Council Meeting Date: March 17, 2008 **Agenda Item:** 7(a)

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Resolution No. 274 amending Resolution No. 266 authorizing a Civic Center/City Hall Development Agreement with OPUS Northwest LLC, and Associated Leases
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Ian Sievers, City Attorney Debbie Tarry, Finance Director

ISSUE:

The City Council unanimously authorized the City Manager to sign a development agreement with Opus Northwest, LLC in December 2007 by adopting Resolution No. 266. Since that time staff has finalized the negotiations with Opus resulting in the need to make technical corrections to the adopted resolution. Resolution No. 274 (Attachment A) reflects these corrections. The finalized development agreement is within the authorization given by the City Council in December 2007 in the amount of $30,550,000.

Additionally, Resolution No. 274 formalizes the funding resources Council authorized in December 2007 to complete the City Hall project. This resolution will be provided to Opus as part of their Request for Proposal (RFP) for construction financing to lenders.

FINANCIAL IMPACT:

The development agreement negotiated with Opus Northwest LLC is for $30.55 million. In addition to the cost of the development agreement, there was prior Council authorization to conduct a space study analysis, fund legal and professional services, and conduct a site review with costs totaling approximately $420,000. Likewise, the Council had unanimously authorized the purchase of the Highland Professional Center and the Kimm Property for the site of City Hall. These properties totaled $9.1 million and were purchased with cash. The Highland Professional Center acquisition has historically been included in the Civic Center/City Hall costs within the City's adopted Capital Improvement Plan (CIP). These costs are reflected in the updated 2008-2014 CIP project detail sheet (Exhibit B to Resolution No. 274).

RECOMMENDATION

Staff recommends that Council pass Resolution No. 274 which incorporates technical corrections to Resolution No. 266, formalizes the funding sources to complete the City Hall project, and provides an updated CIP project detail sheet for the City Hall project.

Approved By: City Manager JM City Attorney ___

BACKGROUND:
On December 17, 2007, the City Council adopted Resolution No. 266 authorizing the City Manager to enter into a Ground Lease, Building Lease and Development Agreement with Opus Northwest, LLC for the construction of the new Shoreline Civic Center/City Hall. The development agreement was in the amount of $30.55 million.

The December 17, 2007 staff report and Resolution No. 266 are included with this staff report as Attachment B and C.

DISCUSSION:
City staff has completed negotiations of the development agreement with Opus Northwest LLC in an amount of $30.55 million. Included in the $30.55 million are design and survey costs. The City paid $494,590 of the development costs in July 2007 in the form of a pre-development agreement that produced 30% design documents. As part of the negotiation process since December 2007, the City agreed to pay the remaining design and survey costs of the development, $1,651,977, as this work is completed. This leaves a balance of $28,403,433 ($30.55 million less the $494,590 pre-development agreement and less $1,651,977 of additional design and survey costs) which will be executed in the form of a "lease transfer" at the completion of two project phases: building and garage.

Exhibit B to Resolution No. 274 is an updated CIP project sheet for the City Hall project. Prior to Council's approval of the $30.55 million development agreement, Council had unanimously authorized the purchase of the Highland Plaza property ($5.77 million), and other costs such as previously completed space analysis, legal and professional services, and site review ($420,000). The City Council has authorized the following resources to fund the development agreement obligations:

Source	Amount
King County Green Building Grant	$ 20,000
Cash Resources:	
Surface Water Utility Contribution	300,000
General Fund Contribution	4,961,401
Annex Lease Savings	738,000
Annex/Kimm Property Lease Revenue	75,000
Real Estate Excise Tax	3,334,709
Investment Interest	480,000
Municipal Financing - Certificates of Participation	20,640,890
Total	$ 30,550,000

As a result of prior general fund budget savings and a higher than expected level of Real Estate Excise Tax (REET) collections from 2004 through 2007, the City will have contributed $16.1 million, 44% of total cost, in cash towards this project when including the acquisition of the Highland Professional Center. Additionally the City purchased the Kimm property in 2006, of which a portion will be used for the parking garage and connecting landscape to the City Hall building. This property was purchased using $3,291,289 in cash. This property purchase was accounted for in previous CIP documents as property for future City Hall expansion.

The Certificates of Participation (COPS) that are issued at the time of the "lease transfer" will be repaid over a 30 year period. The City Council has authorized $775,000 of REET annually, starting in 2009, to go towards the repayment of the COPS along with the amounts that were previously budgeted in the general fund for the lease of City offices in the current City Hall and the Annex. The 2008 budgeted amount for these leases is $605,000. Amounts in excess of those needed for debt repayment will be used of the maintenance and operations of the Civic Center facility.

RECOMMENDATION

Staff recommends that Council pass Resolution No. 274 which incorporates technical corrections to Resolution No. 266, formalizes the funding sources to complete the City Hall project, and provides an updated CIP project detail sheet for the City Hall project.

ATTACHMENTS

Attachment A – Resolution No. 274
    Exhibit A – Project Ground Lease
    Exhibit B – Updated CIP Project Sheet
Attachment B – Adopted Resolution No. 266
Attachment C – December 17, 2007, Staff Report

RESOLUTION NO. 274

A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, AMENDING RESOLUTION NO. 266 AUTHORIZING A GROUND LEASE, BUILDING LEASE AND DEVELOPMENT AGREEMENT WITH OPUS NORTHWEST LLC FOR CONSTRUCTION OF THE SHORELINE CIVIC CENTER AT N 175TH AND MIDVALE AVE N.

WHEREAS, the City purchased the Highland Plaza and Kimm properties in 2006 for the future site of a Civic Center/City Hall facility; and

WHEREAS, the City held a bid process for a lease and lease back agreement requiring the lessee to build on a Civic Center for the City's offices and operations upon terms most favorable to the City; and

WHEREAS, Opus Northwest, LLC was selected as the best developer based on experience, quality of proposal and price and was awarded a Pre-Development Agreement for 30 percent design in July 2007; and

WHEREAS, the City Council passed Resolution No. 266 authorizing a ground Lease and Development Agreement with Opus Northwest, LLC for construction and lease back of the Civic Center at a negotiated guaranteed maximum price; and

WHEREAS, staff has negotiated changes in certain payments to Opus to reduce construction financing and city financing for the project which require a revision to the expenditures authorized in Resolution No. 266; and

WHEREAS, an Mitigated Determination of Non Significance was issued for the Development Agreement and ground lease for the Civic Center and the Development Agreement pursuant to Chapter 43.21 RCW on March 13, 2008; and

