

**MEMORANDUM**  
**For Meeting of January 13, 2009**

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

SUBJECT: **Resolution No. 1275** – Authorizing the execution of an agreement for the purchase of a portion of Tax Parcel No. 0420172028 from Louis W. Boitano, for right-of-way, slope easement, and temporary construction easement.

**REPORT IN BRIEF:** Resolution 1275 authorizing the execution of an agreement for the purchase of a portion of Tax Parcel No. 0420172028 from Louis W. Boitano for right-of-way, slope easement, and temporary construction easement necessary for the 70<sup>th</sup> Avenue East and Valley Avenue East Road Improvement Project.

**ATTACHMENT:** Resolution No. 1275 with attached agreement.

**DISCUSSION:** Louis W. Boitano is the owner of the real estate identified as tax parcel no. 0420172028. It is necessary for the City to acquire a portion of the property for right of way, slope easement, and temporary construction easement for the 70<sup>th</sup> Avenue East and Valley Avenue East Road Improvement Project. The City Attorney has negotiated the purchase of the right of way, slope easement, and temporary construction easement in settlement of the condemnation lawsuit, for the sum of \$74,360.00, which is 10% over the appraised value as determined by the City's appraiser and review appraiser, and amounts to approximately \$11.00/s.f. As additional consideration the City agrees to survey the new property corners, provide temporary fencing around the temporary construction area, and a 24 foot driveway apron.

**FISCAL IMPACT:** \$74,360.00, plus construction items, recording fees, and closing fees.

**ALTERNATIVE COURSES OF ACTION:**

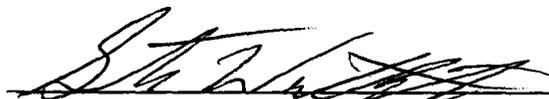
1. Approve Resolution 1275.
2. Amend Resolution 1275 and then approve Resolution 1275.
3. Decline to approve Resolution 1275.

**RECOMMENDATIONS:** Approve Resolution 1275 as drafted.

**SUGGESTED MOTION:** Move to approve Resolution 1275.



Russ Blount  
Public Works Director



Approved for Agenda:  
Steve Worthington, City Manager

RESOLUTION NO. 1275

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON APPROVING THE AGREEMENT WITH LOUIS W. BOITANO TO PURCHASE REAL PROPERTY AND EASEMENTS FOR RIGHT OF WAY AND UTILITIES PURPOSES

WHEREAS, it is necessary for the City to acquire right of way, a temporary construction easement and a slope easement from Louis W. Boitano on parcel number 0420172028 for the 70<sup>th</sup> and Valley Road Improvement Project; and

WHEREAS, the City Attorney has negotiated a purchase of the right of way, temporary construction easement and slope easement from Louis W. Boitano for \$74,360.00 plus other consideration, in lieu of condemnation, which amount constitutes just compensation based on the City's reviewed appraisal. A copy of the Agreement is attached hereto as Exhibit A 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 approves the Agreement with Louis W. Boitano 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 \_\_\_th day of January, 2009.

\_\_\_\_\_  
Barry D. Johnson, Mayor

Attest:

\_\_\_\_\_  
Steve Marcotte, City Clerk

**PURCHASE AND SALE AGREEMENT  
RIGHT OF WAY**

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 31 day of December, 2008, and is made and entered into by and between Louis W. Boitano, as his separate estate ("Boitano") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Boitano is the owner of the real estate legally described in Exhibit A attached hereto and identified as tax parcel no. 0420172028 (the "Property").

2.2 It is necessary for the City to acquire a portion of the Property for right of way and utilities ("Right of Way") and to acquire a Slope Easement and Temporary Construction Easement for the reconstruction of Valley Avenue East (the "Project"). The portion of the Property, to be acquired by the City for Right of Way, Slope Easement and Temporary Construction Easement is legally described in Exhibit B and geographically depicted in Exhibit C attached hereto.

