CITY OF LANGLEY, WASHINGTON

ORDINANCE NO. __________

AN ORDINANCE of the City of Langley, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of $420,300 principal amount of a limited tax general obligation bond to provide funds for the Second Street Project and to pay the costs of issuance and sale of the bond; fixing certain terms and covenants of the bond; and providing for other related matters.

Passed January 6, 2014

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TABLE OF CONTENTS*

Section 1. Definitions......................................................................................................................... 1
Section 2. Findings and Determinations ............................................................................................. 2
Section 3. Authorization of Bond ....................................................................................................... 3
Section 4. Description of Bond.......................................................................................................... 3
Section 5. Bond Registrar; Registration and Transfer of Bond ......................................................... 4
Section 6. Form and Execution of Bond............................................................................................. 4
Section 7. Payment of Bond............................................................................................................... 4
Section 8. Funds and Accounts; Deposit of Proceeds....................................................................... 5
Section 9. Prepayment of Bond ........................................................................................................ 5
Section 10. Failure To Pay Bond ....................................................................................................... 5
Section 11. Pledge of Taxes.............................................................................................................. 5
Section 12. Tax Covenants. ............................................................................................................. 6
Section 13. Sale and Delivery of the Bond. ....................................................................................... 6
Section 14. General Authorization and Ratification .......................................................................... 7
Section 15. Severability ................................................................................................................... 7
Section 16. Effective Date of Ordinance ........................................................................................... 7

*The cover page, table of contents and section headings of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.
CITY OF LANGLEY, WASHINGTON

ORDINANCE NO. __________

AN ORDINANCE of the City of Langley, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of $412,400 principal amount of a limited tax general obligation bond to provide funds for the Second Street Project and to pay the costs of issuance and sale of the bond; fixing certain terms and covenants of the bond; and providing for other related matters.

THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, the following capitalized terms shall have the following meanings:

(a) “Bank” means [insert name], Washington, or its corporate successor.

(b) “Bond” means the bond issued pursuant to and for the purposes provided in this ordinance.

(c) “Bond Counsel” means the firm of Foster Pepper PLLC, its successor, or any other attorney or firm of attorneys selected by the City with a nationally recognized standing as bond counsel in the field of municipal finance.

(d) “Bond Fund” means the Limited Tax General Obligation Bond Fund of the City created for the payment of the principal of, redemption premium, if any, and interest on the Bond.

(e) “Bond Register” means the books or records maintained by the Bond Registrar for the purpose of identifying ownership of the Bond.

(f) “Bond Registrar” means the Clerk-Treasurer or any successor bond registrar selected by the City.

(g) “Business Day” means any day that is not a Saturday, a Sunday or a day on which commercial banks located in the State are closed for business.

(h) “City” means the City of Langley, Washington, a municipal corporation duly organized and existing under the laws of the State.

(i) “City Council” means the legislative authority of the City, as duly and regularly constituted from time to time.
(j) “Clerk-Treasurer” means the Clerk-Treasurer or such other officer of the City who succeeds to substantially all of the responsibilities of that office.


(l) “Government Obligations” has the meaning given in RCW 39.53.010, as now in effect or as may hereafter be amended.

(m) “Issue Date” means the date of initial issuance and delivery of the Bond to the Bank in exchange for the purchase price of the Bond.

(n) “Maturity Date” means December 1, 2028, as such date may be changed in accordance with Section 9.

(o) “Placement Agent” means the firm of D.A. Davidson & Co.

(p) “Project” means the __________, and other capital purposes, as deemed necessary and advisable by the City. Incidental costs incurred in connection with carrying out and accomplishing the Project, consistent with RCW 39.46.070, may be included as costs of the Project. The Project includes acquisition, construction and installation of all necessary furniture, equipment, apparatus, accessories, fixtures and appurtenances. The term “land” includes all real property and all appurtenant improvements, structures and interests therein.

(q) “Project Fund” means the fund or account designated or created by the Clerk-Treasurer for the purpose of carrying out the Project.