WHEREAS, the Council should adopt an updated Capital Improvement Program project sheet for the Civic Center Project which will document City revenue commitments and general fund investments in the Project which will assist in obtaining construction financing; and

WHEREAS, the Council has authorized the accumulation of $9,909,110 of cash from various revenue sources and general fund budget savings to be reserved and used exclusively towards the Lease Transfer provisions of the development agreement; and

WHEREAS, the Council has committed $1,380,000 in annual revenues starting in 2009 for the purpose of retiring any debt that the City incurs in order to fulfill the City's obligations within the executed development agreement with OPUS Northwest LLC; now therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON AS FOLLOWS:

Section 1. Amendment- Ground Lease Authorized. The City Manager is authorized to execute the Project Ground Lease with Opus Northwest, LLC attached hereto as Exhibit A, for a portion of City property at 1110 N. 175th Shoreline, WA for the purpose of constructing the Shoreline Civic Center. This lease replaces the Ground Lease authorized in Section 1 of Resolution No. 266 in its entirety.

Section 2. Amendment- Development Agreement Authorized. The City Manager or designee is authorized to execute the Shoreline Civic Center Development Agreement, and the Building Lease attached thereto, filed under Clerk's Receiving No. 4728, with Opus Northwest, LLC for the construction and lease of the Shoreline Civic Center to the City of Shoreline for its governmental offices and operations for a Base Project Cost of $30,550,000 less a credit of $494,590 for design fees paid with the Pre-Development Agreement authorized by the City Council on July 9, 2007. This amount includes a Guaranteed Maximum Price for Project design and construction ($28,000,000); allowances for Opus' construction financing; a City contingency; and furniture, fixtures and equipment ($2,550,000). The City Manager is authorized to execute the Building and Project Leases incorporated in the Development Agreement, with lease payments in an amount sufficient to amortize $28,403,433.

This Section replaces the authorization of Resolution No. 266 Section 2.

Section 3. Amendment- Financing Authorized. The City Manager or designee is authorized to enter into contracts for consultant, underwriting, legal and other fees necessary to acquire financing and to issue the required debt to fulfill the obligation of the Development Agreement. This Section replaces the authorization of Resolution No. 266 Section 3.

Section 4. The Civic Center/City Hall Project sheets, 2008-2013 Adopted Capital Improvement Plan, pages 48-49, are amended as set forth in Exhibit B attached hereto.

ADOPTED BY THE CITY COUNCIL ON MARCH 17, 2008.

_____
Mayor Cindy Ryu

ATTEST:

_____
Scott Passey
City Clerk

PROJECT GROUND LEASE AGREEMENT

THIS PROJECT GROUND LEASE AGREEMENT ("Project Ground Lease") is made as of _____, 2008, by and between **CITY OF SHORELINE** , a municipal corporation of the State of Washington ("Lessor"), and **OPUS NORTHWEST, L.L.C.**, a Delaware limited liability company ("Lessee").

RECITALS

A. Lessor is the owner of the real estate described on **EXHIBIT A** attached hereto ("Building Land") located in Shoreline, King County, Washington.

B. Lessor intends to lease the Building Land to Lessee pursuant to this Project Ground Lease, and Lessee intends to construct and equip thereon an office building to serve as government offices for Lessor ("Building") containing approximately 67,000 square feet of rentable area as more fully described in the Preliminary Plans and Specifications, including all HVAC, electrical and other building systems, and Tenant Improvements, and a parking garage ("Garage")as described in the Development Agreement between Lessor and Lessee (the "Development Agreement"), collectively referred to as the "Project". The design and construction of the Project shall be as more particularly described in the Development Agreement between the parties.

C. Lessee intends to lease the Building Land, including the Building and Garage, back to Lessor in accordance with the Municipal Leasing Act, RCW ch. 35.42, and pursuant to that certain Building Lease and that certain Project Lease described in the Development Agreement ("Two Project Leases"). The parties intend that concurrently with their execution of the Building Lease Lessee shall assign its landlord's interest in the Building Lease to the trustee holding the bond proceeds from the issuance of Certificates of Participation unless Lessor has exercised the Option to purchase included in the Building Lease prior to commencement of the Building Lease, in which case this Project Ground Lease shall be partially transferred by special warranty deed on the Closing Date for the Building if Lessor has segregated the Building Land for the Building from the remainder of the Building Land for the Garage prior to the Payment Date for the Building. The parties intend that concurrently with their execution of the Project Lease Lessee shall assign its landlord's interest in the Project Lease to the trustee holding the bond proceeds from the issuance of Certificates of Participation unless Lessor has exercised the Option to purchase included in the Project Lease prior to commencement of the Project Lease, in which case this Project Ground Lease shall be entirely transferred by special warranty deed on the Closing Date for the Project.

D. All capitalized terms used in this Project Ground Lease but not otherwise defined herein (including these Recitals hereto) shall have the meanings given to such terms in the Development Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **The Demise.**

1.1 Demise. In consideration of the rents, covenants and agreements contained in this Project Ground Lease, Lessor hereby leases the Building Land to Lessee, and Lessee hereby leases the Building Land from Lessor upon and subject to the conditions set forth in this Project Ground Lease, and subject to all encumbrances and matters of record as of the date of this Project Ground Lease.

1.2 Use of the Building Land. The Building Land shall be used and occupied only for the purpose of the development, operation, use, repair and maintenance of the Project. Until Lessee commences such use, Lessor reserves the right to continue to use and occupy the Pre-existing Buildings and the Building Land for its purposes at no cost. Lessee shall not use or permit the Building Land to be used for any other purpose without the prior written approval of Lessor. Lessee is hereby authorized to lease back to Lessor the Building Land as improved by the Project pursuant to the Two Project Leases.

1.3 Access and Utilities. Lessor and Lessee agree to mutually cooperate regarding the provision of reciprocal temporary and permanent pedestrian and vehicular access and utilities to, from and over the Building Land to, from and over adjacent lands of Lessor. Lessor and Lessee further agree to mutually cooperate regarding the use of parking on the Building Land and the adjacent lands of Lessor during and after construction of the Project. Lessor and Lessee agree to execute such instruments as may be necessary to provide for such pedestrian and vehicular access, parking and utilities and agree to cooperate in the location thereof.

1.4 Construction Activity. Lessor hereby grants permission to Lessee to perform construction activity related to the Project on adjacent lands of Lessor. Lessee and Lessor agree to mutually cooperate as to the timing, use and location of such construction activity in order to ensure completion of the Project in a timely manner while maintaining Lessor's ability to utilize the adjacent lands for Lessor's ongoing operations and that of its lessees of adjacent lands.

