

MEMORANDUM
For Meeting of January 27, 2009

TO: Mayor and Councilmembers
THROUGH: Steve Worthington, City Manager
FROM: Russ Blount, Public Works Director

SUBJECT: **Resolution No. 1268** – Authorizing the City Manager to execute an agreement with Bertha J. Turnipseed for acquisition of an easement on a portion of Tax Parcel No. 0420172706, for right-of-way.

REPORT IN BRIEF: Resolution 1268 authorizing the City Manager to execute an agreement with Bertha J. Turnipseed for acquisition of a perpetual right of way easement on a portion of Tax Parcel No. 0420172706, for right-of-way necessary for the reconstruction of Valley Avenue East, as part of the 70th Avenue East and Valley Avenue East Road Improvement Project.

BACKGROUND: The City needs to acquire property owned by the United States in Trust for Bertha J. Turnipseed, an enrolled member of the Puyallup Tribe for right of way for the 70th Avenue East and Valley Avenue East road Improvement Project.

ATTACHMENT: Resolution No. 1268, legal description and map.

DISCUSSION: The City needs to acquire a portion of the property located at 7502 Valley Avenue East, tax parcel no. 0420172706, for right of way for the 70th and Valley Road Improvement Project. The property is owned by the United States in Trust for Bertha J. Turnipseed, an enrolled member of the Puyallup Tribe of Indians. The City does not have the authority to condemn the property, and may only acquire it with the consent of the beneficiary Bertha J. Turnipseed and authorization by the Bureau of Indian Affairs (“BIA”). Per BIA regulations, if approved, the acquisition would be of an exclusive right of way easement.

The Puyallup Tribe has indicated that it would not support the Project unless there was no net loss to tribal member land. The City owns property adjoining parcel no. 0420172706 that is approximately the size of the right of way needed from parcel no. 0420172706, and which is not needed for City purposes. The property was acquired by the City as part of the Managing Green transaction as “trading stock” for the Turnipseed transaction.

The City Manager has negotiated an agreement with Bertha J. Turnipseed for the acquisition of the necessary right of way easement in exchange for cash payment of \$170,715.00 (\$15.00/ s.f.), conveyance of the adjoining surplus City property, and sewer access to the property, subject to BIA approval. The Puyallup Tribe has reviewed the agreement and indicated its approval.

FISCAL IMPACT: \$170,715.00, plus recording fees, BIA application fees, and closing fees.

ALTERNATIVE COURSES OF ACTION:

1. Approve Resolution 1268.
2. Amend Resolution 1268 and then approve Resolution 1268.
3. Decline to approve Resolution 1268.

RECOMMENDATIONS: Approve Resolution 1268 as drafted.

SUGGESTED MOTION: Move to approve Resolution 1268.



Russ Blount
Public Works Director



Approved for Agenda:
Steve Worthington, City Manager

RESOLUTION NO. 1268

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BERTHA J. TURNIPSEED FOR THE ACQUISITION BY THE CITY OF FIFE OF A RIGHT OF WAY EASEMENT ON PORTION OF TAX PARCEL NO. 0420172706

WHEREAS, the City wishes to acquire a perpetual easement on a portion of the property located at 7502 Valley Avenue East, tax parcel no. 0420172706, for right of way for the 70th and Valley Road Improvement Project; and

WHEREAS, the property is owned by the United States in Trust for Bertha J. Turnipseed, an enrolled member of the Puyallup Tribe of Indians; and

WHEREAS, the City owns property adjoining parcel no. 0420172706 that is approximately the size of the right of way needed from parcel no. 0420172706, and which is not needed for City purposes; and

WHEREAS, grants of right of way on trust property must be authorized by the Bureau of Indian Affairs (“BIA”) with the consent of the beneficiary; and

WHEREAS, the City has negotiated an agreement with Bertha J. Turnipseed for the acquisition of the necessary right of way easement in exchange for cash payment and conveyance of the adjoining surplus City property, subject to BIA approval. A copy of the Agreement is attached hereto as Exhibit 1 and by reference incorporated herein (the “Agreement”); and

WHEREAS, the Council has reviewed the Agreement and finds that it is in the best interests of the City and its citizens to approved the Agreement; now, therefore

BE IT RESOLVED that the City Council hereby declares the property described in Exhibit C of the attached Agreement as surplus.

BE IT FURTHER RESOLVED that the City Council approves the Agreement with Bertha J. Turnipseed attached hereto as Exhibit A and authorizes the City Manager to execute the Agreement on behalf of the City and to pay the amounts necessary and take such other further acts as necessary to effectuate the transaction.

