

Name and Full Address

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Agreement Rec Fee: \$ 73.00

06/06/2012 09:08 AM

Walter Washington, Kitsap Co Auditor

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Please print neatly or type information.

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify accuracy or completeness of the indexing information provided herein.

Documents Title(s):

INTERLOCAL AGREEMENT BETWEEN THE CITY OF BAINBRIDGE ISLAND, A
WASHINGTON MUNICIPAL CORPORATION, AND KITSAP COUNTY
TRANSPORTATION BENEFIT AREA DOING BUSINESS AS KITSAP TRANSIT
("KT"), A WASHINGTON MUNICIPAL CORPORATION FOR JOINT PURCHASE
AND USE OF PROPERTY

Reference Number(S) of related documents: _____

Additional reference #'s on Page: _____

Grantor(s):

KITSAP TRANSIT

Additional Grantors on Page: _____

Grantee(s):

CITY OF BAINBRIDGE ISLAND

Additional Grantees on Page: _____

Legal Description (abbreviated from: i.e. Plat name, lot, block, section, township, range, quarter/quarter). Gov Lot 3, Sec. 26, Twnshp 25 N, Rge 2 E, WM

Assessor's Property Tax Parcel/Account Number: 262502-3-099-2001

I, _____, am requesting an emergency nonstandard recording for an additional fee of \$50.00 as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature: _____

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF BAINBRIDGE ISLAND, A
WASHINGTON MUNICIPAL CORPORATION, AND KITSAP COUNTY
TRANSPORTATION BENEFIT AREA DOING BUSINESS AS KITSAP TRANSIT
("KT"), A WASHINGTON MUNICIPAL CORPORATION
FOR JOINT PURCHASE AND USE OF PROPERTY**

SECTION I

Recitals

- 1.1. Kitsap Transit (hereafter "KT") is a municipal corporation and a Public Transportation Benefit Area providing public transportation services throughout Kitsap County. The City of Bainbridge Island (hereafter the "City ") is a city of the first class and municipal corporation located in Kitsap County, Washington.
- 1.2. Union Oil Company of California, a California Corporation (hereafter "Unocal") is the owner of a parcel of property commonly known as the "Bainbridge Unocal Site" (hereafter referred to as the "Property"). The Property is carried under Kitsap County Tax Parcel No. 262502-3-099-2001 and is legally described in Exhibit 1 and depicted on the map attached as Exhibit 2.
- 1.3. KT desires to acquire up to the east forty (40) feet of the Property for transit and transportation purposes. The City desires to acquire the balance of the Property for one or more of the following potential uses: (i) the development of an attractive entry to the City from the Bainbridge Ferry Terminal; (ii) the development and maintenance of an informational kiosk; (iii) the maintenance of one or more pedestrian and bicycle trails or pathways; (iv) the maintenance of a green space along the abutting estuary, creek and ravine; and (v) such other public uses and purposes as the City may deem necessary or advisable.
- 1.4. The Property is the site of a former gasoline station and contains sub-surface petroleum contaminants. Unocal has performed extensive testing and monitoring. To date, Unocal has not been required to remediate the Property. Based on the tests and monitoring completed to date, the parties believe that the contaminants are stable and are not migrating off the Property or into any subsurface ground waters.
- 1.5. Unocal is willing to sell the Property as one parcel at a substantial discount in its as is condition.
- 1.6. The City and KT, together with the residents of the City of Bainbridge Island and Kitsap County will derive substantial benefits from the joint acquisition of the Property.
- 1.7. The City, KT and Unocal previously signed a Purchase & Sale Agreement signed by the City and KT on June 21 and June 23, 2005, respectively (the "Purchase & Sale Agreement") for the joint purchase of the Property by the City and KT. The City's

City Council and KT's Board of Commissioners heretofore ratified the Purchase & Sale Agreement and approved the joint purchase of the Property by KT and the City.

- 1.8. The purpose of this Agreement is to provide for the joint acquisition of the Property and to define the respective rights, responsibilities and obligations of the City and KT.

