



## RESOLUTION NO. U-11195

1 A RESOLUTION relating to Tacoma Power; declaring utility-owned real  
2 property surplus and authorizing the sale to Exeter Canyon Land,  
3 LLC.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Light  
5 Division (d.b.a. "Tacoma Power"), requests the Board declare surplus and  
6 approve the negotiated sale of approximately 31.5 acres of industrial-zoned  
7 land, located at 16515-16525 Canyon Road East, in Fredrickson, Pierce  
8 County, Washington ("Property"), to Exeter Canyon Land, LLC ("Exeter"), and

9 WHEREAS the Property was transferred from Tacoma Water to Tacoma  
10 Power in 2007, with the intention to build a new South Service Center, but that  
11 project was cancelled, and

12 WHEREAS the Director of Utilities approved a surplus declaration in  
13 November 2018, a Request for Proposals was initiated and a Listing Agreement  
14 was approved by the Public Utility Board through Resolution No. 11085, and

15 WHEREAS a Purchase and Sale Agreement with Exeter was entered  
16 into on February 28, 2020, and

17 WHEREAS this Property is located in unincorporated Pierce County,  
18 outside of the Tacoma Power service territory, and Tacoma Power does not see  
19 a need to retain ownership of the Property as it entails additional management  
20 time and expense, and

21 WHEREAS the sale price of \$10,600,000, is believed to reflect Fair  
22 Market Value, and



WHEREAS in addition, by Public Utility Board Resolution No. 11175, the Board had previously granted an easement to the Tacoma Sportsmen's Club on June 24, 2020, with Exeter's consent, and the \$235,000 received from that sale will be a pass-thru credit to the purchase price, and

WHEREAS the closing of the sale is projected to be on or before mid-February 2021, and

WHEREAS Tacoma Power has determined that the Property sought by Exeter is not essential for continued effective utility service and has deemed the Property surplus to Tacoma Power's needs pursuant to RCW 35.94.040 and TMC 1.06.272-.278; Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Sec. 1. That it is in the best interests of the City of Tacoma to approve the negotiated sale of approximately 31.5 acres of property of industrial-zoned land, located at 16515-16525 Canyon Road East, in Fredrickson, Pierce County, Washington, for a purchase price of \$10,600,000, as more fully described in the documents on file with the Clerk of the Board, to Exeter Canyon Land, LLC.

Sec. 2. The Board finds that the Property is not essential for continued effective utility service by Tacoma Power and is properly declared surplus property and excess to Tacoma Power's needs.

Sec. 3. That the City Council is requested to hold a public hearing on this matter pursuant to RCW 35.94.040, and thereafter approve this recommended sale and authorize the proper officers of the City of Tacoma to execute all



necessary documents, substantially in the same form as on file with the Clerk

and approved by the City Attorney.

Approved as to form:

Chair

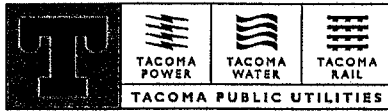
/s/

Chief Deputy City Attorney

Secretary

Adopted

Clerk



## Board Action Memorandum

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** John Nierenberg, Tacoma Power Transmission and Distribution Assistant Section Manager *JN*  
 Greg Muller, Real Estate Officer, Real Property Services  
**MEETING DATE:** September 9, 2020  
**DATE:** August 28, 2020

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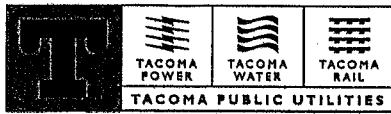
**SUMMARY:** Declare surplus and authorize the sale of approximately 31.5 acres of industrial-zoned Tacoma Power property known as the Frederickson Industrial Site (aka Pierce County Assessor Tax Parcel Number 0419302044) located at 16515-16525 Canyon Road East to Exeter Canyon Land, LLC ("Exeter") for \$10,600,000.00.

**BACKGROUND:** The sale property is located in the Frederickson vicinity of unincorporated Pierce County. This vacant tract was originally transferred from Tacoma Water in 2007 with the intention to build a new South Service Center on the site, but that project was subsequently cancelled. Upon approval by the Director of the surplus declaration in November 2018, a Request for Proposals was initiated to market the property for sale, and a Listing Agreement was executed with Lee & Associates Commercial Real Estate Services, LLC. At the conclusion of the marketing efforts, a Purchase and Sale Agreement (the "PSA") with Exeter was entered into on February 28, 2020. Consistent with the May 7, 2020 Addendum No. 1 to the PSA, the buyer's feasibility study period expires August 25, 2020, and the sale is scheduled to close within four months of Seller approvals (i.e. latest by mid-February 2021), the last of which is final approval by the City Council, expected October 13, 2020. As this property is located in unincorporated Pierce County and outside the Tacoma Power service territory, Tacoma Power does not see a need to retain ownership of the property as ownership entails additional management time and expense. The sale price is believed to reflect Fair Market Value as it resulted from a competitive process with significant professional third-party real estate brokerage marketing efforts to the general public and real property development community. Exeter has extensive nationwide experience in developing industrial properties, many as build-to-suit for particular users and has submitted an application for development with Pierce County. However, as Exeter has confidentiality agreements in place, we do not know the specific future user (either as an owner or tenant). The project is expected to adhere to all Pierce County development regulations, including environmental mitigation, and be consistent with the economic development goals of the County Executive, including job creation. The City Attorney's Office has previously reviewed and approved the form of the purchase and sale agreement. Tacoma Power staff and management have reviewed the documents and support this request with no negative impacts to Tacoma Power operations expected.

Previously, the Board approved the Listing Agreement on May 22, 2019 via Board Resolution No. U-11085. Also, the Board approved the grant of an easement on a portion of the property to the Tacoma Sportsmen's Club on June 24, 2020 via Board Resolution No U-11175. Exeter had previously consented to the easement, and the \$235,000 received from the Tacoma Sportsmen's Club will be a pass-thru credit to the purchase price.

Upon approval by the Board, a separate request will be made to the City Council to hold a Public Hearing to be followed by Final Approval. Closing of the sale is expected on or before mid-February 2021.





**Board Action Memorandum**

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No.**

**IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.**

N/A.

**IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No.**

**ATTACHMENTS:** Tacoma Power Real Estate Purchase and Sale Agreement No. A3182; PSA Addendum No. 1; PSA Addendum No. 2; Tacoma Sportsmen's Club Easement Agreement (E13575); Request for Proposals (PT18-0350F); Listing Agreement; Declaration of Surplus; Location Map

**CONTACT:** Primary Contact: Greg Muller, Real Estate Officer, Ext 8256  
Supervisor: Dylan Harrison, Senior Real Estate Officer, Ext 8836

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
LIGHT DIVISION  
REAL ESTATE PURCHASE AND SALE AGREEMENT  
AGREEMENT NO. A3182

Reference No.: P2018-093

Seller: City of Tacoma, Department of Public Utilities,  
Light Division, (d.b.a. Tacoma Power)

Buyer: EXETER CANYON LAND, LLC  
Abbreviated

Legal Description: REV PAR B of BLA recorded under AFN 201607085001, Pierce Co., WA  
Tax Parcel No.: 0419302044

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of February 28, 2020 between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power) a Washington municipal corporation ("Seller") and EXETER CANYON LAND, LLC, a Delaware limited liability company ("Buyer").

RECITALS

WHEREAS, Seller is the owner of certain real property more particularly described in Section 1 below.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the real property subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT

1. Real Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property located at **16515 Canyon Road East** in the County of Pierce and State of Washington, more particularly described as follows:

{See attached legal description **Exhibit "A"**}

Also known as: Pierce County Tax Parcel Number 0419302044 (the "Property").

2. Deposit. Within four (4) business days after execution of the Agreement by both Seller and Buyer, Buyer shall deliver to First American Title Insurance Company in Tacoma, Washington (the "Title Company"), as escrow agent for the Closing of this transaction, an earnest money deposit in the amount of One Hundred Twenty-five Thousand U.S. Dollars (**\$125,000.00**) (the "Deposit") as part payment of the purchase price of the Property. The Deposit will be held in an interest-bearing account by the Title Company for the benefit of the parties pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Buyer; provided, however, that if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller. Unless otherwise provided in this Agreement, the Deposit and any accrued interest shall be applied to the Purchase Price.

3. Purchase Price. The total purchase price for the Property (the "Purchase Price") will be **Ten Million Six Hundred Thousand U.S. Dollars (\$10,600,000.00)**, to which the Deposit shall be

a fully applicable part. The Purchase Price, including the Deposit, will be paid by Buyer to the Title Company by wire, for further distribution by wire to Seller at Closing.

4. Title to Property.

4.1 Conveyance. At Closing, Seller shall convey to Buyer fee simple title to the Property by duly executed and acknowledged quit claim deed (the "Deed"), subject only to those encumbrances that Buyer approves pursuant to Section 4.3 below (the "Permitted Encumbrances").

4.2 Preliminary Commitment. Upon execution of this Agreement, Seller authorizes Buyer to order a preliminary commitment, at Seller's expense, for an owner's standard coverage policy of title insurance in the full amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment").

4.3 Condition of Title. If Buyer receives a Preliminary Commitment pursuant to Section 4.2, Buyer shall advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer ("Disapproved Encumbrances") within ten (10) business days of receipt of the Preliminary Commitment. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) business days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer. If Seller elects not to remove any Disapproved Encumbrances, Buyer will have fifteen (15) business days to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those encumbrances, or to terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this section, the escrow will be terminated, the Deposit will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.4 Title Policy. At Closing, Seller, at Seller's expense, shall cause the Title Company to issue to Buyer a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

4.5 Tacoma Sportsmen's Club Easement Agreement. Buyer consents to the execution of the Easement Agreement (the "Easement Agreement") as shown in Exhibit "B" and approves the Easement granted thereby as a Permitted Encumbrance. Any compensation received by Seller for the Easement Agreement shall be a credit to Buyer against the Purchase Price at Closing. In no event will such compensation be lower than Two Hundred Thirty-five Thousand and 00/100 Dollars (\$235,000.00).

5. Conditions to Closing.

5.1 Tacoma Public Utility Board and Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utility Board and the Tacoma City Council prior to Closing (the "Seller Approvals"). If the Seller Approvals are not obtained by September 30, 2020; or if

this Agreement and the transaction contemplated hereby are disapproved by either the Tacoma Public Utility Board or the Tacoma City Council prior to September 30, 2020, this Agreement will terminate, and the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. If this Agreement terminates, Buyer shall not be entitled to any portion of the compensation received by Seller pursuant to Section 4.6 herein. Nothing in this Section 5.1 will obligate the Seller to obtain Tacoma Public Utility Board or Tacoma City Council approval beyond the ordinary course of the City of Tacoma's procedures.

5.2 Buyer Feasibility Study. Buyer will have until Ninety (90) days from mutual acceptance of this Agreement as evidenced by the last date signed by Seller (the "Feasibility Study Period") to conduct a review of the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (the "Feasibility Study"). The Feasibility Study may include all inspections and studies Buyer deems reasonably necessary or desirable. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the Property and make borings, drive test piles and conduct any other reasonable tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released. In the event Buyer does not complete the purchase for any reason whatsoever, Buyer shall promptly provide to Seller, and at no cost to Seller, complete copies of all third-party reports obtained by Buyer pursuant to this Section 5.2, which reports shall be provided to Seller AS-IS, without representation or warranty whatsoever.

5.3 Non-Suitability. During the Feasibility Study Period, Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use or for no stated reason. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this section, the Deposit, less any costs advanced or committed for Buyer, will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under this section. Failure by Buyer to notify Seller in writing of any matters affecting the suitability of the Property on or before the expiration of the Feasibility Study Period, whether or not an inspection has been carried out, shall deem Buyer to have waived this contingency, in which case the Deposit shall be non-refundable to Buyer except in the event of Seller's default or as otherwise expressly set forth herein (for example, Section 9), but applicable to the Purchase Price at Closing.

5.4 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or

employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement and the right of entry granted in connection with its Feasibility Study, except for claims caused by Seller's sole negligence and Buyer shall have no liability for pre-existing conditions except to the extent Buyer exacerbates such conditions.

6. Condition of the Property.

6.1 "As Is" Buyer acknowledges that Buyer is purchasing and shall acquire the Property under this Agreement in its physical condition existing at the date of Closing, "AS-IS, "WHERE IS" AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR UNDER THE PROPERTY, SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS, SOLELY IN RELIANCE ON BUYER'S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS, AND EVALUATION OF THE PROPERTY. As of the date this Agreement is signed by both parties, Seller has made no representations or warranties, express or implied, regarding the Property, excluding those representations and warranties expressly provided in this Agreement. Seller shall surrender the Property in as good condition, except for normal wear and tear, as exists on the date of this Agreement. Seller agrees that it will not damage nor commit waste on the Property nor, except for the Easement Agreement as specified in Section 4.5 herein, without the written consent of Buyer, enter into any lease or other agreement that would bind Buyer or the Property after Closing between the date of acceptance of this Agreement and the Closing Date.

6.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

6.3 Release. Except with respect to Seller's representations and warranties expressly provided in this Agreement and any claims made by third parties for damage or injury occurring during Seller's period of ownership for which Seller is held liable, Buyer releases Seller and its directors, officers, employees, and agents from any and all statutory, common law, and other claims, obligations, causes of action, losses, damages, liabilities, costs and expenses (including without limitation attorney fees), unknown to Seller, that Buyer may have against Seller arising from, in whole or in part, or related in any way to the physical condition of the Property (including conditions not readily apparent and the presence of any material classified under state or federal law or regulations as hazardous).

7. Closing. This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The Closing will be held at the office of the Title Company on or before that date that is six (6) months after Seller confirms in writing to Buyer (the "Seller Approval Notice") that Seller has received the Seller Approvals (the "Closing Date"). Provided the Seller Approvals have been obtained, Buyer may select any earlier Closing Date by providing Seller with at least fifteen (15) days' prior written notice (the "Early Closing Notice"). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them. When notified by Escrow Agent, Buyer and Seller will deposit with Escrow Agent without delay all instruments and moneys required to complete the transaction in accordance with this Agreement. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the Title Company has irrevocably committed to issue the Title Policy (including all endorsements

required by Buyer), the sale proceeds are available for disbursement to the Seller, and legal title passes to the Buyer.

8. Closing Costs and Prorations. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price, state of Washington real estate excise taxes applicable to the sale, and one-half of the Escrow Agent's escrow fee. Buyer shall pay the additional premium, if any, attributable to an extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, any financing costs, the cost of recording the deed and any financing documentation, and one-half of the Escrow Agent's escrow fee. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

9. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Property. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Property, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Deposit will be returned to Buyer.

10. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date. Seller shall remove any and all personal property from the Property on or before the Closing Date, unless specifically authorized in writing by Buyer.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then that portion of the Deposit which does not exceed five percent (5%) of the Purchase Price shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to immediate return of its Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

12. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or email (provided that a duplicate copy of any notices delivered by email shall also be delivered via a recognized overnight delivery service). All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: Tacoma Public Utilities – Real Property Services  
ABS – 2<sup>nd</sup> Floor  
3628 S. 35<sup>th</sup> Street  
Tacoma, WA 98409  
Email: gmuller@ci.tacoma.wa.us

With a copy to: Lee & Associates  
701 Pike Street, Suite 1025  
Seattle, WA 98101  
C/O: Vanessa Herzog, Zane Shiras, Christian Mattson  
Email: vherzog@lee-associates.com

Buyer: Exeter Canyon Land, LLC  
101 West Elm Street, Suite 600  
Conshohocken, PA 19428  
Attention: Timothy J. Weber  
Email: tweber@exeterpg.com

With a copy to: The Chase Law Group, LLC  
1447 York Road, Suite 505  
Lutherville, MD 21093  
Attention: Todd Chase, Esq.  
Email: tchase@chaselaw.com

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by email, the same day as verified by use of a "delivery receipt".

13. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. DocuSign transmitted signatures shall be fully binding and effective for all purposes.

14. Brokers and Finders. Seller's broker is Vanessa Herzog, Zaria Shiras and Christian Mattson of Lee & Associates Commercial Real Estate Services, LLC. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the Closing of this transaction.

15. Professional Advice. Seller and the Buyer hereby acknowledge that it may be advisable for either or both parties to obtain independent legal, tax or other professional advice in connection with this transaction, as the terms and conditions of this Agreement affect the parties' rights and obligations. The parties agree that they have satisfied themselves that they understand the terms and conditions of this sale and have accepted full responsibility to seek such professional advice as they deem necessary.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

17. Continuation and Survival of Representations and Warranties.

17.1 Seller's Representations and Warranties.

17.1.1 Authority. Subject to Section 5.1, Seller has the full power and right to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and Seller will attempt to obtain all necessary authorizations required in connection with the execution, delivery and performance contemplated by this Agreement and will attempt to obtain the consent of all entities and parties necessary to bind Seller to this Agreement.