2. **Term.**

2.1 Commencement. Subject to the terms and conditions of this Project Ground Lease, the term of this Project Ground Lease shall commence on the date that this Project Ground Lease is fully executed, acknowledged and delivered by Lessor and Lessee ("Effective Date").

2.2 Duration. The term of this Project Ground Lease shall be thirty-five years from the Effective Date unless sooner terminated hereunder ("Term").

3. **Rent.** Lessee shall pay to Lessor as rent for the Term the sum of $100.00 payable in whole in advance on or before the first day of the Term.

4. Development of Project.

4.1 Construction. Lessor agrees that Lessee shall cause the Project to be constructed and developed pursuant to the Development Agreement. Lessee shall not permit any development or construction on the Building Land except as contemplated by the Development Agreement or as otherwise specifically approved in writing by Lessor.

4.2 Ownership of Improvements. During the Term, the Project and all other improvements on the Building Land paid for by Lessee shall be owned by Lessee. Upon the expiration or earlier termination of this Project Ground Lease, the Project and all other improvements on the Building Land shall become the property of Lessor.

5. Taxes and Utilities.

5.1 Lessee's Responsibility. Lessee shall be solely responsible for the payment of and shall pay and discharge all utility charges which are incurred as part of Project Costs as defined in the Development Agreement.

5.2 Lessor's Responsibility. Lessor shall pay all utility charges that are not part of Project Costs and all real estate taxes and assessments, if any, that are imposed upon the Building Land. In accordance with RCW 35.42.090, this Project Ground Lease shall be exempt from any taxes imposed under the authority of RCW ch. 82.45, RCW 82.04.040, or RCW 82.08.090.

5.3 Lessor's Taxes. Nothing in this Project Ground Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy (measured on the capital stock of Lessor), income, or transfer tax of Lessor.

6. Condition of the Building Land.

6.1 Condition of the Building Land and Pre-existing Buildings. The Parties have prepared the Project Budget having considered studies and surveys of soil conditions and the presence of hazardous substance in the Building Land soils and Pre-Existing Building. Lessor hereby warrants the condition of the Pre-existing Buildings for demolition and the condition of the Building Land for construction of the Project. Should the cost of Project excavation exceed the amount provided in the approved Project Budget due to Environmental Remediation, Lessor shall pay the excess cost caused by the presence of Hazardous Substances to Lessee upon completion of the excavation work. Should the cost of demolition of the Pre-existing Buildings, together with the removal costs of asbestos or other Hazardous Substances being present in the Pre-existing Buildings or costs due to other unknown conditions, exceed the amount of $275,000 provided in the approved Project Budget, Lessor shall pay such excess costs to Lessee upon completion of the demolition.

6.2 Environmental Indemnification. Lessor shall be solely responsible for all claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence,

release, migration or disposal of Hazardous Substances that were present in the soil, groundwater or soil vapor on or under the Building Land or any adjacent or nearby property or within the Pre-existing Buildings as of the Effective Date of this Project Ground Lease or that which may migrate to or from the Building Land during the term of this Project Ground Lease, including any costs of investigation or remediation of such toxic or hazard substances that may be required by any federal, state or local government agency. Except as set forth in the last sentence of this Section 6.2, Lessor hereby releases and will indemnify, defend (with counsel reasonably acceptable to Lessee), protect and hold harmless Lessee from and against any and all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under this Project Ground Lease ("Claims") whatsoever to the extent arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release, migration or management of hazardous substances in, on, under, upon, to or from the Building Land (including water tables and atmosphere) and the Pre-existing Buildings that existed on, or migrates or migrated to or from, the Building Land or the Pre-existing Buildings. Lessor's obligations under this Section 6.2 include, without limitation and whether foreseeable or unforeseeable, (a) all of Lessee's costs, except as covered by the approved Project Budget, of any required or necessary repair, clean-up, detoxification or decontamination of the Building Land and the Pre-existing Buildings; (b) all of Lessee's costs of implementing any closure, remediation or other required action in connection therewith; (c) the value of any loss of use and any diminution in value of the Building Land, and (d) consultants' fees, experts' fees and response costs. Lessor's obligations under this Section 6.2 shall survive the expiration or termination of this Project Ground Lease. Notwithstanding the foregoing, Lessor shall not be responsible for any claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the release or disposal by Lessee of Hazardous Substances brought onto the Building Land by Lessee during construction of the Project and the responsibility for the same shall remain with Lessee.

6.3 Lessor's Right to Inspect. Lessor shall have the right to inspect the Building Land at any time.

7. Liens; Security Interest.

7.1 Lessee's Duty. Except for the use of this Project Ground Lease as security to finance or refinance the Project or as specifically approved in writing by Lessor, Lessee will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Building Land, any part thereof, the Project, Lessee's interest therein, or any equipment, fixtures or personalty on the Building Land that is imposed by or as a result of the actions of Lessee.

[Need Leasehold Financing Provisions Inserted Here]

8. Indemnity and Insurance.

8.1 Indemnity. Lessor and Lessee mutually agree that in any and all causes of action and/or claims or third-party claims arising out of or in connection with the terms, activities, use and/or operations of this Project Ground Lease, including the Building Land and the Project, each party shall be responsible to the other only to the extent of each other's comparative fault in causing the alleged damage or injuries. As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a party to this Project Ground Lease ("Indemnifying Party"), the Indemnifying Party shall have the duty to defend, save and hold the other party harmless and upon failure to do so, the Indemnifying Party shall pay the reasonable attorneys' fees, costs and expenses incurred by the other party to this Project Ground Lease in defense of such claims and/or actions. Nothing contained within this Section 8.1 shall affect and/or alter the application of any other provision contained within this Project Ground Lease.

8.2 Property Insurance. At all times during the Term of this Project Ground Lease, in the event that Lessor is not maintaining property insurance with respect to all improvements constructed on the Building Land, Lessee shall maintain property insurance fully insuring, at 100% of replacement cost value subject to a reasonable deductible, all improvements constructed on the Building Land against loss or damage by fire and other perils currently covered by a special causes of loss commercial property insurance form. Lessee shall also cause the Premises to be insured against the perils of earthquake and flood (if applicable) either as part of the aforementioned property insurance or under a separate policy or policies. The property insurance policy shall meet the requirements set forth in this section and in the Development Agreement.

8.3 Waiver of Subrogation. Lessee shall cause its property insurance carrier(s) to release and waive all rights of subrogation against Lessor to the extent a loss is covered by property insurance in force; provided, however, that this Section 8.3 shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessee.

