

Latecomer Agreement
NO. _____

LATECOMER AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2____, by and between the City of White Salmon, a Municipal Corporation located in Klickitat County, Washington, hereinafter referred to as “**CITY**”, and Claire and Seth Gilchrist, their heirs, successors and assigns, hereinafter referred to as “**DEVELOPER/OWNER**”.

WHEREAS, RCW 35.72.010 et seq. and White Salmon Municipal Code Chapter 13.28 provide for reimbursement of costs by subsequent owners of real property who construct road facilities which are conveyed to the City;

WHEREAS, the property that is being improved is in a location where the City’s ordinances require the facilities to be improved or constructed as a prerequisite to further property development;

WHEREAS, the CITY and the DEVELOPER/OWNER entered into a resolution agreement to split the cost of the improvements made to CITY property;

WHEREAS, the following exhibits are attached to this agreement and incorporated herein by this reference:

- Exhibit A – Description of Owner’s real property;
- Exhibit B – Description of real property subject to this Latecomers Agreement;
- Exhibit C – Map of service area and latecomers fees;
- Exhibit D – Cost breakdown of improvements;
- Exhibit E – Invoices;
- Exhibit F – Proof of payment.
- Exhibit G – Dedication of improvements
- Exhibit H – Copy of the agreement between CITY and DEVELOPER/OWNER

WHEREAS, the location of the road facilities constructed by DEVELOPER/OWNER is shown on the map attached as Exhibit C and are within the legal description contained on the attached Exhibit B;

WHEREAS, the DEVELOPER/OWNER certifies and verifies that the legitimate expenses actually incurred in construction of the road facilities are provided on the attached Exhibit D;

WHEREAS, the DEVELOPER/OWNER has offered and the CITY has agreed to accept the road facilities described herein;

NOW, THEREFORE, IT IS AGREED AND STIPULATED AS FOLLOWS:

Section 1. DEVELOPER/OWNER has constructed at its own cost and expense the facilities described herein. Connection to the municipal system is expressly conditioned upon the following:

- a. Construction of the road facility according to plans and specifications approved by the municipality;
- b. Inspection and approval of the road facility by the municipality;
- c. Transfer to the municipality of the road facility, without cost to the municipality, upon acceptance by the municipality of the road facility;
- d. Full compliance with the owner's obligations under this contract and with the municipality's rules and regulations;
- e. Provision of sufficient security to the municipality to ensure completion of the road facility and other performance under the contract;
- f. Verification and approval of all contracts and costs related to the road facility.

Section 2. For a period of fifteen years from the _____ [the date the parties intended the original agreement to be recorded] (the "Latecomer's Term"), any person, firm, or corporation owning or leasing real estate and not contributing to the cost of the improvements as listed above and as in the attached exhibits and seeking to connect to or make use of these improvements shall pay a Latecomer Fee as calculated and outlined in the attachments hereto and made part of the agreement. These Latecomer Customer Equivalent Charges are explained in the attachments which include documented costs as submitted by the DEVELOPER/OWNER and the method of computing the fair pro rata shares.

Section 3. The Latecomer's Term may be extended for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more. Upon the extension of the Latecomer's Term, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. The CITY shall notify in writing all property owners who are subject to the reimbursement obligations under subsection (1) of this section of the extension filed under this subsection, and DEVELOPER/OWNER shall reimburse CITY for any such notification costs.

Section 4. No person, firm or corporation shall be granted a permit or be authorized by the CITY to connect directly or indirectly or to gain service from the facilities described herein without first paying the latecomers fees set forth in Exhibit F to this agreement, to the CITY.

Section 5. Every two years from the date the contract is executed the DEVELOPER/OWNER entitled to reimbursement under this section shall provide the CITY with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. The funds collected under this subsection must be deposited in the capital fund of the municipality.

Section 6. The CITY shall within sixty (60) days of receipt transmit the Latecomer Fees, less the CITY administrative fee of \$50 per latecomer's fee and less the CITY's cost to repair or reconstruct defective work (if any), payable to the DEVELOPER/OWNER.

Section 7. That the provision herein for reimbursement relates only to costs of road improvements constructed and transferred to the CITY for use as publicly owned, operated and maintained facilities. No reimbursement shall be made to DEVELOPER/OWNER for the cost of local roads serving only his property.

Section 8. The CITY shall never be liable under this agreement or otherwise to pay any of the cost of any road facilities referred to herein; nor shall it be liable for an inadvertent failure to collect a latecomer fee; its function herein is simply to receive the latecomer fees and to transmit the same, less handling fees, to the DEVELOPER/OWNER; all such fees shall be paid without computation of any interest.