SECTION II

Agreement And Incorporation Of Recitals

KT and the City agree to the terms of this Agreement which is being entered into pursuant to Chapter 39.34 RCW as of the ___ day of September, 2005. The recitals set forth above are incorporated herein. KT and the City shall sometimes be referred to as a "party" and collectively as the "parties".

SECTION III

Substantive Terms

- 3.1. ***Acquisition Of Property.*** The City and KT shall jointly acquire the Property in accordance with the Purchase & Sale Agreement. The purchase price and associated closing costs shall be paid in equal shares. At closing, the Parties shall require Unocal to assign the existing monitoring contract with ENSR International and the Parties shall jointly assume the cost thereof. Any modifications to the scope of the work shall be governed by Section 3.2.5 of this Agreement.
- 3.2. ***Allocation Of Environmental Risks.***
- 3.2.1 ***On-Going Monitoring.*** The City and KT shall provide for on-going monitoring, using such methods and pursuant to such schedules as the parties shall agree, to insure the sub-surface contaminants are not migrating onto abutting properties, sub-surface ground waters, or abutting bodies of water. The cost of on-going monitoring shall be borne in equal shares.
- 3.2.2 ***General Indemnity.*** Excluding the respective specific liabilities assigned to the City and KT pursuant to the terms of Sections 3.2.3 and 3.2.4, the City and KT shall share, in equal shares, all costs, fees, expenses, damages and claims, including defense costs, arising from or related to the presence of contaminants on the Property, including the cost of remediation if hereafter ordered by any governmental authority having jurisdiction over the Property. Each party shall assume one-half (1/2) of all such costs, fees, expenses, damages and claims and save, indemnify and hold the other party harmless from such party's one-half (1/2) share .
- 3.2.3 ***KT's Separate Liability.*** If, in connection with KT's specific development or use rights as set forth in Sections 3.3.1 or 3.3.4, any governmental agency with jurisdiction over the Property requires the Property or any portion thereof to be remediated as a result of a specific development or use activity

proposed or undertaken by KT, KT shall be solely responsible for all liabilities, obligations, costs, fees and expenses associated with such remediation and shall save, defend, indemnify and hold the City harmless therefrom.

3.2.4 *City's Separate Liability.* If, in connection with the City's specific development or use rights as set forth in Sections 3.3.2, 3.3.3 or 3.3.4, any governmental agency with jurisdiction over the Property requires the Property or any portion thereof to be remediated as a result of a specific development or use activity proposed or undertaken by the City, the City shall be solely responsible for all liabilities, obligations, costs, fees and expenses associated with such remediation and shall save, defend, indemnify and hold KT harmless therefrom.

3.2.5 *Agreed Expenses.* In the event KT and the City otherwise mutually agree to any voluntary clean-up, remediation, testing, monitoring or other actions relative to the Property, KT and the City shall share equally in all costs, fees and expenses relative thereto.

3.3. **Specific Use Rights.**

3.3.1 *KT Approved Use.* KT shall have the right to use up to the east 40 feet of the Property for the following uses ("KT Approved Use"), none of which shall require the consent or approval of the City:

- a. The construction and operation of a transit lane, including an elevated transit lane for any transit mode of transportation, including trains, trams, cable cars, monorails, buses and vans.
- b. Conveyance of portions of the said east 40 feet to the State of Washington (the "State") to enable the State to expand the vehicle holding area and/or entry drive-aisle for the Bainbridge Island Ferry Terminal, in exchange for the State's conveyance of a transit lane across land owned by the State. At the request of KT, the City will join in the conveyance, at no cost to the City, so as to insure the conveyance of marketable title to the State.
- c. The construction of a pedestrian and/or bicycle lane within said east 40 feet.

3.3.2 *The City's Approved Use Rights.* The City shall have the right to use, develop or improve the remainder of the Property for any of the following uses ("City Approved Use") without the consent or approval of KT:

- a. The construction, maintenance and operation of bicycle and pedestrian paths, greenbelts, green-ways and open space.

