

RESOLUTION NO. 1734

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH THE MURREY TRUST FOR ACQUISITION OF TAX PARCEL NO. 0420202040 IN LIEU OF CONDEMNATION

WHEREAS, a portion of Tax Parcel No. 0420202040 located at 7105 North Levee Road East in Fife is necessary for widening of 70<sup>th</sup> Avenue East and Levee Road East associated with the project to construct a new bridge across the Puyallup River at 70<sup>th</sup> Avenue East; and

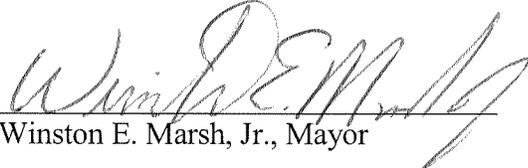
WHEREAS, the remainder of Tax Parcel No. 0420202040 is shown as required for the setback of the levee under North Levee Road East on the draft General Investigation; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with The Murry Trust for the property for \$1.2 million, which constitutes just compensation based on market analysis; now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the Purchase and Sale Agreement with The Murrey Trust 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 13th day of September, 2016.

  
Winston E. Marsh, Jr., Mayor

Attest:

  
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 19<sup>th</sup> day of August, 2016, and is made and entered into by and between The Murrey Trust ("Seller") and City of Fife, a Washington municipal corporation ("Buyer").

2. **Property.** Seller agrees to sell and convey and the Buyer agrees to purchase and accept conveyance of the real estate and all improvements thereon, including all associated water rights, commonly known as Parcel No. 04202002040, located at 7105 North Levy Road, Fife, WA 98424 in Pierce County, Washington, and legally described as follows, on the terms and conditions set forth in this Agreement:

Section 20 Township 20 Range 04 Quarter 22 : BEG 330 FT S OF NW COR OF LOT 2 IN SEC TH ELY ALG A LI PAR TO N BDRY LOT 2 682.5 FT TH SWLY ON AN ANGLE TO RIGHT 122 DEG 13 MIN 443.2 FT TO N LI PUY RIV CHANNEL AS SET BY INTER CO RIV IMP DIST TH NWLY ALG SD CHANNEL TO W LI LOT 2 TH N ALG W LI SD LOT 2 TO BEG EXC RD SUBJ TO & INC EASE

(the "Property").

3. **Purchase Price.** As consideration for the Property, including all improvements and fixtures located thereon, and all associated water rights, the Buyer shall pay Seller the sum of \$1,200,000 cash, payable at Closing ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in paragraph 13 below). As additional consideration, the Buyer shall release at closing its claim as the owner of adjoining Parcel No. 0420202095 of adverse possession of a portion of the Property.

4. **Earnest Money.** The earnest money in the amount of \$5000 shall be in the form of a promissory note. The earnest money shall be held by the Closing Agent. Buyer shall deliver the earnest money no later than five days after Mutual Acceptance. "Mutual Acceptance" shall occur when all parties have signed the Agreement. The earnest money shall be applicable to the purchase price.

5. **Feasibility Contingency.** Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence or absence of any hazardous substances; the contracts and leases affecting the Property; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within forty five (45) days (the "Feasibility Period") after Mutual Acceptance stating that this condition is satisfied. If such notice is timely given, the Feasibility Contingency stated in this Section 5 shall be deemed to be satisfied.

6. **Environmental Records, Leases.** Seller shall make available for inspection by Buyer and its agents within five days after Mutual Acceptance all documents in Seller's possession or control relating to the environmental condition of the Property and any current leases or other agreements relating to occupancy of all or a portion of the Property.

  
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7. **Access.** Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times, to conduct inspections concerning the Property and improvements, including without limitation hazardous materials, soils conditions, sensitive areas, wetlands, or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security, confidentiality, and disruption of Seller's tenants. Buyer shall not perform any invasive testing including environmental inspections beyond a phase I assessment without obtaining the Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall restore the Property and improvements to the same condition they were in prior to inspection. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims, and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This agreement to indemnify and defend Seller shall survive closing.

8. **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.

9. **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 Buyer in writing. Covenants, conditions, restrictions and easements that do not interfere with the Buyer'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.

10. **Title Insurance.** Fees for standard coverage owner's title insurance policies shall be paid by the Seller. 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 Buyer in paragraph 9 above.

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

12. **City Council Approval.** This Agreement is subject to ratification by the Fife City Council. This Agreement 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.

13. **Closing.** Closing shall occur within thirty (30) days after waiver or removal of all contingencies ("Closing") at the office of Ticor Title Company, 3929 Bridgeport Way W., Ste 202, University Place, WA 98466 ("Closing Agent"), or such other place or location as the parties may mutually agree. The Buyer 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.



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14. **Closing Costs & Pro-Rated Items.** Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable to any extended coverage or endorsements requested by Buyer, and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Any real estate excise taxes shall be paid Seller. Real and personal property taxes and assessments; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of Closing.

15. **Possession.** The Buyer shall be entitled to possession of the Property at Closing.

16. **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, except

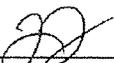
17. **As-Is.** Except for those representations and warranties specifically included in this Agreement or in the statutory warranty deed: (a) Seller makes no representations or warranties regarding the Property; (b) Seller disclaims any and all implied warranties of any kind concerning the Property including the warranties of fitness of a particular purpose, tenantability, habitability or use; and (c) the Buyer 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 Buyer upon reasonable inspection and investigation. The Seller represents that it has no knowledge of any hidden defects.

