

## RESOLUTION NO. 678

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH FRANCISCAN HEALTH SYSTEM.

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WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, Franciscan Health System applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment to rearrange within the Tract 26.7 acres of the Property designated as Planned Community Development - Residential Medium Density (PCD-RMD) and 14.8 acres of Planned Community Development - Business Park, and to redesignate 19.3 acres of the PCD-RMD portion of the Tract as PCD-BP; and

WHEREAS, on July 10, 2006, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the Development Agreement attached hereto as Exhibits 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 Development Agreements attached hereto as Exhibit A, with the applicant Franciscan Health System.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreements against the Property legally described in Exhibit A to the Development Agreements, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 10<sup>th</sup> day of July 2006.

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: 07/10/06  
PASSED BY THE CITY COUNCIL: 07/10/06  
RESOLUTION NO. 678

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF GIG HARBOR  
AND FRANCISCAN HEALTH SYSTEM, FOR A  
COMPREHENSIVE PLAN AMENDMENT  
HOSPITAL/MEDICAL OFFICE BUILDING**

THIS DEVELOPMENT AGREEMENT is made and entered into this 21<sup>st</sup> day of July, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Franciscan Health System, a nonprofit corporation organized under the laws of the State of Washington, hereinafter the "Developer," or "FHS."

**RECITALS**

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as the Franciscan Health System Hospital/Medical Office Building Development; and

WHEREAS, the following events are relevant to the processing of the Developer's comprehensive plan amendment application:

a) FHS is the fee simple owner of the approximately 37.84 acre parcel of real property on the east side of Canterwood Boulevard N.W., about 1,500 feet north of Borgen Boulevard in Gig Harbor, Washington, having a street address of 11567 Canterwood Boulevard N.W., which is legally described in Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property"); and

- b) The Property is bisected by an approximately 3.6 acre energy transmission right-of-way (the "Right-of-Way") owned by Tacoma Power (the "Property and the Right-of-Way is collectively referred to herein as the "Tract"); and
- c) FHS applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment (the "Comp Plan Amendment" or "CPA"), to reconfigure within the Tract 26.7 acres of the Property designated as Planned Community Development – Residential Medium Density (PCD-RMD) and 14.8 acres of Planned Community Development – Business Park, and to redesignate 19.3 acres of the PCD-RMD portion of the Tract as PCD; and
- d) FHS seeks the Comp Plan Amendment so that it may apply for a rezone, conditional use permit (CUP), site plan, building permit(s) and design review for the construction of an 80-bed hospital of approximately 213,000 square feet, and an associated medical office building of approximately 100,000 square feet, and parking facilities for the hospital and medical office building (hereinafter collectively referred to as the "Project"); and
- e) The City issued a Determination of Significance under the State Environmental Policy Act ("SEPA") for the CPA, as well as two other applications for Comp Plan Amendments, and prepared a Supplemental Environmental Impact Statement ("SEIS") to consider the probable adverse environmental impacts of the three proposed CPA's; and
- f) It is the City's position that the Final SEIS that issued on April 5, 2006, for the three proposed CPA's, concluded that the significant transportation impacts resulting from adoption of the CPA proposed by FHS could be mitigated by the construction of certain transportation improvements, FHS's dedication of right-of-way and also proposed the adoption by the City of certain other amendments to its Comp Plan to facilitate and complement the transportation improvements it proposed; and
- g) It is the City's position that the Final SEIS recommended certain potential mitigation measures to be imposed on the FHS Comp Plan Amendment, acknowledging that "subsequent development review, including SEPA review, will further evaluate potential impacts as appropriate and applicable at the more site-specific St. Anthony Hospital conditional use permit application and review stage," (Final SEIS, April 5, 2006, page 91); and
- h) It is the position of FHS that the Final SEIS recommended that FHS be required to dedicate property to the City for use as a right-of-way to be used as an arterial connecting Canterwood Boulevard and Borgen Boulevard and found that dedication of such right-of-way will adequately "offset the impacts of

the requested rezone as a non-project action." (Final SEIS, April 5, 2006, App. A unnumbered page 7); and

i) It is the position of FHS that the Final SEIS provided a "detailed mitigation plan for future reference in subsequent development review processes regarding the specific developments currently proposed on the sites affected by the comprehensive plan amendments evaluated"; and

