

# ORDINANCE NO. 27900

L.I.D. No. 3967

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2  
3 AN ORDINANCE relating to local improvement districts; providing for the  
4 construction of sanitary sewers located in both the Town of Ruston and the  
5 City of Tacoma in connection with the Point Ruston neighborhood; creating  
6 Local Improvement District No. 3967; providing for a special fund for the  
7 payment of the improvement by special assessment upon the property  
8 within the district benefited thereby for the issuance of warrants, installment  
9 notes, bond anticipation notes, or other short-term obligations to pay that  
10 part of the cost and expense of the improvement assessed against the  
11 property in the district, and for the payment of the remainder of the cost  
12 thereof.

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14 WHEREAS all of the preliminary proceedings for the establishment of Local  
15 Improvement District ("L.I.D.") No. 3967 have been taken as provided by law, and

16  
17 WHEREAS the Hearings Examiner of the City, after public hearing duly  
18 held, has recommended to the City Council the formation of L.I.D. No. 3967; Now,  
19 Therefore,

20 BE IT ORDAINED BY THE CITY OF TACOMA:

21  
22 Section 1. That there shall be constructed public works and improvements  
23 to provide for sanitary sewers, as described below:

24  
25 A. Laying a sanitary sewer main of various diameters with tees  
26 and/or riser for side sewers, manholes and other appurtenances, etc., and  
all other work necessary to complete the same in accordance with the  
plans and specifications approved by the City Engineer;

B. 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  
the private roadway referred to as Main Street ("Main Street");





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

7 D. Construction of a 24-inch, sanitary sewer main in proposed  
8 Yacht Club Road from Cascade Avenue southerly 405 feet, more or less,  
9 to proposed Ruston Way, thence continuing with a 24-inch sanitary sewer  
10 main westerly in North 51<sup>st</sup> Street 130 feet, more or less, from proposed  
11 Ruston Way;  
12

13 E. Construction of a 12-inch sanitary sewer main from the intersection of  
14 proposed Ruston Way and proposed Yacht Club Road, southerly 300 feet, to  
15 connect to an existing sanitary sewer main in Baltimore Street;  
16

17 F. Construction of an 8-inch sanitary sewer main in proposed Yacht Club  
18 Road northerly from Cascade Avenue 185 feet, more or less; and

19 G. Construction of an 8-inch sanitary sewer main in proposed Ruston Way  
20 from the intersection of North 51<sup>st</sup> Street and proposed Ruston Way southeasterly  
21 310 feet, more or less.

22 Such improvements may also include sanitary side-sewer connections from  
23 the sewer main to property lines or to the edge of the public sanitary sewer  
24 easement; provided, however, that where such side-sewer connections are  
25 installed, the installation shall be considered a sole benefit to the abutting  
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1 property, and the costs of side-sewer installation shall be assessed as a sole  
 2 benefit and not prorated throughout the district.

3 Section 2. That there is hereby created a local improvement district, to be  
 4 known as L.I.D. No. 3967, which shall embrace as nearly as practicable all the  
 5 property specially benefited by the improvements described above, which property  
 6 is described as follows:

7 Within the City of Tacoma:

8 Those portions of the west half of Section 24,  
 9 Township 21 North, Range 02 East, W.M., described  
 10 as follows:

11 Boundary Line Adjustment MPD 2008-40000118826,  
 12 situated in the City of Tacoma, County of Pierce,  
 13 State of Washington, per the Boundary Line  
 14 Adjustment recorded under Pierce County Auditor's  
 15 Fee Number 2008-10-14-5002, except Parcels 'A',  
 16 'B' & 'L'

17 Within the Town of Ruston:

18 Those portions of the Northeast Quarter of  
 19 Section 23, Township 21N, Range 02E, W.M.  
 20 described as follows:

21 Boundary Line Adjustment Number 08-01, situated in  
 22 the Town of Ruston, County of Pierce, State of  
 23 Washington, per the Boundary Line Adjustment  
 24 recorded under Pierce County Auditors Fee Number  
 25 2009-02-06-5003, except Tracts 12 through 16,  
 26 except Tract 19

Section 3: That the estimated total project cost and expense of the  
 proposed L.I.D. improvements is \$1,983,669.05 and the estimated rate per  
 Assessable Unit of Frontage ("AUF") is \$241.68. The proposed L.I.D. is a 20-year  
 assessment roll. Actual assessments may vary from assessment estimates, so



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long as the assessments do not exceed the increased true and fair value the sanitary sewer improvements add to the property being assessed. At the option of the property owners, the assessments levied against the property shall become due and payable in cash, without interest, within thirty days after publication of notice of assessment, or in twenty (20) equal annual installments with interest on deferred payments at a rate to be hereafter fixed, but in no event greater than one-half percent above the rate of interest fixed upon sale of bonds for the district; and each year one of such installments, together with interest due thereon and on all installments thereafter to become due, shall be collected in the manner provided by law.

Section 4. That a special fund is hereby created, to be called Local Improvement Fund, District No. 3967, which shall consist in the aggregate of the several amounts assessed, levied, and collected upon the several lots and parcels of land in the local improvement district for the purpose of defraying the cost and expense of the sanitary sewer improvements to be borne by the property within the district, and into which fund shall be deposited the proceeds of the sale of warrants, installment notes, bond anticipation notes, or other short-term obligations drawn against the fund which may be sold by the City. Out of the fund shall be paid the warrants, installment notes, bond anticipation notes, or other short-term obligations, interest thereon, and the cost of the sanitary sewer improvements to be borne by the property included in the district.



1 Section 5. The Director of the Department of Public Works is hereby  
2 ordered to call for bids for said improvements, or to provide for the completion of  
3 the sanitary sewer improvements consistent with the "Agreement For  
4 Improvements Within the Asarco Tacoma Smelter Superfund Site Area OU2", as  
5 amended, and to proceed to complete the improvements and to make out and  
6 certify to the City Council an assessment roll, all as provided by law.

7 In case no bid is accepted, the Director of Public Works is hereby  
8 authorized, at his discretion, to proceed to complete the sanitary sewer  
9 improvements by the method of day labor or force account and by use of materials,  
10 supplies, and equipment, as authorized by the City Charter and ordinances of the  
11 City. The Director of Public Works shall keep a separate account of the  
12 expenditures as made and the exact cost of the sanitary sewer improvements  
13 separately computed. Upon certification by the Director of Public Works that any  
14 sums are due to any person for labor or materials for the sanitary sewer  
15 improvements, the proper officers shall issue a warrant therefor drawn upon the  
16 L.I.D. Fund, District No. 3967. The Director of Public Works shall certify to the City  
17 Council the assessment roll on the property as provided by law.  
18  
19

20 Section 6. Under the provisions of the laws of the State of Washington,  
21 amendments thereto, and this ordinance, there shall be issued warrants,  
22 installment notes, bond anticipation notes, or other short-term obligations, issued  
23 pursuant to Ordinance No. 23412, as it may be amended, in payment of the costs  
24 and expenses of the district, payable out of the Local Improvement District Fund.  
25 Such warrants, installment notes, bond anticipation notes, or other short-term  
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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 which are hereby authorized to be issued hereafter. The exact form, amount, date, interest rate, denominations and additional terms and conditions of such bonds shall later be fixed by ordinance of the City Council.

Section 7. Pursuant to the provisions of the laws of the State of Washington, the City Council hereby directs that the sanitary sewer 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 thereof shall be applied in payment of the costs and expenses of the improvements.

Passed JUN 29 2010

  
\_\_\_\_\_  
Mayor


Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form and legality:

  
\_\_\_\_\_  
Deputy City Attorney  
Public Works Department

Property description approved:

  
\_\_\_\_\_  
Chief Surveyor



City of Tacoma  
Hearing Examiner

April 22, 2010

Ralph Rodriguez, L.I.D. Administrator  
Department of Public Works  
City of Tacoma  
747 Market Street – Room 620  
Tacoma, WA 98402  
(Inter-office Delivery)

RE: Proposed Local Improvement District No. 3967

Enclosed please find a copy of the Hearing Examiner's Order Correcting Recommendation with regard to the Findings of Fact, Conclusions of Law and Recommendation to the City Council issued on April 19, 2010.

LOUISA LEGG  
Legal Assistant

Enclosure

cc: City Clerk, City of Tacoma  
Jerry Trujillo, Financial Manager, Treasurer's Office, City of Tacoma  
J.J. McCament, McCament & Rogers, 708 Broadway STE 150, Tacoma WA 98402  
J.J. McCament, 5219 N Shirley Street, STE 100, Ruston WA 98407

"I CERTIFY THAT I MAILED A COPY OF THIS DOCUMENT  
TO THE PERSONS AND ADDRESSES LISTED THEREON,  
POSTAGE PREPAID, IN A RECEPTACLE FOR UNITED  
STATES MAIL AT TACOMA, WASHINGTON  
ON April 22, 2010.

L. Legg"

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

**In the Matter of:**

**Proposed Local Improvement  
District 3967**

**ORDER CORRECTING  
RECOMMENDATION**

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On April 1, 2010, RODNEY M. KERSLAKE, the duly acting Hearing Examiner for the City of Tacoma, Washington, conducted a public hearing on the above-captioned matter and on April 21, 2010, the Hearing Examiner entered his Findings of Fact, Conclusions of Law, and Recommendation.

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Subsequent to the issuance of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation, several scrivener's errors were discovered in the Hearing Examiner's report beginning on Page 3, Line 13 where Resolution No. "37992" is incorrectly identified and should be replaced with Resolution No. "466" instead. Therefore, Line 13, Page 3 is HEREBY corrected to read as follows:

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...Department as the "Project Administrator." Exhibit 7. By Resolution No. **466**, the Town...

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26

**ORDER CORRECTING  
RECOMMENDATION**

- 1 -

1 Next, a scrivener's error located on Page 7, Line 2, incorrectly identifies the subject  
2 proposed local improvement district (L.I.D.) number as "6978." Therefore Line 23, Page 7 is  
3  
4 HEREBY corrected to read as follows:

5 9. All properties within proposed L.I.D. **3967** would be specially  
6 benefited by the...

7 A final scriber's error located on Page 8, Line 2, again incorrectly identifies the subject  
8 proposed local L.I.D. number as "6978" instead of proposed L.I.D. "3967." Therefore, Line 2,  
9 Page 8 is HEREBY corrected to read as follows:

10 10. Based on the foregoing, the Hearing Examiner concludes that L.I.D. .  
11 **3967** should...

12  
13 **SO ORDERED** this 22<sup>nd</sup> day of April, 2010.

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16 **RODNEY M. KERLSAKE, Hearing Examiner**

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25 **ORDER CORRECTING**  
26 **RECOMMENDATION**

- 2 -

90  
City of Tacoma  
Office of the Hearing Examiner  
Tacoma Municipal Building  
747 Market Street, Room 720  
Tacoma, WA 98402-3768  
(253)591-5195 FAX (253)591-2003



City of Tacoma  
Hearing Examiner

April 19, 2010

Ralph Rodriguez, L.I.D. Administrator  
Department of Public Works  
City of Tacoma  
747 Market Street – Room 620  
Tacoma, WA 98402  
(Inter-office Delivery)

RE: Proposed Local Improvement District No. 3967

Enclosed please find a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommendation to the Tacoma City Council entered in the above referred to matter as the result of a public hearing held on April 1, 2010.

LOUISA LEGG  
Legal Assistant

Enclosure

cc: City Clerk, City of Tacoma  
Jerry Trujillo, Financial Manager, Treasurer's Office, City of Tacoma  
J.J. McCament, McCament & Rogers, 708 Broadway STE 150, Tacoma WA 98402  
J.J. McCament, 5219 N Shirley Street, STE 100, Ruston WA 98407

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TO THE PERSONS AND ADDRESSES LISTED THEREON,  
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ON April 19, 2010

L Legg

1  
2 **OFFICE OF THE HEARING EXAMINER**  
3  
4 **CITY OF TACOMA**

5 **In the Matter of:**

6 **Formation of**  
7 **Local Improvement District No. 3967**

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

8  
9  
10  
11 **A PUBLIC HEARING** on the above-captioned matter was held on April 1, 2010,  
12 before RODNEY M. KERLSAKE, the Hearing Examiner for the City of Tacoma. The Hearing  
13 Examiner having considered the evidence presented, reviewed the file, and being otherwise  
14 fully advised, makes the following:

15 **FINDINGS OF FACT:**

16  
17 1. The Tacoma City Council adopted Resolution No. 37992, expressing the intent of  
18 the Council to order the following local improvement and to pay the cost of such improvements  
19 by imposing and collecting special assessments upon the real property that would receive  
20 special benefit from those improvements. The ordinance and the improvements are as follows:

- 21  
22 A. Laying a sanitary sewer main of various diameters with tees and/or  
23 riser for side sewers, manholes, etc., and all other work necessary  
24 to complete the same in accordance with the plans and  
25 specifications approved by the City Engineer;

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

- 1 -

- 1 B. Replacement of a 30-inch sanitary sewer main in existing Ruston  
2 Way from North 49<sup>th</sup> Street northwesterly 710 feet, more or less, to  
3 a private roadway referred to as Main Street;  
4 C. Construction of a new 30-inch sanitary sewer main within a public  
5 sanitary sewer easement, commencing at the intersection of a  
6 private roadway referred to as Main Street and Ruston Way,  
7 northeasterly 210 feet, thence continuing in said private roadway  
8 (Main Street) northwesterly 1,965 feet, more or less, to another  
9 private roadway referred to as Cascade Avenue, thence within said  
10 private roadway westerly 200 feet, more or less, to proposed Yacht  
11 Club Road;  
12 D. Construction of a 24-inch, sanitary sewer main in proposed Yacht  
13 Club Road from the private roadway referred to as Cascade  
14 Avenue southerly 405 feet, more or less, to proposed Ruston Way,  
15 thence continuing with a 24-inch sanitary sewer main westerly in  
16 North 51<sup>st</sup> Street 130 feet, more or less, from proposed Ruston  
17 Way;  
18 E. Construction of a 12-inch sanitary sewer main from the  
19 intersection of proposed Ruston Way and proposed Yacht Club  
20 Road, southerly 300 feet, to connect to an existing sanitary sewer  
21 main in Baltimore Street;  
22 F. Construction of an 8-inch sanitary sewer main in proposed Yacht  
23 Club Road northerly from the private roadway referred to as  
24 Cascade Avenue 185 feet, more or less; and  
25 G. Construction of an 8-inch sanitary sewer main in proposed Ruston  
26 Way from the intersection of North 51<sup>st</sup> Street and proposed  
Ruston Way southeasterly 310 feet, more or less.

Such improvements may also include sanitary side-sewer connections from the sewer main to the property line or to the edge of the public sanitary sewer easement; provided, however, that where such side-sewer connections are installed, the installation shall be considered a sole benefit to the abutting property, and the costs of side-sewer shall be assessed as a sole benefit

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

- 2 -

1 and not prorated throughout the district. Resolution No. 37992 (proposed Local Improvement  
2 District No. 3967) is incorporated herein by reference as though fully set forth.

3  
4 2. Prior to adoption of Resolution No. 37992, indicating the City Council's desire to  
5 construct the improvements described in the referred-to resolution, the City entered into various  
6 agreements with Point Ruston LLC (Point Ruston) concerning the financing of public  
7 infrastructure improvements within Point Ruston's 82-acre mixed-use development located on  
8 the shores of Commencement Bay and the City and the Town of Ruston. Exhibits 2, 3, and 7.  
9 The City and the Town Ruston further entered into an interlocal agreement declaring the public  
10 infrastructure improvements within the City and Town of Ruston as a "joint" project of the two  
11 municipalities and designating the City as the "primary agency" and the City's Public Works  
12 Department as the "Project Administrator." Exhibit 7. By Resolution No. 37992, the Town  
13 Council of Ruston has formed the Local Improvement District ( hereinafter "L.I.D.") for the  
14 improvements within the Town of Ruston and described in Finding 1 above. Exhibit 9.  
15

16  
17 3. Notice of Public Hearing for the captioned proposed L.I.D. was published on  
18 March 11 and 12, 2010. Notice of Public Hearing letters were mailed to property owners of  
19 record on March 12, 2010. An Affidavit of Publication has been filed with the City Clerk, as  
20 well as plans and estimates required by said resolution.  
21

22 4. Pursuant to applicable law and the direction of the Tacoma City Council, a public  
23 hearing was held on April 1, 2010, to consider the formation of L.I.D. No. 3967.  
24  
25

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

- 3 -

1           5. A staff report prepared by the Department of Public Works (DPW), L.I.D. Section,  
2 is entered into the record as Exhibit 5. DPW's report indicates that the proposed L.I.D. is a 20-  
3 year Assessment Roll. The estimated total project cost of proposed L.I.D. 3967 is  
4 \$1,983,669.05 and the estimated rate per Assessable Unit of Frontage (AUF) is \$241.68.  
5

6           6. Point Ruston owns all property situated within the boundaries of proposed L.I.D.  
7 3967 and supports formation of the L.I.D.. Testimony of J.J. McCament, Point Ruston  
8 representative. Accordingly, there is no remonstrance to forming L.I.D. 3967.  
9

10           7. The estimated preliminary assessments were arrived at by utilizing the "zone and  
11 termini formula" provided at RCW 35.44.030 and .040. However, should proposed L.I.D.  
12 3967 be formed and the contemplated improvements constructed, the City, in determining the  
13 final assessments, is intending to utilize an appraisal to calculate the special benefits resulting  
14 from the improvements constructed. Testimony of Ralph Rodriguez, L.I.D. Section.  
15

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

19           9. Any Conclusion of Law hereinafter stated which may be deemed to be a Finding of  
20 Fact herein is hereby adopted as such.

21           10. From these Findings of Fact come the following:  
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26           **FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

- 4 -

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. In regard to formation of L.I.D.s by a city outside its municipal boundaries, RCW  
5 35.43.030, as amended in 2009, provides in pertinent part:

6 ...[C]ities or towns may form local improvement districts or utility  
7 local improvement districts composed entirely or in part of  
8 unincorporated territory outside of such city or town’s corporate limits  
9 in the manner provided in this chapter, or, upon approval the  
10 legislative authority of an adjoining city or town, may form local  
11 improvement districts or utility improvement districts for  
12 transportation and infrastructure purposes that are composed entirely  
or in part of territory within the adjoining city or town. (Emphasis  
supplied.)

13 3. Here, the Town of Ruston, through its legislative authority, has entered into an  
14 interlocal agreement with the City designating the infrastructure improvements within Point  
15 Ruston’s 82-acre mixed-use development, a part of which is located within the Town of  
16 Ruston, as a “joint project” with City and has further designated the City as the “primary  
17 agency” and “project administrator.” Further, the Town of Ruston’s legislative authority has  
18 expressly provided for the formation of L.I.D. 3967 within its territory. Thus, the requirements  
19 of RCW 35.43.030 have been satisfied for the City to proceed with forming the referred-to  
20 L.I.D..  
21

22 4. The purposes of the initial hearing in regard to formation of L.I.D.s are to determine  
23 if the formation of the district should proceed and if the limits of the district are proper.  
24

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

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

- 3 (a) The jurisdiction or authority of the city to proceed with creating  
4 the district.  
5 (b) The proper boundaries of the district.

