

RESOLUTION NO. 669

A RESOLUTION accepting the resignation of Lehman Brothers as financial advisor to the City with respect to the sale and issuance of the Water and Sewer Revenue Bond Anticipation Notes (Utility Local Improvement Districts No. 11 and No. 14) of the City in the principal amount of \$3,565,000; accepting a proposal of Lehman Brothers to purchase and underwrite such notes; and fixing the interest rates on such notes.

WHEREAS, the City of Lacey, Washington, by Ordinance No. 896, passed November 15, 1990, (the "Note Ordinance") as amended by Ordinance No. 899 passed December 10, 1990, (the "Amending Ordinance") authorized the sale and issuance of Water and Sewer Revenue Bond Anticipation Notes (Utility Local Improvement Districts No. 11 and No. 14) of the City in the principal amount of \$3,565,000 (the "Notes") to provide funds to pay part of the costs of improvements specified by the Note Ordinance; and

WHEREAS, no bids were received in response to a notice of sale published in accordance with Section 11 of the Note Ordinance and Exhibit A thereto; and

WHEREAS, for the reasons set forth in the Amending Ordinance, it is in the best interest of the City to accept the resignation of Lehman Brothers as financial advisor to the City with respect to the Notes and to approve the sale of the Notes to Lehman Brothers, of Seattle, Washington, on the terms set forth in their proposal and as provided in Ordinance No. 896, as amended, and this resolution; NOW, THEREFORE,

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

Section 1. Resignation of Financial Advisor. The resignation of Lehman Brothers as Financial Advisor to the City with respect to the Notes as set forth in the letter attached hereto as Exhibit A is hereby accepted.

Section 2. The proposal of Lehman Brothers to purchase the Notes as set forth in the proposal attached hereto as Exhibit B is hereby accepted, and the interest rate on the Notes shall be as follows:

<u>Date</u>	<u>Amount</u>	<u>Rate</u>
June 1, 1991	\$ 415,000	6.00%
December 1, 1991	3,150,000	6.25%

ADOPTED by the City Council at a special meeting thereof, duly noticed and called, held on December 10, 1990.

CITY OF LACEY, WASHINGTON

Kay M. Boyd

Mayor

ATTEST:

Charlotta M. Taylor

City Clerk

FORM APPROVED:

[Signature]

City Attorney

LEHMAN BROTHERS

RICHARD B. KING
SENIOR VICE PRESIDENT

November 29, 1990

Honorable Mayor and City
Council Members
City of Lacey
Post Office Drawer B
Lacey, Washington 98503

Re: **\$3,565,000**
City of Lacey, Washington
Water & Sewer Utility Revenue Bond Anticipation Notes, 1990

Dear Honorable Mayor and City Council Members:

The City advertised for sealed bids to be received at 10:00 a.m. today for the purchase of notes referenced above (the "Notes"). For a variety of reasons, unfortunately, the City did not receive any bids on the Notes. In order to enable the City to proceed with its construction schedule, we have extended an offer to the City to purchase the Notes on a negotiated basis.

Compliance with the Municipal Securities Rulemaking Board Rule G-23 requires that a financial advisor resign, in writing, from its position as a financial advisor in order to serve as an underwriter. We are willing to tender our resignation as a service to the City. In addition, Rule G-23 requires that the City acknowledge our resignation, the potential conflict of interest and the difference in compensation that we will receive in our role as negotiated underwriter.

Under the terms of our current financial advisory contract with the City, we would have received approximately \$11,000 for the sale of the Notes. Our compensation to underwrite the Notes will be \$26,378, assuming that you choose to accept our offer, which is contained in the Bond Purchase Contract. Commissions paid to our salespeople for selling the Notes increases the overall compensation to the firm.

EXHIBIT 'A'

Honorable Mayor and City
Council Members
November 29, 1990
Page 2

In accordance with MSRB Rule G-23, therefore, we hereby tender our resignation as financial advisor on the Notes to enable us to assist the City with the issuance of the Notes.