2.3 Boitano agrees to sell and convey and the City agrees to purchase and accept conveyance of the Right of Way, Slope Easement, and Temporary Construction Easement on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** As consideration for the conveyance of the Right of Way, Slope Easement, and Temporary Construction Easement, the City shall pay Boitano the sum of \$74,360.00 cash, payable at Closing. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 10). 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 Boitano in the process of evaluating the City's offer. Boitano acknowledges that he is receiving just compensation for the Right-of-Way, Slope Easement, and Temporary Construction Easement.

4. **Special Conditions.** The following special conditions are additional consideration and shall survive closing:

a. The City shall install temporary secure fencing around the Temporary Construction Easement area, which fencing shall remain in place during the City's use of the Temporary Construction Easement. The City shall also post "private property" and "no trespassing signs" along the Property boundary during construction.

  
BOITANO

  
THE CITY

a. After completion of the Project, the City shall restore the Temporary Construction Easement Area to the condition it was in at the time of commencement of the Project.

c. As part of the Project, the City shall install a twenty-four foot driveway approach and apron on the southeast corner of the Property as set forth in Exhibit D attached hereto, to applicable City road standards. The driveway shall extend approximately 65 feet into the Property and shall not be paved beyond the back of sidewalk.

d. The City shall provide water, sewer, electrical and phone/cable conduit stub-outs into the Property with locator tape and stub markers a minimum of five feet from any Project improvements such as curb, gutter and sidewalks. The Property is within Local Improvement District 08-1, and will be assessed a share of the costs of extending the water and sewer mains on Valley Avenue.

e. The City shall have the new Property corners and easement corners surveyed and boundary corners and easement boundary hubs installed by a licensed surveyor at the completion of the Project, and shall provide Boitano with mylar copies of the survey.

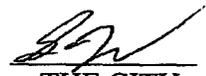
5. **Legal Description.** The Parties hereby authorize the Closing Agent to insert, attach, or correct the legal description of the Property, Right-of-Way, and Slope Easement as required to consummate the conveyance thereof.

6. **Title.** Boitano shall convey title to the Right-of-Way, Slope Easement and Temporary Construction Easement by statutory warranty deed. Title to the Right-of-Way shall be free of all liens, encumbrances or defects, except as expressly approved by the City in writing. Encumbrances to be discharged by Boitano may be paid out of the Purchase Price at date of Closing. The Temporary Construction Easement shall expire two years from the date of Closing.

7. **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 6 above. If title cannot be made so insurable by the date of Closing, The City may elect to terminate this Agreement, or may waive any such defects and elect to purchase as described herein.

8. **Included Items.** This transaction includes any landscaping, improvements and appurtenances, if any, on the Right-of-Way area.

  
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9. **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 within thirty (30) days after signature by both parties.

10. **Closing.** Closing shall occur within 30 days after approval by the City Council, in the office of Chicago Title Insurance Company, Tacoma, Washington, ("Closing Agent"), or such other place or location as the parties may mutually agree. The City and Boitano 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 Boitano.

11. **Closing Costs & Pro-Rated Items.** The City shall pay the escrow fee, reconveyance fees, any real estate excise tax due, and the recording fees. Boitano shall pay any real estate taxes due, if any.

12. **Possession.** The City shall be entitled to possession and use of the Right-of-Way, Slope Easement and Temporary Construction Easement at Closing.

13. **Environmental Representations and Warranties.** Boitano warrants that he 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. Boitano has not caused or permitted and has no knowledge of the release of any hazardous substance on any of the Property at any time.

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

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.

16. **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.

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

  
BOITANO

  
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19. **Remedies.** Both parties acknowledge that specific performance of this Agreement is an appropriate remedy should either party fail to perform under the terms of the Agreement.

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

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.

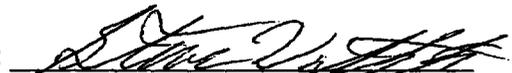
**BOITANO:**

  
Louis W. Boitano

**THE CITY:**

City of Fife, Washington

By:

  
Steve Worthington, City Manager

Spousal Consent:

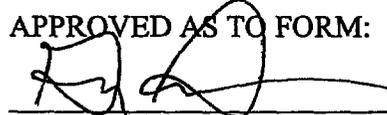
The undersigned spouse of Louis W. Boitano hereby consents to the conveyance of the Right of Way, Slope Easement and Temporary Construction Easement in accordance with the terms of this Agreement and will execute all necessary or incidental documents to further any transaction provided for herein.

