



**ORDINANCE NO. 27987**

L.I.D. No. 5728

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2  
3 AN ORDINANCE providing for the construction of water mains within both the  
4 Town of Ruston and the City of Tacoma, creating Local Improvement  
5 District No. 5728; providing for a special fund for the payment of the  
6 improvements by special assessment upon the property within the  
7 district benefited thereby, for the issuance of warrants, installment notes,  
8 bond anticipation notes, or other short-term obligations to pay that part of  
9 the cost and expense of the improvements assessed against the  
10 property in the district, and for the payment of the remainder of the cost  
11 thereof.

12 WHEREAS all of the preliminary proceedings for the establishment of  
13 Local Improvement District ("L.I.D.") No. 5728 have been taken as provided by  
14 law, and

15 WHEREAS the Hearings Examiner of the City, after public hearing duly  
16 held, has recommended the formation of L.I.D. No. 5728 to the City Council;

17 Now, Therefore,

18 BE IT ORDAINED BY THE CITY OF TACOMA:

19 Section 1. That there shall be the construction of water mains within  
20 both the Town of Ruston and the City of Tacoma, and all other work necessary  
21 to complete the same in accordance with the plans and specifications to be  
22 prepared by the Tacoma Water Superintendent, together with all other work  
23 necessary to complete the project in accordance with the maps, plans, and  
24 specifications prepared and now on file in the office of the Director of the  
25 Department of Public Works, which maps, plans, and specifications are hereby  
26 adopted as follows:



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Replacement of a 12-inch ductile iron water main in Ruston Way from North 49th Street northwesterly 700 feet, more or less, to a private roadway referred to as "Main Street";

Construction of a 12-inch water main within a public utility easement in a private roadway referred to as "Main Street" northeasterly 200 feet, thence continuing in-said private roadway referred to as "Cascade Avenue," thence within said private roadway westerly 240 feet, more or less to proposed Yacht Club Road;

Construction of a 12-inch water main in proposed Yacht Club Road from the private roadway referred to as "Cascade Avenue" southerly 500 feet, more or less, to proposed Ruston Way and proposed North 51st Street;

Construction of a 12-inch water main in proposed Yacht Club Road from the private roadway referred to as "Cascade Avenue" northerly 140 feet, more or less;

Construction of a 12-inch water main in a private roadway referred to as "Bayview Corridor" northeasterly from the intersections of "Bayview Corridor" and a private roadway referred to as "Main Street" 235 feet, more or less;

Construction of a 12-inch water main in a private roadway referred to as "Island View Corridor" northeasterly from the intersections of "Island View Corridor" and a private roadway referred to as "Main Street" 255 feet, more or less;

Construction of a 12-inch water main in a private roadway referred to as "Central Avenue" southwesterly from the intersections of "Central Avenue" and a private roadway referred to as "Main Street" 70 feet, more or less.

Section 2. That there is hereby created a local improvement district, to be known as L.I.D. No. 5728, which shall contain all the property specially benefited by the improvements described above.



1 Section 3. That the estimated cost and expense of the improvement is  
2 \$909,514.20, which cost and expense shall be borne and assessed against the  
3 property included in, and benefitted by, the L.I.D.

4 The assessments levied against the property described above shall  
5 become due and payable at the option of the property owners in cash, without  
6 interest, within 30 days after publication of the notice of assessment, or in twenty  
7 equal annual installments with interest on deferred payments at a rate to be  
8 hereafter fixed, but in no event greater than .05 percent above the rate of interest  
9 fixed upon sale of bond for the district; and each year one of such installments,  
10 together with interest due thereon and on all installments thereafter to become  
11 due, shall be collected in the manner provided by law.

12  
13 Section 4. That a special fund is hereby created, to be called Local  
14 Improvement Fund, District No. 5728, which shall consist in the aggregate of the  
15 various amounts assessed, levied, and collected upon the several lots and  
16 parcels of land in the local improvement district for the purpose of defraying the  
17 cost and expense of the improvements to be borne by the property within the  
18 district, and into which fund shall be deposited the proceeds of the sale of  
19 warrants, installment notes, bond anticipation notes, or other short-term  
20 obligations drawn against the fund which may be sold by the City. The warrants,  
21 installment notes, bond anticipation notes, or other short-term obligations,  
22 interest thereon, and the cost of the improvements to be borne by the property  
23 included in the district shall be paid out of the fund.  
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Section 5. The Tacoma Water Superintendent is hereby ordered to oversee completion of the improvements and to make out and certify to the City Council an assessment roll, all as provided by law.

The Director of Public Works, or his designee, shall review for approval all expenditures made in completing the improvements that are submitted to the City for reimbursement by the developer. Upon certification by the Director of Public Works, or his designee, that any sums are eligible for reimbursement to any person for labor or materials for the improvements, the proper officers shall issue a payment therefore drawn upon the L.I.D. Fund, District No. 5728. The Director of Public Works shall certify to the City Council the assessment roll on the property as provided by law.

Section 6. Under the provisions of the laws of the state of Washington, amendments thereto, and this ordinance, there shall be issued warrants, installment notes, bond anticipation notes, or other short-term obligations, issued pursuant to Ordinance No. 23412, as it may be amended, in payment of the cost and expense of the district, payable out of the Local Improvement District Fund. Such warrants, installment notes, bond anticipation notes, or other short-term obligations shall bear interest from the date of their issuance at a rate to be hereafter fixed by the Director of the Department of Finance in accordance with Ordinance No. 23412, and shall be redeemed from the Local Improvement District Fund or by other warrants, installment notes, bond anticipation notes, or



other short-term obligations, or from the proceeds of local improvement bonds hereafter issued.

Section 7. Pursuant to the provisions of the laws of the state of Washington, the City Council hereby directs that the improvements be paid for by the City in cash and that the warrants, installment notes, bond anticipation notes, or other short-term obligations authorized to be issued under the provisions of this ordinance be sold by the proper officers of the City in accordance with Ordinance No. 23412, as it may be amended, and that the proceeds therefrom shall be applied in payment of the cost and expense of the improvements.