(r) “Purchase Offer” means the letter dated January __, 2014, setting forth certain terms and conditions of the issuance, sale and delivery of the Bond, which offer is accepted by the City pursuant to this ordinance.

(s) “Record Date” means the Bond Registrar’s close of business on the 15th day of the month preceding an interest payment date. With respect to redemption of the Bond prior to its maturity, the Record Date shall mean the Bond Registrar’s close of business on the date on which the Bond Registrar sends the notice of redemption in accordance with Section 9.

(t) “Registered Owner” means the person in whose name the Bond is registered on the Bond Register.

(u) “State” means the State of Washington.

(v) “System of Registration” means the system of registration for the City’s bonds and other obligations set forth in Ordinance No. 469 of the City.

Section 2. Findings and Determinations. The City takes note of the following facts and makes the following findings and determinations:
(a) *Need for Project.* The City is in need of the Project, and the City Council finds that it is in the best interests of the City to carry out the Project.

(b) *Plan of Financing.* Pursuant to applicable law, the City is authorized to issue general obligation bonds for the purpose of financing the Project. The total expected cost of the Project is approximately $420,300, which is expected to be paid from proceeds of the Bond and other available money of the City.

(c) *Debt Capacity.* The amount of indebtedness authorized by this ordinance is $412,400. Based on the following facts, this amount is to be issued within the amount permitted to be issued by the City for general municipal purposes without a vote.

1. The assessed valuation of the taxable property within the City as ascertained by the last preceding assessment for City purposes for collection in the calendar year 2013 is $238,646,812.

2. As of the date of this ordinance, the City has limited tax general obligation indebtedness, consisting of bonds outstanding in the principal amount of $30,000, which is incurred within the limit of up to 1½% of the value of the taxable property within the City permitted for general municipal purposes without a vote.

3. As of the date of this ordinance, the City has no unlimited tax general obligation indebtedness.

(d) *The Bond.* For the purpose of providing the funds necessary to carry out the Project and to pay the costs of issuance and sale of the Bond, the City Council finds that it is in the best interests of the City and its taxpayers to issue and sell the Bond to the Bank, pursuant to the terms set forth in the Purchase Offer consistent with this ordinance.

Section 3. *Authorization of Bond.* The City is authorized to borrow money on the credit of the City and issue a negotiable limited tax general obligation bond evidencing indebtedness in the amount of $420,300 to provide funds necessary to carry out the Project and to pay the costs of issuance and sale of the Bond. The proceeds of the Bond allocated to paying the cost of the Project shall be deposited as set forth in Section 8 of this ordinance and shall be used to carry out the Project, or a portion of the Project, in such order of time as the City determines is advisable and practicable.

Section 4. *Description of Bond.* The City shall borrow money on the credit of the City and issue a negotiable limited tax general obligation bond in the principal amount of $420,300 for the purpose of paying the costs of the Project and the costs of issuance and sale of the Bond. The Bond shall be dated the Issue Date, shall be issued in fully registered form and shall be numbered R-1. The Bond shall be amortized to December 1, 2028 (the “Maturity Date”), with approximately equal semiannual installments of principal and interest payable on June 1 and December 1 of each year, beginning June 1, 2014, to and including the Maturity Date. A debt service schedule describing the installments of principal and interest on the Bond will be attached to the Bond as Exhibit A. The final installment payment of principal of and interest on the Bond, whether on the Maturity Date or upon prepayment, shall be in an amount equal to the
remaining principal and interest due on the Bond. Interest on the Bond shall be calculated based on a 360-day year consisting of twelve 30-day months.

[From the Issue Date, through and including November 30, 2018, the unpaid principal amount of the Bond will bear interest at a fixed rate of _____% per annum. Commencing on December 1, 2018, through and including November 30, 2023, the unpaid principal amount of the Bond will bear interest at a fixed rate of _____% per annum. Commencing on December 1, 2023, through and including the Maturity Date, the unpaid principal amount of the Bond will bear interest at a fixed rate of _____% per annum.]

