

POULSBO DISTRIBUTION SCHEDULE

ORDINANCE NO.

RESOLUTION NO.

RESOLUTION OF INTENTION NO.

**SUBJECT: Olympic College Poulsbo Memorandum of Understanding**

CONFORM AS TO DATES & SIGNATURES

- Filed with the City Clerk 1/3/2002
- Passed by the City Council 1/2/2002
- Signature of Mayor
- Signature of City Clerk
- Publication
- Effective Date 1/2/2002
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Date

Olympic College, Poulsbo

**MEMORANDUM OF UNDERSTANDING**

Among:

Olympic College  
Olhava Associates, L.P.  
City of Poulsbo

THIS MEMORANDUM OF UNDERSTANDING is entered into between Olympic College ("OC"), Olhava Associates, L.P. ("Olhava") and the City of Poulsbo ("the City") on the 3rd day of ~~December 2001~~. January 2002.

**RECITALS**

A. OC is the owner of certain property legally described as the north one-half of the northeast quarter of the northwest quarter of Section 10, Township 26 North, Range 1 East, W.M. in the City of Poulsbo, Kitsap County, Washington ("the OC Poulsbo Campus Property"). The OC Poulsbo Campus Property is part of a larger development commonly known as the Olhava property, for which a Master Plan was approved by the City on June 3, 1998 under City file number MP 96-01. OC acquired the OC Poulsbo Campus Property from Olhava, subject to certain terms and conditions. Olhava is the owner of the remaining property that is governed by the Olhava Master Plan.

B. The Olhava Master Plan contemplates that a number of improvements (roads, utilities, etc.) must be constructed as part of the first phase of development of the Master Plan. Some of these improvements must be in place before OC may construct and occupy the OC Poulsbo Campus as per the Master Plan approvals. The City has also contemplated that certain of its own public works improvements would be constructed contemporaneously with the development of the Olhava property in order to serve growth in northwestern Poulsbo and in areas currently outside the City limits.

C. Olhava and OC entered into an agreement entitled, "Agreement Regarding the Olhava Property Common Easement and Development Agreement" ("the Cost Sharing Agreement") on December 30, 1998 under which OC agreed to contribute a share of the costs of initial construction of certain common improvements (roads, utilities, etc.) within and outside of the Olhava Master Plan that are needed for both development of the OC Poulsbo Campus and the remainder of the Olhava property.

D. The parties originally contemplated that Olhava would construct the common improvements, but it now appears that OC's timetable for constructing the OC Poulsbo Campus may precede Olhava's timetable for construction of any portion of the remainder of the development contemplated by the Olhava Master Plan.





E. OC, Olhava, and the City need a mutually acceptable schedule for development of their respective projects (the Olympic College Poulsbo campus, the Olhava property, and various related City of Poulsbo public works projects). The purpose of this Memorandum of Understanding is to document general understandings and agreements among the parties that have been reached on certain unresolved items with regard to the parties' intentions with respect to such items. The purpose is also to provide for OC or the City to construct certain of the common improvements if Olhava does not do so within the timeframes contemplated by this Agreement, with a corresponding reduction as set forth herein in the cost share to be paid by OC under the Cost Sharing Agreement if such improvements were otherwise among those to be constructed by Olhava.

### AGREEMENT

IN CONSIDERATION OF the promises, covenants and agreements hereinafter set forth, OC, Olhava, and the City hereby agree as follows:

1. **Domestic Water Supply.**

A. Olhava will design, engineer, and construct a water tank with a capacity of approximately 900,000 gallons on a site approximately 100 feet by 100 feet in size located near the common boundary of the OC Poulsbo Campus Property and the NE Residential Area shown on the Olhava Master Plan. The site and tank are generally described in a pre-design report dated March 1, 2001 and prepared by American Engineering. The design, engineering, and construction contemplated by this paragraph will be at Olhava's sole cost and expense. Olhava will submit permit applications for construction of the tank to the City no later than May 1, 2002. Olhava will commence construction of the tank no later than July 1, 2002. Olhava will complete construction of the tank no later than November 1, 2002. In the event that Olhava does not design, engineer, and construct the water tank or otherwise meet any of the timelines provided by this subparagraph, OC or the City may, at OC or the City's sole discretion, elect to do so, subject to the cost sharing and payment provisions set forth in Paragraph 3 below.

B. Olhava and OC will each grant to the City, without charge, fee title to the water tank site, as OC's and Olhava's respective interests appear in that site, no later than 60 days after completion of the tank construction and acceptance by the City, provided that such fee title can be granted consistent with the City's subdivision regulations. If fee title cannot be granted consistent with the City's subdivision regulations, OC and Olhava agree to dedicate or grant an easement to the City for the water tank site. At the same time, Olhava will transfer title to the completed tank to the City, without charge and free and clear from any liens or encumbrances. Olhava and OC will also grant to the City, without charge, a 20-foot wide easement along a mutually acceptable route, for the purpose of vehicular access to the tank site for operation and maintenance purposes. The access easement will be granted to the City no later than 60 days after completion of the tank construction and acceptance by the City.