- b. The construction, maintenance and operation of an informational kiosk, including the right to lease or license third parties to operate such kiosk for quasi-public purposes (i.e. to the Chamber of Commerce, Tourist Bureau and/or service organizations).
- c. The construction maintenance and operation of public park facilities.
- d. Upon written consent from KT, which consent shall not be unreasonably withheld, conditioned or delayed, the City may transfer the City-held portion of the Property, or any smaller portion thereof, to any public or private entity for uses which are consistent with the general area. At the request of the City, KT will join in any application for governmental approval of such transfer, as may be required by local, state or federal law, and will join in the conveyance, so as to insure the conveyance of marketable title; provided, however, that any such transfer and/or application therefore shall be at the sole cost of the City.

3.3.3 *Temporary Use Rights By The City.* KT does not contemplate fully using and improving the east 40 feet of the Property in the short-term future. Unless or until KT actually undertakes a KT Approved Use, the City may use any portions of the east 40 feet not being actively used by KT for any City Approved Use with the prior approval of KT, which approval shall not be unreasonably withheld, delayed or conditioned, subject to the following:

- a. If KT subsequently decides to undertake a KT Approved Use, KT will provide the City with not less than 120 days advance written notice describing the proposed use and area encompassed by such use. Not later than 90 days from the date of KT's notice, the City shall remove all improvements within the area described in KT's notice to insure KT can proceed in a timely fashion and without incurring additional costs in removing or demolishing any improvements made by the City.

3.3.4 *Other Uses.* Neither party shall otherwise undertake a use other than Approved Use without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. In this regard, the parties, Designated Representatives and/or their respective delegees, shall, from time to time, meet and discuss their intended plans and proposed uses and use their best efforts to jointly coordinate and integrate their intended uses and improvements.

3.3.5 *Revenue Sharing.* In the event the City elects to develop, lease or license portions of the City-held property for any use for which the City derives leave, licensing, royalty or other forms of income, any such income after deduction for direct costs attributable to such income shall be applied as follows:

- a. First, in payment of any environmental costs or liabilities incurred by the City pursuant to Section 3.2.2 in connection with the development of the City-held property for such income-producing purposes;
- b. Second, in payment of the cost of environmental monitoring, remediation or other agreed shared expenses (which net income shall serve to reduce the joint costs allocated to KT and the City) incurred pursuant to Sections 3.2.1 and 3.2.5; and
- c. The balance, if any, shall be paid to the City and KT in equal shares.

3.4. *Insurance And Allocation Of Liability.*

- 3.4.1 *Insurance.* KT is a member of the Washington State Transit Insurance Pool (“WSTIP”) and maintains comprehensive casualty and liability insurance through WSTIP for KT’s assets and operations. KT shall add the Property to its coverage through WSTIP and continuously maintain comprehensive casualty and liability coverage covering KT’s ownership and use of the Property. The City is a member of the Washington Cities Insurance Authority (“WCIA”) and maintains comprehensive casualty and liability insurance through WCIA and continuously maintain comprehensive casualty and liability coverage covering the City’s ownership and use of the Property. In the event the parties hereafter mutually agree to procure specialty or supplemental insurance coverage, the parties shall share equally in the cost thereof.
- 3.4.2 *General Indemnity.* Except as provided in Sections 3.4.3 and 3.4.4, KT and the City shall share, in equal shares, all costs, fees, expenses, damages and claims, including defense costs on account of injuries, deaths, damages or liabilities arising from the ownership of the Property. Each party shall assume one-half (~~1/2~~) of all such costs, fees, expenses, damages, liabilities and claims and save, indemnify and hold the other party harmless from such party’s one-half share.
- 3.4.3 *KT’s Separate Liability And Indemnity.* KT shall be solely responsible for all costs, fees, expenses, damages and claims (i) arising from the negligence of KT and its agents, contractors and invitees; and/or (ii) specifically attributable to KT’s use rights on or about the Property. KT shall save, indemnify and hold the City harmless from all such costs, fees, expenses, damages and claims, including defense costs.
- 3.4.4 *The City’s Separate Liability And Indemnity.* The City shall be solely responsible for all costs, fees, expenses, damages and claims (i) arising from the negligence of the City and its agents, contractors and invitees; and/or (ii) specifically attributable to the City’s use rights on or about the Property. The

City shall save, indemnify and hold KT harmless from all such costs, fees, expenses, damages and claims, including defense costs.

