

**SANITARY SEWER SERVICE
DEVELOPMENT AGREEMENT
BETWEEN THE COWLITZ INDIAN TRIBE
AND THE CITY OF LA CENTER, WASHINGTON**

This Sanitary Sewer Service Development Agreement (“Development Agreement”) is entered into and shall be effective on the last signed date below by and between the following parties:

The Cowlitz Indian Tribe (“Tribe”)
A federally recognized Indian Tribe
1055 9th Avenue, Suite A
Longview, WA 98632

The City of La Center (“City”)
A Washington Municipal Corporation
214 East 4th Street
La Center, WA 98629

RECITALS

WHEREAS, the City is a Washington municipal corporation which owns and operates a municipal sanitary sewer system, and has authority under RCW Chapter 35.92 and RCW Chapter 35.67 to construct, condemn, purchase, acquire, maintain and operate sewer systems, plants, sites, or other sewer facilities within and without the City limits, including federal lands contiguous to the city’s corporate limits; and

WHEREAS, The Tribe is a federally recognized Indian tribe with a long historical connection to the Clark County area, acknowledged as a Sovereign Indian Nation by the United States Government, and with authority under its Constitution and tribal laws to enter into this Development Agreement; and

WHEREAS, the Tribe has an interest in property consisting of approximately 151.87 acres contiguous to the city’s corporate limits, which the United States Department of Interior approved on December 17, 2010 to be taken into trust on behalf of the Tribe for its initial reservation (the “Cowlitz Reservation Property”); and

WHEREAS, the Tribe plans to develop the Cowlitz Reservation Property for governmental activities, a gaming and resort facility (the “Tribal Development”); and

WHEREAS, the federal government’s decision to take the Cowlitz Reservation Property into trust and allow gaming has been appealed, and the Tribal Development will not be commenced until final resolution of the appeal in the Tribe’s favor; and

WHEREAS, if the appeal of the decision to take the Cowlitz Reservation Property into trust and allow gaming is resolved in the Tribe’s favor and an initial reservation for

the Tribe is established on the Cowlitz Reservation Property, the City and the Tribe agree that both governments will benefit by the city extending its sewer system to serve the lands recently annexed by the City adjoining the Cowlitz Reservation Property, and to serve the Tribal Development on the Cowlitz Reservation Property; and

WHEREAS, implementation of the federal trust acquisition would remove the Cowlitz Reservation Property from state and county land use authority and jurisdiction under the Washington Growth Management Act, RCW Chapter 36.70A (“GMA”), and the Cowlitz Reservation Property would no longer be GMA-designated “rural” land; and

WHEREAS, in 2011 the City completed construction of an expansion of the City's wastewater treatment plant to increase its peak day treatment capacity to 1.5 million gallons per day, in anticipation of expansion of the City's urban growth area, annexation of lands contiguous to the Cowlitz Reservation Property, and the provision of urban services including sewer in the city's newly-annexed territory; and

WHEREAS, the City is obligated to provide adequate public facilities to all urban areas within its jurisdiction, including sanitary sewer service; and

WHEREAS, it is in the best interest of the City's existing and future ratepayers for the City to obtain a commitment for developer funding for design and construction of a public works project to extend sewer service within its recently-annexed territory, without increasing bonded indebtedness or raising sewer rates;

WHEREAS, the Tribe shall be responsible for payment of its proportionate share of the capital costs of the City's current wastewater treatment plant, based on the Tribal Development's projected demand of 1,444 equivalent residential units (“ERUs”), which is 36% of the current capacity of the City's wastewater treatment plant; and

WHEREAS, in addition to its proportionate share of the capital costs of the City's current wastewater treatment plant, the Tribe shall be responsible for all costs, infrastructure and improvements necessary to serve the sewer demand for the Tribal Development, including 100% of the cost of the extension of the City's sewer collection system from the wastewater treatment plant to the current city limits at the boundary of the Cowlitz Reservation Property, 100% of the cost of the Phase 1B plant improvements, described below, and the Tribe's proportionate share of the cost of the Phase 2 plant improvements described below; and

WHEREAS, in exchange for these proportionate payments, the City will guarantee acceptance and treatment of up to 1,444 ERUs of wastewater flows from the Tribal Development on the Cowlitz Reservation Property; and

WHEREAS, the Tribe seeks approval of permits from the City for sanitary sewer service outside the City's current corporate limits pursuant to LaCenter Municipal Code (“LCMC”) 13.10.370 and for a side sewer permit under LCMC 13.10.130; and

WHEREAS, the City commissioned an engineering study of the facilities and improvements necessary to extend the City's wastewater collection system from the City's current wastewater treatment plant to the current city limits at the boundary of the Cowlitz Reservation Property (the La Center Junction Sewer Study, May 2011); and

WHEREAS, pursuant to RCW 36.70B.170(1), the parties are authorized to enter into a Development Agreement for the provision of sanitary sewer service to serve the Tribal Development on the Cowlitz Reservation Property, which sets forth development standards and other provisions that apply to, govern and vest the development and use of sanitary sewer to serve the Tribal Development on the real property described in Exhibit A; and

WHEREAS, the City and the Tribe desire to enter into this Development Agreement under the authority of RCW Chapter 35.92 and RCW 36.70B.170 through 36.70B.210 and the Constitution and Bylaws of the Cowlitz Indian Tribe, respectively; and

WHEREAS, the City Council held a duly noticed public hearing at special council meeting on November 21, 2011, which was continued the council's regular meeting on December 14, 2011, heard public testimony and considered written public comments on this proposed Development Agreement, reviewed the SEPA threshold determination by the City's Planning Official and existing environmental documents adopted for this action pursuant to SEPA, considered the Tribe's application for a side sewer permit and for sanitary sewer service outside the City limits, and deliberated on the merits of this Development Agreement, and at the conclusion of the public hearing a majority of the City Council voted to approve these permits and agreement.

