

CITY OF BAINBRIDGE ISLAND, WASHINGTON

RESOLUTION NO. 2010-05

A RESOLUTION of the City of Bainbridge Island, Washington, amending provisions of Resolution No. 2009-08; and providing for other matters properly relating thereto.

ADOPTED: January 13, 2010

This document prepared by:

*Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101*

*(206)447-4400*

CITY OF BAINBRIDGE ISLAND, WASHINGTON

RESOLUTION NO. 2010-05

A RESOLUTION of the City of Bainbridge Island, Washington, amending provisions of Resolution No. 2009-08; and providing for other matters properly relating thereto.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, as follows:

Section 1. Capitalized terms are defined in Ordinance No. 2009-02 of the City, passed on March 11, 2009, as amended by Ordinance No. 2009-07 of the City, passed on April 22, 2009 (the "Bond Ordinance") and in Resolution No. 2009-08.

Section 2. Amendments. Deleted language is indicated with strikethrough and new language is indicated with double underlining.

(a) The Title of Resolution No. 2009-08 on the cover page and on page 1 are amended to read as follows:

A RESOLUTION of the City of Bainbridge Island, Washington, approving the sale of not to exceed ~~\$6,000,000~~\$1,900,000 aggregate principal amount Sewer Revenue Bond Anticipation Note (Line of Credit), ~~2009~~2010, to Cashmere Valley Bank, fixing the interest rate, maturity date, and other terms of the Note; and providing for other matters properly relating thereto.

(b) Section 1 of Resolution No. 2009-08 is hereby amended to read as follows:

*Section 1. Findings and Determinations.* The City Council hereby makes the findings and determinations set forth in this Section 1. Capitalized terms are defined in Ordinance No. 2009-02 of the City, passed on March 11, 2009, as amended by Ordinance No. 2009-07 of the City, passed on April 22, 2009 (the "Bond Ordinance") and in Section 2 of this resolution.

(a) Pursuant to the Bond Ordinance, the City has authorized the issuance of the Note, as a short-term obligation issued in anticipation

of permanent financing, in an amount not to exceed ~~\$6,000,000~~\$1,900,000 for the purpose of carrying out the Plan of Additions set forth therein.

(b) Cashmere Valley Bank has offered to provide interim financing through the purchase of a short-term bond anticipation note, as authorized by chapter 39.50 RCW, under the terms and conditions set forth in the form of a Proposal Letter, which is on file with the City Finance Director.

(c) Based on the foregoing, the City finds that it is in the best interest of the City and its ratepayers to accept the Proposal Letter and to issue and sell its Not to Exceed ~~\$6,000,000~~\$1,900,000 Sewer Revenue Bond Anticipation Note (Line of Credit), ~~2009~~2010, pending permanent financing.

(c) Section 2 of Resolution No. 2009-08 is hereby amended to read as follows:

*Section 2. Definitions.* The definitions provided in the Bond Ordinance are incorporated by this reference. In addition, as used in this resolution, the following words shall have the following meanings:

“Bank” means Cashmere Valley Bank of Cashmere, Washington.

“Bond Legislation” means, with respect to the Note, this Bond Sale Resolution and the Bond Ordinance.

“Bond Ordinance” means Ordinance No. 2009-02 of the City, passed on March 11, 2009, as amended by Ordinance No. 2009-07, passed on April 22, 2009.

“Bond Sale Resolution” means ~~this resolution~~ Resolution No. 2009-08 of the City, adopted on April 22, 2009 by the City Council as amended by Resolution No. 2010-05 of the City, adopted on January 2010 by the City Council, approving and fixing the par amount, date, form, maturities, interest rates, terms and covenants of the Note and approving its issuance and sale to the Purchaser.

“Bonds” means, for purposes of this resolution, the Project Bonds authorized to be issued pursuant to, under the authority of and for the purposes provided in the Bond Ordinance.

“Business Day” means any day which is not a Saturday or Sunday or a day on which commercial banks located in Seattle, Washington, are closed for business.

“Draw” means each incremental draw upon the Note.

