

RESOLUTION NO. 1566

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH DOWNS REAL ESTATE INVESTMENTS, LLC FOR ACQUISITION OF A PORTION OF TAX PARCEL NOS. 0420072024 AND 0420072059 IN LIEU OF CONDEMNATION

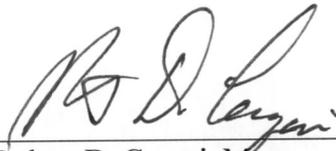
WHEREAS, in order to construct future public safety improvements on the south side of 23rd Street E between 54th Avenue East and 58th Avenue East, it is necessary for the City to acquire a portion of the property located at 5610 23rd Street East, identified as tax parcel no. Tax Parcel Nos. 0420072024 and 0420072059, for right of way; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with Downs Real Estate Investment, LLC for the right of way for a total of \$91,600, 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 Down Real Estate Investments, 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.

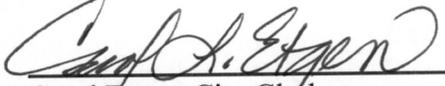
BE IT FURTHER RESOLVED that this purchase is being made under immediate threat of the City's exercise of the right of eminent domain.

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

PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 13 day of September, 2013, and is made and entered into by and between Downs Real Estate Investments, LLC ("Downs") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Downs is the owner of the real estate legally identified as Pierce County tax parcel nos. 0420072024 and 0420072059 and commonly known as 5610 23rd Street East, Fife, WA (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") for future road and pedestrian improvements to 23rd 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 and graphically depicted in Exhibit B attached hereto.

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

3. **Purchase Price.** As consideration for the conveyance of the Right of Way, relocation of the sign, 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, the City shall pay Downs the sum of \$91,600 cash, payable at Closing. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 9). 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 Downs in the process of evaluating the City's offer. Downs acknowledges that it is receiving just compensation for the Right-of-Way, 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. There is no earnest money required for this Agreement. Both parties acknowledge that there is legally sufficient consideration for entering into this Agreement.

4. **Legal Description.** The Parties hereby authorize the Closing Agent to insert, attach, or correct the legal description of the Right-of-Way as required to consummate the conveyance thereof.

5. **Title.** Downs shall convey title to the Right-of-Way by statutory warranty deed. Title shall be free of all liens, encumbrances or defects, except as expressly approved by the City in writing. Covenants, 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.



DOWNS

THE CITY

Monetary encumbrances to be discharged by Downs shall be paid or discharged by Downs at or before Closing.

6. **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 5 above.

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

8. **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.

9. **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. The City and Downs 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 Downs.

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

11. **Possession.** The City shall be entitled to possession and use of the Right-of-Way at Closing.

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

13. **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, will not be cancelled, but will instead survive such



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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.

14. **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.

15. **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.

16. **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.

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

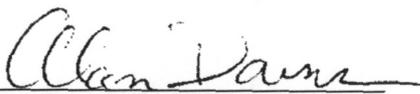
18. **Complete Agreement.** The Agreement and any addenda and exhibits to it state the entire understanding of Downs and the City regarding this transaction. There are no verbal or written agreements which modify or affect the Agreement.

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

20. **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.

DOWNS:

Downs Real Estate Investments, LLC

By: 
Alan Downs, Member

THE CITY:

City of Fife, Washington

By: _____
David K. Zabell, City Manager

ATTEST:

Carol Etgen, City Clerk


DOWNS

THE CITY

APPROVED AS TO FORM:

Gregory F. Amann
Assistant City Attorney

Ad

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**PARCEL 'A' RIGHT-OF-WAY EXHIBIT "A"
LEGAL DESCRIPTION**

THE NORTHERLY 30.00 FEET OF THE FOLLOWING DESCRIBED PARCEL 'A':

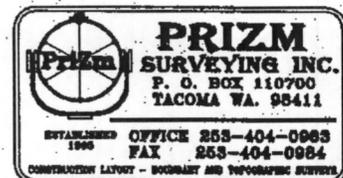
PARCEL 'A':

THAT PART OF GOVERNMENT LOT 2 IN SECTION 7, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE RUNNING EAST ON THE NORTH LINE OF SAID LOT, 1,048.75 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT, 922.706 FEET; THENCE NORTH 82°54' WEST 293.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT, 434.65 FEET; THENCE NORTH 57°15' WEST 343.48 FEET; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID LOT 284.51 FEET TO A POINT 469.12 FEET EAST AND 846.896 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 82°54' EAST 290.45 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING 8,713± SQ. FT.

