

Project title: Approve Settlement Agreement for Acquisition of the Waits Motel

Council Bill # *interoffice use*

Agenda dates requested:

1/10/24

Briefing

Proposed action

Consent

Action 1/10/24

Ordinance

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Settlement Agreement

Department(s) involved:

Legal

Contact person:

David Hall

Phone number:

425-257-8624

Email:

dhall@everettwa.gov

Initialed by:

Department head

Administration

Council President

Project: Waits Motel Condemnation

Partner/Supplier: N/A

Location: Waits Motel

Preceding action: [Ordinance](#), 8.2.23

Fund: Fund 162 – CIP4

Fiscal summary statement:

Property Acquisition under Settlement Agreement is \$1,850,000.

Project summary statement:

The City Council adopted an ordinance on August 2, 2023, to exercise eminent domain to condemn the Waits Motel under the blight condemnation statute, RCW 35.80A.

By approval of the attached settlement agreement, the City will pay \$1,850,000 to the owner of the Waits Motel and the owner’s bank for the Waits Motel property. Within a few days after Council approval, the Waits Motel property will transfer to the City by entry of a Decree of Appropriation by the Snohomish County Superior Court, which will also end the condemnation lawsuit.

The settlement agreement is already signed by the owner, the bank, and the Mayor. However, section 10 of the settlement agreement states that the settlement agreement is null and void unless the City Council approves it before January 31, 2024.

Recommendation (exact action requested of Council):

Approve Settlement Agreement for Acquisition of Waits Motel

CR 2A SETTLEMENT AGREEMENT
City of Everett v. Marmina LLC et al.
Snohomish County Superior Court Cause No. 23-2-06212-31

THIS CR 2A AGREEMENT (the "Agreement") is made and entered into by and between the City of Everett (the "City"), Marmina LLC ("Marmina"), and Hanmi Bank. The parties agree as follows:

1. Recitals

1.1 Marmina owns real property commonly known as 1301 Lombard Avenue in Everett, Washington, Snohomish County Tax Parcel No. 290517-003-014-00, and legally described in Exhibit 1 to the Petition for Condemnation described in this Agreement (the "Property"). Hanmi Bank partially financed the Property when Marmina acquired the Property in 2021.

1.2 On or about August 28, 2023, the City filed a Petition for Condemnation in Snohomish County Superior Court Cause No. 23-2-06212-31 (the "Lawsuit") to acquire the Property as necessary for the elimination of neighborhood blight. The City seeks to acquire the entirety of the Property in fee simple absolute.

1.3 The parties participated in mediation with Judge John R. Ruhl (Ret.) on December 18, 2023, in an effort to resolve all claims between the parties in the Lawsuit. Following further discussions between the parties including the exchange of offers and counteroffers, parties agreed to settle this matter and enter into this Agreement.

2. Just Compensation. The parties agree that just compensation for the taking and damaging of the Property shall be One Million Eight Hundred Twenty-Five Thousand and no/100 Dollars (\$1,825,000.00), plus Twenty-five Thousand and No/100 Dollars (\$25,000.00) for attorneys' fees pursuant to RCW 8.25.070 for a total payment of One Million Eight Hundred Fifty Thousand and No/100 Dollars (\$1,850,000.00).

3. Agreed Judgment and Decree of Appropriation. The parties shall execute an Agreed Judgment and Decree of Appropriation in the substantially the form attached hereto.

4. Mutual Releases. Except for claims arising from this CR 2A Agreement, the City and Marmina release each other, their agents, officers, elected officials, employees, managers, members, and any and all other parties from any and all other claims arising out the acquisition of the Property at issue in this action and any and all other claims, known and unknown, between the City and Marmina, as of the date of this Agreement, including, but not limited to, any and all damages, attorney fees, expert fees, expenses, and court costs. Unless and until its debt has been satisfied, Hanmi Bank reserves all senior lien claims in the just compensation proceeds, as well as all claims, rights and remedies against Marmina.

5. Cooperation. The parties agree to cooperate and execute any additional documents necessary to effectuate the settlement between them and to bind themselves to the settlement terms.

6. Representations and Warranties. The parties represent and warrant that they own and have not transferred or assigned any claims to be dismissed or released under the terms of this Agreement.

7. Fees and Costs. The parties shall bear their own attorneys' fees and costs except as otherwise stated herein.

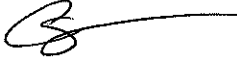
8. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington.

9. Signatures/Counterparts. This Agreement may be signed in counterparts. A signature in ink, pdf-scan, or electronic signature in any format is fully binding.

10. Legislative Approval. The settlement hereunder is subject to approval by the City Council of the City of Everett, Washington. If this approval does not occur on or before January 31, 2024, then this Agreement is null and void and will be inadmissible in any proceeding between any of the parties.