Section 9. DEVELOPER/OWNER agrees with the CITY that easements pertaining to these facilities are to be approved by the CITY and recorded prior to the final acceptance of this Agreement and they will conform exactly to the as-built construction drawings.

Section 10. DEVELOPER/OWNER agrees that the CITY will not be liable for any contracts that DEVELOPER has current pertaining to the original construction of said facilities and will hold harmless, defend and indemnify the CITY from any obligations pertaining thereto.

Section 11. CITY reserves the right, without affecting the validity or terms of the Agreement to make or cause to be made extensions or additions to the above improvement and to allow service connections to be made to said extensions or additions, without liability on the part of the City.

Section 12. The DEVELOPER/OWNER shall supply the CITY with a maintenance guarantee bond or equivalent acceptable to the CITY in the amount of one hundred (100) percent of the value of the improvements conveyed by the DEVELOPER/OWNER to the CITY for a period of one year from the date of final acceptance of the improvements by the CITY, and said bond shall be executed by a surety company authorized to do business with the State of Washington and shall be subject to the approval of the CITY.

Section 13. If prior to the expiration of one year after the date of acceptance of the improvements, any work is found to be defective, the DEVELOPER/OWNER shall promptly, without cost to the CITY, and in accordance with written instructions issued by the City Engineer, either correct such defective work or, if it has been rejected by the City Engineer, remove and replace it with non-defective work. If the DEVELOPER/OWNER does not promptly comply with the terms of such instructions, the CITY may have the defective work corrected or the rejected work removed and replaced and all direct and indirect costs of such removal and replacement, including compensation for professional services, shall be withheld from the latecomer payment transmittals to the DEVELOPER/OWNER. In addition to the remedy for defective work provided in this section, the City may institute a lawsuit to collect from DEVELOPER/OWNER all costs and damages, including consequential damages incurred by the CITY as a result of DEVELOPER'S/OWNER breach of the warranty provided in this section as to the workmanship, materials and fitness of the road facilities

constructed by or on behalf of the DEVELOPER/OWNER. The prevailing party to such lawsuit shall be awarded its reasonable attorney's fees upon trial or any appeal.

This Agreement shall terminate and shall be of no further force or effect fifteen (15) years from _____ [the date the parties intended the original agreement to be recorded], unless extended pursuant to Section Section 3, above.

DATED this _____ day of _____, _____.

CITY OF WHITE SALMON
a Washington Municipal Corporation

DEVELOPER/OWNER

By: _____
Title

By: _____

By: _____

Mailing Address

City, State, Zip

Exhibit A – Description of Owner’s real property

NAME: Seth and Claire Gilchrist

MAILING ADDRESS: PO Box 387
White Salmon, WA 98672

DESCRIPTION OF ENTIRE PARCEL:

TL 15 BLK 1 BOWMANS HILLSIDE TO WS SENE; 24-3-10 as shown and described in the attached survey.

TAX PARCEL NUMBERS:

03102473001800

ROAD LOCATION DESCRIPTION:

Michigan Ave, starting at the corner of Manly St, exclusive of the intersection, was paved North to the lot line of tax lot 03102417060300.

Exhibit B – Description of real property subject to this Latecomers Agreement

Property Owners	Property Address	Area	Parcel Number	Legal Description
Seth and Claire Gilchrist	780 NW Michigan Ave, White Salmon, WA	1.00	03102473001800	TL 15 BLK 1 BOWMANS HILLSIDE TO WS SENE; 24-3-10
John Manly	205 Cherry St, White Salmon, WA	1.01	03102417060100	Lot 1 WS BLA2017-06;24-3-10
John Manly	No Address	0.49	03102417060200	Lot 2 WS BLA2017-06;24-3-10
John Manly	No Address	0.42	03102417060300	Lot 3 WS BLA2017-06; 24-3-10
Scott Hardisty	No Address	0.11	03102416020100	LOT 1 WS-BLA2016-01
Lois Camp	760 NW Michigan Ave, White Salmon, WA	0.57	03102414000800	TL 34A IN SENE IRR TRACTS TO WS; 24-3-10

