

RESOLUTION NO. 1737

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH WAPATO POINTE SOUTH, LLC FOR PURCHASE OF PROPERTY IN LIEU OF CONDEMNATION

WHEREAS, Wapato Pointe South, LLC is the owner of a 60 foot strip of land that bisects City owned property to the north and south, located southwest of Wedge Park and east of Wapato Creek; and

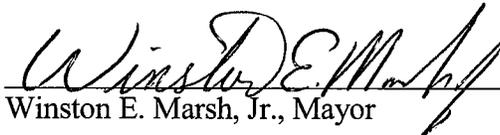
WHEREAS, the City would like to acquire the 60 foot strip as part of an expansion of the City's trail and park system and to provide off street pedestrian and non-motorized connectivity between neighborhoods; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with Wapato Pointe South, LLC for the 60 foot strip for \$14,000, which constitutes just compensation based on market analysis; now, therefore

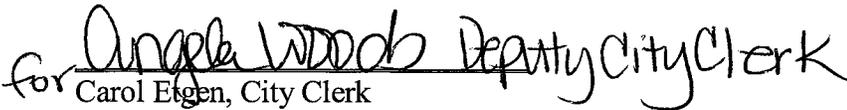
BE IT RESOLVED that the City Council hereby ratifies and approves the Purchase and Sale Agreement with Wapato Pointe South, LLC attached hereto as Exhibit A and authorizes the City Manager to pay the amounts and perform the actions necessary to acquire the property in accordance with the Agreement.

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 11th day of October, 2016.

  
Winston E. Marsh, Jr., Mayor

Attest:

  
for Angela Woods Deputy City Clerk  
Carol Egen, City Clerk

# EXHIBIT " A "

## PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** This Purchase and Sale Agreement ("PSA") is dated, for reference purposes only, the 3<sup>rd</sup> day of ~~September~~ <sup>October</sup>, 2016, and is made and entered into by and between Wapato Pointe South, LLC ("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 legally described in Exhibit A attached hereto (the "Property").

2.2 The City owns the abutting property to the north and south and would like to acquire the Property as part of an expansion of the City's trail and park system and to provide off street pedestrian and non-motorized connectivity between neighborhoods.

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, if any, on the terms and conditions set forth in this Agreement.

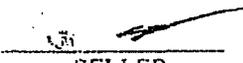
3. **Purchase Price.** As consideration for the Property, the City shall pay Seller the sum of fourteen thousand dollars (\$14,000) cash, payable at Closing. "Closing" shall mean the closing of the transaction contemplated by this PSA as provided in paragraph 9 below.

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 bargain and sale 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.

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

  
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8. City Council Approval. This PSA 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 PSA shall be null and void.

9. Closing. Closing shall occur on or before October 30, 2016, at the office of Ticor Title, 3929 Bridgeport Way West, Suite 202, University Place, WA 98466 ("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. Seller's proceeds shall be distributed by Closing Agent directly to Clark McGowan and Ryan McGowan in equal shares.

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

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

12. As-Is. Except for those representations and warranties specifically included in this PSA or in the bargain and sale 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, tenability, 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.

13. Obligations to Survive Closing. It is mutually agreed by the parties that any provision contained in this 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 Acquisition 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.

14. Conveyance in Lieu of Condemnation. This conveyance is being made under immediate threat of and in lieu of condemnation.

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.

Purchase and Sale Agreement  
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16. **Successors and Assigns.** This PSA 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. **Complete Agreement.** The PSA 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.

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

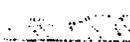
20. **Facsimile Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will

21. **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:

Wapato Pointe South, LLC

By:   
Clark McGowan, Member

By:   
Ryan McGowan, Member

THE CITY:

City of Fife, Washington

By:   
Subir Mukerjee, City Manager

APPROVED AS TO FORM:

  
Gregory F. Amadi, Assistant City Attorney  
City Attorney

EXHIBIT "A"  
Legal Description

PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

A STRIP OF LAND 60 FEET IN WIDTH RUNNING FROM THE CENTER LINE OF WAPATO CREEK SOUTHWESTERLY TO THE NORTH BOUNDARY OF THE PROPERTY AS CONVEYED TO WAPATO POINTE SOUTH, LLC, A WASHINGTON LIMITED COMPANY, BY DEED RECORDED JUNE 18, 2002, UNDER RECORDING NUMBER 200206180538, IN THE FOLLOWING "TRACT X". THE NORTHWESTERLY LINE OF SAID 60 FOOT STRIP OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF WAPATO CREEK WITH THE SOUTH LINE OF THE NORTH 100 FEET OF SAID SOUTHEAST QUARTER OF SOUTHWEST QUARTER;

THENCE SOUTH 57°00' WEST 145 FEET, MORE OR LESS, TO THE NORTH LINE OF THE FOLLOWING DESCRIBED "TRACT X"

TRACT X

THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND OF GOVERNMENT LOT 4, SECTION 7, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4, SAID POINT BEING 617.46 FEET SOUTH 0°30'24" EAST OF THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 4;

THENCE NORTH 88°54'34" WEST 16.00 FEET,

THENCE NORTH 0°30'24" WEST 224.17 FEET, TO A LINE PARALLEL WITH AND 390 FEET SOUTH OF THE NORTH LINE OF SAID GOVERNMENT LOT 4,

THENCE NORTH 89°56'01" WEST PARALLEL TO THE NORTH LINE OF SAID GOVERNMENT LOT 4 279.23 FEET;

THENCE NORTH 0°30'24" WEST 390 FEET,

THENCE SOUTH 89°56'01" EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 4, 295.23 FEET TO THE SAID NORTHEAST CORNER OF GOVERNMENT LOT 4;

THENCE SOUTH 0°30'24" EAST ALONG SAID EAST LINE, 182.00 FEET;

THENCE NORTH 86°26'59" EAST 93.00 FEET;

THENCE SOUTH 24°08'01" EAST 109.00 FEET;

THENCE NORTH 63°54'59" EAST 95.2 FEET, MORE OR LESS, TO THE CENTER LINE OF WAPATO CREEK;

THENCE SOUTHEASTERLY ALONG THE CENTER LINE OF WAPATO CREEK, 550 FEET, MORE OR LESS, TO ITS INTERSECTION WITH A LINE THAT BEARS SOUTH 88°54'34" EAST FROM THE POINT OF BEGINNING;

THENCE NORTH 88°54'34" WEST 522 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

TOGETHER WITH A ROAD RIGHT OF WAY OVER A STRIP OF LAND 15 FEET IN WIDTH RUNNING FROM THE CENTER LINE OF WAPATO CREEK, NORTHERLY AND EASTERLY TO VALLEY AVENUE, THE NORTHERLY AND WESTERLY LINE OF SAID STRIP OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF WAPATO CREEK WITH THE SOUTH LINE OF THE NORTH 100 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER;

THENCE SOUTH 89°28'01" EAST TO THE EAST BANK OF SAID WAPATO CREEK,

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THENCE NORTHERLY ALONG THE EAST BANK OF SAID WAPATO CREEK, 100 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER;

THENCE ALONG SAID NORTH LINE SOUTH 89° 36'00" EAST 580 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT OF WAY LINE OF VALLEY AVENUE.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.