NOW, THEREFORE, based on the foregoing Recitals, the parties agree as follows:

1. Purpose and Recitals. This Development Agreement sets forth the terms and conditions under which the Tribe will become a sewer service customer of the City, and the City will provide sewer service to the Tribal Development at the Cowlitz Reservation. The recitals set forth above are hereby incorporated into this Development Agreement.
2. Jurisdiction and Scope. Nothing in this Development Agreement shall be construed to cede any jurisdiction of either party to this Development Agreement, to otherwise modify the legal rights of any person not a party to this Development Agreement, to accomplish any act violative of state, federal or tribal law, or to subject the parties to any liability to which they otherwise would not be subject by law.
3. Sewer System Improvements. This Development Agreement addresses the following sewer system improvements:
 - (a) *Tribe's 36% equitable share – 1,444 ERUs*. The Tribe shall be responsible for paying its equitable share of the cost of existing wastewater treatment and collection facilities

as provided in Section 3(b) based upon the sewage treatment capacity the Tribe is projected to require, taking into account volume and strength of flows anticipated from the Tribal Development and expressed as Equivalent Residential Units (ERUs). Based on sewage flow data provided by the Tribe to the City, the parties agree that the Tribe will require 1,444 ERUs worth of treatment capacity for phases 1 and 2 of the Tribal Development, which includes the casino, hotel and eating establishments. The parties agree that 1,444 ERUs represents 36% of the current treatment capacity of the City's wastewater treatment plant. In this way, the Tribe will be responsible for paying for the plant and collection infrastructure, operation and maintenance that it uses. The Tribe shall also be responsible for paying its equitable share of the cost of Phase 1B and Phase 2 upgrades as set forth in Section 3(c).

- (b) *Existing wastewater treatment plant.* In addition to the existing collection system, the City completed construction of an expansion of the City's existing sewer plant in 2011 to increase its peak day treatment capacity to 1.5 million gallons per day, in anticipation of expansion of its urban growth area and annexation of lands between the former city limits and the Cowlitz Reservation Property. The city has invested \$18,297,772 in the existing wastewater treatment plant. The Tribe's equitable share of the cost of the existing wastewater treatment plant and future improvements shall be paid by the Tribe by paying 36% of this amount (\$6,587,000), which represents the Tribe's proportionate share of the cost of the existing infrastructure. By paying this amount plus the other financial obligations set forth in this Development Agreement, the Tribe shall be entitled to 1,444 ERUs worth of treatment capacity regardless of whether the Tribe actually uses that amount of capacity. At no time shall the Tribe be entitled to a refund of this payment if actual sewage use does not rise to the projected level of 1,444 ERUs of treatment. If at any time during the term of this Development Agreement, it is determined that the Tribal Development is using more than 1,444 ERUs, on an annual average basis, the Tribe shall pay the City, at the then-applicable SDC rate (currently \$7,800 per ERU), for each ERU actually used in excess of 1,444 ERUs up to a maximum of 2,000 ERUs worth of treatment capacity. The Tribe shall not be entitled to use or receive more than 2,000 ERUs worth of treatment capacity without an amendment to this Development Agreement signed by both parties.
- (c) *Phase 1B and Phase 2 Improvements.* Additional improvements to the City's existing wastewater treatment plant are necessary to provide sufficient capacity to treat sewage from the Tribal Development on the Cowlitz Reservation. Phase 1B improvements will be necessary to meet the Tribe's initial sewer demand, but it is not clear at the time of execution of the Development Agreement when the sewer demand from the Tribal Development will be sufficient to warrant the Phase 2 Improvements. These improvements include additional submerged membrane units, blower upgrades, a second dryer, a second rotary press, and solids building improvements, and are described in detail in Exhibit B. The estimated costs in 2011 dollars for Phase 1B and Phase 2 are \$1,950,000 and \$3,930,000, respectively. The Tribe shall pay 100% of the actual cost of designing, permitting and constructing the Phase 1B improvements. The Tribe shall pay its proportionate share of the actual cost of designing, permitting

and constructing the Phase 2 Improvements, which shall be recalculated at time the Phase 2 improvements are needed, but shall not be less than 50% of the cost of the Phase 2 improvements.