Passed JUN - 7 2011

*Marilyn Finkler*  
Mayor

Attest:

*Doris Cerum*  
City Clerk

Approved as to form and legality:

Property description approved

*J. A. [Signature]*  
Deputy City Attorney

*Loyce [Signature]*  
Chief Surveyor  
Public Works Department

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**OFFICE OF THE HEARING EXAMINER  
CITY OF TACOMA**

**In the Matter of:**  
  
**Formation of  
Local Improvement District No. 5728**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

**A PUBLIC HEARING** on the above-captioned matter was held on May 12, 2011, before RODNEY M. KERLSAKE, the Hearing Examiner for the City of Tacoma. The Hearing Examiner having considered the evidence presented, reviewed the file, and being otherwise fully advised, makes the following:

**FINDINGS OF FACT:**

1. The Tacoma City Council adopted Resolution No. 38242, expressing the intent of the Council to order the following local improvements and to reimburse the developer's cost of such improvements by imposing and collecting special assessments upon the real property that would receive special benefit from those improvements including:

- Replacement of a 12-inch ductile iron water main in Ruston Way from North 49th Street northwesterly 700 feet, more or less, to a private roadway referred to as "Main Street";
- Construction of a 12-inch water main within a public utility easement in a private roadway referred to as "Main Street" northeasterly 200 feet, thence continuing in-said private roadway

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**



1 referred to as "Cascade Avenue," thence-within said private  
2 roadway westerly 240 feet, more or less to proposed Yacht Club  
Road;

- 3 • Construction of a 12-inch water main in proposed Yacht Club  
4 Road from the private roadway referred to as-"Cascade Avenue"  
southerly 500 feet, more or less, to proposed Ruston Way and  
5 proposed North 51st Street;
- 6 • Construction of a 12-inch water main in proposed Yacht Club  
7 Road from the private roadway referred to as "Cascade Avenue"  
northerly 140 feet, more or less;
- 8 • Construction of a 12-inch water main in a private roadway referred  
9 to as "Bayview Corridor" northeasterly from the intersections of  
"Bayview Corridor" and a private roadway referred to as "Main  
10 Street" 235 feet, more or less;
- 11 • Construction of a 12-inch water main in a private roadway referred  
12 to as "Island View Corridor" northeasterly from the intersections  
of "Island View Corridor" and a private roadway referred to as  
13 'Main Street' 255 feet, more or less; and
- 14 • Construction of a 12-inch water main in a private roadway referred  
15 to as "Central Avenue" southwesterly from the intersections of  
"Central Avenue" and a private roadway referred to as "Main  
16 Street" 70 feet, more or less.

17 Such improvements shall include all the necessary appurtenance equipment, including gate  
18 valves, fire hydrants and laterals, connections, and other work necessary to complete the same  
19 in accordance with the plans and specification to be prepared by the Tacoma Water Division  
20 Superintendent. The improvements shall also include water service connections from the water  
21 main to the meter where ordered by individual property owners provided however, that where  
22 the water service connections are installed, the installation shall be considered as a special  
23 benefit to the property serviced and assessed as such and not prorated throughout the district.  
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26 **FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

- 2 -

1 Resolution No. 38242 (proposed Local Improvement District No. 5728) is incorporated  
2 herein by reference as though fully set forth.

3 2. Notice of Public Hearing for the captioned proposed L.I.D. was published on  
4 April 21 and 22, 2011. Notice of Public Hearing letters were mailed to property owners of  
5 record on April 22, 2011. An Affidavit of Publication has been filed with the City Clerk, as  
6 well as plans and estimates required by said resolution.  
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8 3. Pursuant to applicable law and the direction of the Tacoma City Council, a public  
9 hearing was held on May 12, 2011, to consider the formation of L.I.D. No. 5728.  
10

11 4. A staff report prepared by the Department of Public Works (DPW), L.I.D. Section,  
12 is entered into the record as Exhibit 1.1. The estimated total project cost of proposed L.I.D.  
13 5728 is \$909,514.20. The estimated rate per Assessable Unit of Frontage (AUF) is \$120.32.  
14 DPW's report indicates that the proposed L.I.D. is a 20-year Assessment Roll.  
15

16 5. Point Ruston owns all property situated within the boundaries of proposed L.I.D.  
17 5728. Accordingly, there is no remonstrance to forming L.I.D. 5728.

18 6. The verbatim digital transcript in the referred-to matter is in the custody of the  
19 Examiner's Office, the file is in the custody of the City Clerk, and both are available for review  
20 by the Council and any party in interest.  
21

22 7. Any Conclusion of Law hereinafter stated which may be deemed to be a Finding of  
23 Fact herein is hereby adopted as such.

24 8. From these Findings of Fact come the following:  
25

26 **FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

- 3 -

1 **CONCLUSIONS OF LAW:**

2 1. The Hearing Examiner has jurisdiction in the matter. *Tacoma Municipal Code*  
3 *(TMC)* 1.23.050.A.2.

4 2. The purposes of the initial hearing in regard to formation of L.I.D.s are to determine  
5 if the formation of the district should proceed and if the limits of the district are proper.

6 Chandler v. City of Puyallup, 70 Wash. 632, 633 (1912). Accordingly, the only issues properly  
7 presented during the formation stage of the L.I.D. process are:

8 (a) The jurisdiction or authority of the city to proceed with creating  
9 the district.

10 (b) The proper boundaries of the district.