17.1.2 No Violations. To Seller's actual knowledge, Seller has not received written notice that the Property is in violation of any applicable laws.

17.1.3 No Liens. To Seller's actual knowledge, there is no lien affecting the Property and no work has been performed which could give rise to a mechanic's or similar lien against the Property.

17.1.4 No Litigation. To Seller's actual knowledge, there is no pending, or to Seller's knowledge, threatened, litigation or other similar proceeding (including condemnation) affecting the Property.

17.1.5 No Leases. Except for the Permit(s) as shown in Exhibit "C", to Seller's actual knowledge there are no leases or other occupancy agreements that may bind Buyer or the Property after Closing.

17.2 Buyer's Representations and Warranties.

17.2.1 Authority. Buyer is duly organized and in good standing under the laws of the State of Delaware and has the full power and right to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and Buyer has obtained all necessary corporate authorizations required in connection with the execution, delivery and performance contemplated by this Agreement and has obtained the consent of all entities and parties necessary to bind Buyer to this Agreement.

17.2.2 No Conflicts. Neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions, or provisions of any agreement, instrument, judgment, order or injunction to which Buyer is a party or by which Buyer or any of Buyer's assets is bound.

17.3 Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material, and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

18. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington without recourse to any principles of conflict of laws.

19. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

20. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

21. FIRPTA. The Escrow Agent is instructed to prepare a certification or equivalent that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and Seller agrees to sign this certification. If Seller is a "foreign person" as the same is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, Escrow Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.



23. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the Closing of the transaction contemplated under the Agreement.

24. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer may assign this Agreement without Seller's consent to an entity controlling, controlled by or under common control with Buyer, with timely notice thereof provided to Seller pursuant to Section 12. above.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to give effect to the Agreement contemplated herein.

27. Survival. Any terms, conditions, or provisions of this Agreement which by their nature should survive shall survive the Closing of the sale.

28. Waiver of RCW 64.06 Disclosure. Buyer and Seller acknowledge that the Property may constitute "Commercial Real Estate" or "Residential Real Property" as defined in RCW 64.06.005. Buyer waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of such real property, except for the section entitled "Environmental." The Environmental section of the seller disclosure statement (the "Disclosure Statement") shall be provided to Buyer within five business days after execution of this Agreement. The Disclosure Statement shall be deemed approved and accepted by Buyer if Buyer fails to deliver written notice to rescind this Agreement within three business days thereafter. If Buyer rescinds this Agreement within the three business days, the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement. This Agreement constitutes the full understanding between the parties regarding the sale of the property and there are no promises, agreements, conditions, understandings, warranties, or representations, verbal or written, expressed or implied, other than as expressly set forth in this Agreement. The covenants and agreements of this Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER:

**EXETER CANYON LAND, LLC**, a Delaware limited liability company

By: Exeter Operating Partnership V, L.P., a Delaware limited partnership, its sole member

By: Exeter Operating Partnership V GP LLC, a Delaware limited liability company, its general partner

By: Exeter Industrial REIT V LLC, a Delaware limited liability company, its sole member

By:

Name: Timothy J. Weber

Title: Vice President

Date: February 18, 2020

SELLER:

Jackie Flowers 2/28/2020

Jackie Flowers,  
Director of Utilities

Date

Chris Robinson

Chris Robinson,  
Power Superintendent

Approved as to form:

Michael W. Smith

Michael W. Smith,  
Deputy City Attorney

City of Tacoma Review

TACOMA POWER

*Joseph Wilson*

\_\_\_\_\_  
Joseph Wilson,  
Transmission and Distribution Manager

*John Nierenberg*

\_\_\_\_\_  
John Nierenberg,  
Transmission and Distribution Assistant Manager

*Jeff Singleton*

\_\_\_\_\_  
Jeff Singleton,  
Chief Surveyor

FINANCE:

*Andrew Cherullo*

\_\_\_\_\_  
Andrew Cherullo,  
Director of Finance

ES

LV

**City of Tacoma Department of Public Utilities Light Division Real Estate Purchase  
and Sale Agreement No. A3182**

**EXHIBIT "A"**

**Property Legal Description:**

Revised Parcel B of Boundary Line Adjustment recorded under Auditor's File No. 201607085001, described as follows:

Government Lot 2 of Section 30, Township 19 North, Range 4 East of the W.M., in Pierce County, Washington. Except the West 20 feet for road.

Also except those portions conveyed to Pierce County by instruments recorded under Auditor's File Nos. 8604150281 and 201006010129, records of Pierce County, Washington.

Also except those portions conveyed to WGWI, Inc. by instruments recorded under Auditor's File Nos. 201607150389, records of Pierce County, Washington.

**City of Tacoma Department of Public Utilities Light Division Real Estate Purchase  
and Sale Agreement No. A3182**

**EXHIBIT "B"**

**EASEMENT AGREEMENT**

WHEN RECORDED RETURN TO:

Tacoma Public Utilities

Real Property Services

PO Box 11007, Tacoma, WA 98411

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**CITY OF TACOMA**  
**DEPARTMENT OF PUBLIC UTILITIES**  
**EASEMENT NO. E13575**

Reference No.	P2018-093
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	Tacoma Sportsmen's Club Inc.
Legal Description:	Portion of NW¼ and NE¼ of Section 30, Township 19N, Range 4 E, W.M., Pierce County, Washington.
Tax Parcel Nos.:	0419302044, 0419302000, and 0419301001

THIS INGRESS AND EGRESS AND UTILITIES EASEMENT AGREEMENT ("Easement Agreement") is entered into by the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power), a municipal corporation and political subdivision of the State of Washington, hereinafter referred to as "Grantor," and record owner of the Easement Area described in **Exhibit A**, and Tacoma Sportsmen's Club Inc., a Washington non-profit corporation, hereinafter referred to as "Grantee."

## RECITALS

A. Grantee has requested that Grantor grant to Grantee a non-exclusive easement across the Easement Area (the "Easement") for the express purpose of ingress and egress and installation and operation of utilities to benefit Grantee's abutting real property (the "Benefitted Property") as legally described in **Exhibit C**; and,

B. Grantor, for the consideration provided for below, is willing to grant and convey the Easement over the Easement Area to Grantee for the Permitted Purpose described below.

**NOW THEREFORE**, in consideration of the Terms, Conditions, and Covenants herein stated and the payment of Two Hundred and Thirty-Five Thousand Dollars (\$235,000.00) by Grantee to Grantor, Grantor does hereby grant to Grantee the Easement for the Permitted Purpose, across Grantor's real property legally described in **Exhibit A** (the "Easement Area") and depicted on **Exhibit B**.

Grantee is restricted to use of the Easement Area and is not authorized to use any other portions lying outside the Easement Area of Grantor's real property ("Grantor's Property") legally described in **Exhibit D**.

## Terms, Conditions, and Covenants.

This Easement is subject to the following Terms, Conditions, and Covenants.

1. **Covenants.** The terms and conditions of the herein Easement Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, personal representatives, devisees and heirs.
2. **Easement Term.** The Term of this Easement Agreement shall commence on the date of recording of the Easement Agreement with the Pierce County Auditor ("Date of Commencement") and shall run in perpetuity unless terminated pursuant to the terms and conditions set forth herein.
3. **Rights Granted.** The rights granted to Grantee are solely for the Permitted Purpose as described herein. No other use of the Easement Area is granted, nor shall Grantee enlarge the use thereof without the prior written permission of Grantor. The rights granted to Grantee are indivisible.
4. **Incorporation of Recitals.** The foregoing recitals are incorporated into this Easement Agreement as if fully rewritten here.
5. **Permitted Purpose.** Grantor grants the above-described right to use the Easement Area to Grantee for the express and sole purpose of crossing the Easement Area for ingress and egress and installation and operation of utilities in support of Grantee use of its Benefitted Property ("Permitted Purpose"). The Ingress

and egress and utilities shall be restricted to the described Easement Area only. Moreover, the Easement rights granted herein shall not be maintained or extended to any portion of the Benefitted Property that may be sold or transferred subsequent to the Date of Commencement, nor shall the Easement rights extend to any third-party use of any portion of the Benefitted Property, e.g. by lease, permit, or license.

6. **Noninterference.** Grantee shall not damage or materially interfere with Grantor's use of the Easement Area, structures, or facilities. Except as otherwise specifically provided for herein, no structures of any type may be placed on the Easement Area, nor shall the Easement Area be barricaded, fenced or blocked by Grantee in any way.

7. **Easement Closure Risk.** Grantee assumes all risks and costs associated with any interference with Grantee's use of the Easement Area due to closures and blockages caused by events outside of Grantor's reasonable control including, but not limited to, environmental regulation, or natural disaster including, fire, flood, snow, slides, tree windthrow, or road washout, but not including closures and blockages due to Grantor's sole negligence. Grantor is not obligated to repair or unblock any part of the Easement Area described herein if Grantor determines use of the Easement Area is no longer safe or viable.

8. **Non-liability.** Grantor shall not be liable to Grantee or to any third-party entering upon the Easement Area to or in furtherance of any act or thing done in connection with the Permitted Purpose or other use of the Easement Area. Grantee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Purpose or other use of the Easement Area.

9. **Indemnification.** Grantee shall indemnify, defend, and hold harmless Grantor, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising directly or indirectly out of any act or omission of Grantee, its agents, contractors, licensees, invitees or guests and involving the subject matter of this Easement Agreement, and the construction, operation, maintenance, repair, and replacement of the improvements on the Easement Area and/or adjacent to Grantor's Property. The foregoing shall apply to any and all actual or alleged injury to persons (including death) and/or damage to property, except to the extent such injury or damage results from the fault of the Grantor and its officers, employees, agents or volunteers. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the Grantor.

10. **Environmental Liability.** By accepting this grant of Easement, Grantee assumes no liability for existing site conditions including any Hazardous Substances that may be present on, in, or under the Easement Area prior to the execution of this Easement Agreement; except that to the extent Grantee removes any soil, Grantee



shall pay for the removal of and disposal of such soil, whether or not it contains Hazardous Substances. Grantee assumes sole liability and shall be responsible for any remedial action costs incurred due to the release, or exacerbation of the release, of Hazardous Substances by Grantee, its officers, agents, employees, volunteers, subcontractors, invitees, licensees, or guests. "Hazardous Substance" as used in this Easement Agreement shall mean the presence of any substance or group of substances around, above, on, or in the soil of the Easement Area which, by its presence, triggers a remedial investigation or action, or which requires any excavated materials to be disposed of as anything other than clean fill. The meaning of "Hazardous Substance" shall also include without limitation, any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup. The terms of this Hazardous Substances provision have been mutually negotiated.

**11. Improvements.** Any and all road and utilities design, construction, maintenance, repair, or replacement occurring on or impacting the Easement Area must be approved in writing by Grantor prior to construction thereof. Such authorized improvements shall comply with all federal, state and local regulations. Grantee shall be solely responsible for any and all costs associated with the construction, maintenance, repair, replacement, or upkeep of any existing or future authorized improvements impacting the Easement Area. Grantor's review and approval is not intended as an engineering review or analysis. It shall remain the sole responsibility of Grantee to ensure adherence to all code and permitting requirements. Further, Grantor approval shall not be deemed consent, authorization, or acknowledgement that Grantee has obtained all required authorizations or that professional or engineering standards are sufficient or fit. Grantee's improvements shall, at Grantor's option, be removed at the termination of the Easement rights and the Easement Area restored, both at Grantee's sole expense.

In the event any of Grantor's improvements in the Easement Area are disturbed or damaged by Grantee's use, at Grantor's sole discretion and approval, Grantee shall reimburse Grantor all costs reasonably necessary to repair or restore the damaged improvements to a condition as good as or better than that which existed prior to the use.

**12. Waste.** Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area, except as approved by Grantor. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release or dispose of any Hazardous Substances, or other pollutants in or on the Easement Area except in accordance with all applicable laws. Grantee shall maintain the Easement Area in a clean, neat and orderly manner and will not create or permit any nuisance or waste, or allow the Easement Area to be used for any immoral or unlawful purpose.

13. **Warranty.** Grantor does not warrant its authority to grant the above-described use of the Easement Area, and Grantee agrees to secure any other rights needed for the lawful use of the Easement Area. Grantor expressly disclaims any representation or warranty that the Easement Area is suitable for any use.

14. **Prior Agreements.** The rights herein granted shall be subject to any prior agreements or contracts made or entered into by Grantor and further shall be subject to any subsequent agreements between city, state, or federal wildlife, fish, ecology, energy, or other regulatory agency having jurisdiction over the City of Tacoma's hydroelectric, transmission, water supply, and railway systems.

15. **Other Agency Regulations.** This Easement Agreement, Easement, Grantee, and Grantor, are at all times subject to provisions and requirements of federal, state, and local agencies and any future rules and regulations of these agencies or their successors or assigns. The rights granted herein are subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon the subject Easement Area by any regulating authority, including Grantor. Grantor reserves the right at any and all times to prescribe additional non-discriminatory rules and regulations for the conduct, operation, and maintenance of any or all the rights and privileges granted under the terms of this Easement Agreement.

16. **Non-Exclusive Rights.** This Easement is non-exclusive, and shall not prohibit Grantor from granting other rights of like or other nature to others, nor shall it prevent Grantor from using any of the subject Easement Area or affect its right to full supervision and control over all or any part of the Easement Area, none of which is hereby surrendered.

17. **No Protest of LID or ULID.** Grantee agrees it will not protest the formation of a Local Improvement District (LID) or Utility Local Improvement District (ULID) benefitting Grantor's Property except upon Grantor's written consent.

18. **No Protest of Development of Grantor's Property.** Grantee agrees it will not protest or otherwise oppose or object to the lawful subdivision and/or development of Grantor's Property and will reasonably cooperate in such efforts.

19. **Acknowledgement.** As a condition of this Easement Agreement, all parties hereto agree that each of Grantee, its successors and/or assigns, in order to be entitled to and benefit from the Easement shall acknowledge and accept the terms and conditions set forth in this Easement Agreement. Grantee's execution of this Easement Agreement shall be deemed acknowledgement of receipt.

20. **Termination.** Should any one or more of the following events of termination occur, Grantor may re-enter, retake possession of, and hold the Easement Area without compensation to Grantee or any other person whomsoever, for: improvements or property removed, taken or destroyed, or liability for loss of or damages to any premises or the improvements thereon abutting on said Easement

Area or any part thereof. Moreover, no compensation shall be due Grantee for termination of the Easement rights granted herein.

- a. **Failure of Acknowledgement.** If any of Grantee, its successors and/or assigns, fails to acknowledge and accept the terms and conditions of this Easement Agreement, then the Easement rights expressed herein shall automatically terminate with respect to the non-accepting party. In the event of such termination, all ingress and egress and utilities rights of said party to the Easement Area shall cease.
- b. **Failure or Breach.** In the event Grantee fails or breaches the terms and/or conditions of this Easement Agreement, Grantor reserves the right to terminate the rights granted herein; or to reconcile or cause a remedy in order to cure said failure or breach of the Easement Agreement. Such actions shall be at the sole discretion of Grantor. If said remedies to cure a failure or breach of this Easement Agreement are not forthcoming, Grantee shall have the right to create a remedy, which must be acceptable to, and approved in writing by Grantor within 180-days from written notice by Grantor, else the Easement rights shall be terminated after a 180-day notice.
- c. **Abandonment of Easement Area.** Should Grantee fail to use the Easement Area, or any part thereof, as provided for herein for a period exceeding one (1) year, the Easement and all rights associated with said Easement shall automatically terminate.
- d. **Change in Use of Benefitted Property.** Should Grantee change the use of the Benefitted Property inconsistent with either the objectives of the Tacoma Sportsmen's Club or limitations as a Washington non-profit corporation, the Easement rights shall automatically terminate.
- e. **Sale or Transfer of Benefitted Property.** Should Grantee sell or transfer any portion of the Benefitted Property, the Easement rights shall automatically terminate as to such portion sold or transferred.
- f. **Establishment of Alternative Public Access to Benefitted Property.** Should alternative public access be developed across or through Grantor's Property between the Benefitted Property and either Canyon Road East or Military Road East, or any future extension(s) thereof, the Easement rights shall automatically terminate.
- g. **Taking.** If the Easement Area, or any portion thereof, should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), the Easement rights shall terminate as to the portion of the Easement Area taken when the physical taking of the Easement Area occurs, and Grantor shall have no liability to Grantee for its loss of use of the Easement Area. If any portion of the Easement Area is

subject to a Taking, Grantee may terminate occupation and use of such portion of the Easement Area, but continue use and occupation as to the remaining Easement Area but without abatement of any obligations due Grantor herein. Moreover, Grantee disclaims interest in any award of Just Compensation in the event of a Taking.