(d) *Sewer Extension Facilities.* The Sewer Extension Facilities described in this section generally include the improvements necessary to extend the City's wastewater collection system from its wastewater treatment plant along La Center Road (NW 319th Avenue) to the current city limits at the boundary of the Cowlitz Reservation Property. Except as otherwise provided in this section, the Tribe shall be responsible for paying the costs of the Sewer Extension Facilities required to serve the Tribal Development on the Cowlitz Reservation Property, including design, engineering, permitting, materials and construction. Pending more specific design and engineering work, the parties intend that the Sewer Extension Facilities will include the following elements, which are described in detail in Exhibit C (La Center Junction Sewer Study, May 2011) and have an estimated cost in 2011 dollars of \$5,864,300. The La Center Junction Sewer Study addressed only the segment from the City's current wastewater treatment plant to the east side of I-5. The parties recognize that the Sewer Extension Facilities include the I-5 crossing to the west side, which will involve additional costs:

(i) *Pump Station(s).* One or more pump stations will be installed in the public right-of-way between the I-5 junction and the wastewater treatment plant.

(ii) *Sanitary Gravity and Force Mains.* The parties assume that 10-inch gravity mains and 8-inch force mains are required to serve the Tribal Development on the Cowlitz Reservation Property. The parties intend to further evaluate the necessary capacity of the gravity mains and force mains during planning and preliminary design analysis of future demands and system hydraulics.

(iii) *Additional associated improvements.* Additional associated improvements to the pump station will include odor control, standby power, telemetry, site access, a small building for electrical, chemical, and control equipment, and site security. Additional associated improvements to the sewer collection system will include flow measurement and a sampling station on the west side of Interstate 5 for measurement of quantity and quality of the flows and loads contributed by the Tribal Development on the Cowlitz Reservation Property.

(iv) *Oversizing Facilities for Future City Needs.* The City desires that an additional increment of capacity be designed and built into the Sewer Extension Facilities, sufficient to serve non-Tribal development that may occur within the current city limits contiguous to the Cowlitz Reservation Property within the term of this Development Agreement. The City will pay the additional marginal cost of designing and constructing this added increment of capacity in the Sewer Extension Facilities that exceeds what is needed to serve the Tribal Development on the Cowlitz Reservation Property.

- (e) *Additional Capacity Needs.* The parties recognize that, at full build-out of the Tribal Development, the Tribe may require or use more sewage treatment capacity than the maximum 2000 ERU's provided for in Section 3(b). If and when the Tribe needs additional treatment capacity, the parties agree to meet and negotiate that request and the cost for designing and constructing any wastewater plant or collection system upgrades needed to meet additional demand. The Tribe shall not be entitled to use or receive more than 2,000 ERUs worth of treatment capacity without an amendment to this Development Agreement signed by both parties.
- (f) *Improvements to connect the Cowlitz Reservation.* Under this Development Agreement, the City's sanitary sewer system will end at the boundary of its city limits, which is contiguous with the boundary of the Cowlitz Reservation Property. The Tribe shall design and construct all sewer collection and pumping improvements made within the Cowlitz Reservation Property to the Sewer Extension Facilities, and shall bear all the costs of such improvements. Such improvements shall not be considered Sewer Extension Facilities under this Development Agreement. Consistent with the other provisions of this Development Agreement, the Tribe shall provide the City with the data required to quantify the expected sewer flow and loads, coordinate the Tribe's improvements with the City's sewer system, and connect the Tribe's Development to the City's sanitary sewer system. The sewer system improvements on the Cowlitz Reservation Property will be constructed consistent with the requirements of La Center Municipal Code (LCMC) Chapter 13.10, Sewer System Rules and Regulations, and LCMC 15.05.030 (4), Uniform Plumbing Code.

4. Design of Sewer System Improvements.

- (a) *Sewer Extension Facilities.* The Sewer Extension Facilities shall be designed by a consultant hired by the City and constructed as a public works project. The Tribe shall be responsible for paying the costs associated with the design of the Sewer Extension Facilities that are required to serve the Tribal Development on the Cowlitz Reservation Property. The timing of those payments is described in Sections 5 and 6. The City shall select the design engineer for the Sewer Extension Facilities, in consultation with the Tribe, and pay for the design work from the escrow account established under section 6(b). The Tribe shall pay into the escrow account any additional funds needed to complete the design work, including change orders, except for the cost of designing over-sized Sewer Extension Facilities as provided in Section 3(d)(iv). The City will provide the Tribe with draft copies of all Sewer Extension Facilities design documents, and shall meet and confer with the Tribe to discuss the Tribe's comments on these documents. The City shall submit the final design plans to the Washington Department of Ecology (DOE) for review and permitting. After DOE has approved the final designs and after the Tribe has provided notice under Section 5(b) that it is ready to proceed with bidding and construction the City will proceed to bid and construct the Sewer Extension Facilities as provided in Section 6(c).