“Interest Payment Date” means each June 1 and December 1, commencing June 1, ~~2009~~2010.

“Maturity Date” means December 1, 2011.

“Note” means, for purposes of this resolution, the Sewer Revenue Bond Anticipation Note (Line of Credit), ~~2009~~2010 of the City in a principal amount not to exceed ~~\$6,000,000~~\$1,900,000, which is authorized by the Bond Legislation.

“Note Debt Service Fund” means that special fund of the City within the Sewer Fund, designated as the Sewer Revenue Bond Anticipation Note Debt Service Fund, ~~2009~~2010, established for the purpose of paying principal of and interest on the Note.

“Note Register” means the books or records maintained by the Note Registrar containing the name and mailing address of the owner of the Note.

“Note Registrar” means the Finance Director.

“Prime Rate” means the rate of interest publicly announced from time to time as the Wall Street Journal Prime Rate.

“Project Fund” means the special fund of the City created and established by this ordinance to pay costs of the Project.

“Proposal Letter” means the letter of the Bank dated April ~~10~~13, 2009, describing certain terms of the line of credit to be evidenced by the Note as extended by letters dated May 15, 2009, September 14, 2009 and December 15, 2009 (attached as Exhibit A).

“Sewer Fund” means the fund of that name previously established within the City’s Waterworks Utility Fund.

“Sewer System Obligations” means Revenue Obligations payable solely from and secured by a pledge of the Sewer System Revenues. Sewer System Obligations are not general obligations of the City and do not include any portion of any obligation secured by a general obligation pledge.

“Sewer System Revenues” means Waterworks Utility Revenue allocable solely to the Sewer System and remaining after payment of the Maintenance and Operation Expense allocable to the Sewer System within the Waterworks Utility. Sewer System Revenues shall be available to pay, in the following order: (a) Maintenance and Operation Expenses of the Sewer System of the Waterworks Utility; (b) the principal of and interest on all outstanding Sewer System Obligations, if any, for which payment

has not otherwise been provided and all amounts that the City is obligated to set aside into a debt service fund and any reserve fund securing such Sewer System Obligations, and all other payment obligations related thereto; (c) payment of the principal of and interest on (in the following order): (i) that portion of any outstanding Revenue Obligations allocated to the Sewer System, (ii) that portion of any Subordinate Obligations allocated to the Sewer System, and (iii) all amounts that the City is obligated to set aside in the Debt Service Fund or reserve fund for such bonds; and (d) for the payment of any and all other amounts allocable to the Sewer System that the City is obligated to pay from Net Revenue of the Waterworks Utility, including without limitation any Public Works Trust Fund Loans.

(d) Section 3 of Resolution No. 2009-08 is hereby amended to read as follows:

*Section 3. Description of the Note.* For the purpose of providing the funds with which to pay costs of the Project, the costs of issuing and delivering the Note, and interest on the Note pending the issuance of the Bonds, the City may borrow money from time to time pursuant to a line of credit extended by the Bank under the terms of its Proposal Letter, and consistent with the provisions of this ordinance, and shall issue the Note in a maximum principal amount not to exceed ~~\$6,000,000~~\$1,900,000. The Note shall be prepared in a form consistent with this resolution and the Bond Ordinance and shall be designated a Sewer System Obligation for purposes of the Bond Ordinance. The Note shall be designated the Sewer Revenue Bond Anticipation Note, ~~2009~~2010 (Line of Credit) and it shall be dated as of its date of delivery to the Bank. The Note shall be issued in fully registered form and shall be numbered R-1. Each Draw on the Note shall bear interest at a variable rate equal to 90% of the Prime Rate on the date of such Draw, calculated on an actual/365 day basis. The City Council finds that this method of determining the interest rate is in the best interest of the City and its taxpayers and ratepayers. Principal of and interest on the Note shall be payable as described in Section 5, below. Draws are not subject to approval by the Bank, but shall be limited to the aggregate principal amount of ~~\$6,000,000~~\$1,900,000. The line of credit evidenced by the Note is a nonrevolving line of credit, and amounts repaid may not be reborrowed.