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

7  
8 5. There has been no dispute presented in these proceedings in regard to the City's  
9 authority to create L.I.D. 3967<sup>1</sup> and the Hearing Examiner has previously concluded that the  
10 requirements for forming an extra territorial L.I.D. have been satisfied. *See Conclusion of Law*  
11 3.

12  
13 6. The only constraint on the City's authority to create an L.I.D. initiated by resolution  
14 of a local legislative body, as the case here, is statutory limited only by the following provision:

15 **35.43.180 Restraint by protest.** The jurisdiction of the  
16 legislative authority of a city or town to proceed with any local  
17 improvement initiated by resolution shall be divested by a protest  
18 filed with the city or town council within thirty days from the date  
of passage of the ordinance ordering the improvement, signed by

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

20 ...[W]henver the public interest or convenience may require, the legislative authority of any city or town may  
21 order the whole or any part of any local improvement including but not restricted to those, or any combination  
22 thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not  
23 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:

24 \* \* \*

- 25 (7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly  
26 as possible all the territory which can be drained through the trunk sewer and subsewers  
connected thereto;

\* \* \*

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

- 6 -

1           the owners of the property within the proposed local improvement  
2           district or utility local improvement district subject to sixty percent  
3           or more of the total cost of the improvement including federally-  
4           owned or other non-assessable property as shown and determined  
5           by the preliminary estimates and assessment roll of the proposed  
6           improvement district or, if all or part of the local improvement  
7           district or utility local improvement district lies outside of the city  
8           or town, such jurisdiction shall be divested by a protest filed in the  
9           same manner and signed by the owners of property which is within  
10          the proposed local improvement district or utility local  
11          improvement district but outside the boundaries of the city or town,  
            and which is subject to sixty percent or more of that part of the  
            total cost of the improvement allocable to property within the  
            proposed local improvement district or utility local improvement  
            district but outside the boundaries of the city or town, including  
            federally-owned or other non-assessable property: . . . (Emphasis  
            supplied.)

12          RCW 35.43.180.

13                 7. The City, by adoption of Resolution No. 37956, concerning L.I.D. policies,  
14                 determined that it will not form an L.I.D. when owners property representing 50 percent or  
15                 more of the total assessments file remonstrances to formation, except in instances where the  
16                 City Council has previously determined the L.I.D. to be in the best interest of the City. In the  
17                 latter case, the bar to forming the L.I.D. is that set forth at RCW 35.43.180 and Resolution No.  
18                 37956, para E., L.I.D. Formation.

19                 8. Since there is no remonstrance to formation of L.I.D. 3967, the City has the  
20                 authority by statute and its own L.I.D. policies to proceed with the formation of the district.  
21                 22

23                 9. All properties within proposed L.I.D. 6978 would be specially benefited by the  
24                 proposed improvements and the boundaries proposed for the L.I.D. are proper and only include  
25

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

1 those properties that would be specially benefited by the proposed improvement.

2 10. Based on the foregoing, the Hearing Examiner concludes that L.I.D. 6978 should  
3 be formed.  
4

5 11. Any Finding of Fact hereinbefore stated which may be deemed to be a Conclusion  
6 of Law herein is hereby adopted as such.

7 From these Conclusion of Law is entered this recommendation:

8 **RECOMMENDATION:**

9 Based on applicable Tacoma City Council policies with respect to formation of local  
10 improvement districts, the Hearing Examiner recommends the City Council confirm the  
11 formation of Local Improvement District No. 3967.  
12

13 **DATED** this 19<sup>th</sup> day of April, 2010.

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15   
16 **RODNEY M. KERSLAKE, Hearing Examiner**

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

- 8 -

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City of Tacoma  
Office of the Hearing Examiner  
Tacoma Municipal Building  
747 Market Street, Room 720  
Tacoma, WA 98402-3768  
(253)591-5195 FAX (253)591-2003

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.

**APEALS 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**



## RESOLUTION NO. 37892

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A RESOLUTION relating to community development; authorizing the execution of an amendment to the Agreement for Improvements Within the ASARCO Tacoma Smelter Superfund Site Area Operable Unit 2 with Point Ruston, LLC, for certain improvements within the ASARCO Tacoma Smelter Superfund site.

WHEREAS, on March 10, 2009, the City Council adopted Amended Resolution No. 37747, authorizing the execution of an agreement with Point Ruston, LLC ("Point Ruston"), for construction of approximately \$11 million in infrastructure improvements in the City and the Town of Ruston ("Ruston"), which is within the ASARCO Tacoma Smelter Superfund site, and

WHEREAS Point Ruston is required to secure construction financing to complete the project improvements, and

WHEREAS the improvements will be completed and financed under a Local Improvement District ("LID"), subject to the City and Ruston's requirements, and

WHEREAS the completed project improvements will be transferred to the City and Ruston, and

WHEREAS the City will issue LID bonds, and the proceeds of the bond sale will be used to reimburse Point Ruston for its costs to construct the project, and

WHEREAS, since entering into the existing agreement, project costs have increased, and Point Ruston has had difficulty securing project construction financing, and

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EXH. 2 68



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WHEREAS, as a result, Point Ruston has requested that the agreement be amended as follows: (1) the LID be increased from \$11 million to \$15 million, (2) the LID be segregated into two phases to reduce the amount of funds needed for each phase of construction financing, and (3) the map and LID description be adjusted to include power and water improvements identified during the design phase and to describe in more detail the LID segments and improvements within each project phase; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute an amendment to the Agreement for Improvements Within the ASARCO Tacoma Smelter Superfund Site Area Operable Unit 2 with Point Ruston, LLC, for certain improvements within the ASARCO Tacoma Smelter Superfund site with Point Ruston, LLC, for certain improvements within the ASARCO Tacoma Smelter Superfund site, said document to be substantially in the form of the proposed amendment on file in the office of the City Clerk.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney

102



REQUEST FOR **RECEIVED**  
 ORDINANCE  RESOLUTION

Request #: 12379  
Ord./Res. #: 37892

SEP 28 2009

1. DATE: September 24, 2009

CITY CLERK'S OFFICE

2. SPONSORED BY: COUNCIL MEMBER(S) N/A (If no sponsor, enter N/A)		
3a. REQUESTING DEPARTMENT/DIVISION/PROGRAM Community & Economic Development Department	4a. CONTACT (for questions): Martha Anderson	PHONE: 253-591-5207
3b. "DO PASS" FROM Economic Development Committee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To Committee as information only <input type="checkbox"/> Did not go before a Committee	4b. Person Presenting: Martha Anderson	PHONE: 253-591-5207
3c. DID THIS ITEM GO BEFORE THE PUBLIC UTILITY BOARD? <input type="checkbox"/> Yes, on <input checked="" type="checkbox"/> Not required	4c. ATTORNEY: Jeff Capell	PHONE: 253-591-5638
 Department Director/Utility Division	N/A Budget Officer/Finance Director	 City Manager/Director Utilities

5. REQUESTED COUNCIL DATE: October 20, 2009

(If a specific council meeting date is required, explain why; i.e., grant application deadline, contract expiration date, required contract execution date, public notice or hearing required, etc.)

6. SUMMARY AGENDA TITLE: (A concise sentence, as it will appear on the Council agenda.)

Authorizing execution of an amendment to the "Agreement for Improvements Within the Asarco Tacoma Smelter Superfund Site Area OU2."

7. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

In April, 2009 City executed an agreement with Pt. Ruston LLC for construction of approximately \$11 million in infrastructure improvements in the City of Tacoma and the Town of Ruston. The improvements will be completed and financed under a Local Improvement District (LID) subject to the City and the Town's requirements. Pt. Ruston was required to secure construction financing to complete improvements. The completed project improvements would be transferred to the City and the Town and the final funding of the project improvements were to be paid out of LID bonds issued by the City. Proceeds of the bond sale would be used to pay Pt. Ruston LLC for its costs to construct the project. Since entering into this agreement project costs have increased and Pt. Ruston has had difficulty securing project construction financing. As a result Pt. Ruston has requested modifications to the agreement as follows:

1. Increase LID from \$11 million to \$15 million. This increase reflects the fact that the final design requirements and scope of work has expanded over the past six months of design and permit review and the there has been an increase in the cost of capital, construction costs and LID formation costs.
2. Segregate the LID into two phases to reduce the amount of funds needed for each phase of construction financing. Point Ruston will obtain up to \$10 million interim construction financing and begin construction of the first phase of improvements equal to roughly 60% of the total LID

REQUEST (CONT)

Request #:	12379
Ord/Res #:	37892

construction costs. The City would acquire from Pt. Ruston those completed, inspected, and approved improvements using its line of credit or other financing. Pt. Ruston would repay its construction lender for the first phase. Point Ruston would then build the remainder of improvements using interim construction financing. The City would acquire the remaining LID improvements through bond financing when the project is substantially complete, inspected and approved for acquisition.

- 3. Adjust map and LID description to include power and water improvements identified during design phase and to describe in more detail the LID segments and improvements within each project phase.

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

Source Documents/Backup Material	Location of Document
Resolution 37747	City Clerk's Office

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:

N/A

11. FINANCIAL IMPACT:       EXPENDITURE       REVENUE

- A.  NO IMPACT (NO FISCAL NOTE)

Improvements to be paid from LID bond financing upon completion. LID to be repaid by property owners. Security is the bond backed by the Guaranty Fund. Developer has agreed to accelerate foreclosure in case of default.

- 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 #:



201003190517 19 PGS  
 03/19/2010 01:36:53 PM \$80.00  
 PIERCE COUNTY, WASHINGTON

For reference only, not for re-sale.

When Recorded, Return To:  
 City of Tacoma  
 City Clerk's Office  
 747 Market Street, Room 220  
 Tacoma, WA 98402-3769

RE-RECORD

ORIGINAL

<b>DOCUMENT TITLE:</b> CORRECTED AND RE-RECORDED AGREEMENT FOR IMPROVEMENTS
<b>Grantor(s):</b> City of Tacoma, a Washington municipal corporation
<b>Grantee:</b> Point Ruston, LLC, a Washington limited liability company
<b>Description:</b> Rerecording that certain document previously recorded under Auditor's File No. 200912170152 in order to correct errors in Exhibits thereto.
<b>Reference Number(s):</b> Re-recording Auditor's File No. 200912170152, which together with this correction amends the document recorded under Auditor's File No. 200905140661.
<b>Assessor's Parcel Number(s):</b>

200912170152 12 PGS  
12/17/2009 12:33:43 PM \$73.00  
PIERCE COUNTY, WASHINGTON

UNRECORDED

When Recorded, Return To:  
City of Tacoma  
City Clerk's Office  
747 Market Street, Room 220  
Tacoma WA 98402-3769

ORIGINAL

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<b>DOCUMENT TITLE</b> Amendments to Agreement
<b>Grantor</b> City of Tacoma
<b>Grantee</b> Point Ruston, LLC
<b>Description</b> Authorizing the execution of an amendment to the Agreement for Improvements Within the ASARCO Tacoma Smelter Superfund Site Area Operable Unit 2 with Point Ruston, LLC, for certain improvements within the ASARCO Tacoma Smelter Superfund Site.
<b>Reference Number</b> 200905140661
<b>Assessor's Parcel Number</b>

Page 1 of 12



STATE OF WASHINGTON, County of Pierce  
I, Julie Anderson, of the above  
entitled county, do hereby certify that this  
forgoing instrument is a true and correct copy  
of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of Said County.

By: Julie Anderson Deputy  
Date: 3/19/10

After Recording Return To:  
Foster/Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
Attn: Hugh Spitzer

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

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51018027.6

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

THESE AMENDMENTS TO THE "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 "Agreement"), are entered into as of this 16<sup>th</sup> day of November, 2009, 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 Agreement in connection with the clean-up and reconstruction of Ruston Way and associated infrastructure (the "Project"). The Project is related to the environment remediation and development of a site (the "Site") contaminated by the former Asarco copper smelting operation.

B. In the Agreement, the City and the Developer contemplated the formation of a single LID in Tacoma and in Ruston, pursuant to RCW 35.43.030, by the "resolution" method, and through that LID, the City would order the improvements comprising 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. The City has now determined that it will create multiple LIDs with respect to the Project, and the City and the Developer now desire to finance and construct the Project in phases. The Developer would be responsible for the full cost of financing the improvements, and upon the completion of that first phase the City would (1) issue Bonds for the cost of the LIDs; (2) upon City approval of the allocable LID Project costs, acquire from the Developer the portion of the Project improvements constructed in the first phase, (3) upon the completion of Phase 2 and approval of the allocable costs by the City, acquire from the Developer the portion of the Project improvements constructed in the second phase.

D. The City intends to acquire the completed improvements in each phase with the proceeds of LID bonds, but the City reserves the right, at its sole discretion, to acquire the improvements by other means or from other sources as the City deems appropriate.

E. The purpose of these amendments to the Agreement is to accomplish the adjustment in the phasing and financing approach described in Recital C, above.

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NOW, THEREFORE, the parties agree as follows:

1. The portion of Section 1 of the Agreement comprising the definition of "Substantial Completion" is amended to read and be applied as follows:

"Substantial Completion" or "substantially complete," as to the Project or a portion thereof, means the day the City has full and unrestricted use and benefit of the facilities, both from an operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or minor repair remains for the physical completion of the specific LID improvement being constructed. Substantial Completion shall also require the prior removal of all mechanics and materialmen's liens and all other liens with respect to the Project or applicable portion thereof.

2. Section 2 of the Agreement is amended to read as follows:

2. City Responsibilities. Pursuant to this Agreement, the City, having legislatively determined that carrying out the Project is not practicable for traditional competitive bid, shall, as soon as reasonably possible, consistent with applicable law, and subject to the provisions below, form LIDs generally as described in Exhibit A. Prior to the commencement of work on the Project components in any LID, plans and specifications shall be submitted to and approved by the City and Town, all rights-of-way and easements required for carrying out the Project shall be obtained and recorded in the Pierce County Auditor's office, requisite permits shall have been issued with respect to the Project, and remediation design within the rights-of-way and easements shall be approved by EPA.

The City and the Developer intend that the Project will be carried out in two phases. A description of LID improvements in the LIDs comprising Phase 1 and Phase 2, and the current estimated costs of each LID, are set forth in Exhibit A. Ordinances will be presented to the City Council forming the LIDs comprising the property in Tacoma described in Exhibit B, together with the property within the Town of Ruston described in Exhibit B pursuant to RCW 35.43.030, or as the boundaries of that LID may be adjusted during the LID formation process. Formation of the LIDs, including property both in the City and Town, will not occur unless and until the sanitary sewer permit has been issued with respect to Phase 1. 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.

(i) Design and Permits. The City shall review all submittals based on generally-applicable City and Town standards, and approve or disapprove the designs for the Project proposed by the Developer. Consistent with applicable law and ordinances, the City the Town are expected to issue one or more permits to the Developer so that the Developer

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may proceed with constructing the Project within Tacoma and Ruston's respective jurisdictions. The City shall, consistent with Section 5.5 of the Agreement and in coordination with the Town, inspect construction of the Project as it proceeds. The City shall designate a project coordinator, and provide contact information to the Developer for that project coordinator, his/her successors, and for other key City personnel involved in reviewing or inspecting Developer's work on the Project. The City will provide regulatory inspection of all work performed on the project to ensure compliance with City of Tacoma standards and regulations, policies, the requirements of the approved Private Work Order Permits, and to determine whether work is appropriate for inclusion as proper costs of the LIDs.

(ii) Assessments and Guaranty/Reserve Funds. Upon the Substantial Completion of Project construction in the LIDs comprising Phase I (currently anticipated to be comprised of LIDs Nos. 3967, 7726, 7727 and 5728), and a determination by the City that Phase I Project costs to be provided through the LID are appropriate given the work and materials involved, the City shall levy special benefit assessments against the real property within all of the LIDs in an amount not to exceed fifteen million five hundred thousand dollars (\$15,500,000), which amount includes a five hundred thousand dollar (\$500,000) permanent contribution to be deposited into the City's Local Improvement District Guaranty Fund, and a one million dollar (\$1,000,000) deposit into a Supplemental Reserve Fund which shall be administered as provided in RCW 35.51.040 and which shall be the fund of first resort upon Default of any payment of the LID assessments. The principal amount deposited into the Supplemental Reserve Fund, including any interest earned thereon in excess of 2.5% shall be applied to the Developer's LID assessment payments consistent with RCW 35.51.040. Interest from the Supplemental Reserve Fund of up to 2.5%, not to exceed the actual interest earned, shall be annually paid to the City to fund City administrative costs, and the Developer waives the application of that portion of interest earnings to the payment of assessments under RCW 35.51.040. The City's Local Improvement Guaranty Fund shall be pledged as security for the LIDs in the City and Town. Assessments will be initially based on the zone and termini method, but may be adjusted in accordance with a special benefit study in order to more fairly reflect the special benefits to the properties being assessed. The assessment payment period shall be 20 years, or such other period of time determined by the City, subject to Developer approval. The City shall collect assessments and apply them toward the repayment of the Bonds, and shall enforce the liens created by those assessments.

(iii) Issuance of Bonds and Purchase of Improvements. Upon the Substantial Completion of Phase I of the Project and acceptance of the improvements by the City, the City shall issue Bonds to fund: (a) Project costs, (b) the deposit to the Supplemental Reserve Fund in the amount of one million dollars (\$1,000,000), (c) the five hundred thousand dollar (\$500,000) contribution to the City LID Guaranty Fund, (d) formation and assessment confirmation costs; and (e) costs of issuance of the Bonds. The Bonds will be payable solely from assessments and interest thereon. The City shall then, with proceeds from

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the Bonds, purchase from the Developer the completed LID improvements included in Phase 1 on behalf of the City and Town (including the City's LID formation and assessment confirmation costs and the costs of issuance of the Bonds allocable to Phase 1) for an amount not to exceed the amount of the Bonds allocable to Phase 1 minus the allocable deposit to the Guaranty Fund and Supplemental Reserve Fund. Upon the completion of the improvements representing the LIDs comprising Phase 2 and acceptance of the improvements by the City, the City shall, with the remaining proceeds of the Bonds, purchase from the Developer the remaining completed portion of the LIDs (including the City's LID formation and assessment confirmation costs and the costs of issuance of the Bonds allocable to Phase 2 for an amount not to exceed the remaining amount of the Bonds allocable to Phase 2. However, if any uncompleted items (including "punchlist items") remain with respect to either phase of the Project after Substantial Completion of that phase, the City will withhold 10% of the payment due the Developer until final Completion has occurred.

(iv) Street Vacation. The City and Developer will agree to a vacation process to create a sixty (60) foot Right-of-Way for Ruston Way on its new alignment. The City will release the surplus Right-of-Way to the abutting property owners. In valuing any Right-of-Way vacated to Developer, as an abutting property owner, the City will consider the value of the Developer Property dedicated to the City and the value of Developer's release of its rights against the City pursuant to Section 6.2 of this Agreement.