- (b) *Phase 1B Improvements.* The Phase 1B Improvements to the City's wastewater treatment plant shall be designed by a consultant hired by the City and constructed as a public works project. The Tribe shall be responsible for paying the costs associated with the design of the Phase 1B Improvements. The timing of those payments is described in Sections 5 and 6. The City shall select the design engineer for the Phase 1B Improvements, in consultation with the Tribe, and pay for the design work from the escrow account. The Tribe shall pay into the escrow account any additional funds needed to complete the design work, including change orders. The City will provide the Tribe with draft copies of all Phase 1B Improvements design documents, and shall meet and confer with the Tribe to discuss the Tribe's comments on these documents. The City shall submit the final design plans to the Washington Department of Ecology (DOE) for review and permitting. After DOE has approved the final designs and after the Tribe has provided notice under Section 5(b) that it is ready to proceed with bidding and construction the City will proceed to bid and construct the Phase 1B Improvements as provided in Section 6(c).
- (c) *Cowlitz Reservation Improvements.* The Tribe will design and construct the collection and any needed pumping improvements that will be located within the Cowlitz Reservation Property, and will provide the City with all data necessary to coordinate the connection of the Cowlitz Reservation improvements with the City's sewer system.
- (d) *Engineering Review.* At the Tribe's election, an independent value engineering review may be performed at the Preliminary (30%) Design stage of the Sewer Extension Facilities project and Phase 1B Improvements. If such an independent review is performed, the parties agree that a Certified Value Specialist, or other qualified expert, will facilitate the review and that experienced wastewater engineers will be included as panel members. If such an independent review is performed, the facilitator and panel members will be selected from firms that are not employees of or contractors for either party. The Tribe will pay the full cost for any such independent review.
- (e) *Phase 2 Improvements.* The parties assume that the Phase 2 Improvements will not be needed until after the Tribal Development is constructed and commences operation. The Phase 2 improvements to the City's wastewater treatment plant shall be designed by a consultant hired by the City and constructed as a public works project. The Tribe shall be responsible for paying its proportionate share of the costs associated with the designing and permitting the Phase 2 Improvements, including change orders. The Tribe shall establish and fund an escrow account with an amount equal to the Tribe's proportionate share of the engineer's cost estimate for the design and permitting of the Phase 2 Improvements, and those funds shall be used by the City to design these improvements. The City shall select the design engineer for the Phase 2 Improvements, in consultation with the Tribe, and pay for the design work from the escrow account. The City will provide the Tribe with draft copies of all Phase 2 Improvements design documents, and shall meet and confer with the Tribe to discuss the Tribe's comments on these documents. The City shall submit the final

design plans to the Washington Department of Ecology (DOE) for review and permitting. After DOE has approved the final designs and the tribe has funded the escrow account as provided in Section 6(e), the City will proceed to bid and construct the Phase 2 Improvements.

- (f) *Ultimate Approval.* The Tribe will have full authority to approve design documents for all improvements located wholly within the Cowlitz Reservation Property. The City will have full authority to approve all design documents for all other Sewer System Improvements, subject to its obligation herein to meet and confer with the Tribe.

5. Construction of Sewer Extension Facilities and Phase 1B Improvements.

- (a) *Contracting Responsibility.* The City shall be the owner of the Sewer Extension Facilities and Phase 1B Improvements constructed under this Development Agreement. The Sewer Extension Facilities and Phase 1B Improvements will be a public works project and shall be subject to applicable state and local public procurement and contracting requirements. The City shall undertake the public bidding process for the Sewer Extension Facilities using the designs and plans produced through the collaborative process described in Section 4. The City shall provide copies of all bid documents to the Tribe, and shall invite the Tribe to designate a representative to participate on the bid review panel. The City shall have the final decision-making authority to issue bids and documents and award construction contracts for the Sewer Extension Facilities and Phase 1B Improvements. The City shall promptly provide the Tribe with copies of all progress reports, change orders, and similar construction documents available to the City.
- (b) *Decision to Proceed.* The City shall begin the process of designing and constructing the Sewer Extension Facilities and the Phase 1B Improvements upon deposit of the design money in the escrow account as provided in Section 6(b) and shall begin bidding and then construction of the Sewer Extension Facilities and Phase 1B Improvements upon written notification from the Tribe that the Tribe is ready to proceed with the Tribal Development as provided in Section 6(c).
- (c) *Construction Schedule.* The City shall award the contract to construct the Sewer Extension Facilities and Phase 1B Improvements after the Tribe has funded the escrow account to pay the construction costs as provided in Section 6(c). The City shall coordinate construction of the Sewer Extension Facilities and Phase 1B Improvements with the Tribe, the Washington State Department of Transportation and the Tribe's development schedule. The completion date for construction shall be consistent with the Tribe's development schedule as set forth in the Tribe's notice to proceed.
- (d) *Permits.* The City will be responsible for obtaining all state and non-city issued permits required for construction of the Sewer Extension Facilities and Phase 1B Improvements. The cost of permits required by entities other than the City shall be

included in the computation of costs for the Sewer Extension Facilities and Phase 1B Improvements under this Development Agreement. The City shall be responsible for all City permits required for the construction of the Sewer Extension Facilities and Phase 1B Improvements, and the City shall not charge the Tribe for any City-issued permits or plan review fees.