Respectfully submitted,



Richard B. King

RBK:ks1647k

LEHMAN BROTHERS

\$3,565,000
City of Lacey, Washington
Water and Sewer Utility Revenue Bond Anticipation Notes, 1990

PURCHASE CONTRACT

December 10, 1990

Honorable Mayor and Members of
the City Council
City of Lacey
Post Office Drawer B
Lacey, Washington 98501

Honorable Mayor and Members of the City Council:

Lehman Brothers (the "Purchaser"), is pleased to offer to purchase from the City of Lacey (the "Seller") all of its \$3,565,000 principal amount of Water & Sewer Utility Revenue Bond Anticipation Notes (the "Notes"). This offer is based upon the terms and conditions set forth below and in Exhibit A attached, which when accepted by the Seller shall constitute the terms and conditions of our Purchase Contract for the Notes. Those terms and conditions are as follows:

1. Prior to the date of delivery and payment for the Notes identified in paragraph j of Exhibit A ("Closing"), the Seller shall adopt ordinances and pass a resolution authorizing the issuance of the Notes (collectively the "Note Ordinance") in form and substance acceptable to the Purchaser and the Seller.
2. The Seller shall sell and deliver to the Purchaser, and the Purchaser shall purchase, accept delivery of and pay for the entire \$3,565,000 principal amount of the Notes, for a purchase price set forth in paragraph a of Exhibit A.
3. The Seller consents to and ratifies the use by the Purchaser of the information contained in the Preliminary Official Statement dated November 26, 1990 relating to the Notes (the "Preliminary Official Statement"). As of its date, the Preliminary Official Statement has been "deemed final" by the Seller for purposes of SEC rule 15C2-12. Seller authorizes the preparation of a Final Official Statement (the "Final Official Statement") for the Notes containing such revisions and additions to the Preliminary Official Statement as the Seller deems necessary (Purchaser acknowledges changes to the Preliminary Official Statement made as of the date of this Purchase Contract), and further authorizes the use of the Final Official Statement in connection with the public offering and sale of the Notes.

EXHIBIT B

4. The Seller represents and warrants to, and agrees with, the Purchaser, as of the date hereof and as of the date and time of Closing, that:
 - a. The Seller has and will have at Closing full legal right, power and authority to enter into and perform its obligations under this Purchase Contract and under the Note Ordinance, to adopt the Note Ordinance and to sell and deliver the Notes to the Purchaser;
 - b. This Purchase Contract, the Note Ordinance and the Notes do not and will not conflict with or create a breach of or default under any existing law, regulation, judgment, order or decree or any agreement, lease or instrument to which the Seller is subject or by which it is bound;
 - c. No governmental consent, approval or authorization other than the Note Ordinance is required in connection with the sale of the Notes to the Purchaser;
 - d. This Purchase Contract, the Note Ordinance and the Notes (when paid for by the Purchaser) are, and shall be at the time of Closing, legal, valid and binding obligations of the Seller enforceable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency or other similar laws generally affecting creditors' rights;
 - e. The Note Ordinance shall have been duly authorized by the Seller, shall be in full force and effect and shall not have been amended at the time of Closing;
 - f. The Preliminary Official Statement, except as to matters corrected in the Final Official Statement, shall be accurate and complete in all material aspects as of its date with respect to information obtained from or utilized by officers and employees of the Seller in the normal course of their duties, and the Final Official Statement shall be accurate and complete in all material respects as of its date and as of the date of Closing to the knowledge and belief of such officers and employees; and
 - g. Any certificate or copy of any certificate signed by any official of the Seller and delivered to the Purchaser pursuant to or in connection with this Purchase Contract shall be deemed a representation by the Seller to the Purchaser as to the truth of the statements therein made and is delivered to the Purchaser for such purpose only.
5. As conditions to the Purchaser's obligations hereunder:
 - a. From the date of the Seller's acceptance of this Purchase Contract to the date of Closing, there shall not have been any:
 - (1) Material adverse change in the financial condition or general affairs of the Seller;