(v) Information for Developer's Lender. The City will provide to the financial institution providing financing to the Developer for construction of the improvements, copies of all correspondence from the City to the Developer concerning any alleged default under this Agreement, and copies of such City documents relating to the formation of the LIDs and construction of the improvements as that financial institution may reasonably request in writing.

3. Section 8 of the Agreement shall be amended to add a new Section 3.8 to read as follows:

8.3 Competitive Processes for Contractor Selection. Notwithstanding the various environmental and other unique difficulties and barriers inherent in this Project as described in this Agreement, the Developer has to this point endeavored to use competitive processes in selecting all contractors for work on the Project, and shall continue to do so wherever practicable through completion.

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4. Section 9 of the Agreement shall be amended to add a new Section 9.3 to read as follows:

9.3 Developer Lender's Right to Cure. Prior to the completion of the Project improvements included in the LIDs and the City's payment to the Developer for those improvements, when the City sends notice of an Event of Default to the Developer under this subsection, the City shall send a copy of that notice to the Developer's construction lender for those improvements. The Developer shall provide the City with the notice address of any such lender. The Developer and its lender shall each then have one hundred twenty (120) days to cure an Event of Default, rather than the thirty (30) day period available to the Developer as set forth in Section 9.1, above, and that right of cure may be exercised either by the Developer or by the lender, provided that any further time to cure may be extended only by written permission of the City.

5. Exhibit A to the Agreement is amended to read as set forth in Exhibit A to these amendments. Exhibit B is amended as read as set forth in Exhibit B to these amendments.

6. This amendment to the Agreement shall be recorded in the office of the Division of Records and Elections of Pierce County, Washington, shall be binding on the successors in interest to Developer in 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 Developer hereunder.

7. In the event of any conflict between the amendments 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.

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


**CITY OF TACOMA**

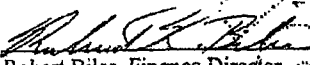
**POINT RUSTON, LLC**

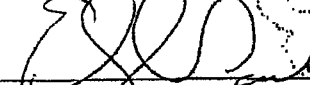
  
Eric Anderson, City Manager

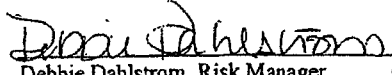
  
Mike Cohen, Managing Partner

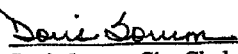
  
Ryan Petty, Director  
Community and Economic Development

  
Richard E. McKinley, Director  
Public Works Department

  
Robert Biles, Finance Director

  
Elizabeth Paul, City Attorney

  
Debbie Dahlstrom, Risk Manager

Attest:  
 11-16-09  
Doris Sorum, City Clerk

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NOV 25 2009  
BY: \_\_\_\_\_

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:

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For reference only, not for re-sale.

Phase 1

LID No. 3967 ( Sanitary sewer LID)

Installation of approximately 3,895 lineal feet of sewer main in Ruston Way, Main Street, a portion of Yacht Club Road and 52<sup>nd</sup> Street as well as the replacement of deep storm sewer in Ruston Way.

Approximate cost: \$

LID No. 7726 (Tacoma Power LID)

Installation of approximately 2900 lineal feet of primary power on Ruston Way and Main Street and the southerly portion of Grand Avenue as well as installation of all conduits and structures in public easements.

Approximate cost: \$

LID No. 7727 (Ruston Power LID)

Installation of approximately 2500 lineal feet of primary power along a portion of Baltimore Street, Yacht Club Road, and Main Street and in public easements including all conduit, vaults, bedding, and backfill.

Approximate cost: \$

LID NO. 5728 (Water LID)

Installation of approximately 4,000 lineal feet of waterline originating on Ruston Way and moving into the site and along Main Street and a portion of Yacht Club Road and within public easements.

Approximate cost: \$

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DRAFT ORIGINAL DOCUMENT

Phase 2

LID No. 8656 (Roadway & Storm LID)

Construction of approximately 3,000 lineal feet of roadway improvements and storm sewers on Ruston Way and portions of Baltimore Street and Yacht Club Road including paving, curb and gutter, sidewalks, roundabouts, landscaping, signage, and public storm systems for Tacoma and Ruston.

Approximate cost: \$

LID No. 6980 (Street lighting LID)

Installation of street lighting along approximately 3,000 lineal feet of Ruston Way and portions of Baltimore Street and Yacht Club Road.

Approximate cost: \$

For reference only, not for re-sale.

ORIGINAL

B-3

51018027.6

**EXHIBIT B**

**LID Property Description**

**Tacoma**

That portion of the west half of Section 24, Township 21N, Range 02E, W.M. described as follows:

Lots 1 through 18, Block 109, Lots 1 through 16, Block 110, all of Block 111, a portion of Blocks 113 & 114, PLAT OF TACOMA TIDELANDS, as recorded in Volume 2 of Plats at Page 84, records of the Pierce County Auditor; together with vacated streets abutting said Blocks, situate in the City of Tacoma, County of Pierce, State of Washington.

Lots A and B, M. S. DREW'S PLAT, as per the plat recorded in Volume 1 of Plats at Page 16, records of the Pierce County Auditor; together with vacated streets abutting said Blocks, situate in the City of Tacoma, County of Pierce, State of Washington.

Block B, 1961, SUPPLEMENTAL MAP OF TACOMA TIDELANDS, as recorded in the Office of the Commissioner of Public Lands at Olympia, Washington, abutting Blocks 109, 110, 113 and 114, PLAT OF TACOMA TIDELANDS, as per the plat recorded in Volume 2 of Plats at Page 84, records of the Pierce County Auditor; situate in the City of Tacoma, County of Pierce, State of Washington.

**Ruston**

Those portions of the Northeast Quarter of Section 23, Township 21N, Range 02E, W.M. described as follows:

Boundary Line Adjustment Number 08-01, situate in the Town of Ruston, County of Pierce, State of Washington, as per the Boundary Line Adjustment recorded under Auditors Fee Number 200902065003, except Tracts 12 through 14, except Tract 16.

For reference only, not for re-sale.

ORIGINAL

B-4

51018027.6

## 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:

B-1

51018027.5  
51018027.6

For reference only, not for re-sale.

**Phase 1**

**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

**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.

For reference only, not for re-sale.

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

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 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: \$808,990

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'

For reference only, not for re-sale.

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.

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: \$9,399,900

LID No. 6980 (Streetlighting 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

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**EXHIBIT B**

**LID Property Description**

**Tacoma**

That portion of the west half of Section 24, Township 21N, Range 02E, W.M. described as follows:

Lots 1 through 18, Block 109, Lots 1 through 16, Block 110, all of Block 111, a portion of Blocks 113 & 114, PLAT OF TACOMA TIDELANDS, as recorded in Volume 2 of Plats at Page 84, records of the Pierce County Auditor; together with vacated streets abutting said Blocks, situate in the City of Tacoma, County of Pierce, State of Washington.

Lots A and B, M. S. DREW'S PLAT, as per the plat recorded in Volume 1 of Plats at Page 16, records of the Pierce County Auditor; together with vacated streets abutting said Blocks, situate in the City of Tacoma, County of Pierce, State of Washington.

Block B, 1961, SUPPLEMENTAL MAP OF TACOMA TIDELANDS, as recorded in the Office of the Commissioner of Public Lands at Olympia, Washington, abutting Blocks 109, 110, 113 and 114, PLAT OF TACOMA TIDELANDS, as per the plat recorded in Volume 2 of Plats at Page 84, records of the Pierce County Auditor; situate in the City of Tacoma, County of Pierce, State of Washington.

**Ruston**

Those portions of the Northeast Quarter of Section 23, Township 21N, Range 02E, W.M. described as follows:

Boundary Line Adjustment Number 08-01, situate in the Town of Ruston, County of Pierce, State of Washington, as per the Boundary Line Adjustment recorded under Auditors Fee Number 200902065003, except Tracts 12 through 14, except Tract 16.

For reference only, not for re-sale.



**City of Tacoma  
Public Works Department  
Construction Division**

747 Market Street, Room 620  
Tacoma, WA 98402-3769  
Phone: (253) 591-5760  
FAX: (253) 594-7966

# Letter of Transmittal

DATE: 11-10-09

TO: Ralph Rodriquez

PROJECT: 60000022216 Ruston San Sew  
Town of Ruston & City of Tacoma

TRANSMITTED BY:  Mail  Hand Carry  Pick Up  Interdepartmental Mail

**WE ARE TRANSMITTING THE FOLLOWING:**

COPIES	DATE	DESCRIPTION
1	11/10/2009	MOU Memorandum of Understanding (Original)

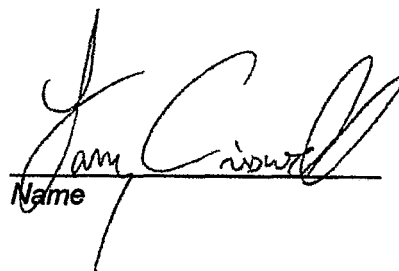
**THESE ARE TRANSMITTED as check below:**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> For approval                | <input type="checkbox"/> Reviewed as submitted  | <input type="checkbox"/> Resubmit __ copies for Review     |
| <input checked="" type="checkbox"/> For your records | <input type="checkbox"/> Reviewed with Comments | <input type="checkbox"/> Submit __ copies for distribution |
| <input type="checkbox"/> As requested                | <input type="checkbox"/> Amend and Resubmit     | <input type="checkbox"/> Return __ corrected prints        |
| <input type="checkbox"/> For review and comments     | <input type="checkbox"/> Rejected               | <input type="checkbox"/> Submit Mylar Drawings             |

REMARKS: For you LID files

COPY TO: File  
60000022216 MOU  
Larry Criswell  
Construction Division  
747 Market room 620 off. (253) 591-5787  
Tacoma, WA 98402

SIGNED:

  
Name

*If enclosures are not as noted, kindly notify us at once.  
253-591-5760*

## Memorandum of Understanding

### **Point Ruston, LLC Local Improvement Districts (LID) Project Construction Management, Inspection and Quality Assurance**

This Memorandum of Understanding (MOU) supplements the Private Work Order Permit, as described in the Agreement for Improvements within the Asarco Tacoma Smelter Superfund Site Area OU02 recorded on May 14, 2009 in the Pierce County Auditor's office under File No. 200905140661, for the construction of the Point Ruston Development and LID, to identify and outline the requirements, procedures, documentation, inspection services, the functions and responsibilities of Point Ruston, LLC and the City of Tacoma.

#### **I. Construction Standards, Documentation and Requirements**

- A. The work will be performed in accordance with the City approved Private Work Order plans and specifications for this project.
- B. Point Ruston, LLC will maintain and provide all documents on site for verifying the work and cost for each LID in accordance with RCW 35.43 and 35.44.
- C. Point Ruston, LLC will require and maintain shop drawings of all materials incorporated into the project to ensure they satisfy the requirements of the City approved Private Work Order documents. Point Ruston, LLC will make these documents available to the City at all times.
- D. Point Ruston, LLC will submit a cataloged electronic copy of all project construction documents for each LID, as identified in this MOU, prior to the acceptance of the LIDs to the City.

#### **II. Construction Surveying and Control of Work**

- A. Point Ruston, LLC will provide the surveying and staking for the construction and control of the project, in accordance with the requirements described in the Private Work Order General Notes in the City approved Private Work Order plans.
- B. Point Ruston LLC will maintain and provide a copy of the surveying notes and records to the City of Tacoma upon completion of the project.

#### **III. Construction Management, Inspection and Quality Assurance**

##### **A. Point Ruston LLC**

- 1) Point Ruston LLC will provide the construction management and inspection necessary to ensure the contract compliance and quality assurance.
- 2) Point Ruston LLC will comply with the Environmental Protection Agency (EPA) Regulations and Guidelines required for the project.
- 3) Point Ruston LLC will provide on-site inspection of the work to be constructed as part of the project. This on-site inspection shall include, but not limited to the following:
  - a. Maintain Inspectors Daily Report (IDR): Documentation of each workday's activities and events. The IDRs will be dated and signed by the Inspector(s). The IDRs shall be on standard letter size paper.

- b. Completion and maintenance of Daily Time and Materials (DT&M) forms, which identifies and documents the workforce, equipment, quantities of materials, time and other cost associated with the work performed. DT&Ms will be dated and signed by the inspector(s). The DT&Ms will be on standard letter size paper. See Exhibit C for sample form.
  - c. Inspection of materials delivered and incorporated into the project for ensuring compliance with the approved Private Work Order documents and/or approved shop drawing submittals.
  - d. The receipt, verification and maintenance of material tickets delivered and incorporated into the project site.
  - e. The Inspector will maintain a record of the quantities of materials incorporated into the project and associate them with the contract project cost items identified and approved as part of this project.
  - d. Point Ruston, LLC will identify its project inspector(s) and provide their name(s) and contact information to the City.
- 4) Point Ruston, LLC will provide the material testing on the project in accordance with the requirements of the approved Private Work Order documents.
- a. The material testing shall be performed by an independent and certified laboratory.
  - b. Material testing will be performed at the frequency identified in the approved Private Work Order documents. Materials shall not be incorporated into the project which do not meet with the City approved Private Work Order documents or approved shop drawings.
  - c. Point Ruston LLC will document and maintain material testing reports. The reports shall be provided to the City on a weekly basis. The reports shall identify the material being tested, the type of test, the location and work associated with the material.
  - d. Point Ruston, LLC will provide the name and contact information of its independent and certified testing laboratory to the City.

**B. City of Tacoma**

- 1) The City will provide regulatory inspection of all work performed on the project to ensure compliance with City of Tacoma standards and regulations, policies and the requirements of the approved Private Work Order Permit.
  - a. The City will provide a construction inspector on a full-time basis or as deemed necessary, Monday – Friday, during the working hours of 7:30 a.m. to 4:30 p.m. Work performed outside these times requires a 24-hour minimum notice to the City's construction inspector.
  - b. The City will have access to the Point Ruston, LLC shop drawings, documents and records associated with the construction for this project at all times.
- 2) Tacoma Water shall inspect all work associated with the construction of water mains for regulatory compliance with Tacoma Water specifications. Prior to commencing water main construction, Point Ruston, LLC shall attend a pre-installation meeting conducted by Tacoma Water. Point Ruston, LLC will be responsible for notifying Tacoma Water when this type of work is being performed.
- 3) Tacoma Power shall inspect all work associated with the construction of the primary electrical distribution systems for regulatory compliance with City codes and regulations within the City Limits. Point Ruston, LLC will be responsible for notifying Tacoma Power when this type of work is being performed.

- 4) Point Ruston, LLC shall be responsible for all City inspection costs associated with the project.
- 5) The parties understand and acknowledge that the City's regulatory role hereunder does not include environmental compliance issues except where any such issues may be under the jurisdiction of the City exclusively and not the EPA.

**IV. Documentation of Labor, Work, Equipment and Materials Cost**

- A. The parties understand that Point Ruston, LLC will have LIDs constructed and paid for on a "Time and Material" basis.
  - 1) Point Ruston, LLC will document and maintain records of the labor, materials, equipment and other items associated with the work on the project. A sample form is provided in Exhibit C.
  - 2) Point Ruston, LLC will make DT&M forms available to the City construction inspector at all times.
  - 3) Point Ruston, LLC will submit the DT&M forms and a Monthly Summary Time & Material Cost form (see Exhibit D) to the City on a monthly basis for review and approval of costs for the LIDs. Point Ruston, LLC will certify that the information and costs being submitted are true and accurate. The monthly invoices shall be submitted in the following format:
    - a. The DT&M and Monthly Summary Time & Material Cost form shall be categorized by each LID.
    - b. All material tickets and receipts shall be maintained and available to the City upon request.
  - 4) Point Ruston, LLC, prior to the start of construction, will provide the City a spreadsheet identifying all equipment and rates, and labor wage rates to be used by the contractor on the project.
  - 5) Point Ruston LLC will provide a copy of the progress payments made to its Contractor to the City.

City of Tacoma:

James G. Parvey  
James G. Parvey, City Engineer

Nov. 6, 2009  
Date

Jeff Capell  
Jeff Capell, Assistant City Attorney

Nov. 6, 2009  
Date

Point Ruston LLC:  
Michael Cohen

Nov 6, 09  
Date

Print Name: Michael Cohen

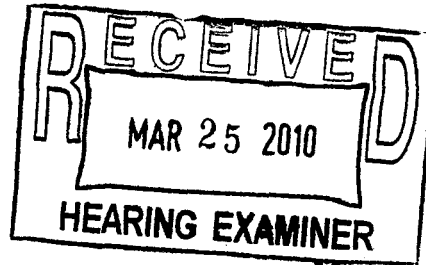
Title: Manager

**ESTABLISHED EQUIPMENT RATES FOR THE LID  
FOR 2009 AND 2010**

1	Komatsu PC750LC Excavator	HR	\$ 200.00	51	Truck & Side Dump Trlr.	HR	\$ 120.00
2	Track Hoepak	HR	\$ 10.00	52	Rental 60CY Trash Haul	HR	\$ 120.00
3	Kobelco 480 Excavator	HR	\$ 162.50	53	Lowboy Truck & 50 Ton Trlr.	HR	\$ 115.00
4	Cat 345 Excavator	HR	\$ 126.00	54	5 cy Dump Truck	HR	\$ 15.00
5	Cat 330 Excavator	HR	\$ 109.20	55	25 Ton Tilt Trailer	HR	\$ 10.00
6	Komatsu PC220LC Excavator	HR	\$ 86.45	56	6000# Rough Terrain Forklift	HR	\$ 17.50
7	Kobelco 190 ED	HR	\$ 80.00	57	Broderon Hydro-Hammer	HR	\$ 35.00
8	Kobelco 220 w/Hammer	hr	\$ 180.00	58	Broce RJ350 Broom	HR	\$ 25.00
9	Cat 315 Excavator	HR	\$ 38.50	59	Rental Vacuum Sweeper	HR	\$ 105.00
10	Komatsu PC1000LC Excavator	HR	\$ 275.00	60	Air Comp. 185 cfm	HR	\$ 13.00
11	Komatsu PC128UU	HR	\$ 35.00	61	Air Comp. 185 cfm w/90lb	HR	\$ 19.00
12	Komatsu PC228US	HR	\$ 56.00	62	Air Comp. 185 cfm w/hole hog	HR	\$ 25.00
13	Hitachi EX50 Mini-Excavator	HR	\$ 21.00	63	Light Plant	HR	\$ 6.50
14	Komatsu PC400 Excavator	HR	\$ 94.50	64	Portable Chipper	HR	\$ 18.50
15	Cat D4G Dozer	HR	\$ 31.50	65	4" Vermeer Trencher	HR	\$ 7.50
16	Cat D4 Dozer	HR	\$ 40.95	66	12" Vermeer Trencher	HR	\$ 22.00
17	Cat D5 Dozer	HR	\$ 50.00	67	Van Trailer	HR	\$ 5.00
18	Cat D6 Dozer	HR	\$ 76.70	68	Variable Message Board	HR	\$ 9.50
19	Cat D8 Dozer	HR	\$ 115.00	69	Arrowboard Solar	HR	\$ 5.00
20	JD850 Wide Track	HR	\$ 66.50	70	Arrowboard Gas	HR	\$ 8.75
21	JD 550 Wide Track	HR	\$ 45.00	71	Trash Pump w/Accessories	HR	\$ 6.50
22	Cat D7 Dozer	HR	\$ 87.50	72	4" Sump Pump w/Accessories	HR	\$ 25.00
23	Cat 950 Loader	HR	\$ 49.00	73	Plate Compactor	HR	\$ 5.00
24	JD 644G Loader	HR	\$ 70.00	74	Jumping Jack Compactor	HR	\$ 7.50
25	Cat 966 Loader	HR	\$ 89.19	75	Dialgrade Laser	HR	\$ 5.00
26	Cat 980 Loader	HR	\$ 80.50	76	8' x 20' Steel Sheet	HR	\$ 3.25
27	Bobcat Loader w/Attach	HR	\$ 21.00	77	6' x 8' Trench Box	HR	\$ 6.00
28	Cat 420 Backhoe	HR	\$ 31.85	78	8' x 12' Trench Box	HR	\$ 8.00
29	Hoepak for Backhoe	HR	\$ 5.00	79	8' x 16' Trench Box	HR	\$ 10.00
30	Breaker for Backhoe	HR	\$ 45.00	80	8' x 20' Trench Box	HR	\$ 12.00
31	JD770 Grader	HR	\$ 50.00	81	4' x 20' Trench Box	HR	\$ 8.00
32	Cat 12 Grader	HR	\$ 50.00	82	8' x 24' Trench Box	HR	\$ 14.00
33	Cat 140G Grader	HR	\$ 57.40	83	4' x 24' Trench Box	HR	\$ 10.00
34	Cat 16G Grader	HR	\$ 87.50	84	8' x 24' Trench Box Rody HD	HR	\$ 14.00
35	Cat 623 Scraper	HR	\$ 170.00	85	8' x 32' Trench Box Rody HD	HR	\$ 16.00
36	Champion Roller	HR	\$ 33.60	86	Gravel Skiff	HR	\$ 12.00
37	Sakai Roller	HR	\$ 33.60	87	Felco Bedding Conveyor	HR	\$ 10.00
38	Bomag 120 Roller	HR	\$ 15.00	88	Rody Belt Conveyor	HR	\$ 35.00
39	PC750 Bedding Conveyor	HR	\$ 38.00	89	8' x 8' Manhole Box	HR	\$ 12.00
40	Foreman Pipetruck	HR	\$ 15.00	90	Screening Plant	HR	\$ 75.00
41	Flatbed Truck	HR	\$ 10.00	91	Rental tiller	HR	\$ 10.00
42	15 Ton Boom Truck	HR	\$ 20.00	92	Office Trailer	HR	\$ 10.00
43	Water Truck, Onsite	HR	\$ 40.95	93	30T Off Road	HR	\$ 80.00
44	Water Truck, Offsite	HR	\$ 40.95	94	Komatsu 380 Crusher	HR	\$ 125.00
45	Mechanic Service Truck	HR	\$ 25.00	95	Hydraulic Furakawa Drill	HR	\$ 65.00
46	Grease Truck	HR	\$ 20.00	96	Shooting Mats	HR	\$ 5.00
47	1/2 Ton Pickup	HR	\$ 10.00	97	Seismograph	HR	\$ 17.50
48	JD400D 40 Ton Off Road Truck	HR	\$ 104.65				
49	Solo Dump Truck	HR	\$ 65.90				
50	Truck & Trailer	HR	\$ 73.50				

**ESTABLISHED LABOR RATES FOR THE LID  
FOR 2009 AND 2010**

1	Flagger	\$ 44.32	9	Superintendent	\$ 74.35
2	Foreman	\$ 66.30	10	Traffic Control Supervisor	\$ 49.16
3	General Laborer	\$ 52.12	11	Truck Driver, Solo	\$ 46.40
4	Asst. Pipelayer	\$ 53.08	12	Truck Driver, T & T	\$ 46.40
5	Skilled Pipelayer/ Grade Eng	\$ 63.73	13	GENERAL FOREMAN (Electrical)	\$ 66.40
6	All Operators	\$ 63.19	14	FOREMAN (Electrical)	\$ 62.33
7	Group 2 Operator	\$ 63.73	15	JOURNEYMAN (Electrical)	\$ 58.26
8	Project Manager	\$ 74.35	16	APPRENTICE (Electrical)	\$ 52.81



**TO:** Rodney M. Kerslake, Hearing Examiner  
**FROM:** Ralph K. Rodriguez, L.I.D. Administrator *RKR*  
**SUBJECT:** Report for L.I.D. 3967  
Formation L.I.D. Hearing April 1, 2010 – 1:30 p.m.  
**DATE:** March 24, 2010

Construction of sanitary sewers, as described below:

- 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.

**Notices:** Resolution No. 37992 setting the hearing date was published March 11 and 12, 2010.

Notice of Public Hearing letters were mailed to owner of record March 12, 2010.

**Status:** Being considered for creation as the result of a petition.

**Background:** Estimated project cost: \$1,983,669.05

Rate per AUF: \$241.68

Total Est. Assessed to Property Owner: \$1,983,669.05

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

Protest: 0%

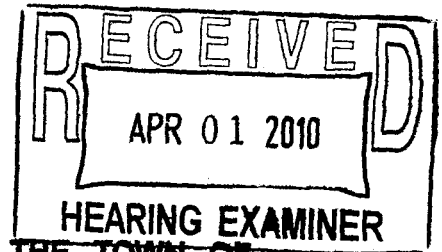
This is a 20-year Assessment Roll.

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

File: lid3967

TOWN OF RUSTON

RESOLUTION NO. 412



A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF RUSTON, DECLARING ITS INTENTION ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF TACOMA FOR THE ADMINISTRATION OF A LOCAL IMPROVEMENT DISTRICT TO CONSTRUCT CERTAIN IMPROVEMENTS IN CONNECTION WITH THE POINT RUSTON NEIGHBORHOOD

WHEREAS, the former Asarco smelter site, between Commencement Bay and Ruston Way and located in both Ruston and Tacoma municipal jurisdictions, is proposed to be redeveloped as an urban neighborhood to be known as "Point Ruston;" and

WHEREAS, Local Improvement Districts may be formed for the purpose of making infrastructure improvements and the costs of those improvements may be paid for by assessments against the specifically benefited property; and

WHEREAS, the City of Tacoma has considerable experience in forming and administering Local Improvement Districts;

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF RUSTON, WASHINGTON AS FOLLOWS:

THAT: The Council intends to enter into an interlocal agreement with the City of Tacoma for Local Improvement District formation, administration, bidding, general contract selection, and construction management services in connection with a Local Improvement District to be formed to make street, lighting and utility improvements in connection with the Point Ruston redevelopment.

BE IT FURTHER RESOLVED THAT: The Council hereby authorizes the Mayor to negotiate and prepare the above-referenced interlocal agreement, and any other documents required in connection therewith, for Council approval at a future council meeting.

PASSED by the Town Council of the Town of Ruston, SIGNED by the Mayor and attested by the Clerk in authentication of such passage this 17<sup>th</sup> day of March 2008.

Michael Transue, MAYOR

Approved as to form:

\_\_\_\_\_  
Town Attorney

ATTEST:

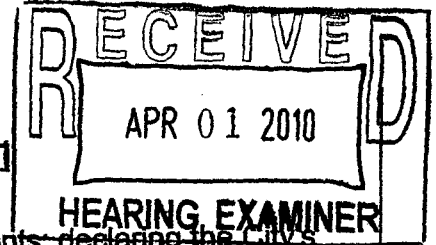
  
Karen Carlisle, Town Clerk

EXH. 6



Req. #11775

**RESOLUTION NO. 37441**



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A RESOLUTION Related to Public Works and Improvements, ~~declaring the City's~~  
intent to undertake a joint project with the Town of Ruston to construct  
certain improvements in connection with the Point Ruston neighborhood,  
and its intent to enter into an interlocal agreement for administration of the  
project, including joint administration of local improvement districts.

WHEREAS the former Asarco smelter site, located near  
Commencement Bay and Ruston Way, and located in both Ruston and  
Tacoma municipal jurisdictions, is proposed to be redeveloped as an urban  
neighborhood that crosses the municipal boundary between the City and the  
Town, to be known as "Point Ruston", and

WHEREAS RCW 35.51.020 authorizes municipalities to contract with  
each other to conduct joint public improvement projects, and to pay for those  
improvements from assessments from local improvement districts, and

WHEREAS the developer and sole property owner has indicated its  
intent to request that the City and Town each form a local improvement district  
to assess the cost of these improvements against the development, and

WHEREAS the City of Tacoma ("City") has considerable experience in  
managing complex public improvement projects and in forming and  
administering Local Improvement Districts, and

WHEREAS, on March 17, 2008, the Town of Ruston ("Town") adopted  
Resolution No. 412, stating the Town's intent to enter into an interlocal  
agreement with the City to undertake this joint project, and the City Council  
believes it is in the best interest of the City to undertake this joint project; Now,  
Therefore,

EXH 7<sup>64</sup> 132



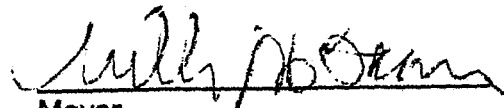
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

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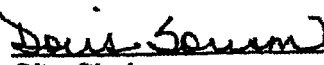
Section 1. That the City Council intends to enter into an interlocal agreement with the Town of Ruston to: a) conduct a joint public improvement project for street, lighting, and utility improvements related to the proposed Point Ruston neighborhood development; b) to administer, on behalf of the project, local improvement districts in each jurisdiction and; c) to manage, on behalf of the project, the design, bidding, contract award and construction management services;

Section 2. That the Council hereby authorizes the City Manager to negotiate and prepare a proposed interlocal agreement, and any other documents necessary and consistent with this Resolution, to implement the joint project described herein, for Council approval.


Adopted APR - 1 2008

  
Mayor

Attest:

  
City Clerk

Approved as to form:

  
Assistant City Attorney



RECEIVED

CITY CLERK USE ONLY

MAR 26 2008

REQUEST FOR

ORDINANCE  RESOLUTION

TACOMA CITY ATTORNEY  
CIVIL DIVISION

2008 MAR 26 PM 2:48

Request #:	11775
Ord./Res. #:	37441

1. DATE: March 26, 2008

2. SPONSORED BY: COUNCIL MEMBER(S) Spiro Manthou (If no sponsor, enter "N/A")		
3a. REQUESTING DEPARTMENT/DIVISION/PROGRAM CEDD	4a. CONTACT (for questions): Martha Anderson	PHONE: 591-5207
3b. DO PASS FROM Economic Development Committee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Did not go before a Committee	4b. Person Presenting: Eric Anderson	PHONE: 591-5100
	4c. ATTORNEY: Steve Gross	PHONE: 591-5638
 Department Director/Utility Division	Budget Officer/Finance Director	 City Manager/Director Utilities

5. REQUESTED EFFECTIVE DATE: April 1, 2008-- The meeting date was specified in the "do pass" recommendation from the Economic Development Committee.

6. SUMMARY AGENDA TITLE: (A concise sentence, as it will appear on the Council agenda.)

A Resolution of the City of Tacoma, declaring its intention to enter into an interlocal agreement with the Town of Ruston for the Administration of a Local Improvement District to construct certain improvements in connection with the Point Ruston Neighborhood.

7. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Pt. Ruston LLC has requested the formation of Local Improvement Districts (LIDs), in the Town of Ruston and in the City of Tacoma that would jointly serve the mixed-use, multi-family development. To facilitate the formation of the LID, an Interlocal Agreement will be negotiated between the two local jurisdictions involved in the formation of the concurrent LIDS. The "Joint" Local Improvement Districts would provide for a seamless project between the two jurisdictions and would provide for the construction of the necessary facilities that would allow development of the private properties. Pt. Ruston LLC would be responsible for all cost associated with the LIDS in both jurisdictions.

The Ruston Town Council passed Resolution No. 412 on March 17, 2008 directing the Mayor to enter into negotiation with the City of Tacoma to create an Interlocal Agreement and bring it back to the Town Council for consideration as soon as April, 2008. At the March 25<sup>th</sup> Economic Development Committee meeting, the committee provided a "do pass" recommendation that the City of Tacoma pass a reciprocal resolution.

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

Source Documents/Backup Material	Location of Document
Town of Ruston Resolution No 412	Packet

9. FINANCIAL IMPACT: 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 #:

66

134

Resolution No. 37441

Adopted: \_\_\_\_\_

Maker of Motion: \_\_\_\_\_

Seconded: \_\_\_\_\_

Voice Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Ms. Anderson				
Mr. Fey				
Ms. Ladenburg				
Mr. Lonergan				
Mr. Manthou				
Ms. Strickland				
Mr. Talbert				
Ms. Walker				
Mayor Baarsma				

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Ms. Anderson				
Mr. Fey				
Ms. Ladenburg				
Mr. Lonergan				
Mr. Manthou				
Ms. Strickland				
Mr. Talbert				
Ms. Walker				
Mayor Baarsma				

**INTERLOCAL AGREEMENT  
BETWEEN THE TOWN OF RUSTON AND THE CITY OF TACOMA  
FOR PAVING, STREETLIGHTING AND UTILITIES PROJECT**

THIS AGREEMENT is made and entered into this 17<sup>th</sup> day of Sept., 2008, by and between the City of Tacoma, Washington ("Tacoma") and the Town of Ruston, Washington ("Ruston" and, together with Tacoma, the "Municipalities"). The parties agree as follows:

Section 1. Recitals.

1.1. The City of Tacoma is a first class city, and the Town of Ruston is a town. Both Municipalities are duly organized and legally existing under the laws of the State of Washington.

1.2. The parties share a common boundary in Pierce County, Washington. Tacoma, Ruston and the owners of the properties on either side of the shared municipal boundary wish to make certain improvements to Ruston Way, Baltimore Street and certain other streets as described below in Paragraph 1.4.

1.3. The nature of the intended project is such that it can best and most efficiently be accomplished by the joint cooperation and participation of the parties in what shall be known as the Ruston Way Local Improvement District Project (the "Project"). The Project is expected to serve properties within Ruston and properties within Tacoma, with an estimated total acquisition and installation cost between \$12 million and \$16 million.

1.4. The proposed Project will consist of: establishing a grade and the realignment of Ruston Way, an arterial roadway, together with all utilities, concrete curb and gutters, bike lanes, sidewalks, roundabouts, street lighting and landscaping, as well as closing of the existing vehicle tunnel; completion of the Baltimore Street connection between Ruston Way and 46<sup>th</sup> Street;

construction of a new street referred to as "Yacht Club Road," from Ruston Way to Metro Parks' property on the peninsula; and placing thereon a permanent pavement, together with the installation of concrete curbs and gutters, surface-water mains and surface water catch basins, where needed, wastewater mains, water mains, ornamental streetlighting, and a new three-phase primary underground electrical system and other improvements.

1.5. Pursuant to RCW 35.51.020, Tacoma and Ruston agree that the planning, financing, property acquisition and construction for the Project should be undertaken and administered on a mutually cooperative basis between the two Municipalities as provided in this Agreement.

1.6. The parties intend this Agreement to be supplemented by other, more specific agreements related to formation of each Municipality's Local Improvement District and to construction management for the Project.

Section 2. Project Declared Joint Project. The Project is declared to be a joint project and undertaking by Tacoma and Ruston under RCW 35.51.020, and the respective Municipalities hereby pledge their good faith cooperation in connection with the Project and direct their respective officials and departments to collaborate and work together to accomplish the Project.

Section 3. Primary Agency and Project Administrator. Tacoma is designated as the primary agency in connection with the Project and its Public Works Department is designated as the "Project Administrator." As primary agency, Tacoma shall have discretion, authority and responsibility to negotiate with the developer, Point Ruston, LLC, on behalf of both Municipalities. The negotiations will include, but are not limited to, the scope of the project -- specifically whether it will be limited to the right of way projects along Ruston Way and

Baltimore Street, whether it will include roadways and other infrastructure within the proposed development; whether the proposed esplanade will be part of the Project; estimated construction costs.

Section 4. Costs, Billing and Payment Responsibilities.

Until the parties sign a supplemental agreement for LID and construction management, the City shall absorb the staff costs of negotiating with the developer. Supplemental agreements shall contain a provision for allocation of costs. Any contract with the developer shall include a provision that requires the developer to pay the LID pre-formation costs for both municipalities.

Section 5. Delegation and Authority to Act. For purposes of this Agreement, Ruston authorizes Tacoma to provide information that is, and do all other things that are, reasonable and necessary to effectively and efficiently accomplish negotiation of the scope of the Project. Ruston agrees to provide information and documents requested by Tacoma in a timely manner. Tacoma agrees that any policy or legislative decisions that need to be made by both Municipalities will be presented to the legislative authority of both Municipalities in a timely manner.

Section 8. Entire Agreement, Integration and Amendment. Except for the supplemental agreements contemplated in Section 1.6, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, all prior communications of the parties on such subject being integrated and merged into this document, which may be modified only by an agreement in writing signed after due authorization by both parties.

Section 9. Binding Effect. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective successors, and assigns, and are not for the benefit of third parties.

Section 10. Disputes. In the event of any dispute with regard to this Agreement, venue shall be in the Superior Court of the State of Washington for Pierce County. The parties may mutually determine to resolve disputes through mediation or other alternative process. The parties shall have the right of specific performance of the terms hereof.

Section 11. Waiver. No covenant, term, or condition, or the breach thereof, shall be deemed waived except by the express written consent of the party against whom waiver is claimed, and any waiver or breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by one party of any performance by the other after the time the same shall have become due shall not constitute a waiver of the breach or default of any covenant, term, or condition unless otherwise expressly agreed to in writing.

Section 12. Notices. Any notice to be given, or any documents or information to be delivered by either party to the other party shall be delivered in person or mailed by certified mail and addressed to the respective parties at the following addresses, unless a different addressee or address has been designated by proper notice:

To Tacoma:  
Eric A. Anderson, City Manager  
747 Market Street, Room 1200  
Tacoma, Washington 98402

To Ruston:  
ATTN: Mayor  
5117 N. Winnifred Street  
Ruston, Washington 98407-6597

Section 13. Saving Clause. If any section or provision of this Agreement is held by the final decision of a court of competent jurisdiction to be invalid, the remainder of the Agreement shall not be affected and shall remain in full force and effect.

Section 14. Ratification. All actions heretofore taken by or on behalf of either party consistent with the provisions or in furtherance of the purposes of this Agreement are ratified and confirmed in all respects.

Section 15. Captions. Section captions used in this Agreement are for convenience of reference only, and shall not be used to resolve any question of interpretation of this document.

Section 16. Effective Date. This Agreement shall take effect upon authorized execution and delivery to be effective as of the day and year first above written.

Section 17. Execution. This Agreement may be signed in counterparts and, if so signed, shall be deemed a single document. Each party represents that the person signing this Agreement on its behalf is duly authorized to do so.

IN WITNESS WHEREOF, the parties have duly executed this Agreement in duplicate.

