

**REAL PROPERTY EXCHANGE AGREEMENT
BETWEEN THE CITY OF PUYALLUP
AND GREGORY AND VICTORIA HOUSTON
("Agreement")**

This Real Property Exchange Agreement is made and entered into this ____ day of May 2003, by and between the City of Puyallup, a municipal corporation ("City" or "the City") and Gregory and Victoria Houston, as a marital community, ("Houstons" or "the Houstons") for and in consideration of the mutual promises and performances set forth herein.

Recitals

The City of Puyallup is the owner of that certain parcel of unimproved real property comprised of approximately 530 square feet, more or less, situated in the City of Puyallup and legally described on Exhibit "A" attached hereto and incorporated herein by reference ("Parcel A").

The Houstons are the owners of that certain parcel of unimproved real property comprised of approximately 132 square feet, more or less, situated in the City of Puyallup, on Tax Parcel # 0420273002 and legally described on Exhibit "B" attached hereto and incorporated herein by reference ("Parcel B").

On April 2, 2001, the Puyallup City Council approved the design and construction plan for the East Pioneer Road Improvement Project, hereinafter referenced as the "Project," necessitating the acquisition of a portion of Parcel B for right-of-way and other public purposes. The Project has been a part of the City's Six Year Capital Improvement Program since 1998. Funding for the project was first approved in 2001. The Project has been delayed pending completion of the 7th Street South East improvement project, which is expected to conclude at some point in or before July of 2003.

The City expressed its intentions to acquire a portion of Parcel B to the Houstons, who have agreed to convey the needed portion of Parcel B to the City under threat of condemnation in exchange for the City's reciprocal conveyance to the Houstons of the surplus City property known as Parcel A, which the Houstons intend to continue holding for trade or business use or for investment.

The City and the Houstons believe that the fair market values of Parcel A and Parcel B are reasonably equivalent and desire to exchange the parcels on an "as is" like-kind exchange basis.

Based on the foregoing, and in consideration of the promises and performances set forth below, the City and the Houstons hereby agree as follows:

Agreement

1. **Conveyance.** The City agrees to convey Parcel A to the Houstons on the closing date for and in consideration for the Houston's conveyance to the City of Parcel B. The Houstons agree to convey Parcel B to the City on the closing date for and in consideration of City's conveyance to the Houstons of Parcel A.

2. **Exchange Value.** The City and the Houstons agree that the relative “as is” fair market values of Parcel A and Parcel B are reasonably equivalent and each parcel is deemed to be fair and reasonable consideration for the other. The City understands that the Houstons may treat this exchange of real property as a tax deferred exchange under Section 1031 of the Internal Revenue Code, and the City promises its reasonable cooperation to assist the Houstons in their efforts to obtain such tax treatment. The Houstons hold Parcel B for trade or business use and for investment. The Houstons do not hold Parcel B for sale or personal use.
3. **Condemnation.** The Houstons understand and acknowledge that the City has designated Parcel B for acquisition as necessary right-of-way for the “East Pioneer Road Improvement Project” and that the City is prepared to pursue eminent domain proceedings to acquire the necessary properties.
4. **Condition of Title.**
- (a) Title to Parcel A shall be conveyed to the Houstons by the City free of encumbrances or defects except exceptions shown on the Preliminary Commitment for (a) rights reserved in federal patents or state deeds, (b) building or use restrictions general to the local jurisdiction (including but not limited to restrictions imposed by the Shoreline Management Act, Growth Management Act or similar acts), (c) existing easements not inconsistent with Purchaser's intended use, and (d) building or zoning regulations or restrictions.
- (b) Title to Parcel B shall be conveyed to the City by the Houstons free of encumbrances or defects except exceptions shown on the Preliminary Commitment for (a) rights reserved in federal patents or state deeds, (b) building or use restrictions general to the local jurisdiction (including but not limited to restrictions imposed by the Shoreline Management Act, Growth Management Act or similar acts), (c) existing easements not inconsistent with Purchaser's intended use, and (d) building or zoning regulations or restrictions.
- (c) Each party shall be required to pay and discharge all monetary encumbrances against their respective parcels prior to the closing date. Failure of either party to do so will entitle the other party to terminate this Agreement and refuse to close this transaction.
5. **Conveyance of Title.** Title to each parcel shall be conveyed by Statutory Warranty Deed free of encumbrances or defects except those disclosed as General Exceptions and standard Special Exceptions contained in the preliminary commitment.
6. **Prorations.** All unpaid real property taxes and imposed assessments against Parcel B shall be paid by the Houstons before the closing date.
7. **Possession.** Possession shall be exchanged on the closing date.
8. **Property Conveyed As Is.** Both parties offer to convey their respective parcels in their “as is” condition. Neither party makes any representations or warranties of any kind regarding the condition of the land or any improvements thereon. Without in any way limiting the

