

RESOLUTION NO. 707

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE EXTENSION OF SEWER SERVICE OUTSIDE THE CITY, AUTHORIZING THE EXECUTION OF A UTILITY EXTENSION CAPACITY AGREEMENT WITH EDISON DORLAND PROVIDING FOR ONE (1) ERU OF SEWER SERVICE TO ONE PARCEL LOCATED AT 2114 50TH STREET COURT NORTHWEST, GIG HARBOR, WASHINGTON.

WHEREAS, on March 12, 2007, the applicant Edison Dorland, submitted a request connect an approximately 0.76 acre parcel to the City sewer utility system as provided for in Title 13, Gig Harbor Municipal Code; and

WHEREAS, the request was for one (1) ERU of sanitary sewer service for an existing single-family residence; and

WHEREAS, on April 9, 2007, the City Council held a public hearing on the Utility Extension Capacity Agreement; and

WHEREAS, on April 9, 2007, the City Council considered the Utility Extension Capacity Agreement during a regular public meeting and voted to approve the Utility Extension Capacity Agreement attached hereto as Exhibit A; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute the Utility Extension Capacity Agreement attached hereto as Exhibit A, with the applicant Edison Dorland.

Section 2. The City Council hereby directs the Community Development Director to record the Utility Extension Capacity Agreement against the Property legally described in Exhibit A to the Utility Extension Capacity Agreement, at the cost of the applicant, pursuant

to RCW 36.70B.190.

PASSED by the City Council this 9th day of April 2007.


APPROVED:


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:


CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 04/05/07
PASSED BY THE CITY COUNCIL: 04/09/07
RESOLUTION NO. 707

AFTER RECORDING RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

1. Utility Extension, Capacity Agreement and Agreement Waiving Right to Protest LID

Grantor(s) (Last name first, then first name and initials)

1. Edison Dorland

Grantee(s) (Last name first, then first name and initials)

1. City of Gig Harbor

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Lot 1 of Short Plat 79-596 Section 16 Township 21 Range 02 Quarter 33

Assessor's Property Tax Parcel or Account Number: 0221167014

Reference Number(s) of Documents assigned or released: _____

**UTILITY EXTENSION, CAPACITY AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID**

THIS AGREEMENT is entered into on this 9th day of April, 2007, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", a Washington Municipal Corporation and **Edison Dorland, a single man**, hereinafter referred to as "the Owner".

RECITALS

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City sewer utility system, hereinafter referred to as "the utility," and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal Code, as now enacted or hereinafter amended, and

WHEREAS, the City Council held a public hearing on this Agreement on April 9, 2007, during a regularly scheduled Council meeting, and authorized the Mayor to execute this Agreement on behalf of the City; NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

TERMS

1. Warranty of Title. The Owner warrants that he is the Owner of the property described in Exhibit 'A', which is attached hereto and incorporated herein by this reference, and is authorized to enter into this Agreement.

2. Extension Authorized. The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Reid Rd at the following location: **2114 50th St Ct. NW, Gig Harbor, WA 98335**

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City Engineer. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner.

4. Sewer Capacity Commitment. The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewage system **1 ERU**; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction. These capacity rights are allocated only to the Owner's system as herein described. Any addition to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this agreement shall not constitute ownership by the Owner of any facilities comprising the City sewage system. The

City agrees to reserve to the Owner this capacity for a period of **36** months ending on **April 9, 2010**, provided this agreement is signed and payment for sewer capacity is commitment received within 45 days after City Council approval of extending sewer capacity to the Owner's property. Sewer capacity shall not be committed beyond a three-year period.

5. Capacity Commitment Payment. The Owner agrees to pay the City the sum of **\$549.75** to reserve the above specified time in accordance with the schedule set forth below.

Commitment period	Percent (%) of Connection Fee	
One year	Five percent	(5%)
Two years	Ten percent	(10%)
Three years	Fifteen percent	(15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for sewer reserve capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitment shall expire and the Owner shall forfeit one hundred percent (100%) of this capacity commitment payment to cover the City's administrative and related expenses.

