

RESOLUTION NO. 1752

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH JOHN AND MARQUETTE FIETZ FOR PURCHASE OF PROPERTY IN LIEU OF CONDEMNATION

WHEREAS, John and Marquette Fietz are the owners the property located at 5820 28<sup>th</sup> Street East that borders Wedge Park on the north and City owned Parcel 0420073079 to the West; and

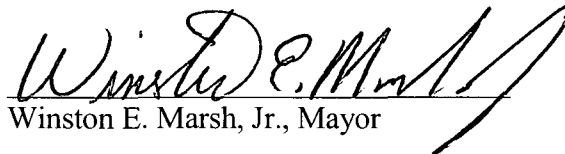
WHEREAS, the City would like to acquire the portion of the Fietz property located northwest of the existing access road to Parcel 0420073079, consisting of approximately 5200sf, as part of an expansion of the City's trail and park system and to provide off street pedestrian and non-motorized connectivity between neighborhoods; and

WHEREAS, in lieu of condemnation, the City Attorney's office has negotiated a Purchase and Sale Agreement with John and Marquette Fietz for \$11,000, 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 John and Marquette Fietz 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 December, 2016.

  
Winston E. Marsh, Jr., Mayor

Attest:

  
Carol Etgen, City Clerk

## PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** This Purchase and Sale Agreement (“PSA”) is dated, for reference purposes only, the 18<sup>th</sup> day of November, 2016, and is made and entered into by and between John and Marquette Fietz, a marital community (“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 parcel 0420073078, located at 5820 28<sup>th</sup> Street East, Fife, Washington, and legally described in Exhibit 1 attached hereto (the “Property”).

2.2 The Property is located on the south side of 28<sup>th</sup> Street East, at the west end of the street. Immediately across the street from the Property is a City park known as Wedge Park. Immediately west of the Property is real property recently acquired by the City, known as the Heath Property.

2.3 The City would like to acquire approximately 5200 square feet of the Property that lies northwest of the existing hedge on the Property, as illustrated on Exhibit 2 attached hereto and incorporated herein (the “Acquisition Property”). The City intends to use the Acquisition 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 (the “Project”).

2.4 Seller agrees to sell and convey and the City agrees to purchase the Acquisition Property, including all improvements and fixtures located thereon, and all associated water rights, if any (collectively referred to as the Acquisition Property), on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** As consideration for the Acquisition Property, the City shall pay Seller the sum of eleven thousand dollars (\$11,000) 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 and BLA.**

4.1 The Acquisition Property legal description will need to be created. The City will hire a licensed surveyor, at the City’s expense, to prepare the legal description. The Parties hereby authorize the Closing Agent to attach the new Acquisition Property legal description to this PSA as Exhibit 3, and the legal description will then be used for closing this transaction.

  
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4.2 The City owns property that abuts the Acquisition Property and it intends to absorb the Acquisition Property into legal description for the other parcels. The City shall, at its expense, prepare, submit, and process a Boundary Line Adjustment (“BLA”) application that will adjust the boundary to take into account the sale of the Acquisition Property. The BLA will also create the new legal description for the Property which remains in the Seller’s ownership, post-closing. The BLA will be finalized prior to Closing and will be recorded with the County as part of the Closing.

5. **Title.** Seller shall convey title to the Acquisition 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 Acquisition 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.

8. **City Council Approval.** This PSA is subject to ratification by the Fife 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 30 days after the BLA is ready to be recorded and Wells Fargo is prepared to deliver a request for partial reconveyance of its deed of trust, 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.

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 shall be prorated as of the date of Closing. All utility accounts will remain with the Property that will continue to be owned by Seller, and thus utility bills will not be prorated.

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

12. **Environmental Representations and Warranties.** Seller warrants that it has not caused or permitted the Acquisition 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 Acquisition Property at any time.

13. **As-Is.** Except for those representations and warranties specifically included in this PSA or in the statutory warranty deed: (a) Seller makes no representations or warranties regarding the Acquisition Property; (b) Seller disclaims any and all implied warranties of any kind concerning the Acquisition Property including the warranties of fitness of a particular purpose, tenantability, habitability or use; and (c) the City otherwise takes the Acquisition 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 PSA if improvements on the Acquisition 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 assign to the City all claims and rights to proceeds under any Acquisition 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 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.

16. **Notice and Principal Contact.**

16.1 Any notice or communication required under this PSA 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

  
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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:                   John and Marquette Fietz  
5820 28<sup>th</sup> Street East  
Fife, WA 98424  
Facsimile: \_\_\_\_\_  
Email:       \_\_\_\_\_

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 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.

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.

  
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20. **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.

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

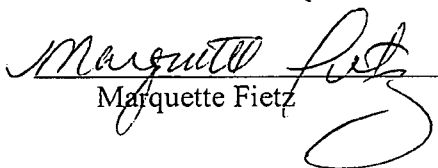
22. **Facsimile Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures 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 PSA to its qualified intermediary or any entity set up for the purposes of completing the exchange.