8.4 Minimum Scope of Insurance Coverage for Lessee.

8.4.1 Lessee's Coverages. During the Term of this Lease, Lessee shall at a minimum maintain: Commercial General Liability insurance (Insurance Services Office form number (CG00 001), covering Commercial General Liability with a limit of not less than $1,000,000 combined single limit per occurrence; $2,000,000 aggregate. In addition, Lessee shall maintain workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limits.

8.4.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in insurance coverage maintained by Lessee must be declared to and approved by Lessor. The deductible and/or self-insured retention of the policies shall not limit or apply to Lessor and shall be the sole responsibility of Lessee.

8.4.3 Other Insurance Provisions. The insurance policies required by this Project Ground Lease are also to contain or be endorsed to contain the following provisions where applicable:

(a) Liability Policies:

(1) Lessor, its officers, officials, employees and agents are to be covered as an additional insured as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

(2) Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Lessor its officers, officials, employees and agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

(3) Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(b) All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to Lessor.

(c) Acceptability of Insurers. Unless otherwise approved by Lessor:

(1) Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investors Service.

(2) If at any time any of the foregoing policies shall fail to meet the above minimum standards, Lessee shall, upon notice to that effect from Lessor, promptly obtain a new policy and shall submit the same to Lessor with certificates and endorsements for approval.

9. Eminent Domain.

9.1 Award. In the event of any taking, partial or whole, Lessor shall be entitled to the entire award judgment or settlement from the condemning authority for the value of the Building Land taken by the condemning authority.

10. Events of Default by Lessee and Lessor's Remedies.

10.1 Events of Default. The following occurrences or acts shall constitute an event of default under this Project Ground Lease:

(a) Failure to Perform. If Lessee shall (i) default in making payment when due of any rent or any other amount payable by Lessee hereunder; or (ii) default in the observance or performance of any other substantial provision of this Project Ground Lease to be observed or performed by Lessee hereunder; and, in either case, if such default shall continue for thirty (30) days, in each case after Lessor shall have given to Lessee notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (ii), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence; or

(b) Lessee's Financial Condition. If Lessee shall make a general assignment for the benefit of creditors, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail seasonably to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its properties.

10.2 Remedies Upon Lessee's Default. In the event of any default by Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, Lessor may exercise any remedy which may be available to Lessor at law or equity, including but not limited to actions for damages, and/or injunctive relief; provided, that, unless the Leasehold Mortgage and the Bonds have been paid in full and the Bond Insurer, if any, has consented, Lessor may not terminate this Project Ground Lease prior to the end of the Term.

10.3 Cumulative Rights and Remedies. The rights and remedies reserved to Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Washington statutory law in effect at the time, Lessor may pursue any and all such rights and remedies at the same time or independently.

10.4 No Waiver. No delay or omission of Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Lessee hereunder. The acceptance by Lessor of rent or any additional rent hereunder shall not be a waiver of any preceding breach or default by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent accepted,

regardless of Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent, or, except as expressly set forth herein, a waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default.

10.5 Attorneys' Fees. If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party hereof. For purposes of this provision, in any action or proceeding instituted pertaining to the Lease, a party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said party or (ii) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

11. Quiet Enjoyment.

11.1 Lessee's Occupation of the Building Land. If and so long as Lessee shall pay all rent and all other amounts payable by Lessee hereunder whenever the same shall become due and shall keep all of the covenants and conditions required by it to be kept during this Project Ground Lease and shall perform all of its other obligations hereunder, Lessor covenants and agrees that, except as may otherwise be provided in the Development Agreement, Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Building Land by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

12. Lessee to Comply with Applicable Laws and Agreements.

12.1 Compliance with Laws. Lessee shall not use the Building Land or permit anything to be done in or about the Building Land which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Except as set forth in Section 6.1 above, Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Building Land.

12.2 Compliance with Agreements. Lessee shall comply with all insurance policies and applicable agreements to which Lessee is a party or by which it is bound, now or hereafter in effect, and all agreements of which Lessee has notice and which are now in effect and applicable to the Building Land.

13. Waiver Limitations.

13.1 Waiver Limitations. The waiver by either party of any term, covenant or condition herein contained on the part of the other party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Project Ground Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

14. Notices.

14.1 Addresses. All notices, requests, demands, instructions or other documents to be given hereunder to any party shall be in writing and shall either be personally delivered to the party at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by mail, sent by registered or certified mail, return receipt requested, as follows:

If to Lessor:
City of Shoreline
City Clerk
17544 Midvale Ave. N.
Shoreline, WA 98133-4921
Facsimile: (206) 546-0780

If to Lessee:
Opus Northwest, L.L.C.
13920 SE Eastgate Way, Suite 250
Bellevue, WA 98005
Attn: Thomas B. Parsons
Phone (425) 467-2700
Fax (425) 467-2701

Copy to:
Opus Northwest, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Brad J. Osmundson, General Counsel
Phone (952) 656-4606
Fax (952) 656-4814

Notices so mailed shall be deemed to have been given forty-eight (48) hours after the deposit of the same in any United States Mail post office box in the state to which the notice is addressed or seventy-two (72) hours after deposit in any such post office box other than the state to which the notice is addressed, postage prepaid, addressed as set forth above. For the purpose of this Section, addresses for notice may be changed by giving written notice of such change in the manner herein provided for giving notice.

15. Assignment and Subleasing.

15.1 Subleasing. Lessor and Lessee intend that Lessee shall enter into the Two Project Leases with Lessor. Any other proposed subleases of the Building Land shall be subject to the review and approval of Lessor.

15.2 Assignment. Except for the assignment to the Leasehold Mortgagee pursuant to Section 7.2 above and to the Trustee to secure the Bonds for the Project, Lessee shall not assign, mortgage, or encumber this Project Ground Lease or delegate the duties of Lessee under this Project Ground Lease without the prior written consent of Lessor. A consent to one assignment shall not be deemed to be a consent by Lessor to any subsequent assignment by another person. This Project Ground Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law, without prior written consent of Lessor.

16. Miscellaneous.

16.1 Time of Essence. Time is of the essence in regard to performance of the covenants and agreements stated herein.

16.2 No Joint Venture or Agency. Nothing contained in this Project Ground Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either party the agent or representative of the other, and nothing in this Project Ground Lease shall be construed to create any such agency relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.

16.3 Amendments. No change in or addition to or waiver or termination of this Project Ground Lease any part hereof, shall be valid unless made in writing and signed by or on behalf of the party charged therewith. Lessor and Lessee agree to negotiate in good faith any amendments to this Project Ground Lease that may be requested or required in connection with the issuance of the Bonds to finance the Project.