Exhibit C – Map of service area and latecomers fees

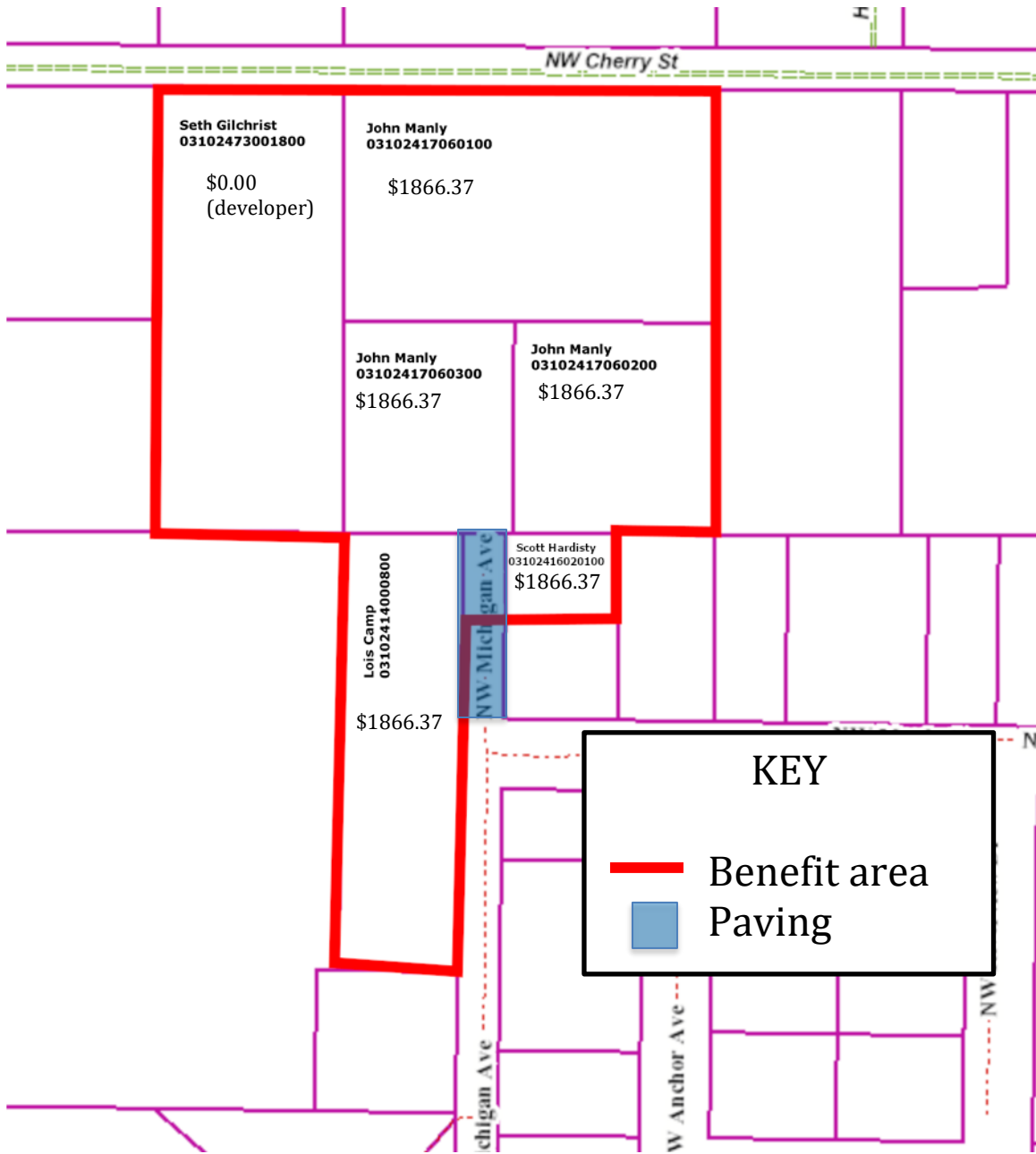


Exhibit D – Cost breakdown of improvements

PROJECT COSTS

Engineering	\$ -
Excavation	\$ 8,277.50
Paving	\$ 9,604.71
TOTAL COST	\$17,882.21

COST DISTRIBUTION

City of White Salmon direct cost	\$ 5,000.00
City of White Salmon split of unexpected*	\$ 1,684.00
Gilchrist Share (1/6 of non-city)†	\$ 1,866.37
Latecomers' Share (5/6 of non-city)†	\$ 9,331.84
TOTAL	\$17,882.21

* City to pay 50% of unexpected costs as per Section C.1 of the attached agreement. Rock-breaking costs were not included in the excavation quote and were not anticipated.

