

RESOLUTION NO. 1477

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH THE STEPHEN AND HELEN FRANICH LIVING TRUST FOR ACQUISITION OF TAX PARCEL NO. 0420071705 IN LIEU OF CONDEMNATION

WHEREAS, tax parcel 0420071705 (the "Franich Property"), is located on 20th Street adjacent to the new library; and

WHEREAS, the Franich Property is an underdeveloped parcel and has recently come on the market as part of a pending probate in Pierce County Superior Court; and

WHEREAS, the City is in a unique situation in that the Franich Property, at this point in time, has little value to others, but has potential to the City for helping stimulate economic development and the eventual redevelopment of 20th Street in accordance with the planning effort currently going through the public process; and

WHEREAS, due to the City Council's emphasis on pedestrian safety, there is a current need for a portion of the property in order to construct an ADA compliant pedestrian crossing to the multifamily complexes across the street from the library that will thus provide greater pedestrian safety for the library patrons that live across 20th Street from the library; and

WHEREAS if the City acquires the Franich property, it could help define the major access to 20th Street for the surrounding undeveloped property, which will then allow the library to close its current access, thus reducing the number of access points onto 20th St., which supports pedestrian safety; and

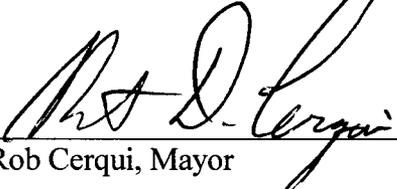
WHEREAS, in order to construct the road it is necessary for the City to acquire tax parcel no. 0420071705; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated an agreement with the Trustee of the Stephen and Helen Franich Living Trust for acquisitions of the property for \$410,000, which constitutes just compensation based on the City's appraisal. A copy of the purchase and sale agreement is attached hereto as Exhibit A (the "Agreement"); now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the Agreement with the Stephen and Helen Franich Living Trust attached hereto as Exhibit A and authorizes the City Manager to pay the amounts and perform the actions necessary to acquire the property in accordance with the Agreement.

BE IT FURTHER RESOLVED that this purchase is being made under immediate threat of the City's exercise of the right of eminent domain.

ADOPTED by the City Council at an open public meeting held on the 10th day of July, 2012.



Rob Cerqui, Mayor

Attest:



Carol Etgen, City Clerk

PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 18th day of June, 2012, and is made and entered into by and between the Stephen and Helen Franich Living Trust ("Franich") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Franich is the owner of the real estate located in Pierce County, Washington identified as Pierce County Tax Parcel No. 0420071705 and legally described as follows (the "Property"):

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN; THENCE SOUTH TO THE SOUTH LINE OF MILTON AVENUE TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 228.58 FEET; THENCE EAST 112 FEET; THENCE NORTH TO THE SOUTH LINE OF MILTON AVENUE; THENCE WEST 112 FEET TO THE TRUE POINT OF BEGINNING, IN PIERCE COUNTY, WASHINGTON.

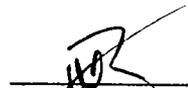
2.2 It is necessary for the City to acquire the Property for the future extension of 66th Avenue East.

2.3 Franich agrees to sell and convey and the City agrees to purchase and accept conveyance of the Property on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** The total purchase price for the Property is \$410,000 cash, payable at Closing. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 12). In addition, the City shall pay at Closing an additional amount not to exceed \$750.00 pursuant to RCW 8.25.020 for various expenditures actually and reasonably incurred by Franich in the process of evaluating the City's offer. Franich acknowledges that it is receiving just compensation for the Property.

4. **Earnest Money.** Within three business days after ratification of this Agreement by the City Council as provided in Paragraph 9, the City shall deposit with the Closing Agent the sum of \$20,000 as earnest money for purchase of the Property. If title is insurable and all other contingencies have been met or waived and the City fails or refuses, without legal excuse, to complete the purchase, the earnest money shall be forfeited as liquidated damages, as the sole and exclusive remedy available to Franich for such failure. Otherwise, the earnest money shall be refunded to the City in the event this transaction does not close.


FRANICH


THE CITY

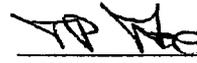
5. **Legal Description.** Upon consent of the parties, Closing Agent may insert, attach, or correct the legal description of the Property as required to consummate the conveyance thereof in accordance with the intent of the Agreement.

6. **Title.** Franich shall convey title to the Property by bargain and sale deed. Subject to Paragraph 7 below, title to the Property shall be free of all liens, encumbrances or defects, except as expressly approved by the City in writing. Encumbrances to be discharged by Franich may be paid out of the Purchase Price at date of Closing.

7. **Title Insurance.** Fees for standard coverage owner's title insurance policies shall be paid by The City. The title policies to be issued shall contain no exceptions other than the usual general exceptions provided for in the specified title policy form, plus encumbrances or defects approved by the City in Paragraph 6 above. If title cannot be made so insurable by the date of Closing, The City may elect to terminate this Agreement, or may waive any such defects and elect to purchase as described herein.

