



# Meeting Agenda

## City Council

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

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**Tuesday, May 3, 2016**

**7:00 PM**

**Council Chambers**

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**1. ROLL CALL**

**1.A ANNOUNCEMENTS**

**1.B APPROVAL OF AGENDA**

**2. SPECIAL RECOGNITION**

**2.A** [16-0586](#) Special Recognition - City Public Service Employee Recognition

**3. PUBLIC COMMUNICATION**

*(Estimated Time: 0-30 Minutes) (Sign-up Sheets are provided in the Foyer.)*

*During this portion of the meeting, citizens may address the City Council regarding items related to City business, including items on the Agenda. In order for the City Council to maintain impartiality and the appearance of fairness in upcoming matters and to comply with Public Disclosure Law for political campaigns, speakers will not be permitted to make public comments before the Council in these three areas: (1) on agenda items for which the City Council either held a Public Hearing in the last 45 days, or will hold a Public Hearing within 45 days, or (2) where the public testimony may implicate a matter on which the City Council will be required to act in a quasi-judicial capacity, or (3) where the speaker promotes or opposes a candidate for public office or a ballot measure.*

*Individual comments are limited to three (3) minutes or less. In order to hear as many people as possible during the 30-minutes set aside for Public Communication, the City Council will refrain from commenting on individual remarks until all public comment has been taken. The City Council will allow for additional public comment to be taken at the end of the meeting for those who signed up at the beginning of the meeting and did not get an opportunity to speak during the allotted 30-minutes.*

**COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)**

**4. CONSENT CALENDAR**

*(Items of a Routine Nature)*

**4.A** [16-0587](#) Approval of April 26, 2016 Study Session Meeting Minutes

**Attachments:** [Minutes](#)

**4.B** [16-0588](#) Approval of April 26, 2016 City Council Meeting Minutes

**Attachments:** [Minutes](#)

**4.C** [16-0494](#) Approval of the Construction Contract for the Maintenance Center and

## Waste ReSources Building Roof Repairs

**Attachments:** [Construction Contract](#)

[Vicinity Map](#)

- 4.D [16-0573](#) Approval of a Property Acquisition from Marie Havens Cody near the Allison Springs Wellfield

**Attachments:** [Purchase & Sale Agreement](#)

[Vicinity Map 1](#)

[Vicinity Map 2](#)

**4. SECOND READINGS - None**

**4. FIRST READINGS - None**

**5. PUBLIC HEARING - None**

**6. OTHER BUSINESS**

- 6.A [16-0572](#) Approval of Ordinance Authorizing up to \$10,000,000 of General Obligation Bonds for Park Acquisition and Authorizing the Issuance of Bond Anticipation Notes (BAN) Pending the Issuance of the Bonds

**Attachments:** [Ordinance](#)

[Cashmere Valley Bank BAN Purchase Offer](#)

- 6.B [16-0582](#) Olympia Police Department Update

**7. CONTINUED PUBLIC COMMUNICATION**

*(If needed for those who signed up earlier and did not get an opportunity to speak during the allotted 30 minutes)*

**8. REPORTS AND REFERRALS**

**8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS**

**8.B CITY MANAGER'S REPORT AND REFERRALS**

**9. ADJOURNMENT**

*The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources. If you require accommodation for your attendance at the City Council meeting, please contact the Council's Executive Assistant at 360.753.8244 at least 48 hours in advance of the meeting. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1.800.833.6384.*



## City Council

### Special Recognition - City Public Service Employee Recognition

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 2.A  
**File Number:** 16-0586

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**Type:** recognition **Version:** 1 **Status:** Recognition

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**Title**

Special Recognition - City Public Service Employee Recognition

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Recognize the employees of the City of Olympia for their services during national Public Service Recognition Week.

**Report**

**Issue:**

Whether to recognize City employees during Public Service Recognition Week.

**Staff Contact:**

Steve Hall, City Manager, 360.753.8447

**Presenter(s):**

Steve Hall, City Manager

**Background and Analysis:**

Since 1985, the first week of May has been celebrated as Public Service Recognition Week. The employees of the City of Olympia work each day to deliver essential services to residents and to take on the most important and formidable challenges facing our City. They do these, and much more, with dedication, ingenuity, and a strong sense of commitment to the well-being of the City. The City of Olympia is also home to the largest body of state government employees in Washington, and their service to the state and contributions to City enrich the livability and vitality of both.

During Public Service Recognition Week, we acknowledge the men and women who answer the call to public service and who work together to make a difference in the City of Olympia.

**Attachments:**

None





City Hall  
601 4th Avenue E.  
Olympia, WA 98501  
360-753-8244

## City Council

### Approval of April 26, 2016 Study Session Meeting Minutes

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 4.A  
**File Number:** 16-0587

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**Type:** minutes   **Version:** 1   **Status:** Consent Calendar

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**Title**

Approval of April 26, 2016 Study Session Meeting Minutes



# Meeting Minutes - Draft

## City Council

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

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**Tuesday, April 26, 2016**

**5:30 PM**

**Council Chambers**

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### Study Session

#### 1. ROLL CALL

**Present:** 5 - Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman and Councilmember Julie Hankins

**Excused:** 2 - Mayor Cheryl Selby and Councilmember Jeannine Roe

#### 2. BUSINESS ITEM

##### 2.A [16-0511](#) Briefing on the Downtown Strategy

Senior Planner, Amy Buckler reviewed the status of the Downtown Strategy process. She noted there have been two stakeholder meetings with approximately 100 citizens at each and over 3,000 responses to the online survey. Ms. Buckler noted a framework has developed using the feedback received, which will help guide future steps. She shared the overall scope and vision of the project moving forward.

John Owen of MAKERS Architecture and Urban Design, consultant for the Downtown Strategy, discussed elements of the framework. These elements include Character Areas, Major Investments, Chart of Task and Goals, and Parking and Housing.

Councilmembers asked clarifying questions.

Ms. Buckler shared upcoming activities around the Downtown Strategy:

April 28 - Business and Development Forum. Hosted in conjunction with the Economic Development Council, about 40 members of the business and development community have been invited to participate in a roundtable discussion which will help inform implementation steps.

May - Release of the Downtown Market Analysis and feasibility analysis of various development types begins.

May 10 - City Council Briefing.

May 23 - Urban Design Discussion. Public meeting to present and discuss building, site and street design concepts.

June 6 - Workshop #3. Public meeting to present 3D viewshed analysis and other elements of the strategy.

Summer 2016 - Public outreach will slow down in order to provide staff and consultants time to concentrate on analysis and preparation of a draft strategy.

Fall 2016 - Public Open House to present the draft strategy; review and recommendation by Planning Commission, leading to final adoption by City Council.

**The study session was completed.**

### **3. ADJOURNMENT**

Mayor Pro Tem Jones adjourned the meeting at 6:30 p.m.



City Hall  
601 4th Avenue E.  
Olympia, WA 98501  
360-753-8244

## City Council

### Approval of April 26, 2016 City Council Meeting Minutes

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 4.B  
**File Number:** 16-0588

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**Type:** minutes   **Version:** 1   **Status:** Consent Calendar

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**Title**

Approval of April 26, 2016 City Council Meeting Minutes



# Meeting Minutes - Draft

## City Council

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

---

**Tuesday, April 26, 2016**

**7:00 PM**

**Council Chambers**

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### 1. ROLL CALL

**Present:** 5 - Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman and Councilmember Julie Hankins

**Excused:** 2 - Mayor Cheryl Selby and Councilmember Jeannine Roe

### 1.A ANNOUNCEMENTS

Mayor Pro Tem Jones announced the City Council met in a Study Session earlier in the evening.

### 1.B APPROVAL OF AGENDA

The agenda was approved.

### 2. SPECIAL RECOGNITION

#### 2.A [16-0410](#) Special Recognition - *Puget Sound Starts Here* Month

Water Resources Education and Outreach Coordinator, Susan McCleary discussed Puget Sound Starts Here month occurring May 1 - 31, 2016. Councilmember Hankins read the Puget Sound Starts Here proclamation.

**The recognition was received.**

### 3. PUBLIC COMMUNICATION

The following people spoke: Sally Henry, Dana Pethia, Karma Reynoldson, Tiffany Web, Erik B. Callison, Qui Min Ji, Jim Reeves and Christiana Figueroa.

#### **COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)**

### 4. CONSENT CALENDAR

#### 4.A [16-0559](#) Approval of April 19, 2016 Study Session Meeting Minutes

**The minutes were adopted.**

#### 4.B [16-0560](#) Approval of April 19, 2016 City Council Meeting Minutes

**The minutes were adopted.**

- 4.C [16-0553](#) Approval of the Establishment of an Economic Development Capital Facilities Plan (CFP) Project Account

**The decision was adopted.**

- 4.D [16-0416](#) Approval of Interlocal Agreement Between Thurston County and the Cities of Lacey, Olympia and Tumwater for Joint Storm and Surface Water Monitoring

**The contract was adopted.**

- 4.E [16-0495](#) Approval of Interlocal Agreement Authorizing the Creation of a Firefighter Special Operations and Rescue Team

**The contract was adopted.**

- 4.F [16-0551](#) Approval of Resolution to Authorize Exercise of Options to Purchase Real Estate Owned by D.R. Horton and Wonderland Holdings LLC and Purchase the Properties

**The resolution was adopted.**

- 4.I [16-0331](#) Authorization for Park Grant Applications

**The resolution was adopted.****4. SECOND READINGS**

- 4.G [16-0481](#) Approval of Ordinance Extending for an Additional Six Months the Moratorium on Medical Marijuana Collective Gardens and Other Cannabis-Related Uses not Licensed by Washington State

**The ordinance was adopted on second reading.**

- 4.H [16-0493](#) Approval of Ordinance Amending Olympia Historic Inventory Regulations

**The ordinance was adopted on second reading.****Approval of the Consent Agenda**

**Councilmember Hankins moved, seconded by Councilmember Bateman, to adopt the Consent Calendar. The motion carried by the following vote:**

**Aye:** 5 - Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman and Councilmember Hankins

**Excused:** 2 - Mayor Selby and Councilmember Roe

**4. FIRST READINGS - None****5. PUBLIC HEARING - None****6. OTHER BUSINESS****6.A [16-0549](#) Approval of Percival Plinth 2016 Sculpture Recommendations**

Arts and Events Program Manager, Stephanie Johnson and Arts in Public Places Committee Chair, Diana Fairbanks presented selections for the 2016-2017 Percival Plinth Project.

**The decision was approved.**

**7. CONTINUED PUBLIC COMMUNICATION****8. REPORTS AND REFERRALS****8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS**

Councilmembers reported on meetings and events attended.