6. Payment of Costs.

- (a) *Sewer Extension Study.* Upon execution of this Development Agreement, the Tribe shall pay to the City half (50%) of the cost of La Center Junction Sewer Study (May 2011), which is \$7,500 as the Tribe's equitable share of the cost of this study.
- (b) *Design of the Sewer Extension Facilities and Phase 1B Improvements.* Except for Oversizing costs as provided in Section 3(d)(iv), the Tribe shall be responsible for paying the costs of the Sewer Extension Facilities and Phase 1B Improvements, including design, permitting and construction. After the Cowlitz Reservation Property is taken into trust by the federal government, the Tribe shall provide notice to the City that it is ready to proceed with design and concurrently shall establish and fund an escrow account with an amount equal to the engineer's estimate of the cost of designing the Sewer Extension Facilities and Phase 1B Improvements, plus a 5% contingency. These funds shall be used by the City to design these improvements.
- (c) *Tribe's Payment for Sewer Extension Facilities and Phase 1B Improvements.* When the design work for the Sewer Extension Facilities and Phase 1B Improvements is complete, the Tribe shall provide notice to the City that it is ready to proceed with construction and concurrently shall establish and fund an escrow account with an amount equal to the engineer's estimate of the cost of constructing the Sewer Extension Facilities, except for Oversizing costs as provided in Section 3(d)(iv), and Phase 1B Improvements, plus a 5% contingency. Once the escrow account is funded, the City shall prepare bid documents, bid the construction of the Sewer Extension Facilities and Phase 1B Improvements and award the contract to the lowest responsible bidder. The City shall use the escrow account to pay the cost of constructing these facilities. If change order costs exceed 5% of the bid amount the Tribe will fund additional amounts as needed to complete construction of the Sewer Extension Facilities and Phase 1B Improvements. If change order costs do not reach 5% of the awarded bid the Tribe will be refunded the unused portion of their change order funds.
- (d) *Tribe's 36% Proportionate Share for 1,444 ERUs.* Concurrent with the Tribe's notice to the City to proceed to construct the Sewer Extension Facilities and Phase 1B Improvements and its funding of the escrow account for that purpose, the Tribe shall also pay to the City its proportionate share (36%) of the current wastewater treatment plant improvements in the amount of \$6,587,000. This amount shall be in lieu of and instead of paying System Development Charges and shall be nonrefundable regardless of the amount of sanitary sewer treatment capacity the Tribe uses in the future.

(e) *Tribe's Proportionate Share of the Phase 2 Improvements.* The Tribe shall be responsible for 50% or its proportionate share, whichever is higher, of the design, permitting and construction costs for the Phase 2 Improvements. At the time the Phase 2 Improvements are needed, the City will calculate the Tribe's actual proportionate share of these costs based upon the proportion of the total capacity of the wastewater treatment plant that it is using at the time. If the Tribe's proportionate share is less than 50%, the Tribe shall be responsible for 50% of the costs. When the City or the Tribe determine the need to expand the treatment capacity of the wastewater treatment plant by the addition of the Phase 2 Improvements, one party shall notify the other of the need to proceed with the up-grade. Within 30 days of that notice, the City shall calculate the Tribe's then-current proportionate share, based on the Tribal Development's wastewater treatment demand as compared to the then-current capacity of the City's plant. Within 30 days of that calculation, the Tribe shall fund an escrow with its proportionate share of the cost of designing, permitting and constructing the Phase 2 Improvements, or 50% of the cost of designing, permitting and constructing the Phase 2 Improvements, whichever is higher. The Phase 2 Improvements shall be a public works project and shall be designed, permitted and constructed by the City in a manner similar to the Sewer Extension Facilities and Phase 1B Improvements in terms of coordination between the City and the Tribe.

7. Wastewater Treatment. The Tribe's equitable share of the cost for designing, permitting and constructing treatment capacity is paid through the Tribe's payment of its proportionate share of the current wastewater treatment plant capacity, currently 36%. The Tribe provided waste water flow volume and strength projections for its development, which the City considered in light of flow volume and effluent strength data from other comparable Tribal casinos. From this data, the City calculated, and the parties agree, that Phases 1 and 2 of the Tribal Development, consisting of a casino, hotel and all on-site eating establishments, will require 1,444 ERUs of treatment capacity, which equates to 36% of the total capacity of the City's wastewater treatment plant. As used in this Development Agreement, an ERU is calculated as follows:

$$\text{Number of ERUs} = 0.2x (\text{Flow Equivalentents}) + 0.45x (\text{BOD Equivalentents}) + 0.35x (\text{TSS Equivalentents})$$

Where:

$$\text{Flow Equivalentents} = \frac{\text{Average Daily Flow (gallons/day)}}{297 (\text{gallons/day})}$$

$$\text{BOD Equivalentents} = \frac{\text{Average BOD (lbs/day)}}{0.46 (\text{lbs/day})}$$

$$\text{TSS Equivalentents} = \frac{\text{Average TSS (lbs/day)}}{0.51(\text{lbs/day})}$$

An ERU is defined as a sewage flow equal to 297 gallons/day that contains 0.46 lbs/day of BOD and 0.51 lbs/day of TSS. Except for the minimum monthly sewer charge described in Section 11(b), the City will charge the Tribe based on the volume and strength of wastewater effluent actually produced by the Tribe and treated by the City. The determination of the number of ERUs delivered from the Cowlitz Reservation will be based on monitoring and testing of the influent into the City Sewer System from the sampling station near the I-5 Junction. The monthly sewer rate charged to the Tribe will be based on the actual number of ERU's determined in accordance with this Section.