**21. Miscellaneous.**

- a. **Notices.** Any and all notices, demands or requests required or permitted hereunder shall be in writing and delivered through personal delivery; or email transmission (with receipt confirmed via reply by the recipient) or two (2) business days after being deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid; or one (1) business day after being deposited with any commercial air courier or express service, next day delivery, addressed as follows:

1) Grantor: Tacoma Power  
Real Property Services  
3628 South 35<sup>th</sup> Street  
ABS - 2<sup>nd</sup> Floor  
Tacoma, WA 98409  
Telephone: 253.502.8256  
E-mail: [gmuller@cityoftacoma.org](mailto:gmuller@cityoftacoma.org)

2) Grantee: Tacoma Sportsmen's Club  
Attention: President  
16409 Canyon Road East  
Puyallup, WA 98375  
Telephone: 253.537.6151  
E-mail: [TSC1933@outlook.com](mailto:TSC1933@outlook.com)

- b. **Further Assurances.** The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Easement Agreement.
- c. **Entire Agreement.** This Easement Agreement contains all of the terms and conditions relating to the Easement and supersedes and replaces all oral and/or written proposals and agreements heretofore made on the subject matter. This Easement Agreement may be modified only by a written document signed by the parties hereto or their respective successors or assigns.
- d. **Attorneys' Fees.** In the event of any litigation relating to this Easement Agreement or the breach thereof, the substantially prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees and all of the costs and expenses of litigation.

- e. **Exhibits.** All exhibits attached to this Easement Agreement are incorporated in and made a part of this Easement Agreement by reference.
- f. **Governing Law.** This Easement Agreement shall be construed and enforceable in accordance with, and governed by, the laws of the State of Washington.
- g. **Counterparts.** This Easement Agreement may be executed in any number of counterparts; each of which shall be an original and all of which shall constitute one and the same instrument.
- h. **Severability.** If any clause, sentence, or other portion of the terms, conditions and covenants of this Easement Agreement are held, to any extent, to be invalid or unenforceable, the remainder of this Easement Agreement shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
- i. **Assignment.** Grantee shall not assign, subcontract, delegate, or transfer any obligation, interest, or claim to or under this Easement Agreement without the prior written consent of Grantor.
- j. **Waiver.** A waiver or failure by either Grantor or Grantee to enforce any provision of this Easement Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision.

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P2018-093/E13575

TACOMA POWER

BY:

\_\_\_\_\_  
Jackie Flowers,  
Director of Utilities

TACOMA SPORTSMEN'S CLUB INC.

ACCEPTED BY:

\_\_\_\_\_  
President,  
Tacoma Sportsmen's Club Inc.

Approved as to form:

\_\_\_\_\_  
Michael W. Smith,  
Deputy City Attorney

P2018-093/E13575

Authorized:

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Chris Robinson,  
Power Superintendent

Reviewed:

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Joseph A. Wilson,  
Transmission and Distribution Manager

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John Nierenberg,  
Transmission and Distribution Assistant Manager

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Andy Cherullo,  
Director of Finance

Legal Description Approved:

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Jeff Singleton,  
Chief Surveyor

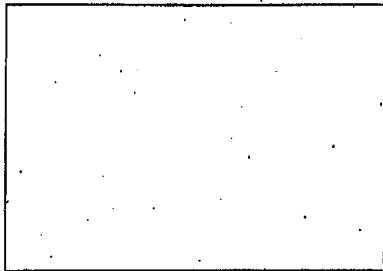
P2018-093/E13575

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF PIERCE )

On \_\_\_\_\_ before me personally appeared Jackie Flowers, to me known to be the Director of Utilities of the City of Tacoma, Department of Public Utilities, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the City of Tacoma for the uses and purposes herein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Place Notary Seal In Box



\_\_\_\_\_  
Notary Public in and for the  
State of Washington

Residing in \_\_\_\_\_



EXHIBIT A

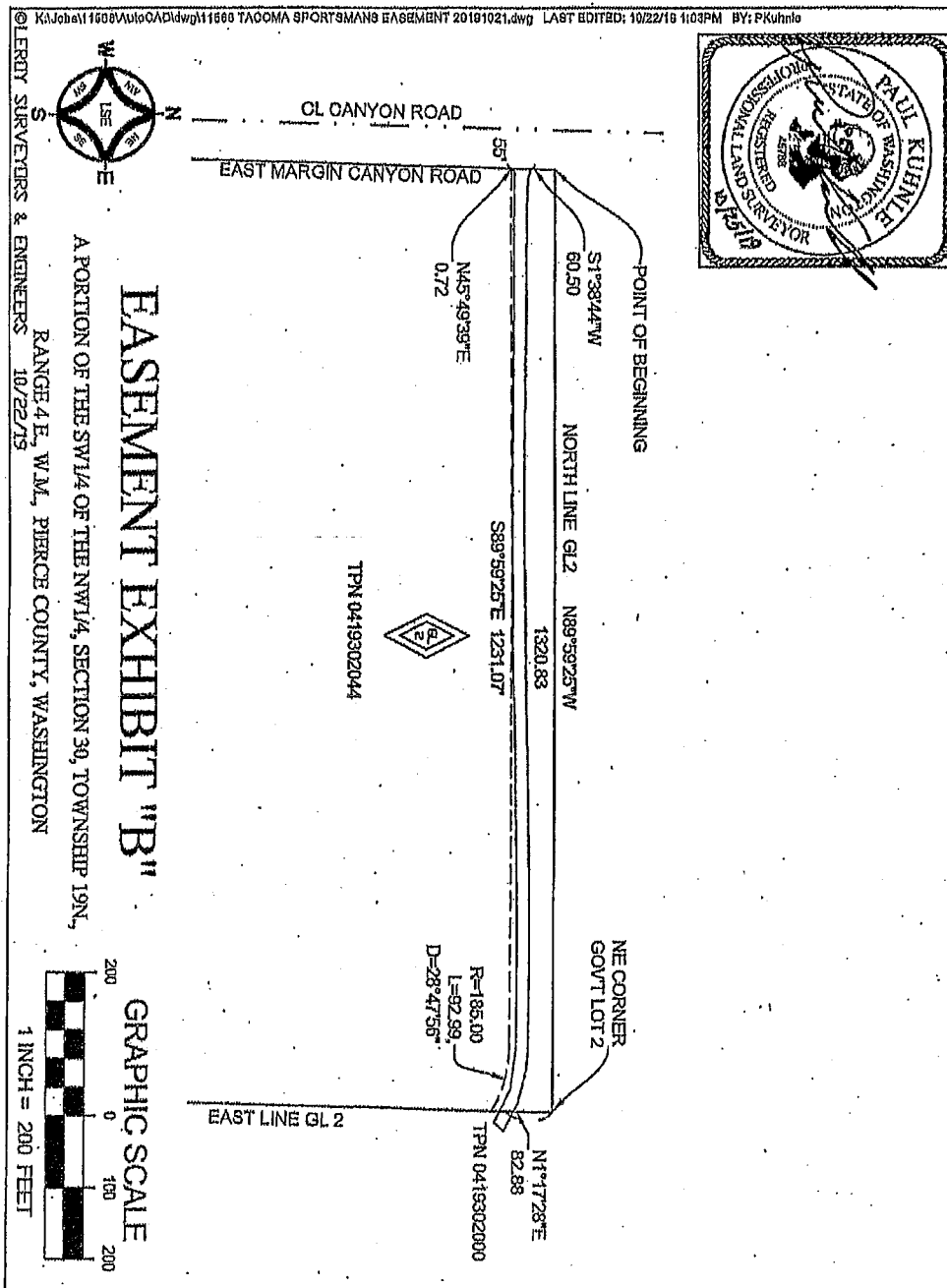
EASEMENT AREA LEGAL DESCRIPTION

THAT PORTION OF GOVERNMENT LOT 2, SECTION 30, TOWNSHIP 19 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 2 AND THE EAST MARGIN OF CANYON ROAD EAST, ALSO BEING THE NORTHWEST CORNER OF REVISED PARCEL B, PIERCE COUNTY BOUNDARY LINE ADJUSTMENT 832895, AS RECORDED UNDER RECORDING NUMBER 201607088001, RECORDS OF PIERCE COUNTY, WASHINGTON;  
THENCE ALONG THE EAST MARGIN OF CANYON ROAD EAST, S01°38'44"W, FOR 60.60 FEET;  
THENCE LEAVING SAID EAST MARGIN OF CANYON ROAD EAST, N45°49'39"E FOR 0.72 FEET;  
THENCE PARALLEL WITH AND 60.00 FEET SOUTH OF THE NORTH LINE OF SAID GOVERNMENT LOT 2, S89°59'25"E FOR 1231.07 FEET TO THE BEGINNING POINT OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 185.00 FEET AND A CENTRAL ANGLE OF 28°47'56";  
THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 92.99 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 2; THENCE ALONG SAID EAST LINE N01°17'28"E A DISTANCE OF 82.88 FEET TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2; THENCE ALONG THE NORTH LINE THEREOF N89°59'25"W FOR 1320.83 FEET, MORE OR LESS, TO THE POINT OF BEGINNING



**EASEMENT AREA DEPICTION**  
(not to scale)



**EXHIBIT C**

**BENEFITTED PROPERTY LEGAL DESCRIPTION**

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, ALL OF SECTION 30, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M., IN PIERCE COUNTY, WASHINGTON OWNED BY THE GRANTEE ON THE COMMENCEMENT DATE REFERENCED HEREIN.

**EXHIBIT D**

**GRANTOR'S PROPERTY LEGAL DESCRIPTION**

REVISED PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201607085001, DESCRIBED AS FOLLOWS:

GOVERNMENT LOT 2 OF SECTION 30, TOWNSHIP 19 NORTH, RANGE 4 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON.

EXCEPT THE WEST 20 FEET FOR ROAD.

ALSO EXCEPT THOSE PORTIONS CONVEYED TO PIERCE COUNTY BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NOS. 8604150281 AND 201006010129, RECORDS OF PIERCE COUNTY, WASHINGTON.

ALSO EXCEPT THAT PORTION CONVEYED TO WGWI, INC. BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 201607150389, RECORDS OF PIERCE COUNTY, WASHINGTON.

**City of Tacoma Department of Public Utilities Light Division Real Estate Purchase  
and Sale Agreement No. A3182**

**EXHIBIT "C"**

**Section 17.1.5 List of Permits**

**P871 - City of Tacoma, Water Division permit to Pierce County, WA dated June  
21, 1988**

**P1195 - City of Tacoma, Water Division permit to Tacoma Sportsmen's Club, Inc.  
dated July 12, 1993**

**P1651 - City of Tacoma, Water Division permit to MJR Development, LLC dated  
November 4, 2003**

**P2480 - City of Tacoma, Light Division permit to Tacoma Sportsmen's Club, Inc.  
dated October 18, 2019**

**Addendum No. 1 to  
City of Tacoma Department of Public Utilities Water Division  
Real Estate Purchase and Sale Agreement No. A3206  
RPS Project No. 2018-020**

THIS Addendum is hereby incorporated into that certain REAL ESTATE PURCHASE AND SALE AGREEMENT dated February 13, 2020 by and between the CITY OF TACOMA, Department of Public Utilities, Water Division (d.b.a. Tacoma Water), a first class municipal corporation ("Seller"), and Nash Cascadia Verde, LLC, a Delaware limited liability company ("Buyer"), and collectively referred to herein as the "Parties".

**WITNESSETH**

**WHEREAS** the Parties have executed the aforementioned REAL ESTATE PURCHASE AND SALE AGREEMENT dated February 13, 2020 (the "Agreement"), and

**WHEREAS** Section 5.1 of the Agreement provides that prior to Closing (as defined in the Agreement), the transaction contemplated by the Agreement must be duly approved by the Tacoma Public Utility Board and the Tacoma City Council, and

**WHEREAS** the Tacoma Public Utility Board approved the transaction by adoption of Resolution No. U-11146 on February 26, 2020, and

**WHEREAS** prior to Tacoma City Council consideration and approval of the transaction, RCW 35.94.040 requires a Public Hearing be held as defined therein, and

**WHEREAS** a Public Hearing as required by RCW 35.94.040 was scheduled to be heard before the Tacoma City Council on March 31, 2020, and

**WHEREAS** the Governor of the State of Washington issued Proclamation No. 20-28 on March 24, 2020 (the "Proclamation"), and

**WHEREAS** the Proclamation, in part, prohibits public agencies from taking "action", as defined in RCW 42.30.020, unless those matters are "necessary and routine....", and

**WHEREAS** the transaction is not deemed to be a "necessary and routine" matter for proper consideration by the Tacoma City Council during the pendency of the Proclamation, and

**WHEREAS** on March 31, 2020 the Tacoma City Council continued the Public Hearing to a "date to be determined", and

**WHEREAS** Section 7 of the Agreement provides that Closing will occur on or before April 10, 2020 (the "Closing Date"), and

**WHEREAS** Section 16 of the Agreement provides that the Agreement may be amended or modified only by a written instrument executed by the Parties, and

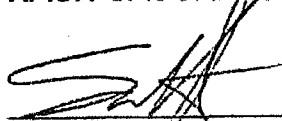
**WHEREAS** the Parties wish to extend the Closing Date to the earlier of either December 31, 2020, or fourteen (14) calendar days following approval of the transaction by the Tacoma City Council.

**NOW, THEREFORE**, in consideration of the mutual promises and obligations herein, the Parties agree as follows:

1. The Closing Date is extended from April 8, 2020 to the earlier of either December 31, 2020, or fourteen (14) calendar days following approval of the transaction by the Tacoma City Council.
2. All other terms of the Agreement shall remain the same unless formally amended in writing upon mutual agreement of the Parties.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Addendum effective as of April 6, 2020.

NASH CASCADIA VERDE LLC

  
\_\_\_\_\_  
Scott Jones, Date  
Authorized Signatory

TACOMA WATER

Jackie Flowers 4/6/2020  
\_\_\_\_\_  
Jackie Flowers, Date  
Director of Utilities

Scott Dewhirst  
\_\_\_\_\_  
Scott Dewhirst,  
Water Superintendent

Approved as to Form:

Michael W. Smith  
\_\_\_\_\_  
Michael W. Smith,  
Deputy City Attorney

**Addendum No. 2 to  
City of Tacoma Department of Public Utilities Light Division  
Real Estate Purchase and Sale Agreement No. A3182  
RPS Project No. 2018-093**

THIS Addendum No. 2 is hereby incorporated into that certain REAL ESTATE PURCHASE AND SALE AGREEMENT dated February 28, 2020 by and between the CITY OF TACOMA, Department of Public Utilities, Light Division (d.b.a. Tacoma Power), a first class municipal corporation ("Seller"), and EXETER CANYON LAND, LLC, a Delaware limited liability company ("Buyer"), and collectively referred to herein as the "Parties".

**WITNESSETH**

**WHEREAS** the Parties have executed the aforementioned REAL ESTATE PURCHASE AND SALE AGREEMENT dated February 28, 2020 (the "Agreement"), and

**WHEREAS** Section 16 of the Agreement provides that the Agreement may be amended or modified only by a written instrument executed by the Parties, and

**WHEREAS** the Parties executed Addendum No. 1 to the aforementioned REAL ESTATE PURCHASE AND SALE AGREEMENT dated May 7, 2020 ("Addendum No. 1"), and

**WHEREAS** by Section 1 of the Agreement the Property to be conveyed is legally described in Exhibit "A" to the Agreement (the "Legal Description"), and

**WHEREAS** upon Buyer's title review, in order to insure the transaction the title company requests the Parties further clarify the Legal Description, and

**WHEREAS** the Parties wish to modify and replace the Agreement Exhibit "A" Legal Description to provide such clarification.

**NOW, THEREFORE**, in consideration of the mutual promises and obligations herein, the Parties agree as follows:

1. The Agreement Exhibit "A" Legal Description is hereby modified and replaced with the attached Addendum No. 2 Exhibit "A" Legal Description.
2. All other terms of the Agreement shall remain the same unless formally amended in writing upon mutual agreement of the Parties.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Addendum No. 2 effective as of July 20, 2020.