**8.B CITY MANAGER'S REPORT AND REFERRALS**

City Manager Steve Hall reported the 52nd Arts Walk last week was a success and thanked Stephanie Johnson, the Arts Commission, volunteers and artists for their work.

**9. ADJOURNMENT**

Mayor Pro Tem Jones adjourned the meeting at 7:54 p.m.



## City Council

### Approval of the Construction Contract for the Maintenance Center and Waste ReSources Building Roof Repairs

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 4.C  
**File Number:** 16-0494

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**Type:** contract   **Version:** 1   **Status:** Consent Calendar

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#### **Title**

Approval of the Construction Contract for the Maintenance Center and Waste ReSources Building Roof Repairs

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee.

##### **City Manager Recommendation:**

Move to award the construction contract to Garland/DBS, Incorporated, under the U.S. Communities Cooperative, in the amount of \$402,510, and authorize the City Manager to execute all documents necessary to proceed.

#### **Report**

##### **Issue:**

Whether to approve staff's recommendation to award the construction contract for the Maintenance Center and Waste Resources Building Roof Repairs to Garland/DBS, Incorporated.

##### **Staff Contact:**

Rick Dougherty, Project Manager, Public Works Engineering, 360.753.8485

##### **Presenter(s):**

None - Consent Calendar Item.

#### **Background and Analysis:**

The Maintenance Center roof was installed in 1998 with a 10-year warranty. The roof has lasted for 18 years. The Waste ReSources roof was originally installed in 1982. The roofs have lasted this long due to continued efforts of the city's Facilities staff.

In 2013, the City conducted a 'Building Condition Assessment'. The report looked at the Maintenance Center and the Waste Resources roofs. Our consultant identified the following:

- The roofing material shows extreme fatigue; cracking and curling at the seams.

- The flashing shows signs of wear and tear.
- Both roofs need replacement as soon as possible.

If City Council approves the award of the contract, construction could begin as early as mid-May and be completed by the end of June, 2016.

**Neighborhood/Community Interests (if known):**

- New roofs will keep the people and equipment housed in these building dry when it rains.

**Options:**

1. Award the construction contract to Garland/DBS, Incorporated, under the U.S. Communities Cooperative in the amount of \$402,510, and authorize the City Manager to execute all documents necessary to proceed.
  - Project can proceed as planned
  - Potential for roof failures and leaks is avoided
  - City realizes cost savings by utilizing the U.S. Communities Cooperative
2. Do not award the construction contract and direct staff to follow the standard design/bid/build process.
  - Completion of roof repairs delayed
  - Possible damage to City equipment due to leaks
  - Increased project cost in order to follow a design/bid/build process

**Financial Impact:**

The roof repairs are funded through the Building Repair and Replacement Fund (029). There are sufficient funds to complete the project.

Project Costs:

Construction contract	\$402,510
10% award contingency	\$ 40,251
City labor	\$ 60,000
Permits	\$ 500
<b>TOTAL PROJECT COST:</b>	<b>\$503,261</b>
<b>Total Available Budget:</b>	<b>\$600,000</b>

**Attachments:**

1. Construction Contract
2. Vicinity Map

**CONTRACT**  
**Project #25-WA-160263**

**BETWEEN CITY OF OLYMPIA, AND GARLAND/DBS, INC. FOR THE MAINTENANCE CENTER BUILDING & WASTE RESOURCES BUILDING ROOF RESTORATION PROJECTS.**

- 1.) This CONTRACT is made at **City of Olympia**, as of the 29<sup>th</sup> day of March 2016 (“Effective Date”), by and between **City of Olympia** located at **601 4<sup>th</sup> Avenue East, Olympia, WA 98501** (hereinafter designated the “CUSTOMER”), and **Garland/DBS, Inc.**, located at **3800 East 91 Street, Cleveland, Ohio 44105-2197, (216) 641-7500** (hereinafter designated the “CONTRACTOR”).
- 2.) The CONTRACTOR shall furnish all material, labor, equipment, and tools necessary for the **City of Olympia Maintenance Center Building & Waste Resources Building Roof Restoration** located in **Olympia, Washington** as well as all work incidental and pertinent thereto, (hereinafter designated the “Project”) all in accordance with the Contract (hereinafter designated the “Contract”); and the original proposals dated 3/23/16, submitted by the CONTRACTOR (hereinafter together designated the “Specifications”), a copy of which is attached hereto as Exhibit A and incorporated herein. In the event of any conflict, ambiguity, or inconsistency between the terms contained in this CONTRACT and the Exhibits, the terms set forth in this CONTRACT shall govern and control.
- 3.) The term of the CONTRACT shall begin based upon the issue date of the Notice to Proceed issued by the CUSTOMER and shall be completed 45 days thereafter, unless sooner terminated as permitted herein, or unless extended by agreement of the parties set forth in writing. The work shall commence within ten (10) days from the date that CONTRACTOR receives a copy or original of the fully executed CONTRACT, which receipt shall be considered Notice to Proceed. The CONTRACTOR is required to submit to the CUSTOMER a Certificate of Insurance and Performance and Payment bonds prior to commencing work. In addition, the work shall be scheduled as agreed upon by the parties.
- 4.) The sums to be paid to the CONTRACTOR shall be at the bid price(s) shown on the Specifications (Exhibit B), and the total to be paid to CONTRACTOR shall be a maximum of \$369,954, excluding applicable sales tax of 8.8%, as set forth in the purchase order and Exhibit A. Invoices shall provide details of all Project expenses as permitted in this CONTRACT. CONTRACTOR shall apply no late charges, interest or penalties to any invoice or charges for services until 30 days from the CUSTOMER receipt of the invoice. If this CONTRACT is terminated for convenience for any reason, then the CONTRACTOR shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred, including lost profit, to the effective date of termination.
- 5.) If the CUSTOMER wishes to terminate the CONTRACTOR for cause due to the failure of CONTRACTOR to perform as required under this CONTRACT and/or in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, then the CUSTOMER must

provide the CONTRACTOR with written notice of said failure to perform. The CUSTOMER must give ten (10) working days from the CONTRACTOR's receipt of the Notice to Cure for the CONTRACTOR to cure or take reasonable action to commence to cure the performance concerns specified. If the CONTRACTOR does not take appropriate action within the ten (10) day period, the CUSTOMER may issue a Final Notice to Cure. The CONTRACTOR will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the CUSTOMER can terminate the CONTRACT. If the CONTRACTOR is terminated for cause, the CUSTOMER may provide or employ any necessary labor and materials in lieu of CONTRACTOR to finish part or all of the work under the CONTRACT or to supplement the work of CONTRACTOR, and to deduct the cost thereof from any money, then due or thereafter to become due to the CONTRACTOR; and if such cost shall exceed the balance due to CONTRACTOR, then the CONTRACTOR shall pay the difference to the CUSTOMER.

- 6.) The CUSTOMER may issue subsequent modifications to the Purchase Order(s) for additional work that was not known or included in the Specifications that is found to be needed during the work on the Project to complete the Project over and above the amount set forth in this paragraph four (4) and in Exhibit A. CONTRACTOR must seek approval from the CUSTOMER before performing any additional work. The CUSTOMER must provide the CONTRACTOR written documentation of the modification to the Purchase Order within three (3) business days of verbal approval. CONTRACTOR is not obligated to perform additional work until written modification has been received from the CUSTOMER, but may commence work based upon a reasonable assumption that written modification will be issued. Incidental additional work performed by the CONTRACTOR without CUSTOMER consent will be evaluated and considered for payment based upon the work's merit. If the CUSTOMER determines the incidental additional work was not included in the original scope of the project and required for the CONTRACTOR's uninterrupted performance in fulfillment of the contract, then the CUSTOMER will approve the CONTRACTOR's request for payment for incidental additional work.
- 7.) All the work done under this CONTRACT shall be performed under the oversight of **Rick Dougherty (Project Manager)**, the CUSTOMER'S representative. All notices hereunder shall be (a) in writing; (b) delivered to the representatives of the parties at the addressees set forth in the Specifications (Exhibit A), unless changed by either party by notice to the other party; and (c) effective upon receipt.
- 8.) The CONTRACTOR shall furnish the CUSTOMER with a performance or contract bond and a labor and material bond, each in the amount of **\$369,954**, a Certificate of Workers' Compensation, and a Certificate of Insurance evidential of comprehensive general liability insurance and property insurance with minimum coverage in amounts reasonable to or exceeding what is normally expected for a comparable project in size and scope. Further, said Certificate of Insurance shall name the **City of Olympia** as an additional insured. Said Certificate of Insurance shall also provide that at least thirty (30) days written notice shall be given to the CUSTOMER of any material change in, or cancellation of, said insurance.

- 9.) Should the CONTRACTOR at any time refuse or neglect to supply a sufficiency of properly skilled workers or materials of the proper quality, or fail in any respect to prosecute the work herein described with promptness and diligence, or fail in the performance of any of the agreements contained herein, the CUSTOMER shall have the right to immediately suspend all work, or any part thereof under this CONTRACT, upon the CUSTOMER's issuance of a stop work notice to the CONTRACTOR and the CONTRACTOR's confirmed receipt of the stop work notice. The work shall continue to be suspended until such time as the CUSTOMER and CONTRACTOR have come to a mutual agreement on how the work under the CONTRACT shall proceed. Should the CONTRACTOR continue to refuse or neglect to supply a sufficiency of properly skilled workers or materials of the proper quality, or fail in any respect to prosecute the work herein described with promptness and diligence, or fail in the performance of any of the agreements contained herein, then the CUSTOMER may, after following the procedures listed in Section 5 above, terminate the CONTRACT for cause.
- 10.) The CONTRACTOR shall indemnify, save harmless, and defend the CUSTOMER from and against all losses, claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description, made, brought, or recovered against the CUSTOMER by reason of any negligent act or omission of the CONTRACTOR, its agents, its subcontractors, or its employees, in the execution of the work herein contracted for.
- 11.) The CONTRACTOR has the right to request and be granted a Termination for Convenience from the CONTRACT obligations if there is a joint determination from both the CUSTOMER and the CONTRACTOR that the termination is in the best interests of both parties, or if the CONTRACTOR believes the Termination for Convenience to be in its best interests because a timely resolution, within ten (10) days from the CUSTOMER'S receipt of written notification, will not be provided with regard to requests for information (RFI), request for clarification, or requests for modification to the Purchase Order(s) due to differing site conditions, vague Specifications, or unforeseen circumstances. Under a Termination for Convenience, the CONTRACTOR shall be reimbursed for all justifiable costs including price of supplies, services delivered, and administrative expenses, including lost profit under the CONTRACT or Purchase Order.
- 12.) This CONTRACT shall be deemed to contain all the terms and conditions agreed to between the parties, who both agree that no representations or promises of any kind whatsoever have been made other than herein contained, and this CONTRACT shall be binding upon both parties and their respective heirs, administrators, executors, successors, and assigns.
- 13.) CUSTOMER shall have the right to approve all subcontracts or assignments of work equal to or exceeding \$10,000. CUSTOMER shall not unreasonably withhold, delay or condition subcontracting or assignments, but may express final and binding disapproval of a proposed assignee or subcontractor. Should the CONTRACTOR be forced to choose a different subcontractor/assignee that is of higher cost than the initial subcontractor/assignee, due to the CUSTOMER's disapproval, the CONTRACTOR shall be able to request and will receive approval from the CUSTOMER for a modification to the

CONTRACT to cover the additional cost. CONTRACTOR shall remain responsible for the work of any agent or independent contractor to whom it assigns its Work, and any assignment or subcontract shall incorporate the terms of this Contract into its contract delegating its Work.