AGREED TO AND EXECUTED BY:

THE CITY OF EVERETT

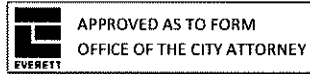


By: Cassie Franklin
Its: Mayor
Date: 12/27/2023

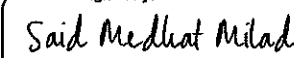
Attest:



Office of the City Clerk





MARMINA LLC



By: Said Medhat
Its: Managing Member
Date: December 22, 2023

HANMI BANK



By: 
Its: 
Date: 12/27/2023

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

CITY OF EVERETT, a Washington municipal corporation,

Petitioner,

v.

MARMINA LLC, a Washington limited liability company; and HANMI BANK,

Respondents.

No. 23-2-06212-31

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, JUDGMENT,
DECREE OF APPROPRIATION

CLERK'S ACTION REQUIRED

Tax Parcel No. 290517-003-014-00

Petitioner, City of Everett, and Respondents Marmina LLC and Hanmi Bank stipulate to entry of this Stipulated Findings of Fact, Conclusions of Law, Judgment, and Decree of Appropriation ("Judgment"), as follows:

1. JUDGMENT SUMMARY

1.1. AMOUNT OF JUDGMENT.

Total amount of Just Compensation: \$1,850,000.00

1.2. JUDGMENT CREDITOR. MARMINA LLC, a Washington limited liability

company, represented by Eugene W. Wong, Lasher Holzapfel Sperry & Ebberson, 601 Union Street, Suite 2600, Seattle, WA 98101, (206) 654-2486.

1 1.3. JUDGMENT DEBTOR. City of Everett, represented by Kinnon W. Williams and
2 Adrian Urquhart Winder, Foster Garvey PC, 1111 Third Avenue, Suite 3000, Seattle, WA 98101,
3 (206) 447-4400.

4 1.4. COSTS. Statutory costs are waived.

5 1.5. LEGAL DESCRIPTION. See legal description contained in the attached Exhibit A
6 (“Property”).

7 1.6. SNOHOMISH COUNTY TAX ACCOUNT NUMBER: 290517-003-014-00.

8 **2. INTRODUCTION**

9 THIS MATTER came before the undersigned judge of the above-entitled court on the
10 stipulation of the Petitioner, City of Everett (“City”), Respondent MARMINA LLC, and
11 Respondent Hanmi Bank (collectively, “Respondents”). The City is represented by Kinnon W.
12 Williams, and Adrian Urquhart Winder, Foster Garvey PLLC. Respondent is represented by
13 Eugene W. Wong, Lasher Holzapfel Sperry & Ebberson. Respondent Hanmi Bank, which holds
14 a security interest in the Property is represented by Brian Born, Selby Morgan & Born, PLLC. The
15 Court received this stipulation of the Parties, including for entry of this Judgment, and is advised
16 in the premises. The Court hereby makes and enters this Judgment and Decree of Appropriation.

17 **3. STIPULATION**

18 3.1. The City and the Respondents are each a “Party” and together the “Parties” to this
19 matter. The Parties agree that the just compensation for the Property and other costs hereunder is
20 One Million Eight Hundred Twenty-five Thousand and No/100 Dollars (\$1,825,000.00) plus
21 Twenty-Five Thousand (\$25,000) for attorneys’ fees pursuant to RCW 8.25.070 (the “Judgment
22 Amount”). The Judgment Amount represents a full and final settlement of all claims related to the
23

1 City's taking of the Property, including but not limited to interest, expert fees, attorney fees, costs,
2 and any claims of damages or other diminution in value.

3 3.2. This Judgment and the Judgment Amount were reached following good faith
4 negotiations and reflect considered evaluation of the risks associated with further litigation,
5 including the continued commitment of resources by the Parties. The Judgment Amount is a
6 compromise and settlement and does not constitute an acknowledgement of the claims or defenses
7 of either Party as to the issues in this matter.

8 3.3. The Property acquired by the City is legally described in the attached Exhibit A and
9 consists of a fee simple absolute interest in the Property, Snohomish County Tax Parcel Number
10 290517-003-014-00, commonly known as 1301 Lombard Avenue in Everett, Washington.
11 Exhibit A is incorporated herein by this reference.

12 3.4. The Parties hereby stipulate to entry of this Judgment.

13 **4. PUBLIC USE AND NECESSITY**

14 The Parties stipulate that this acquisition is for a public use and is necessary for that public
15 use as determined by the City Council of the City of Everett.

16 **5. JUDGMENT AND APPROPRIATION**

17 5.1. The total just compensation to be paid by the City to Respondent Marmina LLC,
18 the fee owner of the property, subject to the senior lien rights of Hanmi Bank in the Judgment
19 Amount, for and in connection with the taking and damaging of the Property, together with any
20 improvements thereon, attorney, expert/evaluation fees, and interest, if any, is the amount of One
21 Million Eight Hundred Fifty Thousand and No/100 Dollars (\$1,850,000.00). Said sum shall be
22 paid to the Clerk of the Court within twenty-one (21) court days of entry of this Judgment. Interest
23

1 at the statutory rate shall accrue on and after the twenty-first (21st) day following entry of the
2 Judgment on the Judgment Amount until paid.

