RESOLUTION 1314

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO EXTENDING SEWER SERVICE OUTSIDE THE CITY, AUTHORIZING THE EXECUTION OF THREE POINT TWO WATER UTILITY EXTENSION AGREEMENT WITH PIERCE COUNTY FIRE DISTRICT #5, TO THE TRAINING FACILITY AND STATION #5 SITE IN PIERCE COUNTY, WASHINGTON

WHEREAS, Pierce County Fire District #5 is in the process of permitting through Pierce County a Training Center and New Station #58 expansion outside city limits and the city's urban growth area, but currently served by city water for fire flow; and

WHEREAS, Pierce County Fire District #5 has requested connection to the City of Gig Harbor's water utility to serve their site known as the PCFD#5 Training Center and Station #58 and located at 10302 Bujacich Road; and

WHEREAS, RCW 35.67.310 and RCW 35.92.200 authorize the city to provide water utility services to property beyond the city limits; and

WHEREAS, Chapter 13.34 of the Gig Harbor Municipal Code (GHMC) requires the property owner seeking a utility extension to enter into a utility extension agreement with the city as a condition of a utility extension; and

WHEREAS, the city currently has capacity to provide the requested utility connections;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor:

Section 1. The city council hereby authorizes the mayor to execute the utility extension agreement attached hereto as Exhibit A, with the owner, Pierce County Fire District #5.

Section 2. The city council hereby directs the city clerk to record the utility extension agreement against the property legally described in the utility extension agreement, at the cost of the applicant.

ADOPTED by the City Council of the City of Gig Harbor at a regular meeting thereof, held this 28th day of May, 2024.

Tracie Markley
Mayor

Attest:

Joshua Stecker, CMC
City Clerk

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):
Utility Extension, Capacity Agreement and Agreement Waiving Right to Protest LID

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

Grantee(s) (Last name first, then first name and initials)
City of Gig Harbor

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)
Section 36 Township 22 Range 01 Quarter 31 : COM CENT QTR COR TH ALG E/W C/L N 87 DEG 49 MIN 27 SEC W 65.97 FT TO POB TH CONT ALG SD C/L N 87 DEG 49 MIN 27 SEC W 792 FT TH S 01 DEG 27 MIN 39 SEC W 330.03 FT TH S 87 DEG 49 MIN 27 SEC E 750.59 FT TH N 08 D

Assessor's Property Tax Parcel or Account Number: 0122363018

Reference Number(s) of Documents assigned or released:

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

THIS AGREEMENT is entered into this _____ day of _____, 2024, between the City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), and Pierce County Fire District #5 (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" and shown in the location map in Exhibit "B" attached hereto and incorporated herein by this reference; and

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

WHEREAS, the Owner desires to connect to the City's water utility system, hereafter referred to as the "utility," and the City 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, on August 14, 2023 the City Council held a Council meeting on this Utility Extension Capacity Agreement; 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 Owner 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 Bujacich Road (street or right-of-way) at the following location: 10302 Bujacich Road NW.

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. Water Capacity Commitment. The City agrees to provide to the Owner water utility service and hereby reserves to the Owner 3.2 ERU's; provided however, that the City retains the authority to temporarily suspend such capacity where it is necessary to comply with other permits required by any agency with jurisdiction. These capacity rights are allocated only to the Owner's system as herein described. Any modification 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's water system. The City agrees to reserve to the Owner this capacity as set forth in GHMC 13.34.030.

5. Capacity Commitment Payment.

A. The Owner agrees to pay the City within 30 days of City Council approval of this Agreement and prior to the Mayor's execution of this agreement the sum of $ $28,014.48 which is fifteen percent (15%) of the current general facilities charge, to reserve the above specified capacity. This payment shall reserve the specified capacity for a period of up to three years from the date of the Mayor's execution.

B. In the event the Owner has not made connection to the City's utility system by the date set forth above and no extension of the commitment period occurs as outlined below, 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.

C. In the event the Pierce County Boundary Review Board should not approve extension of the City's water system prior to the expiration of the commitment period, the Owner shall be entitled to a refund of the capacity commitment payment (without interest), less a five percent (5%) administrative fee.

6. Extension of Commitment Period. The Owner may extend the capacity commitment period for the life of the underlying development application or the underlying development approval upon payment of a capacity commitment payment of 100% of the value of the current general facilities charge. At the time of actual connection, per GHMC 13.34.040(7), if the water general facilities charge has increased, the Owner shall pay the difference between what was paid for the capacity commitment payment and the actual cost of the current general facilities charge.

7. Permits; Easements. Owner shall secure and obtain, at Owner's sole cost and expense, any and all necessary permits, easements, approvals, 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, but no limited to, 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.

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. Record drawings in a form acceptable to the City Engineer;

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 Engineer, ensuring that the facilities will remain free from defects in workmanship and materials for a period of two years.

9. General Facilities Charges. The Owner agrees to pay the applicable general facilities 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 physically connects his/her property to the system. Any commitment payment that has not been forfeited shall be applied to the City's general facilities charges. Should the Owner not connect 100% of the Water Capacity Commitment, the Capacity Commitment payment shall be credited on a prorated percentage basis to the general facilities charges as they are levied.