† Table of latecomer fees assessed to service-area properties

Property Owners	Property Address	Parcel Number	Legal Description	Latecomers Share
Seth Gilchrist	780 NW Michigan Ave, White Salmon, WA	03102473001800	TL 15 BLK 1 BOWMANS HILLSIDE TO WS SENE; 24-3-10	\$0 (developer)
John Manly	205 Cherry St, White Salmon, WA	03102417060100	Lot 1 WS BLA2017-06;24-3-10	\$1,866.37
John Manly	No Address	03102417060200	Lot 2 WS BLA2017-06;24-3-10	\$1,866.37
John Manly	No Address	03102417060300	Lot 3 WS BLA2017-06; 24-3-10	\$1,866.37
Scott Hardisty	No Address	03102416020100	LOT 1 WS-BLA2016-01	\$1,866.37
Lois Camp	760 NW Michigan Ave, White Salmon, WA	03102414000800	TL 34A IN SENE IRR TRACTS TO WS; 24-3-10	\$1,866.37

Exhibit E – Invoices

Halseth Excavating Inc
 5880 Dee Hwy
 Parkdale, OR 97041
 OR CCB # 211457/ WA HALSEEI835J4
 OR DEQ # 39014

Invoice

Date	Invoice #
9/1/2021	6404

P.O. No.

Bill To
Seth Gilchrist

Terms
Net 15

Description	Amount
ROAD EXCAVATION	
Excavation-Mini Excavator	1,323.00T
Ground Labor	1,625.00T
Utility Truck	115.00T
Trucking	575.00T
3/4" Rock (55.11 Ton)	694.00T
Excavator-Rock Breaking	3,368.00T
Sales Tax	577.50

Thank you for your business.	Total \$8,277.50
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Phone #	E-mail
541-806-3152	halseth.excavating@gmail.com

Professional Pavers and Construction LLC

1767 12th St. #384.
 Hood River, OR 97031

Invoice

Date	Invoice #
11/1/2021	4702

Bill To
Gilchrist, Seth 780 NW Michigan Ave. White Salmon, WA. 98672

P.O. No.	Terms	Project
	Due on receipt	

Item	Description	Est Amt	Prior Amt	Prior %	Qty	Rate	Curr %	Total %	Amount
Paving	Pave only prepared surface area totaling approx. 2,413 sq ft of compacted asphalt No grading is included Traffic control by others Testing by others.	8,976.36			1	8,976.36	100.00%	100.00%	8,976.36
	City of White Salmon Sales tax 7%	8,976.36 628.35				628.35	100.00% 100.00%	100.00% 100.00%	8,976.36 628.35

Total						\$9,604.71			
Payments/Credits						-\$8,976.36			
Balance Due						\$628.35			

Exhibit F – Proof of Payment

Excavation Payment

SETH M GILCHRIST
CLAIRE GILCHRIST
PO BOX 387
WHITE SALMON, WA 98672-0387

1299

30-7426/3140

12/Sep/2021
Date

Pay to the Order of Hulseth Excavating Inc \$ 12073.48
One Two Zero Seven Three and 48/100 = Dollars

Handwritten Note



USAA FEDERAL SAVINGS BANK
10750 McDERMOTT FWY
SAN ANTONIO, TEXAS 78288-0544
(210) 456-8000 1-800-832-3724

For Invoices 6403 + 6404

[Signature]

For security and protection, this section has been removed.

Paving Payment

SETH M GILCHRIST
CLAIRE GILCHRIST
PO BOX 387
WHITE SALMON, WA 98672-0387

1341

30-7426/3140

17/Dec/21
Date

Pay to the Order of Professional Pavers + Construction \$ 628.35
Six Two Eight and 35/100 = Dollars

Handwritten Note



USAA FEDERAL SAVINGS BANK
10750 McDERMOTT FWY
SAN ANTONIO, TEXAS 78288-0544
(210) 456-8000 1-800-832-3724

For Invoice 4702

[Signature]

For security and protection, this section has been removed.

SETH M GILCHRIST
CLAIRE GILCHRIST
PO BOX 387
WHITE SALMON, WA 98672-0387

1322

30-7426/3140

CE Nov/10/2021
Date

Pay to the Order of Professional Pavers + Construction LLC \$ 8976.36
eight nine seven six and 36/100 = Dollars

Handwritten Note



USAA FEDERAL SAVINGS BANK
10750 McDERMOTT FWY
SAN ANTONIO, TEXAS 78288-0544
(210) 456-8000 1-800-832-3724

For Paving Michigan - Invoice 4702

[Signature]

For security and protection, this section has been removed.

