

INTERLOCAL AGREEMENT BETWEEN
THE CITY OF PACIFIC AND CITY OF SUMNER
FOR THE PROVISION OF SANITARY SEWER SERVICES

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into this 10th day of June, 2019, by and between the City of Sumner, a Washington municipal corporation (“Sumner”) and the City of Pacific, a Washington municipal corporation (“Pacific”), (individually a “Party” and collectively the “Parties”) for the purposes set forth herein.

RECITALS

WHEREAS, Sumner is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and for other lawful purposes; and

WHEREAS, Pacific is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and for other lawful purposes; and

WHEREAS, the Manke Timber Company, Inc., a Washington corporation, owns real property located at 13702 Stewart Rd., within the City limits of Sumner, in the State of Washington, identified as Pierce County Tax Parcel No. 4495400412, and as legally described as set forth on Exhibit 1, attached hereto and incorporated by reference (“Manke Property”); and

WHEREAS, the Manke Property is currently served by private septic and water utility services via Sumner’s Public Works Department; and

WHEREAS, Sumner’s Public Works Department provides sanitary sewer service to residents and ratepayers within Sumner’s corporate limits, but the nearest connection to Sumner’s sanitary sewer system available to the Manke Property is located approximately 1,000 feet to the east and would require an extension under (or over) the White River, including critical area(s) and shoreline; and

WHEREAS, Pacific is currently engaged in the design and acquisition phase for a road improvement project to a portion of Stewart Road (“Pacific’s Project”), which project footprint abuts the Manke Property to the north, and the acquisition of property necessary for right of way purposes attendant to Pacific’s Project will impact Manke’s existing private septic; and

WHEREAS, Pacific’s Public Works Department provides sanitary sewer services to residents and ratepayers within Pacific’s corporate limits, and is willing to, and capable of providing the Manke Property with sanitary sewer service via an existing main within Pacific’s sanitary sewerage system that is located within Stewart Road directly adjacent to the Manke Property; and

WHEREAS, based on the potential construction impacts to critical areas and the substantial costs associated with a proposed connection between the Manke Property and Sumner's sanitary sewer system, it is economically and technologically inefficient for Sumner to provide sanitary sewer service to the Manke Property; and

WHEREAS, both Sumner and Pacific both strive to provide the most efficient means of providing sanitary sewer service to their residents and ratepayers; and

WHEREAS, pursuant to RCW 35.92.170 and 35.67.310, a code city may permit a connection with its water or sanitary sewer services beyond its corporate limits on terms and conditions as may be prescribed by ordinance, and evidenced by an agreement between the city and owner; and

WHEREAS, the owner of the Manke Property has stated an interest in connecting to the Pacific sanitary sewer system; and

WHEREAS, the Parties agree that Pacific would be best able to provide sanitary sewer service for the Manke Property; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to and in accordance with the State Interlocal Cooperation Act, Chapter 39.34 RCW;

NOW THEREFORE, in consideration of the terms and condition herein, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above are hereby incorporated into this Agreement
2. **Provision of Sanitary Sewer Service.**
 - A. Sumner authorizes Pacific to provide sanitary sewer service for the Manke Property, identified as Pierce County Tax Parcel No. 4495400412 and legally described as set forth on Exhibit 1, located within Sumner's corporate boundaries.
 - B. Pacific agrees to do all things necessary and/or appropriate to provide sanitary sewer services for the Manke Property located within Sumner's jurisdiction, including but not limited to the procurement of any necessary approvals for the provision of these services.
 - C. As the designated provider of sanitary sewer services, Pacific shall process all permits and approvals required for sanitary sewer service connection and/or operation.
 - D. The purpose of this Agreement is to define the respective responsibilities of the Cities in order to ensure that the connection of the Manke Property to Pacific's sanitary sewer system is incorporated as an integrated part into the construction of Pacific's Project.

3. **Indemnification.**

Pacific shall indemnify, defend and hold harmless Sumner, its employees, servants, and agents from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including without limitation, attorneys' and expert witness fees) arising or growing out of or in connection with or related to, either directly or indirectly the connection to, and provision of sanitary sewer service to the Manke Property, except to the extent such claims arise from the sole or partial negligence, error or omissions of Sumner, its employees, servants, and agents. Pacific agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or, or on behalf of, any of its employees or agents. For this purpose, Pacific, by mutual negotiation, hereby waives, as respects Sumner, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Sumner incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Pacific.

Sumner shall indemnify, defend and hold harmless Pacific, its employees, servants, and agents from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including without limitation, attorneys' and expert witness fees) arising or growing out of Sumner's sole or partial negligence, in carrying out its obligations herein. Sumner agrees that this its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or, or on behalf of, any of its employees or agents. For this purpose, Sumner, by mutual negotiation, hereby waives, as respects Pacific, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Pacific incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Sumner.

4. Easement – Construction and Maintenance of Facilities.

A. Conveyance of Easement. To the extent Pacific is required to enter right of way or real property owned in fee by Sumner to effectuate the intent of this Agreement, Sumner shall grant and deliver a fully executed easement to Pacific for the purpose of allowing Pacific to construct, operate, maintain, repair and replace the sanitary sewer connection to the Manke Property. Pacific shall prepare and record the easement at its expense.