j) Subject to the conditions set forth in this Development Agreement, FHS is willing to perform, as a condition of the City's approval of the Comp Plan Amendment proposed by FHS, the transportation improvements recommended by the Final SEIS in "additional phases of development review." (Final SEIS, April 5, 2006, page 89); and

k) The Final SEIS notes that the Washington State Department of Transportation "has not fully commented on the proposed mitigation that impact state owned transportation facilities," (Final SEIS, April 5, 2006, App. C-13); and

l) During the SEIS process, representatives from FHS, the City, WSDOT, the development community and Pierce County, participated in a number of meetings to discuss the transportation improvements described in the EIS and Final SEIS, yet Pierce County has yet to comment on the EIS or Final SEIS; and

m) The Planning Commission recommended that the City Council approve the FHS Comp Plan Amendment, subject to the mitigation measures recommended by the Final SEIS, and that the City enter into a development agreement with FHS to clarify the manner and timing of the performance of those mitigation measures; and

WHEREAS, the parties desire by this Development Agreement to establish the mitigation to be performed by FHS as a condition of the City's approval of FHS's Comp Plan Amendment; and

WHEREAS, by Ordinance No. 1051, the City approved the FHS Comp Plan Amendment, subject to and conditioned upon execution of this Development Agreement; and

WHEREAS, after a public hearing, by Resolution No. 678, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

## General Provisions

**Section 1. The Project.** The Project is the development and use of the Property, which is planned as an 80-bed hospital of approximately 213,000 square feet, and an associated medical office building having approximately 100,000 square feet, and parking facilities for the hospital and medical office building.

**Section 2. The Subject Property.** The Project site or the "Subject Property" is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

**Section 3. Definitions.** As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

A. "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

B. "Construction Engineering" means on-site construction management pertaining to the coordination of separate contracts, phased construction, monitoring of individual phases of the work, adjustment of the work to accommodate changed conditions or unanticipated interferences, determination of whether materials and workmanship are in conformance with the approved contract drawings and specifications, arrangement for the performance of necessary field and laboratory tests, preparation of change orders, and review of progress payments.

C. "Council" means the duly elected legislative body governing the City of Gig Harbor.

D. "Director" means the City's Community Development Director.

E. "Effective Date" means the effective date of the Ordinance adopting the Comprehensive Plan amendment and the date of passage of the Resolution authorizing the execution of this Development Agreement, whichever is later.

F. "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

G. "Project" means the anticipated development of the Subject Property, as specified in Section 1.

H. "Project Manager" means the City's contract person responsible for the management of all phases of the project.

I. "Transportation Mitigation Improvements" are those specifically described in Exhibit C and pictorially depicted in Exhibit D, attached hereto and incorporated herein.

**Section 4. Exhibits.** Exhibits to this Agreement are as follows:

- A. Exhibit A - Legal description of the Subject Property.
- B. Exhibit B - Map showing approved Comp Plan Amendment.
- C. Exhibit C - List of Transportation Mitigation Improvements.
- D. Exhibit D - Map showing the required Transportation Mitigation Improvements.

**Section 5. Parties to Development Agreement.** The parties to this Agreement are:

- A. The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.
- B. The "Developer" or Owner is the Franciscan Health System, which owns the Subject Property in fee, and whose principal office is located at 1717 South "J" Street, Tacoma, WA 98405; Attn: Laure Nichols, Sr. Vice President of Strategic Planning.

**Section 6. Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

**Section 7. Commencement, Duration and Termination.**

A. Commencement. This Agreement shall commence upon the Effective Date. Adoption of the Ordinance approving the FHS Comprehensive Plan Amendment is contingent upon execution of this Development Agreement. FHS acknowledges that the Ordinance as well as this Development Agreement is subject to appeal, and that the outcome of any appeal may affect the validity of this Agreement.