- 14.) If the Project involves construction of a public improvement at a cost exceeding the threshold for payment prevailing wage rates of pay, each laborer, workman or mechanic employed by the CONTRACTOR for performance of the Project herein described or by the subcontractor shall be paid not less than the minimum rate of pay for the applicable pay classification. The CONTRACTOR and their subcontractors who are subject to the requirements of paying prevailing wages shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. The CONTRACTOR and its subcontractors shall deliver to the CUSTOMER a certified copy of their respective payrolls, within two weeks of the CUSTOMER's request, for each pay period requested by the CUSTOMER.
- 15.) Payments to the CONTRACTOR shall be made at the rate of ninety-five percent (95%) of the approved partial payment estimate for each monthly progress billing. The CUSTOMER will retain five percent (5%) of every approved partial payment. The retained amount will be paid to the CONTRACTOR within sixty (60) days following Final Acceptance of the work. Upon completion and acceptance of the work, the CUSTOMER shall issue a certificate attached to the final payment request that the work has been accepted by it under the terms, promises and conditions of the CONTRACT.
- 16.) CONTRACTOR has been employed under this Contract as an independent contractor in order to construct its portion of the Project. CONTRACTOR agrees that no authority has been conferred upon it by CUSTOMER to hire any person(s) on behalf of CUSTOMER, and CUSTOMER undertakes no obligation of any sort to CONTRACTOR's employees or subcontractors. It is understood and agreed that the CONTRACTOR shall select, engage, and discharge its employees, agents, or servants and otherwise direct and control their services. CONTRACTOR will also comply with all laws concerning qualification to do business and engage in the work involved under this CONTRACT and will file all returns and reports required of it and pay all taxes and contributions imposed upon it.
- 17.) CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex, or national origin.
- 18.) The CUSTOMER shall not be considered to have accepted possession of the work under this CONTRACT until a Final Acceptance Letter is issued to the CONTRACTOR by the CUSTOMER or CUSTOMER's representative, or payment of the full CONTRACT compensation is received by the CONTRACTOR, unless the Parties otherwise mutually agree.
- 19.) CONTRACTOR, at all times during its performance of its work under this CONTRACT, shall keep the work site, grounds, and roof tops surrounding the work site free from accumulation of waste materials or rubbish caused by its activities. Upon completion of

the work under this CONTRACT, the CONTRACTOR shall promptly remove all its waste materials and rubbish from and about the work site, as well as, its tools, construction equipment, machinery, and surplus materials, as to leave the work site "Broom Clean" or its equivalent.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, authorized representatives of each party to this CONTRACT, indicating their party's approval of the terms herein, have signed as of the dates set forth below.

WITNESSES:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

**GARLAND/DBS, INC.**

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Tax ID. No. \_\_\_\_\_

Date: \_\_\_\_\_

WITNESSES:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

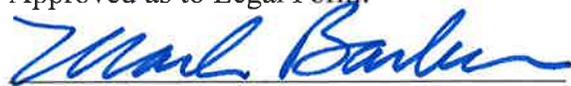
**CITY OF OLYMPIA**

By: \_\_\_\_\_

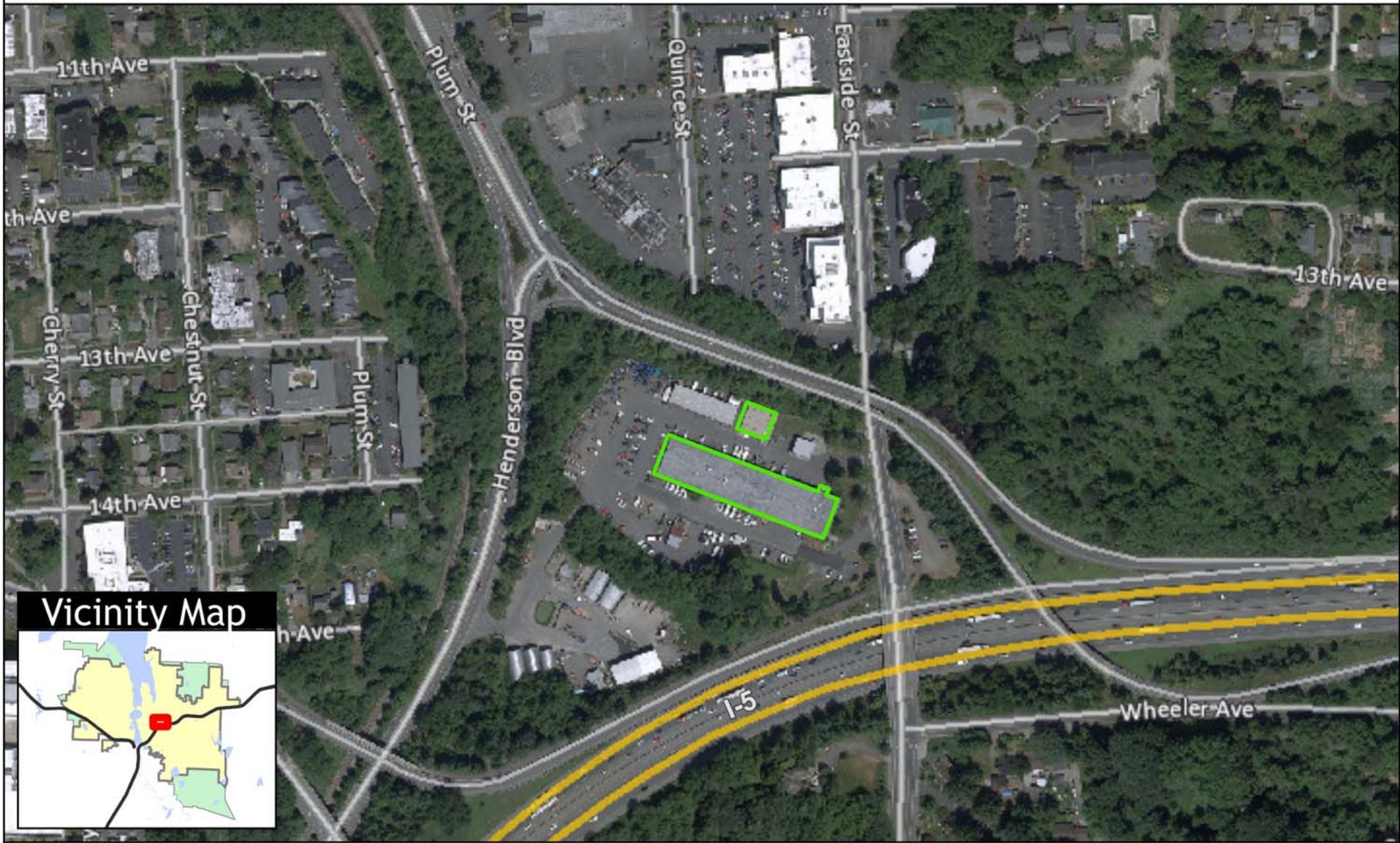
Date: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Legal Form:



 **Maintenance Center and Waste Resources Building Roof Repairs - Project #1609C**  
Vicinity Map



0 150 300  
Feet

1 inch = 300 feet

**Legend**

 Maintenance Center Roof Repair area

Map printed 4/13/2016  
For more information, please contact:  
Rick Dougherty, Project Manager  
rdougher@ci.olympia.wa.us  
(360) 753-8485.

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.





## City Council

### Approval of a Property Acquisition from Marie Havens Cody near the Allison Springs Wellfield

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 4.D  
**File Number:** 16-0573

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**Type:** contract   **Version:** 1   **Status:** Consent Calendar

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**Title**

Approval of a Property Acquisition from Marie Havens Cody near the Allison Springs Wellfield

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee

**City Manager Recommendation:**

Move to approve the Cody property acquisition near Allison Springs Wellfield, and authorize the City Manager to execute all necessary closing documents.

**Report**

**Issue:**

Whether to approve the property acquisition from Marie Havens Cody near Allison Springs Wellfield.

**Staff Contact:**

Ladd F. Cluff, PLS, City Surveyor, Public Works, 360.753.8389

**Presenter(s):**

None - Consent Calendar Item.

**Background and Analysis:**

Allison Springs Wellfield in West Olympia is a vital source of drinking water for Olympia. The wellfield is located west of Delphi Road adjacent to SR #101 and Totten Inlet at Mud Bay (see attached map).

With the exception of the Cody property, the forested and Inlet area surrounding the wellfield is in City of Olympia and Capitol Land Trust ownership. The area has been preserved by the City in order to minimize groundwater contamination risks and unauthorized public access.

The Cody property is the only remaining privately-owned parcel in the area adjacent to the Inlet. It is undeveloped, not suitable for residential development, and available for purchase. The Drinking Water Utility seeks to purchase the 2.5 acre property and maintain its current undeveloped, forested condition. The purchase is consistent with the policies and goals of the Utility's wellfield protection program.

Staff worked with the property owner in accordance with Federal, State and City guidelines throughout the acquisition process. The purchase price is within established fair-market value.

**Neighborhood/Community Interests (if known):**

Acquisition of this parcel furthers the City's ability to protect this water source for the benefit of our water customers/users.

**Options:**

1. Move to approve the Cody property acquisition and authorize the City Manager to execute all necessary closing documents.
  - By purchasing the property the City will be in a position to further protect this vital groundwater source.
  
2. Do not approve the acquisition of property.
  - If we do not acquire the property now, it may not be available for sale in the foreseeable future.
  - The cost to acquire the property in the future will likely be more expensive.
  - The potential for unauthorized access to the wellfield and threat of groundwater contamination will remain.

**Financial Impact:**

The acquisition will be funded by the City's Drinking Water Utility consistent with its wellfield protection program. The expenditure will not impact the scheduling of other Utility priorities.