10. Service Charges. In addition to the general facilities charges, 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.

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

i. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;

ii. City of Gig Harbor ordinances, resolutions, rules and regulations will apply to the property upon the effective date of annexation;

iii. 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;

iv. 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;

v. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and

vi. 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.

B. 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. Public Works Standards and Utility Regulations. Owner agrees to comply with all of the requirements of the City's public works standards relating to water and utility regulations when developing or redeveloping all or any part of the property described on Exhibit "A", and all other applicable water standards in effect at the time.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. 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.

14. Termination for Noncompliance. 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 water, in addition to any other remedies available to the City.

15. Waiver of Right to Protest LID. (If applicable)

A. Owner acknowledges that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements (specify):

Extension of public Water Main and all associated appurtenances from Bujacich into the PCFD #5 - Training Campus and Station #58 expansion, located at 10302 Bujacich Road NW, Gig Harbor, WA 98332

B. 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.

C. 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 purchaser, 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 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:	TO THE OWNER:
City Clerk City of Gig Harbor 3510 Grandview Street Gig Harbor, WA 98335	Pierce County Fire District #5 10222 Bujacich Road NW Gig Harbor, WA 98332

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 this Agreement, such invalidity shall not affect the other terms of this Agreement.

DATED this 14th day of August 2023.

OWNER:	CITY OF GIG HARBOR
By:_____ Its_____ (Owner, President, Managing Member)	By:_____ Its Mayor

Attest:

_____
City Clerk, Josh Stecker

Approved as to form:
Office of the City Attorney

_____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the ____ _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

_____
Printed: _____
Notary Public in and for Washington
Residing at:_____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that _____ 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: _____

_____
Printed:_____
Notary Public in and for Washington
Residing at_____
My appointment expires: _____

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

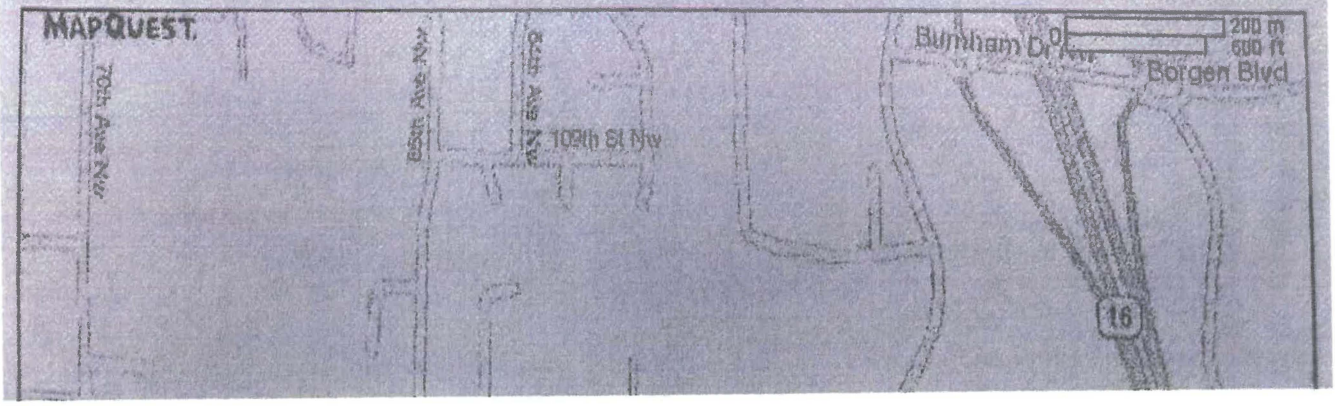
[illegible], THENCE ALONG THE EAST/WEST CENTERLINE OF SAID SECTION, NORTH 87°49'27" WEST 65.97 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE CONTIUING ALONG SAID CENTERLINE NORTH 87°49'27" WEST 792.00 FEET; THENCE SOUTH 1°27'39" WEST 330.03 FEET' THENCE SOUTH 87°49'27" EAST 750.59 FEET; THENCE NORTH 8°37'23: EAST 332.11 FEET TO THE POINT OF BEGINNING;

AND EXCEPT THAT PORTION LYING EASTERLY OF THE WESTERLY MARGIN OF BUJACICH COUNTY ROAD.

TAX PARCEL # 0122363018

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, BEING MORE PARTICULARY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION, AS EVIDENCED BY A WASHINGTON DEPARTMENT OF NATURAL RESOURCES IRON PIPE AND STAMPED BRASS CAP, AS SHOWN ON THE DEPARTMENT OF NATURAL RESOURCES FINAL SURVEY MAP 451, ON FILE WITH THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON; THENCE ALONG THE EAST/WEST CENTERLINE OF SAID SECTION, NORTH 87°49'27" WEST 65.97 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE CONTIUING ALONG SAID CENTERLINE NORTH 87°49'27" WEST 792.00 FEET; THENCE SOUTH 1°27'39" WEST 330.03 FEET' THENCE SOUTH 87°49'27" EAST 750.59 FEET; THENCE NORTH 8°37'23: EAST 332.11 FEET TO THE POINT OF BEGINNING.