B. Duration.

1. The initial term of this Development Agreement shall be two years from the Effective Date.

2. Within this two year period, FHS will submit project permit applications for the Project to the City for review. As described in the "whereas" sections above, FHS intends to submit applications to the City immediately after approval of the Comprehensive Plan Amendment for the Project. These applications must include SEPA checklists, because the City is required to issue a SEPA threshold determination and the City will further evaluate the environmental impacts of the applications/comments from affected agencies and the public.

a) if the City approves those permits without imposing any additional or different mitigation/conditions on these project permit applications, this Agreement shall continue in force beyond the two year period until all of the required mitigation described in Exhibits C and D is constructed/performed, unless the Agreement is extended or terminated as provided herein.

b) If the City imposes different or additional mitigation on the development of FHS's Property, then the parties shall amend this Agreement during the two year period to reflect the mitigation/conditions imposed on the project permit applications. FHS's execution of this Agreement shall not waive FHS's ability to administratively or judicially appeal the City's imposition of any mitigation/conditions imposed on the project permit applications that are different from the mitigation/conditions set forth herein.

C. Termination. This Agreement shall expire and/or terminate as provided below:

1. This Agreement shall expire and be of no further force and effect if the Developer does not submit the project permit applications to the City for a rezone, conditional use permit, site plan and design review within two years after the Effective Date of this Agreement. If these applications are submitted to the City within this time frame, then the provisions of Section 7(B) above shall apply to the duration of this Agreement.

2. This Agreement shall terminate upon the expiration of the term identified in this Section 7, when all of the provisions of this Agreement have been satisfied or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney

that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any non-residential building and the lot or parcel upon which such building is located, when it has been approved by the City for occupancy.

D. Generally. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

#### **Section 8. Limited Vested Rights Applicable to Comp Plan Amendment.**

**Amendment.** Comprehensive Plan Amendments are not subject to the vested rights doctrine. However, because the City Council's consideration of the public health, safety and welfare under a Comprehensive Plan Amendment necessarily involves an evaluation of the available water, sewer capacity and transportation capacity for the Project, the City agrees that if the Developer applies for a rezone and conditional use permit within two years of the anniversary date of this Development Agreement, and if the Developer does not change the scope or intensity of the Project as described herein, the Developer shall not be required to obtain a new concurrency evaluation for water, sewer or transportation. The Developer shall obtain no vested rights under any other codes, ordinances or regulations as a result of execution of this Development Agreement.

**Section 9. Further Discretionary Actions.** Developer acknowledges that the City's existing land use regulations, as well as any other land use regulations adopted by the City after execution of this Agreement, contemplate or will likely contemplate the exercise of further discretionary powers by the City, specifically with regard to future rezone, design review, site plan, building permits and conditional use permit applications. These powers include, but are not limited to, review of these additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations or any other land use regulations adopted in the future.

#### **Section 10. Developer's Obligation to Design and Construct**

**Transportation Mitigation Improvements.** Subject to the condition that it shall receive the City's approval of the Comp Plan Amendment, as well as the City's issuance of a transportation capacity reservation certificate for 535 P.M. peak hour trips (the "CRC") and approval (or conditional approval) of a subsequent rezone (consistent with the Comp Plan Amendment), approval (or conditional approval) of a conditional use permit, design review, building permits and site plan for the Project described herein, Developer shall design and construct the transportation mitigation improvements described in Exhibits C and D attached hereto. At the time a Certificate of Occupancy is requested by the Developer, it shall ensure that the transportation mitigation improvements are in place or that a

financial commitment is in place to provide any facilities that are not complete, within two years of the request. The Developer shall demonstrate to the City at the time the Developer requests a Certificate of Occupancy, that it has set aside sufficient funds to construct the remaining transportation mitigation improvements (through execution of a cash set aside agreement in a form approved by the City Attorney). The cash set aside amount to be deposited by the Developer shall be determined by the City Engineer, who shall estimate the cost of the remaining improvements and this amount shall be one and one-half times the cost of the remaining improvements.

**Section 11. Developer's Agreement on Use of the Subject Property.**

A. As identified in the Final SEIS, the Developer agrees that if the rezone is approved or approved with conditions no development activity would occur on the remaining 7.4 acre portion of the site that would remain in the PCD-RMD zoning classification. (FEIS, April 5, 2006, p. 91.) Therefore, future development in this area shall be restricted to uses that do not involve construction of a building or parking facilities (e.g., open space, passive recreational uses, future streets, buffering trails, critical area mitigation, etc.) or facility that would result in the creation of any additional vehicular trips.

B. The Developer agrees that if the rezone is granted, the use of the PCD-BP portion of the Property shall be limited to hospital and related and auxiliary uses, including without limitation, medical office buildings and parking facilities, as long as such uses are consistent with the PCD-BP zone. The Developer agrees that the size of the project shall be limited to an 80-bed hospital containing approximately 213,000 square feet, an office building containing approximately 100,000 square feet, and related parking facilities for the hospital and medical office building.

