



# CITY COUNCIL MINUTES SPECIAL MEETING OCTOBER 25, 2019

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## CALL TO ORDER & ROLL CALL

Mayor Debbie Bertlin called the Special Meeting to order at 2:00 pm at City Hall, 9611 SE 36<sup>th</sup> Street, Mercer Island, Washington in the Council Chambers.

Mayor Debbie Bertlin, Deputy Mayor Salim Nice (by phone) and Councilmembers Lisa Anderl, Bruce Bassett, Wendy Weiker (by phone at 2:21), Dave Wisenteiner (by phone at 2:07), and Benson Wong were present.

## SPECIAL BUSINESS

At 2:01 pm, Mayor Bertlin convened an Executive Session to discuss with legal counsel litigation or potential litigation to which the City is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the City for approximately 60 minutes.

At 2:30 pm, Councilmember Wisenteiner left the meeting by phone.

At 2:55 pm, Councilmember Weiker left the meeting by phone.

At 2:59 pm, Mayor Bertlin extended the Executive Session for an additional 15 minutes.

At 3:14 pm, Mayor Bertlin extended the Executive Session for an additional 5 minutes.

At 3:19 pm, Mayor Bertlin adjourned the Executive Session and reconvened the City Council Meeting in open session.

It was moved by Bertlin; seconded by Bassett to:

**Authorize the Interim City Manager to execute the 4th amendment to the Purchase and Sale Agreement, in substantially the form attached hereto.**

Passed: 5-0

FOR: 5 (Anderl, Bassett, Bertlin, Nice (by phone) and Wong)

ABSENT: 2 (Weiker & Wisenteiner)

## ADJOURNMENT

The Special Meeting adjourned at 3:20 pm.

Attest:

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Debbie Bertlin, Mayor

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Deborah Estrada, City Clerk

**FOURTH AMENDMENT TO  
PURCHASE AND SALE AGREEMENT**

This Fourth Amendment to Purchase and Sale Agreement (“**Fourth Amendment**”) is made and entered into as of **October \_\_, 2019** by and between **CITY OF MERCER ISLAND, a Washington municipal corporation** (“Buyer”) and **Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (as defined below)**, (collectively, “Seller”) (referred to together as the “Parties”), with respect to that certain Purchase and Sale Agreement dated June 7, 2018 between Buyer and Seller, with an Effective Date of June 7, 2018 (as amended, the “PSA”) regarding the sale of property commonly known as the “Tully’s site” and located at 7810 SE 27<sup>th</sup> Street, Mercer Island, Washington 98040 (the “Property”). Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the PSA.

The Parties agree as follows:

1. Buyer has undertaken its investigation and evaluation of the Property in accordance with Section 4.1.1. Buyer hereby deems the Inspection Condition satisfied and waives its right to terminate the Agreement pursuant to 4.1.1 except with respect to Section 4.1.1(d)(a).
2. Section 4.1.1(a) is amended to provide that the Due Diligence Period shall be extended to Friday, November 22, 2019 *only* with respect to Buyer’s ability to reach a settlement and/or remediation agreement with BP/ARCO pursuant Section 4.1.1(d)(a).

Buyer shall continue to pay the Due Diligence Premium pursuant to Section 4.1.3.

3. If any provision of the PSA, or prior amendments thereto, conflicts with this Fourth Amendment, this Fourth Amendment shall control.

All other terms and conditions of the Agreement remain unchanged.

*[SIGNATURES BEGIN ON FOLLOWING PAGES]*

**BUYER:**

**CITY OF MERCER ISLAND, a  
municipal corporation**

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

Name: Jessica L. Bon

Its: Interim City Manager

Date: \_\_\_\_\_

**SELLERS:**

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Frank M. Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Steve Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Kim Buty  
Title: General Partner

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON TRUST**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: \_\_\_\_\_

**JEAN MITCHELL BURTON  
TESTAMENTARY TRUST**

By: \_\_\_\_\_  
Printed Name: Shelley Burton  
Title: Successor Trustee

Date: \_\_\_\_\_

**MARTIN M. BURTON IRREVOCABLE  
TRUST, dated April 16, 1987**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON, as her  
separate estate**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton

Date: \_\_\_\_\_

**MELISSA MARY BURTON TRUST**

By: \_\_\_\_\_  
Printed Name: Kristina C. Udall  
Title: Trustee

Date: \_\_\_\_\_