  
Marie A. Boitano

ATTEST:

\_\_\_\_\_  
Steve Marcotte, Clerk-Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
assistant City Attorney

V:\Snapdocs\Fife - 70th & Valley Ave R.O.W (25845)\BOITANO2028\Purchaseagreementrow.Doc

  
BOITANO

  
THE CITY

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

Order No.: 4336502  
Your No.: BOITANO

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**LEGAL DESCRIPTION EXHIBIT**  
(Paragraph 4 of Schedule A continuation)

ALL OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE W.M., LYING NORTH OR VALLEY AVENUE;

EXCEPT THE EAST 446.2 FEET THEREOF.

SITUATE IN THE CITY OF FIFE, COUNTY OF PIERCE, STATE OF WASHINGTON.

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CLTACMA6/RDA/0999

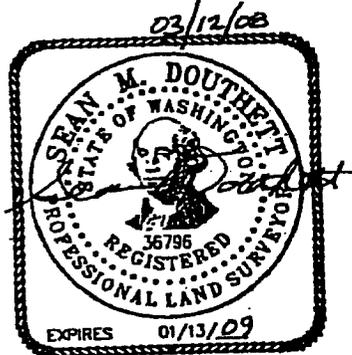
**EXHIBIT**  
" A "

RIGHT-OF-WAY ACQUISITION  
PIERCE COUNTY TAX PARCEL NUMBER 0420172028

THAT PORTION OF THE NORTHWEST 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:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17;  
THENCE NORTH 89° 41' 59" EAST ALONG THE NORTH LINE OF SAID SECTION 457.77 FEET TO AN ANGLE POINT IN THE NORTHERLY RIGHT-OF-WAY MARGIN OF VALLEY AVENUE EAST AND THE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 89° 41' 59" EAST ALONG SAID NORTH LINE 15.94 FEET;  
THENCE SOUTH 51° 26' 32" EAST 40.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST FROM WHENCE THE RADIAL CENTER BEARS SOUTH 29° 54' 21" WEST 544.00 FEET DISTANT;  
THENCE SOUTHEASTERLY 112.71 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 52' 15";  
THENCE SOUTH 47° 14' 45" EAST 209.52 FEET TO SAID NORTHERLY MARGIN;  
THENCE NORTH 51° 26' 32" WEST ALONG SAID NORTHERLY MARGIN 374.59 FEET TO THE POINT OF BEGINNING;

CONTAINING 3,715 SQUARE FEET OR 0.09 ACRES, MORE OR LESS.



**EXHIBIT**

" B "

