

RESOLUTION NO. 1592

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH S. B. & S., LLC FOR ACQUISITION OF A PORTION OF TAX PARCEL NO. 0420062015 IN LIEU OF CONDEMNATION

WHEREAS, "looping" of water lines adds system redundancy and improves system maintainability because it allows water to be provided from different directions if a segment of main is closed; and

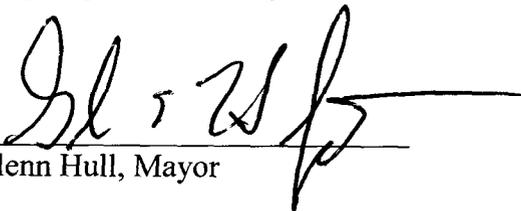
WHEREAS, in order to provide water system "looping" in the Benthien Loop service area it is necessary for the City to acquire a portion of the property located on 57th Avenue East, identified as tax parcel no. Tax Parcel No.0420062015 for right of way and a utilities; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with S. B. & S., LLC for the right of way for a total of \$17,308.00, which constitutes just compensation; now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the Agreement with S. B. & S., 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 25th day of February, 2014.


Glenn Hull, Mayor

Attest:


Carol Egen, City Clerk

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 February, 2014, and is made and entered into by and between S.B. & S., L.L.C. ("SBS") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 SBS is the owner of the real estate legally identified as Pierce County tax parcel no. 0420062015 located on 57th Avenue 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 water utility improvements (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 SBS 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, 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 SBS the sum of \$17,308 cash, payable at Closing, and provide the construction items set forth in Section 4 below. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 10). 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 SBS in the process of evaluating the City's offer. SBS 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. **Construction Items.** The following construction items are additional consideration and shall survive closing:

a. At such time as the City extends water mains on 57th Avenue East adjacent to the Property, the City shall install a water connection stub and water meter to each of the following four adjoining parcels: 0420062015, 0420062135, 0420062202, and 0420062203.

Purchase and Sale Agreement
Page 1 of 4



SBS

THE CITY

b. SBS or its successors in interest shall be responsible, at their cost, for extension of water lines from the meters to any buildings, and shall be responsible for any applicable connection charges and general facilities charges at the time of connection.

c. The Project is not currently funded or scheduled. As such, the City makes no representation as to the timing of installation of water mains on 57th.

5. **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.

6. **Title.** SBS 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. Monetary encumbrances to be discharged by SBS shall be paid or discharged by SBS 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 65 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 Five 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. The City and SBS 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 SBS.

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. SBS shall pay any real estate taxes due, if any. Rather than paying the real estate taxes, SBS may elect to set over the taxes applicable to the Right of Way to the remaining portion of SBS' property.


SBS

THE CITY

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

13. **Environmental Representations and Warranties.** SBS 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. SBS 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, 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 SBS 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



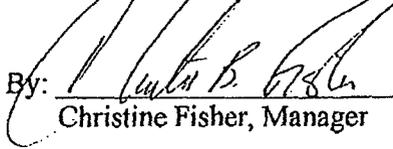
SBS

THE CITY

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.

SBS:

S.B. & S, L.L.C.

By: 
Christine Fisher, Manager

THE CITY:

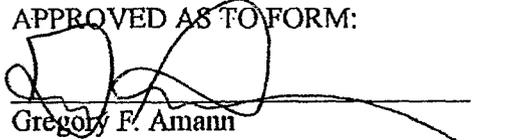
City of Fife, Washington

By: _____
David K. Zabell, City Manager

ATTEST:

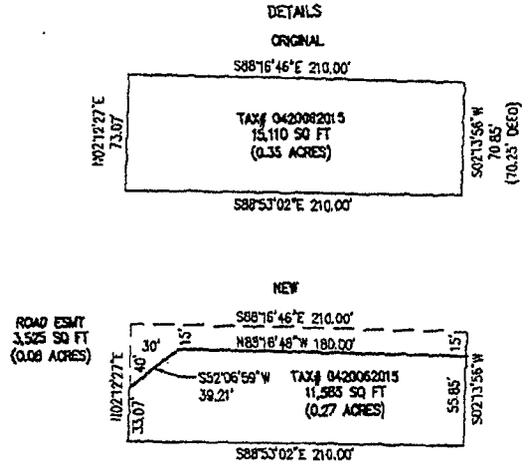
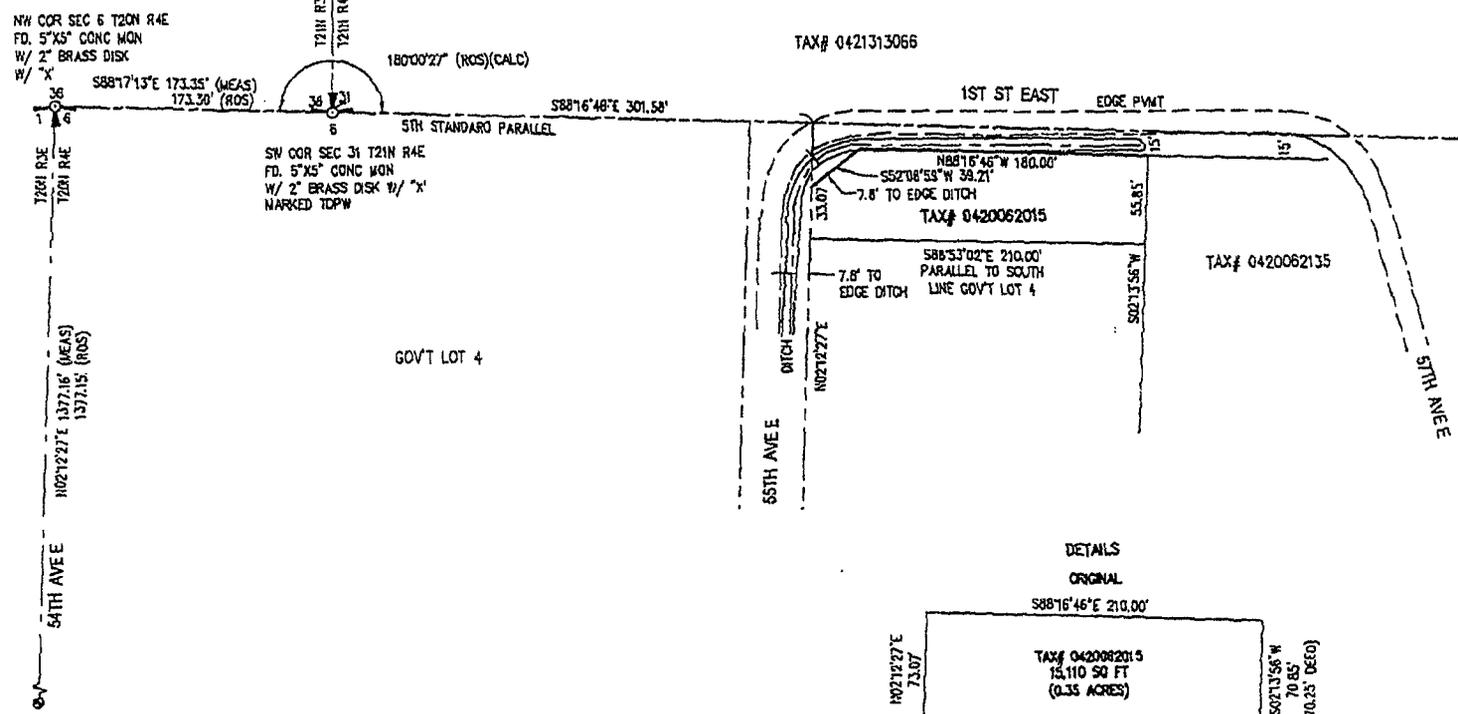
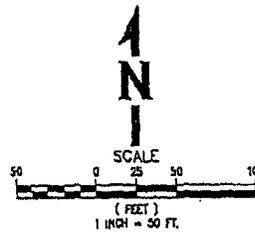
Carol Etgen, City Clerk

APPROVED AS TO FORM:



Gregory F. Amann
Assistant City Attorney

GOVT LOT 4 SEC 6, T20N, R4E, W.M.
GOVT LOT 9 SEC 31, T21N, R4E, W.M.



SW COR GOVT LOT 4 (WHP:R2)
FD. 3" BRASS DISK
SET IN 4" PIPE W/ CONC.
0.25' BELOW GRND
STAMPED "PIERCE COUNTY
PUBLIC WORKS"
© INT. 4TH ST E & 54TH AVE E

REFERENCE:
RECORD OF SURVEY FOR WSDOT, DAVID EVANS AND ASSOCIATES INC., AF#200700133001,
RECORDS OF PIERCE CO., WA.

WHPacific
17100 NE 18th St, Ste 207
Bellevue, WA 98011
425-831-4000 Fax 425-551-4028
www.whpacific.com



SHEET NO	SURVEYED	EBC	DWNZ	APP	LAST DATE	REVISIONS	
						DATE	REMARKS

1ST ST EAST
BENTHIEN LOOP RIGHT-OF-WAY
CITY OF PIFE, PIERCE COUNTY
EXHIBIT B

URAVN FILE NAME: 37397-SURV-EX03
PROJECT NUMBER: 37397

SCALE: 1" = 50'

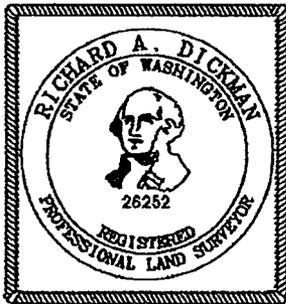
SHEET NUMBER
1 OF 1

EXHIBIT "A"
Portion of Pierce County Tax Parcel 0420062015

That portion of Government Lot 4, Section 6, Township 20 North, Range 4 East, W.M., Pierce County Washington, described as follows:

Commencing at the Southwest corner of Section 31, Township 21 North, Range 4 East, a 5 inch by 5 inch concrete monument with 2 inch brass disk and chistle "x" found in place, said corner being South 88°17'13" East a distance of 173.35 feet from the Northwest Corner of said Government Lot 4; thence South 88°16'46" East, along the North line of Government Lot 4 301.58 feet to the Northwest corner of Tax Parcel 0420062015 and the POINT OF BEGINNING; thence continuing South 88°16'46" East along said north line a distance of 210.00 to the Northeast corner of Tax Parcel 0420062015; thence South 02°13'56" West along the East line of said Tax Parcel a distance of 15.00 feet; thence North 88°16'46" West, parallel with the North line of said Government Lot 4, a distance of 180.00 feet; thence South 52°06'59" West a distance of 39.21 feet to a point on the West line of said Tax Parcel, thence North 02°12'27" East along said West line a distance of 40.00 feet to the North line of said Government Lot 4, the Northwest corner of said Tax parcel and the POINT OF BEGINNING.

Containing 3,525 SQ Ft (±0.08 acres)



WHPACIFIC, INC.
12100 NE 195TH STREET SUITE 300
BOTHELL, WA 98011
425-951-4800