Section 5. Bond Registrar; Registration and Transfer of Bond.

(a) Registration of Bond. The Bond shall be issued only in registered form as to both principal and interest and the ownership of the Bond shall be recorded on the Bond Register.

(b) Bond Registrar; Duties. The Clerk-Treasurer shall serve as Bond Registrar for the Bond. The Bond shall be issued only in registered form as to both principal and interest. The Bond Register shall contain the name and mailing address of the Registered Owner. When the Bond has been paid in full, both principal and interest, the Bond shall be surrendered by the Registered Owner to the Bond Registrar, who shall cancel the Bond.

(c) Transfer and Exchange. The Bond may be assigned or transferred only (i) in whole to a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, (ii) if endorsed in a manner acceptable to and surrendered to the Bond Registrar and (iii) upon the assignee or transferee acknowledging in writing to the City that such assignee or transferee has received information regarding the City and the Bond sufficient to comply with the requirements of Rule 10b-5 promulgated under the Securities Exchange Act of 1934, as amended.

(d) Bond Register. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bond, which shall be open to inspection by the City at all times. The Bond Registrar shall serve as the City’s authenticating agent, registrar and paying agent for the Bond and shall comply fully with all applicable federal and state laws and regulations respecting the carrying out of those duties. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond should it be transferred or exchanged in accordance with the provisions of the Bond and this ordinance, to serve as the City’s paying agent for the Bond and to carry out all of the Bond Registrar’s powers and duties under this ordinance and the System of Registration.

Section 6. Form and Execution of Bond. The Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. The Bond shall be signed by the Mayor of the City and the Clerk-Treasurer and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

Section 7. Payment of Bond. Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Principal of and interest on the Bond is payable by electronic transfer on the interest payment date, or by check or draft of the Bond
Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date.

Section 8. Funds and Accounts; Deposit of Proceeds.

(a) Bond Fund. The Bond Fund is hereby created as a special fund of the City for the sole purpose of paying principal of and interest on the Bond and other limited tax general obligation bonds of the City. Bond proceeds in excess of the amounts needed to pay the costs of the Project and the costs of issuance, if any, shall be deposited into the Bond Fund. All amounts allocated to the payment of the principal of and interest on the Bond shall be deposited in the Bond Fund as necessary for the timely payment of amounts due with respect to the Bond. The principal of and interest on the Bond shall be paid out of the Bond Fund. Until needed for that purpose, the City may invest money in the Bond Fund temporarily in any legal investment, and the investment earnings shall be retained in the Bond Fund and used for the purposes of that fund.

(b) Project Fund. The Project Fund [has been previously created/is hereby created] as a fund of the City for the purpose of paying the costs of the Project. Proceeds received from the sale and delivery of the Bond shall be deposited into the Project Fund and used to pay the costs of the Project and costs of issuance of the Bond. Until needed to pay such costs, the City may invest those proceeds temporarily in any legal investment, and the investment earnings shall be retained in the Project Fund and used for the purposes of that fund, except that earnings subject to a federal tax or rebate requirement (if applicable) may be withdrawn from the Project Fund and used for those tax or rebate purposes.

Section 9. Prepayment of Bond. The District reserves the right and option to prepay the Bond, in whole or in part on any date, with no prepayment penalty. Any prepayments shall be applied first to accrued and unpaid interest and then applied to reduce the outstanding principal amount of the Bond. After any partial prepayment, the remaining semiannual installment payments shall be recalculated to reflect a reduction in the required semiannual installment payment amounts unless the City requests in writing that the Maturity Date be adjusted to reflect an earlier date, in which case the revised payment schedule shall be as mutually agreed upon, in writing, by the City and the Registered Owner. Within seven Business Days after any partial prepayment, the Registered Owner shall provide to the City and the Bond Registrar a revised payment schedule. The rates of interest shall remain unchanged.

