

RESOLUTION NO. 1628

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH MONTCLAIRE PARK, LLC FOR ACQUISITION OF A PORTION OF TAX PARCEL NO. 0420072006 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 5700 23rd Street East, identified as tax parcel no. Tax Parcel No. 0420072006, for right of way; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with the owner Montclair Park, LLC for the right of way for a total of \$60,000, 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 Montclair Park, 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 28th day of October, 2014.



Tim Curtis, 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 15 day of October, 2014, and is made and entered into by and between Montclair Park, LLC ("Montclair") and City of Fife, a Washington municipal corporation ("City").

2. Property to be Conveyed.

2.1 Montclair is the owner of the real estate legally identified as Pierce County tax parcel no. 0420072006 and commonly known as 5700 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 Montclair 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.

2.4 Except for those representations and warranties specifically included in this Agreement, the Property is being sold AS IS, WHERE IS, with no representations or warranties as to the condition of the Property.

3. Purchase Price. As consideration for the conveyance of the Right of Way, and for any loss of value to the remaining portion of the Property as a result of the Project and the acquisition of the Right of Way, if any, the City shall pay Montclair the sum of \$60,000 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 Montclair in the process of evaluating the City's offer. Montclair acknowledges that it is receiving just compensation for the Right-of-Way, and for any 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. Montclair 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



Montclair



The City

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 Montclair shall be paid or discharged by Montclair at or before Closing. The City's sole remedy if Montclair does not pay or discharge monetary encumbrances is to terminate this Agreement with no further obligation of either party, or to take title subject to said monetary encumbrances. The deed of trust recorded under Auditor's Recording No. 201208290446 grants the lender Timberland Bank the right to require that all or a portion of the net proceeds of the sale be applied to the indebtedness. If Timberland Bank will not grant a partial reconveyance of the deed of trust in exchange for application of such portion of the net proceeds to the indebtedness as Timberland designates, then the City may elect to terminate this Agreement with no further obligation of either party, or take title subject to the deed of trust. The City's sole remedy if it does not approve of any other liens, encumbrances or defects is to terminate this Agreement with no further obligation of either party, or to take title subject to all such other liens, encumbrances or defects.

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. Restoration after Construction. Within 30 days after completion of the Project, the City shall restore any landscaping on the remainder of the Property damaged by the Project to the condition it was in immediately prior to the commencement of the Project.

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 Montclair 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 Montclair.

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

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

13. Environmental Representations and Warranties. Montclair 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. Montclair 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 Montclair 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.

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Montclair



The City

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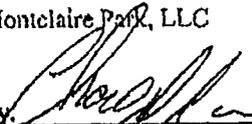
21. Facsimile Transmission. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures by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

MONTCLAIRE:

THE CITY:

Montclair Park, LLC

City of Fife, Washington

By: 
Charles F. Dising, Member

By: 
Subir Mukerjee, Interim City Manager

APPROVED AS TO FORM:


Gregory F. Amara, Asst. City Attorn7

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

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL 'B' DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF BEGINNING OF SAID PARCEL 'B', SAID POINT ALSO BEING ON THE NORTHERLY MARGIN OF THAT TRACT OF LAND CONVEYED TO PIERCE COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 1867982; THENCE NORTH 82°54' WEST, ALONG SAID NORTHERLY MARGIN, 293.65 FEET TO THE WEST LINE OF SAID PARCEL 'B' AND ROAD CONVEYANCE; THENCE SOUTH PARALLEL WITH THE WEST LINE OF GOVERNMENT LOT 2, ALONG THE WEST LINE OF SAID PARCEL 'B' & ROAD CONVEYANCE, 30.23 FEET TO THE SOUTH LINE OF SAID ROAD CONVEYANCE, SAID POINT BEING 30.00 FEET SOUTH, WHEN MEASURED AT RIGHT ANGLES TO, AND PARALLEL WITH THE NORTH LINE OF SAID PARCEL 'B'; THENCE SOUTH 82°54' EAST, ALONG THE SOUTH LINE OF SAID ROAD CONVEYANCE, 291.87 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 82°54' EAST, 47.05 FEET TO THE BEGINNING OF A 159.00 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST; THENCE CLOCKWISE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 82°50'02", A DISTANCE OF 229.87 FEET TO THE EAST LINE OF GOVERNMENT LOT 2 TO A POINT OF CUSP, SAID POINT ALSO BEING THE WEST MARGIN OF A TRACT OF LAND CONVEYED TO PIERCE COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 1867980; THENCE NORTH 00°03'58" WEST, ALONG SAID EAST LINE OF GOVERNMENT LOT 2, 164.61 FEET TO THE SOUTHERLY MARGIN OF THAT TRACT OF LAND CONVEYED TO PIERCE COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 1867981; THENCE SOUTH 88°37'55" WEST, ALONG THE SAID SOUTHERLY MARGIN 185.85 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,289± SQ. FT.

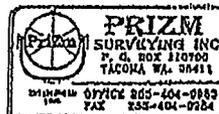
PARCEL 'B':

THAT PORTION OF GOVERNMENT LOTS 2 AND 3, SECTION 7, TOWNSHIP 20 NORTH, RANGE 4 EAST, 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 TO THE WEST LINE OF SAID LOT, 922.706 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 82°54' WEST 293.65 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID LOT, 434.65 FEET; THENCE SOUTH 57°15' EAST 346.72 FEET TO A POINT 586.22 FEET SOUTH, MEASURED PARALLEL TO SAID WEST LINE OF SAID LOT, OF THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 57°15' EAST 218.60 FEET, MORE OR LESS, TO THE EAST LINE OF SAID LOT 3; THENCE NORTH ALONG THE EAST LINES OF SAID LOTS 2 AND 3, TO A POINT 822.71 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 2; THENCE WEST PARALLEL TO THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 184.01 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT FIFE SCHOOL COUNTY ROAD AS CONVEYED TO PIERCE COUNTY BY DEEDS RECORDED UNDER RECORDING NOS. 1867981 AND 1867982;

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.



JOB NO. 2013-030