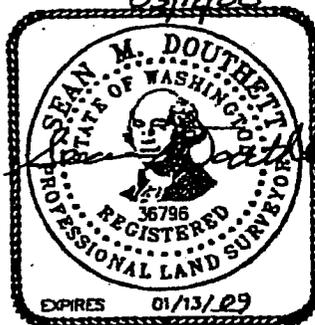
1 of 3

SLOPE EASEMENT  
PIERCE COUNTY TAX PARCEL NUMBER 0420172028

THAT PORTION OF THE NORTHWEST 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:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17;  
THENCE NORTH 89° 41' 59" EAST ALONG THE NORTH LINE OF SAID SECTION 457.77 FEET TO AN ANGLE POINT IN THE NORTHERLY RIGHT-OF-WAY MARGIN OF VALLEY AVENUE EAST;  
THENCE CONTINUING NORTH 89° 41' 59" EAST ALONG SAID NORTH LINE 15.94 FEET;  
THENCE SOUTH 51° 26' 32" EAST 40.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST FROM WHENCE THE RADIAL CENTER BEARS SOUTH 29° 54' 21" WEST 544.00 FEET DISTANT;  
THENCE SOUTHEASTERLY 112.71 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 52' 15" TO THE POINT OF BEGINNING;  
THENCE SOUTH 47° 14' 45" EAST 209.52 FEET TO SAID NORTHERLY MARGIN;  
THENCE SOUTH 51° 26' 32" EAST ALONG SAID NORTHERLY MARGIN 138.71 FEET TO THE WEST LINE OF THE EAST 446.2 FEET OF SAID SECTION SUBDIVISION;  
THENCE NORTH 01° 52' 14" EAST ALONG SAID WEST LINE 18.71 FEET;  
THENCE NORTH 51° 26' 32" WEST 126.98 FEET;  
THENCE NORTH 47° 14' 45" WEST 209.23 FEET;  
THENCE SOUTH 41° 46' 36" WEST 15.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 5,133 SQUARE FEET OR 0.12 ACRES, MORE OR LESS.

