues **Notice to Proceed with Construction** (NTPC) to Developer.

5.2. Construction Standards

The construction of the proposed facilities shall comply with the design approved by the District Engineer and shall incorporate the District's Design and Construction Standards in effect on the date the Notice to Proceed with Construction (NTPC) is issued by the District. The District reserves the right to update the Design and Construction Standards at any time. The District retains exclusive and sole authority to determine Developer compliance with this requirement. A District designated inspector shall be present on the project site at all times wherever project construction activities occur that involves

underground utility work or other work that is to be buried or covered. The Developer shall reimburse the District for costs incurred to perform site inspections. The Developer shall collect accurate field information and provide record drawings to the District. The District inspector's notes will also be made available, but should not be relied on as the only source of "as-built" information. Before final acceptance, the Developer shall provide the District with record drawings on mylar, together with their digital files (both Adobe PDF and AutoCAD DWG files). The District shall issue a "Final District Acceptance of Facilities" notification to the Developer when the facilities are accepted. The Developer's professional land surveyor shall perform construction staking.

6. FEES AND CHARGES PAYABLE TO DISTRICT

6.1. General Provision

The Developer shall bear all costs, including those incurred by the District, associated with the administration, planning, design, construction, and required governmental agency approvals of the proposed facilities project.

6.2. General Fee Schedule

See separate attached DEA Fees and Charges Schedule.

7. INSURANCE AND HOLD HARMLESS

The Developer shall take out and maintain during the life of this contract Public Liability Insurance for bodily injury and property damage liability, including without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities and contingent liability, including products and completed operations and blanket contractual liability, as shall protect Developer, the District and its consultants. The Developer shall provide the District a signed certificate of insurance and CG2026 additional insured endorsement naming the District and its consultants specifically as additional named insured in said policies, all at no cost to the District. The Developer shall also require their Contractor and Subcontractors provide the same certificate and endorsement. The insurance shall cover the District and its consultants for all claims or damages for bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this Agreement whether such operations be by the Developer, its contractor, or by any subcontractor or anyone directly or indirectly employed by them. The Developer agrees, in addition, to indemnify and save harmless the District, and the District's officers, agents, consultants, and employees, from all suits, claims, demands, judgments and attorneys fees, expenses or losses occasioned by the performance of this Agreement by Developer, any contractor, subcontractor, or persons working directly or indirectly for Developer, or on account of or in consequence of any act or omission of any such person, including but not limited to neglect in safeguarding the work or failure to conform to the safety standards for construction work adopted by the Safety Division of the Department of Labor and Industries of the State of Washington.

The amount of such insurance shall be as follows:

Commercial general liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) in the aggregate in any one year.

The Developer shall not cause any policy to be canceled or permit it to lapse, and all policies shall include a clause to the effect that the policy or certificate shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance or any other material change until notice has been mailed to the District stating when, not less than thirty (30) days thereafter, such cancellation or reduction or change shall be effective. In the event the District or Developer receives notice of cancellation, the Developer shall immediately obtain other comparable insurance acceptable to the District and provide proof thereof to the District. In the event the Developer is unable to obtain and provide such insurance, he shall immediately cease all work on the project, save and except that which is necessary to secure the site and prevent injury.

All certificates of insurance, authenticated by the proper officer of the insurer, shall state in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date, and the above mentioned notice of cancellation clause. The Developer shall provide a copy of insurance policy as well as the signed certificate of insurance and CG 2026 additional insured endorsement to the District prior to commencing construction.

8. SPECIAL CONDITIONS

This agreement is conditioned upon Whatcom County's determination that the provision of water and/or sewer service to the proposed development complies with the Washington State Growth Management Act, RCW 36.70A. The Developer agrees to indemnify, defend, and hold harmless from any and all claims, suits, actions, or administrative proceedings, and any liability, loss or damage of any kind or nature, based upon any such actual or alleged violation.

9. EASEMENTS AND RIGHTS-OF-WAY

The Developer shall provide all necessary easements at its sole cost regardless of changes in the design, together with evidence of title. A licensed land surveyor shall prepare legal descriptions for easements across the property of others. Developer shall deliver to District on the standard District form these recorded easement(s) prior to the time Developer commences construction hereunder.

In accordance with the District's Standards, the Developer shall include in any preliminary plat documents the easements for all water and sewer facilities not located in public rights-of-way. A licensed land surveyor shall prepare legal descriptions for easements that cannot be clearly delineated on the plat map.

Prior to acceptance of facilities, Developer shall deliver to the District all original recorded easements, and copies of the recorded plat (if there is a new plat) or other proof of dedication to Whatcom County of any newly designated or existing but unopened rights-of-way.

