

Ordinance 2007-16

AN ORDINANCE OF THE EATONVILLE TOWN COUNCIL
AUTHORIZING THE MAYOR TO ENTER INTO AN ASSESSMENT
REIMBURSEMENT CONTRACT (LATECOMER AGREEMENT)
RELATING TO SEWER SYSTEM IMPROVEMENTS IN THE AREA OF
LYNCH CREEK ROAD AND AIRPORT ROAD

Whereas, the Town has completed construction of a 10-inch sewer line extension paid for by MJK Contracting; and

Whereas, the Town and MJK Contracting desire to enter into a Latecomer Agreement according to the provisions of EMC 13.14.490.A.2; and

Whereas, the completed sewer extension is indicated on Exhibit "A" that is to be attached to the Latecomer Agreement; and

Whereas, the properties that may benefit from the sewer extension are identified on Exhibit "B" attached to the Latecomer Agreement; and

Whereas, pursuant to EMC 13.14, the Administrator has recommended that the Town Council approve the Latecomer Agreement, a copy of which is attached to this ordinance; and

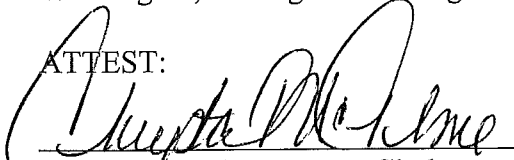
Whereas, a hearing on the Latecomer Agreement was held before the Town Council on September 10, 2007, in accordance with EMC 13.14.

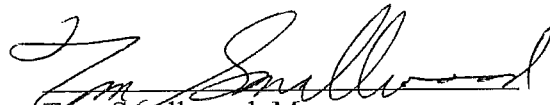
NOW, THEREFORE, the Town Council adopts the following ordinance:

Section 1: The Mayor of Eatonville is hereby authorized by the Town Council to enter into a Latecomer Agreement entitled "Latecomer Agreement for Reimbursement for Town Sewer System Extension" (4 pages), to include Exhibits "A" and "B" as attachments (2 pages), and directs the agreement with attachments to be filed for record with the Pierce County Auditor within thirty (30) days following execution.

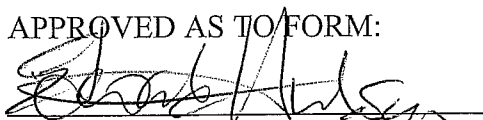
PASSED by the Town Council and approved by the Mayor of the Town of Eatonville, Washington, at a regular meeting thereof this 24 day of September 2007.