Section 10. Failure To Pay Bond. If the principal of the Bond is not paid when the Bond is properly presented at its Maturity Date or date fixed for prepayment, the City shall be obligated to pay interest on the Bond at the same rate provided in the Bond from and after its Maturity Date or date fixed for prepayment until the Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 11. Pledge of Taxes. The Bond constitutes a general indebtedness of the City and is payable from tax revenues of the City and such other money as is lawfully available and pledged by the City for the payment of principal of, redemption premium, if any, and interest on the Bond. For as long as the Bond is outstanding, the City irrevocably pledges that it shall, in the
manner provided by law within the constitutional and statutory limitations provided by law without the assent of the voters, include in its annual property tax levy amounts sufficient, together with other money that is lawfully available, to pay principal of, redemption premium, if any, and interest on the Bond as the same becomes due. The full faith, credit and resources of the City are pledged irrevocably for the prompt payment of the principal of, redemption premium, if any, and interest on the Bond and such pledge shall be enforceable in mandamus against the City.

Section 12. Tax Covenants.

(a) Preservation of Tax Exemption for Interest on Bond. The City covenants that it will take all actions necessary to prevent interest on the Bond from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bond or other funds of the City treated as proceeds of the Bond that will cause interest on the Bond to be included in gross income for federal income tax purposes.

(b) Post-Issuance Compliance. The Clerk-Treasurer is authorized and directed to adopt and implement the City’s written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied after the Issue Date to prevent interest on the Bond from being included in gross income for federal tax purposes.

(c) Designation of Bond as a “Qualified Tax-Exempt Obligation.” The City designates the Bond as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code, and makes the following findings and determinations:

(1) the Bond is not a “private activity bond” within the meaning of Section 141 of the Code;

(2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) which the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Bond is issued will not exceed $10,000,000; and

(3) the amount of tax-exempt obligations, including the Bond, designated by the City as “qualified tax-exempt obligations” for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bond is issued does not exceed $10,000,000.

Section 13. Sale and Delivery of the Bond.

(a) Approval of Purchase Offer; Delivery of Bond. The Bank has submitted a proposal to purchase the Bond from the City under the terms and conditions of the Purchase Offer. The City Council finds that accepting the Purchase Offer is in the City’s best interest and therefore accepts the Purchase Offer. The City will be responsible for all costs of issuance of the Bond. At the discretion of the Clerk-Treasurer, the amount of Bond Counsel’s fee, Placement
Agent’s fee and other costs of issuance may be withheld from the Bond proceeds and paid directly by the Bank on behalf of the City on the Issue Date.

(b) **Preparation, Execution and Delivery of the Bond.** The Bond will be prepared at the expense of the City and will be delivered to the Bank in accordance with the Purchase Offer, together with the approving legal opinion of Bond Counsel regarding the Bond.

Section 14. **General Authorization and Ratification.** The Clerk-Treasurer and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bond to the Bank and for the proper application, use and investment of the proceeds of the Bond. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 15. **Severability.** The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 16. **Effective Date of Ordinance.** This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.
PASSED BY THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON, at an open public meeting thereof, this 6th day of January, 2014, and signed in authentication of its passage this 6th day of January, 2014.

________________________________________
FRED MCCARTHY, Mayor

ATTEST:

________________________________________
DEBBIE L. MAHLER
Director of Finance/City Clerk

APPROVED AS TO FORM:

________________________________________
Bond Counsel
CERTIFICATION

I, the undersigned, City Clerk-Treasurer of the City of Langley, Washington (the “City”), hereby certify as follows:

1. The attached copy of Ordinance No. _____ (the “Ordinance”) is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on January 6, 2014, as that ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after publication in the City’s official newspaper, which publication date will be January __, 2014.

3. A quorum of the members of the City Council was present throughout the meeting and a majority of the members voted in the proper manner for the passage of the Ordinance.

Dated: January 6, 2014.

CITY OF LANGLEY, WASHINGTON

__________________________________________
Debbie L. Mahler, Clerk-Treasurer