Developer shall provide a title insurance policy establishing clear title in grantor to District in sum not less than \$1000.00 per 500 lineal feet of easement.

10. PERMITS AND COMPLIANCE

Developer shall obtain all necessary permits and approvals. Developer shall provide the District with a copy of all such permits and approvals before construction begins. Construction

shall proceed in accordance with all permits, approvals, and other governmental requirements, including the Whatcom County Development Standards and other District requirements. The District reserves the right to cancel, suspend, or not renew or extend this agreement in the event that the Developer, or its agents, are not in compliance with this Agreement, the Plans and Specifications, the terms of any permits and approvals, the Whatcom County Development Standards, or other governmental requirements.

11. USE OF EXISTING FACILITIES

Until execution and acceptance of the Bill of Sale there shall be no water and/or wastewater flow through any on-site or off-site mains or facilities, unless otherwise authorized in writing by the District.

12. LATECOMER REIMBURSEMENT AGREEMENT

At the request of the Developer prior to District final acceptance of facilities, the District will create a Latecomers Reimbursement Agreement with Developer per Title 57 RCW. Developer shall submit to the District all contracts and costs related to the facilities. The District's Engineer will determine the benefit area of the new facilities and verify those costs that are eligible for reimbursement. If the District determines that no benefit area per Title 57 RCW exists, then no Latecomers Reimbursement Agreement will result. The Latecomers Reimbursement Agreement shall be signed and notarized by the Developer prior to final acceptance of facilities. Requests by the Developer to establish a Latecomer Reimbursement Agreement after District's final acceptance of facilities will not be considered.

13. DEVELOPER CONFORMANCE DEPOSIT

The Developer Conformance Deposit shall be held until the Developer has filed with the District a copy of the recorded plat and any adjustments, amendments, or additions to the easement documents or as-built records of the District that are required due to changes in the development, including but not limited to the following: lot lines, greenbelt area legal description, easement descriptions, right-of-way dedication.

The District will retain the Deposit until all items requiring adjustment, amendment, or addition have been completed. All costs of such changes for engineering, legal and administration shall be deducted from the Deposit and any balance remaining shall be returned to the Developer. The Deposit shall not constitute a limit on the amount to be paid to the District for any such adjustments, and connections to the system will not be allowed until the District has been reimbursed for the full amount thereof if in excess of the amount of the Deposit.

14. PERFORMANCE AND PAYMENT BOND

Prior to commencement of the work, the Developer shall furnish to the District a performance and payment bond between Developer and the District upon a Developer-provided form with sureties approved by the District and in an amount equal to 150% of the estimated cost of the project as determined by the District Engineer. The performance and payment bond shall require the Developer to faithfully perform all the provisions of this Agreement, including the execution of the approved Plans and District Construction Standards, and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or

persons, or subcontractors, with provisions and supplies for the carrying on of the work. The performance and payment bond shall also hold the District harmless from any claims thereof, whether any such claims would arise under the public works lien statutes, or the mechanic lien statutes of the State of Washington or any other source, and compliance with the formal requirements of any such statutes shall not be a condition to recovery upon said bond. In lieu of a performance and payment bond the Developer may provide a letter of credit in the amount of 150% of the estimated cost of the project to be held by the District until completion of construction. The letter of credit shall be issued by a Bellingham bank and payable to the District upon demand.

Should the work not be completed within the time allowed under this agreement, the District may complete the project and charge the bond for its costs.

15. MAINTENANCE BOND

The Developer shall provide a maintenance bond in the amount of ten percent (10%) of the construction costs as documented by the Developer. Said bond shall guarantee maintenance for two (2) years after acceptance of the facilities by the District and shall be in a form acceptable to the District.

16. GRADING OF ROADS

Developer shall grade all roads to the design subgrade elevation prior to the start of construction and shall advise the District, in writing, of any changes, which may be contemplated during construction. If the Developer changes the subgrade elevation of the road after completion of the facilities, or any part thereof, the Developer shall be responsible for all costs incurred for the facilities as a result of said change in subgrade elevation. This obligation shall remain in full force until Whatcom County or other municipality releases the road construction maintenance bond or bond of other description in connection with the Developer's obligation for completion of roads within the area.

17. CONNECTION TO THE DISTRICT'S SYSTEM

Written application for permission to make the actual connection to the District's system at a specified time shall be made by Developer or its contractor not less than 48 hours prior to the time that connection to the District's system is desired. All connections to the existing system and all testing of the new facilities shall require authorization of the District or its authorized representatives.