CITY OF TACOMA  
By: [Signature]  
Eric A. Anderson, City Manager

TOWN OF RUSTON  
By: [Signature] 09 Sept 2008  
Mayor

ATTEST:  
[Signature] 9-17-08  
Doris Serum, City Clerk

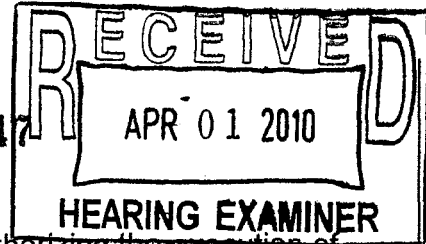
APPROVED AS TO FORM:  
[Signature]  
Assistant City Attorney

APPROVED AS TO FORM:  
TOWN ATTORNEY  
By: [Signature] 11 sept 2008



Req. #12151

RESOLUTION NO. 37747



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A RESOLUTION relating to community development; authorizing the execution of an agreement with Point Ruston, LLC, for certain improvements within the ASARCO Tacoma Smelter Superfund site, and setting forth mutual agreements for the Local Improvement District financing of Ruston Way and related improvements.

WHEREAS Point Ruston is a large 82-acre, mixed-use development project located on the former Tacoma ASARCO Smelter site ("Site") within the City and the Town of Ruston ("Ruston"), and

WHEREAS the Site contains environmental contamination caused by the ASARCO copper smelting operation and is a designated Superfund site under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and

WHEREAS the Site is subject to the ASARCO Tacoma Smelter Consent Decree and all amendments thereto ("Consent Decree"), which places the Site within the jurisdiction and control of the federal Environmental Protection Agency ("EPA") and the federal courts and directs and authorizes certain remedial activities within the Site, and

WHEREAS, as it passes through the Site, Ruston Way is entirely within an area designated in the Consent Decree as Operable Unit 2 including property located in the jurisdiction of both the City and Ruston, and the environmental cleanup and reconstruction of Ruston Way within the Site is part of the remedial activity authorized and required under the Consent Decree, and

EXH B



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WHEREAS, after ASARCO filed for bankruptcy, Point Ruston, LLC ("Point Ruston"), was selected to acquire and undertake remediation of the Site in an open competitive public process administered through the United States Bankruptcy Court and approved by EPA in the form of an amendment to the Consent Decree, which authorizes and requires Point Ruston to undertake and complete certain remedial work, including the cleanup and reconstruction of Ruston Way within the Site, and

WHEREAS Point Ruston is the sole signatory to the Consent Decree and is the sole EPA-approved supervising contractor for the remedial work, and

WHEREAS, without further amendment of the Consent Decree and approval by EPA and the federal courts, which may not be forthcoming, no entity other than Point Ruston can become a signatory to the Consent Decree or control, perform, or contract for remedial work under the Consent Decree including the cleanup and reconstruction of Ruston Way, and

WHEREAS, in addition to the foregoing, Ruston Way, within the Site in both the City and Ruston, is in severely deteriorated condition; and work to improve Ruston Way is eligible for Local Improvement District ("LID") funding, secured by Point Ruston property in the Site, and

WHEREAS Point Ruston has requested the formation of a joint LID in both the City and Ruston for the remediation and improvement of Ruston Way within the Site, in an amount not to exceed \$11 million, secured by Point Ruston property in the Site, and



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WHEREAS, because the Site is subject to the federal jurisdiction and Point Ruston is the sole signatory and sole authorized supervising contractor under the federal Consent Decree, a conventional LID process, including bidding by the City, is not practicable within the meaning of the common law, state statutes, and the Tacoma City Charter and ordinances, and

WHEREAS, in order to accommodate the unique circumstances of the remediation and improvement of Ruston Way within the Site and allow the work and the LID to proceed, the City and Point Ruston have developed an agreement which provides the manner in which the work will proceed, the LID will be formed, and bonds issued, and

WHEREAS, pursuant to the agreement, Point Ruston will design and construct the remediation and reconstruction of Ruston Way ("Project") subject to all federal and City requirements, including payment of prevailing wage and compliance with the Historically Underutilized Business ("HUB") and Local Employment Apprenticeship Program ("LEAP"), and

WHEREAS Point Ruston will furnish interim financing for the Project, and the City will form the LID and subsequently acquire the completed improvements, including a Certificate of Completion from EPA signifying completion of the remedial work with the proceeds of the LID bonds, and

WHEREAS the City and Ruston have previously entered into an interlocal agreement pursuant to chapter 39.34 RCW, regarding the joint LID, and



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WHEREAS the Project has been endorsed by the Pierce County Central

Labor Council–AFL CIO; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the former Tacoma ASARCO Smelter Superfund site (“Site”) is subject to federal jurisdiction, and Point Ruston, LLC (“Point Ruston”), is the sole signatory and sole authorized supervising contractor under the federal ASARCO Tacoma Smelter Consent Decree (“Consent Decree”), which creates a unique circumstance under which a conventional Local Improvement District (“LID”) process, including bidding by the City, is not practicable within the meaning of the common law, state statutes, and the Tacoma City Charter and ordinances.

Section 2. That the proper officers of the City are hereby authorized to execute the Agreement for Improvements Within the ASARCO Tacoma Smelter Superfund Site Area Operable Unit 2 with Point Ruston, setting forth mutual agreements for the formation of an LID to fund the foregoing activities and for the remediation and reconstruction of Ruston Way and related



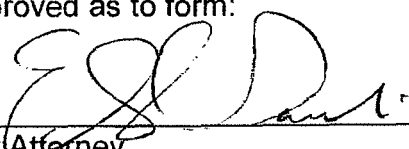
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improvements, including certain utility and other infrastructure within the former Site, said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
\_\_\_\_\_  
City Attorney



CITY CLERK USE ONLY

# REQUEST FOR

ORDINANCE  RESOLUTION

RECEIVED

Request #:

12151
37747

2009 JAN 29 PM 2:45

Ord./Res. #:

1. DATE: January 29, 2009

CITY CLERK'S OFFICE

2. SPONSORED BY: COUNCIL MEMBER(S) N/A (If no sponsor, enter "N/A")

<b>3a. REQUESTING</b> DEPARTMENT/DIVISION/PROGRAM Community & Economic Development  <b>3b. DO PASS FROM - Was before EDC on 12/9/08; EDC requested agreement be brought to full Council</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Did not go before a Committee	<b>4a. CONTACT (for questions):</b> Martha Anderson	PHONE: 253-591-5207
	<b>4b. Person Presenting:</b> Martha Anderson	PHONE: 253-591-5207
	<b>4c. ATTORNEY:</b> Elizabeth Pauli	PHONE: 253-591-5627
 Department Director/Utility Division	N/A Budget Officer/Finance Director	 City Manager/Director Utilities

5. REQUESTED COUNCIL DATE: MARCH 10, 2009

6. SUMMARY AGENDA TITLE: (A concise sentence, as it will appear on the Council agenda.)  
 Authorizing execution of a Development Agreement between the City of Tacoma and Point Ruston LLC setting forth mutual agreements for financing Ruston Way and related improvements, including creation of a Local Improvement District, design and construction of roadway, utility distribution and other infrastructure within the Pt. Ruston site.

7. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)  
 The Pt. Ruston project is a large, 82-acre, mixed-use development project located on the former ASARCO smelter property within the City of Tacoma and the Town of Ruston. In conjunction with the development, the site requires environmental remediation as a result of significant contamination caused by the ASARCO copper smelting operation. Point Ruston LLC was selected to acquire and remediate the site in a competitive public process administered through the United States Bankruptcy Court and approved by the United States Environmental Protection Agency (EPA). Point Ruston is working under a consent decree with EPA and is the sole signatory to the consent decree approved by the federal courts. Pt. Ruston desires to construct roadway, utility and other infrastructure improvements using Local Improvement District (LID) financing in a not-to-exceed amount of \$10 million. Due to the unique nature of the site as a federal Superfund site, a conventional LID approach would require assignment of remedial responsibility under the consent decree and approval by the federal court. For this reason the Development Agreement sets forth a modified process whereby the developer will finance, design and construct the project subject to City requirements and the City will purchase the improvements with the proceeds of the LID bonds. The developer will pay all LID formation costs whether or not the improvements are actually constructed.

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

Source Documents/Backup Material	Location of Document
Development Agreement	Clerk's Office

9. FINANCIAL IMPACT: A.  NO IMPACT (NO FISCAL NOTE)  
 There will be no interim financing, and bonds will be paid through property assessments  
 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:

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Acct #: -

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200905140661 32 PGS  
05/14/2009 3:32pm \$73.00  
PIERCE COUNTY, WASHINGTON

RECORDED AT THE REQUEST OF:  
AND AFTER RECORDING RETURN TO:

FOSTER PEPPER PLLC  
ATTN: NANCY NERAAS  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101

**Agreement for Improvements Within the Asarco Tacoma  
Smelter Superfund Site Area OU2**

For reference only, not for re-sale.

Grantor: CITY OF TACOMA, a Washington municipal corporation and  
POINT RUSTON, LLC, a Washington limited liability  
corporation

Grantee: POINT RUSTON, LLC, a Washington limited liability  
corporation and CITY OF TACOMA, a Washington municipal  
corporation

Abbreviated  
Legal Description: TACOMA: Pts W 1/2 S24 T21N R02E WM; Lots A & B, M.S.  
Drew's Plat, Vol 1-Pg 16; and Block B, 1961, Supp Map of  
Tacoma Tridelands rec in Office of Comm of Pub Lands in  
Olympia, per plat at Vol-2 Pg 84; City of Tacoma

RUSTON: Ptns NE 1/4 S23 T21N R02E WM, City of Ruston  
County of Pierce and fully described on EXHIBIT B

Assessor's Tax Parcel ID#: TACOMA: 8950003311, 8950003312, 8950003313,  
8950003314, 8950003315, 8950003316, 8950003317,  
8950003318, 8950003319, 8950003320, 8950003321  
RUSTON: 0221231077, 0221231078, 0221231079,  
0221231080, 0221231081, 0221231082, 0221231083,  
0221231084, 0221231085, 0221231086, 0221231087,  
0221231091, 0221231093, 0221231094, 0221231095,  
0221231096, and 0221231097

Reference # (If applicable): N/A

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

**THIS AGREEMENT FOR IMPROVEMENTS WITHIN THE ASARCO  
TACOMA SMELTER SUPERFUND SITE AREA OU2** (this "Agreement") is made as of  
this 28<sup>th</sup> day of April, 2009 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 Point Ruston project is a unique combination of a large property development project, and a large and complex environmental remediation project, and is located within the site contaminated by the former Asarco copper smelting operation (the "Site").

B. The Developer and remediator, Point Ruston, LLC, was selected to acquire and remediate the site in competitive public process administered through the United States Bankruptcy court, and approved by the United States Environmental Protection Agency ("EPA").

C. In its remedial responsibilities, Point Ruston is working under a Consent Decree with EPA which directs and governs Point Ruston's responsibility to clean up the Site. The Site is located both in the City of Tacoma (the "City") and the Town of Ruston (the "Town"), and in the absence of a successful completion of the Point Ruston project, issues associated with an unfinished clean-up could create significant problems for the City and the Town.

D. Ruston Way as it passes through the Site, is entirely within an area designated in the Consent Decree as OU2 including properties located in the jurisdiction of both Tacoma and Ruston, and is one of the areas that has been part of the required remedial action from the inception of the original Consent Decree between EPA and Asarco.

E. The Developer had originally considered effecting clean up and reconstruction of Ruston Way (the "Project", as more particularly defined below) through a conventional process with the City, however, the unique circumstances of the Site make such a process complex, difficult and would increase the City's and the Town's risk. Point Ruston LLC and Asarco are signatories to the Consent Decree with EPA for remedial work on the Site that was approved by the federal courts.

F. A conventional LID approach with the City constructing the Project would require some assignment of remedial responsibility under the EPA Consent Decree to the

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City. Under the Consent Decree such an assignment is not allowed without consent of the EPA and the federal court.

G. Federal consent may or may not be forthcoming, and the process of seeking consent would likely extend beyond the timelines for completion of remediation included in the Consent Decree and assuming such consent could be obtained, while the City may already have some liability risk associated with the contaminated right-of-way, such an assignment would increase the City's risk.

H. Under the unique circumstances of Ruston Way as it passes through the former Asarco site, including the preeminence of federal laws and regulations on the Site, the environmental risk, and the fact that Point Ruston is the relevant signatory to the Consent Decree (being a signatory together with Asarco), the Tacoma City Council has found that Ruston Way improvement within the Site is not practicable for bid under the City Charter, Municipal Code and state and common law.

I. The City and the Town have entered into an Interlocal Agreement under Chapter 39.34 RCW in which they have agreed to integrate the improvements of Ruston Way and certain other streets, including integration of the LID financing for those public improvements.

J. As additional consideration for this Agreement, the City has requested that Point Ruston waive its existing right to pursue a claim under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(24) and (25), as amended, against Tacoma for the costs of the Project, and Point Ruston has requested that upon completion of the Project, Tacoma expedite the vacation and re-dedication process of Ruston Way in its new alignment so as to assist Point Ruston in meeting its construction schedule.

K. The parties intend by this Agreement to set forth their mutual agreement and undertakings for the financing of the Project, including creation of a local improvement district or districts (the "LID" or the "Ruston Way LID") for the Project, the financing, design and construction of the Project by the Developer subject to City and Town requirements, the transfer of the completed Project improvements to the City and the Town, respectively, and the final funding of the Project improvements with the proceeds of LID bonds.

L. The City will present to the City Council, the formation of a single LID in Tacoma, and in Ruston, pursuant to RCW 35.43.030, by the "resolution" method, and the City is willing to order the improvements comprising the Project on the condition that Developer: (1) undertake full responsibility for construction period financing of the Project; (2) prior to the issuance of bonds to provide long-term financing for the LID, and subject to the provisions of this Agreement, deposit and maintain in escrow either cash or one or more irrevocable letters of credit in a form and total value amount specified in this Agreement, to

assure the prompt payment of debt service on bonds issued by the City to provide permanent financing of the cost of the Project; and (3) pay all costs incurred by the City in the process of forming the LID and carrying out the Project, whether or not the improvements comprising the Project are actually constructed.

NOW, THEREFORE, the parties agree as follows:

1. **Definitions.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

"Agreement" means this Agreement for Improvements within the Asarco Tacoma Smelter Superfund Site Area OU2.

"Bonds" means bonds and other obligations issued to provide long-term financing for the LID and payable from special benefit assessments against the real property within the LID.

"City" means the City of Tacoma, a first class city organized under the laws of the State of Washington.

"Completion" or "Complete", as to the Project or a portion thereof, means the construction of the improvements comprising the project consistent with the description in Exhibit A, and approved for acceptance by the City.

"Consent Decree" shall mean the ASARCO Tacoma Smelter Consent Decree, and all Amendments thereto, including but not limited to the Second Amendment dated July 29, 2006.

"Developer" means Point Ruston LLC, a Washington limited liability company.

"Developer Property" means the property within the LID owned by Developer or by a person or entity that is directly or indirectly related to or controlled by the Developer.

"Effective Date" means the date set forth in the first paragraph of this Agreement.

"Environmental Standards" shall mean the ASARCO Tacoma Smelter Consent Decree and all Amendments thereto, and all federal, state and local environmental laws and ordinances and all regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future including, but not limited, to the Endangered Species Act ("ESA"), the Resource Conservation and Recovery Act ("RCRA") at 42 U.S.C. § 6921 et. seq., the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") at 42 U.S.C. § 9601 et. seq., the Clean Air Act at 42 U.S.C. § 7401 et. seq., the Federal Water Pollution Control Act, as amended at 33 U.S.C. 1318, the Toxic Substances

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Control Act at 15 U.S.C. § 2601 et. seq., the Shoreline Management Act, Ch 90.58 RCW, the Hazardous Waste Management Act, Ch. 70.105 RCW, the Clear Air Act, Ch. 70.94 RCW, the Water Pollution control Act, Ch. 90.48 RCW, and the Model Toxic Substances Control Act ("MTCA") at RCW 70.105.D, et. seq., the State Water Pollution Control Act (Ch. 90.48 RCW), the State Clean Air Act (Ch. 70.94 RCW), and also including but not limited to all implementing regulations for such acts and any guidelines, levels and standards currently in effect or enacted or amended from time to time in the future by the applicable federal, state or local regulatory authority for addressing any contamination of any, sort.

"Escrow Agent" means First American Title and Escrow.

"Escrow Requirement" means Security placed in escrow with the Escrow Agent, in an amount or amounts determined consistent with Section 3.3 of this Agreement.

"Event(s) of Default" shall be as defined in Section 9 herein.

"Force Majeure" shall be as defined in Section 11.18 herein.

"Governmental Authorities" shall mean any board, bureau, commission, department, or body of any municipal, county, state, or federal governmental or quasi-governmental unit, or any subdivision thereof, having, asserting, or acquiring jurisdiction over the Project, Property and/or the management, operation, use, environmental clean-up or improvement thereof.

"Interlocal Agreement" shall mean the interlocal agreement between the City and Town regarding a Ruston Way LID, dated September 17, 2008, as it may be amended from time to time.

"Legal Requirements" means all local, county, state and federal laws, ordinances and regulations, and other rules, orders, requirements, and determinations of any governmental or quasi official entity or body now or hereafter in effect, whether or not presently contemplated, applicable to the Project, or its ownership, operation or possession, including (without limitation) all those relating to building codes, zoning or other land use matters, the Americans With Disabilities Act of 1990, as amended, and the Consent Decree.

"Letter of Credit" means one or more irrevocable letters of credit (collectively, "Letters of Credit") in a form and total value amount specified in this Agreement, to assure the prompt payment of the Bonds or to secure specified Developer obligations under this Agreement.

"LID" or "Ruston Way LID" means the local improvement district or districts formed by the City to provide for part of the cost of the Project.

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"Project" means the remediation and improvement of Ruston Way, and includes Ruston Way from approximately the intersection of Ruston Way and 49<sup>th</sup> Street to 51<sup>st</sup> Street, the Baltimore Street connection and a portion of the proposed Yacht Club road, all located within the City and Town, and all other related obligations of Developer and City under this Agreement, all as more particularly described in Exhibit A, attached and incorporated herein by reference.

"Ruston Way Property" means the land beneath the current Tacoma Ruston Way right-of-way.

"Security" means Letters of Credit, tax-exempt municipal securities and/or cash, or other security in form and substance acceptable to the City, and provided by the Developer consistent with this Agreement to secure the prompt payment of debt service on the Bonds and to other obligations of Developer under this Agreement.

"Site" means the area of former operation of the Asarco copper smelting operation which is designated as a federal Superfund site and includes the Point Ruston Project site.

"Supplemental Reserve Fund" shall mean a fund created pursuant to RCW 35.51.040 and funded from bond proceeds.

"Substantial Completion" or "substantially complete", as to the Project or a portion thereof, means the construction of the improvements comprising the project consistent with the description in Exhibit A, except for items which do not substantially prevent the use of Project improvements for their respective intended purposes, and those improvements are approved for acceptance by the City. Substantial Completion shall include the removal of all mechanics and materialmen's liens and other all liens with respect to the Project.

"Town" means the Town of Ruston, a town organized under the laws of the State of Washington.

