

**RESOLUTION NO. 1726**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH VAN HALDER, LLC FOR ACQUISITION OF PIERCE COUNTY TAX PARCEL NOS. 0320011029 AND 0320011015

WHEREAS, it is necessary for the City to acquire property for a storage yard and staging area during construction of a planned utility project and for other municipal purposes;

WHEREAS, Seller is the owner of the real estate identified as Pierce County tax parcels 0320011029 and 0320011015, located at 520 54<sup>th</sup> Avenue East, Fife, Washington, and legally described in Exhibit A attached to the Purchase and Sale Agreement hereto (the "Property");

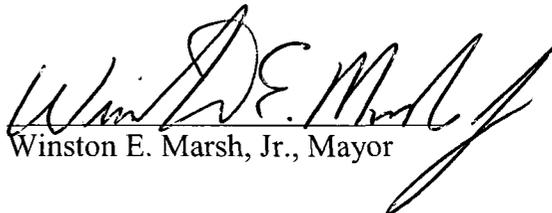
WHEREAS, Seller agrees to sell and convey and the City agrees to purchase the Property, including all improvements and fixtures located thereon, and all associated water rights, on the terms and conditions set forth in Exhibit A hereto;

WHEREAS, after investigating several potential sites, City Staff determined that Tax Parcel Nos. 0320011029 and 0320011015, located at 520 54<sup>th</sup> Avenue East was the most suitable; and

WHEREAS, the City Attorney's office has negotiated a Purchase and Sale Agreement with Van Halder, LLC for the property for \$397,290; plus the escrow fee, reconveyance fees, and any real estate excise tax due, as well as recording fees; now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the City Manager signing the Purchase and Sale Agreement with Van Halder, 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.

ADOPTED by the City Council at an open public meeting held on the 12<sup>th</sup> day of July, 2016.

  
Winston E. Marsh, Jr., Mayor

Attest:

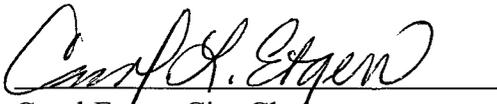
  
Carol Etgen, City Clerk

EXHIBIT A  
TO  
RESOLUTION 1726

**PURCHASE AND SALE AGREEMENT**

1. **Date and Parties.** This Purchase and Sale Agreement ("Agreement") is dated, for reference purposes only, the 6<sup>th</sup> day of July, 2016, and is made and entered into by and between Van Halder LLC, a Washington Limited Liability Company ("Seller") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Seller is the owner of the real estate identified as Pierce County tax parcels 0320011029 and 0320011015, located at 520 54<sup>th</sup> Avenue East, Fife, Washington, and legally described in Exhibit A attached hereto (the "Property").

2.2 It is necessary for the City to acquire the Property for a storage and staging area during construction of a planned utility project and other municipal purposes (the "Project").

2.3 Seller agrees 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 Seller the sum of \$397,290 cash, payable at Closing ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in paragraph 9 below).

4. **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.

5. **Title.** Seller 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, conditions, restrictions and easements that do not interfere with the City's intended use of the Property shall not be considered defects of title. Monetary encumbrances to be discharged by the Seller shall be paid or discharged by Seller 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.

  
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7. **Included Items.** This transaction includes all structures, improvements and fixtures and all associated water rights.

8. **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.

9. **Closing.** Closing shall occur on or before August 31, 2016, at the office of First American Title Company, 4707 South 19<sup>th</sup> St., Suite 101, Tacoma, WA 98045 ("Closing Agent"), or such other place or location as the parties may mutually agree. The City and Seller 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 Seller.

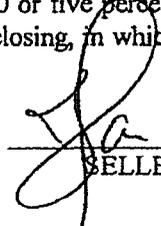
10. **Closing Costs & Pro-Rated Items.** The City shall pay the escrow fee, reconveyance fees, any real estate excise tax due, and the recording fees. Real estate taxes and utility charges shall be prorated as of the date of Closing.

11. **Possession.** The City shall be entitled to possession of the Property at Closing.

12. **Environmental Representations and Warranties.** Seller warrants that it has 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. Seller 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. **As-Is.** Except for those representations and warranties specifically included in this Agreement or in the statutory warranty deed: (a) Seller makes no representations or warranties regarding the Property; (b) Seller disclaims any and all implied warranties of any kind concerning the Property including the warranties of fitness of a particular purpose, tenantability, habitability or use; and (c) the City otherwise takes the Property "AS IS". This disclaimer does not relieve the Seller from liability under applicable law for hidden material defects known to the Seller that would not be discovered by the City upon reasonable inspection and investigation. The Seller represents that it has no knowledge of any hidden defects.