3 5.2 Upon entry of this Judgment and payment of the Judgment Amount under
4 Section 6.1, the City shall have all right, title, and interest in the Property, as described in
5 Section 3.3.

6 **6. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 Sections 2 through 5 above shall be and hereby are adopted as Findings of Fact and
8 Conclusions of Law. Now, therefore, in accordance with the foregoing Findings of Fact and
9 Conclusions of Law, it is hereby ordered, adjudged, and decreed as follows.

10 **7. JUDGMENT**

11 7.1. Sections 2 through 6 above are incorporated herein by this reference.

12 7.2. Upon entry of this Judgment, the Clerk is ordered to strike the trial date and remove
13 the matter from the trial calendar.

14 7.3. Upon entry of this Judgment and payment of the Judgment Amount as set forth in
15 Section 5 above, the City shall have all right and title to the Property described at Section 3.3
16 herein.

17 7.4. The Clerk shall not issue a "certified abstract of judgment" contained in the
18 execution docket, otherwise denominated by the Clerk "transcript of judgment docket," the sole
19 and only purpose of which is presentation for payment. The sole method of payment shall be
20 through the court registry as directed herein.

21 7.5. The Judgment Amount is subject to the senior deed of trust of Hanmi Bank as well
22 as potentially other junior liens, mortgages, security interests, judgments, liens of taxes levied by
23 the state, county, city, and/or any other tax levying public body. *See* RCW 84.60.050. The Clerk

1 of the Court shall not disburse any of the funds deposited to respondent Marmina, LLC until after
2 receiving proof, sufficient to the Clerk of the Court, that the senior deed of trust of Hanmi Bank
3 has been paid, and that all other junior liens, if any, have been paid and discharged. The Hanmi
4 Bank indebtedness shall be paid by the Clerk of the Court from the Judgment Amount upon motion
5 of Hanmi Bank, provided that Hanmi Bank and Marmina, LLC agree that the loan payoff provided
6 by Hanmi Bank will include a maximum of \$4,500.00 in attorney's fees, a maximum of \$5,893.15
7 in late charges, and a discount of the prepayment penalty in the amount of \$10,856.30, and that
8 Hanmi Bank shall not assess default interest. By way of example, the loan payoff as of January
9 31, 2024 would be \$1,766,375.05. With a \$10,856.30 discount, Hanmi Bank would be willing to
10 accept \$1,755,518.75 on January 31, 2024 in satisfaction of this loan.

11 7.6. The Judgment Amount is further subject to delivery by Respondents of a completed
12 and signed W-9 to the City, and the Clerk of the Court shall not disburse any of the funds deposited
13 until after the City files with the Court an Acknowledgement of Receipt of W-9.

14 7.7. Costs are waived as to both Parties.

15 7.8. Upon entry of this Judgment, the Clerk is ordered to strike the trial date and remove
16 the matter from the trial calendar.

17 7.9. Petitioner shall record a copy of this Stipulated Findings of Fact, Conclusions of
18 Law, Judgment, and Decree of Appropriation with the Snohomish County Auditor's office.

19 DATED this ____ day of _____, 2023.

20
21 _____
22 SUPERIOR COURT JUDGE / COURT COMMISSIONER

23 **Stipulated to and presented by:**

STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND DECREE OF APPROPRIATION – 5

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1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3299
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1 FOSTER GARVEY PC

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6 Seattle, Washington 98101-3299
7 Telephone: (206) 447-4400
8 Email: kinnon.williams@foster.com
9 adrian.winder@foster.com

10 *Attorneys for Petitioner City of Everett*

11 **Stipulated to and notice of presentation waived by:**

12 LASHER HOLZAPFEL SPERRY & EBBERSON

13

14 
15


Eugene W. Wong, WSBA No. 29918
16 Sean V. Small, WSBA No. 37018
17 601 Union Street, Suite 2600
18 Seattle, WA 98101
19 Telephone: (206) 654-2486
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22 *Attorneys for Respondent Marmina LLC*

23

24 SELBY MORGAN & BORN, PLLC

25

26 
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29 Fircrest, WA 98466
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32 *Attorneys for Respondent Hanmi Bank*

33

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STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND DECREE OF APPROPRIATION – 6

FG: 102278401.1

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CR 2A Settlement Agreement Waits Motel_SD

Final Audit Report

2023-12-27

Created:	2023-12-27
By:	Ashleigh Scott (AScott@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsxp2i-Q3wRP8NSGyvEAuGwNNVZDu2ch

"CR 2A Settlement Agreement Waits Motel_SD" History

-  Document created by Ashleigh Scott (AScott@everettwa.gov)
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-  Document emailed to Tim Benedict (TBenedict@everettwa.gov) for approval
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-  Email viewed by Tim Benedict (TBenedict@everettwa.gov)
2023-12-27 - 10:00:08 PM GMT
-  Document approved by Tim Benedict (TBenedict@everettwa.gov)
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-  Document emailed to Cassie Franklin (cfranklin@everettwa.gov) for signature
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-  Document emailed to Ashleigh Scott (AScott@everettwa.gov) for signature
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