

RESOLUTION NO. 1565

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH R & R PROPERTY ENTERPRISES, LLC FOR ACQUISITION OF A PORTION OF TAX PARCEL NO. 6605000053 IN LIEU OF CONDEMNATION

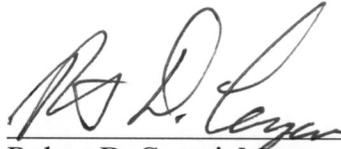
WHEREAS, in order to construct phase two of the 59th Avenue East Improvement Project, it is necessary for the City to acquire a portion of the property located at 5912 15th St East, identified as tax parcel no. Tax Parcel No. 6605000053 for right of way and a temporary construction easement; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with R & R Property Enterprises, LLC for the right of way and temporary construction easement for a total of \$92,074.58, which constitutes just compensation based on the City's appraisal; now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the Agreement with R & R Property Enterprises, LLC 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 24th day of September, 2013.



Robert D. Cerqui, Mayor

Attest:



Carol Etgen, City Clerk

**RESOLUTION NO. 1565
EXHIBIT A**

PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT (“AGREEMENT”), is dated, for reference purposes only, the ____ day of September, 2013, and is made and entered into by and between R&R Property Enterprises, LLC (“R&R”) and City of Fife, a Washington municipal corporation (“City”).

2. **Property to be Conveyed.**

2.1 R&R is the owner of the real estate legally described as Lot 1, Block 2, P-K Tracts, Volume 17 of Plats, Page 29, records of Pierce County Auditor, and identified as Pierce County tax parcel no. 6605000053 (the “Property”).

2.2 It is necessary for the City to acquire a portion of the Property for right of way and utilities (“Right of Way”) and a three year temporary construction easement (“Temporary Construction Easement”) for road and utility improvements to 59th Avenue East (the “Project”). The portion of the Property to be acquired by the City for Right of Way is legally described in Exhibit A attached hereto. The portion of the Property to be acquired by the City for a three year Temporary Construction Easement is legally described in Exhibit B attached hereto. The Right of Way and Temporary Construction Easement are graphically depicted in Exhibit C attached hereto.

2.3 R&R agrees to sell and convey and the City agrees to purchase and accept conveyance of the Right of Way and Temporary Construction Easement on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** As consideration for the conveyance of the Right of Way and Temporary Construction Easement, and for any damages and loss of value to the remaining portion of the Property as a result of the Project and the acquisition of the Right of Way and Temporary Construction Easement, the City shall pay R&R the sum of \$92,074.58 cash, payable at Closing, and shall provide the additional consideration set forth in Section 4 below. (“Closing” shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 10). The Purchase Price is allocated as follows:

Fee Acquisition	\$4700.00
Temporary Cons. Easmt.	\$1200.00
Improvements	\$1700.00
Damages-Cost to Cure	\$84,474.58

conditions, restrictions and easements that do not interfere with the City's intended use of the Right of Way shall not be considered defects of title. Monetary encumbrances to be discharged by R&R shall be paid or discharged by R&R at or before 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 7 above.

8. **Included Items.** This transaction includes any landscaping, improvements and appurtenances, if any, on or in the Right-of-Way area.

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 within thirty (30) days after signature by both parties.

10. **Closing.** Closing shall occur within 30 days after approval by the City Council, in the office of Old Republic Title & Escrow, University Place, Washington, ("Closing Agent"), or such other place or location as the parties may mutually agree. Closing shall automatically be extended for an additional 60 day period, if necessary to procure partial reconveyances from the holders of Deeds of Trust on the Property. The City and R&R 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 R&R.

11. **Closing Costs & Pro-Rated Items.** The City shall pay the escrow fee, reconveyance fees, any real estate excise tax due, and the recording fees. R&R shall pay any real estate taxes due, if any. Rather than paying the real estate taxes, R&R may elect to set over the taxes applicable to the Right of Way to the remaining portion of R&R's property.

12. **Possession.** The City shall be entitled to possession and use of the Right-of-Way and Temporary Construction Easement at Closing.

13. **Environmental Representations and Warranties.** R&R warrants that it has not caused or permitted the Right of Way to be used as a site for generation, manufacture, refining, transportation, transfer, treatment, storage, handling, disposing or processing of hazardous substances, or other dangerous or toxic materials or solid waste except in compliance with applicable federal, state and local laws or regulations. R&R has not caused or permitted and has no knowledge of the release of any hazardous substance on any of the Property at any time.

14. **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 Right of Way and Temporary Construction Easement, 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.

15. **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.

16. **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.

17. **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.

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

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

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

21. **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.

R&R:

R&R Property Enterprises, LLC

By: _____

THE CITY:

City of Fife, Washington

By: _____
David K. Zabell, City Manager

ATTEST:

Carol Etgen, City Clerk

APPROVED AS TO FORM:

Gregory F. Amann
Assistant City Attorney