2. **City Responsibilities.** Pursuant to this Agreement, the City, having legislatively determined that carrying out the Project is not practicable for traditional competitive bid, shall, as soon as reasonably possible consistent with applicable law (but in no event later than six months of the effective date of this Agreement), present to the City Council an ordinance forming a single LID comprising the property in Tacoma described in Exhibit B (attached and incorporated herein by reference), together with the property within the Town of Ruston described in Exhibit B pursuant to RCW 35.43.030, or as the boundaries of that LID may be adjusted during the LID formation process. The City and the Developer recognize that formation of the LID including property both in the City and Town may not occur unless and until permitted under RCW 35.43.030.

(i) Design and Permits. If the LID is formed, the City shall expeditiously review, and, acting reasonably based on generally-applicable City and Town standards, approve or disapprove the designs for the Project proposed by the Developer. Consistent with applicable law and ordinances, the City will issue one or more permits to the Developer so that the Developer may proceed with constructing the Project within Tacoma's jurisdiction. The City shall, consistent with Section 5.5, and in coordination with the Town, inspect construction of the Project as it proceeds. The City shall designate a project coordinator, and provide contact information to the Developer for that project coordinator, his/her successors, and for other key City personnel involved in reviewing or inspecting Developer's work on the Project.

(ii) Assessments and Funds. Upon the Substantial Completion of Project construction, and a determination by the City (acting reasonably) that the Project costs to be provided through the LID are appropriate given the work and materials involved, the City shall levy special benefit assessments against the real property within the LID in an amount not to exceed eleven million dollars (\$11,000,000), which amount includes a five hundred thousand dollar (\$500,000) permanent contribution to be deposited into the City's Local Improvement District Guaranty Fund and a five hundred thousand dollar (\$500,000) deposit into a Supplemental Reserve Fund which shall be administered as provided in RCW 35.51.040 and which shall be the fund of first resort upon Default of any payment of the LID assessments. The principal amount deposited into the Supplemental Reserve Fund, including any interest earned thereon in excess of 2.5% shall be applied to the Developer's LID assessment payments consistent with RCW 35.51.040. Interest from the Supplemental Reserve Fund of up to 2.5%, not to exceed the actual interest earned, shall be annually paid to the City to fund City administrative costs, and the Developer waives the application of that portion of interest earnings to the payment of assessments under RCW 35.51.040. The City's Local Improvement Guaranty Fund shall be pledged as security for the single LID in the City and Town. Upon the Substantial Completion of the Project and acceptance of the improvements comprising the Project by the City (acting reasonably), the City shall issue Bonds to fund (a) Project costs, (b) funding the deposit to the Supplemental Reserve Fund in the amount of five hundred thousand dollar (\$500,000), (c) funding a five hundred thousand dollar (\$500,000) contribution to the City LID Guaranty Fund, (d) formation and assessment confirmation costs; and (e) costs of issuance of the Bonds. The City shall then, with proceeds from the Bonds, purchase from Developer the completed Project on behalf of the City and Town (including the City's LID formation and assessment confirmation costs and the costs of issuance of the Bonds) for an amount not to exceed the total amount of the Bonds, minus the deposit to the Guaranty Fund and Supplemental Reserve Fund. However, if any uncompleted items (including "punchlist items") remain with respect to the Project after Substantial Completion, the City may withhold 10% of the payment due the Developer until final Completion has occurred. The Bonds will be payable solely from assessments and interest thereon. The assessment payment period shall be 20 years, or such other period of time determined by the City, subject to Developer approval. The City shall collect assessments

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and apply them toward the repayment of the Bonds, and shall enforce the liens created by those assessments.

(iii) Street Vacation and Rededication. Prior to completion of the Project, the City and Developer will agree to schedules for a vacation and rededication process to create a sixty (60) foot Right-of-Way for Ruston Way on its new alignment, together with an adjoining ten (10) foot utility easement, including dedication of existing Developer Property to the City and Town within their respective jurisdictions, and City release of surplus Right-of-Way to Developer. In valuing any Right-of-Way vacated to Developer, the City will consider the value of the Developer Property dedicated to the City and the value of Developer's release of its rights against the City pursuant to Section 6.2 of this Agreement.

### 3. Developer's Responsibilities and Obligations.

3.1 Developer's Design, Construction and Project Transfer Responsibilities. Except as otherwise expressly provided herein, Developer shall at its sole cost and expense obtain all permits and furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for completion of the Project, all consistent with this Agreement. The Developer shall designate a project manager, and provide contact information to the City for that project manager, his/her successors, and for other Developer personnel involved in interfacing with the City in connection with Developer's work on the Project. The Developer shall pay the City out of the proceeds of the Bonds to provide for the City's actual costs for engineering, survey, appraisal, legal and other expenses related to the improvements and the formation of the LID. The Developer shall also pay the City amounts customarily required in connection with City permits associated with construction of the Project, to assure consistency with City standards and to verify quantities of materials used in connection with the construction. The Developer shall provide all interim financing for the project during the design and construction period, and transfer by warranty deed, bill of sale and/or right-of-way dedication (as applicable) the completed improvements comprising the Project to the City and the Town respectively, in exchange for the proceeds of the Bonds issued to pay for the improvements within the LID. The Developer shall provide the City with sufficient documentation for the City to determine that, based on the work and materials involved, the amount to be paid to the Developer from Bond proceeds is appropriate. In the event that the actual cost of the Project is greater than may be lawfully assessed against the Developer Property, the Developer shall nevertheless finance, complete and transfer the completed improvements comprising the Project to the City and the Town respectively for an amount equal to the portion of Bonds issued to pay for those improvements (i.e., the amount of the Bonds less costs of funding the Guaranty Fund, the Supplemental Reserve Fund and the portion of Project costs comprised of the City's LID formation/assessment costs and Bond issuance costs). The Developer shall be responsible for any and all costs of the Project in excess of that amount. In carrying out the Project, the Developer shall conduct remedial

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activities in compliance with the Consent Decree, and shall complete the Project consistent with the City's generally-applicable standards for arterial streets. The Developer shall have sole responsibility for environmental clean-up, construction, obtaining all necessary permits and approvals and complying with all Legal Requirements as they relate to carrying out the Project.

**3.2. Developer Security for Obligations.** Subject to portions of the following obligations being undertaken by purchasers of the Developer Property as provided in Section 12 herein, Developer guarantees the full and timely payment of all costs of the Project, including but not limited to interim financing prior to the issuance of the Bonds, and Developer's full payment of every installment of principal of and interest on and/or penalties on the special assessments to be levied against the property in the LID. By this guarantee the Developer assures the payment of the Bonds, both principal and interest. Developer also guarantees the payment of the City's actual costs incurred in connection with the LID and the Project in the event that the Developer is unable to provide for the Security as provided herein, or in the event that the Developer does not proceed with and complete the Project. Developer agrees to pay any amount lawfully due under the terms of this guarantee within sixty days of receipt of the City's written demand therefor, which demand will list the costs incurred. In addition, if the Developer fails to timely pay an LID assessment installment and/or interest and/or penalty thereon, the City immediately may commence foreclosure proceedings against the Developer Property under Chapter 35.50 RCW, without delaying for two years as set forth in RCW 35.50.030. The Developer agrees to this accelerated commencement of foreclosure proceedings with full knowledge that it is waiving a significant right in return for the City's willingness to form the LID, to proceed with the Project and to structure the financing of the Project as described in this Agreement. In the event that the Developer transfers any of the Developer Property to a person or entity that is directly or indirectly related to or controlled by the Developer, this waiver shall be deemed to follow and shall be effective as to that subsequent owner. The guarantees and agreements relating to foreclosures contained in this paragraph are subject to the terms of this Agreement and shall terminate as to any subject parcel when the Escrow Requirement terminates as set forth in Section 3.3.

**3.3 Escrow Requirement.** Subject to the last paragraph of this Section 3.3, Developer agrees to provide to the Escrow Agent, not later than thirty (30) days prior to pricing of the LID bonds, cash, tax-exempt municipal securities, or one or more irrevocable letters of credit or other security in form and substance acceptable to the City, in the amount of the Escrow Requirement (as defined immediately below). The Escrow Agent shall hold the Security pursuant to an Escrow Agreement acceptable to the City and the Developer, acting reasonably. The Escrow Requirement initially shall be three times the first year's estimated interest payments on property to be assessed within the LID (as determined by the City using the estimated interest rate set forth in the assessment roll confirmation ordinance), minus the amount of funds deposited to the City's Guaranty Fund and in the Supplemental Reserve

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Fund, pursuant to Section 2 above. The Original Escrow Requirement may be adjusted consistent with this Section and Section 3.4.

To the extent that the Security is composed of one or more letters of credit, Developer shall, prior to the issuance of tax-exempt Bonds, allow the City or the City's bond counsel to review the reimbursement agreement or similar agreement with any letter of credit bank to ascertain whether the security provided by the Developer to its letter of credit provider might adversely affect the tax-exempt status of the Bonds. If the City's bond counsel determines that the arrangement between the Developer and its letter of credit bank might so adversely affect the tax-exempt status of those obligations, Developer shall adjust its arrangements so that the obligations may be treated as tax exempt. Further, at the time of the sale of the Bonds, Developer agrees to execute such certificates as may be reasonably requested by bond counsel to insure that the interest on such obligations will be exempt from federal income taxation.

Any letter or letters of credit provided for Security shall be in form and substance acceptable to the City, and shall be provided by a bank or banks with a long-term debt rating not lower than A-/A3 from any rating agency. In the event a letter of credit cannot be obtained from a bank meeting the foregoing rating criteria because no bank with such a rating will issue a letter of credit, or will not do so on commercially reasonable terms, or agencies no longer rate banks, or because of bank nationalization, the parties may substitute a letter of credit from a bank which is acceptable to the City. Except as provided in Section 3.6, each letter of credit shall be for a term of at least one year. Each letter of credit shall provide that if, on or before ten days prior to its expiry date, it is not replaced by a similar letter of credit with a term of at least one year, the Escrow Agent shall be entitled to draw the full amount of the then-current letter of credit and to hold the amount in cash, and apply that cash consistent with this Agreement, until a letter of credit conforming to the requirements of this Section is provided by the Developer. Upon the receipt of a new, conforming letter of credit, any cash remaining from the amount drawn under the letter of credit that has not been expended by the City pursuant to this Agreement shall be returned to the Developer.

The Escrow Requirement amount shall be deposited and maintained with the Escrow Agent as provided herein. Interest earnings on the deposit shall be retained by the Escrow Agent and applied for the same purposes as the escrow deposit. The deposit shall serve as security for payment of Developer's obligations to the City and the Developer's payment of assessments when due. Upon the passage of the ordinance confirming the assessment roll for the LID and mailing of the City Treasurer's notice of the prepayment period for collection of assessments, the City shall within ten days after the close of such prepayment period determine and notify the Developer of the estimated interest rate for unpaid assessments. Based on that estimated interest rate, the Escrow Requirement shall be adjusted to equal three times the interest on Developer's assessments in the LID for the following year. The Escrow Requirement shall be provided by the Developer's deposit with the Escrow Agent, of Security

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equal to or exceeding the Escrow Requirement. The Escrow Requirement shall be further adjusted: (i) following the sale of the Bonds and fixing of the actual interest rate on assessments, to an amount equal to three times the interest on Developer's assessment for the following year; and (ii) following any Bond interest payment to an amount equal to three times the interest on Developer's assessment for the following year; and (iii) in accordance with Section 12.2 of this Agreement. Any increase or decrease in the Escrow Requirement because of such adjustment shall be allowed by an adjustment to cash Security held in escrow, or by amendment to or replacement of the Letter of Credit within thirty days of the City's notice to Developer and the Escrow Agent of that adjusted amount. Developer covenants to deliver to the City for deposit with the Bank and with the Escrow Agent, respectively, the acceptable Security for the Original Escrow Requirement and the acceptable Security for the Escrow Requirement in accordance with this Agreement. All references to the Escrow Requirement hereinafter shall be to the initial Escrow Requirement as increased or decreased in the manner referred to in this Section 3.3 (including the adjustments described in Section 12.2). The Security shall be managed, drawn upon and replenished in accordance with the terms of this Agreement. In addition to that deposit, Developer shall pay to the Escrow Agent its annual escrow fee, beginning at the time the Security is deposited with the Escrow Agent; such fee shall be a reasonable amount consistent with similar fees for similar services.

The Escrow Requirement shall be reduced to zero for any parcel within the LID that can be shown to have a fair market value, including any improvements thereon, of at least six times the outstanding unpaid assessment against that parcel, as certified to the City by an MAI qualified appraiser with short form, or that the Pierce County Assessor-Treasurer's assessed value for the parcel meets the six times test.

3.4 Final Assessment Roll; Objections to LID. The City will expend money for LID formation costs before the LID is created. The City's costs and expenses, together with the actual cost of the City's purchase of the improvements on behalf of the City and the Town and comprising the Project, will be incorporated into a final assessment roll which will be approved and confirmed and filed for collection. In the event the Project is not constructed or construction is not completed, the City's initial costs and expenses must be paid, and will be billed to Developer and Developer shall pay those costs and expenses. Developer, for itself and any successors in interest to the Developer Property, waives any right it may have to object to formation of the LID on the Developer Property for any reason, or to object to the method of assessment against Developer's Property. The Developer has waived its right to object to formation of the LID, and to object to the method of assessment of Developer's Property, with full knowledge that it is waiving significant rights in return for the City's willingness to form the LID, to proceed with improvements and to structure the financing of the Project as contemplated herein. However, prior to the assessment roll being finalized by the City, the Developer and City shall in good faith cooperatively work to mutually agree upon the proper amount of assessment for each parcel of Developer Property

benefited by the LID, consistent with applicable law. Pursuant to City standard practices, the City's interest rate on the assessments will be 50 basis points higher than the interest costs on the Bonds.

3.5 Construction Period Security. The obligations of Developer hereunder, including but not limited to Developer's right to adjust and obligation to maintain the Escrow Requirement, shall follow the ownership of the Developer Property to Developer's successors and assigns other than an Individual Purchaser (as defined below). In addition to the statutory lien created in connection with formation of the LID and the levying of assessments therein, to provide further security for the Developer's obligations under this Agreement there is hereby created a contractual lien and charge on the Developer Property which shall separately be enforceable under the laws governing the foreclosure of mortgages, except as modified herein, and the City may elect to enforce the lien of this Agreement against any portion of the Developer Property then subject to the lien.

3.6 Additional Construction Period Security. The construction of the Project will require the temporary closure and re-routing of vehicular traffic off Ruston Way. In order to provide the City with security to ensure the re-opening of Ruston Way to a condition comparable to its existing condition as of the date of this Agreement, Developer shall, prior to the temporary closure of Ruston Way and re-routing of vehicle traffic consistent with a City-approved street closure plan, provide the City with an irrevocable letter of credit or other security in form and substance acceptable to the City in the amount of \$1,000,000 from a bank acceptable to the City. The term of the letter of credit required under this Section 3.6 shall be sufficient to provide for the entire period of temporary closure of Ruston Way, which the City and the Developer expect to be no greater than 90 days. Under the terms of that letter of credit, the City shall be entitled to draw on all or part of the letter of credit to pay for City completion of the improvements in that right of way area, if the Developer fails to reconnect Ruston Way and allow for traffic through the Project and Developer Property within 90 days of the closure, subject to delay for Force Majeure. In the event of such a failure, the Developer shall promptly transfer all Project designs and other plans to the City and the City shall be entitled to complete the Project, adopt the final assessment roll and issue the Bonds to pay for the costs of the Project. If the assessment roll may not lawfully be approved at an amount sufficient to pay for all of the City's costs of completing the Project, the Developer shall nevertheless be liable to the City for any excess costs not included in the assessment roll.

3.7 Performance of Developer Essential. Developer's guarantee to pay the assessments levied against the Developer Property in the LID as set forth in this Agreement, and Developer's agreement to deposit a Letter of Credit, cash or other Security with the City, all as contained in this Section 3 and to otherwise perform this Agreement, are for the benefit of the City and the purchasers of the Bonds and the parties to this Agreement recognize that purchasers of the Bonds will acquire the Bonds in reliance in part upon this Agreement. As

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between the City and Developer, the City agrees to attempt to exhaust the Security under the terms of this Agreement before making a demand upon Developer to make a payment under the guarantee contained in this Section 3.

4. **Standards.** Developer shall perform the terms of this Agreement according to the following standards:

4.1 **Compliance with Agreement.** All construction hereunder shall comply with, and be performed in accordance with the Consent Decree, the City's generally-applicable standards for arterial streets, this Agreement and all Legal Requirements and Environmental Standards, free and clear of all liens (other than in connection with approved Financing Obligations).

4.2 **Diligence.** The Developer shall use its reasonable best efforts to seek and obtain all interim financing necessary to the Project and shall thereafter diligently design, permit, construct and complete the improvements comprising the Project in a good and workmanlike manner and of good quality.

4.3 **Costs of Project, Books and Records.** Developer shall use its best efforts to carry out the design and construction of the improvements at a commercially reasonable level of cost and expense. Upon Substantial Completion of the Project, the cost of the Project to be paid by the City to the Developer shall not exceed the amount described in Sections 2 and 3, including but not limited to the costs of planning, design, construction, LID formation, and Guaranty Fund, and Supplemental Reserve Fund deposits as required by Sections 2 and 3. The amount paid to the Developer shall not include any Developer overhead or Developer's fee. The Developer shall pay third parties solely pursuant to invoices received. Developer shall keep accurate books and records of Project costs, including copies of all invoices received by Developer and amounts paid, and those books and records shall be made available for inspection upon reasonable notice to the City, to accountants designated by the City, and/or to the Washington State Auditor.

5. **Project Development and Construction.**

5.1 **Generally.** The parties agree that no construction will commence until the satisfaction of the following conditions:

(i) The Developer shall be in material compliance with this Agreement.

(ii) The City and/or the Town shall have issued a permit for work in Ruston Way.

(iii) The Developer shall have obtained the City's approval of the design and construction plans for the Project.

(iv) The LID shall have been formed including the Developer Property, with the Town's consent under RCW 35.43.030 and, consistent with the existing Interlocal Agreement between the City and the Town entered into pursuant to RCW 35.43.030, to allow for the formation of a single LID for the Project between the City and the Town, except that the Developer, with notice to the City, may commence design, site preparation and construction work and the costs of such design, site preparation and construction work may be included in the Project costs to be funded through the LID if it is formed as anticipated.

(v) The Developer shall have demonstrated to the City's satisfaction (acting reasonably) the availability of all funding necessary for completion of Project.

The Developer agrees that once construction has begun on Project, subject only to Force Majeure, it will proceed diligently with such construction until all the improvements comprising the Project have been fully completed. Subject to delay for events of Force Majeure, the Developer shall complete or cause completion of construction of the Project improvements before December 31, 2011. Upon receipt of a Notice of Substantial Completion from Developer, City shall proceed promptly with all actions necessary to verify the costs of the Project and proceed with the issuance and sale of the LID bonds and paying the proceeds to Developer.