Monitoring and Measuring: At the location where influent from the Cowlitz Reservation enters the City Sanitary Sewer System, flow will be monitored continuously with a flowmeter. This data will be available in real time to the City. The Tribe will provide a monitoring station maintained by the Tribe with a refrigerated automatic sampler capable of collecting 24 hour composite samples. The City operates and maintains a water quality Laboratory accredited by the Washington State Department of Ecology. Samples will be collected by City staff and analyzed according to the City's Sampling and Analysis Plan following Washington State Department of Ecology protocol. Laboratory costs will be paid for directly by the Tribe at the rate set by the La Center City Council but not to exceed the cost of a comparable private lab. The Tribe will have access to split samples, may test for BOD and TSS on its own to verify the City laboratory results, and will provide copies of any such test results to the City. All private laboratory costs will be paid by the Tribe. The Tribe's monthly sewer bills will be based on the average flows, average BOD (lbs per day), and average TSS (lbs per day) of the previous month. In January of each year, the monthly ERU's will be averaged for the calendar year. The average of the monthly ERU's will be used to determine the ERU rating for the Cowlitz Reservation for the prior year. If the ERU rating is greater than the number of ERUs allocated to the Tribe, the Tribe shall pay an additional SDC for each additional ERU by March 1 of the new year, up to a maximum of 2,000 ERUs. The Tribe shall not be entitled to use or receive more than 2,000 ERUs worth of treatment capacity without an amendment to this Development Agreement signed by both parties.

8. City as Exclusive Sewer Service Provider to the Tribal Development on the Cowlitz Reservation Property. Upon execution of this Agreement, the City shall be the exclusive provider of sewer service to the Tribal Development on the Cowlitz Reservation Property, and once the Sewer Extension Facilities and Phase 1B improvements are complete, the City shall be obligated to provide wastewater treatment services to the Tribal Development. The Tribe agrees to accept such sewer service from the City in accordance with the terms of this Development Agreement. The Tribe agrees, so long as the City has the ability to provide sewer service to the Tribal Development, that it will not dispose of wastewater at facilities on the Cowlitz Reservation. The Tribe agrees that it will not contract with any other provider for sewer service to the Tribal Development on the Cowlitz Reservation Property during the term of this Development Agreement. Notwithstanding the foregoing, the City and the Tribe agree that the Tribe's pre-treatment of wastewater from the Tribal Development on the Cowlitz Reservation Property would be beneficial to the operation of the City's sewer system. Nothing herein shall be construed to preclude on-site use of greywater within the Tribal Development or

pre-treatment of wastewater from the Tribal Development prior to its delivery to the City's sewer system. The City shall have the right to inspect all wastewater pre-treatment facilities serving the Tribal Development on the Cowlitz Reservation Property to enable the City to operate its sewer system and to comply with any requirements of current or future federal or state permits. The Tribe agrees not to accept, process, or transmit to the City's sewer system any wastewater from properties or facilities outside the Tribal Development on the Cowlitz Reservation Property.

9. Compliance with City's Sewer Regulations. The Tribe agrees to comply with the requirements of the City's sewer ordinance, LCMC Chapter 13.10, now or as it may be amended in the future, except that the Tribe's payment of its 36% proportionate share of the capital cost of the City's existing wastewater treatment cost shall be in lieu of and instead of paying System Development Charges otherwise required for 1,444 ERUs.

10. Right-of-way. The City shall acquire any additional right-of-way necessary to construct the Sewer Extension Facilities. Upon execution of this Development Agreement and both parties' approval of the Preliminary (30%) Design Report, the City will proceed with negotiations to acquire any additional right-of-way needed for the Sewer Extension Facilities. Any right-of-way acquisition and associated costs are considered part of the total cost of the Sewer Extension Facilities to be funded by the Tribe.

11. Tribe's Monthly Payment Obligations for Sewer Service.

(a) *Sewer Rates.* The City shall charge the Tribe sewer rates for wastewater from the Tribal Development on the Cowlitz Reservation Property consistent with rates charged for other users served by the City's sewer system pursuant to LCMC Chapter 13.10.

(b) *Minimum Monthly User Charge for 722 ERUs.* Beginning with the calendar month immediately following the month in which the Sewer Extension Facilities and Phase 1B Improvements are declared substantially complete (whichever is declared substantially complete last), and before influent from the Tribal Development is sent to the city's wastewater treatment plant, the Tribe will pay a minimum monthly charge of \$6,500 per month. This is the estimated cost to operate and maintain the Phase 1B improvements without additional flows from the Tribal Development. Beginning the month following the day on which the Tribal Development connects to the City's sewer system and begins sending influent to the system, and for each month thereafter, the Tribe shall pay a minimum monthly user charge equal to the then-current sewer rate for 722 ERUs, which is estimated to be 50% of the average daily sewer demand for Phases 1 and 2 of the Tribal Development (estimated to be \$36,822 per month based on 2011 sewer rates). The Tribe shall be obligated to pay a minimum monthly user charge based upon the then-current sewer rate for 722 ERUs each month throughout the duration of this Development Agreement, regardless of the amount of actual sewer flows and loads produced by the Tribal Development, if any, or any decrease therein.

(c) *Additional Monthly User Charges.* Once the Tribe is determined to be using more than the minimum monthly number of ERUs (722 ERUs) provided for in the previous subsection, the Tribe shall be assessed an additional monthly sewer rate, based on the number of ERUs actually used and treated by the City at the then-applicable sewer rate set by the City Council.

12. City's Rate Setting Policies. In establishing connection fees, system development charges, and/or capital facility charges pursuant to LCMC Title 13 to be collected in the future from all sewer users, the City agrees to collect amounts sufficient for its continuing annual costs of owning and operating the sewer system to the extent authorized under RCW Chapter 35.92.