16.4 Governing Law. This Project Ground Lease shall be construed in accordance with and governed by the laws of the State of Washington.

16.5 Headings. The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Project Ground Lease.

16.6 Successors and Assigns. Subject to the provisions hereof restricting the sublease or assignment by Lessee, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

16.7 No Merger. In no event shall the leasehold interest of Lessee hereunder merge with any estate of Lessor in or to the Building Land or the leasehold interest of Lessor under the Two Project Leases, provided, however,in the event that Lessor acquires the leasehold interest of Lessee, such leasehold interest shall merge with Lessor's fee interest in the Building Land or the leasehold interest of Lessor under the Two Project Leases, and this Project Ground Lease and the Two Project Leases shall terminate..

16.8 Counterparts; Recording of Memorandum. This Project Ground Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Lessor or Lessee shall have the right to record a memorandum of this Project Ground Lease in a form comparable to that provided in the Two Project Leases and the parties shall cooperate in execution of such memorandum.

16.9 Schedule of Exhibits. This Project Ground Lease includes the following exhibits attached hereto and incorporated herein by this reference.

EXHIBIT A Building Land Legal Description

IN WITNESS WHEREOF, Lessor and Lessee have executed this Project Ground Lease as of the date set forth in the first paragraph of this Project Ground Lease to evidence their agreement to the terms of this Project Ground Lease.

DATED the date first above written.

LESSOR:

CITY OF SHORELINE,
a municipal corporation of the
State of Washington

APPROVED AS TO FORM:

By_____
Ian Sievers, City Attorney

By_____
Robert Olander, City Manager
Date: _____

LESSEE:

OPUS NORTHWEST, L.L.C.,
a Delaware limited liability company

By_____
Name:
Title:
Date: _____

STATE OF WASHINGTON }
ss.
COUNTY OF KING }

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 THE CITY OF SHORELINE, a political subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2005.

_____
Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON }
ss.
COUNTY OF KING }

I certify that I know or have satisfactory evidence that Thomas B. Parsons 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 Senior Vice President of **OPUS NORTHWEST, L.L.C.,** a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2005.

_____

Printed Name _____

NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A

BUILDING LAND LEGAL DESCRIPTION

Tax Parcels 031810046, 031810036, 031810055 and a portion of 031810040 consisting of approximately 2.93 acres described as :

AUTOMOBILE ADD UNREC BAAP ON NLY MGN OF N 175TH ST-50 FT NLY OF C/L OF SD ST - SD PT BEING N 89-06-00 W 377.00 FT FR W LN OF PLAT OF RONALD TERRACE TH N 00-53-00 E 100 FT TO TPOB TH N 89-06-00 W 112.35 FT TO W LN BLK 9 SD UNREC PLAT TH N 12-04-00 W 186.52 FT TO N LN S 1/2 OF S 1/2 OF SW 1/4 OF NE 1/4 STR 07-26-04 TH S 89-06-00 E 214.20 FT TH S 00-53-00 W 126.78 FT TH N 89-06-00 W 60 FT TH S 00-53-00 W 55 FT TO TPOB

AUTOMOBILE ADD UNREC E 37.18 FT OF 3 ALL 4 & W 74.82 FT OF 7 & POR OF 8-9 NLY & ELY OF LN BEG ON N OF 8 DIST 214.20 FT E OF NW COR TH S 00-53-00 W 126.78 FT TH E TO W LN OF 7 TGW E 77.18 FT OF S 88.15 FT OF 9

AUTOMOBILE ADD UNREC ALL 1-2 & 3 LESS E 37.18 FT & S 33.15 FT OF TR 9 LESS E 77.18 FT LESS CO RDS

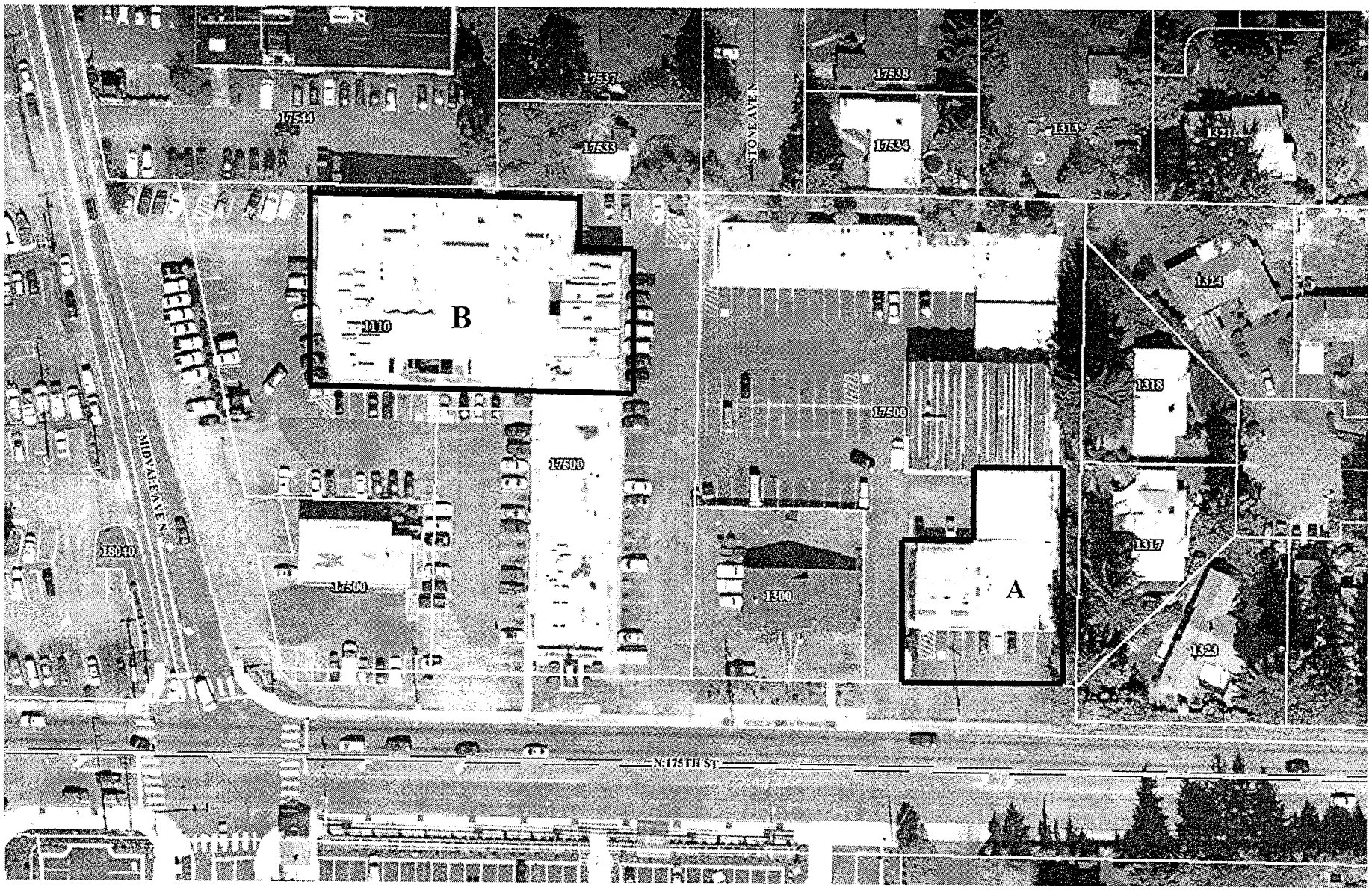
AUTOMOBILE ADD UNREC E 225 FT LESS S 120 FT OF W 100 FT LESS CO RD