5.2 Approval Process. Developer has submitted construction plans of the Project for approval to the City and the Town respectively and to other related infrastructure providers who require approval. The review and approval of submitted plans shall be accomplished through the Work Order Review Process. Applicable plans shall be submitted to the City of Tacoma Public Works Department as one plan set to help facilitate the work order review process. The Developer's request for City approvals shall be in writing and shall include sufficient information so as to permit the City to make an informed decision with respect thereto (the "request"). Approvals by the City under this Section 5.2 shall not be unreasonably withheld and shall be deemed given with respect to the submitted material (the "submittal") unless the City shall notify Developer in writing within thirty-five (35) days of the request, stating the reasons for withholding approval. Developer shall, upon receipt of disapproval, modify the submittal, taking into account such objections, and promptly resubmit it to the City for approval in accordance with the time schedule set forth herein. Such process of submittal, review, comment and re-submittal by Developer, known as the Work Order Review Process, shall continue until such time as the submittal has been approved by the City. The typical review duration for each work order plan book submittal is 40 working days for the first submittal and 15 working days for each additional re-submittal. Approval shall be

required for any modification, replacement, alteration or addition to any previously approved submittal. Revision sheets to the approved work order plans shall be submitted, reviewed, and approved by the City prior to implementation in the field.

5.3 Contracting Requirements. Developer shall pay prevailing wage and comply with the City's Historically Underutilized Business ("HUB") and Local Employee Apprenticeship Program ("LEAP") programs for construction of the Project. Developer shall provide in its contract(s) with its major subcontractors, that in the event of a Developer Default as described in Section 9, the Developer must assign such contract(s) to the City if the City has (at its sole option) agreed to such assignment, and the major subcontractor(s) shall be bound by such assignment.

5.4 Governmental Approvals. The Developer shall apply, at its sole cost, to the appropriate Governmental Authorities or third parties for, and shall diligently pursue any permit, license, permission, consent or approval required in connection with the construction of the Project. Nothing in this Agreement shall affect the authority of the City or the Town of Ruston, as a Governmental Authority, from exercising normal regulatory authority with respect to the Project consistent with generally applicable ordinances, rules and guidelines. For example (and not by way of exclusion), the City may require that during construction of the Project, Developer provide for alternate traffic detour routes so that traffic flow in the Ruston Way corridor continues unimpeded.

5.5 City Inspections. The City shall have a right at all reasonable times to inspect work on the Project to determine compliance with the provisions of this Agreement and Exhibit A. In performing such inspections, the City shall not engage in conduct which unreasonably impedes or delays completion of the Project. The City's right to inspect shall not in any way be deemed relieve Developer of its responsibility to complete the Project consistent with the terms of the Agreement and Exhibit A.

5.6 Utility Work. The Developer will install the utilities described in Exhibit A as part of the Project to be funded by the LID. Prior to commencement of construction, the City and Point Ruston may revise the list of utilities described in Exhibit A by mutual written agreement. Tacoma Water needs to replace a portion of the water main in Ruston Way and the existing tunnel that is currently out of service. Tacoma Water's replacement has been awaiting remediation of the area by the clean-up responsible party. It is anticipated that Tacoma Water will fund the portion of the cost of that replacement, which is not the Developer's responsibility, under a separate agreement between Tacoma Water and the Developer. Other utility infrastructure improvements may be provided under additional agreements, and may be financed through separate LIDs. Any separate agreement for utility work between any City utility and the Developer must be in place prior to issuance of construction plans for that work to the Developer.

5.7 Substantial Completion. Upon Developer's determination that Substantial Completion of the Project has been achieved, Developer shall provide to City a written Notice of Substantial Completion. The City shall have ten (10) business days working in coordination with the Town to reasonably identify any incomplete items that would preclude Substantial Completion ("punch-list items"). If no response is received from the City within the required time, the Project shall be deemed Substantially Complete as of the date of the Notice of Substantial Completion.

6. Disclaimer of City Liability, Indemnity.

6.1 Preparation of Site; Utilities. The City shall not be responsible for any excavation, demolition or site preparation in connection with the Project or any existing improvements on the Ruston Way Property. The City makes no representations as to the availability or suitability of utility connections to the Ruston Way Property. The Developer shall make agreements for all utility services directly with the service provider.

6.2 AS IS. Except as expressly set forth herein, Developer undertakes the Project improvements on the Ruston Way Property "as is" and "where is" with all faults, of any nature or kind, without any representations or warranties, express or implied or statutory of any kind whatsoever by the City, or any employee, officer, agent or representative of the City. Upon sale of the Bonds and City's acquisition of the Project, Developer shall be deemed to have accepted such Ruston Way Property and to have waived and released its right to recover from the City any and all damages, losses liabilities, costs, including but not limited to "remedial action" and "response" costs as these terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(24) and (25), as amended, expenses whatsoever (including attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of the design and construction of the Project, or Ruston Way Property that may be conveyed to the Developer by street vacation. Without limitation of the foregoing waiver and release, the parties agree that the above waiver and release shall not serve to release any third party from any such damage, loss liability, cost, expense or claim incurred by Developer. The City makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Ruston Way Property or structures thereon for any Project improvements to be constructed by the Developer, and Developer warrants that it has not relied on representations or warranties, if any, made by the City as to the physical or environmental condition of the Ruston Way Property or the structures thereon for any Project improvements to be constructed by the Developer.

6.3 Indemnification of the City and Town. Developer shall indemnify, defend and hold the City and Town harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with the construction of the Project,

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including any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, tenants, successors, assigns or invitees on or with respect to construction of the Project. To the extent a court determines that RCW 4.24.115 applies, the City and Town shall not be entitled to such indemnification for damage caused to it or any third party by reason of its sole negligence or, to the extent of such negligence, its concurrent negligence. This indemnification for claims arising out of construction of the Project, shall survive expiration of this Agreement. Promptly following receipt of notice, an indemnitee hereunder shall give Developer written notice of any claim for which Developer has indemnified it hereunder, and Developer shall thereafter vigorously defend such claim, at its sole cost, on behalf of such indemnitee. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this Section to which action or proceeding the City and/or Town is made a party, the City and/or Town shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent the City and/or Town is indemnified under this section, Developer shall bear the cost of the City's and/or Town's defense, including reasonable attorneys' fees and costs. No settlement of any claim shall be made without the City's and/or Town's written approval, not to be unreasonably withheld.

6.4 City Permits. Developer acknowledges that the City has not made any representation or warranty with respect to Developer's ability to obtain any permit or approval or to meet any other requirements for development of the Ruston Way Property or Project. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances to further the Project, nor binds the City to do so. The Developer understands that the City will process applications for permits and approvals as if such applications were made without any City participation in such project.

6.5 Indemnity From Liens. Except in connection with Developer's existing financing, any interim Project financing the LID, and any rights of the EPA in the Ruston Way Property, Developer shall not cause any lien to attach to any part of the Ruston Way Property in connection with any monetary obligation, including but not limited to mortgages, deeds of trust, mechanic's liens, attachment liens, judgment liens, execution liens, utility liens, tax liens, security interests or encumbrances, unless Developer first obtains the City's written approval thereto, which approval may be granted or withheld in its sole discretion. Developer shall indemnify and hold harmless the City from and against all mechanics', materialmen's and laborers' liens and all costs, expenses and liabilities arising from construction of Project improvements upon any of the Ruston Way Property. Nothing contained in this Agreement shall be construed as the consent or request of the City, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment to the Project (or any part thereof). NOTICE IS HEREBY GIVEN THAT

TACOMA WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO DEVELOPER, OR ANYONE HOLDING AN INTEREST IN THE RUSTON WAY PROPERTY (OR ANY PART THEREOF) THROUGH OR UNDER DEVELOPER, AND THAT NO CONSTRUCTION OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT ANY INTEREST OF TACOMA IN THE RUSTON WAY PROPERTY.

7. Insurance.

7.1 Insurance Requirements. Developer shall maintain and keep in force insurance covering all aspects of the construction activity on the Project, including but not limited to the following requirements described in this Section 7.

7.2 Builders All Risk Comprehensive Coverage. Developer shall keep, or shall require its major subcontractors to keep, all Project components (including materials off site or in transit) insured for Builders All Risk Comprehensive Coverage including earthquake, fire, and flood and to include amounts sufficient to prevent the City or Developer from becoming a co-insurer under the terms of the applicable policies but in any event in an amount not less than 100% of the then full "Replacement Cost," being the cost of replacing the Ruston Way Improvement components, and all fixtures, equipment, improvements and betterments thereto.

7.3 Commercial General Liability. Developer shall carry, and shall require its construction subcontractors to carry, Commercial General Liability insurance providing coverage against claims for bodily injury, death or property damage in connection with the Ruston Way Improvement with broad form liability and property damage endorsement, such insurance to afford minimum protection, during the term of the construction, and written for combined single limits of liability of no less than Five Million Dollars (\$5,000,000), per occurrence, said amount to be adjusted from time to time with coverage deemed customary under like conditions.

7.4 Insurance Policies. Insurance policies required herein:

Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

(i) The companies must be rated no less than "A," as to general policy holders rating in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.

(ii) The policies shall name the City as an additional insured for liability purposes.

(iii) The policies shall be issued as primary policies.

Each such policy or certificate of insurance required in this Section shall have attached thereto (1) an endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to Developer and the City; (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (3) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

Cancellation of any insurance or non-payment by Developer of any premium for any insurance policies required by this Agreement shall constitute an immediate Event of Default under this Agreement, without cure or grace period. In addition to any other legal remedies, the City at its sole option after written notice may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, Developer shall be liable to the City.

8. **Prohibition against Assignment of Agreement.** Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance or assignment of this Agreement, without the consent of the City, which consent shall not be unreasonably withheld.

9. **Default.** Developer's failure to keep, observe, or perform any of its duties or obligations under this Agreement shall be a default hereunder, including, without limitation, any of the following specific events:

(i) The failure of Developer to substantially comply with the standards of performance for the Project set forth in this Agreement.

(ii) The failure of Developer to submit and obtain required approval as to any construction plans for the Project.

(iii) The failure of Developer to timely commence construction, after issuance of permits by the City or the Town respectively or to achieve Substantial Completion of the Project improvements, subject to delay occasioned by Force Majeure, prior to December 31, 2011.

(iv) The failure of Developer to satisfy the indemnities set out in this Agreement.

(v) The making by Developer of an assignment for the benefit of creditors, contrary to the terms of this Agreement, or filing a petition in bankruptcy or of

reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts.

(vi) The appointment of a receiver or trustee of the property of Developer, which appointment is not vacated or stayed within sixty (60) days, or the filing of a petition in bankruptcy against Developer or for its reorganization under any bankruptcy or insolvency law which not dismissed or stayed by the court within sixty (60) days after such filing.

(vii) The failure of Developer to timely make an LID assessment principal or interest payment.

Upon the happening of any of the above described events, the City shall notify Developer in writing of its purported breach, failure or act above described (except that no City notice shall be required with respect to the Defaults described in Subsections 9(v) and (vi) above). Unless another cure period is expressly otherwise set forth in this Agreement, it shall be an "Event of Default" if Developer fails to cure such breach, failure or act within thirty (30) days from receipt of such notice (or if such failure cannot be reasonably cured within 30 days, if Developer fails to promptly commence and diligently pursue such cure to completion; provided that in such event any further time to cure may be extended only by written permission of the City).

9.2 Remedies Upon Default. If an Event of Default shall occur, the City shall have all cumulative rights and remedies under law or in equity, including but not limited to the following:

(i) Damages. Developer shall be liable for any and all damages incurred by the City (which shall be limited to actual damages only and shall not include consequential or punitive damages).

(ii) Specific Performance. The City shall be entitled to specific performance of each and every obligation of Developer under this Agreement without any requirement to prove or establish that the City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that the City would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

(iii) Injunction. The City shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that the City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and

acknowledges that the City would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

(iv) City Completion of Improvements. Upon Default, as defined in the preceding paragraphs, the City shall be entitled to complete the unconstructed Project improvements using Developer's contractors or subcontractors of the City's choosing. In that event, the Developer shall promptly execute all documents necessary to immediately transfer the necessary right of way to the City and the Town respectively, to transfer all completed portions of the Project to the City and the Town, and to provide the City with all designs and plans for the Project improvements so that the City can proceed with completion of the Project. Upon such completion, the City shall be entitled to adopt a final assessment roll and to issue Bonds to pay for the City's costs of completing the Project. That final assessment roll may also include amounts to reimburse the Developer for Developer's expenditures with respect to the Project prior to transfer of completion responsibilities, except that if the total assessment roll may not lawfully be set at an amount to provide for both the City's and the Developer's expenses, the City's shall be repaid first, and the Developer shall be reimbursed from the Bonds only up to an amount available after the City has been repaid.

10. Representations and Warranties. Each party hereby represents and warrants to the other that (a) it has full statutory right, power and authority to enter into this Agreement and perform in accordance with its terms and provisions; (b) the individuals signing this Agreement on its behalf have the authority to bind and to enter into this transaction; and (c) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

11. Miscellaneous.

11.1 Estoppel Certificates. The City and Developer shall at any time and from time to time, within twenty (20) days after written request by the other, execute, acknowledge and deliver, to the party requesting same or to any prospective mortgagee, assignee or subtenant designated by Developer, a certificate stating that (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by the City or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party, or, to the extent untrue, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

11.2 Inspection. The City shall have the right, at all reasonable times and upon at least twenty-four (24) hours previous notice, to inspect on a confidential basis, but not

to retain without Developer's consent, the books, records and all other documentation of Developer pertaining to Developer's obligations under this Agreement. However, the Developer recognizes that certain books, records and other documentation that are so inspected may be later deemed to be "public records" and may be subject to being made public consistent with applicable law. The City shall have the further right at all reasonable times to inspect the Property and the construction thereon to determine compliance with the provisions of this Agreement.

11.3 Entire Agreement. This Agreement and any collateral instruments referenced herein contain the entire agreement between the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them.

11.4 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

11.5 Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inference be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is explicitly permitted, such as in the case of a party being allowed to make a decision in its "sole judgment" or "sole discretion".

11.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest by any of the parties hereto except pursuant to the express terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired its interest in compliance with the terms of this Agreement, or under law.

11.7 Notices. All notices which may be or are requested to be given pursuant to this Agreement shall be deemed given when personally delivered, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties at the following addresses unless otherwise provided for herein:

To the City:

Eric Anderson, City Manager  
747 Market Street, Room 1200  
Tacoma, WA 98402

For reference only, not for re-sale.

To Developer:

Mike Cohen, Managing Partner  
Point Ruston, LLC  
5219 North Shirley, Suite 100  
Ruston, WA 98407

Notices shall be deemed given within two (2) days following the date mailed, or on the date delivered (or delivery) if personally delivered. Either party may change the address to which notices shall be sent by notice to the other party.

11.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

11.9 Waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

11.10 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

11.11 Applicable Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the jurisdiction in the Pierce County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

11.12 No Joint Venture. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between the City and Developer. The parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by the City and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

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11.13 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington.

11.14 Conflict of Interest. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to Developer or any successor in interest upon the occurrence of any default or breach by the City or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement.

11.15 Discrimination. Developer, for itself and its successors and assigns, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, age, sex, gender identity, sexual orientation, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability, or national origin or ancestry.

11.16 Attorney's Fees. In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals, accountants', and other experts' fees and all other fees, costs, and expenses, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy courts, including those related to issues unique to bankruptcy law.

11.17 Captions; Exhibits. The headings and captions of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

11.18 Force Majeure. In addition to specific provisions of this Agreement, no party shall be deemed to be in default where delays are due to war, insurrection, strikes or lock-outs beyond Developer's control, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, Developer's inability (despite using reasonable best efforts) to obtain permits or other governmental

approvals ("Permit Delays"), or other acts or failure to act of any public or governmental entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform, provided that the lack of funds or financing of Developer is not a cause beyond the control or without the fault of Developer. An extension of time for the duration of such event will be deemed granted only if notice by the party claiming such extension is sent to the other as to any of the above causes (other than Permit Delays, for which no notice shall be required) within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice (such extension of time is referred to herein as "Force Majeure"). Times of performance under this Agreement may also be extended in writing by the City and Developer.

11.19 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

11.20 Time of the Essence. In all matters under this Agreement, the parties agree that time is of the essence.

12. Contract Lien and Charge on Developer Property; Conveyance by Developer.

12.1 Recording of Agreement. This Agreement shall be recorded in the office of the Division of Records and Elections of Pierce County, Washington, shall be binding on the successors in interest to Developer in the Developer Property (and reference to "Developer" herein shall include those successors), and shall constitute a lien and charge on the Developer Property to secure the performance of Developer hereunder.

12.2 Sales of the Developer Property.

(i) Sale of the Developer Property without Completed Building Improvements. Any conveyance of Developer's Property or a portion of Developer Property, without completed building improvements, where the Developer Property or a portion thereof

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171

does not meet the six times value test described in Section 3.3, shall not relieve Developer of its escrow security obligations hereunder, unless the purchaser or purchasers have deposited with the Escrow Agent cash or one or more Letters of Credit to serve as Security in an aggregate amount equal to the Escrow Requirement for the portion of the Developer Property that is conveyed.

(ii) Sale of the Developer Property with Completed Building Improvements. The conveyance of any legal lot, tract or parcel of the Developer Property on which building improvements are completed and have received a Temporary or Permanent Certificate of Occupancy, shall cause the Escrow Requirement and Developer's obligations hereunder to be reduced following the next Bond interest payment based on the amount of the assessment applicable to any such lots tracts or parcels sold during the preceding year, unless the Developer Property or portion thereof does not meet the six times value test described in Section 3.3 which shall not relieve Developer's of its escrow security obligations hereunder, unless the purchaser or purchasers have deposited with the Escrow Agent cash or one or more Letters of Credit to serve as Security in an aggregate amount equal to the Escrow Requirement for the portion of the Developer Property that is conveyed.


(iii) Segregation of Assessments. As soon as practicable, in collaboration with the Developer as provided in Section 3.4, the City shall segregate the Developer Property for purposes of assigning LID assessments to separate parcels. If final plat approval is not obtained prior to confirmation of the final assessment roll, the City shall segregate the LID assessments based upon the existing division of the Developer Property and Developer shall pay all engineering and clerical costs incident to carrying out the LID segregation in accordance with RCW 35.44.410. If the City segregates one or more portions of the Developer Property prior to the confirmation of the applicable final assessment roll and filing of the lien thereof against the Developer Property, or at any time thereafter, and the assessment chargeable to one or more of those segregated portions (or amount equivalent to the then estimated assessment) is paid or placed irrevocably in escrow for future payment, the City shall release the lien of this Contract from those segregated portions and the Escrow Requirement shall be reduced accordingly. The City does not intend to segregate condominiums by individual condominium unit, but instead expects to segregate such that the property subject to assessments will be an entire condominium, with responsibility for payment of assessments devolving upon the applicable condominium association.