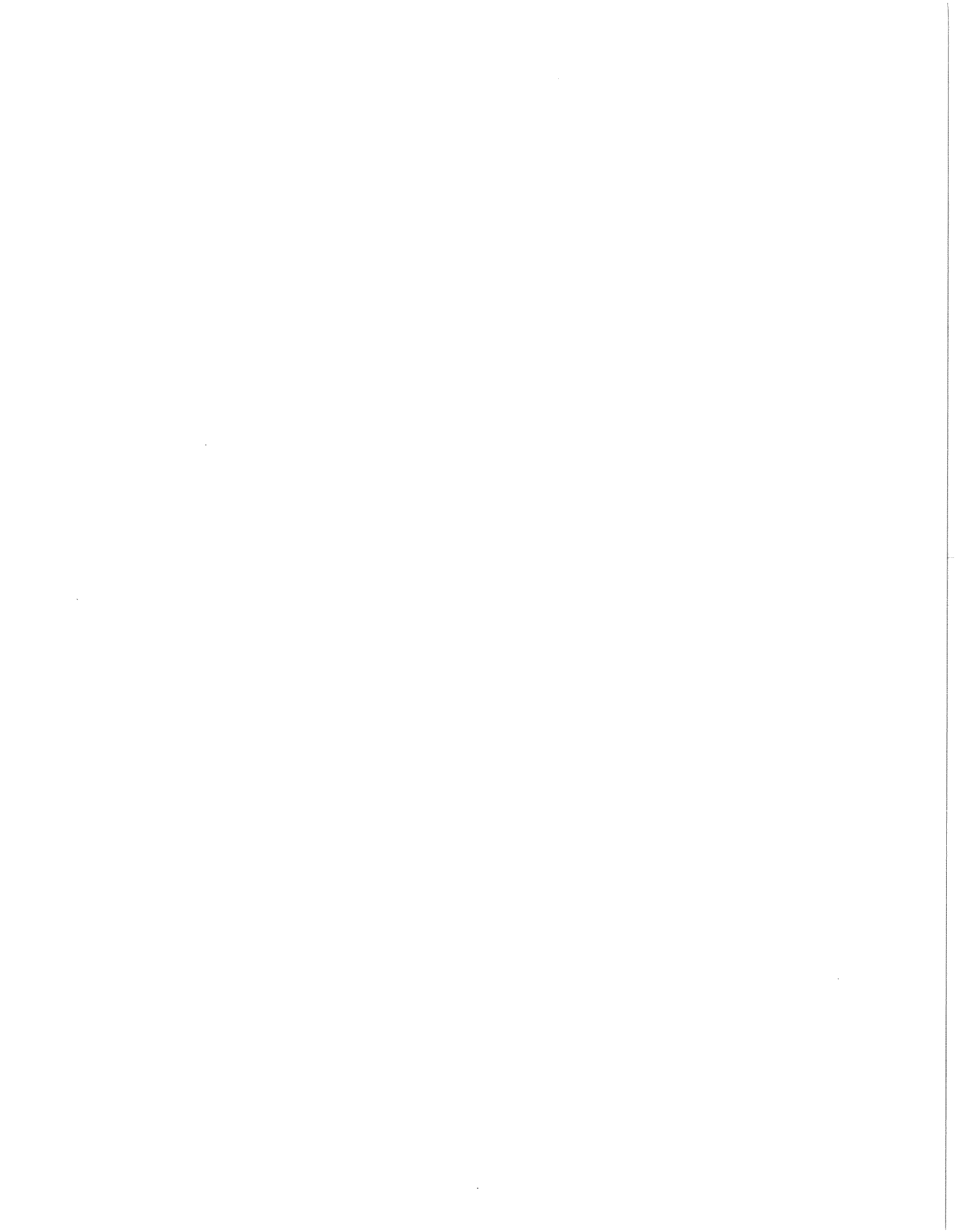
ATTEST:


Chrystal McGlone, Town Clerk


Tom Smallwood, Mayor

APPROVED AS TO FORM:


Edward Hudson, Town Attorney



**LATECOMER AGREEMENT FOR REIMBURSEMENT
FOR TOWN SEWER SYSTEM EXTENSION**

AGREEMENT made this ___ day of _____, 2007 between M.J.K. Contracting, Inc., a Washington corporation, and the Town of Eatonville, situate in Pierce County, Washington, the parties respectively referred to herein as "Developer" and "Town".

WITNESSETH:

RECITALS

1. The Town has undertaken and completed a ten-inch sewer line extension financed by Developer, who has exercised the option of a Latecomer Agreement ("Latecomer Agreement") pursuant to EMC 13.14.490.A.2, which makes it possible for Developer to recover some of the construction costs of the sewer line extension; and

2. The Town of Eatonville, Washington, after giving due notice of the hearing before the Town Council on Ordinance 2007-16 to permit such Agreement and upon the conclusion of said hearing did adopt said Ordinance on September 10, 2007 granting approval of the Latecomer Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

A. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.

B. The ten-inch sewer line extension constructed and installed by the Town is shown on attached Exhibit "A", with said extension being 593 feet in length.