INCLUDING a vacated portion of Midvale Ave North consisting of 6,423 square feet lying Easterly of the following described line:

> **Beginning at a point on the South line of the North half of said subdivision, said point being 39.49 feet Easterly of the Easterly Margin of Old Seattle-Everett Interurban Railway Right of way as measured perpendicular to said Easterly Margin;**
>
> **Thence South 12°04'15" East, parallel with the tangent portion of said Easterly Margin, for a distance of 289.11 feet to North Margin of North 175th Street and the end of said line description.**

LESS the area of Tax Parcel 031810040 depicted as "Excluded from Project Land" in Exhibit A-1 attached hereto.

Exhibit A-1



A – Exclude from Project Land

B – Existing Building (temporary offices)

Exhibit B

Project	Civic Center/City Hall
Org Key	2819148
Job Ledger	GN107900

Expenditures By Project Phase	Prior Year Expenditures	2008 Amended Budget	Projected 2008	2009 Budget	2010 Budget	2011 Budget	2012 Budget	2013 Budget	Total Project Cost
Project Administration	195,903	173,674	173,674	-	-	-	-	-	369,577
Real Estate Acquisition	5,772,342		-	-	-	-	-	-	5,772,342
Construction	494,590	1,701,977	1,701,977	28,403,433	-	-	-	-	30,600,000
Total Project	$ 6,462,835	$ 1,875,651	$ 1,875,651	$ 28,403,433	$ -	$ -	$ -	$ -	$ 36,741,919

Project Revenue Sources	Prior Year Revenue	2008 Amended Budget	Projected 2008	2009 Budget	2010 Budget	2011 Budget	2012 Budget	2013 Budget	Total Project Revenue
King County Green Building Grant			-	20,000	-	-	-	-	20,000
Surface Water Utility Contribution			-	300,000	-	-	-	-	300,000
General Fund Cont. - Budget Savings 2006-2008	2,882,961	1,261,649	1,261,649	-	-	-	-	-	4,144,610
General Fund Cont - Prior to 12/31/2005	7,008,711	-	-	-	-	-	-	-	7,008,711
General Fund Cont - Annex Lease Savings	288,000	300,000	300,000	150,000	-	-	-	-	738,000
General Fund Cont. - Annex Lease Revenue	50,410	24,590	24,590	-	-	-	-	-	75,000
Real Estate Excise Tax	1,273,708	400,000	400,000	1,661,000	-	-	-	-	3,334,708
Investment Interest		480,000	480,000	-	-	-	-	-	480,000
Municipal Financing		-	-	20,640,890	-	-	-	-	20,640,890
		-	-	-	-	-	-	-	-
		-	-	-	-	-	-	-	-
		-	-	-	-	-	-	-	-
					-	-	-	-	-
Total Revenue	11,503,790	$ 2,466,239	$ 2,466,239	$ 22,771,890	$ -	$ -	$ -	$ -	$ 36,741,919

Project Time Line:		2008	2009	2010	2011	2012	2013
Project Administration		Q1					
Real Estate Acquisition							
Construction		Q2 Q3 Q4	Q1 Q2 Q3 Q4				

EXHIBIT B

ORIGINAL

RESOLUTION NO. 266

A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, AUTHORIZING A GROUND LEASE, BUILDING LEASE AND DEVELOPMENT AGREEMENT WITH OPUS NORTHWEST LLC FOR CONSTRUCTION OF THE SHORELINE CIVIC CENTER AT N 175TH AND MIDVALE AVE N. AND AUTHORIZING FINANCING EXPENSES FOR DEVELOPMENT COSTS

WHEREAS, the City entered into a Predevelopment Agreement with OPUS Northwest, LLC for preliminary design of the City's Civic Center; and

WHEREAS, a series of community workshops, and meetings with staff and the City Council has brought the project to a 30% design concept; and

WHEREAS, City staff has negotiated a maximum guaranteed price and delivery date with OPUS Northwest as part of a Development Agreement to complete final design and construct the Civic Center; and

WHEREAS, the Development Agreement anticipates a ground lease and lease back of the completed project subject to an option for the City to purchase the civic center facilities at any time during the lease; now therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON AS FOLLOWS:

Section 1. Ground Lease Authorized. The City Manager is authorized to execute the Ground Lease with Opus Northwest, LLC attached hereto as Exhibit A, for a portion of City property at 1110 N. 175th Shoreline, WA for the purpose of constructing the Shoreline Civic Center.

Section 2. Development Agreement Authorized. The City Manager is authorized to execute a development agreement and building lease materially the same as the Shoreline Civic Center Development Agreement and attached Building Lease filed under Clerk's Receiving No. 4617, with Opus Northwest, LLC for the construction and lease of the Shoreline Civic Center to the City of Shoreline for its governmental offices and operations. Building Lease payments are authorized in an amount sufficient to amortize the actual Lease Transfer Amount of the Development Agreement and finance expenses authorized in Section 3 together with interest on these amounts not to exceed 5%.

Section 3. Financing Authorized. The City Manager is authorized to enter into contracts for consultant, underwriting, legal and other fees necessary to acquire financing for the total development costs of the Shoreline Civic Center up to an aggregate total of $2.55 million. Actual financing costs, together with development costs, shall be amortized through lease payment under the Building Lease.

ORIGINAL

ADOPTED BY THE CITY COUNCIL ON DECEMBER 17, 2007.