If the Note is not redeemed when properly presented at its Maturity Date, the City shall be obligated to pay interest on the Note, solely from the funds set aside and pledged for such purpose, at the same rate provided from and after its maturity until the Note, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the note redemption fund and the Note has been called for payment by giving notice of that call to the registered owner.

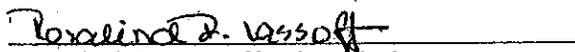
Section 3. Ratification of Prior Acts. All acts taken consistent with the authority of this Resolution and prior to its effective date are ratified, approved and confirmed.

Section 4. Effective Date of Resolution. This resolution shall take effect and be in force from and after its passage.

ADOPTED by the City Council of the City of Bainbridge Island, Washington, and signed by me in open session in authentication of its adoption at a regular meeting thereof held this 13<sup>th</sup> day of January, 2010.

  
\_\_\_\_\_  
Bob Scales, Mayor

ATTEST:

  
\_\_\_\_\_  
Rosalind D. Lassoff, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Foster Pepper PLLC, Bond Counsel

## CERTIFICATION

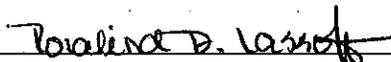
I, the undersigned, City Clerk of the City of Bainbridge Island, Washington (the "City"), hereby certify as follows:

1. The attached copy of Resolution No. 2010-05 (the "Resolution") is a full, true and correct copy of a Resolution duly adopted at a regular meeting of the City Council of the City held at the regular meeting place thereof on January 13, 2010, as that Resolution appears on the minute book of the City; and the Resolution is in full force and effect from and after its date of adoption; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of January, 2010.

CITY OF BAINBRIDGE ISLAND,  
WASHINGTON

  
\_\_\_\_\_  
Rosalind D. Lassoff, City Clerk



April 13, 2009

Honorable City Council  
City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812

Dear Council Members,

Thank you for the opportunity to propose an interim funding solution for the City of Bainbridge Island's Winslow Wastewater Treatment Plant Project (the "Project"). Cashmere Valley Bank (the "Bank") understands that the City currently has a need for funding of approximately \$6,000,000 as a part of the \$14.3 million Project. Accordingly, the Bank has prepared the below described credit facility intended to address the City's current need. **This offer is subject to receipt of final credit approval by the Bank, anticipated to be received on Tuesday, April 15, 2009.**

1. Borrower: City of Bainbridge Island, (the "City")
2. Description of the Credit Facility:  

The Bank is offering to provide a Waterworks Utility Revenue Bond Anticipation Note Line of Credit (Non-Revolver), (the "Note"). The Note will be designated a senior lien on the net revenues of the Sewer Fund, as a part of the Waterworks Utility. We further understand that the City intends to issue bonds to fully repay the Note at or before completion of the Project. When the Note is closed, the Bank will allow draws at anytime up to the maximum amount of the Note.
3. Amount: Not to Exceed \$6,000,000
4. Form: Registered, Bank Qualified, Tax-Exempt Note issued by the City and purchased by the Bank at private sale.
5. Purpose: Financing a portion of the costs of the Project.

6. **Bond Terms:**

a) **Interest Rate:**

Interest will accrue at a variable equal to 90% of the Prime Rate as published in the printed edition of the Wall Street Journal. Calculated on an actual/365 basis.

b) **Term:**

Interest on the Note will be due semi-annually on mutually agreeable dates. Principal outstanding under the Note will be due in approximately 3 years.

c) **Security:**

The City pledges the net revenues of the Sewer Fund, as part of the Waterworks Utility, for repayment of interest on the Note. The Note will be a senior lien to all previously issued bonds with claims to the revenues of the Waterworks Utility.

d) **Transferability:**

The Bank will hold this Note with no intent to sell or transfer. However, the Note may be assigned or transferred in whole to a qualified investor. Any transfer shall be without cost to the owner or transferee, except for governmental charges imposed on any such transfer or exchange.

7. **Prepayment:** The City may prepay the Note, in whole or in part, at anytime at par plus accrued interest to the date of prepayment and redemption. There will be no fee from the Bank for prepayment.