C. The Developer's properties benefiting from the sewer extension are parcel nos. 416145024, 416145022, 416145020, and 416145025, and the other parcels for which the extension could benefit are parcel nos. 416141009, 416141031, 416141056, 416141057, and 416141055, all parcels more particularly described on attached Exhibit "B" and incorporated herein by this reference.

D. The total cost for the design and construction of the extension depicted in Exhibit "A" and subject to pro rata reimbursement is \$37,115.87.

E. The Town agrees to collect from the Owner or Owners of the parcels within the benefited real estate as shown in Exhibit "B" who have not heretofore contributed to the project cost thereof, and who subsequently tap onto or connect to or use the same, a Latecomer charge equal to the fair pro rata share of the total project cost based upon the lineal front footage of the affected properties and as assessed as set forth in Exhibit "C". The Town shall charge, in addition to its usual and ordinary charges made against persons applying for service from said facility and in addition to the amount agreed to be collected by the Town in this paragraph, a sum

equal to 15% of the assessment to be collected from the Owners of said benefited real estate tapping onto, connecting to, or using said extension, which sum shall be used by the Town to defray the cost of labor, bookkeeping, and accounting, pursuant to the terms of this Agreement.

F. The Town agrees not to allow Owners of a parcel within the benefited real estate area as shown in Exhibit "B" to tap onto, connect to, or use said facility without such Owner or Owners having first paid to the Town the Latecomer charge, and such other charges as set forth above.

G. The Town agrees not to allow Owners of benefited real estate as mentioned above to tap on to, connect to, or use said facility without such Owner or Owners having first paid or agreed to pay by installment, to the Town the Latecomer charge, and such other charges as set forth above.

H. The Town shall pay to the Developer the sums agreed by it to be collected pursuant to the provisions above, within 60 days after receipt thereof, at the address of the Developer as set forth hereinafter or at such other addresses as the Owner shall provide by certified mail. If said payments are returned to the Town unclaimed by the Developer or if the Town is unable to locate the Developer after six (6) months, the Town shall retain all sums then received and all future sums collected under this Agreement. In the event of any claims arising as a result of the negligent acts or omissions of the Town, its officers, officials, employees, representatives and agents, in the performance of the services described in this Agreement, the Developer hereby agrees to release, indemnify, defend and hold the Town, its officers, officials, employees, agents and representatives harmless from any and all claims, costs, judgments, awards, or liabilities to any person, to the extent allowed by law.

I. The Town shall be entitled to rely with acquittance on the provisions of this Agreement with respect to the fairness of the pro rata charges, and upon the determination of the benefited properties as provided herein. The Developer agrees to indemnify, hold harmless and defend the Town on any challenge to the method used to calculate the fair pro rata share applied to the parcels as set forth in this Agreement.

J. Nothing contained herein shall be construed to affect or impair in any manner the right of the Town to regulate the use of its sewer system, of which the extension described in Exhibit "A" shall become part under the terms of this Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by the Town of any such requirement shall not be deemed an impairment of this Agreement, though it may be imposed in such manner as to refuse service to any Owner or Owners of a parcel in the benefited real estate area in order to secure compliance with any such requirement of the Town.

K. This Agreement shall become operative upon its being recorded with the Pierce County Auditor at the expense of the Developer, and shall remain in full force and effect for a period of fifteen (15) years as above mentioned, or until the Developer, or its successors or assigns shall have been fully reimbursed as aforesaid, whichever event occurs earlier.

L. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the Town and Developer.

M. All communications regarding this Agreement shall be sent to the parties at the addresses listed below unless notified to the contrary.

TOWN ADMINISTRATOR
TOWN OF EATONVILLE
PO Box 309
Eatonville, WA 98328

M.J.K. CONTRACTING, INC.
16544 – 148TH Avenue SE
Yelm, WA 98597

N. All of provisions, conditions, regulations and requirements of this Agreement shall be binding upon the successors and assigns of the Developer as if they were specifically mentioned herein.