13. Good Faith and Best Efforts. The parties will proceed in good faith and use their best efforts to complete the sewer improvements contemplated by this Development Agreement and to meet the scheduling needs of both parties.

14. Indemnification. Each party shall defend, indemnify, and hold harmless the other party and its directors, officers, employees, agents, representatives, successors, and permitted assigns from and against all liabilities, claims damages, losses and expenses, including reasonable attorney fees directly related thereto to the extent caused by any negligence, willful misconduct, or other fault, act, or omission (i) in each case related to the performance or nonperformance of this Development Agreement and (ii) attributable to the indemnifying party or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, provided that (except with respect to third party claims) neither party shall be liable to the other for incidental or consequential damages.

15. No Third-Party Beneficiary. This Development Agreement and all rights under this Development Agreement are intended for the sole benefit of the parties executing this Development Agreement and, to the extent expressly provided, the other indemnified parties identified in the preceding Section, and shall not imply or create any rights on the part of, or obligation to, any other person except as, and then only to the extent, expressly provided elsewhere in this Development Agreement.

16. Notices. Any notice to be given under this Development Agreement shall be given in writing and delivered in person or shall be sent via certified mail with a return receipt requested in a securely sealed envelope, recognized overnight courier service, or facsimile transmission (receipt confirmation required), and shall be effective when received at the address specified below. Each party, by like notice in writing, may designate, from time to time, another address to which notices may be given to it pursuant to the Development Agreement:

Tribe: Tribal Chair
Cowlitz Indian Tribe
1055 9th Avenue, Suite A

P.O. Box 2547
Longview, WA 98632
FAX: (360) 577-7432

With copies to:

Edward Fleisher, Esq.
2834 Nisqually View Loop NE
Olympia, WA 98516-2354
FAX: (360) 493-8143

Stephen Horenstein, Esq.
500 E. Broadway, Suite 400
Vancouver, WA 98660
FAX: (360) 694-6413

City: Mayor and City Council
214 East 4th Street
La Center, WA 98629
FAX: (360) 263-5700

With copy to:

Daniel Kearns, Esq.
621 SW Morrison St., Suite 1225
Portland, OR 97205
FAX: (503) 225-0276

17. Binding Effect on Successors and Assigns. All of the provisions, conditions, regulations, and requirements contained in this Development Agreement shall be binding upon the parties' successors and assigns, as if they were specifically mentioned herein.

18. Governing Law. The validity, interpretation, and enforcement of this Development Agreement are governed by the laws of the State of Washington (without reference to the principles of conflict of laws thereof).

19. Entire Development Agreement. This Development Agreement, and the three Exhibits referenced herein, constitutes the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes any prior agreements and understandings relating to such subject matter. This Development Agreement may be executed in several counterparts, or by different parties in separate counterparts, each of which counterpart is an original, but all of which constitute one instrument.

20. Amendments. This Development Agreement may be amended at any time by the mutual written and authorized consent of the parties. No changes or modification to this Development Agreement shall be valid or binding upon the parties unless such changes

or modifications are in writing and executed by the parties, including any additional waiver of sovereign immunity that may be required to effectuate any such amendment.

21. Severability. It is understood and agreed to by the parties hereto that if any part of this Development Agreement is illegal, the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed as if the Development Agreement did not contain the particular illegal part.

22. Delay Not Waiver. Any delay, waiver, or omission by a party to exercise any right or power arising from any breach or default by the other in any of the terms, provisions, or covenants of this Development Agreement shall not be construed to be a waiver of any subsequent or continuing breach or default of the same or other terms, provisions, or covenants on the part of the other.

23. Dispute Resolution. The parties agree to attempt in good faith to resolve any disagreement or dispute as to the interpretation, enforcement, or breach of this Development Agreement, or the Parties' rights or obligations hereunder, by meeting and conferring prior to initiating arbitration or proposing mediation.

(a) *Required Arbitration*. Any dispute or claim that arises out of or that relates to this Development Agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then-effective arbitration rules of Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in the Superior Court of the State of Washington for Clark County, which shall have exclusive jurisdiction and venue with respect to enforcement, modification, or vacation of any arbitration award under this Development Agreement. The parties waive all claims that such a forum is inconvenient or that a more convenient forum can be found.

(b) *Voluntary Mediation*. The parties acknowledge that mediation may help to resolve disputes. Prior to or after the filing of a claim for arbitration, either party may propose mediation through Arbitration Service of Portland, Inc. or such other mediator or mediation service as the parties may agree upon; however, mediation shall not be required as a condition precedent to arbitration.

24. Limited Waiver of Sovereign Immunity.

(a) *Retention of Sovereign Immunity*. By executing this Development Agreement, the Tribe does not waive, limit or modify its sovereign immunity from uncontested suit or judicial litigation except as provided in this Section.

(b) *Limited Waiver of Sovereign Immunity*. The Tribe expressly and irrevocably waives its sovereign immunity (and any defense based thereon) from suit by the City solely for the purpose of interpreting or enforcing any provision of this Development Agreement and consents to the jurisdiction of and to be sued by the City in the Superior Court of the State of Washington for Clark County for the

purpose of enforcing any arbitration award or judgment with respect to any dispute related to or arising out of this Development Agreement. The Tribe expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any court to enforce any judgment entered against the Tribe in favor of the City; provided, however, that in no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the revenues of the gaming and resort facility constructed on the Cowlitz Reservation. By executing this Development Agreement, the Tribe does not waive, limit, or modify its sovereign immunity from unconsented suit or judicial litigation, except as provided in this Section, nor does the Tribe waive any aspect of its sovereign immunity with respect to actions by third parties.