C. The City agrees to complete the City's Big Valley Well Construction Project and to secure easements from the County and the State to construct a transmission line from the Big Valley Well to the intersection of Parnell Place and "H" Street (as "H" Street is



shown in the Olhava Master Plan). The easements shall be secured and the Big Valley Well improvements and the transmission line shall be operational no later than November 1, 2002. The easements shall be obtained and the improvements contemplated by this subparagraph shall be constructed at the City's sole cost and expense.

D. Olhava and OC will grant the City an easement along "H" Street and a portion of "C" Street (as those streets are shown in the Olhava Master Plan), and across their respective properties to the tank site via the access easement, for the purpose of constructing a water transmission line. The easements shall be granted without charge to the City. The easements shall be granted no later than March 1, 2002.

E. The City will construct a water transmission line from the intersection of Parnell and "H" Street to the tank site, within the easements described in the preceding subparagraph, no later than November 1, 2002.

2. **Road Access.** Not later than March 1, 2002, Olhava will dedicate to the City the right-of-way for "H" Street and that portion of "C" Street in which the water transmission line contemplated by Paragraph 1 above is to be constructed (or, at Olhava's option, will grant the City and OC an easement along the same or an alternate route acceptable to all parties) for the purpose of constructing, reconstructing, installing, operating, and maintaining public roads and underground utilities. The easement or dedication contemplated by this paragraph shall be without charge to the City or OC. Either OC or the City may construct road or utility improvements in the land to be dedicated or for which an easement is to be granted under this paragraph. The road or utility improvements may be permanent if constructed in the final configurations (including elevations) contemplated in the Olhava Master Plan, as approved by Olhava, or such improvements may be temporary if constructed in unapproved configurations or locations. The decision whether to construct the improvements in permanent or temporary configurations or locations shall be within the sole discretion of the City and OC. If the improvements are constructed in temporary configurations, Olhava may remove the same at Olhava's sole cost and expense at such time as Olhava constructs the permanent improvements contemplated by the Olhava Master Plan.

3. **Release from Cost Sharing Obligations – Payments.**

A. Under the Cost Sharing Agreement, OC agreed to pay Olhava up to \$1,165,966.00 toward the cost of off-site and on-site improvements necessary to serve the Olhava property and the OC Poulsbo Campus. In the event that OC or the City:

1. Elects to design, engineer, or construct the water tank contemplated by Paragraph 1(A) above upon Olhava's failure to do so or Olhava's failure to meet any or all of the timelines specified in said paragraph; and/or

2. Constructs road and utility improvements as provided in Paragraph 2 in permanent locations or configurations as provided in the Olhava Master Plan, as approved by Olhava; then





OC shall receive a credit against its obligation to contribute costs toward the off-site and on-site improvements as contemplated by the Cost Sharing Agreement in an amount determined according to subparagraph B of this paragraph.

B. The amount to be credited against OC's cost sharing obligation shall be determined as follows:

1. Credit shall be given for improvements installed in approved permanent locations and configurations only. To the extent that any improvements constructed by OC or the City are constructed as interim improvements intended to serve OC only until Olhava constructs the permanent improvements contemplated by the Olhava Master Plan, such improvements shall not be eligible to be credited against OC's cost sharing obligation.

2. Credit shall not exceed an amount that Olhava has budgeted for design, construction, inspection, and administration of the same work by Olhava. Olhava shall base its budget on industry standards for similar private work or on actual engineering estimates or construction bids received within six months of the date of this agreement or June 30, 2002. Olhava shall provide the City and OC with its budget for the improvements that are subject to this agreement upon request and in any event prior to OC or the City making a commitment to construct any such improvements. The parties understand and agree that publicly funded construction can be more expensive than construction that is funded with private monies. Thus, OC shall receive credit only for the cost that Olhava would have incurred for the same construction, as set forth above.

3. In the case of the water tank, credit shall not be given for the cost of design, engineering or construction work performed by the City or OC prior to the passing of a deadline by which Olhava was required to take action. All design, engineering or construction costs incurred after the passing of any such deadline, where Olhava did not complete the required action, shall be eligible for credit, subject to the limitations of this agreement.

C. All parties recognize that the availability of OC's mitigation funds under the Cost Sharing Agreement is contingent upon OC's receipt of awardable construction bids for the OC Poulosbo Campus Project that do not exceed OC's cost estimates. If awardable construction bids for the OC Poulosbo Campus Project are received by May 15, 2002, the parties to this agreement shall immediately proceed to determine the credit amounts available from mitigation funds in the event that Olhava does not complete the required actions on time.