O. This Agreement shall be construed in accordance with the State of Washington, and jurisdiction of any resulting dispute shall be in Pierce County Superior Court, Pierce County, Washington. The prevailing party in any legal action arising from this Agreement shall be entitled to all costs and expenses, including attorney fees, expert witness fees or other witness fees and any such fees and expenses incurred on appeal.

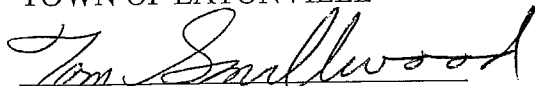
P. Any invalidity, in whole or in part. of the provisions of this Agreement shall not affect the validity of any other of its provisions.

Q. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

R. This Agreement, including the exhibits and all documents referenced herein, constitutes the entire Agreement between the Town and Developer and supersedes all proposals, oral or written, between the parties on the subject.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

TOWN OF EATONVILLE




Mayor of Eatonville

M.J.K Contracting, Inc.

16544 – 148TH Avenue SE
Yelm, WA 98597

ATTEST:



Chrystal McGlone, Town Clerk

Approved as to form:

SMITH ALLING LANE, P.S.

[Handwritten Signature]
Edward G. Hudson, Town Attorney

STATE OF WASHINGTON)
: ss.
COUNTY OF PIERCE)

On this day personally appeared before me TOM SMALLWOOD, to me known to be the Mayor of the Town of Eatonville, the Town described in and who executed the foregoing instrument, and acknowledged that he signed as his free and voluntary act and deed for the uses and purposes therein mentioned on behalf of the Town.

GIVEN under my hand and official seal this 24 day September, 2007.



[Handwritten Signature]
Notary Public in and for the State of
Washington, residing at Pierce County
Print Name: Crystal A. McElmoe
My Commission Expires: 11/31/2011

STATE OF WASHINGTON)
: ss.
COUNTY OF PIERCE)

On this day personally appeared before me _____,
to me known to be the _____ of M.J.K. CONTRACTING, INC., the Developer
described in and who executed the foregoing instrument, and acknowledged that he signed as his
free and voluntary act and deed for the uses and purposes therein mentioned on behalf of said
corporation.