14. **Risk of Loss.** Seller bears all risk of loss until Closing, and thereafter the City shall bear the risk of loss. The City may terminate this Agreement 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, Seller shall

  
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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.

15. **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.

16. **Notice and Principal Contact.**

16.1 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  
                                            Facsimile: 253.  
                                            Email:     smukerjee@cityoffife.org

With Copy to:                    VSI Law Group, PLLC  
                                            225 Tacoma Avenue South  
                                            Tacoma, WA 98402  
                                            Facsimile: 253.212.3963  
                                            Email:     gfa@vsilawgroup.com

To Seller:                         Van Halder LLC  
                                            P.O. Box 595  
                                            Puyallup, WA 98271-0181  
                                            Facsimile: \_\_\_\_\_  
                                            Email:     janvanhalder@gmail.com

  
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16.2 Any party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of section 16.1.

17. 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.

18. 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.

19. 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.

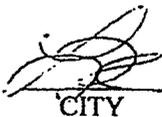
20. Complete Agreement. The Agreement and any addenda and exhibits to it state the entire understanding of Seller and the City regarding this transaction. There are no verbal or written agreements which modify or affect the Agreement.

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

22. 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.

23. Section 1031 Exchange. If City or Seller intends for this transaction to be a part of an IRS Section 1031 exchange, the other party agrees to cooperate in completion of the exchange so long as the cooperating party incurs no additional liability or expense in doing so. If there are costs, including attorney fees, associated with the cooperating party that relate solely to the exchange, then the party requesting the exchange shall pay/reimburse those costs and fees at Closing. Notwithstanding any other provision of this Agreement, any party completing a 1031 exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing the exchange.

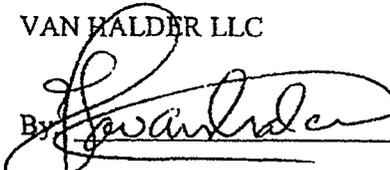
  
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23. **Electronic Delivery.** Electronic delivery of signed documents (e.g. transmission by email or facsimile) shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the escrow agent, the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

SELLER:

VAN HALDER LLC

By:   
\_\_\_\_\_  
JOHANNES VAN HALDER  
Printed Name

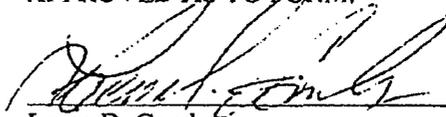
Its: MEMBER

THE CITY:

City of Fife, Washington

By: \_\_\_\_\_  
Subir Mukerjee, City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Loren D. Combs  
City Attorney

  
\_\_\_\_\_  
SELLER

  
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CITY

EXHIBIT A  
LEGAL DESCRIPTION

The following described real estate, situate in the County of Pierce, State of Washington

Parcel A:

Commencing at a point 15 feet West and 455.56 feet South of the Northeast corner of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 1, Township 20 North, Range 3 East, W.M., in Pierce County Washington;  
THENCE West parallel with the North boundary of said subdivision, 204.38 feet to the East line of a tract conveyed to William N. Hammerschmidt, by deed recorded under recording No. 392637, records of Pierce County, Washington;  
THENCE South along the East boundary of said tract, 54.44 feet;  
THENCE East, parallel with the North boundary of said subdivision, 203.97 feet;  
THENCE North, 54.44 feet to the point of beginning;  
Except the East 23 feet thereof for Sproule Road.  
Except also the East 8 feet thereof for 54<sup>th</sup> Avenue (formally Sproule Road)

Parcel B:

Beginning at a point 15 feet West and 510 feet South of the Northeast corner of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 1, Township 20 North, Range 3 East, W.M., in Pierce County, Washington;  
THENCE West parallel with the North boundary of said subdivision 203.97 feet;  
THENCE South parallel with the West boundary 54.44 feet;  
THENCE East parallel with the North boundary of said subdivision, 203.97 feet;  
THENCE North, 54.44 feet to the point of beginning;  
EXCEPT the East 23 feet thereof for Sproule Road.  
Except also the East 9 feet thereof for 54<sup>th</sup> Avenue (formally Sproule Road)

BOTH SITUATE in the County of Pierce, State of Washington

Purchase and Sale Agreement  
Page 6 of 6

  
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