4. **OC's Agreement to Pay City.** The City and OC may agree, by separate agreement reached between them, that the City will undertake any of the improvements for which OC would be eligible to receive credit against its obligations under the Cost Sharing Agreement. In the event that the City and OC reach such an agreement, OC agrees to reimburse the City for all design, engineering, and construction costs incurred. OC may use the mitigation funds set aside for its obligations under the Cost Sharing Agreement in order to do so, and/or may use any other available funds.



5. **Extension of Dates Under Option Agreement.** Olhava agrees to grant OC a five year extension of the Construction Commencement Date and the Construction Completion Date set forth in the Option Agreement between OC and Olhava if any of the following occur on or before June 30, 2003:

A. (1) OC has gone to bid, received bids, and rejected bids for the Poulsbo Campus Project by June 30, 2002, because the total cost of the lowest qualified bid(s) exceeds OC's cost estimates and/or appropriation; and then (2) OC has requested additional funding for the excess cost; and (3) the State Legislature fails to authorize additional funding for the excess cost; or

B. OC has gone to bid, received bids, and rejected bids for the Poulsbo Campus Project by June 30, 2002 and has requested and received authority to redesign the Poulsbo Campus Project to bring the same within the current funding appropriation; or

C. The State Legislature "freezes" or otherwise makes OC's appropriation for the Poulsbo Campus Project construction unavailable.

6. **Relationship to Master Plan.** Any party taking action pursuant to this Agreement must first obtain all approvals required under the Olhava Master Plan approved by the City of Poulsbo. If any activity or action taken pursuant to this memorandum is found by the governmental jurisdiction with authority to be inconsistent with the Master Plan approvals, each party agrees that said activity or action will be ceased immediately.

7. **Delays.** In the event that any person, firm, corporation, or organization (other than a party to this memorandum) brings a lawsuit or administrative appeal challenging this memorandum or any action or activity undertaken by OC, the City, or Olhava pursuant to this memorandum as not being in compliance with the Olhava Master Plan, then all such action or activity shall cease and this memorandum and all obligations hereunder shall terminate if the resolution of such lawsuit or administrative appeal would materially delay the issuance of any development permit or approval or any construction of any improvements called for or contemplated in the approved Master Plan. Such termination shall not, however, affect any obligation, including any credit, which accrued prior to such termination and which is not the subject of the lawsuit or appeal. For purposes of this paragraph, a "material delay" includes, but is not limited to, any delay that impacts seasonal construction time or a delivery deadline. The parties agree that they will not bring a lawsuit or administrative appeal challenging this memorandum or any activity undertaken by OC, the City, or Olhava pursuant to this memorandum as not being in compliance with the Olhava Master Plan.

8. **OC's Failure to Award Contract.** If OC does not award a contract for construction of the OC Poulsbo Campus Project by June 1, 2002, then this memorandum shall terminate and the parties shall have no further rights or obligations hereunder, provided that the provisions of paragraph 1 requiring the granting of fee title and easements for the water tank and water line construction and the provisions of paragraph 5 pertaining to extension of the Construction Commencement Date and Construction Completion Date shall continue in full force and effect, ~~between Olhava and OC.~~





9. **Force Majeure.** If any party is delayed or prevented from performing any of its respective obligations under this memorandum by reason of acts of God, governmental requirement, fire, floods, strikes or due to any other cause beyond the reasonable control of such party, then the time period for performance of such obligations shall be extended for the period of such delay.

10. **Non-Waiver.** The failure of any party to insist upon strict performance of any of the covenants and agreements of this memorandum shall not be construed as a waiver thereof. Waiver of a particular breach or default shall not be deemed to be a waiver of any subsequent breach or default.

11. **Ratification.** The parties understand that the City Council of the City of Poulsbo must ratify this memorandum in order for it to become finally effective as to the City. Therefore, this memorandum shall be binding upon the City only upon such ratification. If ratification does not occur within 30 days of the date this memorandum is signed by the last party signing the same below, then it shall become void and of no further effect.

**THIS MEMORANDUM OF UNDERSTANDING ENTERED INTO:**

OLYMPIC COLLEGE

  
\_\_\_\_\_  
Dr. Diana Van der Ploeg, President

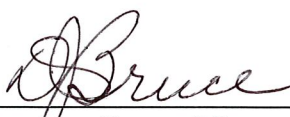
1/2/02  
Date

OLHAVA ASSOCIATES LIMITED  
PARTNERSHIP, by its Managing General  
Partner, First Western Development of  
Washington III Associates

  
\_\_\_\_\_  
Mark Zenger, General Partner

12/28/01  
Date

CITY OF POULSBO

  
\_\_\_\_\_  
Donna Jean Bruce, Mayor

1/2/2002  
Date

