RESOLUTION NO. 2014-47

A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT WITH WESTERN FORGE AND FLANGE COMPANY FOR PURCHASE OF 540 CLEVELAND AVENUE FOR THE PUBLIC WORKS SERVICE CENTER PROJECT

WHEREAS, effective May 6, 2013 the City of Albany (BUYER) and Western Forge and Flange (SELLER) entered into a Purchase and Sale Agreement for the disposition of the property located at 540 Cleveland Avenue (Alameda County Assessors Parcel 066-2760-014-08); and

WHEREAS, Said Purchase Agreement provided that the close of escrow for the transfer of the property was conditioned on completion of certain actions concerning the remediation of soils and groundwater contamination of the property, and other due diligence activities, with a deadline for close of escrow no later than December 31, 2013, with an administrative extension of the close of escrow deadline allowed by mutual consent to January 31, 2014; and

WHEREAS, On March 3, 2014 the City Council approved the First Amendment to the Purchase Agreement to extend the deadlines for close of escrow and amend certain conditions for the close of escrow; and

WHEREAS, as a result of additional information obtained during the implementation of the Second Amendment activities regarding the form of notice the County of Alameda will provide the SELLER at the completion of the County required remediation, the parties desire to amend the conditions under which the close of escrow will occur, pursuant to the SECOND AMENDMENT TO THE PURCHASE AND SALE AGREEMENT, attached hereto as Exhibit A.
NOW THEREFORE, BE IT RESOLVED, That the City Council of the City of
Albany hereby authorizes the City Manager to execute the SECOND AMENDMENT TO
THE PURCHASE AND SALE AGREEMENT, attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, this resolution shall become effective
immediately upon its adoption.

PEGGY THOMSEN, MAYOR
RESOLUTION NO. 2014-47

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,
The 5th day of May, 2014, by the following votes:

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile
And Mayor Thomsen

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 6th
day of May, 2014.

Eileen Harrington
DEPUTY CITY CLERK

The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.
SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (the "Second Amendment") is made and entered into effective as of May 5, 2014 (the "Effective Date"), by and between the City of Albany, a municipal corporation ("Buyer") and Western Forge & Flange Co., a California corporation ("Seller"). Seller and Buyer are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on March 3, 2014, the Parties executed that certain First Amendment to Purchase and Sale Agreement (the "First Amendment"), that provided (among other things) that Seller was to diligently pursue obtaining a "No Further Action Letter" from the County prior to December 31, 2015; and,

WHEREAS, the Parties have now been informed that the County does not routinely issue No Further Action Letters but rather follows certain procedures whereby sites subject to remediation are classified as "closed" upon the occurrence of all of the conditions required for such classification by the County; and,

WHEREAS, the Parties now desire to modify the provisions of the First Amendment by deleting all references to the No Further Action Letter as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Section 1.6 of the First Amendment is hereby deleted in its entirety and is replaced by the following provision:

1.6. County Closure Authorization. Provided that either (a) Seller obtains County's approval to discontinue monitoring of the groundwater, or (b) subsequent groundwater samples, if any, confirm levels of contaminates being below the applicable ESL's, Seller anticipates that the County will consider the site for case closure. The case closure process will involve a 30 to 60 day public notification and comment period informing the neighboring community of the proposed case closure. Following completion of the public notification and comment period, Seller anticipates that the County will request the destruction of Monitoring Wells on the Property, and that following the destruction of Monitoring Wells on the Property, the Seller will submit a Monitoring Well Destruction Report to the County. The Seller anticipates that within approximately sixty (60) days thereafter, or by June 30, 2015, the County will authorize closure of the site.
2. Sections 2.1, 2.2 and 3 of the First Amendment are hereby deleted in their entirety and are replaced by the following provisions:

2.1 Duty to Cooperate; Failure to Obtain County No Further Action Letter. The Parties agree to cooperate with each other and with the County, and Seller agrees to provide the County with any information it reasonably requires to facilitate County's issuance of a Soil Remediation Certificate on or before March 31, 2014 and the County authorization for closure of the site by June 30, 2015.

2.2 Seller’s Duties Post-Closing of Escrow. Notwithstanding the Close of Escrow, Seller shall remain obligated to comply with the CAP and agrees to diligently pursue obtaining authorization for closure of the site. The Parties agree that to secure Seller's obligation to diligently pursue obtaining the authorization for closure of the site, the sum of $50,000 (the “Holdback Amount”), shall be retained in escrow from the funds Buyer deposits into escrow to pay the purchase price for the Property. The Holdback Amount shall be released to Seller upon the occurrence of any of the following events:

2.2.1 County Requirement for Land Use Restriction. If after completion of any additional period of groundwater monitoring that may be required by the County, but in no event beyond December 31, 2015, the County will not authorize closure of the site without Buyer's agreement to a Land Use Restriction limiting the beneficial use of the groundwater, then Buyer shall agree to such Land Use Restriction, provided that it results in the County authorizing closure of the site.

2.2.2 Completion of Groundwater Monitoring; Removal of Contaminated Soils. Completion by Seller of quarterly water quality monitoring that may be required by the County, but in no event beyond December 31, 2015, and the removal, at Seller’s expense, of any soil containing contaminants at concentrations exceeding the Clean Up Goals established in the CAP Addendum (the “CG’s”), solely to the extent excavated by Buyer in connection with Buyer’s construction of the Public Works Service Center and then only to the extent such costs exceed amounts budgeted by Buyer for the removal of non-contaminated soils or soils containing contaminants which do not exceed CG’s, in connection with such project.

2.2.3 Failure to Obtain Authorization for Closure of the Site. Provided that Seller has diligently pursued obtaining authorization for closure of the site from the County, as determined by Buyer acting reasonably, but the County has not authorized such closure by December 31, 2015.

3. Right of Entry. Concurrent with the Close of Escrow, Buyer shall grant Seller a non-exclusive right of entry to the Property for the limited purpose of maintaining, repairing, taking samples from and ultimately sealing the Monitoring Wells and doing or engaging others to do any other acts reasonably required by the County in order to obtain the County authorization for closure of the site.
4. No Further Amendment. Save and except as herein provided, all of the terms and conditions set forth in the Sale Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to Purchase and Sale Agreement as of the date first written above.

BUYER:
CITY OF ALBANY, a municipal corporation
By: ________________
Name: Penelope Leach
Title: City Manager

ATTEST:
By: ________________
City Clerk

APPROVED AS TO FORM:
By: ________________
City Attorney

SELLER:
WESTERN FORGE & FLANGE CO., a
California corporation

By: ________________
Name: Walt Pierce
Title: President
4. **No Further Amendment.** Save and except as herein provided, all of the terms and conditions set forth in the Sale Agreement remain in full force and effect.

**IN WITNESS WHEREOF,** the Parties have executed this Second Amendment to Purchase and Sale Agreement as of the date first written above.

**BUYER:**
CITY OF ALBANY, a municipal corporation

By: __________________________

Name: ________________________

Title: ________________________

**ATTEST:**

By: __________________________
City Clerk

**APPROVED AS TO FORM:**

By: __________________________
City Attorney

**SELLER:**

WESTERN FORGE & FLANGE CO., a California corporation

By: __________________________
Name: Walt Pierce
Title: President