- (2) Event, court decision or proposed law, rule or regulation which may have the effect of changing the federal income tax exemption of the interest on the Notes or the transactions contemplated by this Purchase Contract or the Preliminary and Final Official Statements;
 - (3) International and national crisis, suspension of stock exchange trading or banking moratorium materially affecting the marketability of the Notes; or
 - (4) Material adverse event with respect to the Seller which in the reasonable judgment of the Purchaser requires or has required an amendment, modification or supplement to the Final Official Statement and such amendment, modification or supplement is not made.
- b. At or prior to Closing, the Purchaser shall have received the following:
- (1) The Notes, in definitive form and duly executed and authenticated;
 - (2) A certificate of authorized officers of the Seller, in form and substance acceptable to the Seller and Purchaser, to the effect: (i) that the Seller's execution of the Final Official Statement is authorized, (ii) that, to the knowledge and belief of such officers, the Preliminary Official Statement and Final Official Statement (including the statistical data contained therein) (collectively the "Official Statements") did not as of their respective dates or as of the date of Closing contain any untrue statement of material fact or omit to state a material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading; and (iii) that the representations of the Seller contained in this Purchase Contract are true and correct when made and as of Closing;
 - (3) An approving opinion or opinions of the law firm identified in paragraph k of Exhibit A as bond counsel or from another nationally recognized firm of municipal bond lawyers (either or both of which shall be referred to as "Bond Counsel") satisfactory to the Purchaser and dated as of Closing, to the effect: (i) that the Seller is duly organized and legally existing as a City under the laws of the State of Washington with full power and authority to adopt the Note Ordinance and to issue and sell the Notes to the Purchaser; (ii) that the Notes are valid, legal and binding obligations of the Seller, except to the extent that such enforcement may be limited by bankruptcy, insolvency or other laws affecting creditors' rights; (iii) that interest on the Notes is exempt from federal income taxation; and (iv) that the Notes are not "arbitrage notes" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

- (4) A letter of Bond Counsel, dated the date of Closing and addressed to the Purchaser, to the effect that it may rely upon the opinion in subparagraph (3) above as if it were addressed to the Purchaser;
- (5) A certificate of authorized officers of the Seller to the effect that no litigation is pending, or to the knowledge of the Seller threatened, against the Seller in any court: (i) to restrain or enjoin the sale or delivery by the Seller of the Notes; (ii) in any manner questioning the authority of the Seller to issue, or the issuance or validity of, the Notes; (iii) questioning the constitutionality of any statute, ordinance or resolution, or the validity of any proceedings, authorizing the issuance of the Notes; (iv) questioning the validity or enforceability of the Note Ordinance; (v) contesting in any way the completeness, accuracy or fairness of the Official Statements; (vi) questioning the titles of any officers of the Seller to their respective offices or the legal existence of the Seller under the laws of the State of Washington; or (vii) which might in any material respect adversely affect the transactions contemplated herein and in the Official Statements to be undertaken by the Seller;
- (6) A certificate signed by authorized officers of the Seller to the effect that the officers of the Seller who signed or whose facsimile signatures appear on the Notes were on the date of execution of the Notes the duly elected or appointed, qualified and acting officers of the Seller and that their signatures are genuine or accurate facsimiles;
- (7) A certificate of authorized officers of the Seller to the effect that the Seller has not been and is not in default as to principal or interest payments on any of its notes or other obligations;
- (8) A certificate of authorized officers of the Seller to the effect that, from the respective dates of the Official Statements and up to and including the date of Closing, the Seller has not incurred any material liabilities direct or contingent, nor has there been any material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Seller, except as described in the Official Statements;
- (9) A certified copy of the Note Ordinance;
- (10) A definitive copy of the Final Official Statement, signed on behalf of the Seller by an authorized officer of the Seller;
- (11) A non-arbitrage certificate signed by an authorized officer of the Seller;
- (12) A certified copy of this Purchase Contract; and