ADOPTED by the City Council at an open public meeting held on the 27th day of January, 2009.

Barry D. Johnson, Mayor

Attest:

Steve Marcotte, City Clerk

**AGREEMENT BETWEEN BERTHA J. TURNIPSEED AND CITY OF FIFE
REGARDING GRANT OF RIGHT OF WAY**

1. **Date and Parties.** THIS AGREEMENT REGARDING GRANT OF RIGHT OF WAY ("AGREEMENT"), is dated, for reference purposes only, the 20 day of January, 2009, and is made and entered into by and between Bertha J. Turnipseed an Enrolled Member of the Puyallup Tribe of Indians, Enrollment No. 00652 ("Owner") and City of Fife, a Washington municipal corporation ("City").

2. **Subject Property.**

2.1 The real property known as tax parcel no. 0420172706 and legally described in Exhibit A attached hereto, is held in trust by the United States for the benefit of the Owner, Allotment No. _____ (the "Property").

2.2 The City wishes to acquire a portion of the Property for public right of way and utilities ("Right of Way") for improvements to Valley Avenue East in accordance with the 70th and Valley Road Improvement Project (the "Project"). The portion of the Property to be acquired by the City for Right of Way is legally described and geographically depicted in Exhibit B attached hereto.

3. **Consent to Grant of Right of Way.** The Owner consents to the U.S. Department of Interior Bureau of Indian Affairs (BIA) granting the Right of Way to the City pursuant to 25 C.F.R. Part 169, and the City agrees to accept conveyance of the Right of Way, on the terms and conditions set forth in this Agreement.

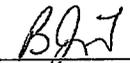
4. **Consideration.** As consideration for the grant of the Right-of-Way, the City agrees as follows:

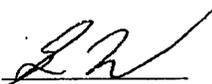
A. The City shall at Closing, pay the Owner \$170,715.00 in cash.

B. The City shall, at Closing, convey to Owner the property legally described and geographically depicted in Exhibit C attached hereto (the "Trading Stock"). ("Closing" shall mean the closing of the transaction contemplated by the Agreement as provided in Paragraph 12). Upon conveyance, the City shall support Owner's request to place the Trading Stock in trust status by BIA, and shall perform any and all further acts as may be reasonably necessary to aid Owner's request.

C. The City shall provide three sanitary sewer connection stubs to the Property as part of the Project, without charge to Owner for connection or inspection fees. Owner shall be responsible, at Owner's cost, for extension of sanitary sewer from the stubs to buildings on the Property.

Agreement regarding
Grant of Right of Way
Page 1 of 5
1-12-09


OWNER


CITY

5. Stipulation Regarding Right of Way. As required by 25 C.F.R. §169.5, the City expressly agrees to the following:

A. To construct and maintain the Right-of-Way in a workmanlike manner.

B. To pay promptly all damages and compensation, in addition to the consideration provided herein, determined by the Secretary of the Interior to be due the Owner on account of the granting, construction and maintenance of the Right-of-Way.

C. To indemnify the Owner and authorized users and occupants of the Property against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the Right of Way by the City, its employees, contractors and their employees, or subcontractors and their employees.

D. To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the Right-of-Way was granted.

E. To clear and keep clear the lands within the Right-of-Way to the extent compatible with the purpose of the Right-of-Way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

F. If applicable, to take soil and resource conservation and protection measures, including weed control, on the land covered by the Right-of-Way.

G. To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the Right-of-Way.

H. If applicable, to build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the Right-of-Way.

I. That upon revocation or termination of the Right-of-Way, the City shall, so far as is reasonably possible, restore the land to its original condition.

J. To at all times keep the Secretary informed of its address and of the names and addresses of its principal officers.


OWNER


CITY

K. That the City will not interfere with the use of the lands by or under the authority of the Owner for any purpose not inconsistent with the primary purpose for which the Right-of-Way is granted.

6. **Form of Conveyance of Right of Way.** Pursuant to 25 C.F.R. § 169.18, the Right of Way shall be in the nature of an exclusive easement for public road and utilities without limitation as to term of years.

7. **Form of Conveyance of Trading Stock.** The City shall convey title to the Trading Stock by statutory warranty deed. Title to the Trading Stock shall be free of all liens, encumbrances or defects, except as expressly approved by Owner in writing.