C. In the event that the Developer desires to reduce the size of the medical office building, the amount of reduction (in square feet) may be added to the hospital, so that the size of the hospital is increased. Except as permitted in subsection D below, in no event shall the combined square footage of the hospital and medical office building exceed approximately 313,000 square feet.

**Section 12. Additional Floor on Hospital Building.** FHS originally applied to the State for a hospital with over 80 beds, but the State granted a certificate of need for an 80 bed hospital. FHS may wish to again apply to the State in the future for a larger hospital. However, if FHS constructs an 80 bed hospital now and receives a certificate of need for a larger hospital later, the construction of the hospital expansion will seriously inconvenience both the hospital staff and patients. Therefore, FHS may desire to construct an additional floor of 30,000 square feet at the same time as construction takes place for the main hospital building. FHS acknowledges that the concurrency certificate

associated with its Comprehensive Plan Amendment does not cover any applications for the additional 30,000 square feet, and that FHS must submit all required application materials to be reviewed under a new project permit application process. The City shall fully review these applications under SEPA and the City's codes in existence at the time of submission of the applications. If FHS cannot obtain a concurrency certificate for the 30,000 additional floor, the City acknowledges that FHS may appeal the denial of concurrency by requesting that construction be allowed concurrent with construction of the main hospital building, on condition that the additional floor not be occupied until the State grants the required approval for hospital expansion and concurrency can be achieved.

The Comprehensive Plan Amendment that has been approved conditioned on this Development Agreement does not cover this 30,000 square foot additional floor to the hospital. A determination of concurrency shall be made for the 30,000 square feet at the time FHS may legally occupy the additional floor (such as after the State grants the required approval for hospital expansion), not at the time the applications are submitted. In addition, FHS acknowledges that years could pass between the time that the additional floor is constructed (if approved) and the time that it is occupied. During that time, the applicable codes may change. Therefore, FHS acknowledges that the Building Official may request that conditions be imposed or impose conditions on the issuance of any permits requiring compliance with the applicable City Building Code in effect at the time of occupancy.

Nothing in this Agreement shall be construed to be approval of any application for this 30,000 square foot additional floor to the hospital, or any site or building plan. All site development and construction, including but not limited to emergency vehicle access, fire flow, fire hydrant locations, allowable heights and area and fire resistant construction must comply with the requirements of GHMC Title 15 as it exists at the time of building permit application for the 30,000 square foot additional floor, and if a condition is added to the permit allowing delayed occupancy, these requirements must also be satisfied as to the version of GHMC Title 15 as it exists at the time of occupancy.

**Section 13. No Obligation to Perform Required Transportation Mitigation Improvements if Permits for the Project are Not Approved.** The parties acknowledge that the Developer shall not have any obligation to perform or construct the transportation mitigation improvements if the City does not approve (or conditionally approve) the Developer's applications for rezone, conditional use permit and site plan for the Project described herein. In the event that the applications are not approved, then the City may take whatever action the City deems necessary with regard to amendment of the City's Comprehensive Plan for the Property, consistent with Section 20 herein. Any transportation concurrency certificate granted for the Comprehensive Plan

Amendment shall expire within two years of the effective date of this Agreement, as provided in Section 7B(1).

**Section 14. Additional Mitigation May be Imposed on Subsequently Issued Permits, Additional Traffic Studies May Also be Required.** The parties acknowledge that the City's approval of the rezone, conditional use permit and site plan approval may include the transportation mitigation improvements, as well as additional mitigation under SEPA and the City's land use regulations, as they now exist or may be amended in the future. The parties further acknowledge that neither the Washington State Department of Transportation nor Pierce County have approved or commented on the mitigation proposed in this Development Agreement, and that additional mitigation suggested by either agency may be imposed at the time the City reviews the applications for rezone, conditional use permit or site plan approval.

**Section 15. Existing Land Use Fees and Impact Fees.**

A. Permitting and Impact Fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All imposition and payment of impact fees shall be performed in accordance with chapter 19.12 of the Gig Harbor Municipal Code, as it now exists or may hereafter be amended.