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

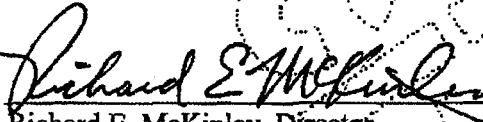
**CITY OF TACOMA**


**POINT RUSTON, LLC**

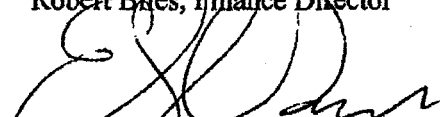
  
Eric Anderson, City Manager

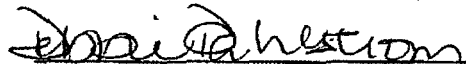
  
Mike Cohen, Managing Partner

  
Ryan Petty, Director  
Community and Economic Development


  
Richard E. McKinley, Director  
Public Works Department

pt   
Robert Biles, Finance Director

  
Elizabeth Pauli, City Attorney

  
Debbie Dahlstrom, Risk Manager

Attest:

 4-28-09  
Doris Sorum, City Clerk

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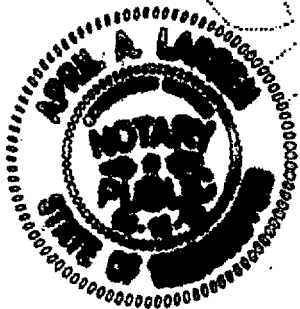
STATE OF WASHINGTON )

SS.

COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that each of ERIC ANDERSON, RYAN PETTY, RICHARD E. MCKINLEY, ROBERT BILES, ELIZABETH PAULI and DEBBIE DAHLSTROM are the persons who appeared before me, and/or said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the named officer/director of the City of Tacoma, a Washington municipal corporation, to be the free and voluntary act of such City for the uses and purposes mentioned in the instrument.

Dated this 28<sup>th</sup> day of APRIL, 2009.



*April A. Larsen*  
(Signature of Notary)

APRIL A LARSEN

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,  
residing at TACOMA

My commission expires 04-13-12

(Use this space for notarial stamp/seal)

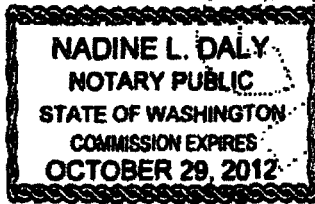
For reference only, not for re-sale.

STATE OF WASHINGTON )  
 )  
COUNTY OF PIERCE )

ss.

I certify that I know or have satisfactory evidence that MIKE COHEN is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Partner of Point Ruston, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 15<sup>th</sup> day of April, 2009.



Nadine L. Daly  
(Signature of Notary)

Nadine L. Daly  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,  
residing at 12320 morris Rd SE, Yelm, WA  
My commission expires October 29, 2012

(Use this space for notarial stamp/seal)

For reference only, not for re-sale.

## 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).

**EXHIBIT B**

**LID Property Description**

**Tacoma**

That portion of the west half of Section 24, Township 21N, Range 02E, W.M. described as follows:

Lots 1 through 18, Block 109, Lots 1 through 16, Block 110, all of Block 111, a portion of Blocks 113 & 114, PLAT OF TACOMA TIDELANDS, as recorded in Volume 2 of Plats at Page 84, records of the Pierce County Auditor; together with vacated streets abutting said Blocks, situate in the City of Tacoma, County of Pierce, State of Washington.

Lots A and B, M. S. DREW'S PLAT, as per the plat recorded in Volume 1 of Plats at Page 16, records of the Pierce County Auditor; together with vacated streets abutting said Blocks, situate in the City of Tacoma, County of Pierce, State of Washington.

Block B, 1961, SUPPLEMENTAL MAP OF TACOMA TIDELANDS, as recorded in the Office of the Commissioner of Public Lands at Olympia, Washington, abutting Blocks 109, 110, 113 and 114, PLAT OF TACOMA TIDELANDS, as per the plat recorded in Volume 2 of Plats at Page 84, records of the Pierce County Auditor; situate in the City of Tacoma, County of Pierce, State of Washington.

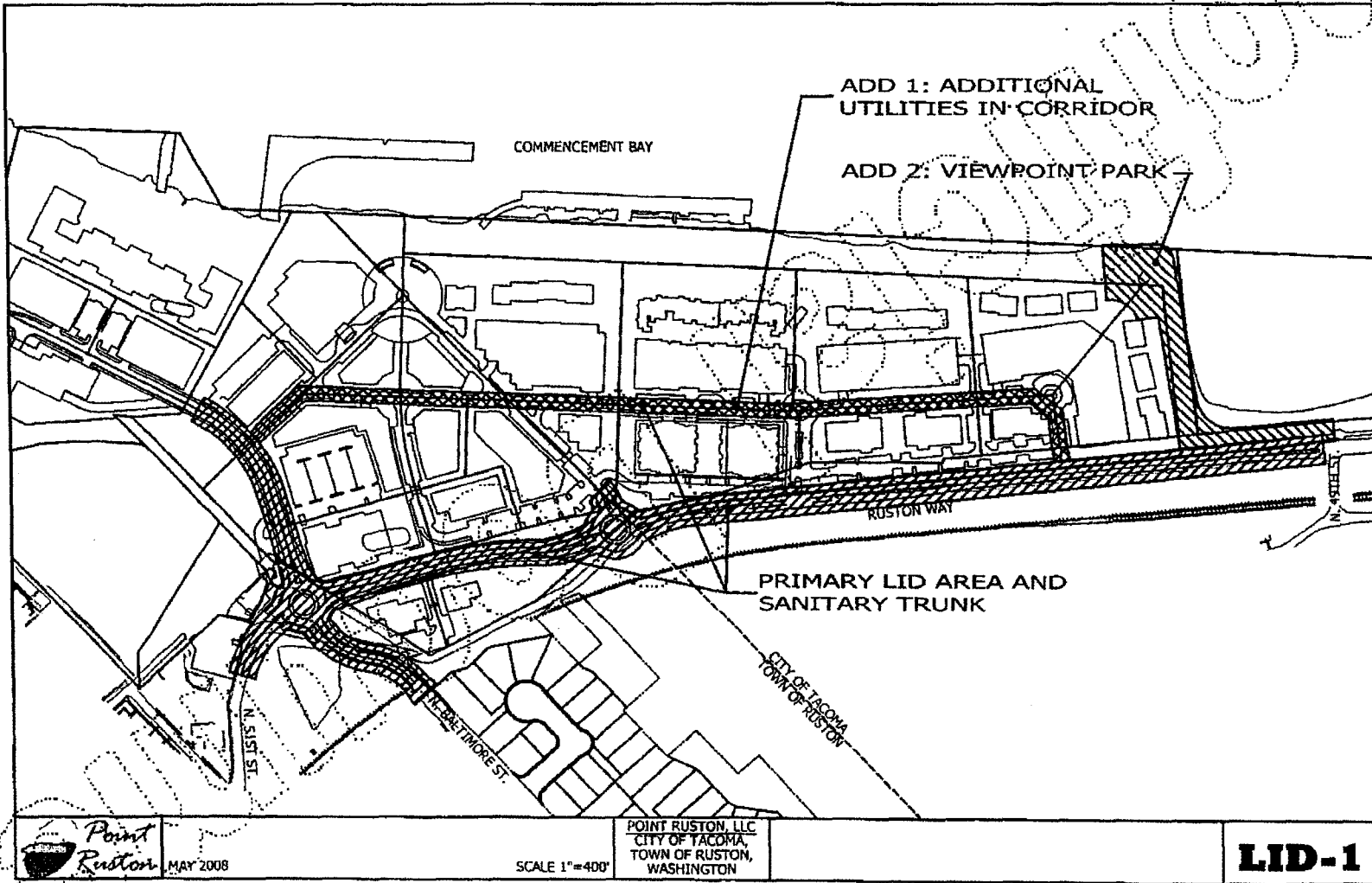
**Ruston**

Those portions of the Northeast Quarter of Section 23, Township 21N, Range 02E, W.M. described as follows:

Boundary Line Adjustment Number 08-01, situate in the Town of Ruston, County of Pierce, State of Washington, as per the Boundary Line Adjustment recorded under Auditors Fee Number 200902065003, except Tracts 12 through 14, except Tract 16.

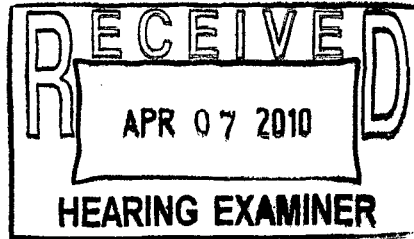
For reference only, not for re-sale.

For reference only, not for re-sale.





City of Tacoma



Memorandum

**TO:** Rodney Kerslake, Hearing Examiner  
**FROM:** Ralph Rodriguez, L.I.D. Administrator *RFR*  
**SUBJECT:** Requested Resolutions  
**DATE:** April 7, 2010

Please find enclosed copies of Resolutions passed by the Town of Ruston:

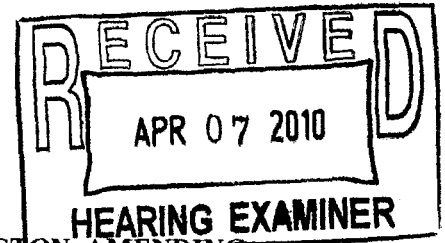
- Resolution 439, passed April 6, 2009
- Resolution 466, passed April 5, 2010

These are being forwarded as requested by your office.



TOWN OF RUSTON

RESOLUTION NO. 466



A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF RUSTON, AMENDING RESOLUTION NO. 439 TO CONSENT TO THE FORMATION BY THE CITY OF TACOMA OF ONE OR MORE LOCAL IMPROVEMENT DISTRICTS, IN WHOLE OR IN PART COMPRISED OF TERRITORY WITHIN THE TOWN OF RUSTON, FOR TRANSPORTATION AND INFRASTRUCTURE PURPOSES ASSOCIATED WITH THE POINT RUSTON PROJECT.

WHEREAS, The Town of Ruston and the City of Tacoma have entered into an Interlocal Agreement dated September 17, 2008 (the "LID Interlocal Agreement"), regarding the formation of a joint Local Improvement District (LID) for improvements of Ruston Way, including but not limited to connection of Ruston Way with Baltimore Street with Tacoma taking lead responsibility for managing the LID process; and

WHEREAS, the Washington State Legislature adopted revisions to RCW 35.43.030 that authorized joint Local Improvement Districts (LIDs) formed, bonded and administered by one municipality, entirely within the territory of a neighboring municipality, with consent of both jurisdictions; and


WHEREAS, The Town of Ruston approved Resolution 439 on April 6, 2009, consenting to the formation of a Local Improvement District in Tacoma and Ruston for the improvement of Ruston Way and designated the Mayor as Town Representative for purposes of such future reviews and consents as may be necessary to carry out the LID Interlocal Agreement;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF RUSTON:

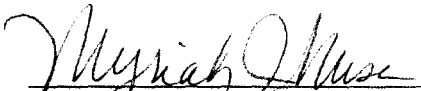
That the final paragraph of Resolution No. 439 is amended to read as follows:

That the Town of Ruston approves the formation by the City of Tacoma of one or more local improvement districts, in whole or in part comprised of territory within the Town of Ruston, for transportation and infrastructure purposes associated with the Point Ruston project, including but not limited to LID No. 3967 – Sanitary Sewer, LID No. 7727 – Ruston Power, LID No. 5728 – Water, LID No. 8656 – Roadway & Storm, and LID No. 6980 – Street Lighting; and designates the Mayor as Town Representative for purposes of such future reviews and consents as may be necessary to carry out this resolution and the LID Interlocal Agreement.


PASSED BY THE COUNCIL AND APPROVED by me this 5th day of April, 2010.

  
Bruce Hopkins, Mayor

ATTEST:

  
Town Clerk-Treasurer

APPROVED AS TO FORM:

  
Town Attorney



**TOWN OF RUSTON**

**Resolution No. 439**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF RUSTON, CONSENTING TO THE CITY OF TACOMA'S FORMATION OF A LOCAL IMPROVEMENT DISTRICT IN TACOMA AND RUSTON, PURSUANT TO THE SEPTEMBER 17, 2008 INTERLOCAL AGREEMENT BETWEEN TACOMA AND RUSTON.**

WHEREAS, the Town of Ruston and the City of Tacoma have entered into an Interlocal Agreement dated September 17, 2008, regarding the formation of a joint Local Improvement District (LID) for improvements of Ruston Way, including but not limited to connection of Ruston Way with Baltimore Street with Tacoma taking lead responsibility for managing the LID process, and

WHEREAS, the Washington State Legislature is currently in the process of adopting revisions to RCW 35.43.030 that will specifically authorize joint Local Improvement Districts (LIDs) formed, bonded and administered by one municipality, entirely within the territory of a neighboring municipality, with consent of both jurisdictions; and

WHEREAS, the City of Tacoma unanimously approved Resolution No. 37747 on March 10, 2009 to enter into a LID agreement between the City and Point Ruston that sets forth roles and responsibilities for a joint LID to complete infrastructure improvements within Tacoma and Ruston, and including the use of Tacoma's Guaranty Fund whereby financial risk for the Town is eliminated with regard to the proposed LID improvements; and

WHEREAS, the Town of Ruston retains review and permitting responsibilities for the proposed LID improvements to be built in Ruston, and further, Point Ruston will dedicate to the Town public rights-of-way for those portions of Ruston Way, Baltimore Street reconnection and Yacht Club that are completed within Ruston's jurisdiction; and

WHEREAS, Point Ruston agrees to reimburse the Town for all reasonable costs associated with the formation of a single LID to be administered by Tacoma; and

WHEREAS, Point Ruston has agreed to waive its existing right to pursue a claim under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(24 and (25), as amended, against Ruston for the costs of the Project, and Point Ruston has requested expedited review and permits and that upon completion of the Project, Ruston expedite the vacation and re-dedication process of Ruston Way and portions of Baltimore Street in their new alignments so as to assist Point Ruston in meeting its construction schedule; and

Resolution No. 438  
April 6, 2009  
Page 1 of 2

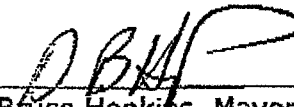


WHEREAS, in order to fully comply with the requirements of the revised RCW 35.43.030 it will be necessary for Ruston to affirm its consent to the formation by Tacoma of the joint Ruston Way LID;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF RUSTON:

That the Town of Ruston hereby consents to the formation by the City of Tacoma of a Local Improvement District in Tacoma and Ruston for the improvement of Ruston Way and designates the Mayor as Town Representative for purposes of such future reviews and consents as may be necessary to carry out this resolution and the LID Interlocal Agreement.

PASSED BY THE COUNCIL AND APPROVED by me this 6<sup>th</sup> day of April, 2009.

  
\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Town Clerk-Treasurer

\_\_\_\_\_  
Town Attorney





REQUEST FOR **RECEIVED**  
 ORDINANCE  RESOLUTION



Request #: 12587  
Ord./Res. #: 27900

MAY 06 2010

1. DATE: May 6, 2010

CITY CLERK'S OFFICE

2. SPONSORED BY: COUNCIL MEMBER(S) N/A (If no sponsor, enter "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</b> <b>PUBLIC UTILITY BOARD?</b> <input type="checkbox"/> Yes, on <input checked="" type="checkbox"/> Not required	<b>4a. CONTACT (for questions):</b> Louisa Legg  <b>4b. Person Presenting:</b> Rodney Kerslake	<b>PHONE:</b> 253-591-5915  <b>PHONE:</b> 253-591-5915
	<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 21, 2010

6. SUMMARY AGENDA TITLE: (A concise sentence, as it will appear on the Council agenda.)

L.I.D. 3967: Provide for construction of sanitary sewers, as described below:

- Laying a sanitary sewer main of various diameters with tees and/or riser for side sewers, manholes, etc., and all other work necessary to complete the same in accordance with the plans and specifications approved by the City Engineer;
- 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 were 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 the 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;

REQUEST (CONT)

Request #:	12587
Ord/Res #:	27900

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

7. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

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

Source Documents/Backup Material	Location of Document
Order Correcting Recommendation	Attached
Hearing Examiner's Report/Recommendation	Attached
City of Tacoma Resolution 37892 (Exhibit 2)	Attached
Memo of Understanding (Exhibit 3)	Attached
Staff Report (Exhibit 5)	Attached
Town of Ruston Resolution 412 (Exhibit 6)	Attached
Resolution No. 37441 (Exhibit 7)	Attached
Resolution No. 37747 (Exhibit 8)	Attached
Resolution No. 439 & 466 (Exhibit 9)	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:

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
---------------------	----------	---------	----------	--------------

If an expenditure, is it budgeted?  Yes  No Where? Cost Center:

Acct #:

184

Request #: **12587**  
 Ord/Res #: **27900**

**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.

<b>DEPARTMENT:</b>	<b>CONTACT PERSON/PHONE:</b>	<b>OMBA CONSULTANT/PHONE:</b>
Public Works Construction, L.I.D	Ralph K. Rodriguez, x-5522	Cindy Cusick, x-7954

Is it currently budgeted?  Yes  No  
 Is this a grant?  Yes  No If Yes,  Operating  Capital

**EXPENDITURES:**

FUND NAME & NUMBER *	COST CENTER	WBS	ACCOUNT	2009-2010 EXPENDITURES
PW Wastewater 2006 Bond Construction Fund, 4300-06CON		LID-3967W-EX	5600000	\$1,983,669.05
<b>TOTAL</b>				

\* General Fund: Include Department

**Purpose:** For the construction of the Point Ruston Sanitary Sewer L.I.D.

**REVENUES:**

FUND NAME & NUMBER	COST CENTER	WBS	ACCOUNT	2009-2010 REVENUES
PW Wastewater 2006 Bond Construction Fund, 4300-06CON		LID-3967W-FS-AD-03	6398645	\$1,983,669.05
<b>TOTAL</b>				

**Notes:** Project to be designed and constructed by Point Ruston, reimbursement to be post construction and post long term bond sale. Long term bonds to be repaid to City via L.I.D. assessment payable over 30 years.

**POSITION IMPACT:**

POSITION TITLE	PERMANENT/PROJECT/TEMPORARY POSITION	POSITION END DATE	2009 FTE	FUTURE FTE
N/A				

Total positions created or abrogated through this legislation, including FTE impact. FTE impact for temporary employees is estimated.

FISCAL NOTE (CONT)

Request #:

12587

Ord/Res #:

27900

LONG-TERM FINANCIAL IMPACT OF LEGISLATION:

SPENDING PLAN & BUDGET	2009	2010	2011	2012	2013	TOTAL
Salaries/Benefits						
Start-up						
On-going						
Maintenance & Operations						
Capital		\$1,983,669.05				
<b>TOTAL</b>		\$1,983,669.05				

FUNDING SOURCE	2009	2010	2011	2012	2013	TOTAL
PW Wastewater 2006 Bond Construction Fund, 4300-06CON		\$1,983,669.05				
<b>TOTAL</b>		\$1,983,669.05				

The financial cost of not implementing the legislation:

*Estimate the cost to the City if the legislation is not implemented, including the potential conflicts with regulatory requirements, cost avoidance, or other potential costs.*

OTHER ISSUES:

Ordinance No. 27900

First Reading of Ordinance: JUN 29 2010

Final Reading of Ordinance: JUN 29 2010

Passed: JUN 29 2010

Roll Call Vote:

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

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