**Attachments:**

Purchase and Sale Agreement  
Vicinity Maps (2)

## PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is dated effective \_\_\_\_\_, 2016, by and between **Marie Havens Cody**, ("Seller") and the **City of Olympia**, a municipal corporation organized under the laws of the State of Washington ("Buyer"), with reference to the following facts:

Seller is the owner of certain real property located Northerly of US Highway 101, South of Mud Bay RD NW, East of Eld Inlet and West of Delphi RD NW in **Thurston County, Washington**, consisting of approximately 2.5 acres and more particularly described on **Exhibit A** and illustrated in a sketch on **Exhibit B**, attached hereto and by this reference incorporated herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

**1. Property.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

**1.1 Land.** That certain real property located in Thurston County, Washington, comprising tax parcel number 128-18-320400 and more particularly described on **Exhibit A** attached hereto (the "Land");

**1.2 Appurtenances.** All rights, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the Land, all development rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (all of which are collectively referred to as the "Appurtenances");

**1.3 Improvements.** All improvements and fixtures located on the Land, including, without limitation, any and all buildings and structures located on or under the Land, all apparatus, equipment and appliances used in connection with the ownership, use and operation of the Land (all of which are hereinafter collectively referred to as the "Improvements").

**1.4 Personal Property.** NONE.

**1.5 Excluded Property.** Buyer and Seller acknowledge that certain personal property is expressly excluded from the transaction contemplated by this Agreement (the "Excluded Property"). As of the date hereof, the Excluded Property includes, but is not limited to, N/A.

**1.6 Abandoned Property.** Any of Seller's personal property left on the Property, including but not limited to any furniture and fixtures owned by Seller shall be considered abandoned property, and at Closing title to such abandoned property shall pass to Buyer as if it had been conveyed by a bill of sale.

All of the items described in **Paragraphs 1.1, 1.2, 1.3 and 1.4** above are herein collectively referred to as the "Property."

**2. Purchase Price.** The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") is **fifteen thousand and 00/100 Dollars (\$15,000.00)**.

**3. Payment of Purchase Price.** On the Closing Date, Buyer shall deposit with Escrow Agent the amount of the Purchase Price less any amounts to be credited against the Purchase Price

pursuant to this Agreement. Within five (5) days following the execution and delivery of this Agreement, Buyer shall open escrow with Stewart Title – Puget Sound Division (the "Escrow Agent"), by depositing with Escrow Agent a copy of this Agreement.

**4. Closing Date.** The closing (the "Closing") shall be held at the offices of the Escrow Agent, on or before June 30, 2016, unless otherwise agreed by the parties. Closing shall occur when the Deed (as hereinafter defined) to Buyer is recorded and the Purchase Price is delivered to the Escrow Agent for delivery to Seller.

**5. Title and Survey Matters.**

**5.1 Title Binder.** Buyer has ordered a preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by Stewart Title ("Title Company") describing the Property, showing all matters of record pertaining to the Property and listing Buyer as the prospective named insured. Following the mutual execution of this Agreement, if necessary, Buyer shall obtain from Title Company a written supplemental report to such preliminary commitment, in a form acceptable to Buyer, updating the preliminary commitment to the execution date of the Agreement. Such preliminary commitment, supplemental reports and true, correct and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder."

**5.2 Title Review.** Within ten (10) business days of mutual execution hereof, Buyer shall review the Title Binder and any surveys of the Property, and, shall notify Seller what exceptions to title, if any, will be accepted by Buyer. Only those exceptions approved by Buyer in writing shall constitute "Permitted Exceptions." Seller shall remove all exceptions that are not Permitted Exceptions prior to the Closing Date. If Seller shall fail to remove any such exceptions objected to by Buyer from title prior to the Closing Date, and Buyer is unwilling to take title subject thereto, Seller shall be in default hereunder and, without limiting Buyer's rights and remedies against Seller, Buyer may elect to terminate this Agreement, and Seller shall be liable for all of Buyer's damages, including Buyer's costs and expenses incurred hereunder, including title and escrow costs and attorneys' fees.

**5.3 Title Policy.** At Closing, Seller and Buyer shall cause Title Company to issue a 2011 standard ALTA owner's policy with the Deletion of Creditor's Rights Endorsement". ("Title Policy") to Buyer, at Buyer's cost. The Title Policy shall (a) be satisfactory to Buyer in its sole and absolute discretion, (b) be issued in the amount of the total Purchase Price and (c) insure fee simple, indefeasible title to the Property in Buyer, subject only to the Permitted Exceptions. The Title Policy shall contain endorsements as Buyer may require. Buyer's obligation to close this transaction shall be contingent on Buyer's approval, in its sole and absolute discretion, of the Title Policy required under this **Paragraph 5**.

**6. Conditions to Buyer's Obligations.**

**6.1 Documents and Reports.** Within ten (10) calendar days after the execution and delivery of this Agreement (the "Document Delivery Date"), Seller shall deliver to Buyer copies of the documents and reports listed on attached Exhibit C to this Agreement and in Seller's possession. Seller shall certify to Buyer, as of the Document Delivery Date, as to any documents listed on Exhibit C not in Seller's possession. All existing leases or occupancy agreements for the Property shall be referred to herein as the "Leases." All existing service contracts for the Property shall be referred to herein as the "Contracts." Buyer shall inform Seller, prior to the expiration of the Contingency Period, which Contracts, if any, Buyer desires to assume at Closing (the "Assumed Contracts").

**6.2 Inspection of the Property.** Buyer and its employees, representatives, consultants and agents shall have the right and permission from the date Seller signs this Agreement through the Closing Date (or earlier termination of this Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of making all tests and/or studies of the Property that Buyer may wish to undertake, including, without limitation, soils tests (including borings), toxic and hazardous waste studies, surveys,

structural studies and review of zoning, fire, safety and other compliance matters; provided, however, Buyer shall indemnify and hold harmless Seller from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Seller by any actions taken by Buyer in connection with the Property. To the extent necessary, Buyer shall reasonably restore the Property to its condition immediately prior to any invasive testing. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

M. E. Cody  
Seller's Initials indicating permission

**6.3 Appraisal of the Property.** The Buyer accepts the agreed price of \$15,000 as the full and final value of the land.

**6.4 Approval of the Property.** Buyer's obligation to purchase the Property shall be subject to and contingent upon Buyer's approval, in its sole and absolute discretion, prior to the expiration of the Contingency period, of all aspects of the Property, including, without limitation, the physical condition of the Property, and all of the information delivered by Seller pursuant to **Paragraph 6.1** above or otherwise obtained by Buyer regarding the Property.

**6.5 Contingency Period Defined.** As used herein, the term "Contingency Period" means the period ending at 5:00 p.m. on June 16, 2016.

**6.6 Buyer's Right to Terminate.** If Buyer's conditions set forth in **Paragraph 6.4** above are not satisfied in Buyer's sole and absolute discretion, Buyer shall have the right to terminate this Agreement by sending written notice to Seller and Escrow Agent (such notice referred to as a "Termination Notice") prior to the expiration of the Contingency Period. If Buyer gives its Termination Notice to Seller, this Agreement shall terminate and neither Buyer nor Seller shall have any further liability to the other under this Agreement.

**6.7 Additional Closing Conditions.** Buyer's obligation to purchase the Property shall also be subject to the following conditions that must be satisfied as of Closing.

(i) Prior to Closing, all Contracts (whether written or oral), with respect to the Property shall be terminated in writing, except for the Assumed Contracts. Seller shall provide Buyer, prior to Closing, with written termination agreements with respect to all Contracts, except for the Assumed Contracts, in a form acceptable to Buyer;

(ii) Prior to Closing, Seller shall have timely delivered to all tenants a tenant notice in the form set forth on Exhibit D, and provide Buyer with proof of such delivery;

(iii) All representations and warranties of Seller contained herein shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iv) Seller shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

(v) At Closing, title to the Property shall be in the condition required by **Paragraph 5** of this Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

(vi) At Closing, the physical condition of the Property shall be substantially the same as on the date hereof, ordinary wear and tear excepted.

If the conditions set forth in this **Paragraph 6** are not satisfied as of Closing and Buyer does not waive the same, Buyer may terminate this Agreement, and thereafter neither Buyer nor Seller shall have any further liability to the other under this Agreement.

**7. Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

**7.1 Title.** Seller is the sole owner of the Property. At Closing, Buyer will acquire the entire fee simple estate and right, title and interest in and to the Property by statutory warranty deed, free and clear of all recorded or unrecorded liens, encumbrances, covenants, restrictions, reservations, easements, options, tenancies, leases, encroachments, claims or other matters affecting title or possession of the Property, subject only to the Permitted Exceptions.

**7.2 Compliance with Law; Compliance with Property Restrictions.** The Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property (including those related to zoning, building, subdivision, and engineering), including all conditions contained in any certificate of occupancy covering any of the Property. Seller has obtained all required permits or authorizations for such occupancy. Seller has no knowledge of any facts that might give rise to any violation of the foregoing matters. The Property and the current use, occupation and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions or agreements (including, without limitation, any of the Permitted Exceptions), site plan approvals, zoning or urban redevelopment plans applicable to the Land, Property, Building or any other structures on the Property.

**7.3 Bankruptcy, etc.** No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

**7.4 Taxes and Assessments.** Other than amounts disclosed by the Title Binder, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.

**7.5 Foreign Person.** Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

**7.6 Mechanics' Liens.** No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborer's or materialmen's liens or claims might arise.

**7.7 Underground Storage Tanks.** Seller has no knowledge of (a) subterranean storage or underground storage tanks that exist on the Property, and (b) any previously existing underground storage tanks that have been removed or filled by the Seller in compliance with applicable law.

**7.8 Leases and Other Agreements.** Except for the Leases and the Contracts, Seller represents that there are no leases, occupancy agreements, service agreements, licenses, easements, option agreements or other contracts (whether oral or writing) in effect with respect to the Property. Seller further represents that there are no disputes or claims, or any set of facts known to Seller that could lead to a dispute or a claim, under any Contracts. Seller shall comply with the requirements of Section 6.7(i) with respect to any and all Contracts prior to Closing. Seller shall comply with the requirements of Section 6.7(ii) with respect to any and all Leases prior to Closing.

**7.9 Assumption of Liabilities.** Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date. Other than such obligations so expressly assumed by Buyer or any liens or other obligations with respect to the Property that result from any action or activities by or on behalf of Buyer after the Closing Date, Seller, after the date of Closing, will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the possession, ownership or use of the Property prior to the Closing Date, and shall indemnify, defend and hold Buyer harmless therefrom.

**7.10 Defaults.** Seller is not in default and there has occurred no uncured event which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Property.