In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

6. Extension of Commitment Period. In the event the Owner chooses to permanently reserve sewer capacity by paying the entire connection fee for the number of equivalent residential units desired to be reserved before the expiration date set forth above, the Owner shall be responsible for paying each year for the sewer utility system's depreciation based on the following formula: (Owner's reserved capacity divided by the total plant capacity times the annual budgeted depreciation of the sewer facilities.)

7. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Community Development Department.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other City required capital facilities, the Owner agrees if required by the City to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Community Development Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved

by the City Attorney;

- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Community Development Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 (two) years.

9. Connection Charges. The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his/her property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated percentage basis to the connection charges as they are levied.

10. Service Charges. In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, (which is presently at 150% the rate charged to customers inside city limits), or as they may be hereafter amended or modified.

11. Annexation. Owner understands that annexation of the property described on Exhibit 'A' to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, fire and utility service will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an

annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex; Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit 'A' is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

12. Land Use. The Owner agrees that as long as the property has not been annexed to the City, that any development of the property described on Exhibit 'A' shall meet the following conditions after execution of Agreement:

A. The use of the property will be restricted to uses allowed in the following City zoning district at the time of development or redevelopment:

SINGLE-FAMILY RESIDENTIAL (R-1)

B. The development or redevelopment of the property shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code, Design Review Guidelines, Building Regulations, and City Public Works Standards for similar zoned development or redevelopment in effect in the City at the time of such development or redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.290, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

14. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right, at any time, to enter onto the Owner's property and for that purpose disconnect the sewer, in addition to any other remedies available to the City.

15. Waiver of Right to Protest LID. Owner acknowledges that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements (specify):

NONE

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain

the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

16. Specific Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

17. Covenant. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner, and every purchases, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement. Venue of such action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

19. Notices. Notices and correspondence to the City and Owner shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to the City shall be to the attention of both the City Administrator and City Attorney. Notice to any person who purchases any portion of the Property from the Owner shall be required to be given by the City only for those property purchasers who provide the City with written notice of their address. The parties hereto may, from time to time, advise the other of any new addresses for notice and correspondence.

TO THE CITY:

City Administrator
City of Gig Harbor
3510 Grandview Street 98335

City Attorney
Carol Morris
Law Office of Carol A. Morris, P.C.
P.O. Box 948
Seabeck, WA 98380

TO THE OWNER:

Dorland Construction Ltd
3205 White Cloud Ave NW
Gig Harbor WA 98335

20. Severability and Integration. This Agreement and the Exhibits attached hereto constitute the agreement between the parties on this subject matter, and there are no other understandings, verbal or written, that modify the terms of this Agreement. If any phrase,

provision, or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the resolution or ordinance adopting this Agreement, such invalidity shall not affect the other terms of this Agreement.

DATED this 9th day of April, 2007.

CITY OF GIG HARBOR

Charles L. Hunter
Mayor Charles L. Hunter

OWNER

Edison Dorland
Name: Edison Dorland
Title: Owner

ATTEST/AUTHENTICATED:

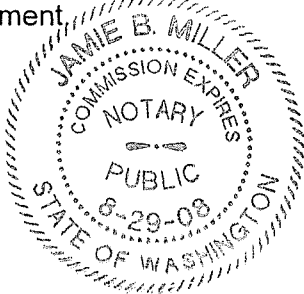
Molly Towslee
City Clerk, Molly Towslee

APPROVED AS TO FORM:

Carol A. Morris
Carol A. Morris, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Edison Dorland is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it as the owner of 2114 50TH STCT NW, GIG HARBOR, WA 98335, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 3/29/07

Signature [Handwritten Signature]

Print Name: Jamie B. Miller

NOTARY PUBLIC for the State of Washington, residing at Tacoma, WA

My commission expires: 8-29-08

STATE OF WASHINGTON)
) ss:
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles L. Hunter is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 4-9-07

Signature [Handwritten Signature]

Print Name: Molly M. Towsee

NOTARY PUBLIC for the State of Washington, residing at Gig Harbor

My commission expires: 12/2/07

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

Parcel Number: 0221167014

Property Address: 2114 50th ST. CT. NW
Gig Harbor, WA. 98335

Legal Description: SECTION 16 TOWNSHIP 21 RANGE 02 QUARTER 33 : LOT 1
OF SHORT PLAT 79-596 EASE OF RECORD OUT OF 3-0