8. **Fees:** A \$20,000 fee will be due at closing. All legal costs incurred by the City for purposes of issuing the Note will be the responsibility of the City.

9. **Additional Terms:** The Note documents will be in the standard forms customarily required by the Bank for bank qualified municipal funding and will include additional terms and conditions not discussed above. At the date of closing the Note, 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 material adverse changes in the creditworthiness of the City, including litigation involving or claims filed against the City, other than as discussed below in this paragraph, this commitment will terminate upon notice by the Bank. This commitment is non-assignable by the City. This commitment supersedes any prior commitments, offers, or agreements, written or oral concerning this financing and can only be modified in writing.

The Bank has received copies of letters dated February 19, 2009 and March 11<sup>th</sup> (the "Letters") sent to the City on behalf of an organization called the Bainbridge Ratepayers Alliance raising concerns that it alleges form the basis for a potential challenge to the issuance of debt to finance the Project. The Bank has also received a copy of a memorandum of Bond Counsel ("Bond Counsel Memo"), dated February 25, 2009 analyzing the February 19 Letter.

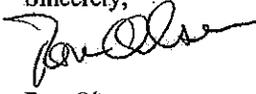
As a condition of closing, the Bank will receive one or more opinions of Bond Counsel, or other counsel to the City, to the effect that there is no merit to any of the potential claims raised by the Bainbridge Ratepayers' Alliance in the Letters as they relate to the issuance, sale and delivery of the Note to the Bank as provided in this proposal letter and it is unlikely that a court of competent jurisdiction, if properly briefed, would find otherwise. To the fullest extent permitted by law, the City shall indemnify and hold harmless the Bank, and its officers, agents and employees, from and against (i) all claims by or on behalf of any person arising from any of the potential claims raised in the February 19 Letter, other than to the extent such claims are established to be caused by the negligence or willful misconduct of the Bank or its officers, agents or employees; and (ii) all reasonable costs, counsel fees, or liabilities incurred in connection with any such claim or proceeding.

10. **Acceptance:** This commitment is not binding unless a copy of this letter is signed by the City and received by us prior to close of business on April 27, 2009 at which time the offer will expire without notice. If, after acceptance, the Note has not closed by May 15, 2009 this commitment will expire without notice.

**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.**

If this commitment is acceptable to the City, please sign and return the enclosed copy. Thank you for the opportunity to work with you.

Sincerely,



Ron Olsen  
Director Municipal Services

Acknowledged and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Borrower

City of Bainbridge Island

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

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

City's Tax Identification Number: 91-\_\_\_\_\_

cc: Steve Gaidos

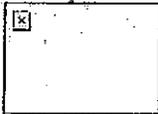
**From:** Ron Olsen [ROlsen@cashmerevalleybank.com]  
**Sent:** Monday, April 20, 2009 2:55 PM  
**To:** Steve Galdos; Eiray Konkel  
**Cc:** Alice Ostdiek; Sommer; Annette; James Tinker  
**Subject:** RE: City of Bainbridge Island - Note purchase offer

Hi All

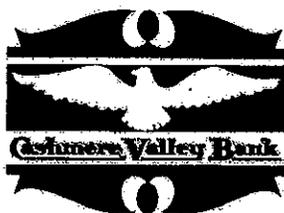
The NPO from Cashmere valley Bank to the City of Bainbridge Island dated April 13, 2009 contains in the first paragraph a contingency relating to final credit approval of the Bank anticipated to occur April 15<sup>th</sup>. This final credit approval was completed and the contingency is hereby withdrawn.