C. The Developer may request a credit from transportation impact fees for the construction of the transportation mitigation improvements (eligible for impact fees) or dedication of property (required for impact fee projects) at the time of project permit application, under chapter 19.12 GHMC, to the extent that the Developer has actually dedicated property, constructed improvements or paid or agreed to pay for any improvements.

**Section 16. Dedication of Public Lands.** FHS shall convey to the City by quit claim deed or easement for street right-of-way, a strip of land thirty (30) feet in width along the generally straight ( except for two irregular indentations) south boundary line of the Property, which, when combined with a thirty (30) foot wide strip along the north boundary line of the abutting property (the south boundary line of the Property and the north boundary line of the abutting property are the same line), when acquired by the City, will produce a sixty (60) foot wide right-of-way to be used by the City for street purposes. At the time FHS applies for the building permit(s) associated with the Project, FHS may submit evidence of this dedication to the City to apply for an impact fee credit under GHMC Section 19.12.080. FHS acknowledges that the City has not yet included this dedication and proposed right-of-way in the City's 2006 Six Year Road Plan.

Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within two (2) years of the Effective Date of this Agreement.

**Section 17. Default.**

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

**Section 18. Effect upon Termination on Developer Obligations.**

Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

**Section 19. Assignment and Assumption.** The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property, at least 30 days in advance of such action.

**Section 20. Covenants Running with the Land.** 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 Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject 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 Subject 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 a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

**Section 21. Amendment to Agreement; Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property.

**Section 22. Releases.** Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

**Section 23. Notices.** Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

**Section 24. Reimbursement for Agreement Expenses of the City.** Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees, which shall not exceed Three Thousand Dollars (\$3,000.00). This development agreement shall not take effect until the fees provided for in this section are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the

latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

**Section 25. Applicable Law and Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

**Section 26. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit (but not the liability associated with such lawsuit or claims) to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees, costs, expert witness fees. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

**Section 27. Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

**Section 28. Severability.** 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 ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

FRANCISCAN HEALTH SYSTEM

CITY OF GIG HARBOR

By Laure C. Nichols  
Its SENIOR VICE PRESIDENT

BY Arnold J. Hunter  
Its Mayor

7/21/06

ATTEST:

By Molly M. Dowdlee  
City Clerk

APPROVED AS TO FORM:

By John J. H.  
City Attorney

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Laure C. Nichols is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Senior Vice President of Franciscan Health System to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 21, 2006



Kimberly A. Bullard

KIMBERLY A. BULLARD

(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

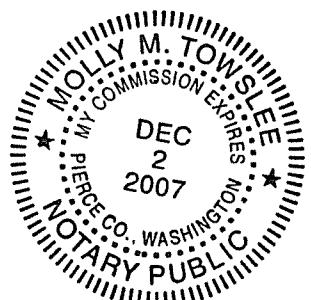
State of Washington,  
TACOMA, WA

My Commission expires: 3/14/10

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, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7-25-06



Molly M Dowdall

Molly M. Towslee

(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing at:

## Gig Harbor

My Commission expires: 12/2/07

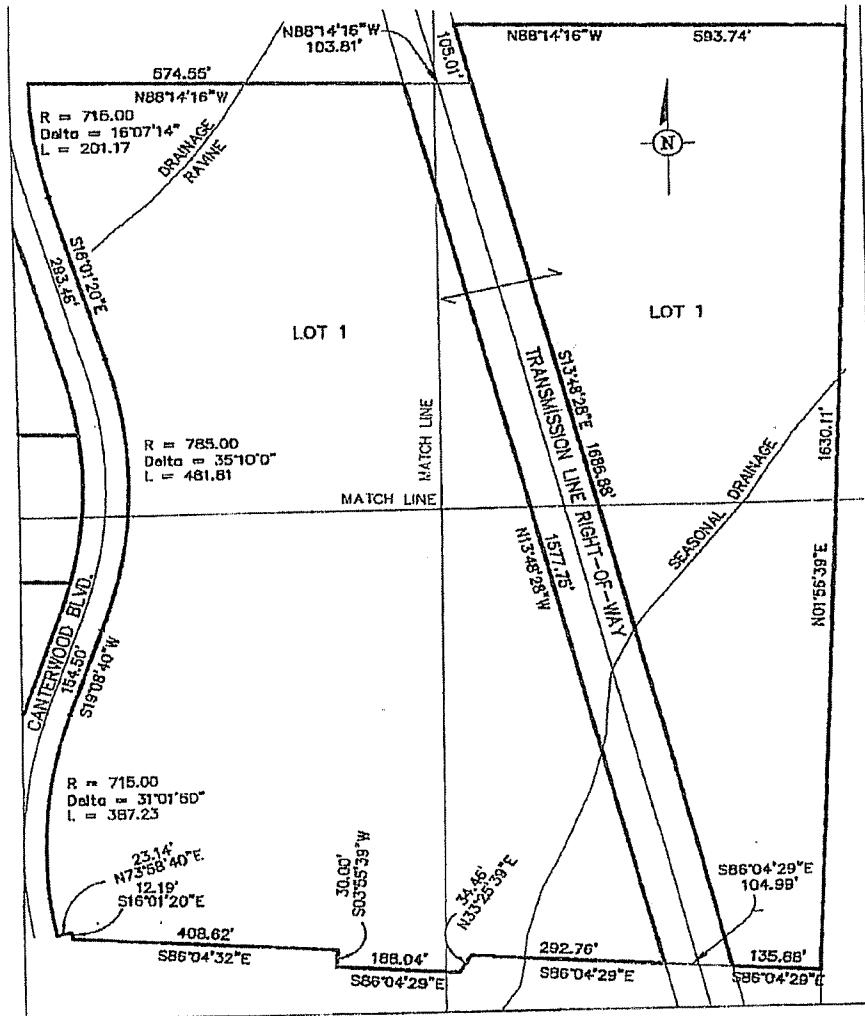
**EXHIBIT A**  
**LEGAL DESCRIPTION AND MAP OF SUBJECT PROPERTY**

## **Exhibit “A”**

**Legal description:**

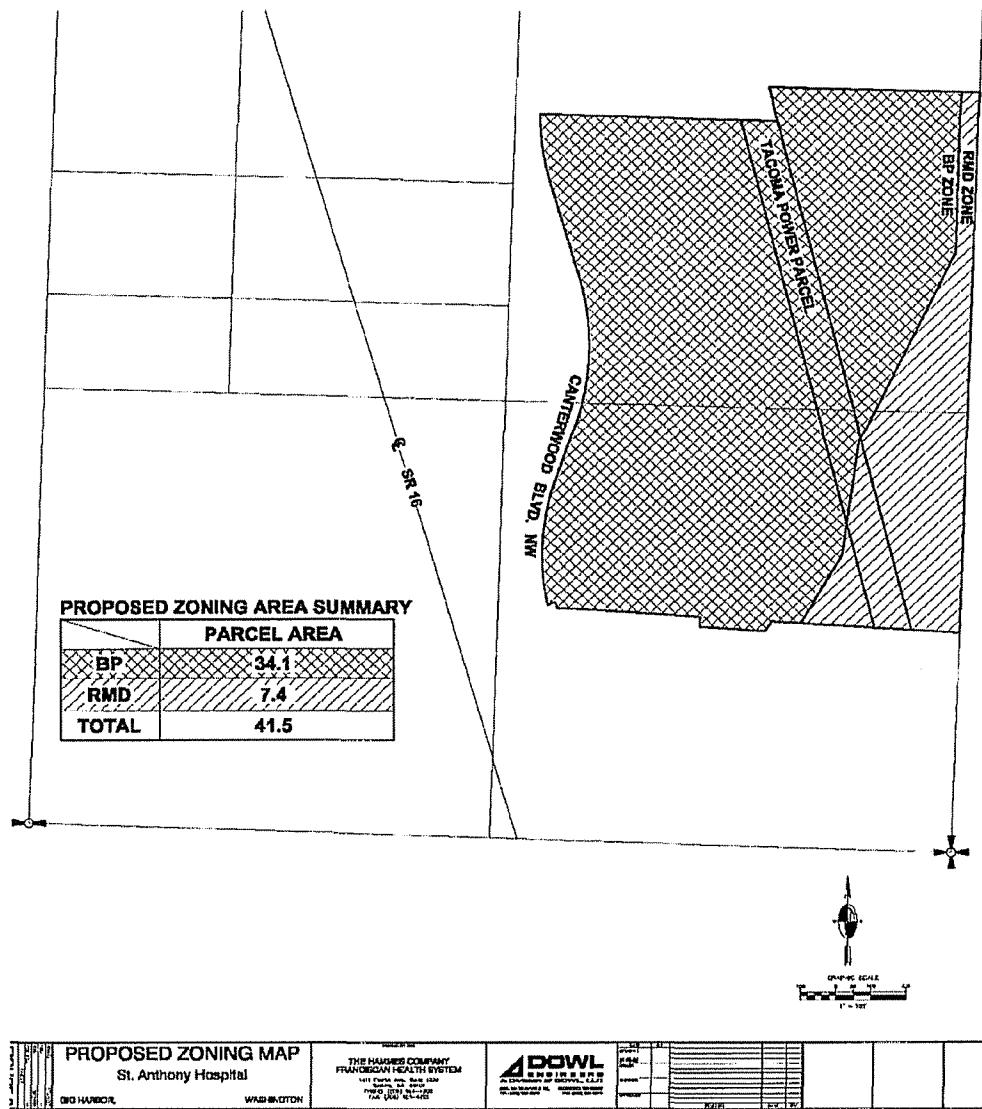
**Lot 1 of Boundary Line Adjustment  
AFN# 200407080296**