Openings of valves and use of water from the District's system will be done by the District or its authorized representative. The District reserves the right to require that connections be made by live tap where disturbance of water service would in the opinion of the District, be unduly detrimental. The District may elect to make connections to the existing system and the Developer shall pay all costs for the connection.

Not less than 48 hours prior to the time that the extension is partially or fully completed and connection to the District's system is desired, written application for permission to make the actual connection to the District's system at a specified time shall be made by Developer or its Contractor. All new connections to the existing system and all testing of new lines shall require authorization of the District and shall be conducted in the presence of the District's

representatives. All inspections, connections and testing shall be made during normal working hours, unless prior arrangements have been made with the District.

18. PRE-PAID CONNECTION CERTIFICATION

The District will issue a Pre-paid Connection Certificate for each approved connection after the Developer makes the required payment of all General Facilities Connection Fees. The Pre-paid Connection Certificate reserves capacity in District-owned water and/or sewer facilities. The connection charge paid is applicable for the calendar year issued, and thereafter shall be subject to such additional or higher fees as may thereafter be adopted by the District.

19. BILL OF SALE

Developer agrees to execute a Bill of Sale prepared by the District prior to acceptance of system and furnish it to the District. The Developer shall deliver a copy of the recorded plat, short plat, or legal description of the property. A legal description, prepared by the Developer's professional land surveyor, is required for inclusion into the Bill of Sale. Said Bill of Sale will provide for transfer of title of the extension facilities from the Developer to the District and will further include the following statements:

- A. Developer is the lawful Owner of said facilities and the facilities are free from any encumbrances.
- B. Developer has the right to transfer said title and will warrant and defend the same against all claims and demands of all persons.
- C. Developer grants the facilities to the District in consideration of incorporating same into the overall system of the District.
- D. A statement of the costs, separating the costs of the water facilities from the cost of the sewer facilities, including administration, legal and engineering fees.
- E. All bills for labor and material have been paid and the Developer has provided a certificate from the contractor installing the facilities, and the Developer's Engineer, acknowledging that the contractor and engineer have been paid in full and/or do fully release, transfer, assign and set over to the District all of their rights, title, claims and interest therein.
- F. Developer further warrants that for a period of two (2) years from the date of the Bill of Sale that the facilities will remain in good working order and condition except where abused or neglected by the District. The Developer will repair or replace at its own expense any unsatisfactory work or material during the two (2) year period of warranty. The District will inspect the facilities at the end of the 2-year period.

20. FINAL ACCEPTANCE

Formal Final Acceptance of the Facilities shall occur when all of the following conditions occur.

- District inspects and approves facilities as 100% complete.
- District receives water meters (Master Meter Dialog 3G Wireless RF) for each service. (see District Design and Construction Standards)
- District receives and accepts record drawings (see Section 5).
- District receives and accepts easements and title insurance (see Section 9).
- District receives Maintenance Bond (see Section 15).

- District receives and approves Bill of Sale (see Section 19).
- District receives a copy of recorded plat, short plat, or legal description (see Section 19).
- District receives legal description of property (see Section 19).
- District receives Latecomers Reimbursement fees due to other Developers, if Latecomers Reimbursement Agreement(s) apply to Developer's property.
- Developer pays to District any Supplemental DEA Processing/General Administrative Fees, if due.
- District receives signed and notarized Latecomers Reimbursement Agreement prepared by the District, if applicable.

21. CONDITION PRECEDENT

Compliance with the terms and conditions of this DEA and all applicable resolutions of the District shall be a condition precedent to the District's obligation to accept a bill of sale and a condition precedent to the District's agreement to maintain and operate the facilities and to provide utility service to the real property described herein. Without limiting the generality of the preceding sentence, the District shall be under no obligation to allow connections to the water or wastewater system of any portion of the real property described in this DEA if there are any fees or costs due and owing to the District arising from this DEA or from regulations, resolutions or ordinances of any government agency.

The District shall not be obligated to provide utility service to the property described in this DEA if construction by third parties of facilities to be deeded to the District have not been completed and title accepted by the District if said third party facilities are necessary to provide utility service to the said property.

22. BREACH OF CONTRACT - ATTORNEY'S FEES

A breach of any provision of this DEA shall constitute a total breach hereof, and shall subject the Developer to cancellation of the DEA, forfeiture of deposits, and claim for costs and damages, as allowed by law. The parties agree that in the event of litigation regarding the terms or performance of this DEA, the substantially prevailing party shall be entitled to an award of reasonable attorney fees and costs, in addition to any other appropriate remedy.