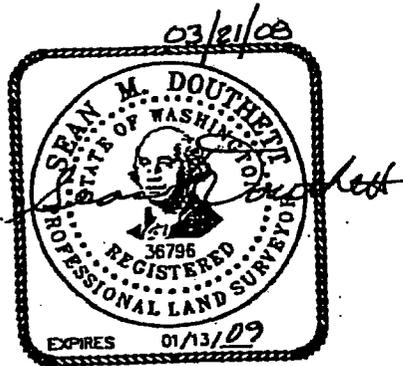


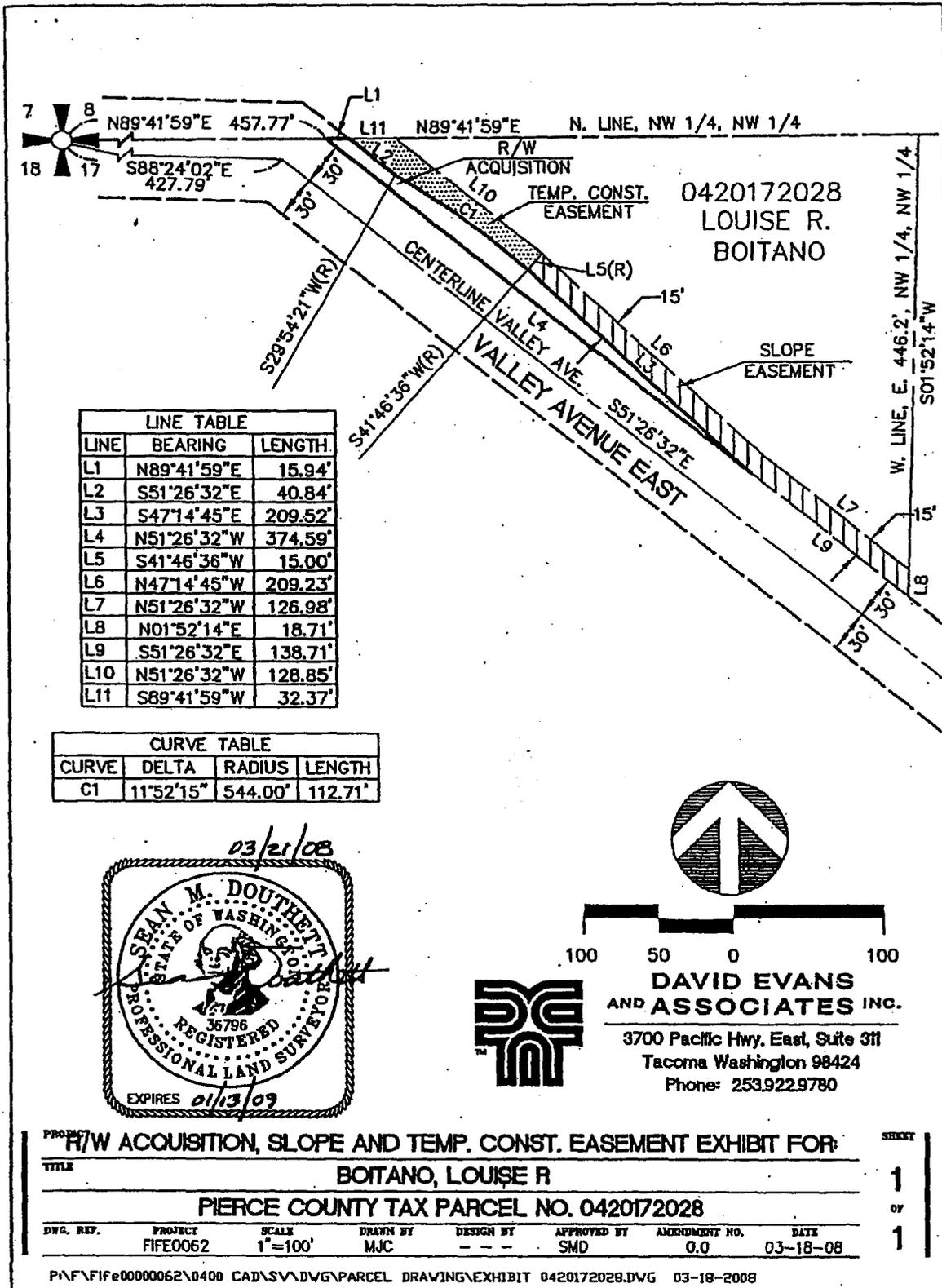
TEMPORARY CONSTRUCTION EASEMENT  
PIERCE COUNTY TAX PARCEL NUMBER 0420172028

THAT PORTION OF THE NORTHWEST 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:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17;  
THENCE NORTH 89° 41' 59" EAST ALONG THE NORTH LINE OF SAID SECTION  
457.77 FEET TO AN ANGLE POINT IN THE NORTHERLY RIGHT-OF-WAY MARGIN  
OF VALLEY AVENUE EAST;  
THENCE CONTINUING NORTH 89° 41' 59" EAST ALONG SAID NORTH LINE 15.94  
FEET TO THE POINT OF BEGINNING;  
THENCE SOUTH 51° 26' 32" EAST 40.84 FEET TO THE BEGINNING OF A NON-  
TANGENT CURVE CONCAVE TO THE SOUTHWEST FROM WHENCE THE RADIAL  
CENTER BEARS SOUTH 29° 54' 21" WEST 544.00 FEET DISTANT;  
THENCE SOUTHEASTERLY 112.71 FEET ALONG THE ARC OF SAID CURVE  
THROUGH A CENTRAL ANGLE OF 11° 52' 15";  
THENCE NORTH 41° 46' 36" EAST 15.00 FEET;  
THENCE NORTH 51° 26' 32" WEST 128.85 FEET TO SAID NORTH LINE;  
THENCE SOUTH 89° 41' 59" WEST ALONG SAID NORTH LINE 32.37 FEET TO THE  
POINT OF BEGINNING;

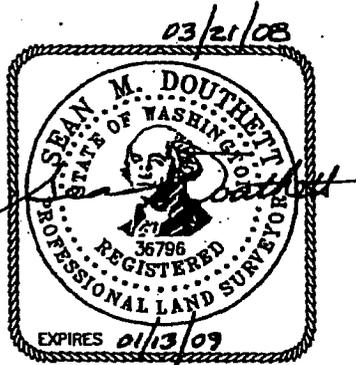
CONTAINING 2,343 SQUARE FEET OR 0.05 ACRES, MORE OR LESS.





LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°41'59"E	15.94'
L2	S51°26'32"E	40.84'
L3	S47°14'45"E	209.52'
L4	N51°26'32"W	374.59'
L5	S41°46'36"W	15.00'
L6	N47°14'45"W	209.23'
L7	N51°26'32"W	126.98'
L8	N01°52'14"E	18.71'
L9	S51°26'32"E	138.71'
L10	N51°26'32"W	128.85'
L11	S89°41'59"W	32.37'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	11°52'15"	544.00'	112.71'