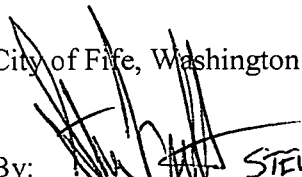
24. **Electronic Delivery.** Electronic delivery of signed documents (e.g. transmission by email or facsimile) shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures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

**SELLER:**


  
\_\_\_\_\_  
John Fietz

  
\_\_\_\_\_  
Marquette Fietz

**THE CITY:**

City of Fife, Washington  
  
By: STEVEN FRIEDLE  
Subir Mukerjee, City Manager *Acting City Manager*

APPROVED AS TO FORM:

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

  
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**EXHIBIT 1  
LEGAL DESCRIPTION**

**PROPERTY**

**Parcel A:**

That part of the Southeast one Quarter of the Southwest one Quarter of Section 7, Township 20 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at a point on the North line of said Southeast one Quarter of the Southwest Quarter 763.02 feet North 89°28'01" West of the Northeast corner of said Southeast one Quarter of the Southwest one Quarter; thence South 0°31'59" West 390 feet, more or less, to the center line of Wapato Creek; thence Northwesterly along the center line of Wapato Creek, 580 feet, more or less, to the said North line of the Southeast one Quarter of the Southwest one Quarter; thence South 89°28'01" East 298 feet, more or less, to the point of beginning, in Fife, Pierce County, Washington.

Except the North 15 feet thereof.

**Parcel B:**

A non-exclusive easement for ingress and egress created by instrument recorded under Auditor's No. 213815, in Fife, Pierce County, Washington.

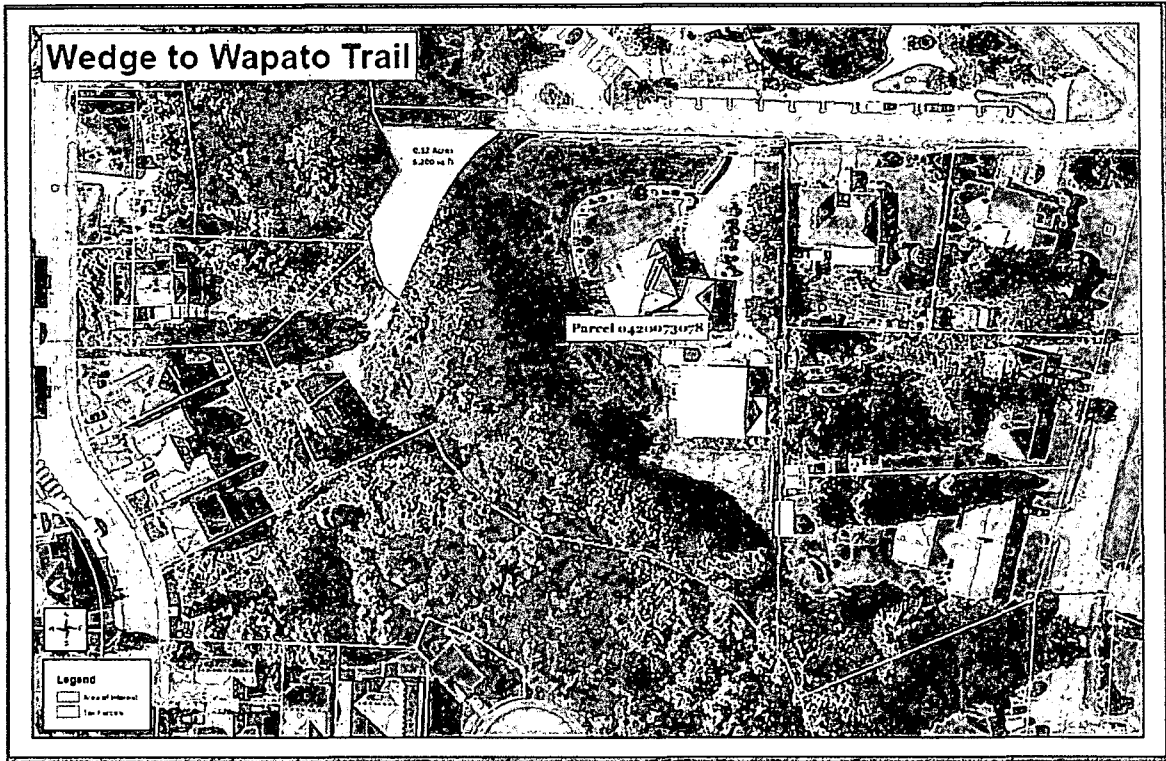
**Parcel C:**

A non-exclusive esement for ingress and egress created by instrument recorded under Auditor's No. 213817, in Fife, Pierce County, Washington.

  
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EXHIBIT 2  
PICTORIAL ILLUSTRATION



*Margaret M. Riets*  
RIETZ

*DF*  
CITY



**EXHIBIT 3  
LEGAL DESCRIPTION  
ACQUISITION PROPERTY**

**Legal Description to be Inserted After Survey**

  
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