**7.11 Litigation.** There is no litigation or threatened litigation which could now or in the future in any way constitute a lien, claim, or obligation of any kind on the Property, affect the use, ownership or operation of the Property or otherwise adversely affect the Property. For purposes of this provision, litigation includes lawsuits, actions, administrative proceedings, governmental investigations and all other proceedings before any tribunal having jurisdiction over the Property.

**7.12 Utilities.** The Property is served by water, storm and sanitary or septic sewer, electricity, and telephone supplied directly to the Property by facilities of public utilities. All such utilities are located within the boundaries of the Property or within lands dedicated to public use or within recorded easements for the same.

**7.13 Public Improvements.** Seller has no knowledge of any federal, state, county, municipal or other governmental plans to change the road system in the vicinity of the Building or to restrict or change access from any such road to the Property.

**7.14 Subdivision.** The conveyance of the Property will not constitute a violation of any subdivision ordinance. The Improvements on the Property comply in all material respects with all applicable subdivision ordinances and statutes.

**7.15 Due Authority.** Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligation enforceable against Seller in accordance with its terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

**7.16 No Omissions.** All representations and warranties made by Seller in this Agreement, and all information contained in any certificate furnished by Seller to Purchaser in connection with this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

**8. Covenants of Seller.** Seller covenants and agrees as follows:

**8.1 Perform Obligations.** From the date of this Agreement to the Closing Date, Seller will perform all of its monetary and non-monetary obligations under all indebtedness (whether for borrowed money or otherwise) and the liens securing same pertaining to the Property or any portion thereof, if any.

**8.2 No Liens.** From the date of this Agreement to the Closing Date, Seller will not allow any lien to attach to the Property, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without Buyer's written consent first having been obtained.

**8.3 Provide Further Information.** From the date of this Agreement to the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

## **9. Closing.**

**9.1 Time and Place.** Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in **Paragraph 4** of this Agreement.

**9.2 Documents to be Delivered by Seller.** For and in consideration of, and as a condition precedent to, the payment to Seller of any of the Purchase Price, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Bill of Sale.** A Bill of Sale in the form attached as Exhibit F, for all of Seller's personal property, if any.

(ii) **Title Documents.** Such other documents, including, without limitation, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by Buyer, or by the Title Company as a condition to its insuring Buyer's good and marketable fee simple title to the Property free of any exceptions, other than the Permitted Exceptions.

(iii) **Authority.** Such evidence as the Title Company shall require as to authority of Seller to convey the Property to Buyer.

(iv) **Surveys and Drawings.** All surveys, site plans and plans and specifications relating to the Property as are in the possession or control of Seller, if any.

(v) **General Assignment.** A general instrument of transfer in the form set forth on attached Exhibit G, pursuant to which Seller shall convey and assign to Buyer all of Seller's right, title and interest in and to (a) all Leases, (b) the Assumed Contracts, if any, and (c) all other rights of Seller relating to the Property (the "General Assignment"), to the extent such items exist.

(vi) **Original Documents.** Originals of all documents, if not already delivered, or copies if the originals are not available, including but not limited to all documents and materials assigned pursuant to the General Instrument of Transfer and the original leases fully executed with the landlord's and tenant's signatures acknowledged.

(vii) **Keys and Operating Manuals.** Keys to all doors in the Improvements, reasonably identified, and all operating manuals relating to operation of the equipment and systems which are part of the Property.

(viii) **Security Deposits; Rent Roll.** A rent roll certifying the name of each tenant on the Property as of Closing, rent paid by each tenant under its lease, the amount of security deposit held by Seller for the account of each such tenant, together with all funds representing the security deposits held by Seller. If Seller does not deposit all such security deposits held by Seller in connection with the tenants of the Property, then Buyer shall cause the Escrow Agent to deduct such sums from the proceeds of this transaction due to Seller and disburse such sums to the applicable tenant.

**9.3 Delivery by Buyer.** Buyer shall deliver the Purchase Price (after credit for any applicable amounts pursuant to this Agreement) and shall prepare the following documents and deliver to the Title Company at or before Closing.

(i) **Warranty Deed.** A statutory warranty deed ("Deed") in substantially the same form attached as **Exhibit E** conveying to Buyer a good, marketable and indefeasible title in fee simple absolute to the Property, free and clear of all liens, encumbrances, conditions, easements, assignments, and restrictions, except for the Permitted Exceptions.

**9.4 Payment of Costs.** At Closing, Seller and Buyer shall pay their own respective costs incurred with respect to the consummation of the purchase and sale of the Property including, without limitation, attorneys' fees. Notwithstanding the foregoing, Buyer shall pay the premium for the Owner's Title Policy to be issued by Title Company to Buyer, the fee to record the Deed, and the escrow fee. **Seller agrees to pay the real estate excise tax.**

**9.5 Property Taxes.** Seller shall pay at or prior to Closing all real property taxes and personal property taxes due or to become due with respect to the Property for the period up to the Closing Date. Seller shall pay in full any assessments due or to become due with respect to the Property.

**9.6 Monetary Liens.** Seller shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements.

**9.7 Possession.** Possession of the Property shall be delivered to Buyer at Closing. The Property, including without limitation the Improvements, shall be delivered to Buyer in good order, with all of Seller's personal property removed. If any personal property of Seller, not transferred to Buyer under this agreement, remains on the Property at Closing, then Buyer may remove all such personal property and charge Seller for the cost of such removal.

**9.8 Prorations.** All amounts required to be prorated hereunder as of Closing, shall be calculated as if Buyer was in possession of the Property as of the date of Closing.

**10. Environmental Compliance.** In addition to and without limiting **Paragraphs 6, 7 and 8**, Seller warrants, represents, covenants and agrees:

**10.1 Hazardous Substances.** Seller has not used, generated, manufactured, produced, stored, released, discharged or disposed of on, under, above or about the Property (or off-site of the Property that might affect the Property) or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above Property (or off-site of the Property that might affect the Property) or transported to or from the Property by any entity, firm or person, or from any source whatsoever.

**10.2 Pre-closing Covenant.** Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property (or off-site of the Property that might affect the Property), or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to the closing.

**10.3 Environmental Indemnity.** Seller shall protect, indemnify, hold harmless and defend Buyer and its directors, officers, contractors, employees, agents, parents, subsidiaries, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to a breach of any representation, warranty, covenant or agreement contained in this **Paragraph 10** including, without limitation, (a) all consequential damages, and (b) the costs of any required or necessary repairs, cleanup or detoxification

of the Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity does not apply to actions of Buyer, its agents or independent contractors.

**10.4 Definitions.** The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes" or "solid waste" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; and (d) chlorinated solvents. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances.

**11. Indemnification.** Seller shall pay, protect, pay the defense costs of, indemnify and hold Buyer and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, (b) the failure of Seller to perform any obligation required by this Agreement to be performed by Seller, (c) the ownership, maintenance, and/or operation of the Property by Seller prior to the Closing, not in conformance with this Agreement, or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractor or suppliers that occurred before Closing.

**12. Condemnation.** In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively "Condemnation") respecting the Property or any portion thereof, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement neither Buyer nor Seller shall have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to any condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such Condemnation respecting the Property.

**13. Casualty.** If any fire, windstorm or casualty occurs and materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement neither Buyer nor Seller have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, the Purchase Price shall be reduced by the amount of loss or damage occasioned by such casualty not covered by insurance, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to all insurance claims and proceeds to which Seller may be entitled in connection with such casualty. Buyer shall have the right at all times to participate in all negotiations and other dealings with the insurance carrier providing such coverage and to approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such casualty respecting the Property.

**14. Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty eight (48) hours after the deposit

thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Seller: Marie Cody  
7500 91<sup>st</sup> Ave SE  
Olympia, WA 98513

To Buyer: City of Olympia  
601 4<sup>th</sup> Ave E  
P.O. Box 1967  
Olympia, WA 98507-1967  
Attn: Ladd F. Cluff

With a copy to: City of Olympia  
601 4<sup>th</sup> Ave E  
P.O. Box 1967  
Olympia, WA -98507-1967  
Attn: City Attorney

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

**15. Event of Default.** In the event of a default under this Agreement by Seller (including a breach of any representation, warranty or covenant set forth herein), Buyer shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Seller's obligations hereunder.

**16. Miscellaneous.**

**16.1 Applicable Law.** This Agreement shall in all respects, be governed by the laws of the State of Washington.

**16.2 Further Assurances.** Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the parties hereto.

**16.3 Modification or Amendment, Waivers.** No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

**16.4 Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

**16.5 Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

**16.6 Attorneys' Fees.** Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

**16.7 Construction.** Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

**16.8 Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**16.9 Survival.** The covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

**16.10 Finders' or Brokers' Fees.** Seller represents and warrants that it has not dealt with any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement and insofar as it knows, no broker or other person is entitled to any commission, charge or finder's fee in connection with the transactions contemplated by this Agreement. Seller agrees to indemnify, defend and hold harmless Buyer against any loss, liability, damage, cost, claim or expense, including interest, penalties and reasonable attorneys' fees, that Buyer shall incur or suffer by reason of a breach by Seller of the representation and warranty set forth above.

**16.11 Time.** Time is of the essence of every provision of this Agreement.

**16.12 Risk of Loss.** All of Seller's personal property of any kind or description whatsoever on the Property shall be at Seller's sole risk. Buyer shall not be liable for any damage done to or loss of such personal property, injury to person or damage or loss suffered by the business or occupation of Seller caused in any manner whatsoever, unless and to the extent the damage is caused by the gross negligence or willful misconduct of Buyer.

**16.13 Force Majeure.** Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

This offer will expire if not executed by Seller and received by Buyer on or before **5:00 p.m. on May 16, 2016.**

[Signatures appear on the following page]

DATED as of the date first set forth above.

SELLER:

By: Marie Havens Cody  
Marie Havens Cody

BUYER:

City of Olympia, a Washington municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

Mark Barber  
CITY ATTORNEY

**EXHIBIT A**

**Legal Description**

That part of the North 825 feet of the Southwest Quarter of Section 18, Township 18 North, Range 2 West, W.M., in Thurston County, Washington, lying Southerly of County Road (formerly Primary State Highway No. 9), Easterly of the centerline of the main channel of Eld Inlet and Westerly of a line commencing South 78° 17' East 1022.23 feet and South 81° 43' East 320 feet from the West Quarter of said Section;

Thence South 8°17' West to a point 495 feet North of the South line of the North Half of said Southwest Quarter.

Excepting therefrom that portion as conveyed in Statutory Warranty Deed recorded under File No. 422346.

Excepting therefrom that portion as conveyed in Purchaser's Assignment of Real Estate Contract and Deed recorded under File No. 484425.