100 50 0 100

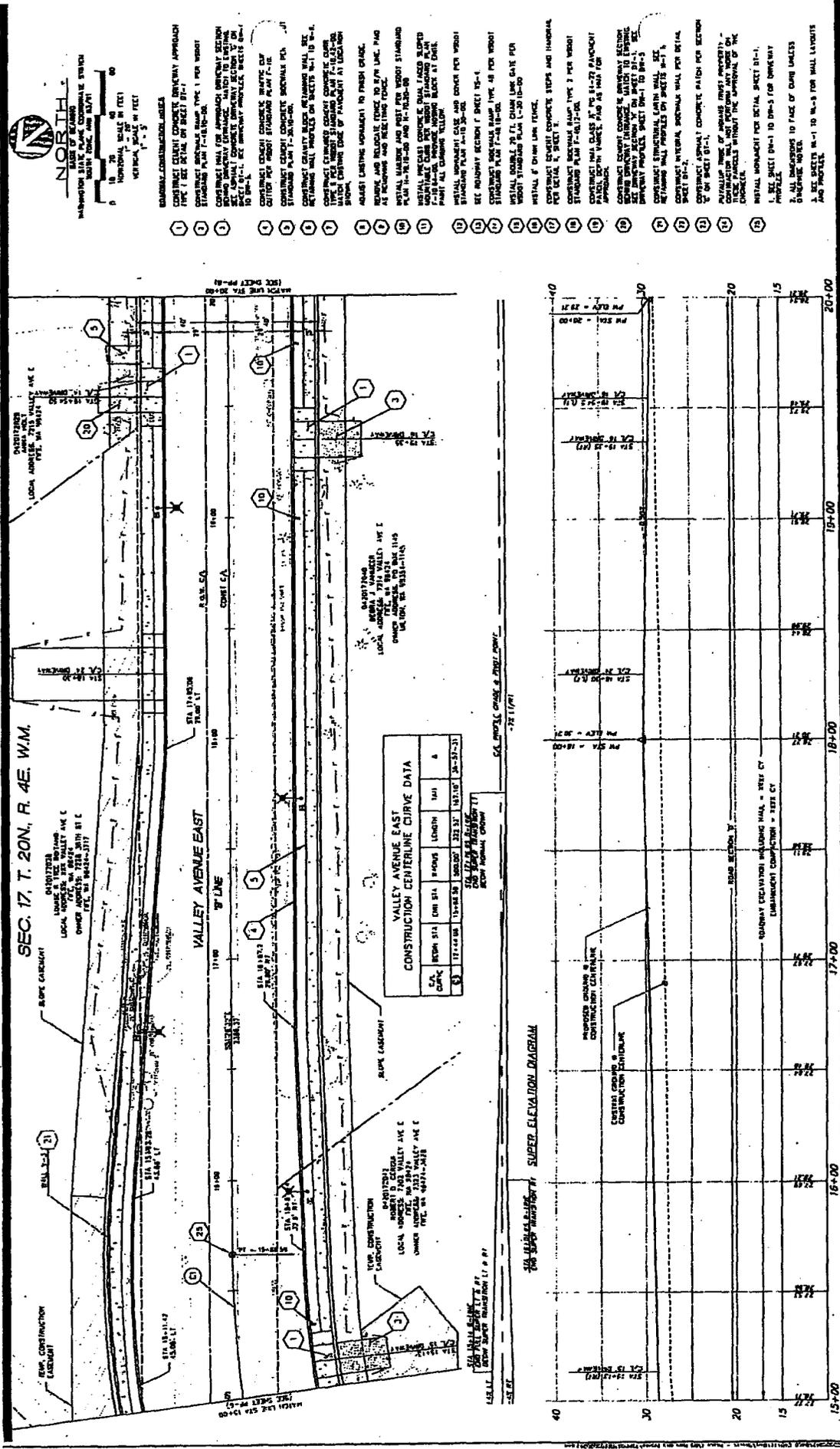
**DAVID EVANS AND ASSOCIATES INC.**  
 3700 Pacific Hwy. East, Suite 311  
 Tacoma Washington 98424  
 Phone: 253.922.9780