8. **Included Items/Personal Property.** This transaction includes all landscaping, improvements and appurtenances on or in the Property, and all personal property located on the Property at Closing. Any personal property on the Property that Franich or any of the Franich beneficiaries want to keep shall be removed from the Property by Franich prior to Closing. In addition, Franich shall, prior to Closing, remove from the Property any fuel containers, items with fuel tanks, and any potentially hazardous personal property, such as fertilizer, vehicle batteries, pesticides and paint. Within ten days of court approval of this Agreement, a City representative shall meet with the Franich Trustee at the Property and identify the items of personal property that the City requires to be removed under this paragraph. If all such items have not been removed at the time of Closing, then at Closing, \$2000 of the proceeds of the sale shall remain in escrow and shall be disbursed in the following order of priority: (1) To the City for costs and expenses incurred by the City to remove from the Property any fuel containers, items with fuel tanks, and any potentially hazardous personal property, such as fertilizer, vehicle batteries, pesticides and paint that remained on the Property at Closing, upon submission of a written invoice itemizing the costs and expenses incurred; (2) the remainder to Franich. The City shall have 60 days from Closing to submit its invoice to the Closing Agent. If the Closing Agent does not receive the City's invoice within 60 days after Closing, the Closing Agent shall promptly disburse the remaining proceeds to Franich.

9. **City Council Approval.** This Agreement is subject to ratification by the Fife City Council. This matter shall be submitted to the City Council for ratification at the June 26, 2012 City Council meeting. If the City Council does not ratify the Agreement by June 27, 2012, this Agreement shall terminate.


FRANICH


THE CITY

10. **Court Approval.** This Agreement is subject to approval by the Pierce County Superior Court in Cause No. 07-4-00262-9. The Franich Trustee shall note the matter for hearing to be held within 30 days of City Council ratification of the Agreement.

11. **Right of First Refusal.** The Property is subject to a right of first refusal, and this Agreement shall terminate if the holder of the right of first refusal timely exercises such right. The Franich Trustee shall promptly notify the holder of the right of first refusal of this Agreement and provide a deadline for exercising such right that is at least one week prior to the scheduled court hearing date as described in Paragraph 10 above.

12. **Closing.** Closing shall occur as soon as possible but in any case not sooner than thirty (30) days after entry of the court order approving the Agreement, at the office of Chicago Title Insurance Company, Tacoma, Washington, ("Closing Agent"), or such other place or location as the parties may mutually agree. The City and Franich will, on demand, deposit in escrow all instructions and moneys necessary to complete the purchase in accordance with this Agreement. Closing shall be deemed to have occurred when all documents are recorded and the sale proceeds are available to Franich. The parties agree to fully cooperate in good faith to meet the Closing date.

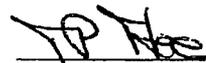
13. **Closing Costs & Pro-Rated Items.** The City shall pay the escrow fee, closing fee, reconveyance fees, any real estate excise tax due, and the recording fees. Property taxes, water and other utilities constituting liens shall be pro-rated between Franich and the City at Closing. The City is a municipal corporation exempt from property tax and thus the prorated amount may be subject to Tax Assessor's approval.

14. **Possession.** The City shall be entitled to possession of the Property at Closing.

15. **Environmental Representations and Warranties.** Franich has not caused or permitted and has no knowledge of the release of any hazardous substance on any of the Property at any time.

16. **Obligations to Survive Closing.** It is mutually agreed by the Parties that any provision contained in this Agreement which shall by its nature or terms impose any obligation or duty upon any party hereto, or give any right or benefit to any party hereto, continuing beyond the date of conveyance of the Property, will not be cancelled, but will instead survive such conveyance and will continue in full force and effect until all such obligations and duties are fully performed and all such rights and benefits are fully realized.

17. **Attorneys' Fees and Expenses.** In the event any Party brings a lawsuit to enforce or defend any rights herein, the prevailing party shall be awarded all costs and expenses and reasonable attorney fees.


FRANICH


THE CITY

18. **Successors and Assigns.** This Agreement and all of the terms and provisions set forth herein shall inure to the benefit of and be binding upon the Parties, their heirs, successors, legal representatives and assigns.

19. **Further Acts.** In addition to the acts specifically required in this Agreement, the Parties agree to perform or cause to be performed at and after Closing any and all further acts as may be reasonably necessary to consummate the transaction described herein.

20. **Conveyance in Lieu of Condemnation.** This conveyance is being made under immediate threat of and in lieu of condemnation.

21. **Remedies.** Both parties acknowledge that specific performance of this Agreement is an appropriate remedy should either party fail to perform under the terms of the Agreement.

22. **Complete Agreement.** The Agreement and any addenda and exhibits to it state the entire understanding of Franich and the City regarding this transaction. There are no verbal or written agreements which modify or affect the Agreement.

23. **Time of the Essence.** Time is of the essence as to each provision of this Agreement.

24. **Facsimile Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures by signing an original document.

25. **Counterpart Signatures.** The Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

26. **Acceptance of Agreement.** Franich shall have until 5:00pm on Tuesday, May 22, 2012 to execute this Agreement. Execution shall not be effective until a signed copy is received by the City's attorney. If this Agreement is not so executed the City's offer as set forth herein shall lapse.

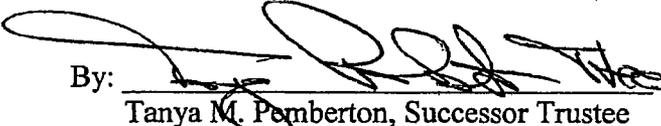
FRANICH:

THE CITY:

The Stephen and Helen Franich Living Trust

City of Fife, Washington

By:


Tanya M. Pemberton, Successor Trustee

By:


David K. Zabell, City Manager

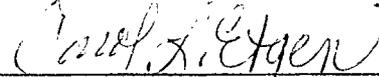
Purchase and Sale Agreement

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FRANICH

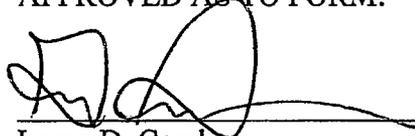

THE CITY

ATTEST:



Carol Etgen, City Clerk

APPROVED AS TO FORM:



Loren D. Combs

City Attorney

assisted city atty