BUYER:

**EXETER CANYON LAND, LLC, a Delaware  
limited liability company**

By: Exeter Operating Partnership V, L.P., a  
Delaware limited partnership, its sole member

By: Exeter Operating Partnership V GP  
LLC, a Delaware limited liability company, its  
general partner

By: Exeter Industrial REIT V LLC, a  
Delaware limited liability company, its sole  
member

By: 

Name: Timothy J. Weber

Title: Vice President

SELLER:

**CITY OF TACOMA, DEPARTMENT OF PUBLIC  
UTILITIES, LIGHT DIVISION (d.b.a Tacoma Power),  
a Washington municipal corporation**

*Jackie Flowers*

\_\_\_\_\_  
Jackie Flowers,  
Director of Utilities

*Chris Robinson*

\_\_\_\_\_  
Chris Robinson,  
Power Superintendent

Approved as to form:

*Michael W. Smith*

\_\_\_\_\_  
Michael W. Smith,  
Deputy City Attorney

**Addendum No. 2 to  
City of Tacoma Department of Public Utilities Light Division  
Real Estate Purchase and Sale Agreement No. A3182  
RPS Project No. 2018-093**

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Revised Parcel B, Record of Survey for Boundary Line Adjustment recorded July 8, 2016 under recording number 201607085001, records of the Pierce County Auditor;

Situate in the County of Pierce, State of Washington.

**Excise Tax Exempt**

Pierce County, WA

07/16/2020 12:17 PM

Electronically Submitted

PPRICE

**202007160303**

Electronically Recorded

Pierce County, WA PPRICE

07/16/2020 12:17 PM

Pages: 15 Fee: \$117.50

**WHEN RECORDED RETURN TO:**

Tacoma Public Utilities

Real Property Services

PO Box 11007, Tacoma, WA 98411

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**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
EASEMENT NO. E13575**

Reference No.	P2018-093
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	Tacoma Sportsmen's Club Inc.
Legal Description:	Portion of NW¼ and NE¼ of Section 30, Township 19N, Range 4 E, W.M., Pierce County, Washington.
Tax Parcel Nos.:	0419302044, 0419302000, and 0419301001

THIS INGRESS AND EGRESS AND UTILITIES EASEMENT AGREEMENT ("Easement Agreement") is entered into by the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power), a municipal corporation and political subdivision of the State of Washington, hereinafter referred to as "Grantor," and record owner of the Easement Area described in **Exhibit A**, and Tacoma Sportsmen's Club Inc., a Washington non-profit corporation, hereinafter referred to as "Grantee."

## RECITALS

A. Grantee has requested that Grantor grant to Grantee a non-exclusive easement across the Easement Area (the "Easement") for the express purpose of ingress and egress and installation and operation of utilities to benefit Grantee's abutting real property (the "Benefitted Property") as legally described in **Exhibit C**; and,

B. Grantor, for the consideration provided for below, is willing to grant and convey the Easement over the Easement Area to Grantee for the Permitted Purpose described below.

**NOW THEREFORE**, in consideration of the Terms, Conditions, and Covenants herein stated and the payment of Two Hundred and Thirty-Five Thousand Dollars (\$235,000.00) by Grantee to Grantor, Grantor does hereby grant to Grantee the Easement for the Permitted Purpose, across Grantor's real property legally described in **Exhibit A** (the "Easement Area") and depicted on **Exhibit B**.

Grantee is restricted to use of the Easement Area and is not authorized to use any other portions lying outside the Easement Area of Grantor's real property ("Grantor's Property") legally described in **Exhibit D**.

## Terms, Conditions, and Covenants.

This Easement is subject to the following Terms, Conditions, and Covenants.

1. **Covenants.** The terms and conditions of the herein Easement Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, personal representatives, devisees and heirs.
2. **Easement Term.** The Term of this Easement Agreement shall commence on the date of recording of the Easement Agreement with the Pierce County Auditor ("Date of Commencement") and shall run in perpetuity unless terminated pursuant to the terms and conditions set forth herein.
3. **Rights Granted.** The rights granted to Grantee are solely for the Permitted Purpose as described herein. No other use of the Easement Area is granted, nor shall Grantee enlarge the use thereof without the prior written permission of Grantor. The rights granted to Grantee are indivisible.
4. **Incorporation of Recitals.** The foregoing recitals are incorporated into this Easement Agreement as if fully rewritten here.
5. **Permitted Purpose.** Grantor grants the above-described right to use the Easement Area to Grantee for the express and sole purpose of crossing the Easement Area for ingress and egress and installation and operation of utilities in support of Grantee use of its Benefitted Property ("Permitted Purpose"). The ingress

and egress and utilities shall be restricted to the described Easement Area only. Moreover, the Easement rights granted herein shall not be maintained or extended to any portion of the Benefitted Property that may be sold or transferred subsequent to the Date of Commencement, nor shall the Easement rights extend to any third-party use of any portion of the Benefitted Property, e.g. by lease, permit, or license.

6. **Noninterference.** Grantee shall not damage or materially interfere with Grantor's use of the Easement Area, structures, or facilities. Except as otherwise specifically provided for herein, no structures of any type may be placed on the Easement Area, nor shall the Easement Area be barricaded, fenced or blocked by Grantee in any way.

7. **Easement Closure Risk.** Grantee assumes all risks and costs associated with any interference with Grantee's use of the Easement Area due to closures and blockages caused by events outside of Grantor's reasonable control including, but not limited to, environmental regulation, or natural disaster including, fire, flood, snow, slides, tree windthrow, or road washout, but not including closures and blockages due to Grantor's sole negligence. Grantor is not obligated to repair or unblock any part of the Easement Area described herein if Grantor determines use of the Easement Area is no longer safe or viable.

8. **Non-liability.** Grantor shall not be liable to Grantee or to any third-party entering upon the Easement Area to or in furtherance of any act or thing done in connection with the Permitted Purpose or other use of the Easement Area. Grantee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Purpose or other use of the Easement Area.

9. **Indemnification.** Grantee shall indemnify, defend, and hold harmless Grantor, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising directly or indirectly out of any act or omission of Grantee, its agents, contractors, licensees, invitees or guests and involving the subject matter of this Easement Agreement, and the construction, operation, maintenance, repair, and replacement of the improvements on the Easement Area and/or adjacent to Grantor's Property. The foregoing shall apply to any and all actual or alleged injury to persons (including death) and/or damage to property, except to the extent such injury or damage results from the fault of the Grantor and its officers, employees, agents or volunteers. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the Grantor.

10. **Environmental Liability.** By accepting this grant of Easement, Grantee assumes no liability for existing site conditions including any Hazardous Substances that may be present on, in, or under the Easement Area prior to the execution of this Easement Agreement; except that to the extent Grantee removes any soil, Grantee

shall pay for the removal of and disposal of such soil, whether or not it contains Hazardous Substances. Grantee assumes sole liability and shall be responsible for any remedial action costs incurred due to the release, or exacerbation of the release, of Hazardous Substances by Grantee, its officers, agents, employees, volunteers, subcontractors, invitees, licensees, or guests. "Hazardous Substance" as used in this Easement Agreement shall mean the presence of any substance or group of substances around, above, on, or in the soil of the Easement Area which, by its presence, triggers a remedial investigation or action, or which requires any excavated materials to be disposed of as anything other than clean fill. The meaning of "Hazardous Substance" shall also include without limitation, any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup. The terms of this Hazardous Substances provision have been mutually negotiated.

**11. Improvements.** Any and all road and utilities design, construction, maintenance, repair, or replacement occurring on or impacting the Easement Area must be approved in writing by Grantor prior to construction thereof. Such authorized improvements shall comply with all federal, state and local regulations. Grantee shall be solely responsible for any and all costs associated with the construction, maintenance, repair, replacement, or upkeep of any existing or future authorized improvements impacting the Easement Area. Grantor's review and approval is not intended as an engineering review or analysis. It shall remain the sole responsibility of Grantee to ensure adherence to all code and permitting requirements. Further, Grantor approval shall not be deemed consent, authorization, or acknowledgement that Grantee has obtained all required authorizations or that professional or engineering standards are sufficient or fit. Grantee's improvements shall, at Grantor's option, be removed at the termination of the Easement rights and the Easement Area restored, both at Grantee's sole expense.

In the event any of Grantor's improvements in the Easement Area are disturbed or damaged by Grantee's use, at Grantor's sole discretion and approval, Grantee shall reimburse Grantor all costs reasonably necessary to repair or restore the damaged improvements to a condition as good as or better than that which existed prior to the use.

**12. Waste.** Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area, except as approved by Grantor. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release or dispose of any Hazardous Substances, or other pollutants in or on the Easement Area except in accordance with all applicable laws. Grantee shall maintain the Easement Area in a clean, neat and orderly manner and will not create or permit any nuisance or waste, or allow the Easement Area to be used for any immoral or unlawful purpose.

13. **Warranty.** Grantor does not warrant its authority to grant the above-described use of the Easement Area, and Grantee agrees to secure any other rights needed for the lawful use of the Easement Area. Grantor expressly disclaims any representation or warranty that the Easement Area is suitable for any use.

14. **Prior Agreements.** The rights herein granted shall be subject to any prior agreements or contracts made or entered into by Grantor and further shall be subject to any subsequent agreements between city, state, or federal wildlife, fish, ecology, energy, or other regulatory agency having jurisdiction over the City of Tacoma's hydroelectric, transmission, water supply, and railway systems.

15. **Other Agency Regulations.** This Easement Agreement, Easement, Grantee, and Grantor, are at all times subject to provisions and requirements of federal, state, and local agencies and any future rules and regulations of these agencies or their successors or assigns. The rights granted herein are subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon the subject Easement Area by any regulating authority, including Grantor. Grantor reserves the right at any and all times to prescribe additional non-discriminatory rules and regulations for the conduct, operation, and maintenance of any or all the rights and privileges granted under the terms of this Easement Agreement.

16. **Non-Exclusive Rights.** This Easement is non-exclusive, and shall not prohibit Grantor from granting other rights of like or other nature to others, nor shall it prevent Grantor from using any of the subject Easement Area or affect its right to full supervision and control over all or any part of the Easement Area, none of which is hereby surrendered.

17. **No Protest of LID or ULID.** Grantee agrees it will not protest the formation of a Local Improvement District (LID) or Utility Local Improvement District (ULID) benefitting Grantor's Property except upon Grantor's written consent.

18. **No Protest of Development of Grantor's Property.** Grantee agrees it will not protest or otherwise oppose or object to the lawful subdivision and/or development of Grantor's Property and will reasonably cooperate in such efforts.

19. **Acknowledgement.** As a condition of this Easement Agreement, all parties hereto agree that each of Grantee, its successors and/or assigns, in order to be entitled to and benefit from the Easement shall acknowledge and accept the terms and conditions set forth in this Easement Agreement. Grantee's execution of this Easement Agreement shall be deemed acknowledgement of receipt.

20. **Termination.** Should any one or more of the following events of termination occur, Grantor may re-enter, retake possession of, and hold the Easement Area without compensation to Grantee or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of or damages to any premises or the improvements thereon abutting on said Easement

Area or any part thereof. Moreover, no compensation shall be due Grantee for termination of the Easement rights granted herein.

- a. **Failure of Acknowledgement.** If any of Grantee, its successors and/or assigns, fails to acknowledge and accept the terms and conditions of this Easement Agreement, then the Easement rights expressed herein shall automatically terminate with respect to the non-accepting party. In the event of such termination, all ingress and egress and utilities rights of said party to the Easement Area shall cease.
- b. **Failure or Breach.** In the event Grantee fails or breaches the terms and/or conditions of this Easement Agreement, Grantor reserves the right to terminate the rights granted herein; or to reconcile or cause a remedy in order to cure said failure or breach of the Easement Agreement. Such actions shall be at the sole discretion of Grantor. If said remedies to cure a failure or breach of this Easement Agreement are not forthcoming, Grantee shall have the right to create a remedy, which must be acceptable to, and approved in writing by Grantor within 180-days from written notice by Grantor, else the Easement rights shall be terminated after a 180-day notice.
- c. **Abandonment of Easement Area.** Should Grantee fail to use the Easement Area, or any part thereof, as provided for herein for a period exceeding one (1) year, the Easement and all rights associated with said Easement shall automatically terminate.
- d. **Change in Use of Benefitted Property.** Should Grantee change the use of the Benefitted Property inconsistent with either the objectives of the Tacoma Sportsmen's Club or limitations as a Washington non-profit corporation, the Easement rights shall automatically terminate.
- e. **Sale or Transfer of Benefitted Property.** Should Grantee sell or transfer any portion of the Benefitted Property, the Easement rights shall automatically terminate as to such portion sold or transferred.
- f. **Establishment of Alternative Public Access to Benefitted Property.** Should alternative public access be developed across or through Grantor's Property between the Benefitted Property and either Canyon Road East or Military Road East, or any future extension(s) thereof, the Easement rights shall automatically terminate.
- g. **Taking.** If the Easement Area, or any portion thereof, should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), the Easement rights shall terminate as to the portion of the Easement Area taken when the physical taking of the Easement Area occurs, and Grantor shall have no liability to Grantee for its loss of use of the Easement Area. If any portion of the Easement Area is



subject to a Taking, Grantee may terminate occupation and use of such portion of the Easement Area, but continue use and occupation as to the remaining Easement Area but without abatement of any obligations due Grantor herein. Moreover, Grantee disclaims interest in any award of Just Compensation in the event of a Taking.

**21. Miscellaneous.**

- a. **Notices.** Any and all notices, demands or requests required or permitted hereunder shall be in writing and delivered through personal delivery; or email transmission (with receipt confirmed via reply by the recipient) or two (2) business days after being deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid; or one (1) business day after being deposited with any commercial air courier or express service, next day delivery, addressed as follows:
- 1) Grantor: Tacoma Power  
Real Property Services  
3628 South 35<sup>th</sup> Street  
ABS – 2<sup>nd</sup> Floor  
Tacoma, WA 98409  
Telephone: 253.502.8256  
E-mail: [gmuller@cityoftacoma.org](mailto:gmuller@cityoftacoma.org)
- 2) Grantee: Tacoma Sportsmen's Club  
Attention: President  
16409 Canyon Road East  
Puyallup, WA 98375  
Telephone: 253.537.6151  
E-mail: [TSC1933@outlook.com](mailto:TSC1933@outlook.com)
- b. **Further Assurances.** The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Easement Agreement.
- c. **Entire Agreement.** This Easement Agreement contains all of the terms and conditions relating to the Easement and supersedes and replaces all oral and/or written proposals and agreements heretofore made on the subject matter. This Easement Agreement may be modified only by a written document signed by the parties hereto or their respective successors or assigns.
- d. **Attorneys' Fees.** In the event of any litigation relating to this Easement Agreement or the breach thereof, the substantially prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees and all of the costs and expenses of litigation.

- e. **Exhibits.** All exhibits attached to this Easement Agreement are incorporated in and made a part of this Easement Agreement by reference.
- f. **Governing Law.** This Easement Agreement shall be construed and enforceable in accordance with, and governed by, the laws of the State of Washington.
- g. **Counterparts.** This Easement Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- h. **Severability.** If any clause, sentence, or other portion of the terms, conditions and covenants of this Easement Agreement are held, to any extent, to be invalid or unenforceable, the remainder of this Easement Agreement shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
- i. **Assignment.** Grantee shall not assign, subcontract, delegate, or transfer any obligation, interest, or claim to or under this Easement Agreement without the prior written consent of Grantor.
- j. **Waiver.** A waiver or failure by either Grantor or Grantee to enforce any provision of this Easement Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision.

**[Remainder of Page Intentionally Left Blank]**

P2018-093/E13575

TACOMA POWER

TACOMA SPORTSMEN'S CLUB INC.

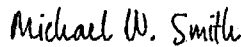
BY:

  
Jackie Flowers,  
Director of Utilities

ACCEPTED BY:

  
\_\_\_\_\_  
President,  
Tacoma Sportsmen's Club Inc.