Robert L. Ransom
Mayor Robert L. Ransom

ATTEST:

Scott Passey
City Clerk

Council Meeting Date: December 17, 2007 **Agenda Item: 8(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Resolution No. 266 authorizing a City Hall/Civic Center Development Agreement with OPUS Northwest LLC, and Associated Leases
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Robert L. Olander, City Manager Jesus Sanchez, Civic Center Project Manager

In July 2007, the Council authorized the City Manager to enter into a Predevelopment Agreement with OPUS Northwest, L.L.C. (Developer) for the design of the Civic Center Project.

The Predevelopment Agreement authorized Opus to proceed with certain predevelopment activities required for the Civic Center Project to meet the project development schedule. Predevelopment activities for the Civic Center included four community public workshops on March 20, July 30, August 21, and October 25 inviting public comment and participation in each phase of the building design framework to include functional layout; massing and composition; materials; features; sustainability; architectural strategies; full schematics and design concepts with landscape renderings; and design options associated with alternate costs. Opus has also conducted meetings with city staff and made presentations before Council to review various site, building design, and sustainability options.

On November 5, 2007, staff presented to Council three design options for the Civic Center Building with associated cost projections. Design Option I was considered as the base option with a footprint of 77,000 sq. ft. Design Option II was similar in design, but was designed with a higher level of architectural detail and a footprint of 70,000 sq. ft. Design Option III had yet a higher level of design detail, more glass features, and a footprint of 77, 000 sq. ft. Design Option III was highly supported by the community in the feedback we received at the community public forums. Council was generally agreeable to proceed with Design Option III, requesting that a final design and associated costs be brought back to Council for final review and approval.

30% design development of the building meeting the space requirements and design parameters of the City, has now been completed. Design documents have been delivered to the City (architectural drawings, structural drawings, mechanical-HVAC drawings, plumbing drawings, fire protection drawings, fire alarm drawings, electrical drawings, landscape & irrigation/hardscape drawings, civic drawings and other drawings as required). A master schedule has been developed through construction identifying each milestone on the schedule.

The Predevelopment Agreement has now been completed and through a collaborative effort, the City of Shoreline and the Developer have negotiated a lease/leaseback development agreement (Development Agreement) for the Civic Center Project which includes a "guaranteed maximum price" and a detailed budget. The Development Agreement for the new Shoreline Civic Center is now being presented to Council for approval. Staff has analyzed and assessed the value and cost benefits of Certificates of Participation (COP) or 63/20 financing options for tax exempt financing. Each method was evaluated for minimizing risk to the City, inclusion of inherent cost controls, and minimizing financing costs. The proposed Development Agreement proposes a Certificates of Participation financing.

FINANCIAL IMPACT:

Staff is recommending that Council authorize a total project budget of $30.55 million for the City Hall building. This would include all costs related to the building including construction, developer costs, construction financing, contingencies, and furnishings. The current CIP had a cost of $19.3 million. The change in project cost is primarily related to the desire to include a parking garage instead of on-grade parking, the increased size in building, and increased civic design elements. To fund the total project staff has currently identified $9.5 million in cash and anticipates issuing up to $21.5 million in debt (to net $21.05 for the project). The debt will be repaid over a period of 30 years. Staff is continuing to look for opportunities to allocate more cash towards the project to reduce the amount of debt that will need to be issued, but at this time our financial assumptions assume the previous funding scenario.

The annual occupational costs (debt service, operations & maintenance), net of anticipated lease revenues, are projected to average $1.630 million for years 2010 through 2013, $375,000 greater than was previously estimated. In large part, this is attributable to changes in the project scope initiated, authorized, or approved by the City Council, such as additional land acquisition, a parking garage, additional building space, added landscaping and environmental features. Staff recommends that Council increase the authorized annual allocation of Real Estate Excise Tax towards the debt service of City Hall from $400,000 annually to $775,000. The six year CIP projects annual REET at approximately $900,000 annually. The remaining $854,000 in occupational costs will be funded with the monies currently allocated for lease payments and facility maintenance within the General Fund.

If additional cash is identified to allocate towards the project or if the actual project costs are less than the projected $30.55 million then the level of debt issued will be reduced, thus reducing the annual debt service payments and the amount of REET allocated towards the repayment.

The Development Agreement includes a "Lease Transfer Amount". The Lease Transfer Amount differs slightly from the total project budget because it does not include financing related costs, owner's contingency, or the furnishings and fixtures allowance. These costs are estimated at $2.55 million. Based on a project budget of $30.55 million and deducting the estimated financing related costs of $2.55 million we arrive at a Lease Transfer Amount of $28 million. The financing costs are estimated at this time based on assumed construction draw down schedules and estimated construction loan

interest rates. The development agreement does not require that the developer assume risk related to possible changes in the financing costs as changes in the interest rate market, which could go up or down, are beyond the control of the developer. This is the reason why these costs are not included in the Lease Transfer within the development agreement.

RECOMMENDATION

Staff recommends that Council pass Resolution No. 266 authorizing the City Manager to enter into a Ground Lease, Building Lease and Development Agreement with Opus Northwest, L.L.C. for the construction of the new Shoreline Civic Center Building with a "lease transfer amount" of $28 million; and authorizing the City Manager to incur other expenses up to $2.55 million to finance this development cost and complete the project.

Approved By: City Manager ____ City Attorney ___

INTRODUCTION

The Predevelopment Agreement between the City of Shoreline and OPUS Northwest, L.L.C. has now been satisfied and through a collaborative effort, the City of Shoreline and the Developer have now agreed to a lease/leaseback development agreement for the Civic Center Project at a "guaranteed maximum price" or Lease Transfer Payment. This negotiation and 30% design are the final tasks under the Predevelopment Agreement.

The Lease/Leaseback Development Agreement at the "Guaranteed Maximum Price" for the construction of the new Shoreline Civic Center Building is now being presented to Council for approval. We are also seeking Council authorization for the City Manager to pursue Certificates of Participation as the financing approach that will give the City optimal value.

BACKGROUND

Council approval for the Civic Center Project began with the acquisition of the Highland Plaza property and the Kimm property in 2006. In January 2007, authorization was given to move forward with a design-build, build-to-suite/lease-to-own delivery method to develop the Cvic Center and OPUS Northwest, L.L.C. was selected through the RFQ and RFP processes as the developer of the project in June 2007. A Predevelopment Agreement was executed with OPUS in July 2007.