11 Underground Equality v. Seattle, 6 Wn. App. 338, 342, 492 P.2d 1071 (1972).

12 3. There has been no dispute presented in these proceedings in regard to the City's  
13 authority to create L.I.D. 5728.<sup>1</sup>

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18 <sup>1</sup> RCW 35.43.040 provides, in pertinent part, that:

19 ...[W]henever the public interest or convenience may require, the legislative authority of any city or town may  
20 order the whole or any part of any local improvement including but not restricted to those, or any combination  
21 thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not  
22 restricted to the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and  
shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and  
collect special assessments on property specially benefited thereby to pay the whole or any part of the expense  
thereof, viz:

23 \* \* \*

24 (13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include  
25 as nearly as possible all the territory in the zone or district to which water may be  
distributed from the trunk water mains through lateral service and distribution mains  
and services;

26 \* \* \*

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

1           4. The only constraint on the City's authority to create an L.I.D. initiated by resolution  
2 of a local legislative body, as the case here, is statutory limited only by the following provision:

3           **35.43.180 Restraint by protest.** The jurisdiction of the  
4 legislative authority of a city or town to proceed with any local  
5 improvement initiated by resolution shall be divested by a protest  
6 filed with the city or town council within thirty days from the date  
7 of passage of the ordinance ordering the improvement, signed by  
8 the owners of the property within the proposed local improvement  
9 district or utility local improvement district subject to sixty percent  
10 or more of the total cost of the improvement including federally-  
11 owned or other non-assessable property as shown and determined  
12 by the preliminary estimates and assessment roll of the proposed  
13 improvement district or, if all or part of the local improvement  
14 district or utility local improvement district lies outside of the city  
15 or town, such jurisdiction shall be divested by a protest filed in the  
16 same manner and signed by the owners of property which is within  
17 the proposed local improvement district or utility local  
18 improvement district but outside the boundaries of the city or town,  
19 and which is subject to sixty percent or more of that part of the  
20 total cost of the improvement allocable to property within the  
21 proposed local improvement district or utility local improvement  
22 district but outside the boundaries of the city or town, including  
23 federally-owned or other non-assessable property: . . . (Emphasis  
24 supplied.)

25 RCW 35.43.180.

26           5. The City, by adoption of Resolution No. 37956, concerning L.I.D. policies,  
determined that it will not form an L.I.D. when owners property representing 50 percent or  
more of the total assessments file remonstrances to formation, except in instances where the  
City Council has previously determined the L.I.D. to be in the best interest of the City. In the  
latter case, the bar to forming the L.I.D. is that set forth at RCW 35.43.180 and Resolution No.  
37956, para E., L.I.D. Formation.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

- 5 -



1 **NOTICE**

2 **RECONSIDERATION/APEAL OF EXAMINER'S RECOMMENDATION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or as  
5 otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting  
6 reconsideration of a decision or recommendation entered by the Hearing Examiner. A motion for  
7 reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and  
8 must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the  
9 Hearing Examiner's decision/recommendation, not counting the day of issuance of the  
10 decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend  
11 day or a holiday, the last day for filing shall be the next working day. The requirements set forth  
12 herein regarding the time limits for filing of motions for reconsideration and contents of such  
13 motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with  
14 the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the  
15 Hearing Examiner. It shall be within the sole discretion of the Examiner to determine whether an  
16 opportunity shall be given to other parties for response to a motion for reconsideration. The Hearing  
17 Examiner, after a review of the matter, shall take such further action as he/she deems appropriate,  
18 which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code*  
19 *1.23.140*)

20 **APEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:**

21 Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved  
22 person or entity having standing under the ordinance governing such application and feeling that the  
23 recommendation of the Hearing Examiner is based on errors of procedure, fact or law shall have the  
24 right to appeal the recommendation of the Hearing Examiner by filing written notice of appeal and  
25 filing fee with the City Clerk, stating the reasons the Hearing Examiner's recommendation was in  
26 error.

**APPEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN  
ACCORDANCE WITH TMC 1.70.**

**GENERAL PROCEDURES FOR APPEAL:**

The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**



**TO:** Rodney M. Kerslake, Hearing Examiner

**FROM:** Ralph K. Rodriguez, L.I.D. Administrator *RKR*

**SUBJECT:** Report for L.I.D. 5728  
Point Ruston – Watermain L.I.D.  
Formation L.I.D. Hearing May 12, 2011 – 9:30 a.m.

**DATE:** May 2, 2011

Construction of water mains as described below:

- Replacement of a 12-inch ductile iron water main in Ruston Way from North 49th Street northwesterly 700 feet, more or less, to a private roadway referred to as "Main Street";
- Construction of a 12-inch water main within a public utility easement in a private roadway referred to as "Main Street" northeasterly 200 feet, thence continuing in-said private roadway referred to as "Cascade Avenue," thence within said private roadway westerly 240 feet, more or less to proposed Yacht Club Road;
- Construction of a 12-inch water main in proposed Yacht Club Road from the private roadway referred to as "Cascade Avenue" southerly 500 feet, more or less, to proposed Ruston Way and proposed North 51st Street;
- Construction of a 12-inch water main in proposed Yacht Club Road from the private roadway referred to as "Cascade Avenue" northerly 140 feet, more or less;
- Construction of a 12-inch water main in a private roadway referred to as "Bayview Corridor" northeasterly from the intersections of "Bayview Corridor" and a private roadway referred to as "Main Street" 235 feet, more or less;
- Construction of a 12-inch water main in a private roadway referred to as "Island View Corridor" northeasterly from the intersections of "Island View Corridor" and a private roadway referred to as "Main Street" 255 feet, more or less;
- Construction of a 12-inch water main in a private roadway referred to as "Central Avenue" southwestly from the intersections of "Central Avenue" and a private roadway referred to as "Main Street" 70 feet, more or less

*EXH. 1.1*

**Notices:** Resolution No. 38242 setting the hearing date was published April 21 and 22, 2011.

Notice of Public Hearing letters were mailed to owner of record April 22, 2011.

**Status:** Being considered for creation as the result of an Agreement and Letter of Request from the owner.

**Background:** Estimated project cost: \$909,514.20

Rate per AUF: \$120.32

Total Est. Assessed to Property Owner: \$909,514.20

To our knowledge the proceedings are all proper and in conformance with L.I.D. statutes.

