



City Hall
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City Council

ADDED - Approval of Resolution Authorizing City Manager to Execute a Settlement Agreement in the lawsuit, Bernie's Garage and Adams Street Warehouse vs. City of Olympia, WSDOT, and LIHI

**Agenda Date: 11/22/2016
Agenda Item Number: 4.K
File Number: 16-1323**

Type: resolution **Version:** 1 **Status:** Passed

Title

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Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing the City Manager to execute a settlement agreement of the above referenced case.

Report

Issue:

Whether to settle the above referenced case.

Staff Contact:

Darren Nienaber, Deputy City Attorney, 360.753.8037

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

This Settlement Agreement comes before Council because a proposed settlement with the State of Washington (WSDOT) requires modification of the 2008 Real Estate Purchase and Sale Agreement for the property commonly located at 318 State Avenue. The modification relates to a revision of the environmental indemnification given to the City by WSDOT under the purchase agreement at the time the City acquired the property at issue.

Bernie's Garage, LLC, and Adams Street Warehouse are plaintiffs in a lawsuit against City of

Olympia and Washington State Department of Transportation (WSDOT). The lawsuit concerns alleged contamination of the plaintiffs' property from the property to the south (currently owned by the City of Olympia). WSDOT had been owner of the southern property for over 80 years, using it as a testing and repair facility. WSDOT sold the property to the City of Olympia in 2008 for \$1,280,175. The acquisition money was placed into a special account that the City of Olympia was authorized to draw upon to clean up hazardous contamination of the property. Using all of the funds from that account, the cleanup of the property has substantially been accomplished. There is some contamination still remaining. The City of Olympia filed a cross claim in the above referenced case against WSDOT alleging, in part, that WSDOT is responsible under the 2008 Purchase and Sale Agreement for final cleanup of the City's parcel and, in addition under the agreement, that WSDOT is liable to the plaintiff (Bernie's Garage, LLC and Adams Street Warehouse) for any contamination, rather than Olympia.

The City of Olympia obtained an estimated cost of final cleanup of the property of about \$467,000, which includes certain contingencies. The City also obtained an estimate for maximum number of foreseeable contingencies to cleanup the property to meet Ecology Model Toxic Control Act (MTCA) standards in the amount of \$751,749, which includes unpaid prior costs except attorney's fees. The City has been offered \$751,749 by WSDOT to settle Olympia's cross claims against the State of Washington (WSDOT). WSDOT also would agree to pay and settle the claims brought by the plaintiffs, Bernie's Garage and Adams Street Warehouse. The offer is contingent on the City releasing WSDOT from on-property liability for environmental cleanup of the City's property. This release does not alter any responsibility WSDOT may or may not have with regard to off-property pollution. The City would use the settlement proceeds to finish cleanup of the property. The remainder of any settlement proceeds, if any, would be placed in a City account for remediation of other properties owned by the City.

Neighborhood/Community Interests (if known):

None as this is an administrative amendment.

Options:

1. Approve the attached resolution.
2. Continue with the lawsuit and assume risk of lesser result.

Financial Impact:

The City would receive \$751,749 in order to clean up its property.

Attachments:

Resolution