PROJECT	R/W ACQUISITION, SLOPE AND TEMP. CONST. EASEMENT EXHIBIT FOR:					SHEET
TITLE	BOITANO, LOUISE R					1
	PIERCE COUNTY TAX PARCEL NO. 0420172028					OF
						1
DWG. REF.	PROJECT	SCALE	DRAWN BY	DESIGN BY	APPROVED BY	AMENDMENT NO.
	FIFE0062	1"=100'	MJC	---	SMD	0.0
						DATE
						03-18-08

P:\F\Fife\0000062\0400 CAD\SV\DWG\PARCEL DRAWING\EXHIBIT 0420172028.DWG 03-18-2008

**EXHIBIT**

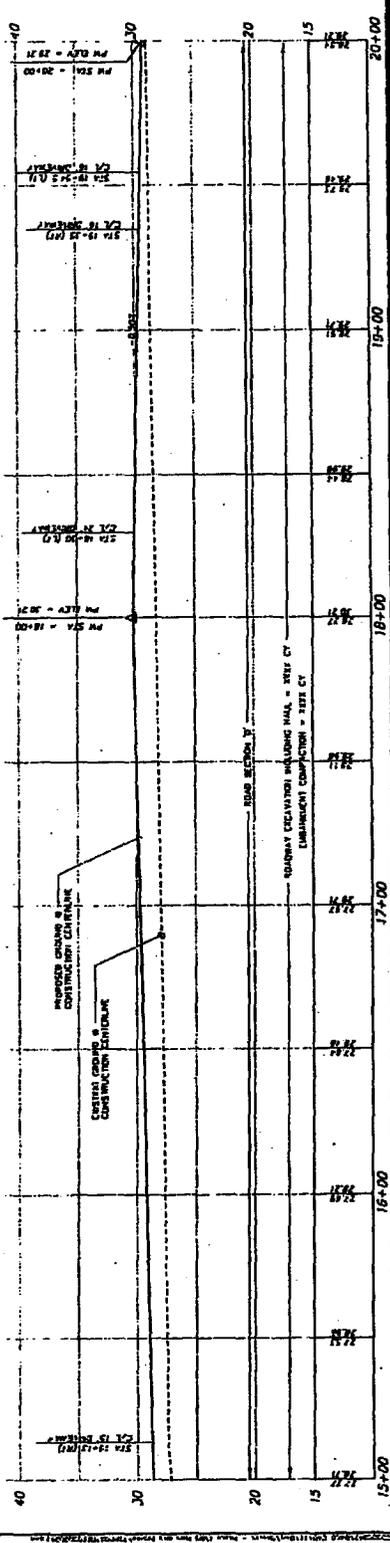
" C "



**VALLEY AVENUE EAST CONSTRUCTION CENTERLINE CURVE DATA**

Curve	Station	Length	Radius	Delta
1	15+00 to 15+25	25.00	1000.00	18.47
2	15+25 to 15+50	25.00	1000.00	18.47
3	15+50 to 15+75	25.00	1000.00	18.47
4	15+75 to 16+00	25.00	1000.00	18.47
5	16+00 to 16+25	25.00	1000.00	18.47
6	16+25 to 16+50	25.00	1000.00	18.47
7	16+50 to 16+75	25.00	1000.00	18.47
8	16+75 to 17+00	25.00	1000.00	18.47
9	17+00 to 17+25	25.00	1000.00	18.47
10	17+25 to 17+50	25.00	1000.00	18.47
11	17+50 to 17+75	25.00	1000.00	18.47
12	17+75 to 18+00	25.00	1000.00	18.47
13	18+00 to 18+25	25.00	1000.00	18.47
14	18+25 to 18+50	25.00	1000.00	18.47
15	18+50 to 18+75	25.00	1000.00	18.47
16	18+75 to 19+00	25.00	1000.00	18.47
17	19+00 to 19+25	25.00	1000.00	18.47
18	19+25 to 19+50	25.00	1000.00	18.47
19	19+50 to 19+75	25.00	1000.00	18.47
20	19+75 to 20+00	25.00	1000.00	18.47