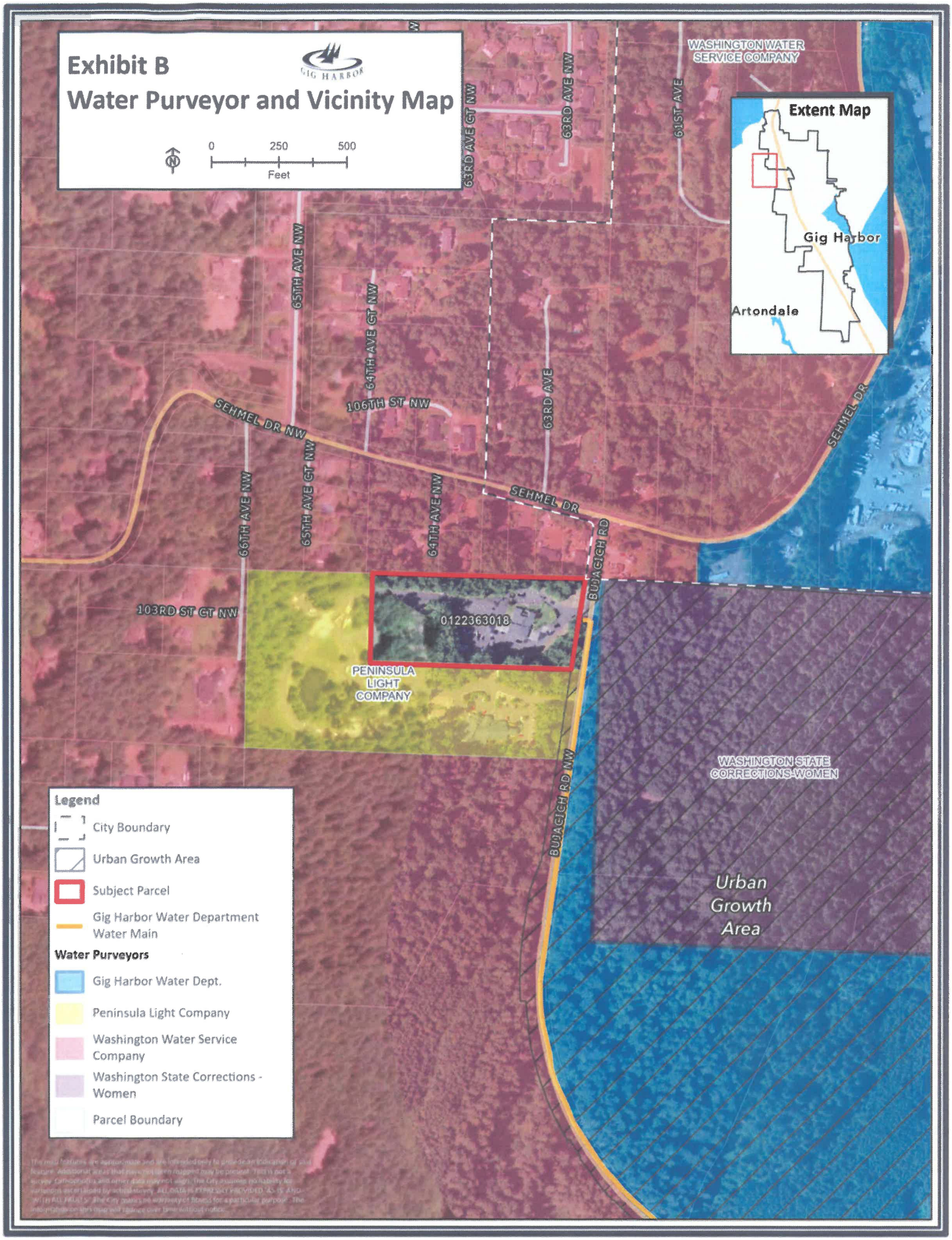


Exhibit B
Water Purveyor and Vicinity Map
GIG HARBOR
0
250
500
Feet
Extent Map
Gig Harbor
Artondale
WASHINGTON WATER SERVICE COMPANY
63RD AVE GT NW
63RD AVE NW
61ST AVE
65TH AVE NW
64TH AVE GT NW
106TH ST NW
63RD AVE
SEHMEL DR NW
SEHMEL DR
66TH AVE NW
65TH AVE GT NW
64TH AVE NW
BUJACICH RD
103RD ST GT NW
0122363018
PENINSULA LIGHT COMPANY
WASHINGTON STATE CORRECTIONS-WOMEN
BUJACICH RD NW
Urban Growth Area
Legend
City Boundary
Urban Growth Area
Subject Parcel
Gig Harbor Water Department Water Main
Water Purveyors
Gig Harbor Water Dept.
Peninsula Light Company
Washington Water Service Company
Washington State Corrections - Women
Parcel Boundary