- (13) Such additional legal opinions of bond counsel, certificates, instruments and documents as the Purchaser may reasonably request to evidence the truth, accuracy and completeness, as of the date hereof and as of the date of Closing, of the representations and warranties contained herein and of the statements and information contained in the Official Statements and the due performance by the Seller at or prior to Closing of all agreements then to be performed and all conditions then to be satisfied by the Seller.
6. The Seller shall pay the fees and disbursements of Bond Counsel, and the Seller's other consultants and advisors, the costs of federal funds (if used) and the costs of preparing, printing and executing and registering the Notes. The Purchaser shall pay the costs of preparing, printing and distributing the Final and Preliminary Official Statements (except in the circumstances and to the extent set forth in paragraph 7 hereof), the charge of the CUSIP Bureau, the Purchaser's expenses relative to Closing, and the Purchaser's travel expenses.
7. If, during the period ending 25 days after the Closing, any material adverse event affecting the Seller or the Notes shall occur which results in the Final Official Statement containing any untrue statement of a material fact or omitting to state any material fact necessary to make the Final Official Statement, or the statements or information therein contained, in light of the circumstances under which they were made, not misleading, the Seller shall notify the Purchaser and, if in the opinion of the Seller and the Purchaser such event requires a supplement or amendment to the Final Official Statement, the party whose omission, misstatement or changed circumstance has resulted in the supplement or amendment will at its expense supplement or amend the Final Official Statement in a form and in a manner approved by the Seller and the Purchaser.
8. Any notice or other communication to be given to the Seller under this Purchase Contract shall be given by delivering the same in writing to its address above. Any notice or other communication to be given to the Purchaser under this Purchase Contract shall be given by delivering the same in writing to Lehman Brothers, 999 Third Avenue, Suite 4000, Seattle, Washington 98104-4075 (Attention: Richard B. King, Public Finance).

9. Upon acceptance of this Purchase Contract, this Purchase Contract shall be binding upon the Seller and the Purchaser. This Purchase Contract is intended to benefit only the parties hereto. The Seller's representations and warranties shall survive any investigation made by or for the Purchaser, delivery and payment for the Notes, and the termination of this Purchase Contract, except that such representations and warranties contained in the Official Statement shall not survive if Purchaser becomes aware that the facts contained in the Official Statement are incorrect or misleading and Purchaser fails to advise Seller of such incorrect or misleading statements. Should the Purchaser fail (other than for reasons permitted in this Purchase Contract) to pay for the Notes at Closing, the amount set forth in paragraph i of Exhibit A shall be paid by the Purchaser as liquidated damages in full, and costs shall be borne in accordance with Section 6. Should the Seller fail to satisfy any of the foregoing conditions or covenants, or if Purchaser's obligations are terminated for any reason permitted under this Purchase Contract, then neither the Purchaser nor the Seller shall have any further obligations under this Purchase Contract, except that any expenses incurred shall be borne in accordance with Section 6.
10. This offer expires on the date set forth in paragraph m of Exhibit A.

Respectfully submitted,

Richard B. King

Richard B. King
Senior Vice President

ACCEPTED by the City of Lacey, Washington, this 10th day of December, 1990.

CITY OF LACEY

By *Kay M. Boyd*
Mayor

Approved as to Form:

By *[Signature]*
City Attorney

ATTEST:

By *Charlotta M. Taylor*
City Clerk

RBK:ks0445P

EXHIBIT A

DESCRIPTION OF NOTES

- a. Purchase Price: \$99.25 per \$100.00 par value, or \$3,538,262.50, plus accrued interest from December 18, 1990 to the date of Closing.
- b. Denominations: \$5,000 or integral multiples thereof within a single maturity.
- c. Dated Date: December 18, 1990.
- d. Form: Bearer Notes with privileges of exchange at the expense of the Seller.
- e. Interest Payable: At maturity and at the rates shown below.
- f. Maturity Schedule: Notes shall mature on June 1, and December 1, 1991 in the amounts and shall bear interest at the rates shown below.

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
June 1, 1991	\$415,000	6.00%
December 1, 1991	3,150,000	6.25%

- g. Underwriting Discount: \$26,737.50 (0.75%).
- h. Redemption: The Seller does not reserve the right to redeem the Notes prior to maturity.
- i. Liquidated Damages: \$2,000.
- j. Location and Closing Date: Seattle, Washington, December 18, 1990.
- k. Bond Counsel: Lane Powell Spears Lubersky, Olympia, Washington.
- l. Method of Payment: Federal Funds wire or check.
- m. Offer Expires: December 10, 1990 at 12:00 midnight.

0445P