

WHEN RECORDED RETURN TO:
Freeland Water & Sewer District
P. O. Box 222
Freeland, WA 98249

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Please Print or type information

Document Title(s) (Or transactions contained therein)

1. **RECOVERY CONTRACT** – applicable to benefiting non-participating parcels.

Grantor(s) (Last name first, then first name and initials)

1. _____
2. Additional names on Page ___ of document.

Grantee(s) (Last name first, then first name and initials)

1. _____
2. Additional names on Page ___ of document.

Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)

1. Lot No, _____ In the _____ 1/4 of Section _____, Township ___ North, Range ___,
E.W.M. -- Island County, Washington.

Additional legal descriptions are on Page(s) _____ of document.

Assessor's Property Tax Parcel or Account Number of "Subject Parcel(s)": _____

Reference Number(s) of Documents assigned or released: N/A

**FREELAND WATER and SEWER DISTRICT -- ISLAND COUNTY,
WASHINGTON**

RECOVERY CONTRACT NO. _____

IN RE: Developer main Extension By _____, ET. Al.
INCLUDING WATER SYSTEM IMPROVEMENT CONVEYANCE

AFFECTING: Island County Assessor's Parcel No. _____ -- Lot _____, Plat of
_____ -- In the _____ 1/4 of Section _____,
Township _____ North, Range _____, E.W.M. -- Island County, Washington.

More Legal Descriptions on Pages 2 through 5

THIS AGREEMENT, entered into by and between the GRANTOR, The Freeland Water and Sewer District, a Washington municipal corporation, hereinafter referred to as "District", and the GRANTEE, _____, hereinafter referred to as "Developer".

TOTAL BENEFIT AREA DESCRIPTION: The area specifically benefited by the installation of water main facilities developed by the Developer consists of all the following properties which form the basis for total area calculation and hence the calculation of funds to be collected from owners of the benefiting yet non-participating parcels described as follows:

PARCEL-A - "SUBJECT PARCEL -1" Owners: _____ :

Assessor's Parcel No. _____, (as now existing or hereafter re-configured or divided) and specifically described as follows:

[insert legal description] – or ["SEE EXHIBIT-A ATTACHED"]

PARCEL-B - "SUBJECT PARCEL -1" Owners: _____ :

Assessor's Parcel No. _____, (as now existing or hereafter re-configured or divided) and specifically described as follows:

[insert legal description] – or ["SEE EXHIBIT-A ATTACHED"]

PARCEL-C - "SUBJECT PARCEL -1" Owners: _____ :

Assessor's Parcel No. _____, (as now existing or hereafter re-configured or divided) and specifically described as follows:

[insert legal description] – or ["SEE EXHIBIT-A ATTACHED"]

RECITALS

WHEREAS, Developer has constructed and installed a water system extension including water mains, hydrant assemblies, valves, meters, and other appurtenances described as follows:

Beginning at _____ the District's existing main located at _____ thence running along _____ Road some _____ lineal feet, to the end of said

water main extension at _____. Said improvements may include _____ fire hydrant assemblies, _____ gate valves, and all other appurtenant, fixtures, joints, and other work and materials installed within the county road right-of-way etc. along _____ Rd.

And

WHEREAS, The District has approved and does, by virtue of this agreement, accept the conveyance, ownership, and maintenance responsibilities of said water system main extension under its sole jurisdiction; and

WHEREAS, The parties desire to enter into a contract pursuant to Chapter 35.91 RCW providing for reimbursement to the Developer for its construction and installation costs by owners of benefiting lands who did not participate in its original cost of development; and

WHEREAS, the total area of all parcels benefiting from said improvements comprised _____ acres, more or less per the maps of the District; and the total area of the benefiting parcel whose owners did not participate is _____ acres, more or less per the maps of the District; and

WHEREAS, the total cost of said extension was \$ _____. This sum, when divided by "total benefiting acreage" of _____ acres, yields an acreage-based project cost of \$ _____ per acre;

NOW THEREFORE, in consideration of the covenants bargained for and given in exchange, and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually agree as follows:

1. **CONVEYANCE:** Developer has furnished the District with "as-built" drawings of the installed improvements together with evidence showing that all associated charges and expenses have been paid. The improvements and facilities described are hereby conveyed to the District by the undersigned Developer and warranted to be free and clear of any outstanding liens, claims, or encumbrances.
2. **PROJECT COST:** The original cost to the developer of the system installation project covered by this recovery contract was \$ _____ .
3. **SUBJECT PARCEL:** The properties subject to recovery charges under this contract for non-participation in the original costs of water main extension is specified hereinabove "Subject Parcel(s)" and are described per deeds and Records of Island County, State of Washington as follows:

Assessor's Parcel Nos. _____ (as now existing or hereafter re-configured or divided) and specifically described as follows:

_____.

4. **CONTRACT TERM:** This contract shall extend for a period not to exceed **15 years** from the date of this contract's execution by the parties and recording with the Office of

the Island County Auditor, the District agrees to require the owners of the above described Subject Parcel, their heirs, successors or assigns, who hereafter connect to the above described system extension to pay a fair pro-rata share of the cost of the original construction.

5. **LIMITS OF APPLICABILITY:** Recovery under this contract shall not be applicable to any additional main extensions added to the terminus of the new main constructed by the Developer herein. Recovery shall be applicable only to new service and/or main connections intersecting the subject main between its start point and its terminus. In no case shall the terms of this contract be applicable to the District or any of its projects to improve the overall system of the District. In any case, only the owners of the property labeled and described hereinabove as Subject Parcel, their heirs, successors, or assigns are liable for charges pursuant to the terms of this contract.

6. **PRO-RATA SHARE:** The total fair pro-rata share to be collected from the Subject Parcel is a total of \$ _____.

7. **METHODOLOGY:** Given the inequitable distribution of front footage among the benefiting lands along _____ Rd., and the uniformity of zoning among the benefiting properties, the "area method" of calculating relative benefit of the improvements is applied in this case, to determine the pro-rata share charge applicable to the Subject Parcel.

Said charge was calculated by dividing the total project cost by the total number of benefiting acres yielding a charge of \$ _____ per acre. Said per acre charge was then multiplied by the _____ acres comprising the Subject Parcel.

The resulting total charge of \$ _____ shall be additional to any other fees or costs charged or levied by the District in association with hereafter providing water service to the Subject Parcel. Said charge is final and determinative for the purposes of this contract and shall not be subject to any re-calculation based on actual or alleged "new information". The charge shall not be "negotiable" nor subject to any re-calculation of areas, rates, or methods of applicability.

8. **RECOVERY LIMIT:** The maximum amount recoverable by the Developer under this contract is \$ _____.

9. **APPLICATION:** Said charge shall be applicable to the lands hereinabove described as Subject Parcel(s) and shall be paid by the owners of said properties, their heirs, successors, or assigns, prior to any connection to or extension from that water main extension installed by the Developer herein. The Subject Parcel(s) shall not receive service from the District until said charge is paid in full.

10. **DELIVERY:** The funds collected by the District pursuant to this contract - less no more than 10% to cover the actual cost of collection and the administration of this contract - shall be disbursed to the Developer, its heirs, successor's or assigns, at such address as provided by the Developer, or as may be changed by the Developer upon written notice to

the District. The Developer herein may assign or convey her rights to collection of said funds to other parties upon written notice to the District. The District shall be provided with a signed copy of such assignment by the Developer. The initial address of Developer for delivery shall be:

11. **Until otherwise notified, the District shall make checks payable to " _____ " who hereby assumes sole responsibility for any and all subsequent distribution of funds to other participating owners.**
12. **ADMINISTRATIVE COSTS:** the District may reduce the amount paid to the Developer by amounts equaling no more than ten percent (10%) of the collected funds to cover the District costs of collection and/or the general administration of this contract.
13. **INABILITY TO DELIVER, CAUSE FOR FORFEIT:** In the event that the District, after collecting said recovery amount, and after due and diligent efforts to deliver said fund(s) to the Developer, her heirs, successors, or assigns, for a period not to exceed one year in duration, finds that it is unable to deliver said funds to the developer, her heirs, successors, or assigns, the rights of the Developer to collect said funds shall will be forfeit, and shall terminate ninety (90) days after publication in a local newspaper of record for two consecutive issues of said paper of a Public Notice advising that the funds are available and will be forfeited upon a date specified if not claimed.
14. **FUTURE USE:** No owner(s) of the Subject Parcel(s) shall be granted permission, or be otherwise authorized by the District to connect to or use the above described water main extension during the said 15-year period without first paying the above specified charge to the District in addition to any and all other costs and charges made or assessed for such connection or use. Present or future owners of the Subject Parcel, under this contract agreement, shall not be permitted by the District to indirectly access through, private easements, any other water mains of the District. All future main extensions into the Subject Parcel(s) shall be subject to this contract.
15. **PAYMENT DUE DATE:** All amounts received by the District pursuant to this recovery agreement, less reasonable collection costs, shall be paid (mailed) to the Developer, her heirs, successors, or assigns within 60 working days after receipt thereof by the District.
16. **TERMINATION:** At the end of the 15 year period, this agreement shall automatically terminate and be null and void. Any funds or charges collected by the District over and above the amount due to Developer or any such funds collected by the District after said 15 year period expires shall belong to the District.
17. **DURATION:** As it pertains to the responsibility of the owners of the Subject Parcel(s) hereinabove described, their heirs, successors, or assigns, the terms of this contract shall run with the land and shall be binding on all parties having or acquiring any right, title, or

interest in the Subject Parcel(s) or any part thereof. As it pertains to the Developer herein, the rights of collection under this contract shall not run with the land and shall inure solely to the person of the Developer, her heirs, successors, or assigns as may be designated or disclosed to the District.

- 18. **INDEMNIFICATION:** Developer herein agrees to indemnify and hold the District harmless in any legal challenge to the sufficiency, fairness, timeliness, or enforceability of this contract. Any and all costs associated with any defense of or challenge to this contract or any parts thereof shall be at the sole cost and expense of Developer, its heirs, successors or assigns seeking to protect the recovery herein specified. The above indemnification and hold harmless clause shall apply to the District and any of its employees, agents, or officials individually and severally.

- 19. **SEVERABILITY:** In the event that any part of this contract shall be found invalid or inapplicable by a court of competent jurisdiction, such finding shall in no way affect any other parts or remainder thereof.

PROJECT COST SUMMARY

1.	Engineering _____ (Name of Firm)	\$ _____	
2.	District (billed invoices)	\$ _____	
3.	District (incurred; not yet billed) - additional professional services and recording fees	\$ _____	
4.	Construction labor & materials, including taxes: _____ (Name of Contractor)	\$ _____	
6.	Lab fees:	\$ _____	
8.	Developer's, miscellaneous expenses: finance costs, administrative time efforts and out of pocket expenses:	\$ _____	

TOTAL PROJECT COST =		\$ _____	

Dated this _____ day, of _____, 20__.

Freeland Water and Sewer District:

By: _____
Commissioner:

By: _____
Commissioner:

By: _____
Commissioner:

Owner: _____
By (print name):

Owner: _____
By (print name):

ACKNOWLEDGEMENT:

STATE OF WASHINGTON)
) SS
County of ISLAND)

On this _____ day of _____, 20__, before me, the undersigned, a Notary public in and for the State Of Washington, Duly Commissioned and Sworn, personally appeared

_____, to me known to be the _____ of the _____, the Washington municipal corporation which executed the foregoing instrument and acknowledged the execution of said instrument to be the free and voluntary act of said corporation for the uses and purposes therein mentioned, and on oath stated that _____ were/was authorized to execute said instrument for said corporation and that the seal affixed (if any) is the seal of said corporation.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington.

Residing at _____ .
My commission expires on _____ .

ACKNOWLEDGEMENT:

STATE OF WASHINGTON)
) SS
County of ISLAND)

On this _____ day of _____, 20____, before me, the undersigned, a Notary public in and for the State Of Washington, Duly Commissioned and Sworn, personally appeared

_____, to me known to be the _____ of the Freeland Water and Sewer District, the Washington municipal corporation which executed the foregoing instrument and acknowledged the execution of said instrument to be the free and voluntary act of said corporation for the uses and purposes therein mentioned, and on oath stated that _____ were/was authorized to execute said instrument for said corporation and that the seal affixed (if any) is the seal of said corporation.

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Notary Public in and for the State of Washington.
Residing at _____ .
My commission expires on _____ .