

RESOLUTION NO. 2521

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, RATIFYING THE PURCHASE OF A PARCEL OF REAL ESTATE FOR THE PLANNED PUBLIC WORKS CENTER (PARCEL 0519022023)

WHEREAS, the City Council authorized the Mayor to negotiate the purchase of the "Smith" parcel of land in Eastown located next to the existing City parcel which is planned for the new Public Works Center; and

WHEREAS, the addition of the Smith parcel will make it easier to site the new public works center in relation to wetlands, utilities, and ingress/egress; and

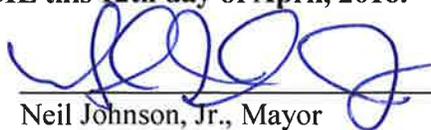
WHEREAS, the City and the Smith family have entered into a purchase and sale agreement for the City to obtain the Smith parcel located at 22123 SR410 East, Pierce County Parcel Number 0519022023; and

WHEREAS, the purchase and sale agreement is subject to the City Council's ratification of the agreement;

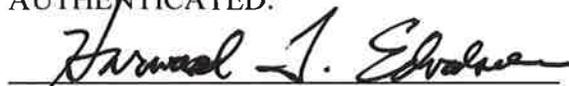
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON HEREBY RESOLVES AS FOLLOWS:

1. The City Council ratifies the acquisition of Pierce County Parcel # 0519022023, a 3.48 parcel of land, including a single-family residence located at 22123 SR 410 E, Bonney Lake, as described in the attached Real Estate Purchase and Sale Agreement marked Exhibit "A";
2. The City Council acknowledges that no state or federal funds were used to acquire said property, and accordingly the City was not required to provide any relocation benefits per RCW 8.26.020(2).

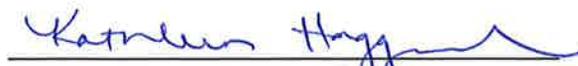
PASSED BY THE CITY COUNCIL this 12th day of April, 2016.


Neil Johnson, Jr., Mayor

AUTHENTICATED:


Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:


Kathleen Haggard, City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made between the City of Bonney Lake, Washington ("City", Aka "Buyer") and Eileen M. Smith, by Dennis Russell Smith as Attorney-in-Fact ("Seller").

RECITALS

1. Seller is the owner of a parcel of real estate located at 22123 SR 410 E, Bonney Lake, Pierce County, Washington, Pierce County Parcel Number 0519022023, a description of which is attached hereto as Exhibit A (the "Property").
2. The City desires to purchase the Property.
3. Seller agrees to sell the Property upon the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, the City and the Seller hereby agree as follows:

1. **Sale of the Property.** Seller shall sell and convey to the City, and the City shall purchase and acquire from Seller, all of Seller's interest in the Property, which shall include the land, together with any easements, appurtenances, rights, privileges, and reversionary rights; all timber and plants; all right, title and interest of Seller in and to all alleys, strips, or gores of land lying adjacent to the Property; and all utilities serving the Property.
2. **Purchase Price.** The purchase price shall be four hundred and sixty thousand dollars (\$460,000), payable in cash at time of closing.
3. **Earnest Money.** Earnest Money in the amount of twenty-five thousand dollars (\$25,000) shall be in the form of a Promissory Note (see attached Earnest Money Promissory Note). The Earnest Money shall be held by the Closing Agent, and delivered no later than five (5) days after Mutual Acceptance herein.
4. **Closing.** The Closing shall be held at the offices of Ticor Escrow, Jani Gay Closing Agent, located in University Place, WA. The Closing shall occur after acceptance of the Title Report as outlined in Section 8, which shall is anticipated to be approximately May 8, 2016 on a date chosen by the City in consultation with the Seller, with three days advance notice to the Seller. The Closing shall not occur before all deeds and other documents necessary for transfer of the Property to the City are recorded and the purchase price is delivered to the Escrow Agent for delivery to Seller. In no event shall the closing take place later than May 15th, 2016.
5. **Documents to be Delivered by Seller.** As a condition precedent to the payment to Seller of any of the purchase price, Seller shall deliver to the City at the Closing the



Exhibit A - Purchase & Sale Agreement

following documents (all of which shall be duly executed and acknowledged where required):