8. **Title Insurance.** The City authorizes the Closing Agent to apply for and deliver to Owner, at the City's expense, an ALTA extended coverage owner's title insurance policy for the Trading Stock. 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 Owner in Paragraph 7 above. If title to the Trading Stock cannot be delivered or made so insurable by the date of Closing, Owner may elect to terminate this Agreement, or may waive any such defects and elect to Close as described herein.

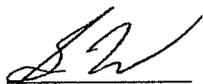
9. **Included Items.** This transaction includes any landscaping, improvements and appurtenances, if any, on the Trading Stock.

10. **City Council Approval.** This Agreement is subject to approval by the Fife City Council. This matter shall be submitted to the City Council for approval within thirty (30) days after signature by both parties.

11. **BIA Approval.** The Parties agree to cooperate in the expeditious preparation and submission of a written application to the BIA for approval of the grant of Right of Way, and to perform or cause to be performed any and all acts as may be reasonably necessary to obtain BIA approval.

12. **Closing.** Closing shall occur within 30 days after BIA approval of the Grant of Right of Way, at 7422 Valley Av Fife, Tacoma, Washington, ("Closing Agent"), or such other place or location as the parties may mutually agree. The Owner and City will, on demand, deposit in escrow all documents, 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.


OWNER


CITY

13. **Legal Description.** The Parties hereby authorize the Closing Agent to insert, attach, or correct the legal description of the Property, Right-of-Way, or Trading Stock as required to consummate the conveyance thereof.

14. **Closing Costs & Pro-Rated Items.** The City shall pay the escrow fee and recording fees, and any real estate tax or real estate excise tax due at time of Closing, if any. 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 the Owner in the process of evaluating the City's offer.

15. **Survival of Representations and Warranties.** All of the Parties' representations and warranties contained herein shall survive the Closing.

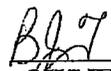
16. **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement or the breach thereof shall be settled by applicable BIA dispute resolution procedures, if any. Any controversy or claim arising from or related to this Agreement or the breach thereof, that is not governed by BIA dispute resolution procedures shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to an award of costs and reasonable attorneys fees.

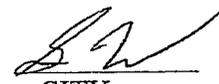
17. **Acceptance of Trading Stock into Trust.** If BIA denies Owner's application to take the Trading Stock into trust status, and all rights to appeal the denial have been exhausted or waived by the City, the parties shall at Owner's option, rescind this transaction, at which time, Owner shall convey the Trading Stock back to the City and refund to the City the \$170,715.00 cash payment, and the City shall convey the Right of Way back to the Owner, and so far as reasonable possible, restore the Property and Right of Way to its condition at the time of execution of this Agreement.

18. **Governing Law.** Any actions or claims arising out of or relating to this Agreement shall be governed by applicable Federal law and, to the extent not preempted by Federal law, the laws of the State of Washington.

19. **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.

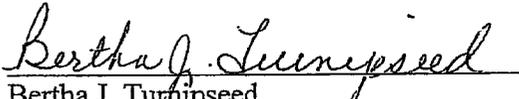
20. **Complete Agreement.** The Agreement and any addenda and exhibits to it state the entire understanding of Owner and the City regarding the sale of the Property. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.


OWNER


CITY

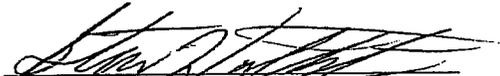
21. **Facsimile Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures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

OWNER:


Bertha J. Turnipseed

CITY:

City of Fife, Washington

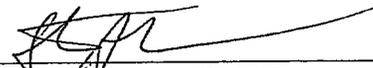
By: 
Steve Worthington, City Manager

APPROVED:

BUREAU OF INDIAN AFFAIRS

By: _____

ATTEST:


Steve Marcotte, Clerk-Treasurer

APPROVED AS TO FORM:


City Attorney
Assistant City Attorney

V:\Snapdocs\Fife - 70th & Valley Ave R.O.W (25845)\Turnipseed\Turnipseedpsav4.Doc


OWNER


CITY

CHICAGO TITLE INSURANCE COMPANY
A.L.T.A. COMMITMENT
SCHEDULE A
(Continued)

Order No.: 4336517
Your No.: TURNIPSEED

LEGAL DESCRIPTION EXHIBIT
(Paragraph 4 of Schedule A continuation)

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE W.M., THENCE NORTH 00 DEGREES 05 MINUTES 19 SECONDS WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, 607.68 FEET TO AN INTERSECTION WITH THE SOUTHERLY MARGIN OF VALLEY AVE. THENCE SOUTH 53 DEGREES 24 MINUTES 17 SECONDS EAST ALONG SAID SOUTHERLY MARGIN, 569.25 FEET; THENCE SOUTH 00 DEGREES 48 MINUTES 27 SECONDS WEST 250.91 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF SAID SUBDIVISION, THENCE SOUTH 87 DEGREES 48 MINUTES 02 SECONDS WEST ALONG SAID SOUTH LINE 452.89 FEET TO THE POINT OF BEGINNING.