Approved as to form:

  
\_\_\_\_\_  
Michael W. Smith,  
Deputy City Attorney

P2018-093/E13575

Authorized:

*Chris Robinson*

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Chris Robinson,  
Power Superintendent

Reviewed:

*Joseph Wilson*

---

Joseph A. Wilson,  
Transmission and Distribution Manager

*John Nierenberg*

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John Nierenberg,  
Transmission and Distribution Assistant Manager

*Andrew Cherullo*

ES SL

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Andy Cherullo,  
Director of Finance

Legal Description Approved:

*Jeff Singleton*

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Jeff Singleton,  
Chief Surveyor

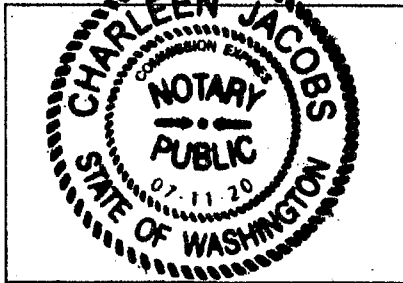
P2018-093/E13575

STATE OF WASHINGTON     )  
  ) SS  
COUNTY OF PIERCE     )

On July 10, 2020 before me personally appeared Jackie Flowers, to me known to be the Director of Utilities of the City of Tacoma, Department of Public Utilities, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the City of Tacoma for the uses and purposes herein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Place Notary Seal in Box



Charleen Jacobs  
Notary Public in and for the  
State of Washington  
Residing in University Place

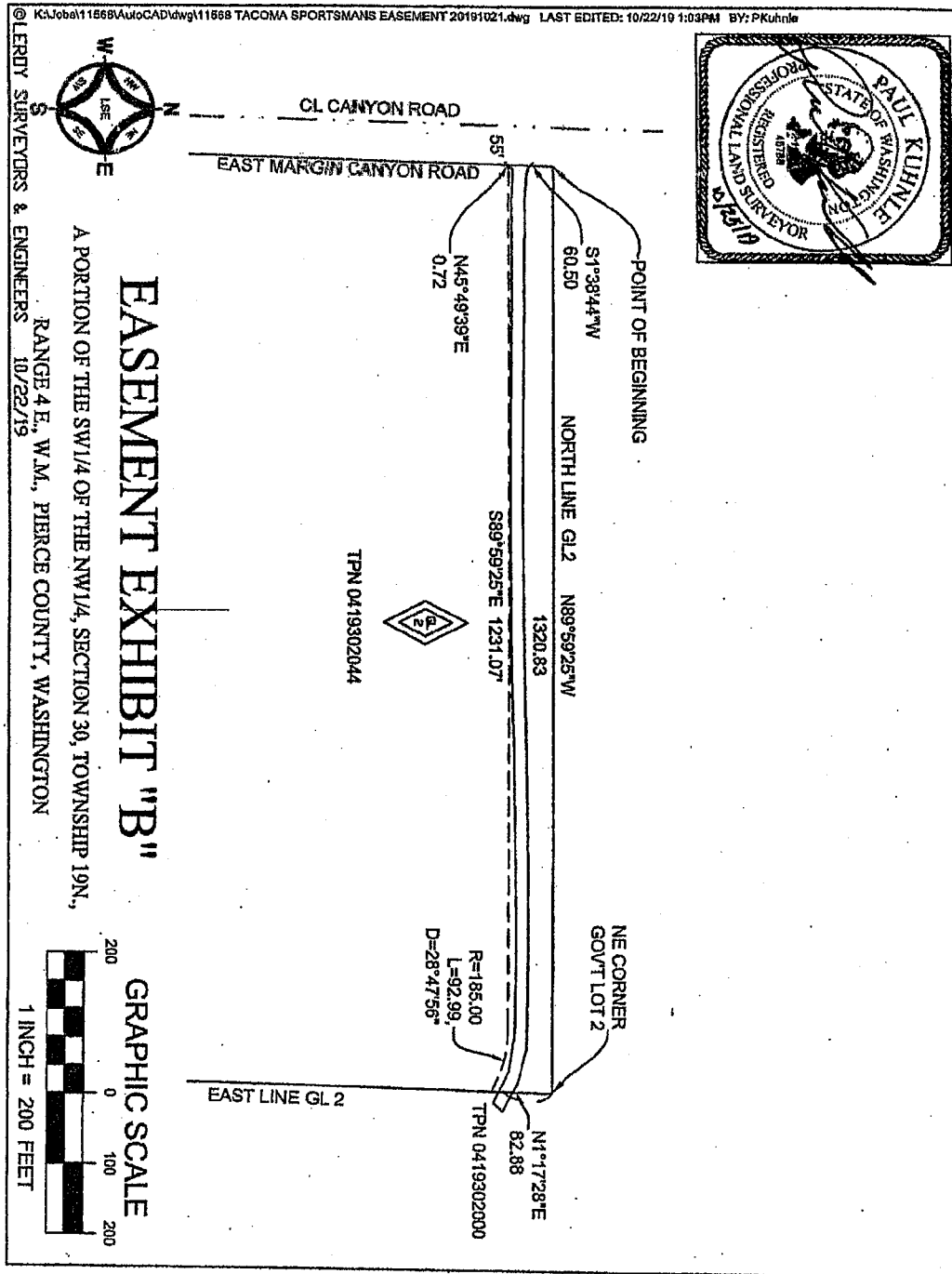
**EXHIBIT A****EASEMENT AREA LEGAL DESCRIPTION**

THAT PORTION OF GOVERNMENT LOT 2, SECTION 30, TOWNSHIP 19 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 2 AND THE EAST MARGIN OF CANYON ROAD EAST, ALSO BEING THE NORTHWEST CORNER OF REVISED PARCEL B, PIERCE COUNTY BOUNDARY LINE ADJUSTMENT 832695, AS RECORDED UNDER RECORDING NUMBER 201607085001, RECORDS OF PIERCE COUNTY, WASHINGTON;  
THENCE ALONG THE EAST MARGIN OF CANYON ROAD EAST, S01°38'44"W, FOR 60.50 FEET;  
THENCE LEAVING SAID EAST MARGIN OF CANYON ROAD EAST, N45°49'39"E FOR 0.72 FEET;  
THENCE PARALLEL WITH AND 60.00 FEET SOUTH OF THE NORTH LINE OF SAID GOVERNMENT LOT 2, S89°59'25"E FOR 1231.07 FEET TO THE BEGINNING POINT OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 185.00 FEET AND A CENTRAL ANGLE OF 28°47'56";  
THENCE ALONG SAID CURVE TO THE RIGHT FOR AN ARC DISTANCE OF 92.99 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 2; THENCE ALONG SAID EAST LINE N01°17'28"E A DISTANCE OF 82.88 FEET TO THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 2; THENCE ALONG THE NORTH LINE THEREOF N89°59'25"W FOR 1320.83 FEET, MORE OR LESS, TO THE POINT OF BEGINNING



## EXHIBIT B

EASEMENT AREA DEPICTION  
(not to scale)

**EXHIBIT C**

**BENEFITTED PROPERTY LEGAL DESCRIPTION**

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, ALL OF SECTION 30, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M., IN PIERCE COUNTY, WASHINGTON OWNED BY THE GRANTEE ON THE COMMENCEMENT DATE REFERENCED HEREIN.



**EXHIBIT D**

**GRANTOR'S PROPERTY LEGAL DESCRIPTION**

REVISED PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201607085001, DESCRIBED AS FOLLOWS:

GOVERNMENT LOT 2 OF SECTION 30, TOWNSHIP 19 NORTH, RANGE 4 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON.

EXCEPT THE WEST 20 FEET FOR ROAD.

ALSO EXCEPT THOSE PORTIONS CONVEYED TO PIERCE COUNTY BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NOS. 8604150281 AND 201006010129, RECORDS OF PIERCE COUNTY, WASHINGTON.

ALSO EXCEPT THAT PORTION CONVEYED TO WGW, INC. BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 201607150389, RECORDS OF PIERCE COUNTY, WASHINGTON.



City of Tacoma, WA



**TACOMA POWER**  
**TRANSMISSION & DISTRIBUTION**  
**REQUEST FOR PROPOSALS**  
**REAL ESTATE BROKER SERVICES**  
**SPECIFICATION NO. PT18-0350F**





**City of Tacoma  
Tacoma Power / Transmission & Distribution**

**REQUEST FOR PROPOSALS PT18-0350F  
Real Estate Broker Services**

**Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, December 11, 2018**

**Submittal Delivery:** Sealed submittals will be received as follows:

**By Carrier:**

City of Tacoma Procurement & Payables Division  
Tacoma Public Utilities  
3628 S 35<sup>th</sup> Street  
Tacoma, WA 98409

**In Person:**

City of Tacoma Procurement & Payables Division  
Tacoma Public Utilities Lobby Security Desk  
Administration Building North – Main Floor  
3628 S 35<sup>th</sup> Street  
Tacoma, WA 98409

**By Mail:**

City of Tacoma Procurement & Payables Division  
Tacoma Public Utilities  
PO Box 11007  
Tacoma, WA 98411-0007

**Note: This is a change in location for in-person deliveries.**

**Submittal Opening:** Sealed submittals in response to a RFB will be opened by a Purchasing representative and read aloud during a public bid opening held in Conference Room M-1, located on the main floor in the same building. Submittals in response to an RFP or RFQ are recorded as received but are not typically opened and read aloud. After 1:00 p.m. the day of bid opening, the names of vendors submitting proposals are posted to the website for public viewing.

**Solicitation Documents:** An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org).

- [Register for the Bid Holders List](#) to receive notices of addenda, questions and answers and related updates.
- Click here to see a [list of vendors registered for this solicitation](#).

**Pre-Proposal Meeting:** A pre-proposal meeting will not be held.

**Project Scope:** The City of Tacoma, Tacoma Power is soliciting proposals for an experienced real estate broker/brokerage team to assist with selling the Tacoma Power Frederickson Industrial Site.

**Estimate:** N/A

**Paid Leave and Minimum Wage:** Effective February 1, 2016, the City of Tacoma requires all employers to provide paid leave and minimum wages, as set forth in Title 18 of the Tacoma Municipal Code. For more information visit [www.cityoftacoma.org/employmentstandards](http://www.cityoftacoma.org/employmentstandards).

**Additional Information:** Requests for information regarding the specifications may be obtained by contacting Doreen Klaaskate by email to [dklaaskate@cityoftacoma.org](mailto:dklaaskate@cityoftacoma.org).

**Protest Policy:** City of Tacoma protest policy, located at [www.tacomapurchasing.org](http://www.tacomapurchasing.org), specifies procedures for protests submitted prior to and after submittal deadline.



Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.

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Request for Proposals Page

Submittal Checklist

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- A. Project Overview
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- C. Inquiries to RFP
- D. RFP Revisions
- E. Calendar of Events
- F. Contract Term
- G. Responsiveness
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- I. Acceptance of Proposal Contents
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- O. Content to be Submitted
- P. Evaluation Criteria
- Q. Interviews / Oral Presentations
- R. Award

### **Appendix A**

- Signature Page
- Contractor's Pre-Work Form


### **Appendix B**

- Standard Terms and Conditions
- Sample Contract
- Insurance Requirements

## SUBMITTAL CHECK LIST

This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and not be considered for award.

Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposal page.

<b>The following items make up your submittal package:</b>	
One original, four copies and one electronic copy (flash drive) of your complete submittal package (with original and copies clearly identified)	
Signature Page – Appendix A	
Contractor's Pre-Work Form - Appendix A	
Information in O - Content To Be Submitted	
<b>After award, the following documents will be executed:</b>	
Professional Services Contract	
Certificate of Insurance and related endorsements	

## **SECTION 1 – PROJECT INFORMATION AND REQUIREMENTS**

### **A. PROJECT OVERVIEW**

The City of Tacoma, acting through its Real Property Services, will be selling a City-owned parcel of real property commonly known as the Tacoma Power Frederickson Industrial Site, 16515 Canyon Road East, in unincorporated Pierce County, WA. The Tacoma Power Frederickson Industrial Site is listed by the Pierce County Assessor-Treasurer as Tax Parcel No. 0419302044. The property is 31.5 acres, zoned Community Employment within the Frederickson Community Plan.

The City desires to select as its Contractor an experienced real estate broker/brokerage team to assist with selling of the Tacoma Power Frederickson Industrial Site at a fair market value commensurate with its highest and best use that is compatible with the current Frederickson Community Plan, preferably prior to Pierce County's proposed update to the community plan. The City will base its selection of a Contractor on the Evaluation Criteria set forth in these specifications.

The City will be responsible for drafting the real estate purchase and sale agreement ("PSA") for use in selling the Tacoma Power Frederickson Industrial Site. The PSA will be drafted by the City Attorney's office using information contained in purchase offer term sheets, letters of intent, or other appropriate documentation received from prospective purchasers and submitted by the Contractor to the City and will include proposed terms and conditions to be incorporated into the PSA. Standard form CBA or MLS purchase and sale agreements may be submitted as a purchase offer, but will not be utilized as the final PSA.

The City will also be responsible for drafting the Professional Services Contract ("Contract") which will serve as the listing agreement. See Section F. below for Contract term. At termination or expiration of the Contract, City and Contractor will have no further obligation to each other except as provided therein (e.g., in case of a pending sale). The Contract will be in substantially the same form as the sample contract attached hereto in Appendix B.

### **B. DELIVERABLES**

1. The selected Contractor must be able to assign at least one licensed commercial real estate broker with a minimum of 5 years demonstrated industrial land experience to provide the services required by the City.
2. Listing the property on the Commercial Broker's Association (CBA) web service.
3. Listing the property on the Contractor's website, Costar and possibly other sources deemed appropriate.
4. Providing flyer and other written sales information to the City for inclusion in the City's surplus website(s).
5. Utilizing the Contractor's real estate industry network including, but not limited to, other real estate firms, members of CBA, Pierce County Economic Development Department, Economic Development Board for Tacoma-Pierce County, and prospective buyers to advertise and promote the sale of property within 10 business days of entering into the Contract.

6. Posting For-Sale signs located in prominent locations and easily visible from nearby rights of way.
7. Providing guidance and assistance for preparing the property for sale, including any studies that may be needed and disclosure documents and items.
8. Showing the property to interested buyers providing viewing opportunities and inspection.
9. Providing relevant information to the City regarding any third-party site visits and feedback on prospective buyers' background and level of interest.
10. Communicating to the market and potential buyers the City's selection process and criteria for evaluating offers for the property, as well as, the City's objectives and goals for the sale and redevelopment of the property. The City's requirements, objectives, community goals, and evaluation criteria will be provided to the Contractor for dissemination to prospective buyers, if necessary, to facilitate a sale.
11. Otherwise assist in the negotiation and sale of the property as directed by the City.
12. Attend and answer any relevant questions from the Tacoma Public Utility Board and/or Tacoma City Council regarding the property, buyer and/or sale terms.

#### **C. INQUIRIES TO RFP**

No pre-proposal conference is being held; however, questions and requests for clarification of the specifications may be submitted in writing by **3:00 p.m., Pacific Time, Tuesday, November 27, 2018**, to Doreen Klaaskate, Purchasing Division, via email to [dklaaskate@cityoftacoma.org](mailto:dklaaskate@cityoftacoma.org). No further questions will be accepted after this date and time. The City will not be responsible for unsuccessful submittal of questions and requests.

Written answers to all questions and requests for clarification timely submitted will be posted on the Purchasing website at [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org) on or about **Tuesday, December 4, 2018**. The City reserves the discretion to group similar questions and requests for clarification to provide a single answer or not to respond when the requested information is confidential. The answers are not typically considered an addendum.

#### **D. RFP REVISIONS**

In the event it becomes necessary to revise any part of this RFP, addenda will be issued to all registered planholders and posted on the Purchasing website.

#### **E. CALENDAR OF EVENTS**

The anticipated schedule of events concerning this RFP is as follows:

Pre-Proposal Questions/Requests for Clarification	<b>November 27, 2018</b>
Response to Questions/Requests for Clarification	<b>December 4, 2018</b>
Submittal Due Date	<b>December 11, 2018</b>
Submittals evaluated	<b>December 12- December 19, 2018</b>
Interviews/presentations, if conducted	<b>December 20, 2018</b>

Award recommendation  
Public Utility Board/City Council approval

**December 21, 2018**  
**To Be Determined**

Contract may be issued after Public Utility Board and/or City Council approval.

This is a tentative schedule only and may be altered at the sole discretion of the City.

#### **F. CONTRACT TERM**

The Contract will be for an initial one-year term with the option in the sole discretion of the City to renew the Contract on an annual basis for up to four additional one-year terms. The City reserves the right to terminate the Contract for any reason, by written notice, as stipulated in the Contract.

#### **G. RESPONSIVENESS**

Respondents agree to provide 60 days for acceptance from the submittal deadline.

All submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. Failure to comply with any part of this RFP may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed to be immaterial.

The final selection, if any, will be that proposal which, after review of submissions and potential interviews, in the sole judgement of the City, best meets the requirements set forth in this RFP.

#### **H. COSTS TO PREPARE SUBMITTAL**

The City is not liable for any costs incurred by Respondents for the preparation of materials or a proposal submitted in response to this RFP, for conducting any presentations to the City, or any other activities related to responding to this RFP.

#### **I. ACCEPTANCE OF PROPOSAL CONTENTS**

The Proposal contents of the selected Respondent will become contractual obligations if a contract ensues.

#### **J. CONTRACT OBLIGATION**

The selected Respondent must execute a Professional Services Contract. The Contract will be in substantially the same form as the sample contract attached hereto in Appendix B. As part of the negotiation process, Respondent may propose amendments to the Contract, but the City, in its sole discretion, will decide whether to open discussion on any proposed amendment.

#### **K. PARTNERSHIPS**

The City will allow firms to partner in order to respond to this RFP. Respondents may team under a Prime Respondent's submittal in order to provide responses to all sections in a single submission; however, each Respondent's participation must be clearly delineated by section. The Prime Respondent will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Respondent. All contract payments will be made only to the Prime Respondent.