- (i) Deed. A statutory warranty deed ("Deed") substantially in the form attached hereto as Exhibit B, transferring the Property to the City.
 - (ii) Excise Tax Affidavit. An excise tax affidavit for filing with the County Auditor at the time of recording the Deed.
 - (iii) Title Documents. Such other documents as shall be reasonably required by the Title Company as a condition to its insuring the City's good and marketable fee simple title to the Property, in the form of a standard Owner's Policy.
 - (iv) FIRPTA Affidavit. The affidavit of non-foreign status, as required by federal tax law.
 - (v) Surveys and other documents. Any land surveys or other studies or documents in Seller has in possession that pertain to the subject property.
6. Payment of Costs. Seller and the City shall pay their own costs incurred with respect to the purchase and sale of the Property, including attorneys' fees. The Parties shall share equally the cost of recording the Deed and any other recordable instruments related to the transaction, as well as the escrow fee, if any. The Seller shall pay:
- (i) Any taxes or charges incidental to the conveyance of title to the Property to the City;
 - (ii) The full cost of the Title Policy, if any.
7. Real Property Taxes and Utility Bills. Seller shall pay at the Closing all taxes and utility bills due or to become due with respect to the Property for the period up to the Closing Date.
8. Condition of Title.
- (i) The Seller has deliver to City a preliminary commitment for standard coverage title insurance with respect to the Property. Title report shall be issued by Ticor Title Insurance Company.
 - (ii) Within Ten (10) calendar days following mutual execution of this agreement, the City shall either approve any matters of title disclosed therein, or deliver to Seller written notice of disapproval or conditional approval. Any approved conditions shall constitute "Permitted Exceptions." If the City does not notify the Seller of its approval, disapproval, or conditional approval, the City shall be



deemed to have approved all matters of title shown or described in the Report.

- (iii) Within seven (7) days of receiving a notice of disapproval or conditional approval from the City, Seller shall identify to City in writing which of such matters Seller is willing to cure. The City shall then have seven (7) days to advise Seller whether the City will accept title. If City is not willing to accept title, the City may terminate this Agreement and the City's Earnest Money promissory note shall be returned to the City.

9. Ratification by City Council. The City's obligation to close the purchase of this Property is contingent upon ratification of the Agreement, its terms, and the purchase price, by the City Council of the City of Bonney Lake. If the City Council does not ratify the purchase, the City shall have the right to terminate its obligations under this Agreement by sending written notice to Sellers, and the City's Earnest Money Promissory Note shall be returned to the City. Upon ratification of the Agreement, the Earnest Money will be converted to cash and will become Non-Refundable but will remain Applicable to the Purchase Price. At that point, the Earnest Money will be recorded and then released immediately to the Seller.
10. Casualty. If any fire, windstorm or casualty materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, the City may elect, by written notice to Seller, to terminate its rights and obligations under this Agreement, and the City's Earnest Money shall be returned to the City. If the City makes such election, neither the City nor Seller shall have any further liability with respect to the Property under this Agreement; *provided*, that obligations relating to indemnification and attorneys' fees shall survive the termination of this Agreement. Seller shall notify the City in writing of any such casualty respecting the Property.
11. Seller's Representations and Warranties. To the best of Seller's knowledge, the Seller makes the following representations and warranties, and recognizes that if the City discovers any of the following to be untrue, the City may terminate this Agreement and the City's Earnest Money shall be returned to the City.
 - (a) Parties in Possession. To the best of Seller's knowledge, there are no parties, other than the parties to this Agreement, which have a right to possession of all or any portion of the Property, and there are no leases or licenses affecting the Property.
 - (b) Access. The Property has full and free access from adjoining public highways, streets or roads, and to the best of Seller's knowledge, there is no governmental proceeding which would impair or curtail such access.
 - (c) Compliance with Law. Seller is not aware of any notification from any governmental authority requiring any work to be done on the Property or advising of any condition (including, without limitation, hazardous substances or wastes) which would render the Property unusable or affect



the usability of the Property or any part thereof for the purposes of the City.

- (d) Mechanics' Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborers' or materialmen's liens or claims might arise.
- (e) Litigation. There is no litigation, pending or threatened, which would constitute a lien, claim, or obligation of any kind on the Property, affect the use, ownership or operation of the Property, or otherwise adversely affect the Property. For purposes of this clause, litigation includes lawsuits, actions, administrative proceedings, governmental investigations and all other proceedings before any tribunal having jurisdiction over the Property.
- (f) Hazardous Substances. The Property is not in violation of any law, ordinance, rule or regulation relating to the environmental conditions thereon. To the best of Seller's knowledge, there is no hazardous waste or other substance, including but not limited to, those that would be a hazardous waste, material or substance, toxic substance or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et. seq.; Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., the Clean Water Act, 42 U.S.C. Section 1251 et. seq., the Washington Environmental Policy Act, RCW Ch. 43.21, the Washington Water Pollution Control Act, RCW Section 90.48.010 et. seq., the Washington Hazardous Waste Management Act, RCW Ch. 70.105, the Washington Model Toxics Control Act, RCW Ch. 70.105D, and the regulations promulgated thereunder or under any applicable local or state environmental ordinance, statute, law, rule or re-on, on or in the vicinity of the Property or on any parcels of land which abut the Property. Further, to the best of Seller's knowledge, there has been no release, spill, leak, discharge, emission, leak or disposal, and there are no substances or conditions, in or on the Property or any other parcels of land which may affect the Property or use thereof, which may support a claim or cause of action under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirements, and there are no PCBs or underground storage tanks located on the Property.\