Protest: 0%

This is a 20-year Assessment Roll.

**Recommendation:** Considering the amount of protest, we recommend the L.I.D. be created.

File: lid5728

After Recording Return To:  
City of Tacoma, Legal Department  
747 Market Street, Room 1120  
Tacoma, WA 98402

***SECOND AMENDMENT TO***  
**AGREEMENT FOR IMPROVEMENTS WITHIN THE ASARCO TACOMA  
SMELTER SUPERFUND SITE AREA OU2**  
**BETWEEN THE CITY OF TACOMA AND  
POINT RUSTON, LLC**

**ORIGINAL**

**SECOND AMENDMENT TO  
AGREEMENT FOR IMPROVEMENTS WITHIN THE ASARCO TACOMA  
SMELTER SUPERFUND SITE AREA OU2**

THIS SECOND AMENDMENT TO THAT CERTAIN "AGREEMENT FOR IMPROVEMENTS WITHIN THE ASARCO TACOMA SMELTER SUPERFUND SITE AREA OU2" dated April 28, 2009 and recorded on May 14, 2009 in the Pierce County Auditor's Office under File No. 20090514066 (the "Original Agreement"), is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2011 between the City of Tacoma, a Washington municipal corporation (the "City") and Point Ruston LLC, a Washington limited liability company (the "Developer").

**RECITALS**

A. The City and the Developer entered into the Original Agreement in connection with the clean-up and reconstruction of Ruston Way and associated infrastructure (the "Project"). The Project is related to the environmental remediation and development of a site (the "Site") contaminated by the former Asarco copper smelting operation. The Agreement has been previously amended by that certain document entitled "Amendments to Agreement for Improvements within the Asarco Tacoma Smelter Superfund Site Area Ou2" *finally* dated November 16, 2009 and recorded under Pierce County Auditor's File No. 201003190517 (separately the "First Amendment"). The original Agreement, together with the First Amendment and this Second Amendment collectively comprise the "Agreement." Any given document referred to separately shall be designated (in order) the Original Agreement, the First Amendment and (this) Second Amendment.

B. The Original Agreement contemplated the formation of a single LID in the City of Tacoma (the "City") and in the Town of Ruston (the "Town"), pursuant to RCW 35.43.030, by the "resolution" method, and through that LID the City was to reimburse the Developer for designated improvements in the Project on the condition that the Developer undertake full responsibility for construction period financing of all of the LID improvements, prior to the City's issuance of LID bonds.

C. In the First Amendment, the City and the Developer Agreed to create multiple LIDs with respect to the Project, and to finance and construct the Project in phases as set forth in the First Amendment.

D. With this Second Amendment, the parties intend to modify the Agreement in order to specify the terms and conditions under which the City will reimburse the Developer for certain Phase I improvements currently completed.

**ORIGINAL**

NOW, THEREFORE, the parties agree as follows:

**1. Incorporation and Definitions.** The foregoing recitals and any exhibits or other attachments hereto are hereby expressly incorporated into the body of this Second Amendment (and thereby the Agreement) as integral parts. Except for those capitalized terms expressly defined in this Second Amendment, all capitalized terms herein shall have the meanings ascribed to them in the Original Agreement and the First Amendment.

**2.** Section 2 of the Agreement is hereby modified as follows:

**2.1** The concluding sentence in the second paragraph of Section 2 of the First Amendment that read:

Before the City accepts the improvements in Phase 1 and provides for the payment of those improvements as described in this Agreement, the Developer must first have obtained all requisite permits with respect to Phase 2.;

is hereby modified to read as follows:

Before the City accepts all improvements comprising Phase 1 and provides for the final payment of the Phase I improvements as described in this Agreement, the Developer must first have obtained all requisite permits with respect to Phase 2.

**2.2** A new section (vi) is hereby added to read as follows:

(vi) Upon transfer of the improvements in LID No. 3967, in accordance with Section 3.1 of this Agreement, the City shall reimburse the Developer the amount of three million dollars (\$3,000,000.00)(the "Phase 1A Costs") for documented costs and expenses incurred in (a) completing sanitary sewer LID No. 3967, (b) performing work directly related to the Storm component of LID No. 8656 (Roadway and Storm) as supplemental costs included with LID No. 3967 (the "Supplemental Storm Costs"), and (c) engineering and design costs related to both. The Supplemental Storm Costs were incurred contemporaneously with LID No. 3967 as a result of the collocation of improvements for both sanitary and storm within the right-of-way. The Developer hereby represents and warrants that LID No. 3967 has been completed in compliance with the terms and conditions of this Agreement and that all costs and expenses being reimbursed under this Second Amendment comply with RCW 35.44.020. For reference purposes, the work being reimbursed pursuant to this Second Amendment may be referred to hereafter as Phase 1A of the LID Project as referenced and set forth in Exhibit A. The parties intend for the transfer of the LID No. 3967 improvements to occur on or before March 31, 2011.

2.5 Anything in this Agreement to the contrary notwithstanding, the LID Phases are now regrouped, revalued and designated as set forth in Exhibit A. Exhibit A to this Second Amendment supersedes and replaces the Exhibit A attached to the First Amendment.

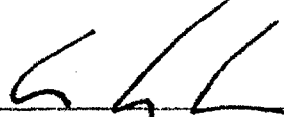
3. This Second Amendment to the Agreement shall be recorded in the office of the Pierce County Auditor, shall be binding on the successors in interest to the Developer, shall attach to and run with the Developer Property (and reference to "Developer" herein shall include those successors), and the Agreement, as amended, shall continue to constitute a lien and charge on the Developer Property to secure the performance of the Developer hereunder.