Any agreements between the Prime Respondent and other companies will not be a part of the agreement between the City and the Prime Respondent. The City reserves the right to select more than one Prime Respondent.

#### **L. COMMITMENT OF FIRM KEY PERSONNEL**

The selected Respondent agrees that the key personnel identified in its submittal or during contract negotiations as committed to this project will, in fact, be the key personnel to perform during the life of the Contract. Should key personnel become unavailable for any reason, the selected Respondent shall provide suitable replacement personnel, subject to the approval of the City. Substantial organizational or personnel changes within the firm are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract. Specific language pertaining to personnel substitution is contained within the sample contract in Appendix B.

#### **M. PROPOSAL FORMAT AND PRESENTATION**

Proposals must be clear, succinct, and should not exceed 10 double sided pages, excluding front and back cover and required City of Tacoma forms and attachment materials.

Respondents are encouraged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, whenever possible. Standard company brochures and resumes are allowed.

#### **N. CONFIDENTIAL OR PROPRIETARY INFORMATION**

Information that is confidential or proprietary must be clearly marked on each affected page. Further, an index must be provided indicating the affected page number(s) and location(s) of all such identified material. Information not included in said index will not be reviewed for confidentiality or as proprietary before release.

#### **O. CONTENT TO BE SUBMITTED**

Respondents are to provide complete and detailed responses to all items below. Submittals that are incomplete or conditioned in any way that contain alternatives or items not called for in this RFP, or not in conformity with law, may be rejected as being non-responsive. The City will not accept any proposal containing a substantial deviation from the requirements outlined in this RFP.

Organization of the submittal shall follow the sequence of contents below so that essential information can be located easily during evaluation.

In order to be deemed responsive to this RFP, Proposers must submit the following information:

##### **1. Required Information**

Please provide the following information in your proposal.

**Representatives:** Provide the name and contact information of the brokerage and each brokerage team member that would be assigned to provide services to the City for the Contract.

The names and number of years the firm has been in business under current or previous names or additional assumed business names. The name and title of the person authorized to execute a contract on behalf of the firm.

- **Experience:** Provide biographical information and resumes outlining the relevant experience and track records of the brokerage and brokerage team members for similar projects and discuss generally the real estate transactions completed by those team members within the last 3 years in the greater Tacoma/Pierce County area. Provide documentation establishing successful representation of similar industrial sales/acquisitions with individual transactions over at least the past 3 years. The name and resume of each individual assigned to this project and the individual assigned to back up the primary person in his/her absence and similar information concerning each individual to be provided by subcontract.
- **Legal:** The caption, cause number, court, legal counsel and general summary of any litigation pending or judgment rendered within the past 3 years against the Proposer.

Note the extent, if any, to which the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal, State or local funds; is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any agency; has been suspended, debarred, voluntarily excluded or determined ineligible by any agency within the past 3 years; does have a proposed debarment pending; has been indicted, convicted or has a civil judgment rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct within the past 3 years.

- **Licensing.** Provide documentary evidence that the brokerage and each brokerage team member are duly licensed in the state of Washington to legally provide the services requested by the City for this project.
- **Commission/Fees:** Provide the commission/fee structure proposed for this Contract, listing specifically any percentage commission/fee split between the buyer's broker and the seller's broker.
- **Comparative Market Analysis/Broker's Price Opinion:** Provide the City with a Comparative Market Analysis (CMA) or Broker's Price Opinion (BPO) of the Tacoma Power Frederickson Industrial Site that assesses its fair market value, probable time on the market and a financial return projection for the City with regard to each option.
- **Marketing Strategy and Plans:** Provide the City with a recommended marketing strategy and marketing plan that describes in detail how the Contractor proposes to market the property.

Any additional services or procedures of benefit to the City not specifically required herein, which the Contractor offers to provide.

References listing customers with similar requirements.

## 2. Small Business Enterprise

Please provide answers to the questions below in your proposal. A "yes" answer to any of the questions below will result in the award of five (5) points.

- Is your firm a certified City of Tacoma SBE firm?
- Is your firm partnering with a certified City of Tacoma SBE firm(s)?
- Is your firm a minority/woman owned firm certified with the Washington State Office of Minority and Women's Business Enterprise?
- Is your firm partnering with a minority/woman owned firm certified with the Washington State Office of Minority and Women's Business Enterprise?

## P. EVALUATION CRITERIA

A Selection Advisory Committee (SAC) will review and evaluate submittals. After the evaluation, the SAC may conduct interviews of the most qualified Respondents before final selection.

The SAC may select one or more Respondents to provide the services required.

Submittals will be evaluated on the following criteria:

Criteria	Points
The experience of the firm, length of time in business, past relevant services provided to the City of Tacoma, and other matters relating to relevant experience.	25
Commission/fee structure	25
The firm's approach to this work, including compliance with requirements, innovative offerings, services offered and other related matters.	20
The ability of the firm to service this account based on the contemplated scope of work.	15
Marketing and Advertising Plan	10
Small Business Enterprise	5
Total points possible	100

The SAC may use references to clarify information in the submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.

#### **Q. INTERVIEWS / ORAL PRESENTATIONS**

An invitation to interview may be extended to Respondents based on Selection Advisory Committee review of the written submittals. The SAC reserves the right to adjust scoring based on additional information and/or clarifications provided during interviews. The SAC may determine scoring criteria for the interviews following evaluation of written submittals.

The City reserves all rights to begin contract negotiations without conducting interviews.

Respondents must be available to interview within three business days' notice.

#### **R. AWARD**

After the Respondent is selected by the SAC and prior to award, all other Respondents will be notified in writing by the Purchasing Division.

Once a Respondent is selected by the SAC, contract negotiations with the selected Respondent will begin, and if a Contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council.

# **APPENDIX A**

Signature Page

Prime Contractors Pre-Work Form

**SIGNATURE PAGE**

**CITY OF TACOMA**  
**Tacoma Power / Transmission & Distribution**

All submittals must be in ink or typewritten and must be executed by a duly authorized officer or representative of the bidding/proposing entity. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

Submittals will be received and time stamped only at the City of Tacoma Purchasing Division, located in the Tacoma Public Utilities Administration Building North, Main Floor, at 3628 South 35<sup>th</sup> Street, Tacoma, WA 98409. **See the Request for Proposals page near the beginning of the specification for additional details.**

**REQUEST FOR PROPOSALS SPECIFICATION NO. PT18-0350F**  
**Real Estate Broker Services**

The undersigned bidder/proposer hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The bidder/proposer agrees, by submitting a bid/proposal under these specifications, that in the event any litigation should arise concerning the submission of bids/proposals or the award of contract under this specification, Request for Bids, Request for Proposals or Request for Qualifications, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

**Non-Collusion Declaration**

*The undersigned bidder/proposer hereby certifies under penalty of perjury that this bid/proposal is genuine and not a sham or collusive bid/proposal, or made in the interests or on behalf of any person or entity not herein named; and that said bidder/proposer has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a bid/proposal; and that said bidder/proposer has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).*

\_\_\_\_\_  
 Bidder/Proposer's Registered Name

\_\_\_\_\_  
 Signature of Person Authorized to Enter      Date  
 into Contracts for Bidder/Proposer

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Printed Name and Title

\_\_\_\_\_  
 City, State, Zip

\_\_\_\_\_  
 (Area Code) Telephone Number / Fax Number

\_\_\_\_\_  
 E-Mail Address

\_\_\_\_\_  
 State Business License Number  
 in WA, also known as UBI (Unified Business Identifier) Number

\_\_\_\_\_  
 E.I. No. / Federal Social Security Number Used on Quarterly  
 Federal Tax Return, U.S. Treasury Dept. Form 941

\_\_\_\_\_  
 State Contractor's License Number  
 (See Ch. 18.27, R.C.W.)

Addendum acknowledgement #1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_ #4 \_\_\_\_\_ #5 \_\_\_\_\_

**THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.**



City of Tacoma  
Community & Economic Development  
Office of Small Business Enterprise  
747 Market Street, Room 900  
Tacoma, WA 98402  
253-591-5224 or 253-573-2435

## PRIME CONTRACTOR'S PRE-WORK FORM

Company Name \_\_\_\_\_

Telephone \_\_\_\_\_

Address/City/State/Zip Code \_\_\_\_\_

Specification Number \_\_\_\_\_

Specification Title \_\_\_\_\_

JOB CATEGORIES SPECIFY	TOTAL EMPLOYEES		TOTAL MINORITY EMPLOYEES		BLACK		ASIAN or PACIFIC ISLANDER		AMERICAN INDIAN or ALASKAN NATIVE		HISPANIC	
	M	F	M	F	M	F	M	F	M	F	M	F
Officer / Managers												
Supervisors												
Project Managers												
Office / Clerical												
Apprentices												
Trainees												
<b>TOTALS</b>												

### CONTRACTOR'S PROJECTED WORK FORCE - THIS PROJECT

Superintendent												
Foreman												
Operators												
Laborers												
Apprentice												
Trainee												
<b>TOTALS</b>												

\_\_\_\_\_  
Type or Print Name of Responsible Officer / Title

\_\_\_\_\_  
Signature of Responsible Officer

\_\_\_\_\_  
Date

## INSTRUCTIONS FOR COMPLETING PRIME CONTRACTOR'S PRE-WORK FORM

***This form only applies to employees who will be working on this specific project.***

1. "Heading" the company name and address should reflect the subcontractor actually doing business with the City of Tacoma. If this address is different from that of the Equal Employment Opportunity Officer that administers the EEO programs of the company, the Equal Employment Opportunity Officer's address should be noted in the "Comments" section at the bottom of the form. "Telephone" should contain the area code, telephone number and extension (if any) for the Equal Employment Officer or the responsible official.
2. "Job Categories" at the extreme left hand column of the form specifying "Job Categories" lists "Officials & Managers." You are to list in addition to Officials & Managers any appropriate job titles such as Sales Workers, Office/Clerical, Professionals, Technical, etc., as they apply to your own company and only as pertains to this specific project.
3. The "M" and "F" headings at the top of each column refer to "Male" and "Female."
4. The "Total Employees" column should list the total number of male employees under "M" and the total female number of female employees under "F" for each job category listed. They should be listed in a similar manner in the "Total" category at the bottom of the form. The "Total Employees" column should include all those employees listed under "Non-Minority" and "Total Minorities." "Non-Minority" should include all employees not listed in the minority columns.
5. "Total Minorities" should include all employees listed under the "Black," "Asian or Pacific Islander" (A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.), "American Indian or Alaskan Native," and "Hispanic" columns. These columns should include only employees who are members of that particular minority group. Designation and definitions of ethnic/national origin status follow the instructions and definitions of the Federal EEO-1 Form of the U. S. Equal Employment Opportunity Commission.
6. "Totals" this line should reflect the total of all lines in each of the above columns.
7. The signature of your company's designated responsible official or similar official responsible for equal employment opportunity must appear in the designated space at the bottom of the form. Please PRINT OR TYPE the person's name on the top line across from the signature. This is required since some signatures are difficult to read.
8. "Comments" this section is to be used as needed for explanations to underutilization rate or lack of turnover, proposed expansion or reduction of staff or any other pertinent information you believe will help clarify or explain the data presented on the form. If you need additional space, please explain on a separate sheet of paper.
9. If you need assistance or have questions regarding the completion of this form, please call the SBE Office at 253-591-5224 or 253-573-2435. TMC 1.07 can be viewed at:  
<http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title01-AdministrationAndPersonnel.PDF>



## **APPENDIX B**

Standard Terms and Conditions

Sample Contract

Insurance Requirements

**CITY OF TACOMA  
STANDARD TERMS AND CONDITIONS  
GOVERNS BOTH GOODS AND SERVICES AS APPLICABLE**

In the event of an award by the City, these Terms and Conditions stated herein, Additional Contract Documents if issued, Solicitation if issued, Purchase Orders if issued by City, and Supplier's Submittal, if provided, shall constitute the Contract between City and Supplier for the acquisition of goods, including materials, supplies, and equipment or for the provision of services and deliverables.

Said documents represent the entire Contract between the parties and supersede any prior oral statements, discussions, or understandings between the parties, and/or subsequent Supplier invoices. No modification of the Contract shall be effective unless mutually agreed in writing.

The specific terms and conditions of any Solicitation (Specification, Request for Bids, Request for Proposals, Requests for Qualifications, Requests for Quotations, Request for Information, bid documents, request to enter into negotiations, or other form of solicitation issued by City, including any general, special, or technical provisions associated with such Solicitations) are incorporated herein by reference and supersede these Terms and Conditions where there is conflict or inconsistency.

In the event Additional Contract Documents are negotiated and agreed to in writing between Supplier and City, the specific terms of such Additional Contract Documents are incorporated herein by reference and supersede all other terms and conditions where there is conflict or inconsistency.

These Terms and Conditions, Additional Contract Documents if issued, Solicitation if issued, City purchase order if issued, are controlling over Supplier's Submittal if a Submittal is provided. Submittals if provided are incorporated herein by reference.

**1.01 SUPPLIER / CONTRACTOR**

As used herein, "Supplier" or "Contractor" shall be the Supplier(s) entering a Contract with City, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise.

**1.02 SUBMITTAL**

Submittal means Bids, Proposals, Quotes, Qualifications or other information, content, records or documents submitted in response to a City Solicitation.

**1.03 FORMS OF SUBMITTAL**

Unless stated otherwise, all submittals must be in SAP Ariba and submitted exactly as specified or directed, and all required forms must be used.

**1.04 COSTS TO PREPARE SUBMITTAL**

The City is not liable for any costs incurred by Supplier for the preparation of materials or a Submittal provided in response to a solicitation, conducting presentations to the City, or any other activities related to responding to the City's Solicitation.

**1.05 LICENSES/PERMITS**

- A. Suppliers must have a Washington state business license at the time of Submittal and throughout the term of the Contract. Failure to include a Washington state business license may be grounds for rejection of the Submittal. Information regarding Washington state business licenses may be obtained at <http://bls.dor.wa.gov>.
- B. Upon award, it is the responsibility of the Supplier to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, 253-591-5252, [https://www.cityoftacoma.org/government/city\\_departments/finance/tax\\_and\\_license/](https://www.cityoftacoma.org/government/city_departments/finance/tax_and_license/). Supplier shall obtain a business license as is required by Tacoma Municipal Code Subtitle 6C.20.
- C. During the term of the Contract, Supplier, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

**1.06 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION**

- A. Supplier Submittals, all documents and records comprising the Contract, and all other documents and records provided to the City by Supplier are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose the Contract and documents or records related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Supplier has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Supplier 10 days' written notice of impending release. Should legal action thereafter be initiated by Supplier to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Supplier, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. City shall not be liable for any release where notice was provided and Supplier took no action to oppose the release of information.
- B. If Supplier provides City with records or information that Supplier considers confidential or proprietary, Supplier must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary." Further, in the case of records or information submitted in response to a Request for Proposals, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Supplier fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and Supplier expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s).
- C. Submission of materials in response to City's Solicitation shall constitute assent by Supplier to the foregoing procedure and Supplier shall have no claim against the City on account of actions taken pursuant to such procedure.

**1.07 SUSTAINABILITY**

- A. The City has interest in measures used by its contractors to ensure sustainable operations with minimal adverse impact on the environment. The City seeks to do business with vendors that value community and environmental stewardship that help us meet our sustainable purchasing goals.
- B. The City encourages the use of environmentally preferable products or services that help to minimize the environmental and human health impacts of City operations. Suppliers are encouraged to incorporate environmentally preferable products or services into Submittals wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- C. Environmental Standards. The City seeks to ensure that all purchases comply with current environmental standards and product specifications. Where appropriate, third party independent certifiers such as Green Seal and USEPA Standards shall be a minimum specification for products to the City, unless specified otherwise herein.
- D. The City encourages the use of sustainability practices and desires any awarded Suppliers to assist in efforts to address such factors when feasible for:
  - 1. Pollutant releases
  - 2. Toxicity of materials used
  - 3. Waste generation
  - 4. Greenhouse gas emissions, including transportation of materials and services
  - 5. Recycle content
  - 6. Energy consumption
  - 7. Depletion of natural resources
  - 8. Potential impact on human health and the environment

**1.08 ALTERATIONS NOT ALLOWED**

Except as otherwise specifically provided in a Solicitation, Submittals that are incomplete or conditioned in any way, contain erasures, alternatives or items not called for, or not in conformity with law, may be rejected as being non-responsive. Any attempt to condition a Submittal by inserting exceptions to the Solicitation or any conditions, qualifications or additions that vary its terms may result in rejection of the Submittal. The City may reject any submittal containing a material deviation from the Solicitation.