Excepting therefrom that portion as conveyed in Deed recorded under File No. 249638 as Book 145 Page 551 of Deed.

Excepting therefrom any portion of Primary State Highway No. 9 now know as State Highway 101 as conveyed in Warranty Deed recorded under File No. 576136.

Situated in the County of Thurston, State of Washington.

EXHIBIT B

**stewart**  
title & escrow



300 Deschutes Way SW, Suite 300  
Tumwater, WA 98501  
(360) 357-7067



**This Sketch is provided as a courtesy for the sole purpose of assisting in locating the subject property and no liability is assumed for inaccuracies within the sketch. Reference should be made to a survey for further information.**

## **EXHIBIT C**

### **Documents and Reports**

1. All surveys, topographical and plat maps.
2. Copies of all of leases or other occupancy agreements relating to the Property, with originals to be delivered at Closing.
3. A detailed inventory of all personal property of Seller located on our used in connection with the Property.
4. Copies of all licenses, permits and approvals issued by governmental authorities for the use and occupancy of the Property or any facility located thereon.
5. Any other information about the Property reasonably requested by Buyer if in the possession or control of Seller.
6. Any service contracts or other similar agreements related to the Property.

**EXHIBIT D**

**Form of Tenant Notice**

**Via Certified Mail or Hand Delivery**

Insert Date

Insert Name of Tenant

Insert Address of Tenant

Olympia, Washington \_\_\_\_\_

RE:

Dear Tenant:

This letter shall serve as notice that the rental property at \_\_\_\_\_, Olympia, Washington (the "Rental Property") will be acquired by the City of Olympia (the "City") as of \_\_\_\_\_, 2016 (the "Closing Date"). Your security deposit in the amount of \$\_\_\_\_\_, held by \_\_\_\_\_ shall also be transferred to the City at that time.

You shall continue to deliver all rents and other amounts due and owing under your lease prior to the Closing Date to \_\_\_\_\_ as usual and you shall continue to abide by the Rental Property lease agreement. Rent for the month of \_\_\_\_\_ and any and all payments due under your lease thereafter shall be payable to the City at the following address:

The City of Olympia

\_\_\_\_\_  
Olympia, Washington \_\_\_\_\_

If you have any questions, please feel free to contact the City of Olympia at [Phone Number].

Sincerely,

**EXHIBIT E**

**Form of Deed**

After recording return document to:  
City of Olympia  
Attention: Legal Department  
P.O. Box 1967  
Olympia, WA 98507-1967

---

**Document Title:** Statutory Warranty Deed  
**Grantor:** Marie Havens Cody  
**Grantee:** City of Olympia  
**Legal Description:** NWG-SWQ, Sec. 18 T18N, R2W  
**Assessor's Tax Parcel Number:** 12818320400

**STATUTORY WARRANTY DEED**

The Grantor, Marie Havens Cody, for and in consideration of the sum of TEN and No/100 (\$10.00) Dollars, and other valuable considerations, hereby conveys and warrants to the Grantee, CITY OF OLYMPIA, a municipal corporation, the following described real estate situated in the County of Thurston, State of Washington, legally described as follows:

That part of the North 825 feet of the Southwest Quarter of Section 18, Township 18 North, Range 2 West, W.M., in Thurston County, Washington, lying Southerly of County Road (formerly Primary State Highway No. 9), Easterly of the centerline of the main channel of Eld Inlet and Westerly of a line commencing South 78° 17' East 1022.23 feet and South 81° 43' East 320 feet from the West Quarter of said Section;

Thence South 8°17' West to a point 495 feet North of the South line of the North Half of said Southwest Quarter.

Excepting therefrom that portion as conveyed in Statutory Warranty Deed recorded under File No. 422346.

Excepting therefrom that portion as conveyed in Purchaser's Assignment of Real Estate Contract and Deed recorded under File No. 484425.

Excepting therefrom that portion as conveyed in Deed recorded under File No. 249638 as Book 145 Page 551 of Deed.

Excepting therefrom any portion of Primary State Highway No. 9 now know as State Highway 101 as conveyed in Warranty Deed recorded under File No. 576136.

Situated in the County of Thurston, State of Washington

It is understood and agreed that delivery of this Deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Olympia unless and until accepted and approved hereon in writing for the City of Olympia, by the City Manager.  
GRANTOR:

Granted this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Marie Havens Cody

STATE OF WASHINGTON)

County of \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared Marie Havens Cody to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

GRANTEE:

Accepted and Approved:  
CITY OF OLYMPIA

Approved as to form:

By: \_\_\_\_\_  
Steven R. Hall, City Manager

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

**EXHIBIT F**

**Bill of Sale**

THIS BILL OF SALE is made and given this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by MARIE HAVENS CODY, (the "Seller") to THE CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington ("Buyer").

*RECITAL*

Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, all of Seller's right, title and interest in the personal property (the "Personal Property") located on the real property described on attached Exhibit A. The Personal Property is described as follows: n/a.

NOW, THEREFORE, for and in consideration of good and valuable consideration in hand paid by Buyer to Seller, the receipt and sufficiency of which are hereby acknowledged by Seller:

1. Seller hereby grants, bargains, sells, assigns, transfers, conveys and delivers unto Buyer, its successors and assigns, all of Seller's right, title and interest in and to the Personal Property, TO HAVE AND TO HOLD such interest in the Personal Property unto Buyer, its successors and assigns forever.
2. Seller will warrant and forever defend the right and title to the items of Personal Property unto Buyer.

DATED as of the day and year first above written.

**SELLER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT G**

**General Assignment**

**ASSIGNMENT AND ASSUMPTION**

THIS ASSIGNMENT AND ASSUMPTION (the "Assignment") is made as of this \_\_\_ day of \_\_\_\_\_, 2016 (the "Transfer Date") by MARIE HAVENS CODY ("Assignor"), in favor of THE CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington ("Assignee").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns and transfers to Assignee, as of the Transfer Date, all of the following relating to the real property legally described on attached Schedule 1 (the "Property"), to the extent assignable:

1. any and all of Assignor's right, title and interest, as lessor, in, to and under all leases, licenses and occupancy agreements together with any security deposits, affecting the Property (the "Leases");
2. any and all of Assignor's right, title and interest in, to and under the contracts and agreements relating to the leasing, operation, maintenance and repair of Property set forth on Schedule 2 (the "Contracts");
3. any and all assignable governmental licenses, permits, certificates (including certificates of completion and certificates of occupancy), authorizations and approvals held by Assignor in connection with the current occupancy, use and operation of, and construction upon, the Property (collectively, the "Permits"); and
4. any and all assignable warranties and guaranties including, without limitation, contractor's, architect's and manufacturer's warranties and guaranties held by Assignor and given by third parties with respect to the Property (collectively, the "Warranties").

Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, originating prior to the Transfer Date and arising out of the lessor's obligations under the Leases.

Assignee accepts this Assignment and hereby assumes and agrees to perform from and after the Transfer Date all of the covenants, agreements and obligations of the lessor under the Leases, as may be amended, and all of Assignor's covenants, agreements and obligations under the Contracts, Permits, and Warranties, and agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, originating subsequent to the Transfer Date and arising out of the lessor's obligations under the Leases.

IN WITNESS WHEREOF, this Assignment and Assumption is made as of the day and year first above written.

ASSIGNOR:

By: \_\_\_\_\_  
By: \_\_\_\_\_

ASSIGNEE:

THE CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ADDENDUM / AMENDMENT TO PURCHASE AND SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated \_\_\_\_\_ 1  
between City of Olympia \_\_\_\_\_ ("Buyer") 2  
Buyer Buyer  
and Maire Cody \_\_\_\_\_ ("Seller") 3  
Seller Seller  
concerning 128-18-320400 \_\_\_\_\_ (the "Property"). 4  
Address City State Zip

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

Marie Cody agrees to pay Abbey Relaty Inc a commission of 1,000 One thousand dollars at the successful closing of this transaction. 6  
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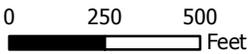
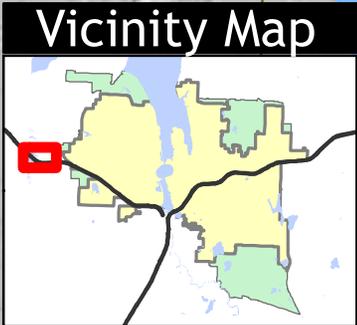
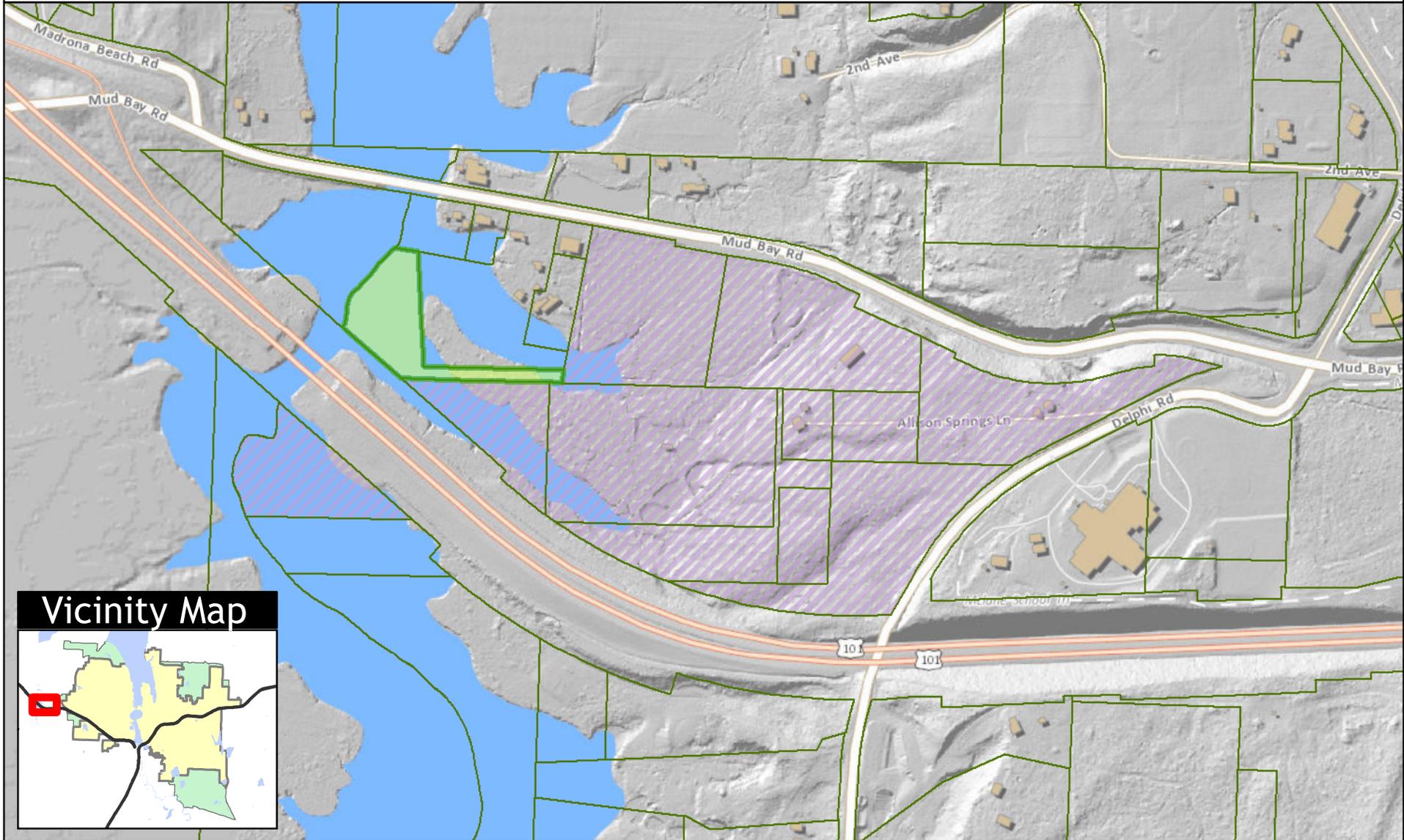
ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 31