12. Covenants of Seller.

- a. From the date of this Agreement to the Closing Date, Seller will not allow any lien to attach to the Property or any part thereof, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without the City's written consent.
- b. Seller shall not enter into any leases, trust deeds, mortgages, restrictions,



Exhibit A - Purchase & Sale Agreement

- encumbrances, liens, licenses or other instruments or agreements affecting the Property without the prior written consent of the City.
- c. Seller will perform all of their monetary and non-monetary obligations under all indebtedness (whether for borrowed money or otherwise) and the liens securing same pertaining to the Property or any portion thereof, if any.
- d. Seller shall maintain in force all policies of fire and other casualty and liability insurance maintained as of the date of this Agreement with respect to the Property until the Closing Date.
- e. In the event of a default by Seller in the performance of their obligations under this section, the City may, upon five (5) days prior written notice to Seller and Seller's failure to cure said default, cure such default and offset the cost of doing so against the Purchase Price payable at Closing.

13. Possession. City shall be entitled to possession at closing. City accepts the property "as is".

14. Default.

- a. If the Closing does not occur by reason of any default under this Agreement by Seller, the City may elect to treat this Agreement as terminated;
- b. If the Closing does not occur by reason of any default under this Agreement by City, the Seller may elect to treat this Agreement as terminated and keep as liquidated damages the Earnest Money as the sole and exclusive remedy.

15. Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications shall be in writing and delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service, it shall be deemed given twenty-four (24) hours after the deposit with such delivery service. If such notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such notice shall be deemed given only if properly addressed to the party to whom such notice is to be given, as follows:

To Seller: Eileen M. Smith
26014 137th St Ct E
Buckley, WA 98321

Dennis Smith, Attorney - in - Fact
Address 26314 137th St. Ct. E
Buckley, WA 98321

To the City: Don Morrison, City Administrator
City of Bonney Lake
19306 Bonney Lake Blvd.
Bonney Lake, Washington 98391



Either party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party.

16. Survival of Representations and Warranties. All representations, , warranties, covenants and agreements of the parties contained in this Agreement, or in any instrument or other writing provided for herein, shall survive Closing.

17. Finders' or Brokers' Fees. Seller is responsible for paying any brokers' or finders' fees due to real estate professionals or brokers working on their behalf. The Seller's Broker is Kidder Mathews, Inc., Jerome O'Leary. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency".

18. Miscellaneous.

- (a) Applicable Law. This Agreement shall, in all respects, be governed by the laws of the State of Washington.
- (b) Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto.
- (c) Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.
- (d) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect.
- (e) Attorneys' Fees. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.
- (f) Headings. The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.
- (g) Exhibits. All exhibits attached hereto are incorporated by reference.
- (h) Counterparts. This Agreement may be executed in counterparts, and each set of duly delivered identical counterparts which includes all signatories shall be deemed to be one original document.
- (i) Agreement Date. For purposes of calculation of all time periods described in this Agreement, all phrases such as "the date of this Agreement" or "the



Exhibit A - Purchase & Sale Agreement

date of execution of this Agreement" or any other like phrase referring to the date of the Agreement, shall mean and refer to the date of the last signature on this Agreement.

SELLER

EILEEN M. SMITH

By: *Eileen M. Smith*
Eileen M. Smith, by Dennis Russell Smith,
as Attorney-in-Fact

Dennis Russell Smith

Date: *3/22/16*

CITY OF BONNEY LAKE

By: *Neil Johnson, Jr.*
Mayor Neil Johnson, Jr.

Date: *3-28-2016*

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Pierce County Tax Parcel No. 0519022023

Section 02 Township 19 Range 05 Quarter 21 THAT POR OF ELY 264 FT OF
GOVT LOT 3 LY NLY OF STATE HWY LESS N 510 FT THEREOF EXC
THAT POR CYD TO STATE OF WASH PER ETN 4226332 EASE OF
RECORD PER ETN 573735 (DCGRES10-7-82) DC6/1/10DX

Situated in the City of Bonney Lake, County of Pierce, State of Washington.