18. **Risk of Loss.** Seller bears all risk of loss until Closing, and thereafter the Buyer shall bear the risk of loss. The Buyer 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 Buyer may elect to proceed with closing, in which case, at Closing, Seller 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.

19. **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.

20. **Notice and Principal Contact.**

20.1 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

  
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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 Buyer: 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With Copy To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20.2 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 21.1.

21. **Seller's Remedies.** In the event of any default by Buyer without legal excuse, Seller shall be entitled to terminate this Agreement and receive the Earnest Money as liquidated damages. The foregoing shall be Seller's sole and exclusive remedy for any breach or default by Buyer, and Seller's receipt of the Earnest Money shall constitute a waiver of any other rights or remedies that Seller may have at law or in equity.

22. **Buyer's Remedies.** In the event of any default by Seller without legal excuse, Purchaser may elect to pursue any of the following remedies: (a) terminate this Agreement, in which event the Earnest Money shall be immediately returned to Purchaser; or (b) maintain an action for specific performance or other injunctive relief.

23. **Offer.** Buyer shall purchase the Property under the terms and conditions of this Agreement. Seller shall have until 5:00pm on August 25, 2016 to accept this offer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by Buyer or Buyer's

  
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attorney.

24. **Commission.** Seller and Buyer agree to pay a commission in accordance with any listing or commission agreement to which they are a party.

25. **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.

26. **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.

27. **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.

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

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

30. **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.

31. **Section 1031 Exchange.** If Buyer 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.

*[this space intentionally left blank]*

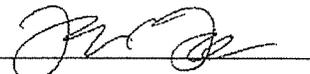
  
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32. **Electronic Delivery.** Electronic delivery of signed documents (e.g. transmission by email or facsimile) shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the escrow agent, the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

**SELLER:**

The Murrey Trust

By: 

Lamont C Leo  
Printed Name

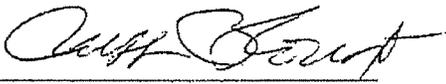
Its: Trustee

Date: 8-30-16

*See counter offer  
of even date.*  


**BUYER:**

City of Fife, Washington

By:   
Russ Blount, Acting City Manager

Date: Aug 19, 2016

APPROVED AS TO FORM:

  
Gregory F. Amann  
Assistant City Attorney

  
SELLER

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**COUNTEROFFER**

**Murrey Trust to City of Fife, a Washington municipal corporation**

**7105 North Levee Road – Parcel No. 0420202040 (the “Property”)**

This Counteroffer is a made part of the Purchase and Sale Agreement (*Agreement*) dated August 19, 2016, between **City of Fife, a Washington municipal corporation (Buyer)** and **The Murrey Trust (Seller)** concerning the above Property. The provisions of this Counteroffer shall prevail over any inconsistencies between it and the Agreement. The execution of this Counteroffer by both parties shall constitute an acceptance by both parties of the terms of the Agreement as modified by this Counteroffer.

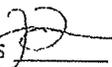
The terms and conditions of the above referenced Agreement are accepted subject to the following:

1. Paragraph 2 of the Agreement is revised to provide that the address of the Property is 7105 North Levee Road E, Fife, WA, 98424. The Tax Parcel No. for the Property is 0420202040.
2. Paragraph 16 of the Agreement is replaced with the following:

**Environmental Representations and Warranties.** Seller warrants that it has no knowledge of the Property being 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 no knowledge of the release of any hazardous substance on any of the Property at any time.

3. This Agreement is contingent on and subject to Seller obtaining Court approval of the terms of the sale prior to closing. Seller will provide written notice to Buyer of such approval or disapproval. If court approval is not obtained, the Agreement shall be terminated and the earnest money shall be returned to the Buyer.
4. Seller discloses the following: For an unknown period of time prior to 2011 the owner of the parcel lying East of the Property encroached upon and farmed the triangular portion of the Property lying East of the 6' high chain link fence as shown on the survey dated July 29, 2011 by Larson and Associates (the “Disputed Area”). The Disputed Area consists of approximately 35,102.84 square feet. Seller constructed the existing wire fence along the East surveyed boundary of the Property in 2011. The Statutory Warranty Deed to be provided by the Seller to the Buyer at Closing will except from the warranties given any claim for adverse possession or prescriptive easement within the Disputed Area.

Seller's Initials



Buyer's Initials



5. The Property is being acquired by the Buyer in lieu of condemnation and the parties therefore believe that this transaction is exempt from real estate excise tax pursuant to WAC 458-61A-206(3). The parties agree to execute an Excise Tax Affidavit to that effect at Closing.
6. Paragraph 20.1 is revised to provide for notice to the Seller as follows:

Lamont Loo, Trustee  
Davies Pearson, P.C.  
920 Fawcett Ave  
PO Box 1657  
Tacoma, WA 98401  
Email: lloo@dpearson.com

With copy to:

John Bauder, VP  
CBRE  
2101 Pacific Ave, Suite 1502  
Tacoma, WA 98402  
Email: [john.bauder@cbre.com](mailto:john.bauder@cbre.com)

Seller makes this counter offer on the terms above and acknowledges receipt of a copy.

Seller: *John Bauder*  
Date: 8-31-16

*Replaces counteroffer of 8-30-16*

Acceptance: I accept the above Seller Counter Offer and acknowledge receipt of a copy.

Buyer: *John Bauder*  
Date: 8/31/16

Seller's Initials *JL*

Buyer's Initials \_\_\_\_\_