

**RESOLUTION NO. 1609**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH RANDY AND BARBARA HOLT FOR ACQUISITION OF TAX PARCEL NO. 0420171064 IN LIEU OF CONDEMNATION

WHEREAS, the City is in need of a new maintenance yard for the Parks, Recreation and Community Services Department; and

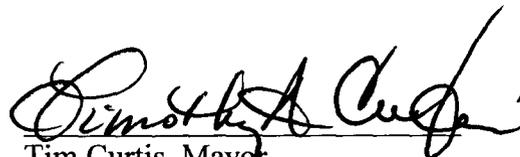
WHEREAS, after investigating several potential sites, City Staff determined that Tax Parcel No. 0420171064 located at 3820 Freeman Road East was the most suitable; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with Randy and Barbara Holt for the property for a total of \$3,841,500, which constitutes just compensation; now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the Agreement with Randy and Barbara Holt 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 22nd day of July, 2014.

  
Tim Curtis, Mayor

Attest:

  
for Carol Etgen, 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 15<sup>th</sup> day of July, 2014, and is made and entered into by and between Randy Holt and Barbara Holt, husband and wife ("Sellers") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Sellers are the owners of the real estate identified as Pierce County tax parcel no. 0420171064 located at 3820 Freeman Road East, Fife, WA, and legally described in Exhibit A attached hereto (the "Property").

2.2 It is necessary for the City to acquire the Property for a parks maintenance yard and other municipal purposes (the "Project").

2.3 Sellers agree to sell and convey and the City agrees to purchase the Property, including all improvements and fixtures located thereon, and all associated water rights, on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** As consideration for the Property, including all improvements and fixtures located thereon, and all associated water rights, the City shall pay Sellers the sum of \$3,481,500 cash, payable at Closing ("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 Sellers in the process of evaluating the City's offer. Sellers acknowledges that they are receiving just compensation for the Property.

4. **Earnest Money.** The Earnest Money amount is \$50,000 cash, which shall be delivered to the Closing Agent within five days of ratification of this Agreement by the City Council. The earnest money is no-refundable except as otherwise provided in this Agreement or in the event of Sellers' default, and shall be immediately released to Sellers. All Earnest Money shall be applied to the Purchase Price at Closing.

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

6. **Title.** Sellers shall convey title to the Property by statutory warranty deed. Title shall be free of all liens, encumbrances or defects, except any encumbrances by the City of Fife or Pierce County, or as expressly approved by the City in writing. Covenants,

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conditions, restrictions and easements that do not interfere with the City's intended use of the Property shall not be considered defects of title. The City expressly agrees to accept title subject to the Agreement for Future Property Improvements recorded under Recording No. 200503290413. Monetary encumbrances to be discharged by the Sellers shall be paid or discharged by Sellers 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 all structures, improvements and fixtures and all associated water rights. The installed portion of the well is not included in the purchase price. At closing, Seller shall donate the well to the City by statutory warranty deed, and shall sign at or after closing any other documents reasonably requested by the City or the Washington State Department of Ecology to establish ownership thereof.

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 at the next regular council after signature by both parties. If not ratified by the City Council within 30 days, this Agreement shall be null and void.

10. **Closing.** Closing shall occur on or before October 10, 2014, in the office of Nelson Carver, Puyallup, Washington, ("Closing Agent"), or such other place or location as the parties may mutually agree. The City and Sellers 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 Sellers.

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. Real estate taxes and utility charges shall be prorated as of the date of Closing.

12. **Possession.** The City shall be entitled to possession and use of the Property at Closing. The Property is subject to a commercial lease agreement with Boart Longyear Company that expires September 30, 2014 (the "Lease"). The Sellers shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the Lease. In the event the tenant holds over, the City may elect to extend Closing until the Sellers can deliver possession, and Sellers, at Seller's expense shall promptly and expeditiously take appropriate legal action to obtain possession. Provided that if the tenant holds over and Sellers are not able to deliver possession despite prompt and

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expeditious legal action by October 15, 2014, the City may elect to terminate this Agreement and obtain a refund of the Earnest Money. If the City does not elect to extend closing, Sellers shall pay all costs and attorneys' fees incurred by the City to obtain eviction of the tenant and possession of the Property. If Boart Longyear vacates the Property and delivers possession of the Property to Sellers prior to September 30, 2014, Closing shall then occur within fifteen days of delivery by Seller to the City of written notice of such vacation and delivery of possession.

13. Environmental Representations and Warranties. Sellers warrant that they have not caused or permitted the Property 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. Sellers have not caused or permitted and has no knowledge of the release of any hazardous substance on any of the Property at any time.

14. Repairs and Maintenance Prior to Closing. Sellers shall continue to operate the Property in the ordinary course of its business and maintain the Property in the same or better condition as existed on the date of this Agreement, but shall not be required to repair material damage from casualty except as otherwise provided in this Agreement.. Sellers shall not enter into or modify existing rental agreements or leases, service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining the City's written consent. The Purchase Price was reduced by \$18,500 (to \$3,481,500) on account of the following items that were identified on initial inspection by the City: (1) exterior siding repair; (2) repair of exterior door on metal building; (3) roof gutter repair in main office and detached garage; (4) apparent settlement in foundation of detached garage; large cracks in foundation wall in several areas; (5) concrete roof tiles on detached garage installed with no felt; several broken tiles and holes found in tiles; (6) roof trusses in detached garage appear to be overloaded due to concrete roof tiles; and (7) bathroom in S.E. corner of large metal building constructed without a permit and does not meet current or former code standards. In consideration of the price reduction, Sellers shall have no obligation to repair or remedy items 1-7, provided Sellers shall verify where the sewer for the bathroom described above drains to.