4. In the event of any conflict between the amendments and modifications contained herein and the terms and provisions of the Original Agreement, the amendments contained herein shall control and be given precedence over any such conflicts or inconsistencies.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

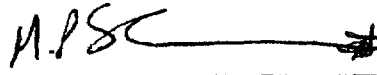
**CITY OF TACOMA**

**POINT RUSTON, LLC**

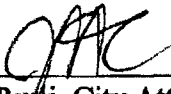
  
Eric Anderson, City Manager


  
Mike Cohen, Managing Member

  
Ryan Petty, Director  
Community and Economic Development

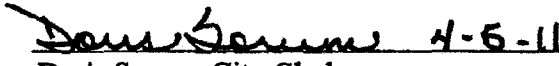
  
Richard E. McKinley, Director  
Public Works Department

  
Robert Biles, Finance Director

  
for Elizabeth Pauli, City Attorney

  
Debbie Dahlstrom, Risk Manager

Attest:

 4-5-11  
Doris Sorum, City Clerk

## EXHIBIT A

### Description of the LIDs for the development known as Point Ruston

LIDs will be created to construct public infrastructure within the realignment of Ruston Way from North 49th Street to North 51st Street; the reconnection of Baltimore Street from the westerly extension of the Northerly line of the "Plat of Stack Hill" to the realigned right-of-way of Ruston Way; the realignment of North 51st Street from the realigned right-of-way of Ruston Way; and a portion of a new street called Yacht Club Road beginning at the realigned right-of-way of Ruston Way and extending northwesterly. (See LID - Figure 1.)

The scope of work funded/financed by the LIDs may include, but not be limited to: establishing the grade and alignment of the street, paving, curbs, gutters, sidewalks and/or multi-use paths, together with storm-water systems, (including temporary erosion and sedimentation control); street lighting; sanitary-sewer mains; joint trenches for primary electrical power, including conduit, conductors vaults, switchgear, and transformers as needed, also providing provisions for natural gas, telecommunication, and cable T-V lines; water mains; landscaping; and abandonment and decommissioning of existing improvements within the rights-of-way or within easements. The project may also include public utilities that will run within existing rights-of-way, proposed rights-of-way or public easements. All design shall be completed pursuant to the affected utility's approval. All construction shall be completed pursuant to the affected utility's standards, inspection and acceptance.

The LIDs apply only to improvements within the public rights-of-way or public easements. The proposed development shall be designed to City of Tacoma policies, and standards and regulations as adopted by the respective jurisdictions, and will be consistent with the mitigation adopted in the Final Supplemental Environmental Impact Statement to the Asarco Smelter Site Master Development Plan dated March, 2008. For consistency, the roadway sections and other design components in the City of Tacoma and Town of Ruston shall complement each other and provide similar functionality.

Additional work that may be financed with these LIDs would include in order of priority:

1. Additional public utilities to be placed within public easements on Point Ruston's property (See Figure LID-1 Add 1)
2. First portion of the publicly-accessible shoreline promenade, including and extending from the existing sidewalk on Ruston Way to "View Point Park" on Point Ruston property. (See Figure LID-1 Add 2). The work comprising the improvements in the LIDs comprising each phase of the Project is set forth generally as follows:

**Phase 1A**

LID No. 3967 ( Sanitary sewer LID)

Replacement of a 30-inch sanitary sewer main in existing Ruston Way from North 49<sup>th</sup> Street northwesterly 710 feet, more or less, to a private roadway referred to as 'Main Street'.

Construction of a new 30-inch sanitary sewer main within a public sanitary sewer easement commencing at the intersection of a private roadway referred to as 'Main Street' and Ruston Way, northeasterly 210 feet, thence continuing in said private roadway 'Main Street' northwesterly 1,965 feet, more or less, to another private roadway referred to as 'Cascade Avenue', thence within said private roadway westerly 200 feet, more or less, to proposed Yacht Club Road.

Construction of a 24-inch sanitary sewer main in proposed Yacht Club Road from a private roadway referred to as 'Cascade Avenue' southerly 405 feet, more or less, to proposed Ruston Way, thence continuing with a 24-inch sanitary sewer main westerly in North 51<sup>st</sup> Street 130 feet, more or less from proposed Ruston Way

Construction of a 12-inch sanitary sewer main from the intersection of proposed Ruston Way and proposed Yacht Club Road southerly 300 feet to connect to an existing sanitary sewer main in Baltimore Street.

Construction of an 8-inch sanitary sewer main in proposed Yacht Club Road northerly from a private roadway referred to as 'Cascade Avenue', 185 feet, more or less.

Construction of an 8-inch sanitary sewer main in proposed Ruston Way from the intersection of North 51<sup>st</sup> Street and proposed Ruston Way southeasterly 310 feet, more or less.

Approximate cost: \$1,983,640.00

\$1,016,360 of Costs to be reimbursed here for completed work from LID No. 8656.

**Phase 1B**

LID No. 7726 (Tacoma Power LID)

Installation of an underground primary electrical distribution feeder system in a 15-foot easement parallel with the existing Ruston Way from North 49<sup>th</sup> Street northwesterly to the Tacoma City Limits.

Installation of an underground primary electrical distribution feeder system in a public power utility easement within a private roadway referred to as 'Grand Avenue' and parallel with the City Limits, northerly from Ruston Way 400 feet, more or less.

Also, installation of an underground primary electrical distribution feeder system in a public power utility easement within a private roadway referred to as 'Island View Corridor' northeasterly 850 feet, more or less, from proposed Ruston Way. Thence southeasterly 650 feet, more or less, in a public power utility easement along the northeasterly side of building 2-B, to a private roadway referred to as 'Bayview Corridor' thence southwesterly 50 feet, more or less within said 'Bayview Corridor' roadway.

Approximate cost: \$1,609,560.00

LID NO. 5728 (Water LID)

Replacement of a 12-inch ductile iron watermain in Ruston Way from North 49<sup>th</sup> Street northwesterly 700 feet, more or less, to private roadway referred to as 'Main Street'.