CLTACMA6/RDA/0999

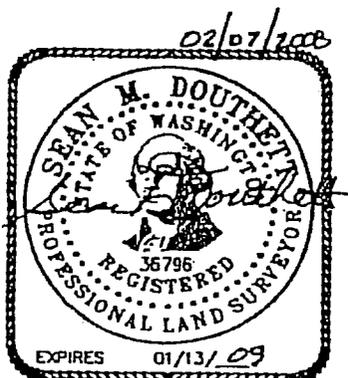
EXHIBIT
" A "

RIGHT-OF-WAY ACQUISITION
PIERCE COUNTY TAX PARCEL NUMBER 0420172706

THE NORTHERLY 20.00 FEET AS MEASURED PERPENDICULAR TO THE CENTERLINE OF VALLEY AVENUE EAST, SITUATE IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE W.M., CITY OF FIFE, PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION SUBDIVISION;
THENCE NORTH 01° 52' 14" EAST ALONG THE WEST LINE OF SAID SECTION SUBDIVISION 607.54 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY MARGIN OF SAID VALLEY AVENUE EAST;
THENCE SOUTH 51° 26' 32" EAST ALONG SAID SOUTHERLY MARGIN 569.27 FEET;
THENCE SOUTH 02° 46' 00" WEST 250.88 FEET TO THE SOUTHERLY LINE OF SAID SECTION SUBDIVISION;
THENCE SOUTH 89° 46' 20" WEST ALONG SAID SOUTH LINE 452.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 11,381 SQUARE FEET OR 0.26 ACRES, MORE OR LESS.



EXHIBIT

" B "

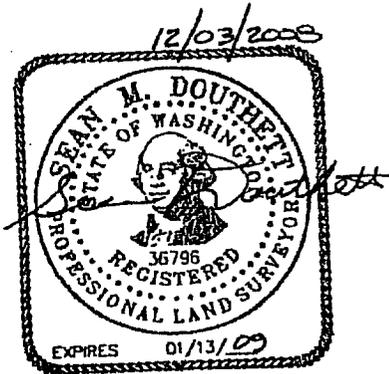
1 of 2

EXHIBIT C
LAND DESCRIPTION

THAT PORTION OF PARCELS 'A' AND 'B' OF CITY OF FIFE BOUNDARY LINE ADJUSTMENT LLA02-0009, FILED UNDER PIERCE COUNTY RECORDING NUMBER 200309035004, SITUATE IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE W.M., PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