## Assessors map



**EXHIBIT B**  
**APPROVED COMPREHENSIVE PLAN MAP AMENDMENT**

**Exhibit "C"**  
**Map of PROPOSED Land Use**



2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.

**APPROVED COMPREHENSIVE PLAN MAP AMENDMENT  
PCD-BP ZONE LEGAL DESCRIPTION**

THAT PORTION OF LOT 1 OF THE BOUNDARY LINE ADJUSTMENT AS RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200406290853 LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE SOUTH EAST CORNER OF SAID LOT 1 THENCE N86°06'11"W ALONG THE SOUTH BOUNDARY OF SAID LOT 1 TO THE BEGINNING OF THIS LINE DESCRIPTION;

THENCE N29°49'34"E 235.31 FEET

THENCE N08°11'16"E 345.74 FEET

THENCE N25°28'44" E 633.15 FEET

THENCE N01°54'57"E 485.49 FEET TO THE NORTH LINE OF SAID LOT 1 AND THE TERMINUS OF THIS LINE DESCRIPTION.

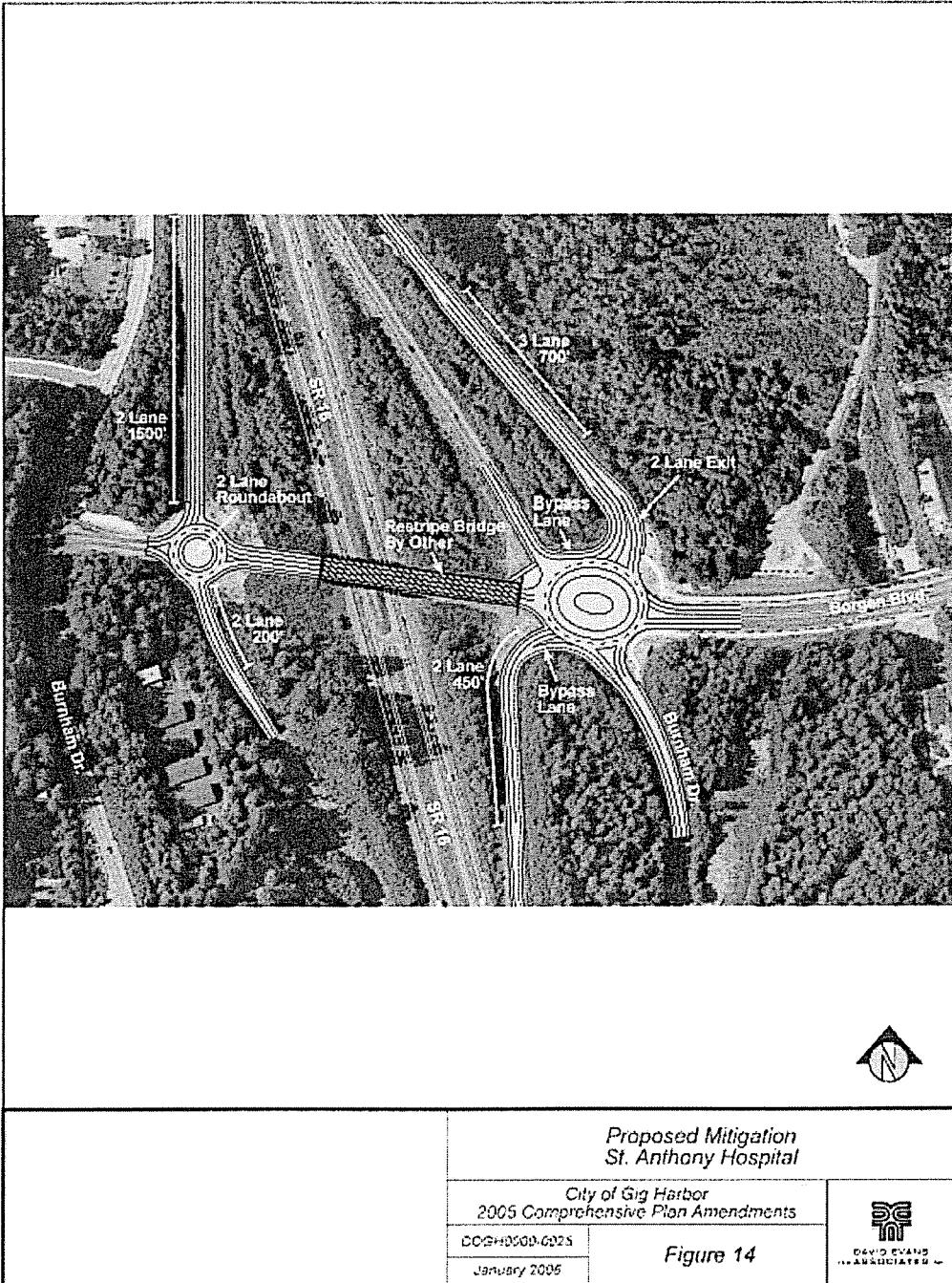
## **EXHIBIT C** **REQUIRED TRANSPORTATION MITIGATION**