Construction of a 12-inch watermain within a public utility easement in a private roadway referred to as 'Main Street' northeasterly 200 feet, more or less from Ruston Way, thence continuing in private roadway referred to as 'Main Street' northwesterly 1,980 feet, more or less, to another private roadway referred to as 'Cascade Avenue', thence westerly in said private roadway 240 feet, more or less, to proposed Yacht Club Road,

Construction of a 12-inch watermain in proposed Yacht Club Road from the private roadway referred to as 'Cascade Avenue' southerly 440 feet, more or less, to the intersection of proposed Ruston Way, and proposed North 51<sup>st</sup> Street thence westerly 280 feet, more or less, in said North 51<sup>st</sup> Street.

Construction of a 12-inch watermain in a private roadway referred to as 'Bayview Corridor' northeasterly from the intersections of 'Bayview Corridor' and a private roadway referred to as 'Main Street' 235 feet, more or less.

Construction of a 12-inch watermain in a private roadway referred to as 'Island View Corridor' northeasterly from the intersections of 'Island View Corridor' and a private roadway referred to as 'Main Street' 255 feet, more or less.

Installation of an underground primary electrical distribution system in a 15-foot electrical utility easement parallel with proposed Ruston Way from North 51<sup>st</sup> Street southeasterly 660 feet, more or less.

Also installation of an underground primary electrical distribution system in a 15-foot electrical utility easement parallel with proposed Baltimore Street from proposed Ruston Way southly 340 feet, more or less.

Also installation of an underground primary electrical distribution system in a 15-foot electrical utility easement parallel with proposed Yacht Club Road from proposed Ruston Way Street northerly 550 feet, more or less.

Also installation of an underground primary electrical distribution system from the intersection of proposed Ruston Way and proposed North 51<sup>st</sup> Street thence along the centerline of proposed North 51<sup>st</sup> Street northwesterly 110 feet, more or less, to the true point of beginning, thence northerly from the proposed North 51<sup>st</sup> Street 160 feet, more or less, to a point within Tract 15, BLA 08.01 within the Town of Ruston, recorded under Auditors Fee Number 200902065003, thence westerly 100 feet more or less. The underground primary electrical distribution system will be in a 15-foot electrical utility easement outside of the public street right-of-way.

**Approximate cost: \$909,480**

## **Phase 2**

LID No. 8656 (Roadway & Storm LID)

To improve Ruston Way (existing and proposed) with curb; gutter; asphalt paving with structural section to a variable width of 36 feet to 40 feet; including storm drainage; landscaping; two round-a-bouts and a multi-use path from North 49<sup>th</sup> Street to North 51<sup>st</sup> Street approximately 2,640 feet.

Also, to improve proposed Yacht Club Road from proposed Ruston Way northerly 600 feet, more or less, with curb; gutter; asphalt paving with structural section to a width of 32 feet; including storm drainage; landscaping; and a multi-use path.

Also, to improve North 51<sup>st</sup> Street from proposed Ruston Way westerly 280 feet, more or less with curb; gutter; asphalt paving with structural section to a width of 32 feet; including storm drainage; and sidewalk.

Also, Baltimore Street from proposed Ruston Way southerly 480 feet, more or less, with curb; gutter; asphalt paving with structural section to a width of 32 feet; including storm drainage; and sidewalk.

Approximate cost: \$ 8,391,710.00

LID No. 6980 (Street lighting LID)

**Ornamental street lighting along Ruston Way (existing and proposed) from North 49<sup>th</sup> Street to North 51<sup>st</sup> Street approximately 2,640 feet.**

**Also, ornamental streetlighting along proposed Yacht Club Road from proposed Ruston Way northerly 600 feet, more or less.**

**Also, ornamental streetlighting along North 51<sup>st</sup> Street from proposed Ruston Way westerly 280 feet, more or less.**

**Also, ornamental streetlighting along Baltimore Street from proposed Ruston Way southerly 480 feet, more or less.**

Approximate cost: \$780,260.00

LID No. 7727 (Ruston Power LID)

**Installation of an underground primary electrical distribution system in a 15-foot electrical utility easement parallel with proposed Ruston Way from North 51<sup>st</sup> Street southeasterly 660 feet, more or less.**

**Also installation of an underground primary electrical distribution system in a 15-foot electrical utility easement parallel with proposed Baltimore Street from proposed Ruston Way southerly 340 feet, more or less.**

**Also installation of an underground primary electrical distribution system in a 15-foot electrical utility easement parallel with proposed Yacht Club Road from proposed Ruston Way Street northerly 550 feet, more or less.**

Also installation of an underground primary electrical distribution system from the intersection of proposed Ruston Way and proposed North 51<sup>st</sup> Street thence along the centerline of proposed North 51<sup>st</sup> Street northwesterly 110 feet, more or less, to the true point of beginning, thence northerly from the proposed North 51<sup>st</sup> Street 160 feet, more or less, to a point within Tract 15, BLA 08.01 within the Town of Ruston, recorded under Auditors Fee Number 200902065003, thence westerly 100 feet more or less. The underground primary electrical distribution system will be in a 15-foot electrical utility easement outside of the public street right-of-way.