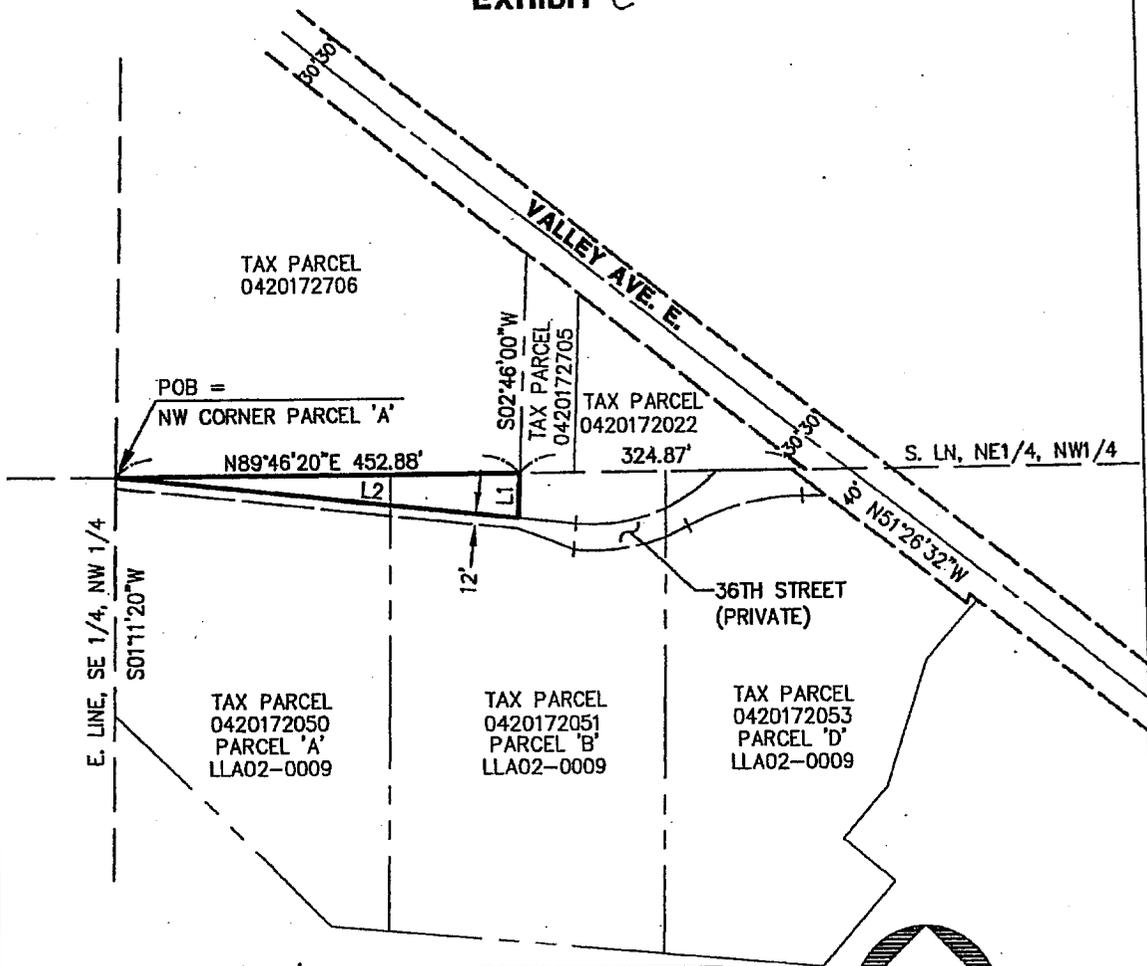
BEGINNING AT NORTHWEST CORNER OF SAID PARCEL 'A';
THENCE NORTH 89°46'20" EAST ALONG THE NORTH LINE OF SAID PARCELS 'A' AND 'B' 452.88 FEET TO A POINT WHICH BEARS SOUTH 89°46'20 WEST 324.87 FEET DISTANT FROM THE INTERSECTION OF THE NORTH LINE OF SAID SOUTHEAST QUARTER AND THE SOUTHERLY MARGIN OF VALLEY AVENUE EAST; THENCE SOUTH 2°46'00" WEST 51.13 FEET TO THE NORTHERLY MARGIN OF THE 36TH STREET ACCESS AND UTILITIES EASEMENT;
THENCE NORTH 83°45'27" WEST ALONG SAID NORTHERLY LINE 453.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 11,562 SQUARE FEET OR 0.27 ACRES, MORE OR LESS.

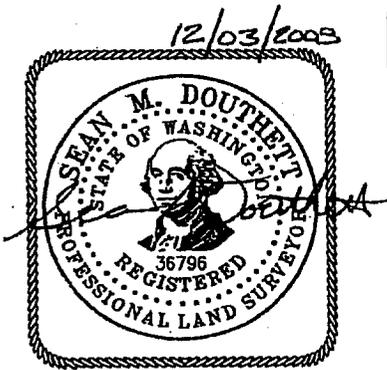
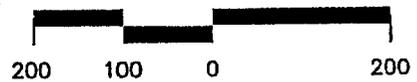


1 of 2

EXHIBIT C



LINE TABLE		
LINE	BEARING	LENGTH
L1	S02°46'00"W	51.13'
L2	N83°45'27"W	453.10'



DAVID EVANS AND ASSOCIATES INC.
 3700 Pacific Hwy. East, Suite 311
 Tacoma Washington 98424
 Phone: 253.922.9780

PROJECT		LAND TRANSFER				SHEET	
TITLE		USA IN TRUST FOR BERTHA TURNIPSEED				1	
		PIERCE CO. TAX PARCEL NO. 0420172706				OF	
						1	
DWG. REV.	PROJECT	SCALE	DRAWN BY	DESIGN BY	APPROVED BY	AMENDMENT NO.	DATE
	FIFE0062	1" = 200'	MJC		SMD	0.0	06-11-08

smd 12/03/08 5:29pm - P:\File\0000062\0400 CAD\SV\DWG\PARCEL DRAWING\EXHIBIT MAPS\Transfer to 0420172706.dwg