- 3.4.5 *Casualty Losses*. Each party shall assume the risk of loss to any improvement made or undertaken by such party and, except as provided in Section 3.3.3, the other party shall have no responsibility to share in the cost of restoring or repairing any improvement made by the other party, provided if one party (either directly or through the act, error or omission of its employees, agents or contractors) damages the Property or improvements constructed or maintained by the other party, such party shall promptly repair and fully restore such damage at such party's sole expense.

3.5. *Dispute Resolution*.

- 3.5.1 *In General*. If a dispute arises between the parties on account of this Agreement, including the performance of any provision of this Agreement or the interpretation thereof, the parties agree to follow the procedure set forth in this Section 3.5. It is the goal of the parties to resolve their differences as early in this step process as possible.
- 3.5.2 *Step One - Informal Discussions*. The Designated Representatives shall meet to see if the matter can be informally resolved. This may involve more than one meeting.
- 3.5.3 *Step Two - Written Notification And Resolution*. If informal discussions are not successful, then a written notice of dispute shall be mailed to the address for notices set forth in Section 3.7.1, as well as to the Designated Representative. The notice shall set forth the nature of the dispute and the desired outcome. A written response shall be provided within ten (10) business days. The response shall provide the responding party's version of the dispute and a proposed resolution. The parties shall meet within ten (10) business days after the response is received in order to see if the matter can be amicably resolved. If the matter is amicably resolved at this stage, the affected parties shall sign a Memorandum Of Understanding with regards thereto.
- 3.5.4 *Step Three - Binding Arbitration*. In the event any controversy or dispute arises between the Parties which they are unable to mutually resolve, any such dispute or controversy shall be referred to binding arbitration before one Arbitrator.
- 3.5.5 *Selection Of Arbitrator*. If the Parties are unable to mutually agree on an acceptable Arbitrator, each Party shall, within seven (7) days of one Party's demand for Arbitration, designate a Selector and the Parties' Selectors shall, in turn, mutually agree on an acceptable Arbitrator. If one Party fails to

timely designate a Selector, the Selector designated by the other Party shall have the exclusive right to designate the Arbitrator, including the right of the Selector to name himself/herself as the Arbitrator.

If, however, the Parties' designated Selectors are unable to mutually agree on an Arbitrator, within seven (7) days of their respective designations, either Party may apply to the Presiding Judge of the Kitsap County Superior Court, who shall have the summary power to appoint an Arbitrator following notice and hearing on the Court's regular civil motion calendar. Costs and fees charged by the Arbitrator shall be borne by the parties in equal shares.

3.5.6 *Powers.* The Arbitrator shall have the full power to resolve all disputes and controversies, to accord full relief to the parties and impose all remedies available under Washington law and/or specified in this Agreement.

3.5.7 *Venue And Jurisdiction.* Venue and jurisdiction for the confirmation of a decision or award of the Arbitrator (or on account of any action otherwise instituted on account of this Agreement) shall lie exclusively in the Kitsap County Superior Court.

3.6. *Term.* The term of this agreement shall be perpetual, unless sooner terminated by the mutual agreement of the Parties.

3.7. *Miscellaneous Provisions.*

3.7.1 *Notices.* All notices and other written communications required by this Agreement shall be in writing and, except as expressly provided elsewhere in this Agreement, shall be deemed to have been given at the time of delivery if personally delivered, or at the time of mailing if mailed by first class, postage prepaid and addressed to the party at its address as stated below or at such address as any party may designate at any time in writing.

To the City: Mayor
City of Bainbridge Island
280 Madison Avenue N.
Bainbridge Island, WA 98110

To KT: Executive Director
Kitsap Transit
60 Washington Avenue #200
Bremerton, WA 98337

3.7.2 *Severability.* It is the intent of the Parties that if any provision of this Agreement or its application is held by a Court of competent jurisdiction to be illegal, invalid or void, the validity of the remaining provisions of this Agreement or its application to other entities or circumstances shall not be

affected. The remaining provisions shall continue in full force and effect. The rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular invalid provision. However, if the invalid provision or its application is found by a Court of competent jurisdiction to be substantive and to render performance of the remaining provisions unworkable and non-feasible, and is found to seriously affect the consideration and/or is inseparably connected to the remainder of this Agreement, then the entire Agreement shall be null and void.