**1.09 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS**

- A. The City reserves the right to correct obvious errors in Supplier's Submittal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.
- B. Supplier shall notify the City of Tacoma Procurement and Payables Division in writing of any ambiguity, conflict, discrepancy, omission or other error in a Solicitation no later than five business days prior to the submittal deadline.
  - 1. For solicitations conducted in SAP Ariba, Supplier shall notify the City of Tacoma Procurement and Payables Division on the message board of the event.
  - 2. For all other solicitations, Supplier shall notify the contract person listed in the Solicitation.
- C. The City will make necessary modifications by addendum.
- D. Supplier is responsible for identifying ambiguities, conflicts, discrepancies, omissions or other errors in the Solicitation prior to providing its Submittal or the ambiguity, conflict, discrepancy, omission, or other error is waived. Any Submittal that includes assumed clarifications and/or corrections without the required authentication of the same is subject to rejection.

**1.10 WARRANTIES/GUARANTEE**

- A. Suppliers warrant that all items, including services, as applicable:
  - 1. Are merchantable.
  - 2. Comply with the City's latest drawings and specifications.
  - 3. Are fit for the City's intended use.
  - 4. Will be performed according to the skill and care required by customarily accepted good practices and procedures followed by service providers rendering the same or similar type of service.
  - 5. Are new and unused unless otherwise stated.
  - 6. Comply with all applicable safety and health standards established for such products by the Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA) and/or Consumer Products Safety Act (CPSA), and all other applicable state and federal laws or agency regulations.
  - 7. Are properly packaged and contain appropriate instructions or warnings, including applicable MSDS sheets.

**1.11 PATENTS, TRADEMARKS AND COPYRIGHTS**

Suppliers warrant that equipment and/or materials furnished, including software, do not infringe on any patent, trademark or copyright, and agree to indemnify, defend and hold harmless, the City in the event of any infringement or claim thereof.

**1.12 DELIVERY OF SUBMITTALS TO THE CITY'S PROCUREMENT AND PAYABLES DIVISION**

- A. Submittal packages must be received by the City's Procurement and Payables Division in SAP Ariba (unless another form of delivery is stated), prior to the scheduled time and date stated in the Solicitation.
- B. Supplier is solely responsible for timely delivery of its Submittal.
- C. Submittals received after the time stated in the solicitation will not be accepted.
- D. For purposes of determining whether a Submittal has been timely received in SAP Ariba, the City's Procurement and Payables Division will rely on the submittal clock in SAP Ariba.

**1.13 SUBMITTAL IS NON-COLLUSIVE**

Supplier acknowledges that by its delivery of a Submittal to the City in response to a Solicitation, it represents that the prices in such Submittal are neither directly nor indirectly the result of any formal or informal agreement with another Supplier.

**1.14 PARTNERSHIPS**

The City will allow firms to partner in order to respond to a Solicitation. Multiple suppliers may team under a Prime Supplier's Submittal in order to provide responses to all sections in a single submission; however, each Supplier's participation must be clearly delineated by section. The Prime Supplier will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Supplier. All contract payments will be made only to the Prime Supplier. Any agreements between the Prime Supplier and other companies will not be a part of the Contract between the City and the Prime Supplier. The City reserves the right to select more than one Prime Supplier.

**1.15 WITHDRAWAL OF SUBMITTALS**

- A. Prior to Submittal Deadline. Submittals may be withdrawn (including in SAP Ariba) prior to the scheduled submittal deadline.
- B. After Submittal Deadline. No Submittal can be withdrawn after having been opened before the actual award of the contract, unless the award is delayed more than 90 calendar days beyond the date of opening. If a delay of more than 90 calendar days does occur, Supplier must submit written notice to the City purchasing manager that Supplier is withdrawing its submittal.

**1.16 ACCEPTANCE OF SUBMITTALS**

- A. If the solicitation announcement so states, submittals, unless previously withdrawn, will be read aloud, irrespective of any irregularities or informalities in such submittal, at the time and place specified in the solicitation announcement.
- B. All submittals must remain open for acceptance by the City for a period of at least 90 calendar days from the submittal deadline.

**1.17 RIGHT TO REJECT**

- A. The City of Tacoma reserves the right to reject any and all submittals, waive minor deviations or informalities, supplement, amend, reduce or otherwise modify the scope of work or cancel the solicitation, and if necessary, call for new submittals.

**1.18 RESERVED RIGHTS**

- A. By providing a submittal in response to a City solicitation, Supplier acknowledges and consents to the below City rights and conditions. With regard to this procurement process, the City reserves, holds without limitation, and may exercise, at its sole discretion, the following rights and conditions:
  - 1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Suppliers for any reason whatsoever with or without substitution of another solicitation.
  - 2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Suppliers.
  - 3. To issue addenda for any purpose including:
    - a. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with a procurement.
    - b. To supplement, amend, reduce, cancel, or otherwise modify a Solicitation, including but not limited to modifications to the description of services and/or products contained in the solicitation, by omitting services/products and/or including services/products.
  - 4. To request clarifications, additional information, and/or revised Submittals from one or more Suppliers.
  - 5. To conduct investigations with respect to the qualifications and experience of Supplier(s), including inspection of facilities and to request additional evidence to support any such information.

6. To eliminate any Supplier that submits an incomplete or inadequate response, or is non-responsive to the requirements of a Solicitation, or is otherwise deemed to be unqualified during any stage of the procurement process.
7. To select and interview a single finalist or multiple finalists to further the City's evaluation of Submittals provided in response to a Solicitation. The City may, in its sole and exclusive discretion as to what is in the City's best interest, elect not to conduct interviews of any or all Suppliers in connection with a solicitation process.
8. Except in the case of Requests for Bids, to negotiate any rate/fee offered by a Supplier. The City shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Supplier does not accept the City's final offer, the City may, in its sole discretion discontinue contract negotiations and commence negotiations with another Supplier, except as otherwise provided in Chapter 39.80, RCW.
9. To select and enter into a Contract with one or more Suppliers whose Submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of a Solicitation.
10. To award by line item or group of line items.
11. To not award one or more items.
12. To issue additional or subsequent solicitations.
13. To seek partnerships between one or more Suppliers.
14. Request additional related products and services from the selected Supplier(s) as necessary throughout the term of the Contract.
15. Negotiate costs or fees in the event of new legislation or regulatory changes, or issuance of related compliance guidance, technology enhancements, and innovative solutions.
16. In the event the City receives questions concerning a Solicitation from one or more Suppliers prior to the deadline for response, the City reserves the right to provide such questions, and the City's responses, if any, to all Suppliers.
17. If an award is made and, prior to entering into a contract, subsequent information indicates that such award is not in the best interest of the City, the City may rescind the award without prior notice to Supplier and either award to another Supplier or reject all submittals or cancel this solicitation.
18. To cancel award of a contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In providing a submittal, Suppliers agree that the City is not liable for any costs or damages for the cancellation of an award. Supplier assumes the sole risk and responsibility for all expenses connected with the preparation of its submittal.
19. To add additional City departments or divisions to the Contract or develop a separate Contract with the Supplier subject to all terms, conditions and pricing of the original Contract
20. To take any other action affecting a Solicitation or a procurement process that is determined to be in the City's best interests.

#### **1.19 SUBMITTAL CLARIFICATION**

Suppliers may be asked to clarify their Submittal. This action shall not be construed as negotiations or any indication of intentions to award. If called upon, Supplier must respond to such requests within two business days or the timeframe set forth by the City in its request for clarification. Supplier's failure to respond to such a request may result in rejection of its Submittal.

#### **1.20 EVALUATION OF SUBMITTALS**

- A. The City of Tacoma reserves the right to award to the lowest and best responsible Supplier(s) delivering a Submittal in compliance with the Solicitation, provided such Submittals are reasonable and are in the best interest of the City to accept. The City may use a number of criteria for determining award, including evaluation factors set forth in Municipal Code Section 1.06.262. Suppliers who are inexperienced or who fail to properly perform other contracts may have their submittal rejected for such cause.

1. Evaluation Factors. In addition to the factors set forth in Municipal Code Section 1.06.262, the following may be used by the City in determining the lowest and best responsible Submittal:
  - a. Compliance with a Solicitation and with applicable City requirements, including by not limited to, the City's Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs.
  - b. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).
  - c. The total cost to the City, including all applicable taxes, may be the basis for contract award.
  - d. Time of delivery and/or completion of performance (delivery date(s) offered).
  - e. Warranty terms.
  - f. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City's Ethics Code.
  - g. Previous and existing compliance with laws and ordinances relating to contracts or services.
  - h. Sufficiency of financial resources.
  - i. Quality, availability, and adaptability of the supplies or services to the particular use required.
  - j. Ability to provide future maintenance and service on a timely basis.
  - k. Location of nearest factory authorized warranty repair facility or parts dealership.
  - l. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications, and skill to perform the contract or provide the services required.
2. Cash Discount. Payment discount periods of 20 calendar days or more, if offered in the submittal, will be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect.
3. All other elements or factors, whether or not specifically provided for in a Solicitation, which would affect the final cost to, and the benefits to be derived by, the City, may be considered in determining the award of a Contract. The final award decision will be based on the best interests of the City.

#### **1.21 CONTRACT OBLIGATION**

- A. The Submittal contents of the successful Supplier will become contractual obligations if a Contract ensues.
- B. In the event the City of Tacoma determines to award a Contract, the selected Supplier(s) may be requested to execute Additional Contract Documents.
- C. Supplier shall register with the City of Tacoma on the SAP Ariba Network and be enabled for transactions upon request by the City.
- D. Suppliers may propose amendments to City's Contract documents or to these Terms and Conditions, but the City retains the right to accept or reject proposed amendments.
- E. No costs chargeable for work under the proposed Contract may be incurred before mutual acceptance and execution as directed.

#### **1.22 AWARD**

The City reserves the right to award Contracts for any or all items to one or more Suppliers in the best interests of the City.

#### **1.23 SUPPLIER'S REFUSAL TO ENTER INTO CONTRACT**

Any Supplier who refuses to enter into a Contract after it has been awarded to the Supplier will be in breach of the agreement to enter the Contract, and Supplier's certified or cashier's check or bid bond, if any, shall be forfeited.

#### **1.24 LEGAL HOLIDAYS**

- A. The City of Tacoma observes the following holidays, which shall apply to performance of all contracts:

New Year's Day	January 1
Martin Luther King's Birthday	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September

Veteran's Day	November 11
Thanksgiving Day	4th Thursday of November
Day after Thanksgiving	4th Friday of November
Christmas Day	December 25

- B. When any of these holidays occur on Saturday or Sunday, the preceding Friday or the following Monday, respectively, is a legal holiday for the City of Tacoma.

#### **1.25 CONTRACT TERM**

All services shall be satisfactorily completed and all deliverables provided by the termination date stated, and the Contract shall expire on said date unless mutually extended in writing by the parties.

#### **1.26 EXTENSION OF CONTRACT**

Contracts shall be subject to extension at City's sole discretion.

#### **1.27 TERMINATION AND SUSPENSION**

- A. Supplies. The City reserves the right to terminate a Contract at any time upon prior written notice to Supplier. Upon the effective date of termination specified in such notice, and payment by the City, all conforming supplies, materials, or equipment previously furnished hereunder shall become its property.
- B. Services. The City may terminate a Contract at any time, with or without cause, by giving 10 business days' written notice to Supplier. In the event of termination, all finished and unfinished work prepared by Supplier pursuant to the Contract shall be provided to the City. In the event City terminates the Contract due to the City's own reasons and without cause due to Supplier's actions or omissions, the City shall pay Supplier the amount due for actual work and services necessarily performed under the Contract up to the effective date of termination, not to exceed the total compensation set forth in the Contract.
- C. Suspension. For either services or supplies, the City may suspend a Contract, at its sole discretion, upon three business days' written notice to Supplier. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Supplier's actual expenses and shall be subject to verification. Supplier shall resume performance of services under the Contract without delay when the suspension period ends.
- D. Termination or suspension of a Contract by City shall not constitute a waiver of any claims or remaining rights the City may have against Supplier relative to performance under a Contract.

#### **1.28 DEFAULT/BREACH**

In the event of material default or breach by Supplier on any of the conditions of a Contract, Supplier agrees that the City may, at its election, procure the goods or services from other sources, and may deduct from the unpaid balance due Supplier, or collect against the bond or security (if any), or may invoice and recover from Supplier all costs paid in excess of the price(s) set forth in the Contract. **CHANGES**

- A. Supplies. The City at any time by written change order or other form of written contract amendment may make reasonable changes in the place of delivery, installation, or inspection, the method of shipment or packing, identification and ancillary matters that Supplier may accommodate without substantial additional expense.
- B. Services. The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or other written form of contract amendment. If the changes will result in additional work effort by Supplier the City agrees to reasonably compensate Supplier for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code. Any new services accepted by the City may be added to the Contract and/or substituted for discontinued services. New services shall meet or exceed all requirements of original award.
- C. Expansion Clause. A Contract may be further expanded in writing to include other related services or products normally offered by Supplier, as long as the price of such additional services or products have a profit margin equal to or less than that in place at the time of original submittal. Such additions and prices will be established in writing. New items not meeting these criteria will not be added to the Contract. Supplier profit margins are not to increase as a result any such expansion.

#### **1.29 SCOPE OF SERVICES**

Supplier agrees to diligently and completely perform the services required by a Contract.



**1.30 SERVICES DO NOT INCLUDE PUBLIC WORK**

Unless otherwise stated, the services and/or work contracted for herein exclude public work and improvements as defined in RCW 39.04, as that statute may hereafter be amended.

**1.31 PREVAILING WAGES**

- A. If federal, state, local, or any applicable law requires Supplier to pay prevailing wages in connection with a Contract, and Supplier is so notified by the City, then Supplier shall pay applicable prevailing wages.
- B. If applicable, a Schedule of Prevailing Wage Rates for the locality or localities where the Contract will be performed is attached and made of part of the Contract by this reference. If prevailing wages do apply to the Contract, Supplier and its subcontractors shall:
  - 1. Be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits,
  - 2. Ensure that no worker, laborer or mechanic employed in the performance of any part of the Contract shall be paid less than the prevailing rate of wage specified on that Schedule, and
  - 3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages must be submitted by Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid must be received or verified by the City prior to final Contract payment.

**1.32 CONTRACT PRICING**

- A. Submitted prices shall include costs of submittal preparation, servicing of the account, all contractual requirements during contract period such as transportation, permits, insurance costs, bonds, labor, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material, and workmanship.
- B. Surcharges of any type will not be paid.
- C. If applicable, related additional products and corresponding services of benefit to the City not specifically required in a solicitation, but which Supplier offers to provide, may be included with the submittal. Supplier may request to add new products if the City approves them and Supplier can demonstrate the pricing is from the same pricing structure/profit margin.
- D. Unless specifically stated otherwise, only firm prices will be accepted and all prices shall remain firm during the term of a Contract.
- E. Price increases may at City's discretion be passed along during a contract period if the increase is mandated by statute.
- F. By submitting prices, Supplier warrants prices equal to or better than the equivalent prices, terms, and benefits offered by Supplier to any other government unit or commercial customer.
- G. Should Supplier, during the term of a Contract, enter into any other contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other government unit or commercial customer, the Contract with the City shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the City. This provision applies to comparable products and purchase volumes by the City that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits, or more favorable terms.
- H. If at any time during the term of the Contract, Supplier reduces prices to other buyers purchasing approximately the same quantities stated on the Contract, Supplier will immediately notify the City purchasing manager of such fact, and the price(s) for future orders under the Contract shall be reduced accordingly.
- I. The City is entitled to any promotional pricing during the Contract period.
- J. Price decreases shall be immediately passed on to the City.
- K. The City reserves the right to increase or decrease the quantities of any item awarded pursuant to the Contract and pay according to the unit prices quoted in the submittal with no adjustments for anticipated profit.

**1.33 APPROVED EQUALS WHEN ALTERNATES ARE ALLOWED**

- A. Unless an item is indicated as "no substitute," special brands, when named, are intended to describe the standard of quality, performance, or use desired. Equal items will be considered by the City, provided that Supplier specifies the brand and model, and provides all descriptive literature, independent test results, specification sheets, schematic drawings, photographs, product samples, local servicing, parts availability, etc., to enable the City to evaluate the proposed equal. Performance testing in the field may be required.
- B. The decision of the City as to what items are equal shall be final and conclusive. If the City elects to purchase a brand represented by Supplier to be an "equal," the City's acceptance of the item is conditioned on the City's inspection and testing after receipt. If, in the sole judgment of the City, the item is determined not to be an equal, the item shall be returned at Supplier's expense.
- C. When a brand name or level of quality is not stated in Supplier's submittal, it is understood Supplier's submittal shall exactly confirm with those required in the Contract. If more than one brand name is stated in a Solicitation, Supplier(s) must indicate the brand and model/part number to be supplied.