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generality of the directly preceding sentence, the City makes no representations or warranties to the Houstons regarding the condition of Parcel A or its suitability for the Houstons' intended investment or development purposes. Notwithstanding the foregoing, both parties represent and warrant that to the best of their knowledge without inquiry or investigation there are no hazardous or dangerous substances on, under, around or released from their respective parcels and/or the improvements (if any) thereon.

9. **Closing.** The conveyance shall close upon the recording of the Statutory Warranty Deed with the County Auditor's office for each property ("Closing Date"), or sooner upon mutual agreement.

10. **Closing Date.** For purposes of this Agreement, "Closing Date" shall be construed as the date upon which all appropriate documents are recorded with the County.

11. **Costs and Expenses.** Except as expressly provided for herein each party shall be responsible for payment of their own costs and expenses, including fees of attorneys and accountants, incurred in conjunction with this transaction.

12. **Entire Agreement.** This Agreement supersedes any and all agreements between the parties hereto regarding the subject property which are prior to the time of this Agreement. Neither the City nor the Houstons shall be bound by any statement, understanding, agreement, promise, representation or stipulation, express or implied, that is not expressly stated herein.

13. **Addenda.** Any addendum attached hereto that is signed by both parties shall be deemed a part hereof.

14. **Existing Lease.** If there are any existing leases or rental agreements affecting either parcel, such leases or rental agreements shall be irrevocably terminated by the City or the Houstons, as the case may be, prior to the Closing Date.

15. **Conduct Before Closing.** Between the date of this Agreement and the Closing Date, the City and the Houstons shall each maintain the parcels in good condition and repair.

16. **Legal Counsel.** The City and the Houstons each covenant and warrant that they were advised of their opportunity to be represented in this transaction by independent legal counsel or advisors of their own choosing and that the other party has done nothing to interfere or discourage their respective rights to seek such advice.

17. **Time.** Time is of the essence in fulfilling and effectuating the terms of this Agreement.

18. **Real Estate Commission.** The City and the Houstons hereby represent and warrant to each other that there are no real estate brokers or agents involved in this transaction and that no listing or sales commissions will be due to anyone.

Executed on the dates set forth adjacent to each party's signature below.

"CITY":

CITY OF PUYALLUP

James C. Bacon Jr., City Manager
(Under authority granted by motion of the City Council
in an open public meeting on May 19, 2003)

Date: _____

Address: 218 West Pioneer
Puyallup, WA 98371

Approved as to form and content:

Gary N. McLean, City Attorney

"The HOUSTONS":

Gregory Houston

Victoria Houston

Date: _____

Address: _____

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Exhibit "A"

The legal description of the surplus land, known as Parcel "A", that the city intends to exchange for the Houston property, described in Exhibit "B", under the terms of the **REAL PROPERTY EXCHANGE AGREEMENT BETWEEN THE CITY OF PUYALLUP AND GREGORY AND VICTORIA HOUSTON**, is as follows:

That portion of the Northeast quarter of Southwest quarter of Section 27, Township 20 North, Range 4 East of the Willamette Meridian in the City of Puyallup, described as follows:

Commencing at the west quarter corner of said Section 27 in the intersection of Meridian Street and Main Street in said City; thence along East Main Street, South 88°59'43" East 1320.37 feet to a street monument; thence South 01°21'36" West 495.24 feet to a street monument in the intersection of 5th Street S. E. and Pioneer Avenue; thence North 01°21'36" East 130.00 feet; thence South 88°56'31" East along a line parallel with and 100.00 feet north of the north right of way of said Pioneer Avenue, a distance of 5.89 feet to the east line of 5th Street S.E. as positioned by the City of Puyallup; thence continuing South 88°56'31" East, along the south line of the parcel of land conveyed to the City of Puyallup by deed recorded under recording number 8612190004, records of Pierce County, Washington, a distance of 38.13 feet to a point 7.00 feet easterly, as measured easterly of and parallel with the existing back of a concrete sidewalk, to the True Point of Beginning; thence continuing along said south line South 88°56'31" East 36.87 feet to the southeast corner of said parcel of land conveyed to the City; thence North 00°51'49" East along a line parallel with and 75.00 feet east of said east line of 5th Street S.E. a distance of 16.00 feet; thence North 88°56'31" West 29.24 feet to an intersection with a 245.26 foot radius curve, the radius point of which bears South 61°31'56" East; thence southwesterly along said curve and along a line parallel with and 7.00 feet easterly of said existing back of a concrete sidewalk, an arc distance of 17.71 feet through a central angle of 04°08'12" to the true point of beginning.

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Exhibit "B"

The legal description of the portion of the Houston property needed for public purposes, known as Parcel "B", that the Houstons intend to exchange for a portion of the City's property described in Exhibit "A", under the terms of the **REAL PROPERTY EXCHANGE AGREEMENT BETWEEN THE CITY OF PUYALLUP AND GREGORY AND VICTORIA HOUSTON**, is as follows:

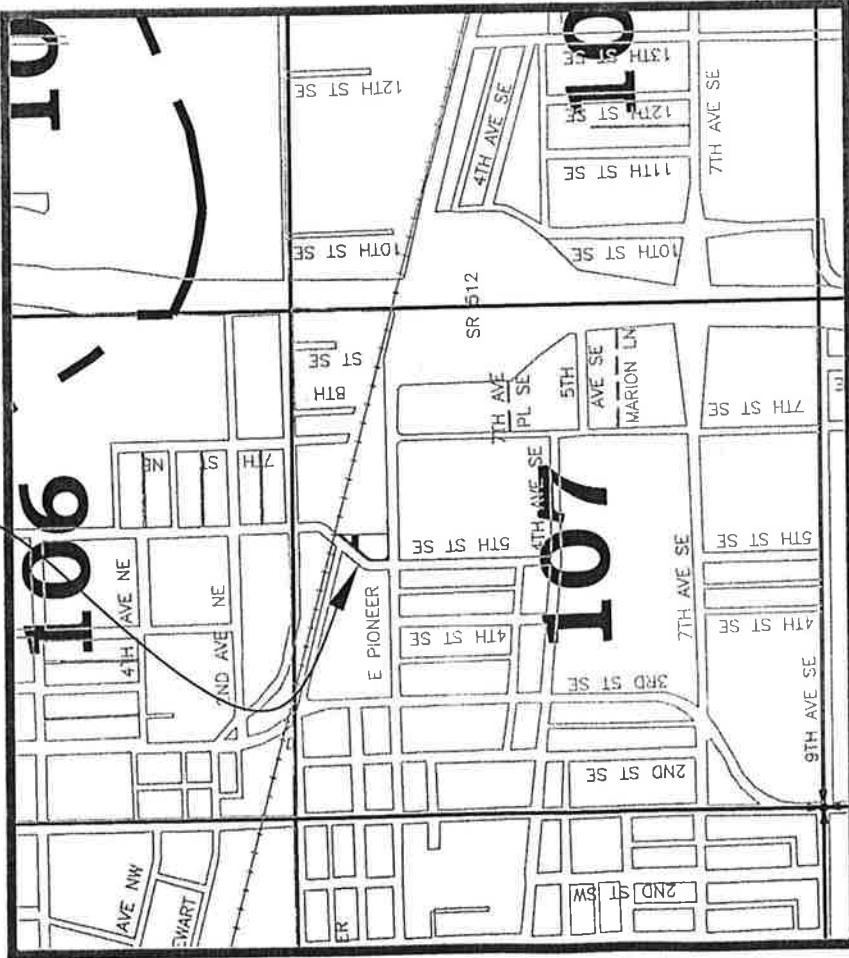
That portion of Section 27, Township 20 North, Range 4 East, W.M, in Pierce County, Washington, described as follows:

With the TRUE POINT OF BEGINNING AT THE INTERSECTION OF THE NORTH MARGIN OF E. Pioneer Avenue and the east margin of 5th Street SE; Thence east along E. Pioneer Avenue margin 27.51 feet; Thence northerly along a curvilinear arc of radius of 28 feet a distance of 35.96 feet to a point on the east margin of 5th Street SE; Thence south along 5th Street SE margin 20.11 feet to the TRUE POINT OF BEGINNING.

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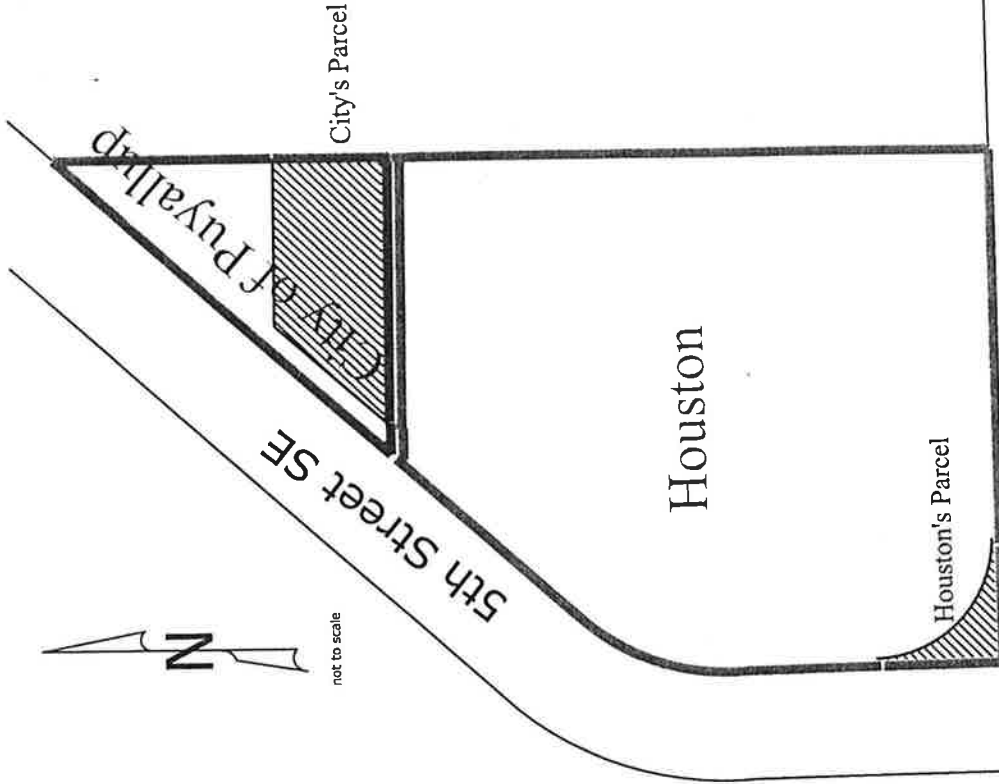
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Location



Vicinity Map

not to scale



not to scale

East Pioneer Avenue

May 2003



CITY OF
PUYALLUP
 PUBLIC WORKS
 DEPARTMENT

East Pioneer - Houston / City Land Exchange

NE Corner of East Pioneer Avenue and 5th Street SE