3.7.3 *Modification.* This Agreement represents the entire agreement between the Parties. No change, termination or attempted waiver of any of the provisions of this Agreement shall be binding on any of the Parties unless executed in writing by each of the Parties. This Agreement shall not be modified, supplemented or otherwise affected by the course of dealings between the Parties.

3.7.4 *Benefits.* This Agreement is entered into for the benefit of the Parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons, except as otherwise expressly specified in this Agreement.

3.7.5 *Designated Representatives; Supplemental Documents And Signature Authority.* The Parties agree to complete and timely execute all supplemental documents ("Supplemental Agreements") necessary or appropriate to fully implement the terms of this Agreement. The following persons are the Designated Representatives for the parties, shall have the authority to sign or approve all Supplemental Agreements or changes to this Agreement and to provide the consents, approvals, joinders or decisions enumerated throughout this Agreement:

For the City: Mayor

For KT: Executive Director

3.7.6 *Filing Of Agreement With County Auditor.* Within five (5) days from the date of this Agreement, as set forth in Section II, the original of the Agreement shall be filed by KT with the Kitsap County Auditor, as required by the provisions of RCW 39.34.040. KT shall provide the City with a conformed copy thereof.

3.7.7 *Execution In Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

3.7.8 *Binding Effect.* This Agreement shall be binding on the Parties and their respective successors.

3.8. *Enumeration Of Exhibits.* The Exhibits to this Agreement consist of the following:

Exhibit 1:	Legal Description of Property
Exhibit 2:	Site Map

CITY OF BAINBRIDGE ISLAND

By *Paloma Kunderburg*
Its Mayor

ATTEST:
Clerk

Susan P. Kasper
APPROVED AS TO FORM:

Kathleen F. Weber
KATHLEEN WEBER, City Attorney
ERINE

KITSAP TRANSIT

By *OE M. [Signature]*
Its Executive Director

ATTEST:
Clerk

Catherine Kuy-Brown

APPROVED AS TO FORM:

Ronald C. Templeton
RONALD C. TEMPLETON, General Counsel

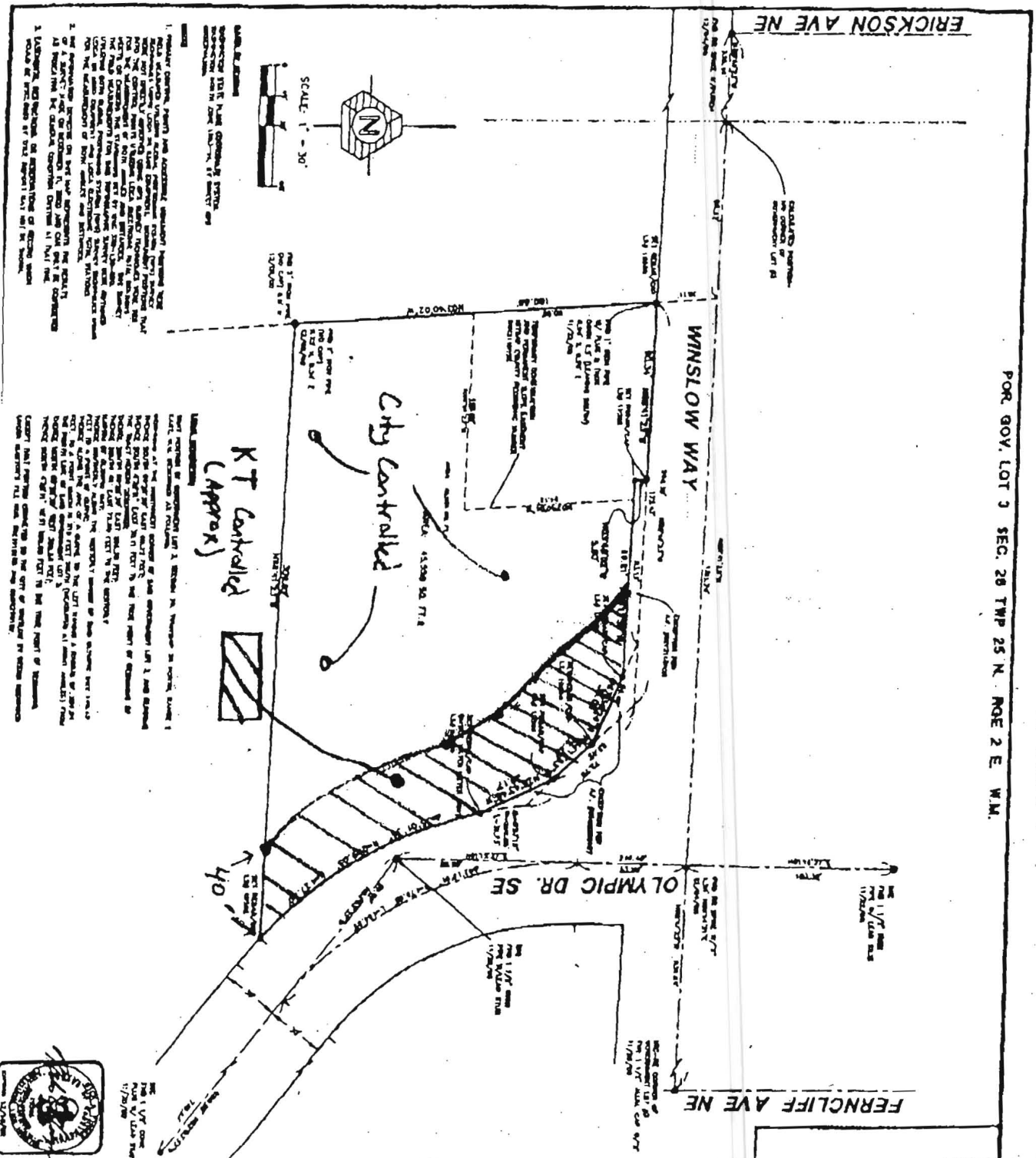
EXHIBIT 1

That portion of Government Lot 3, Section 26, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington, described as follows:

Beginning at the Northwest corner of said Government Lot 3 and running thence South 89°29'30" East 88.22 feet; thence South 4°28'11" East 30.11 feet to the true point of beginning of the tract herein described; thence South 89°29'30" East 204.30 feet; thence South 45° East 72.80 feet to the westerly margin of Olympic Way; thence southerly along the westerly margin of said Olympic Way, 149.47 feet to a point of curve; thence along the arc of a curve to the left having a radius of 209.04 feet, to a point which is 210 feet South (measured at right angles) from the North line of said Government Lot 3; thence North 89°29'30" West 309.54 feet; thence North 4°28'11" West 180.69 feet to the true point of beginning;

EXCEPT that portion conveyed to the City of Winslow by Deed recorded under Auditor's File Nos. 8012110108 and 8609290187.

POR. GOV. LOT 3 SEC. 26 TWP. 25 N. RGE 2 E. W.M.



SCALE: 1" = 30'

NOTE:

1. The survey was conducted in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

2. The survey was conducted in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

3. The survey was conducted in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

KT Controlled (Approx)

City Controlled

NOTE:

1. The survey was conducted in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

2. The survey was conducted in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

3. The survey was conducted in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

RECORDING CERTIFICATE

This map is hereby recorded in accordance with the provisions of the Surveying Act of 1908, and the Surveying Act of 1940, and the Surveying Act of 1963, and the Surveying Act of 1978, and the Surveying Act of 1984, and the Surveying Act of 1990, and the Surveying Act of 1996, and the Surveying Act of 2002.

Date: 11/12/05

By: [Signature]

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direct supervision and the requirements of the SURVEYING ACT of the Province of Ontario.

UNOCAL

DATE: 11/12/05

BY: [Signature]

RECORD OF SURVEY FOR UNOCAL

11720 UNCO ROAD, BLDG. C
EDMONTON, ALBERTA T6C 0G2

TMAD ASSOCIATES

1170-1130 Avenue NE, Edmonton, AB T6C 2E7
(403) 463-8848 • (403) 463-3401 FAX
WWW.TMADASSOCIATES.COM

Date: 11/12/05

Drawn: [Signature]

Checked: [Signature]

Job No. 00-323

Sheet 1 of 1