\_\_\_\_\_  
Buyer's Initials      Date      Buyer's Initials      Date      M. E. Cody 7-18-16      M. E. Cody  
Seller's Initials      Date      Seller's Initials      Date



# Allison Springs Land Acquisition

## Cody Parcel



1 inch = 500 feet

Map printed 4/25/2016

### Legend

-  Cody Parcel
-  City Owned Property

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and/or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.



EXHIBIT B



300 Deschutes Way SW, Suite 300  
Tumwater, WA 98501  
(360) 357-7067



**This Sketch is provided as a courtesy for the sole purpose of assisting in locating the subject property and no liability is assumed for inaccuracies within the sketch. Reference should be made to a survey for further information.**



## City Council

### Approval of Ordinance Authorizing up to \$10,000,000 of General Obligation Bonds for Park Acquisition and Authorizing the Issuance of Bond Anticipation Notes (BAN) Pending the Issuance of the Bonds

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 6.A  
**File Number:** 16-0572

---

**Type:** ordinance **Version:** 1 **Status:** 1st Reading-Not Consent

---

#### **Title**

Approval of Ordinance Authorizing up to \$10,000,000 of General Obligation Bonds for Park Acquisition and Authorizing the Issuance of Bond Anticipation Notes (BAN) Pending the Issuance of the Bonds

#### **Recommended Action**

##### **Committee Recommendation:**

The Finance Committee recommends Council approve the ordinance on first reading and move to second reading.

##### **City Manager Recommendation:**

Move to approve the Ordinance Authorizing up to \$10,000,000 of General Obligation Bonds for Park Acquisition and Authorizing the Issuance of Bond Anticipation Notes (BAN) Pending the Issuance of the Bonds on first reading and move to second reading.

#### **Report**

##### **Issue:**

Should the City authorize bond anticipation notes pending the issuance of general obligation bonds for park acquisitions?

##### **Staff Contact:**

Dean Walz, Fiscal Services Director, Administrative Services Department, 360.753.8465

##### **Presenter(s):**

Jane Kirkemo, Director of Administrative Services, 360.753.8499.

##### **Background and Analysis:**

In 2006 the City issued bonds funded from a voter-approved utility tax (VUT). The bonds will be fully paid in December 2016. Once the bonds are fully paid the VUT may be used for other park purposes. The final 2016 debt service on the bonds is \$1.2 million. The City Council and citizens have

expressed the desire to acquire additional park property with the VUT after the bonds are retired. The City has opportunities and options to acquire park land prior to VUT becoming available. The exact amount required to purchase park land in 2016 is not finalized at this time. At a minimum, between \$5.3 and \$5.5 million is needed to exercise the purchase option on the D.R. Horton and Kaiser Heights properties, including issuance and closing costs.

Staff is recommending a Bond Anticipation Note (BAN) be issued with a maximum maturity of three years in an amount not to exceed \$10 million to finance park properties. A BAN is recommended at this time since it is anticipated there will be additional bonding for park purchases in the next few years. Issuing the BAN will reduce issuance and closing costs versus the cost of issuing multiple bonds. The City negotiated with Cashmere Valley Bank for the purchase of the BAN. Contacts were also made with other local banks. Attached is a preliminary offer from Cashmere Valley Bank. The final offer will be included with the ordinance on final reading and passage scheduled for May 10. No material changes are expected from the preliminary to final offer.

**Neighborhood/Community Interests (if known):**

The Council has received requests by neighborhood/community groups and individuals requesting the City acquire additional park land.

**Options:**

- 1) Approve the ordinance providing interim financing for park acquisitions.
- 2) Do not approve the ordinance. Not approving the ordinance may jeopardize the City's ability to purchase park land at this time, including land for which the City has exercised options to purchase.
- 3) Direct the staff to another course of action for park acquisition.

**Financial Impact:**

Approval of the ordinance provides financing for immediate park acquisition needs. Funding for payment of bonds to be issued to refinance the BAN will come from voter-approved utility tax for park purposes or other general revenues. Interest on the BAN is expected to be 1.35%. Annual interest will depend on the final amount of the BAN. Interest on the BAN will be paid semi-annually from Park impact fees and/ or voted utility taxes.

**Attachments:**

1. Ordinance
  
2. Bond Anticipation Note, preliminary offer from Cashmere Valley Bank

CITY OF OLYMPIA, WASHINGTON

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE of the City of Olympia, Washington authorizing the issuance of limited tax general obligation bonds of the City to provide funds to pay a part of the cost of purchasing property for parks; authorizing the issuance of a bond anticipation note pending the issuance of those bonds in the aggregate principal amount of not to exceed \$10,000,000; fixing the terms and covenants of the note; and approving the sale and providing for the delivery of the note to Cashmere Valley Bank.

Passed May 10, 2016

*This document prepared by:*

*Foster Pepper PLLC  
1111 Third Avenue, Suite 3000  
Seattle, Washington 98101  
(206) 447-4400*

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CITY OF OLYMPIA, WASHINGTON

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE of the City of Olympia, Washington authorizing the issuance of limited tax general obligation bonds of the City to provide funds to pay a part of the cost of purchasing property for parks; authorizing the issuance of a bond anticipation note pending the issuance of those bonds in the aggregate principal amount of not to exceed \$10,000,000; fixing the terms and covenants of the note; and approving the sale and providing for the delivery of the note to Cashmere Valley Bank.

WHEREAS, the City of Olympia, Washington (the "City"), is in need of property for park purposes (the "Project"); and

WHEREAS, the City Council deems it to be in the best interests of the City to borrow money by the issuance of limited tax general obligation bonds and, pending the issuance of those bonds, issue short term obligations in accordance with the provisions of chapter 39.50 RCW for the purpose of providing a part of the funds to pay the costs of the Project; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, ORDAINS as follows:

Section 1. Debt Capacity. The assessed valuation of the taxable property of the City as ascertained by the last preceding assessment for City purposes for the calendar year 2016 is \$5,785,389,448, and the City has outstanding general indebtedness evidenced by limited tax general obligation bonds, loans and leases in the principal amount of \$53,352,970 incurred within the limit of up to 1 1/2% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein, and unlimited tax general obligation bonds in the principal amount of \$12,535,000 incurred within the limit of up to 2 1/2% of the value of the taxable property within the City for capital purposes only, issued pursuant to a vote of the qualified voters of the City. The maximum amount of indebtedness for which bonds are authorized herein to be issued is \$10,000,000.

Section 2. Authorization of Bonds. The City shall borrow money on the credit of the City and issue negotiable limited tax general obligation bonds evidencing that indebtedness in the amount of \$10,000,000 or such other lesser amount necessary (the "Bonds") to provide the funds to pay all or a portion of the cost of the Project and to pay the costs of issuance and sale of the Bonds. The general indebtedness to be incurred shall be within the limit of up to 1 1/2% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein.

Section 3. Description of the Note. For the purpose of providing all or part of the money required to finance the cost of the Project, and pay interest on and costs of issuing the Note pending the issuance of the Bonds, the City shall issue its Limited Tax General Obligation

Bond Anticipation Note, 2016, in the principal amount of not to exceed \$10,000,000 (the "Note"). The Note shall be in fully registered form, shall be numbered R-1, shall be dated the date of its delivery to Cashmere Valley Bank (the "Bank"), and shall mature on June 1, 2019 (the "Maturity Date").

The Bank has offered to purchase the Note under the terms of its term sheet dated May 10, 2016 attached as Exhibit A (the "Term Sheet"), and this ordinance. Amounts received from the Note shall bear interest on unpaid principal outstanding from time to time at the interest rate of 1.35%, or such amount as listed on the attached Term Sheet, calculated on the basis of a 365-day year and the actual number of days elapsed. Interest on the Note shall be due and payable semiannually on each June 1 and December 1, beginning on December 1, 2016. The outstanding principal balance of the Note shall be due and payable on the Maturity Date.

The outstanding principal balance of the Note on any particular day shall be the aggregate of all funds which the City has drawn from the date of the Note to that day, less the aggregate of all principal payments made by the City on or before that day.

A Request for Draw pursuant to the Note may be made by the Administrative Services Director or Fiscal Services Director (each a "Designated Representative") in writing to the Bank, at any time on or prior to the Maturity Date. Each Request for Draw must be in the minimum amount of \$25,000. A Request for Draw made prior to 11:00 a.m. and confirmed by the Bank will be funded on that business day. Each Request for Draw shall be delivered to the Bank, shall specify the dollar amount requested, the account number to which the drawing shall be deposited and the proposed date of the drawing, which date must be a business day. The aggregate of all such draws on the Note may not exceed \$10,000,000. Principal amounts of the Note that are prepaid may not be re-borrowed. The City hereby delegates to a Designated Representative authority to make a written Request for Draw pursuant to this ordinance. The Bank shall incur no liability to the City or to any other person in acting upon any written notice or other communication which the Bank believes in good faith to have been given by an official or other person authorized to borrow on behalf of the City, or otherwise acting in good faith in making advances pursuant to this ordinance.

The Note shall be an obligation only of the Note Fund and shall be payable and secured as provided herein. The Note shall not be deemed to constitute a pledge of the faith and credit or taxing power of the State of Washington.

Both principal of and interest on the Note shall be payable in lawful money of the United States of America. Upon the final payment of all principal and interest on the Note, the Note shall be surrendered to the Note Registrar for cancellation.