23. LIMITATION OF PERIOD FOR ACCEPTANCE

The facilities shall be completed and accepted by the District within three (3) years of this Agreement. If the facilities are not completed and accepted within three (3) years from the date below, then the Developer's rights under this DEA shall cease. The Developer may submit a written request along with the DEA Renewal Fee to request a DEA renewal from the Board of Commissioners. The Board of Commissioners has the right to reject or accept the renewal request. If the Board of Commissioners accepts the renewal request, the Developer shall pay all administrative, legal, engineering, and other costs incurred to renew the DEA, all as determined by the Board of Commissioners. A DEA renewal requires both the Developer and Board of Commissioners signing a new DEA. The District is not responsible for notifying the Developer of pending Contract expiration.

24. NO THIRD PARTY RIGHTS CREATED

This agreement is made entirely for the benefit of the District and the Developer and successors in interest. No third party shall have any rights hereunder, whether by agency or as a third party beneficiary or otherwise.

25. BINDING OF PROPERTIES

Parcels listed in this agreement are bound by the terms of the agreement until the agreement expires or the defined improvements are completed per the agreement. While the agreement is in force, requests for Denial of Service from parcels which will be served by the defined water and/or sewer improvements will not be considered by the District.

26. AGREEMENT

We, _____, the Owners / Developer of the herein described property, have read and accept the terms and conditions set forth in this application.

Name, Owner / Developer
(Owner of Parcels[LIST OF PARCELS])

Name, Owner
(Owner of Parcels[LIST OF PARCELS])

Name, Owner
(Owner of Parcels[LIST OF PARCELS])

APPROVED this ____ day of _____, _____

LAKE WHATCOM WATER AND SEWER DISTRICT
Whatcom County, Washington

By: _____
President, Board of Commissioners

LAKE WHATCOM WATER AND SEWER DISTRICT

A1. DEA FEES AND CHARGES SCHEDULE

(per current Master Fees and Charges Schedule)

Purpose	Amount	Due	Refundable
Initial DEA Processing/General Administration	\$750.00	With submission of Contract	No
Supplemental DEA Processing/General Administration	If District's actual costs are greater than above amount, District will bill Developer for balance due	Prior to Final District Acceptance of Facilities	No
DEA Renewal District Commissioners approve renewal.	\$750.00	With written request for renewal	Yes, if Commissioners deny renewal request.
Final Design Review (Performed by District's Engineer)	District Engineer's direct costs as invoiced to District plus 2% administration fee	With submission of final Drawings and Specifications for review	No
Design Review and Inspection Deposit	District's costs as invoiced to District plus 2% administration fee ----- \$5,000.00 initial deposit ----- \$2,000.00 supplemental deposit	See below. ----- Prior to Design Review ----- Whenever account balance is less than \$2,400.00. If account balance is ever less than \$800.00, District will issue an immediate stop work order and will suspend the DEA until the account balance is more than \$2,400.00	Yes, to extent balance exists on Final District Acceptance of Facilities date
General Facilities Connection	<i>Total:</i> Per separate schedule in effect on day of <u>Final District Acceptance of Facilities</u> <i>Initial Deposit:</i> 25% of total amount per separate schedule in effect on day <u>DEA approved/signed</u> <i>Balance = (Total - Initial Deposit)</i>	See below for <i>Initial Deposit</i> and <i>Balance</i> ----- Prior to Notice to Proceed with Construction ----- Prior to Final District Acceptance of Facilities	No NOTE: Payment of fees does not guarantee utility service priority if DEA expires or if Developer abandons DEA.
Conformance Deposit (See Section 13)	\$1,000.00	Prior to Notice to Proceed with Construction	No
Performance Bond (See Section 14)	150% of estimated project cost	Prior to Notice to Proceed with Construction	No
Maintenance Bond (See Section 15)	10% of constructed facilities cost	Prior to Final District Acceptance of Facilities	No
Latecomers Fees owed to other Developers or District ULID Fees owed	Depends on existence of any Latecomers Reimbursement Agreements or District ULIDs applicable to	Prior to Final District Acceptance of Facilities	Yes, if paid and District does not accept facilities, or if paid and Developer cancels project.

Purpose	Amount	Due	Refundable
	developed property		
Special Agreements (For costs to prepare any special agreement(s) between District and Developer)	Actual cost plus 2% administration fee	Payable in full on demand	No
Third Party Claims (For all costs, damages, and expenses, including reasonable attorneys fees, incurred by District responding to, and/or defending claims made by third parties for acts of Developer, Developer's Engineer, or Contractor)	Actual cost plus 2% administration fee	Payable in full on demand	No
Contract Noncompliance (For all costs, charges, expenses, and damages attributable to failure of Developer to comply with this Contract and/or the requirements of any governing agency)	Actual cost plus 2% administration fee	Payable in full on demand	No