**SUPER ELEVATION DIAGRAM**



**70TH AVENUE EAST/VALLEY AVENUE EAST ROADWAY IMPROVEMENTS**  
 STA 15+00 - STA 20+00  
 ROADWAY PLAN AND PROFILE

DATE: 11/11/11  
 DRAWN BY: J. GILBERT  
 CHECKED BY: M. CLARKE  
 SCALE: AS SHOWN

DESIGNED BY: J. GILBERT  
 CHECKED BY: M. CLARKE  
 SCALE: AS SHOWN

PROJECT ENGINEER: R. J. JENSEN  
 ENGINEER IN CHARGE: G. POLYAK  
 DESIGNER: J. GILBERT  
 DRAWN BY: M. CLARKE  
 DATE: 11/11/11  
 SCALE: AS SHOWN

PREPARED BY: DAVID EVANS AND ASSOCIATES INC.  
 3700 South Valley Blvd, Suite 200  
 Phoenix, AZ 85026  
 Phone: 602.998.2200

City of Fife  
 Department of Public Works  
 5411-23rd Street East  
 Fife, Washington 98424

PLAN PROVIDED BY: DAVID EVANS AND ASSOCIATES INC.  
 3700 South Valley Blvd, Suite 200  
 Phoenix, AZ 85026  
 Phone: 602.998.2200

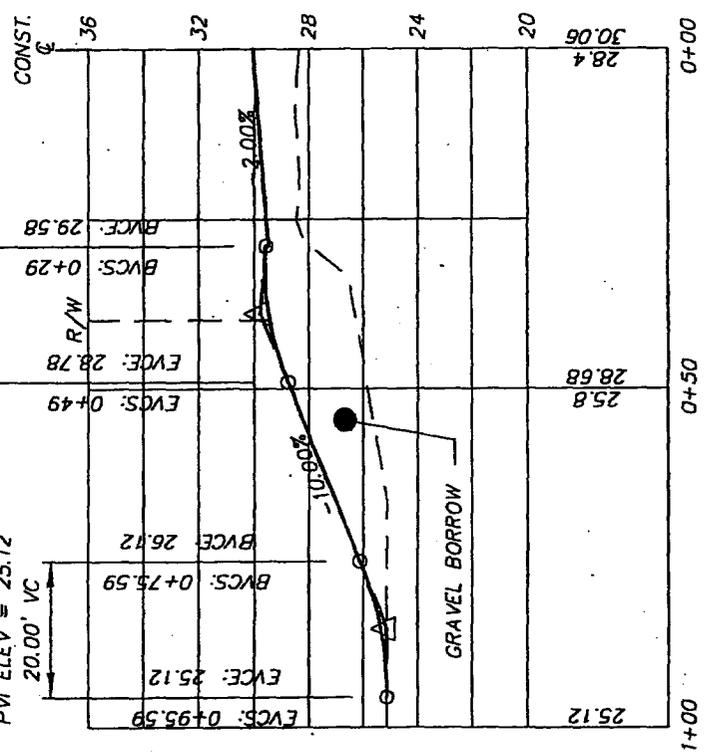
DATE: 11/11/11  
 DRAWN BY: J. GILBERT  
 CHECKED BY: M. CLARKE  
 SCALE: AS SHOWN

PROJECT ENGINEER: R. J. JENSEN  
 ENGINEER IN CHARGE: G. POLYAK  
 DESIGNER: J. GILBERT  
 DRAWN BY: M. CLARKE  
 DATE: 11/11/11  
 SCALE: AS SHOWN

**EXHIBIT**  
 " D " 11  
 1 of 2

HIGH POINT ELEV = 29.61  
 HIGH POINT STA = 0+32.33  
 PVI STA = 0+39  
 PVI ELEV = 29.78  
 20.00' VC

LOW POINT ELEV = 25.12  
 LOW POINT STA = 0+85.59  
 PVI STA = 0+85.59  
 PVI ELEV = 25.12  
 20.00' VC



PRIVATE DRIVEWAY PROFILE  
 18+30 LT, 'B' LINE  
 (LOUISE R. TTEE BOITANO)

**DRAFT**