EXHIBIT B

STATUTORY WARRANTY DEED

Pierce County Tax Parcel No. 0519022023

Section 02 Township 19 Range 05 Quarter 21 THAT POR OF ELY 264 FT OF
GOVT LOT 3 LY NLY OF STATE HWY LESS N 510 FT THEREOF EXC
THAT POR CYD TO STATE OF WASH PER ETN 4226332 EASE OF
RECORD PER ETN 573735 (DCGRES10-7-82) DC6/1/10DX

WHEN RECORDED RETURN TO:

Don Morrison
City of Bonney Lake
19306 Bonney Lake Blvd.
Bonney Lake, Washington 98391

STATUTORY WARRANTY DEED

Grantor: Eileen M. Smith

Grantee: City of Bonney Lake

Legal Description:

Pierce County Tax Parcel No. 0519022023

Section 02 Township 19 Range 05 Quarter 21 THAT POR OF ELY 264 FT OF
GOVT LOT 3 LY NLY OF STATE HWY LESS N 510 FT THEREOF EXC
THAT POR CYD TO STATE OF WASH PER ETN 4226332 EASE OF
RECORD PER ETN 573735 (DCGRES10-7-82) DC6/1/10DX

Situated in the County of Pierce, State of Washington.



Exhibit A - Purchase & Sale Agreement

I certify that I know or have satisfactory evidence Eileen M. Smith is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2016

Notary Public in and for the state of Washington, residing at _____.

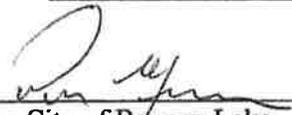
My appointment expires _____.



EARNEST MONEY PROMISSORY NOTE

For value received, the City of Bonney Lake, Washington ("City") agrees to pay to the order of Fidelity Escrow the sum of twenty-five thousand dollars (\$25,000.00) within five (5) business days following Mutual Acceptance of the Purchase and Sale Agreement. This Note is evidence of the obligation to pay Earnest Money under a real estate Purchase and Sale Agreement between the Buyer and Seller (Eileen M. Smith) dated 3-28-16. Buyer's failure to pay the Earnest Money strictly as above shall constitute default on said Purchase and Sale Agreement as well as on this Note. If this Note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the balance due on this Note, the Buyer promises to pay reasonable attorneys' fees, and all court and collection costs.

Date: 4-1-2016



For City of Bonney Lake



City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Executive / Don Morrison	Meeting/Workshop Date: 12 April 2016	Agenda Bill Number: AB16-53
Agenda Item Type: Resolution	Ordinance/Resolution Number: 2521	Councilmember Sponsor: Lewis

Agenda Subject: Ratification of a Purchase and Sale Agreement between the City of Bonney Lake and Eileen Smith to acquire an additional 3.47 acres of land for the Public Works Center

Full Title/Motion: A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Ratifying The Purchase And Sale Agreement Between The City Of Bonney Lake And Eileen Smith To Acquire An Additional 3.5 Acres Of Land For The Public Works Center In Eastown..

Administrative Recommendation: Approve

Background Summary: The City acquired the former Compass Pointe property in Eastown upon which to construct the new public works center (PWC) for the City. The Smith parcel is immediately West of the City parcel. The addition of the Smith parcel, combined with the Compass Point parcel, will improve access, reduce impacts to wetlands, and make it easier to site the facility, install utilities, and extend the frontage roads. The cost of the parcel is \$460,000.

Attachments: Purchase and Sale Agreement;

BUDGET INFORMATION

Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
4,000,000	4,000,000	\$460,000	3,540,000	<input type="checkbox"/> General <input checked="" type="checkbox"/> Utilities <input type="checkbox"/> Other

Budget Explanation: The budget amount represents what is included in the 2016 adopted water utility budget for the water share of the public works center 2016 expenditures.

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review:	Other	<i>Approvals:</i>	Yes	No
	Date:	Chair/Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
		Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
		Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
	Forward to:		Consent Agenda: <input type="checkbox"/> Yes <input type="checkbox"/> No	

Commission/Board Review:

Hearing Examiner Review:

COUNCIL ACTION

Workshop Date(s): 3/1/16 (Exec. Session)	Public Hearing Date(s):
Meeting Date(s): 10/27/15 (Exec Session)	Tabled to Date:

APPROVALS

Director:	Mayor:	Date Reviewed by City Attorney: (if applicable)
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