Exhibit G – Dedication of Improvements

I, Seth Gilchrist, the developer responsible for the paving of NW Michigan Ave north of Manly St, hereby GRANT the improvements detailed in this document to the City of White Salmon on this twenty-ninth (29) day of December in the year twenty-twenty-one (2021) free from all encumbrances (no exceptions).

Seth Gilchrist

Date Signed

Exhibit H – City Settlement Agreement

SETTLEMENT OF CLAIMS AND MUTUAL RELEASE

This Settlement of Claims & Mutual Release is made by and among Seth Gilchrist and Claire Gilchrist, husband and wife (hereinafter "Gilchrist"), and the City of White Salmon, a Washington Municipal Corporation ("City").

RECITALS

A. Gilchrist owns real property in the City of White Salmon located at 780 NW Michigan White Salmon, WA 98671 (Klickitat Parcel #03102473001800). Gilchrist alleges the City improperly imposed road improvement requirements on Gilchrist as part of their residential development. City replies that its required exactions were reasonable and proportional.

B. The parties are willing to resolve this dispute under the terms set forth below.

C. This agreement is entered into between the parties to resolve the issue without further dispute and to avoid any risk of litigation. Each party expressly denies liability to the other in this matter

NOW, THEREFORE, it is agreed as follows:

I. Agreement.

A. Gilchrist's agreement. Gilchrist agrees as follows:

1. Gilchrist shall improve N. Michigan Ave to the standards required by the City Fire Chief within sixty (60) days. Alternatively, Gilchrist may, at his option, provide the City with a performance bond within ten (10) calendar days insuring Gilchrist will complete the road improvements as required not later than August 31, 2021. The bond shall cover the remaining improvement costs as determined by the Public Works Director. Upon City approval of the road construction or this bond the City will provide Gilchrist with a Certificate of Occupancy.

2. Gilchrist shall be responsible for hiring a contractor to perform the work of the street improvements that are necessary for development access, at the developers' expense; and has the option of establishing a Developer Reimbursement agreement.

B. City's agreement. City agrees as follows:

1. The City of White Salmon will pay for and provide all street engineering design, inspection work and as-built drawings to ensure the street is constructed to city standards;

2. In addition, the City of White Salmon will reimburse Gilchrist the sum of up to Five Thousand Dollars (\$5,000.00) toward Gilchrist's costs for the street improvements to N.

Michigan Ave.

3. The City of White Salmon will be financially responsible for all other expenses and change orders that are not directly associated with access to the Developers property.

SETTLEMENT OF CLAIMS & MUTUAL RELEASE - 1

ca

Sam

C. Mutual agreement.

1. The Parties agree to cost share in any unexpected conditions that may be discovered during construction that are directly related to and for the need of access.

II. Mutual Release. Under the terms set forth above, Gilchrist and City settle this dispute and mutually release each other, their agents, co-owners, employees, elected officials and from any and all claims related to the Gilchrist road improvement requirements and related matters. Any claim brought under this agreement shall relate exclusively to a breach of this agreement and not to the underlying claims, which upon signing are fully and completely released.

III. Venue. In the event any action is brought to enforce this agreement, the parties agree that venue shall lie exclusively in Klickitat County, Washington.

IV. Modification. This agreement, including all recitals and City records relating to this matter, represents the full and complete agreement of the parties, superseding all previous communications, representations or agreements, whether written or oral, and may not be modified without the written agreement of all parties.


V. Severability. If any term, covenant, or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

VI. Durability. This agreement runs with the land and shall inure to Gilchrist's successors and assigns.

VII. Voluntary Execution. The parties represent, understand and agree that this agreement is made and entered into as their free and voluntary act.

VIII. Costs and Attorneys' Fees. If by reason of any breach or default on the part of either party hereto it becomes necessary for the other party hereto to employ an attorney, then the nonbreaching party shall have and recover against the other party in addition to costs allowed by law, reasonable attorneys' fees and litigation-related expenses. The nonbreaching party shall be entitled to recover reasonable attorneys' fees and costs and expenses, as provided above, regardless of whether litigation is actually commenced.

Signed by:



Clare Gilchrist



Seth Gilchrist

Dated: 02/24/21

24/feb/2021

Dated:

CITY OF WHITE SALMON

By Marla Keethler
Its Mayor

Dated: _____

Approve as to Form:

Kenneth B. Woodrich, City Attorney

ca

smw