In satisfaction of the conditions of the Comprehensive Plan Amendment and as consideration for the Development Agreement, the Developer shall:

1. Implement transportation demand management measures in accordance with the City's adopted commute trip reduction regulations, as set forth in chapter 10.28 GHMC, to reduce single occupant vehicle use.
2. Allow future transit service to be provided directly to the Property, consistent with the plans of Pierce Transit, and provide accommodations for such service in the approved site plan for the Project.
3. Construct full frontage improvements along the west boundary of the Property that fronts on Canterwood Boulevard, and construct a waterline transmission main extension along Canterwood Blvd. up to and across the entire Property frontage, consistent with adopted City standards. Improvements shall consist of a twelve (12) foot wide lane, cement concrete curb and gutter, planter strip, sidewalk, retaining walls, street illumination, storm drain system and an irrigation system.
4. Construct on Canterwood Boulevard a second southbound lane along with a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary of the Property. South Access of FHS to RAB required.
5. Construct on the northbound (east) side of Canterwood Boulevard a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary (or south access) of the Property.
6. Construct a bypass lane on the north side of the East Roundabout from Canterwood Boulevard southbound to the SR 16 on-ramp northbound( Westbound). The design shall meet WSDOT standards.
7. Construct a second exit lane on the SR 16 on-ramp northbound (westbound) from the East Roundabout for an appropriate taper length acceptable to the Washington State Department of Transportation ("WSDOT"). The design shall meet WSDOT standards
8. Construct and extend the storage of the SR 16 off-ramp northbound 450 feet south of the East Roundabout. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

9. Construct a bypass lane on the south side of the East Roundabout from the SR 16 off-ramp northbound(westbound) to Burnham Drive southbound.
10. Construct a second southbound lane on the SR 16 off-ramp to the existing Roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet of additional storage. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.
11. Construct a second lane circulating lane around the entire circumference of the West Roundabout. The design shall meet WSDOT standards.
12. Construct a second exit lane on the SR 16 on-ramp southbound from the West Roundabout for an appropriate taper length acceptable to WSDOT. The design shall meet WSDOT standards.
13. Convert the channelization of the existing Burnham Drive bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, or as required by WSDOT within the existing bridge width. The design shall meet WSDOT standards.
14. Convert the channelization of the East Roundabout to align with the revised channelization on the existing Burnham Drive bridge over SR 16.
15. Exhibit D pictorially depicts the required improvements.

EXHIBIT D  
MAP OF REQUIRED TRANSPORTATION MITIGATION



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