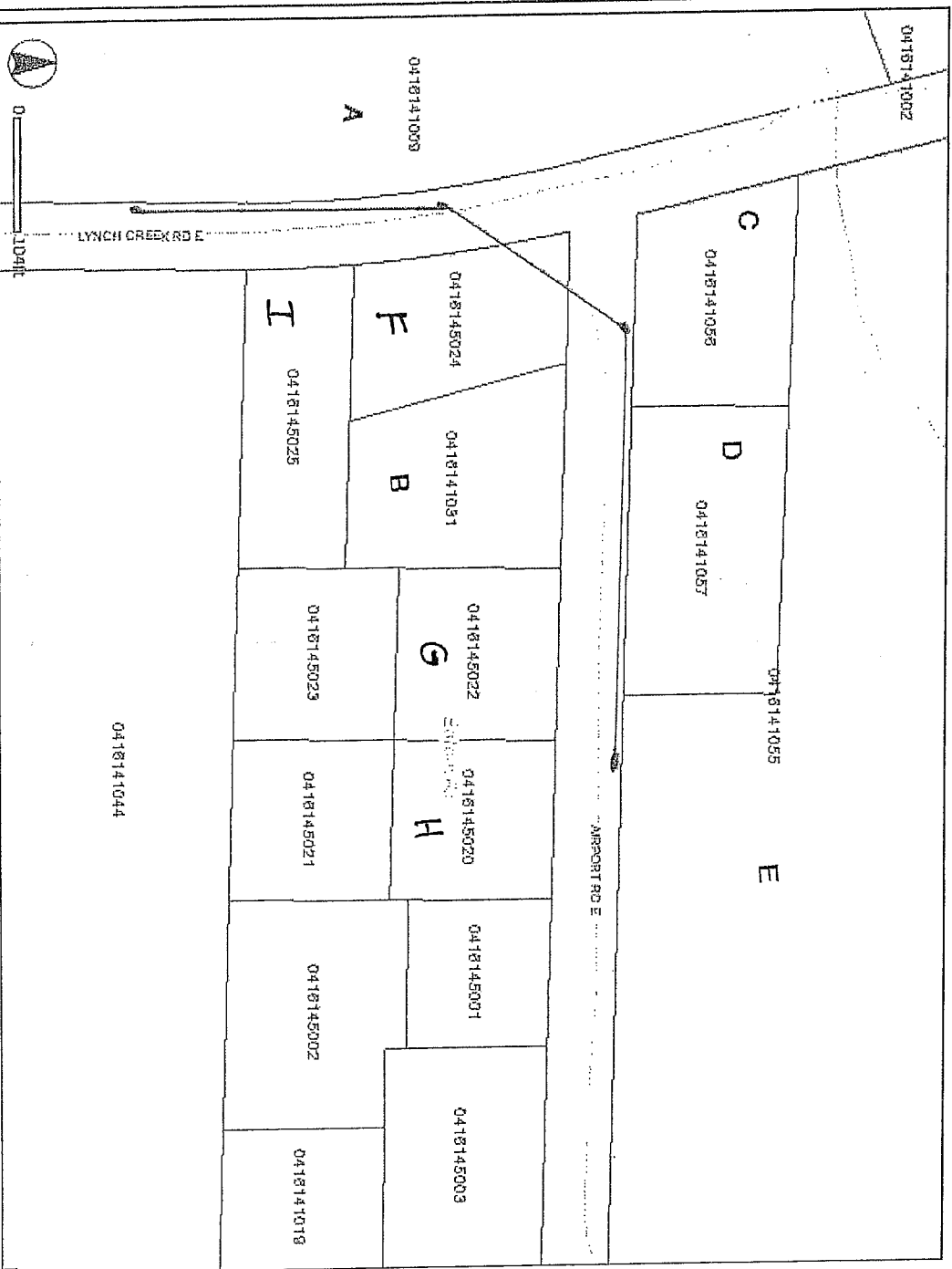
GIVEN under my hand and official seal this ____ day _____, 2007.

Notary Public in and for the State of
Washington, residing at _____
Print Name: _____
My Commission Expires: _____

Legend

Tax Parcels

Exhibit "A"



Disclaimer: The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

M.J.K. CONTRACTING, INC. COST RECOVERY CALCULATIONS

Map ID	Parcel #	Owner	Frontage	Assessment Rate	Total Assessment
A	416141009	Terrance Van Eaton 41918 Lynch Creek Rd E	303.61	27.647	\$8,393.91
B	416141031	Carl & LeeAnn Lucaas 495 Airport Rd E	200	27.647	\$5,529.40
C	416141056	Harold & W. Etal Burlingame 448 Airport Rd E	138	27.647	\$3,815.29
D	416141057	Carl & LeeAnn Lucaas 495 Airport Rd E	249.16	27.647	\$6,888.53
E	416141055	Harold & W. Etal Burlingame 448 Airport Rd E	60	27.647	\$1,658.82
F	416145024	Trent Fallon PO Box 1430 Eatonville	325.08	27.647	\$8,987.49
G	416145022	Trent Fallon PO Box 1430 Eatonville	147.98	27.647	\$4,091.20
H	416145020	Trent Fallon PO Box 1430 Eatonville	20	27.647	\$552.94
I	416145025	Trent Fallon PO Box 1430 Eatonville	100.28	27.647	\$2,772.44
Total			1544.11	27.647	\$42,690.02

Sewer Line Construction and design costs	\$37,104.96
15% Town Overhead	\$5,565.06
Total Sewer Cost subject to reimbursement	\$42,690.02