15. As-Is. Except for those representations and warranties specifically included in this Agreement: (a) Sellers make no representations or warranties regarding the Property; (b) Sellers disclaim any and all implied warranties of any kind concerning the Property including the warranties of fitness of a particular purpose, tenantability, habitability or use; (c) the City otherwise takes the Property "AS IS;" and (d) the City represents and warrants to Sellers that the City has sufficient experience and expertise such that it is reasonable for the City to rely on its own pre-closing inspections and investigations. This disclaimer does not relieve the

                      
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Sellers from liability under applicable law for hidden material defects known to the Sellers that would not be discovered by the City upon reasonable inspection and investigation.

16. **Risk of Loss.** Sellers bear all risk of loss until Closing, and thereafter the City shall bear the risk of loss. The City may terminate this Agreement and obtain a refund of the earnest money if improvements on the Property are destroyed or materially damaged by casualty before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$100,000 or five percent (5%) of the Purchase Price. Alternatively, the City may elect to proceed with closing, in which case, at Closing, Sellers shall assign to the City all claims and rights to proceeds under any property insurance policy and shall credit to the City at Closing the amount of any deductible provided for in the policy.

17. **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.

18. **Notice and Principal Contact.**

18.1 Any notice or communication required under this Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, by express delivery service, or by registered or certified mail return receipt requested. Notice shall be deemed to have been given and received upon actual receipt. If signature on express delivery, or registered or certified mail is refused, then the date of refusal shall be deemed the date of delivery. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:

To the City:                      City Manager  
    City of Fife  
    5411 23<sup>rd</sup> Street East  
    Fife, WA 98424

With Copy to:                    VSI Law Group, PLLC  
    3600 Port of Tacoma Road, Suite 311  
    Tacoma, WA 98424  
    gfa@vsilawgroup.com

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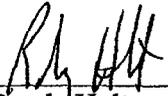


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26. Electronic Delivery. Electronic delivery of signed documents (e.g. transmission by email or facsimile) shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures by signing an original document

**SELLERS:**

  
\_\_\_\_\_  
Randy Holt

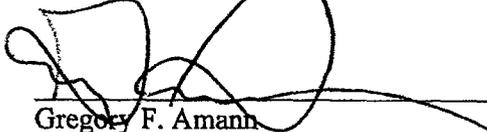
\_\_\_\_\_  
Barbara Holt

**THE CITY:**

City of Fife, Washington

By: \_\_\_\_\_  
David K. Zabell, City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Gregory F. Amann  
Assistant City Attorney

  
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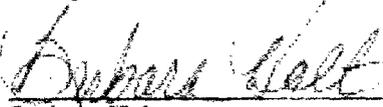
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**SELLERS:**

**THE CITY:**

City of Fife, Washington

Randy Holt



Barbara Holt

By: \_\_\_\_\_

David K. Zabeli, City Manager

**APPROVED AS TO FORM:**

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Gregory F. Amann

Assistant City Attorney

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EXHIBIT A  
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17 TOWNSHIP 20 NORTH RANGE 4 EAST OF THE W.M, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 285.50 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE WEST 900 FEET MORE OR LESS TO THE CENTER LINE OF WAPATO CREEK; THENCE SOUTHEASTERLY 450 FEET MORE OR LESS ALONG THE CENTER LINE OF SAID CREEK TO THE EASTERLY LINE OF A TRACT OF LAND CONVEYED TO ARTHUR J STEPHENS AND GLEE STEPHENS, HUSBAND AND WIFE IN DEED, RURN 1378318; THENCE SOUTHWESTERLY ALONG SAID EASTERLY LINE OF STEPHENS TRACT 70 FEET TO THE INTERSECTION WITH THE EASTERLY LINE OF PACIFIC HIGHWAY; THENCE SOUTHEASTERLY ALONG SAID HIGHWAY TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE EAST TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH TO THE POINT OF BEGINNING.

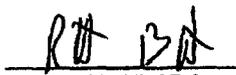
EXCEPT THE NORTH 263 FEET;

EXCEPT THE PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE ON THE EAST LINE OF SAID SUBDIVISION SOUTH 1155 FEET TO THE POINT OF BEGINNING; THENCE NORTH 66°55'00" WEST 483.30 FEET; THENCE SOUTH 22°17'00" WEST 186.60 FEET TO THE NORTHERLY LINE OF VALLEY AVE; THENCE CONTINUING ON SAID NORTHERLY LINE, SOUTHEASTERLY TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE EASTERLY TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO THE CITY OF FIFE BY DEED RECORDED UNDER RECORDING NO. 200812220592.

Purchase and Sale Agreement  
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