Regards,

*Ron Olsen*  
Director Municipal Services  
Cashmere Valley Bank  
866-252-2285



\*\*\*\*\*  
\*\*\*\*\* NOTICE: This electronic mail message and any files transmitted with it are intended exclusively for the individual or entity to which it is addressed. The message, together with any attachment, may contain confidential and/or privileged information. Any unauthorized review, use, printing, saving, copying, disclosure or distribution is strictly prohibited. If you have received this message in error, please immediately advise the sender by reply email and delete all copies.  
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May 15, 2009

Bainbridge City Council Members  
City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812

Re: Cashmere Valley Bank April 13, 2009 Commitment Letter Extension

Dear Council Members:

This letter will confirm the position of Cashmere Valley Bank (the "Bank") with respect to our proposal to provide an interim funding solution for the City of Bainbridge Island's Winslow Waste Water Treatment Plant Project (the "Project") as set forth in our letter to the City dated April 13, 2009.

As indicated in paragraph 9 of the aforementioned letter, an event of a material adverse change in the creditworthiness of the City, including litigation involving or claims filed against the City, may result in termination of the Bank's commitment set forth in said letter. The Bank has been provided with a copy of the Complaint filed in Kitsap County Superior Court Cause No. 09-2-01023-6 against the City by the Plaintiff group known as the Bainbridge Ratepayers Alliance, a non-profit corporation. This will confirm that the Bank has formed an opinion that this pending litigation does represent a material adverse change and that in order to move forward with the commitment consistent with the remaining terms of the Bank's April 13, 2009 letter to the City, one of the following must first occur:

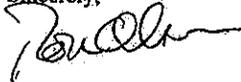
1. The parties to the aforementioned litigation stipulate that City Resolution No. 2009-09, approving the sale not to exceed \$6,000,000 aggregate principal amount of Sewer Revenue Bond Anticipation Notes (line of credit) to Cashmere Valley Bank is a properly passed, executed, and valid Resolution of the City for the uses and purposes stated therein and that any funds paid out by the Bank pursuant to the aforementioned Resolution and/or any subsequently adopted Resolutions and/or Ordinances in furtherance thereof, together with all other documents related to the Bond issuance collectively create a valid and enforceable obligation of the City; or
2. The Kitsap County Superior Court or another court of competent jurisdiction enters an order deemed by the Bank to have the same legal effect as the aforementioned stipulation.

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Pursuant to these terms, the Bank renews all other terms in the Bank's April 13, 2009 letter to the City that are not inconsistent with the terms set forth herein and incorporates said terms into this letter as if fully set forth herein. In addition, the Bank hereby extends the commitment from the initial expiration date of May 15, 2009 to September 15, 2009.

If this extension of the commitment is acceptable to the City, please sign a copy of this letter and return it to me. We appreciate the opportunity to provide municipal funding for the City on this Project.

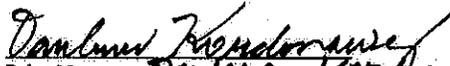
Sincerely,



Ron Olsen  
Director Municipal Services

cc: Steve Gaidos  
Alice Ostdiek

Acknowledged and accepted this 15 day of May, 2009, by and on behalf of the Borrower, the City of Bainbridge Island, Washington.

By:   
Print Name: Darlene Kordonov  
Title: Mayor



Bainbridge City Council Members  
City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812

September 14, 2009

Re: Cashmere Valley Bank April 13, 2009 and May 15, 2009 Commitment Letter Extension

Dear Council Members:

This letter will confirm the position of Cashmere Valley Bank (the "Bank") with respect to our proposal to provide an interim funding solution for the City of Bainbridge Island's Winslow Waste Water Treatment Plant Project (the "Project") as set forth in our letter to the City dated April 13, 2009, and as extended in our letter to the City dated May 15, 2009.

This letter will confirm that the Bank hereby extends the commitment as set forth in the Bank's May 15, 2009 letter from September 15, 2009 to December 15, 2009. The remaining terms and conditions as set forth in the April 13, 2009 letter, and as those terms and conditions are modified in the May 15, 2009 letter, shall continue to be the conditions of the Bank's commitment.

If this extension of the commitment is acceptable to the City, please sign a copy of this letter and return it to me. We appreciate the opportunity to provide municipal funding for the City on this Project.

Sincerely,

Ron Olsen  
Director Municipal Services

cc: Alice Ostdiek  
Charles D. Zimmerman

Acknowledged and accepted this 15th day of September, 2009, by and on behalf of the Borrower, the City of Bainbridge Island, Washington.