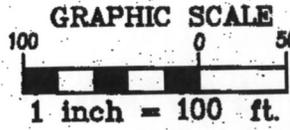
SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.



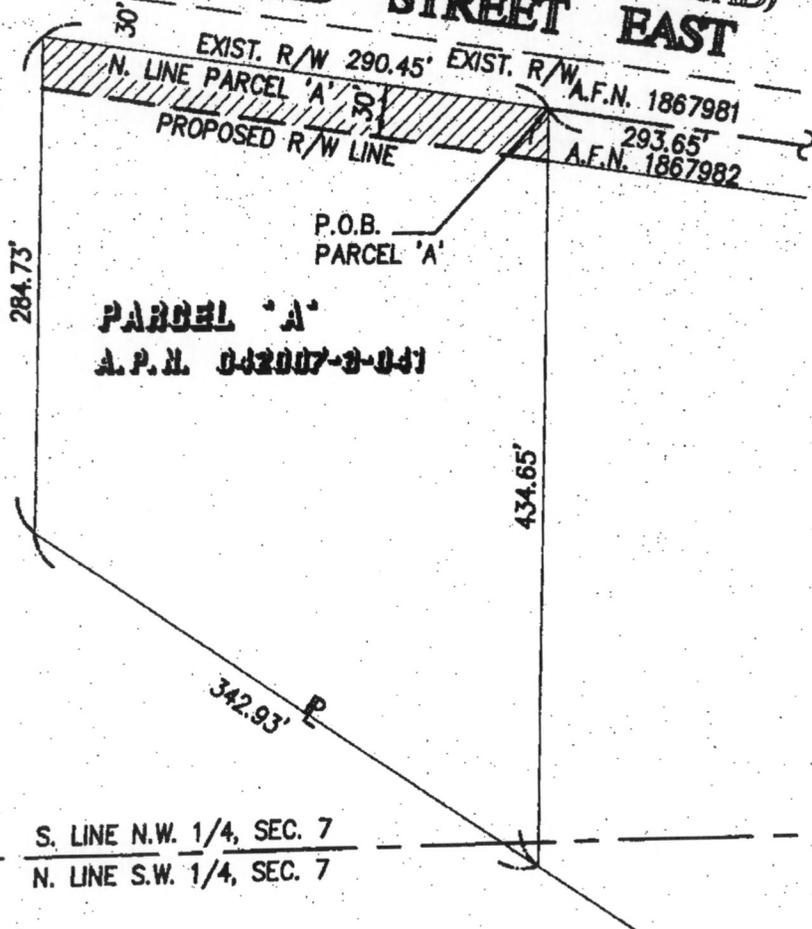
JOB NO. 2013-030

PARCEL 'A' RIGHT-OF-WAY EXHIBIT 'B'

56TH AVE. E.



(FIFE SCHOOL COUNTY ROAD)
23RD STREET EAST



EXIST. R/W 290.45' EXIST. R/W
 N. LINE PARCEL 'A' A.F.N. 1867981
 PROPOSED R/W LINE 293.65' A.F.N. 1867982

P.O.B.
 PARCEL 'A'

PARCEL 'A'
 A.P.N. 042007-3-041

S. LINE N.W. 1/4, SEC. 7
 N. LINE S.W. 1/4, SEC. 7



LEGEND

- PROPERTY LINE
- PROPOSED RIGHT OF WAY LINE
- RIGHT OF WAY TAKE

PRIZM SURVEYING INC.
 P. O. BOX 110700
 TACOMA WA. 98411

ESTABLISHED 1968 OFFICE 253-404-0983
 FAX 253-404-0984

CONVEYANCE LICENSES - SURVEYING AND INSTRUMENT SERVICES

JOB NO. 2013-030