B. Maintenance of Facilities. Upon execution of the easement referenced in Section 4.A, Pacific agrees to own, operate and maintain the sanitary sewer facilities at its expense.

5. Compliance with Law. Nothing in this Agreement shall be construed as excusing a Party from compliance with any applicable federal, state, or local laws and regulations. All such requirements and regulations are hereby made a condition of this Agreement. Violation of any such requirement or regulation shall constitute a breach of this Agreement by either Party.

6. Prevailing Wages. The public work contemplated by this Agreement shall comply with the requirements of Chapter 39.12 RCW regarding the payment of prevailing wages, including the requirements to deliver a Statement of Intent to Pay Prevailing Wages and post notice of such intent prior to commencement of work, and to file and Affidavit of Wages Paid after completion of work.

7. **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

8. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any action brought arising out of this Agreement shall be Pierce County Superior Court, Washington.

9. **Legal Review.** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. These parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

10. **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11. **Authority to Enter Agreement.** Each party represents and warrants that it has the full authority to enter into this Agreement, and that the individual executing this Agreement on its behalf is authorized to do so.

12. **Entire Agreement.** This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings, written or oral, between the parties. Any agreement or modification of the terms and conditions of this Agreement shall be pursuant to a written document signed by both parties.

13. **Execution.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute by tone and the same instrument.

14. **Recording and Retention.** A copy of this Agreement shall be filed with the Sumner and Pacific City Clerks and, Pacific shall record a copy with the Pierce County Auditor.

18. **Effective Date and Termination.** This Agreement shall take effect upon execution of the Agreement after authorization by Sumner's City Council and Pacific's City Council. This Agreement shall remain in effect unless terminated by either party by 180 days prior written notice to the other party.

19. **Notices.** All notices required under this Agreement shall be deemed sufficient if sent in writing by U.S. Mail or by electronic mail. All notices shall be delivered to the following addresses or to any other or additional addresses as may be specified from time to time by notice to either party. Notices shall be deemed received on the day sent electronically or 3 business days after the notice is placed in the U.S. Mail

Sumner: Mike Dahlem
 Public Works Director
 City of Sumner

1104 Maple St.
Sumner, WA 98390

With a copy to: Sumner City Attorney

Pacific: Jim Morgan
Public Works Director
City of Pacific
100 3rd Avenue SE
Pacific, WA 98047

With a copy to: Pacific City Attorney


IN WITNESS WHEREOF, each of the parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

DATED this 10th day of June, 2019.

CITY OF SUMNER

CITY OF PACIFIC

By  _____

By  _____

Its: Mayor _____

Its: MAYOR _____

STATE OF WASHINGTON)

)ss

COUNTY OF ~~PIERCE~~ King)

On this 11th day of June, 2019, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

Lianne Guier to me known to be the Mayor

of City of Pacific the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Laurie R. Cassell

NOTARY PUBLIC is and for the State of Washington

Residing at Pacific WA

My commission expires 8/15/19

STATE OF WASHINGTON)

)ss

COUNTY OF PIERCE)

On this 17th day of July, 2019, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared William Pugh to me known to be the Mayor of City of Sumner the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Kelsey White
NOTARY PUBLIC is and for the State of Washington
Residing at King County, WA
My commission expires 4/29/20

EXHIBIT 1

LEGAL DESCRIPTION OF REAL PROPERTY ("Manke Property")

Pierce County Tax Parcel No. 4495400412

Section 01 Township 20 Range 04 Quarter 31 HILLMANS C D PACIFIC CITY DIV # 4 COMB FOR TAX PURPOSES ONLY L 1 THRU 7 B 60 EXC E 160 FT ALSO THAT POR B 60 DESC AS BEG AT SE COR OF L 7 B 60 TH W ALG S LI SD L 7 160 FT TH N 1698 FT M/L TO N LI OF L 1 SD B 60 TH E ALG N LI OF L 1 55 FT TH S 900 FT TH SELY 363.4 FT TO A PT ON E LI OF L 6 448 FT FROM POB TH S ALG E LI OF L 6 & 7 448 FT TO POB EXC N 10 FT THEREOF ALSO L 8 THRU 10 B 60 EXC THAT POR CYD TO P CO FOR 16TH ST E ALSO THAT POR OF SW LY W OF A LI RUNNING N FROM A PT ON S LI OF SW 48.25 CHS E OF SW COR OF SE OF SE SEC 2 & LY DIRECTLY E OF B 60 EXC THAT POR LY N & E OF FOLL DESC LI BEG AT SE COR OF L 7 B 60 TH S 16 DEG 50 MIN 31 SEC E 388 FT TH S 35 DEG 12 MIN 44 SEC E 212 FT TH S 70 DEG 37 MIN 07 SEC E 206 FT M/L TO E LI OF SD DESC PROP & EXC 16TH ST E EASE OF RECORD COMB 041-1, 042-1 & 04-20-01-3-048 SEG J-0119 JU 7/25/97JU