In September 2007, the Council adopted Civic Center/City Hall Guiding Principles to provide direction for the Civic Center Project design, with a strong emphasis on securing the corner of N. 175th and Midvale Ave. North as the prominent location of the civic center with a city hall, council chambers and a two-story structure parking garage. Total floor area was to be planned to accommodate future growth. Option III was authorization for 30% design in November 2007. These milestones all represent the significant support and direction Council has provided throughout the Civic Center Project process.

The proposed final Development Agreement is an important milestone of the Project and culminates years of effort.

DISCUSSION

DEVELOPMENT AGREEMENT: State law allows the City to have a building erected on land owned by the City through the lease of the land with a leaseback of the building for the same term (RCW ch. 35.42). This leaseback must include terms that do not allow the cost of construction of the building to become an obligation of the city, provide the city with the right to occupy upon payment of rent not exceeding prevailing rates, the right to lease unneeded portions to tenants approved by the city and the right to own the building upon termination of the lease.

The proposed Development Agreement with OPUS Northwest, L.L.C. is a 45 page document with nine attachments. The agreement is available in the Council Office and has been assigned Clerk's Receiving # 4617 for reference. The key terms are summarized here.

- Ground Lease. The proposed development approach under RCW ch 35.42 calls for the City to execute a thirty- year Ground Lease of most of the property acquired for the civic center for the sole purpose of demolishing existing structures and designing and constructing the new civic center according to the 30% design plans. Some land and offices in the southeast corner of the City property that will not be used for the civic center are excluded from the ground lease. The Ground Lease is attached to Resolution No. 266 (Attachment A, Exhibit A).

- Building Lease. The Development Agreement calls for a lease back of the completed center to the City for the same 30-year term as the Ground Lease. This Building Lease includes an exclusive irrevocable option to purchase the civic center (and remaining term of the Ground Lease) for the total construction cost less a credit for principal components of lease payments made during the lease. The lease is terminable by prepayment of the principal component of the remaining lease payments. The City assumes all responsibility for operation and maintenance except for rights under the two-year construction warranties. Upon completion of the project Opus will transfer its rights as lessor to a trustee for payment of a guaranteed maximum lease transfer amount negotiated at $28 million. Opus warrants completion of the civic center by June 30, 2009. The form of the Building Lease is attached to the Development Agreement.

- Development Agreement. The Development Agreement requires OPUS to guarantee delivery of the civic center project for the lease transfer amount. This amount includes all design services, permits, project management, developer fees, developer overhead, construction costs, a project contingency and a tenant improvement allowance not to exceed $28 million. Project costs exceeding the transfer amount shall be paid by Opus. The Development Agreement provides an incentive to Opus for cost savings equal to one third of the final contingency balance not to exceed $200,000.

Financial Impact

Staff is recommending that Council authorize a total project cost of $30.55 million for the City Hall building. This cost includes estimated financing costs, owner's contingency, and furnishings and fixtures of $2.55 million, and therefore the gross maximum price (GMP) staff is recommending that Council authorize within the development agreement be $28 million. The majority of the $2.55 million represents the construction and other financing costs. At this level of funding the project includes a building with 67,000 square feet, parking garage, and some enhanced civic design elements for the building and landscaping. Staff will continue to work with OPUS to finalize the design of the project, which may result in some modifications, but the cost of the building could not exceed the GMP but, could ultimately be lower. Based on these assumptions staff is assuming that the City would lease approximately 4,000 square feet of space.

The annual City Hall occupational costs (debt service, operations & maintenance), net of anticipated lease revenues, are projected to average $1.630 million for years 2010 through 2013, approximately $375,000 greater than was previously estimated. In large part, this is attributable to changes in the project scope initiated, authorized, or approved by the City Council, such as additional land acquisition, a parking garage, additional building space added landscaping and environmental features.

The Council has the following options available to address the difference in annual costs:

- Reduce the overall project budget and in turn the "Gross Maximum Price": The City Council could choose to reduce the GMP to a lower number than $28 million. This could require elimination of the parking garage, a smaller building, or reduced civic design, all of which the Council has stated that they desire. Staff is continuing to work with OPUS to refine the design and evaluate the cost of the building. There is a possibility that the final cost will be less than the projected $28 million, but staff does not anticipate that it will be significantly lower without the elimination of one of these elements.
- Increase the amount of cash allocated towards the project to reduce the long-term debt service payments: Staff has identified $9.5 million in cash to allocate towards the City Hall building. At this time Staff is continuing to look for opportunities to increase the cash allocation, but at this time has not identified specific sources. Once we close the books for 2007 we will see if there are additional savings from the current year budget that could be allocated. Also as certain contracts are finalized for 2008 we may have an opportunity to have one-time savings that can be allocated towards City Hall.
- Reduce the amount of the general fund transfer made to the Roads Capital Fund annually. Currently this transfer is made as part of the Council's policy on gambling tax collections that are in excess to a 7% tax rate. In 2008 the amount budgeted to be transferred is $637,500. These funds are currently used to help provide funding for the City's pavement management program. In 2007 the State Legislature approved an optional funding source, a $20 per vehicle license fee that can be adopted to use for transportation/road improvements. If this revenue source were implemented staff projects that it would generate approximately

$600,000 annually that could be used to back-fill a reduction to the general fund transfer.

- Council could increase the annual amount of Real Estate Excise Tax (REET) allocated towards the annual debt service payments for City Hall. Council has authorized the allocation of $400,000 annually for this purpose starting in 2009. The adopted 2008-2013 CIP includes this allocation. Annual REET collections are estimated at approximately $900,000, therefore, there is still $500,000 that is programmed for future park and facility projects. Council could authorize an increase in the annual amount allocated for City Hall debt service to cover the additional $375,000 in projected annual cost. This option does not affect transportation/road related projects.

Staff recommends that the Council authorize an increase in the allocation of REET to $775,000 in order to meet the anticipated financing needs to complete the City Hall project. As staff finalizes the design and cost of the project the actual annual occupational costs (debt service, operations & maintenance) will be determined. If the project costs are lower than $30.55 million, then the annual occupational costs are anticipated to be lower and the amount of additional REET may be less than is currently projected.

RECOMMENDATION

Staff recommends that Council pass Resolution No. 266 authorizing the City Manager to enter into a Ground Lease, Building Lease and Development Agreement with Opus Northwest, L.L.C. for the construction of the new Shoreline Civic Center Building with a "lease transfer amount" of $28 million; and authorizing the City Manager to incur other expenses up to $2.55 million to finance this development cost and complete the project.

ATTACHMENTS

Attachment A – Proposed Resolution 266

Exhibit A- Ground Lease

Exhibit B- Development Agreement