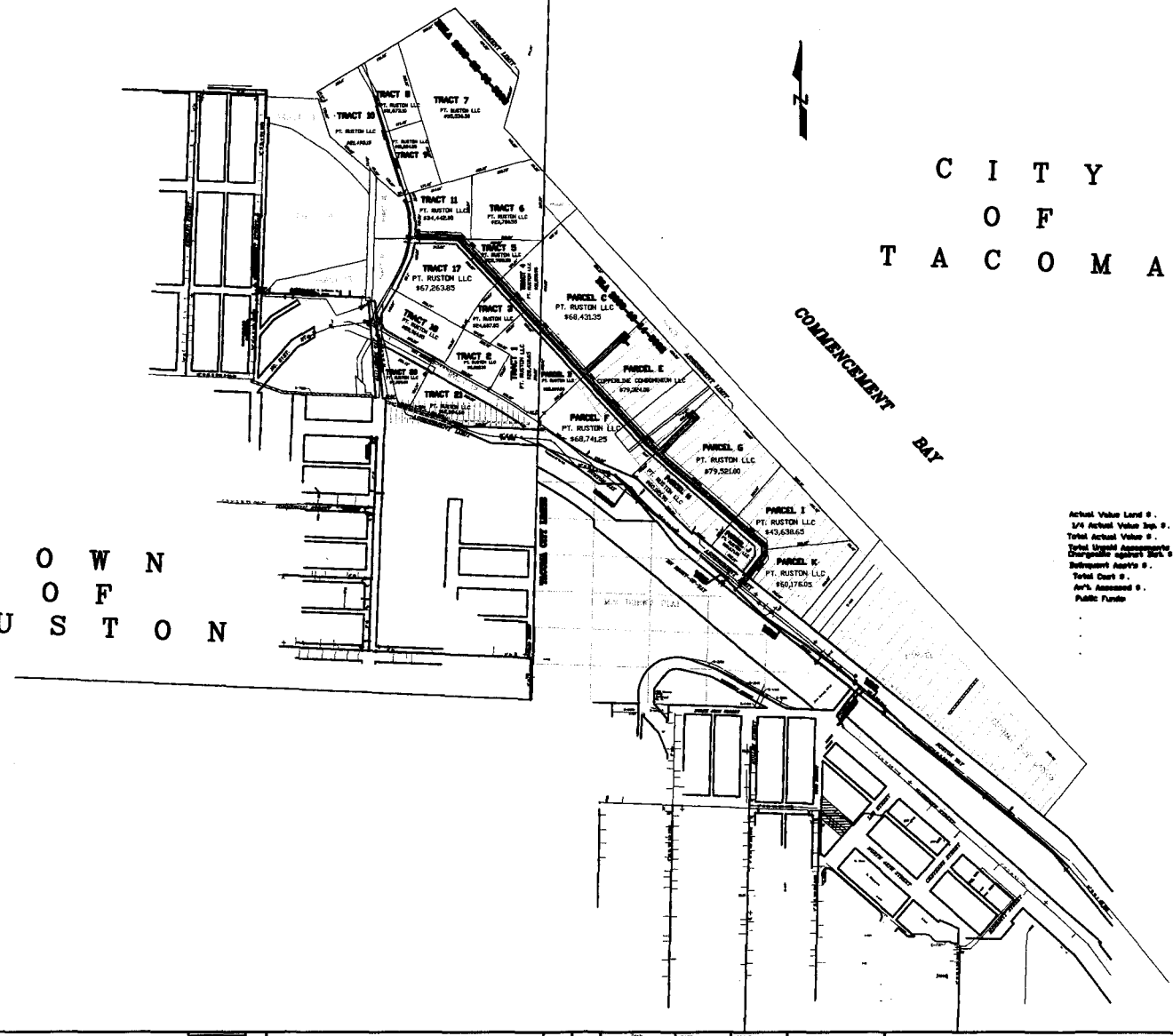
Approximate cost: \$808,990

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 EXH 1.1

CITY  
 OF  
 TACOMA

TOWN  
 OF  
 RUSTON

COMMENCEMENT BAY



Actual Value Land \$.	2,882,000
1/4 Actual Value Imp. \$.	5,000
Total Actual Value \$.	2,887,000
Total Unpaid Assessment Charges against Ass'ts.	NONE
Subsequent Ass't's \$.	NONE
Total Debt \$.	\$0.00
Net Assessment \$.	\$2,887,000
Public Funds	



NO	REVISION	DATE	APPD	NO	DATE	APPD	NO	DATE	APPD	NO	DATE	APPD

CITY OF TACOMA DEPARTMENT OF PUBLIC WORKS		LID 5728 SHEETS 1 of 1
Assessment Map SHOWING PROPERTIES BEING ASSESSED FOR WATERMAINS		



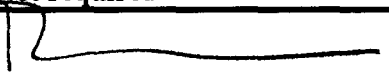

REQUEST FOR **RECEIVED**  
 ORDINANCE  RESOLUTION

Request #: 12953  
Ord./Res. #: 27987

1. DATE: May 19, 2011

CITY CLERK'S OFFICE

2. SPONSORED BY: COUNCIL MEMBER(S) N/A

<b>3a. REQUESTING</b> DEPARTMENT/DIVISION/PROGRAM Hearing Examiner  <b>3b. "DO PASS" FROM</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To Committee as information only <input checked="" type="checkbox"/> Did not go before a Committee  <b>3c. DID THIS ITEM GO BEFORE THE PUBLIC UTILITY BOARD?</b> <input type="checkbox"/> Yes, on <input checked="" type="checkbox"/> Not required	<b>4a. CONTACT (for questions):</b> Louisa Legg (OHEX)  Ralph Rodriguez	<b>PHONE:</b> 253-591-5195  253-591-5522
	<b>4b. Person Presenting:</b> Rodney Kerslake	<b>PHONE:</b> 253-591-5195
	<b>4c. ATTORNEY:</b>  Jeff Capell	<b>PHONE:</b>  253-591-5638
	 Department Director/Utility Division	 Budget Officer/Finance Director

5. REQUESTED COUNCIL DATE: June 7, 2011

6. SUMMARY AGENDA TITLE:

**FORMATION LID 5728 – POINT RUSTON – WATERMAIN**

Construction of water mains as described below:

Replacement of a 12-inch ductile iron water main in Ruston Way from North 49<sup>th</sup> Street northwesterly 700 feet, more or less, to a private roadway referred to as "Main Street";

Construction of a 12-inch water main within a public utility easement in a private roadway referred to as "Main Street" northeasterly 200 feet, thence continuing in-said private roadway referred to as "Cascade Avenue," thence within said private roadway westerly 240 feet, more or less to proposed Yacht Club Road;

Construction of a 12-inch water main in proposed Yacht Club Road from the private roadway referred to as "Cascade Avenue" southerly 500 feet, more or less, to proposed Ruston Way and proposed North 51<sup>st</sup> Street;