By:

  
Print Name: Christopher Snow

Title: Mayor

  
Mark Dombrowski  
City Manager

1400 112th Avenue SE, Suite 100 • Bellevue, Washington 98004-6907 • (425) 688-3935 • Toll Free 1 (866) 252-2265 • Fax (425) 688-3037



CHARLES D. ZIMMERMAN  
czimmerman@omwlaw.com

December 3, 2009

**VIA E-MAIL ONLY**

Alice M. Ostdiek  
Foster Pepper, PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101

Re: Winslow Waste Water Treatment Plant Project  
Bainbridge Ratepayers Alliance v. City of Bainbridge  
Kitsap County Superior Court Cause No. 09-2-01023-6

Dear Alice:

Thank you for providing me with a copy of your e-mail to Ron Olsen of Cashmere Valley Bank (the "Bank"). Ron and I have had an opportunity to discuss your proposal and Ron has authorized me to offer the City of Bainbridge Island (the "City") the following possible solutions for the benefit of the City:

1. The City may pursue and obtain from the Bainbridge Ratepayers Alliance a formal written waiver of any objection to a specific borrowing amount. The Bank wants me to review any such waiver so the Bank is comfortable that the actual language provides the Bank the security it needs to know it will not be a participant in the existing or any potential future lawsuit concerning the funding; or
2. The Bank will provide an extension of the September 14, 2009 extension for a period of six months, the consideration for which will be a payment of \$5,000 from the City to the Bank to reimburse the Bank for a portion of its out-of-pocket expenses incurred in this matter to date. Should the loan ultimately closed, this payment will be credited as a pre-payment of the normal and customary charges of the Bank associated with providing the financing to the City of Bainbridge Island.

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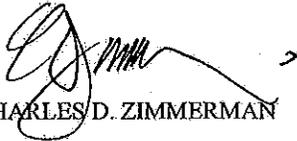
Alice M. Ostdiek  
December 3, 2009  
Page 2

Please let us know which option the City would prefer to pursue.

I look forward to hearing from you.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.

A handwritten signature in black ink, appearing to read "CDZ", with a stylized flourish extending to the right.

CHARLES D. ZIMMERMAN

CDZ:lrc

cc: Ron Olsen (via e-mail only)

(CDZW0136135.DOC;1\03015.020090)



Bainbridge City Council Members  
City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812

December 15, 2009

Re: Cashmere Valley Bank April 13, 2009, May 15, 2009, and September 14, 2009  
Commitment Letter Extension

Dear Council Members:

This letter will confirm the position of Cashmere Valley Bank (the "Bank") with respect to our proposal to provide an interim funding solution for the City of Bainbridge Island's Winslow Waste Water Treatment Plant Project (the "Project") as set forth in our letter to the City dated April 13, 2009, and as extended in our letters to the City dated May 15, 2009 and September 14, 2009.

This letter will confirm that upon payment by the City to the Bank of the sum of \$5,000, the Bank hereby extends the commitment as set forth in the Bank's September 14, 2009 letter from December 16, 2009 to June 16, 2010. The remaining terms and conditions as set forth in the April 13, 2009 letter, as those terms and conditions are modified in the May 15, 2009 letter and the September 14, 2009 letter, shall continue to be conditions of the Bank's commitment.

In the event this transaction closes, the funds identified in the preceding paragraph shall be credited by the Bank as a pre-payment of fees.

If this extension of the commitment is acceptable to the City, please sign a copy of this letter and return it to me with a check in the amount of \$5,000 made payable to the Bank.

We appreciate the opportunity to provide municipal funding for the City on this Project.

Sincerely,

Ron Olsen  
Director Municipal Services

RO:lrc

cc: Alice Ostidiek  
Charles D. Zimmerman

Acknowledged and accepted this 15<sup>th</sup> day of December, 2009, by and on behalf of the Borrower, City of Bainbridge Island, Washington.

By:

(Print Name) Lee Walton  
(Title) Interim City Manager

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