Section 4. Registration and Transfer of the Note. The Note shall be issued only in registered form as to both principal and interest and be recorded on books or records maintained by the Fiscal Services Director who is appointed to act as the note registrar (the "Note Register"). The Note Register shall contain the name and mailing address of the owner of the Note.

A Note surrendered to the Note Registrar may be exchanged for a new Note in the amount of not to exceed \$10,000,000. A Note may be transferred only if endorsed in the manner provided thereon and surrendered to the Note Registrar. Any exchange or transfer shall be without cost to the owner or transferee. The Note Registrar shall not be obligated to exchange or transfer a Note during the 15 days preceding the Maturity Date of the Note.

The Note may be assigned or transferred only in whole by the registered owner to a single investor that is a financial institution or a person who is reasonably believed to be a qualified institutional buyer or accredited investor within the meaning of the applicable federal securities laws.

Section 5. Prepayment. The City reserves the right to prepay principal of the Note in advance of the Maturity Date, in whole or in part, at any time, with no prepayment penalty. The City will notify the Bank at least 15 days in advance of its intent to prepay.

Section 6. Pledge of Taxes. The City irrevocably pledges to redeem the Note on or before its Maturity Date from the proceeds of a sufficient amount of the Bonds, from the proceeds of additional short term obligations or from other money of the City legally available for such purpose, and to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of the electors of the City on all of the taxable property within the City in an amount sufficient, together with the Bonds or other short term obligation proceeds and other money legally available and to be used therefor, to pay when due the principal of and interest on the Note and the Bonds, and the full faith, credit and resources of the City are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Section 7. Form and Execution of the Note.

(a) *Form of the Note; Signatures and Seal.* The Note shall be prepared in a form consistent with the provisions of this ordinance and Washington law. The Note shall be signed by the Mayor and the City Clerk-Treasurer, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. If any officer whose manual or facsimile signature appears on the Note ceases to be an officer of the City authorized to sign bonds before the Note bearing his or her manual or facsimile signature is authenticated by the Note Registrar, or issued or delivered by the City, the Note nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign notes. The Note also may be signed on behalf of the City by any person who, on the actual date of signing of the Note, is an officer of the City authorized to sign notes, although he or she did not hold the required office on its date of delivery of the Note.

(b) *Authentication.* Only the Note bearing a Certificate of Authentication in substantially the following form, manually signed by the Note Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: "Certificate of Authentication. This Note is the fully registered City of Olympia, Washington, Limited Tax General Obligation Bond Anticipation Note, 2016." The authorized signing of a Certificate of

Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

Section 8. Tax Covenants.

(a) *Tax Certificate.* The City hereby covenants that it will not make any use of the proceeds of sale of the Note or any other funds of the City which may be deemed to be proceeds of such Note pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable regulations thereunder which will cause the Note to be an "arbitrage bond" within the meaning of such section and such regulations. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Note) and the applicable regulations thereunder through the term of the Note. The City further covenants that it will not take any action or permit any action to be taken that would cause the Note to constitute a "private activity bond" under Section 141 of the Code.

(b) *Post-Issuance Compliance.* The Administrative Services Director is authorized and directed to review and update the City's written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied after the issue date to prevent interest on the draws on the Note from being included in gross income for federal tax purposes.

(c) *Designation of the Note as a "Qualified Tax-Exempt Obligation."* The City has designated the Note as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code, and makes the following findings and determinations:

(i) the Note does not constitute a "private activity bond" within the meaning of Section 141 of the Code;

(ii) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Note is issued will not exceed \$10,000,000; and

(iii) the amount of tax-exempt obligations, including the Note, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Note is issued does not exceed \$10,000,000.

Section 9. Note Fund; Disposition of Note Proceeds. There is authorized to be created in the office of the Fiscal Services Director a special account designated as the "Limited Tax General Obligation Bond Anticipation Note Account, 2016" (the "Note Fund"). All Bond proceeds, installment loans and taxes collected for and allocated to the payment of the principal of and interest on the Note shall be deposited in the Note Fund. Both principal of and interest on the Note shall be payable solely out of the Note Fund.

The proceeds received from a draw on the Note shall be paid into the "Capital Improvement Fund," a fund designated by the Fiscal Services Director and used for the Project.

Until needed to pay the costs of the Project and costs of issuance of the Note, the City may invest Note proceeds temporarily in any legal investment.

Payment of interest on each interest payment date, and of principal at maturity or prepayments of principal, shall be paid by immediately available funds delivered on or before each interest payment date or the maturity or prepayment date to the registered owner at the address appearing on the Note Register on the last day of the month preceding the payment date. Upon the final payment of principal of and interest on the Note the registered owner shall surrender the Note at the principal office of the Note Registrar for destruction or cancellation in accordance with law.

Section 10. Sale of the Note. The sale of the Note to the Bank, under the terms and conditions of this ordinance, and the Term Sheet to purchase the Note is hereby approved and confirmed. The City Council authorizes the Term Sheet to be signed by the Administrative Services Director. The Bank will not charge a fee for this Note.

Section 11. Reporting Requirements . While the Note is outstanding, the City shall submit its annual financial reports and audit reports to the Bank along with such additional information as the Bank may reasonably request from time to time. Such information can be provided to the Bank through a link to the information on the City's website or through the Electronic Municipal Market Access ("EMMA") website of the Municipal Securities Rulemaking Board.

Section 12. Governing Law. The Note shall be governed and interpreted according to the laws of Washington. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of the Bank under federal law.

Section 13. General Authorization and Ratification. The Mayor, Administrative Services Director, Fiscal Services Director and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Note to the Bank thereof and for the proper application, use and investment of the proceeds of the Note. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 14. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 15. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Olympia, Washington, at a regular open public meeting thereof, this 10<sup>th</sup> day of May, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk-Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**TERM SHEET OF THE BANK**

**CERTIFICATION**

I, the undersigned, City Clerk-Treasurer of the City of Olympia, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. \_\_\_\_ (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on May 10, 2016, as that ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after publication in the City's official newspaper, which publication date is \_\_\_\_\_, 2016.

3. A quorum of the members of the City Council was present throughout the meeting and a majority of the members voted in the proper manner for the passage of the Ordinance.

Dated: \_\_\_\_\_, 2016.

CITY OF OLYMPIA, WASHINGTON

\_\_\_\_\_  
City Clerk-Treasurer

May 10, 2016

Dean Walz  
Fiscal Services Director  
Administrative Services Department  
City of Olympia

Dear Dean,

Thank you for the opportunity to provide this offer to purchase the City of Olympia Limited Tax General Obligation Bond Anticipation Note, 2016. Cashmere Valley Bank (the "Bank") is pleased to provide the following terms:

1. Borrower: City of Olympia, Thurston County, Washington (the "City").
2. Summary of Borrowing:

A Limited Tax General Obligation Bond Anticipation Note (the "Note") of the City. Draws will be used to purchase property for parks.
3. Amount:

Not to exceed \$10,000,000
4. Form:

Fully registered Note issued by the City and purchased by the Bank at private sale.
5. Purpose:

To provide funding for land acquisition.
6. Bond Terms:
  - a) Interest Rate:

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City of Olympia  
Metropolitan Park District  
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Interest rate will be a bank-qualified tax-exempt fixed rate equal to 1.35%.  
Accrual basis actual/365.

b) Term:

The Note shall mature June 1, 2019. Interest would be due semi-annually December 1, and June 1, beginning December 1, 2016. Principal would be due at maturity.

c) Draws:

Draws can be made on the Note on any business day in an amount greater than or equal to \$25,000. Draw proceeds will be wire transferred to the City. For same day funding, draw requests will need to be received by 11 AM.

d) Transferability

The Bank will hold the Note with no intent to sell or transfer. The Note may be transferred only in whole to a qualified investor.

7. Prepayment:

The Note may be prepaid at any time in whole or in part without penalty provided the registered owner of the Note receives 15-day notice.

8. Fees:

No fees. The City will be responsible for all other costs of issuance, including bond counsel costs. The Bank will not have any legal expenses.

9. Additional Terms:

The bond documents would be prepared by bond counsel to the City, will be in the standard forms customarily required by the Bank for municipal funding, and will include additional terms and conditions not discussed above. At the date of closing the bond, the financial condition and credit of the City and all other features of this transaction will be as represented to the Bank without material adverse change. In the event of adverse material changes in the credit worthiness of the City, including litigation or claims filed against the City, any commitment will terminate upon notice by the Bank. This commitment will be non-assignable by the City. The City will designate the Note as a “qualified tax-exempt obligation” under section 265(b) (3) of the IRS Code for investment by financial institutions.

10. Continuing Disclosure:

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City of Olympia  
Metropolitan Park District  
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The City will also be required to make available to the Bank its annual financial report for as long as the Note is outstanding. The report may be made available via City web site, EMMA, or by direct transfer.

11. Acceptance:

This commitment is not binding unless the Bank receives a signed copy of this letter by May 20, 2016 at which time the commitment will expire without notice. If, after acceptance, the Note has not closed by June 15, 2016, this commitment will expire without notice.

12. Closing: Closing of the Note is anticipated on or about June 1, 2016.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Thank you for the opportunity to provide this offer to the City and its financing team.

Sincerely,

CASHMERE VALLEY BANK

Ron Olsen  
Senior Vice President Municipal Finance Manager  
Direct: 425-688-3935

Acknowledged and accepted this 10th day of May, 2016

CITY OF OLYMPIA

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

cc: Nancy Neraas, Foster Pepper PLLC



## City Council

### Olympia Police Department Update

**Agenda Date:** 5/3/2016  
**Agenda Item Number:** 6.B  
**File Number:** 16-0582

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**Type:** information **Version:** 1 **Status:** Other Business

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**Title**

Olympia Police Department Update

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Receive the update from the Olympia Police Department. Briefing only; no action requested.

**Report**

**Issue:**

Whether to receive the Olympia Police Department's (OPD) status report on Department strategic initiatives.

**Staff Contact:**

Lt. Paul Lower, Olympia Police Department, 360.753.8410

**Presenter(s):**

Chief Ronnie Roberts, 360.753.8300

**Background and Analysis:**

In this update, OPD will present information about the progress of strategic initiatives implemented by the Department over the last two years. Included in the update will be information about the Department's commitment to community outreach, training, succession planning and other topics related to OPD's progress towards the goals in the "President's Task Force on 21<sup>st</sup> Century Policing."

**Neighborhood/Community Interests (if known):**

Neighborhoods and the community at large are important aspects of Olympia's community outreach and community policing.

**Options:**

NA

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**Type:** information **Version:** 1 **Status:** Other Business

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**Financial Impact:**  
NA