Construction of a 12-inch water main in proposed Yacht Club Road from the private roadway referred to as "Cascade Avenue" northerly 140 feet, more or less;

Construction of a 12-inch water main in a private roadway referred to as "Bayview Corridor" northeasterly from the intersections of "Bayview Corridor" and a private roadway referred to as "Main Street" 235 feet, more of less;

Construction of a 12-inch water main in a private roadway referred to as "Island View Corridor" northeasterly from the intersections of "Island View Corridor" and a private roadway referred to as "Main Street" 255 feet, more or less;

Construction of a 12-inch water main in a private roadway referred to as "Central Avenue" southwestly from the intersections of "Central Avenue" and a private roadway referred to as "Main Street" 70 feet, more or less

**REQUEST (CONT)**

**CITY CLERK USE ONLY**

Request #:	12953
Ord/Res #:	27987

**7. BACKGROUND INFORMATION/GENERAL DISCUSSION**

Resolution No. 38242, expressing the intent of the Council to order the local improvements and pay the cost of such improvements by imposing and collecting special assessments upon the real property that would receive special benefit from those improvements.

**8. LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:**

Source Documents/Backup Material	Location of Document
Hearing Examiner's Report	Attached
Staff Report (Exhibit 1.1)	Attached

**9. WHICH OF THE CITY'S STRATEGIC GOALS DOES THIS ITEM SUPPORT? (CHECK THE GOAL THAT BEST APPLIES)**

- A.  A SAFE, CLEAN AND ATTRACTIVE COMMUNITY
- B.  A DIVERSE, PRODUCTIVE AND SUSTAINABLE ECONOMY
- C.  A HIGH-PERFORMING, OPEN AND ENGAGED GOVERNMENT

**10. IF THIS CONTRACT IS FOR AN AMOUNT OF \$200,000 OR LESS, EXPLAIN WHY IT NEEDS LEGISLATIVE APPROVAL:**

[Click Here and Type or Press Delete to Clear]

**11. FINANCIAL IMPACT:**       EXPENDITURE       REVENUE

- A.  NO IMPACT (NO FISCAL NOTE)
- B.  YES, OVER \$100,000, Fiscal Note Attached
- C.  YES, UNDER \$100,000, (NO FISCAL NOTE)  
Provide funding source information below:

**FUNDING SOURCE: (Enter amount of funding from each source)**

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
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If an expenditure, is it budgeted?     Yes     No    Where? Cost Center:  
Acct #:

Request #:

12953

Ord/Res #:

27987

## FISCAL NOTE

Each piece of legislation that has a financial impact or creates positions authority requires a fiscal note. After preparation by departmental staff, the Budget and Research Division will review the fiscal note and make any necessary revisions before transmittal to the Legal Department for legislation preparation.

DEPARTMENT: CONTACT PERSON/PHONE: OMBA CONSULTANT/PHONE:

Public Works	Ralph K. Rodriguez / x5522 Seth Frazier Doull P.E./ 396-3357	Cindy Cusick / x7954
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Is it currently budgeted?  Yes  No

Is this a grant?  Yes  No If Yes,  Operating  Capital

## EXPENDITURES:

FUND NAME & NUMBER *	COST CENTER	WBS	ACCOUNT	2011-2012 EXPENDITURES
Tacoma Water Current Fund - 4600	581200	WTR-00392-02		\$909,514.20
<b>TOTAL</b>				<b>\$909,514.20</b>

**Purpose:** LID-5728, to provide for the replacement and construction of 12 inch water mains to serve the Point Ruston Development within the City of Tacoma and the Town of Ruston.

## REVENUES:

FUND NAME & NUMBER	COST CENTER	WBS	ACCOUNT	2011-2012 REVENUES
Tacoma Water Current Fund - 4600	581100	WTR-00392-02-07		\$909,514.20
<b>TOTAL</b>				<b>\$909,514.20</b>

**Notes:** Project to be constructed by Point Ruston, reimbursement to be post construction and post long term bond sale via Consolidated Local Improvement District (CLID) No. 64 Bond Sale. Long Term Bonds to be repaid to City via LID property owner assessments payable over 30 years.

## POSITION IMPACT:

POSITION TITLE	PERMANENT/PROJECT/ TEMPORARY POSITION	POSITION END DATE	2011 FTE	FUTURE FTE
N/A				

## LONG-TERM FINANCIAL IMPACT OF LEGISLATION:

SPENDING PLAN & BUDGET	2011	2012	2013	2014	2015	TOTAL
Capital	\$909,514.20					\$909,514.20
<b>TOTAL</b>	<b>\$909,514.20</b>					<b>\$909,514.20</b>

FUNDING SOURCE	2011	2012	2013	2014	2015	TOTAL
Property Owner Assessments.	\$909,514.20					\$909,514.20
<b>TOTAL</b>	<b>\$909,514.20</b>					<b>\$909,514.20</b>

**Notes:** Project revenue to be derived from Consolidated Local Improvement District (CLID) No. 64 Bond Sale, assessed to parcels and to be repaid via property owner assessments.

## The financial cost of not implementing the legislation:

**OTHER ISSUES:** Financing this LID per the agreement signed by the City and Point Ruston LLC as authorized and outlined in Resolution No. 37747 and Resolution No. 37892.

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Ordinance No. 27987

First Reading of Ordinance: JUN - 7 2011

FIRST & FINAL READING

Final Reading of Ordinance: JUN - 7 2011

Passed: JUN - 7 2011

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Boe	✓			
Mr. Campbell	✓			
Mr. Fey	✓			
Mr. Lonergan	✓			
Mr. Manthou	✓			
Mr. Mello	✓			
Ms. Walker	✓			
Ms. Woodards				✓
Mayor Strickland	✓			

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Boe				
Mr. Campbell				
Mr. Fey				
Mr. Lonergan				
Mr. Manthou				
Mr. Mello				
Ms. Walker				
Ms. Woodards				
Mayor Strickland				