- (c) *Time Period.* With respect to any claim authorized in this Section, initial suit, as authorized, shall be commenced within three (3) years after the later of the date that the claim accrues or is discovered upon the exercise of due diligence, or such claim shall be forever barred. The waiver granted herein shall commence on the Effective Date and shall continue for three (3) years following the date of termination of this Development Agreement, except that the waiver shall remain effective for any proceedings then pending, and all appeals, enforcement or collection actions related thereto.

25. Duration. The initial term of this Development Agreement shall be 20 years from its effective date, with renewal terms of 5-year increments as necessary to allow for the completion of the sewer improvements described herein. Renewals shall be automatic unless the Development Agreement is otherwise amended by written agreement or the Development Agreement is terminated pursuant to the provisions herein. Notwithstanding the foregoing, the City's promise in Sections 11(a) and 12 regarding monthly user charges and the Tribe's monthly payment requirements in Section 11 shall survive the term of this Development Agreement and continue in effect after the remainder of this Development Agreement is no longer in effect.

26. Termination. This Development Agreement may be terminated by mutual agreement of the parties in writing. In the alternative, either party may terminate this Development Agreement due to: (a) material breach by the other party, or (b) failure to obtain final United States Department of Interior approval for the federal government to take into trust the Tribe's Cowlitz Reservation Property.

- (a) *Termination Due to Material Breach of Contract.* Either party may terminate this Development Agreement due to a material breach by the other party, provided that the terminating party has delivered written notice of such breach to the other party and such breach has not been corrected within forty-five (45) days of that written notice.

(b) *Termination Due to Lack of United States Department of Interior Approval.* The Tribe may terminate this Development Agreement in the event that the federal government does not take title to the Tribe's Cowlitz Reservation Property into trust.

(c) *Effect of Termination on Tribe's Funding Obligations for the Phase 1B/Phase 2 Improvements and/or the Sewer Extension Facilities.*

(i) If this Development Agreement is terminated after the decision to proceed with the improvements but prior to start of Final Design, then the Tribe shall not be required to pay for the costs of Final Design, Bidding, or Construction. The Tribe shall not be entitled to a return of previously committed planning/preliminary design funds.

(ii) If this Development Agreement is terminated after the start of Final Design but prior to public bidding, then the Tribe shall not be required to pay for the costs of Bidding or Construction. The Tribe shall not be entitled to a return of previously committed funds.

27. Extra-territorial Sewer Service Permit. LCMC 13.10.370 requires a permit from the City for the provision of sewer service to land outside the City's corporate limits, which is a "project permit" for purposes of RCW 36.70C.020(2) and RCW 36.70B.200. In this case, the Tribe has applied for such a project permit, and it is approved concurrently with this Development Agreement, subject to the conditions, limitations and findings set forth herein. This project permit shall be effective upon execution of this Development Agreement and shall have a 5-year duration instead of the 1-year term provided for in LCMC 13.10.370(6), which may be extended if construction is delayed due to litigation or other causes beyond the Tribe's control. The elements required for a utility extension agreement by LCMC 13.10.370(6) are contained in the various provisions of this Development Agreement, to the extent they are relevant to the special circumstances of this situation. In particular, both parties recognize that, as a matter of law, the Cowlitz Reservation Property, once it is taken into trust by the federal government, will not be subject to the Washington Growth Management Act nor any state or local regulations or ordinances promulgated thereunder, and will not be subject to involuntary annexation, the formation of a local improvement district, local land use regulations, fire code, building code or other local regulations, except to the extent that compliance is required by the Tribe's approved Gaming Ordinance. In lieu of recordation of a deed restriction that runs with title to the Cowlitz Reservation Property as required by LCMC 13.10.370(6), this Development Agreement is enforceable according to its terms pursuant to the Tribe's limited waiver of sovereign immunity in Section 24.

28. Side Sewer Permit. LCMC 13.10.130 requires a side sewer permit from the City for the extension of the City's sanitary sewer collection system, which is a "project permit" for purposes of RCW 36.70C.020(2) and RCW 36.70B.200. In this case, the Tribe has applied for such a project permit, and it is approved concurrently with this Development Agreement, subject to the conditions, limitations and findings set forth

herein. This project permit shall be effective upon execution of this Development Agreement and shall have a 5-year duration instead of the 180-day term provided for in LCMC 13.10.130(9), which may be extended if construction is delayed due to litigation or other causes beyond the Tribe's control.

29. Effective Date. This Development Agreement is effective upon the authorized execution by both parties. This Development Agreement has been approved by the La Center City Council pursuant to Council resolution following a public hearing, and by the Cowlitz Tribal Council pursuant to Tribal Council resolution. The undersigned, each acting through its duly authorized representative, have executed this Development Agreement as of the date(s) shown below.

FOR THE COWLITZ INDIAN TRIBE:

FOR THE CITY OF LaCENTER:



William Iyall, Chairman

James T. Irish, Mayor

Date: _____

Date: _____

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