**1.34 RISK OF LOSS, SHIPPING AND DELIVERY**

- A. Shipping. Prices must be quoted FOB destination (the place of destination as defined in RCW 62A.2-319, as that statute may hereafter be amended), with freight prepaid and allowed (shipping costs included in unit prices), and risk of loss remaining with Supplier until delivery is tendered.
- B. Delivery. Delivery will be to the designated addresses set forth in a Solicitation or as otherwise stated in the Contract. Deliveries shall be between 9:00 a.m. and 3:30 p.m., Monday through Friday only, except Legal Holidays. Failure to make timely delivery shall be cause for termination of the contract or order and return of all or part of the items at Supplier's expense except in the case of force majeure.

**1.35 DELIVERY OF PRODUCTS AND PROVISION OF SERVICES – IDLING PROHIBITED**

- A. The City of Tacoma has a commitment to reduction of unnecessary fuel emissions and improving air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.
- B. Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City of Tacoma for more than three minutes. The City requires contractors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when associated power is necessary to make a delivery or provide the service, when the engine is used to provide power to another device, and when a running engine is required for proper warm-up and cool-down of the engine.

**1.36 PACKING SLIPS AND INVOICES**

- A. Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line if applicable, services and deliverables provided if applicable. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable.
  - 1. For transactions conducted in SAP Ariba, invoices shall be submitted through Ariba.
  - 2. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to [accountspayable@cityoftacoma.org](mailto:accountspayable@cityoftacoma.org).
  - 3. For invoices paid by credit card, invoices shall also display the last name of the cardholder and last four digits (only) of the card number (e.g., Jones/6311). Unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to (do not combine different POs into one invoice or charge) to [pcardadmin@cityoftacoma.org](mailto:pcardadmin@cityoftacoma.org).
- B. Any terms, provisions or language in Supplier's invoice(s) that conflict with the terms of the Contract are superseded and shall not apply to the Contract unless expressly accepted in writing by the City.
- C. Packing slips and shipping notices shall be sent to the specific City Division or Department receiving the item(s) at the address stated in City's Solicitation or as otherwise stated in the Contract and include complete description of items, contents of items if crated or cased, quantity, shipping point, carrier, bill of lading number and City of Tacoma purchase order.

- D. Supplier shall package orders, preferably in environmental friendly packaging such as reduced packaging and recyclable packing materials.

### **1.37 COOPERATIVE PURCHASING**

The Washington State Interlocal Cooperation Act RCW 39.34 provides that other governmental agencies may purchase goods and services based on the Contract with the City in accordance with the terms and prices of the Contract if all parties are agreeable. Each public agency shall formulate a separate contract with Supplier, incorporating the terms and conditions of the Contract with the City of Tacoma. The City shall incur no liability in connection with such contracts or purchases by other public agencies thereunder. It will be Supplier's responsibility to inform such public agencies of the Contract with the City. Supplier shall invoice such public agencies as separate entities.

### **1.38 TAXES**

- A. Unless otherwise stated, applicable federal, state, City, and local taxes shall be included in the submittal and in contract as indicated below. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.
1. Federal Excise Tax. The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If Supplier fails to include any applicable tax in its submittal, then Supplier shall be solely responsible for the payment of said tax.
  2. State and Local Sales Tax. The City of Tacoma is subject to Washington state sales tax. It is Supplier's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the submittal.
  3. City of Tacoma Business and Occupation Tax. It is Supplier's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal. Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.
- B. Any or All Other Taxes. Any or all other taxes are the responsibility of Supplier unless otherwise required by law. Except for state sales tax, Supplier acknowledges that it is responsible for the payment of all taxes applicable to the Contract and Supplier agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law.
- C. If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of the Contract, Supplier agrees to hold the City harmless from such costs, including attorney's fees. In the event Supplier fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then Supplier authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Supplier's total compensation.

### **1.39 COMPENSATION**

- A. The City shall compensate Supplier in accordance with the Contract. Said compensation shall be the total compensation for Supplier's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Supplier. Unless stated otherwise the total stated compensation may not be changed without a written change order or other form of contract amendment.
- B. Payment(s) made in accordance with the Contract shall fully compensate Supplier for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Supplier.

### **1.40 PAYMENT TERMS**

- A. Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The City may withhold payment to Supplier for any services or deliverables not performed as required hereunder until such time as Supplier modifies such services or deliverables to the satisfaction of the City.

- B. Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained. Upon CITY'S request, Supplier shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

#### **1.41 PAYMENT METHOD – CREDIT CARD ACCEPTANCE – EFT/ACH ACCEPTANCE**

- A. Payment methods include:
1. Credit card. Tacoma's VISA procurement card program is supported by standard bank credit suppliers and requires that merchants abide by the VISA merchant operating rules.
    - a. Suppliers must be PCI-DSS compliant (secure credit card data management) and federal FACTA (sensitive card data display) compliant.
    - b. Suppliers must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.
  2. Electronic Funds Transfer (EFT) by Automated Clearing House (ACH).
  3. Check or other cash equivalent.
- B. The City's preferred method of payment is by Visa credit card (aka procurement card). Suppliers may be required to have the capability of accepting the City's authorized procurement card as a method of payment. **The City of Tacoma will not accept price changes or pay additional fees when the procurement card is used.**
- C. The City, in its sole discretion, will determine the method of payment for goods and/or services as part of the Contract.

#### **1.42 NOTICES**

Unless otherwise specified, except for routine operational communications, which may be delivered personally or transmitted by electronic mail, all notices required by the Contract shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to Supplier's registered agent and to the applicable City department representative.

#### **1.43 INDEPENDENT CONTRACTOR STATUS**

- A. Supplier is considered an independent contractor who shall at all times perform his/her duties and responsibilities and carry out all services as an independent contractor and shall never represent or construe his/her status to be that of an agent or employee of the City, nor shall Supplier be eligible for any employee benefits. No payroll or employment taxes or contributions of any kind shall be withheld or paid by the City with respect to payments to Supplier. Supplier shall be solely responsible for all said payroll or employment taxes and/or contributions including, but not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. If the City is assessed, made liable or responsible in any manner for such taxes or contributions, Supplier agrees to indemnify and hold the City harmless from all costs incurred, including attorney fees.
- B. Unless otherwise specified in writing, Supplier shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under the Contract. Supplier, at its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform the Contract.

#### **1.44 NONDISCRIMINATION**

Supplier agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. Supplier shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental, or physical handicap. In the event of non-compliance by Supplier with any of the non-discrimination provisions of the Contract, the City shall be deemed to have cause to terminate the Contract, in whole or in part.

**1.45 FEDERAL, STATE, AND MUNICIPAL LAWS AND REGULATIONS**

Supplier shall comply with all federal, state, municipal, and/or local laws and regulations in the performance of all terms and conditions of the Contract. Supplier shall be solely responsible for all violations of the law from any cause in connection with its performance of work under the Contract.

**1.46 REPORTS, RIGHT TO AUDIT, PERSONNEL**

- A. Reports. Supplier shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken or goods provided pursuant to the Contract.
- B. Right to Audit. Upon City's request, Supplier shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under the Contract or in satisfaction of City's public disclosure obligations as applicable.
- C. Personnel. If before, during, or after the execution of a Contract, Supplier has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to the Contract, then Supplier is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. Substantial organizational or personnel changes within Supplier's firm are expected to be communicated to City immediately. Failure to do so could result in termination of the Contract. This provision shall only be waived by written authorization by the City, and on a case-by-case basis.

**1.47 INSURANCE**

During the course and performance of a Contract, Supplier will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City of Tacoma Insurance Requirements document, if issued, is fully incorporated into the Contract by reference.

**1.48 INDEMNIFICATION – HOLD HARMLESS**

- A. Supplier agrees to indemnify, defend, and hold harmless the City of Tacoma, its officers, agents and employees, from and against any and all liability which may accrue to or be sustained by the City of Tacoma for any claim, suit or legal action made or brought against the City for the death of or injury to persons (including Supplier's or subcontractor's employees), or damage to property involving Supplier or subcontractor(s) and their employees or agents, or for any other cause arising out of and in connection with or incident to the performance of the Contract, except for injuries or damages caused by the sole negligence of the City. In this regard, Supplier recognizes it is waiving immunity under Industrial Insurance Law, Title 51 RCW. This indemnification includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. By Supplier's acceptance of this order, he/she agrees that this subsection has been mutually negotiated.
- B. These indemnifications shall survive the termination of a Contract.

**1.49 CONFLICT OF INTEREST**

No officer, employee, or agent of the City, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in a Contract, either in fact or in appearance. Supplier shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. Supplier represents that Supplier presently has no interest and shall not acquire any interest, direct or indirect, in the program to which the Contract pertains that would conflict in any manner or degree with the performance of Supplier's services and obligations hereunder. Supplier further covenants that, in performance of a Contract, no person having any such interest shall be employed. Supplier also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of Contract subjecting the Contract to termination.

**1.50 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS**

- A. To the extent that Supplier creates any work subject to the protections of the Copyright Act (Title 17 U.S.C.) in its performance of a Contract, Supplier agrees to the following: The work has been specially ordered and commissioned by the City. Supplier agrees that the work is a "work made for hire" for copyright purposes, with all copyrights in the work owned by City. To the extent that the work does not qualify as a work made for hire under applicable law, and to the extent that the work includes material subject to copyright, Supplier hereby assigns to City, its successors and assigns, all right, title and interest in and to the work, including but not limited to, all copyrights, patent, trade secret and other

proprietary rights, and all rights, title and interest in and to any inventions and designs embodied in the work or developed during the course of Supplier's creation of the work.

- B. Supplier shall be solely responsible for obtaining releases and/or licenses for the reproduction, distribution, creation of derivative works, performance, display, or other use of copyrighted materials. Should Supplier fail to obtain said releases and/or licenses, Supplier shall indemnify, defend, and hold harmless the City for any claim resulting there from.

#### **1.51 DUTY OF CONFIDENTIALITY**

Supplier acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the City. Except for disclosure of information and documents to Supplier's employees, agents, or subcontractors who have a substantial need to know such information in connection with Supplier's performance of obligations under the Contract, Supplier shall not without prior written authorization by the City allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to a Contract.

#### **1.52 DISPUTE RESOLUTION**

In the event of a dispute pertaining to a Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the City's right to terminate.

#### **1.53 GOVERNING LAW AND VENUE**

Washington law shall govern the interpretation of the Contract. The state or federal courts located in Pierce County Washington shall be the sole venue of any mediation, arbitration, or litigation arising out of the Contract.

#### **1.54 ASSIGNMENT**

Supplier shall not assign, subcontract, delegate or transfer any obligation, interest or claim to or under the Contract without the prior written consent of the City.

#### **1.55 WAIVER**

A waiver or failure by either party to enforce any provision of the contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of the Contract.

#### **1.56 SEVERABILITY AND SURVIVAL**

If any term, condition or provision herein or incorporated by reference is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of the Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of the Contract, shall survive termination of the Contract.

#### **1.57 NO CITY LIABILITY**

Neither the City, its officials, staff, agents, employees, representatives, or consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

#### **1.58 SIGNATURES**

A signed copy of Submittals, Contract documents, including but not limited to contract amendments, contract exhibits, task orders, statements of work and other such Contract related documents, delivered by email or other means of electronic transmission including by using a third party service, which service is provided primarily for the electronic execution of electronic records, shall be deemed to have the same legal effect as delivery of an original signed copy.

SAP Contract No. \_\_\_\_\_

**PROFESSIONAL SERVICES CONTRACT**

**THIS CONTRACT**, made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and Insert Name of Contractor, a Insert Business Entity Status, e.g., sole proprietorship, limited liability company, Washington state corporation, etc., (hereinafter referred to as "CONTRACTOR");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

**1. Scope of Services/Work**

- A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables described in Exhibit(s) \_\_\_\_\_ attached hereto and incorporated herein.
- B. Changes To Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

**2. Term**

- A. All services shall be satisfactorily completed on or before \_\_\_\_\_, or as otherwise specified in Exhibit \_\_\_\_\_ and this Contract shall expire on said date unless mutually extended in writing by the Parties.
- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

**3. Compensation and Payment**

- A. The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract as follows:

**Check ONLY one:**

- ☐ On the basis of Time and Materials according to the rates and charges set forth in Exhibit \_\_\_\_\_
- ☐ In accordance with Exhibit \_\_\_\_\_
- ☐ At the rate of \$ \_\_\_\_\_ per hour.

- B. The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$ \_\_\_\_\_ without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.
- C. The CONTRACTOR shall submit monthly invoices in a format comparable to the invoice attached hereto and identified as Exhibit \_\_\_\_\_, for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D. Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G. In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

#### 4. Independent Contractor Status

- A. The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.
- B. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

#### 5. Professional Services Warranty

- A. The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables



SAP Contract No. \_\_\_\_\_

as expressed in Exhibit(s) \_\_\_\_\_. Additional warranties, if any, for incidental product deliverables hereunder are set forth in Exhibit \_\_\_\_ <<or in Section 1.A.(2) above>>.

- B.** In the performance of services under this Contract, the CONTRACTOR and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.
- C.** If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractor's or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

## 6. Contract Administration and Right to Audit

- A.** The Insert Dept/Division/Engineer/City Contact for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- B.** The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- C.** Upon CITY's request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract or in satisfaction of CITY's public disclosure obligations as applicable.

## 7. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters related to the performance of this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

## 8. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	CONTRACTOR
Name and Address	Name and Address
Phone	Phone
Facsimile	Facsimile
E-mail	E-mail

## 9. Termination and Suspension

- A. The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days' written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.
- B. The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days' written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.
- C. Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

## 10. Taxes, Licenses and Permits

- A. The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.
- B. In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.
- C. The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

## 11. Indemnification

- A. The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury

results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

- B. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.
- C. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

## 12. Insurance

During the course and performance of the services herein specified and for the entire term of the Contract, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements document is fully incorporated herein by reference. CONTRACTOR shall not begin work under the Contract until the required insurance has been obtained and approved by CITY. Proof of insurance shall be provided by CONTRACTOR as is specified in the City of Tacoma Insurance Requirements.

## 13. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

## 14. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

**15. City ownership of Work/Rights in Data and Publications:**

- A. To the extent that CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a "work made for hire" for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR'S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this sub-section. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract.
- B. The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

**16. Public Disclosure**

- A. This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorney's fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.
- B. If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

**17. Duty of Confidentiality**

- A. CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.
- B. Except for disclosure of information and documents to CONTRACTOR's employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR's performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.
- C. The CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.
- D. The CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles, without the prior written approval of the CITY. Any and all news releases, professional articles, marketing, advertising, publicity, or other commercial activities that describe or discuss the Scope of Services shall be reviewed and approved by the CITY prior to publication, disclosure and/or distribution. The CONTRACTOR may submit for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.
- E. This Section shall survive for six (6) years after the termination or expiration of this Contract.
- F. CONTRACTOR shall ensure that the text of this Section is included in each subcontractor's contract pertaining to the Scope of Services hereunder.

## 18. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

## 19. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment. The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

SAP Contract No. \_\_\_\_\_

- C. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement. This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.
- G. Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.
- H. Authority to enter into this Contract. The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the Effective Date first written above.

CITY OF TACOMA

INSERT NAME OF CONTRACTOR

\_\_\_\_\_  
 Printed Name/Title Division Head or Representative

\_\_\_\_\_  
 Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
 Printed Name/Title of additional department/division representative, if applicable

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SAP Contract No. \_\_\_\_\_

\_\_\_\_\_  
Director of Finance

Approved as to Form:

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Deputy City Attorney

Tax ID: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

SAMPLE

SAP Contract No. \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF WORK**



SAP Contract No. \_\_\_\_\_

**EXHIBIT "B"****INVOICE**

This form is intended to illustrate the information the City of Tacoma needs to process Contract payments. The City of Tacoma prefers that CONTRACTOR use its own standard business invoice forms so long as they include the following information. CONTRACTORS who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing the information we are requesting will ensure prompt processing of your payments.

**I HEREBY REQUEST PAYMENT FOR THE FOLLOWING ITEMIZED SERVICES AND/OR PRODUCT DELIVERABLES:**

Services (Describe): \_\_\_\_\_

Deliverables (Describe): \_\_\_\_\_

**AS PER CONTRACT No.:** \_\_\_\_\_ **AMOUNT DUE:** \_\_\_\_\_**I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT FOR THE SERVICES AND/OR DELIVERABLES IDENTIFIED HAS NOT BEEN RECEIVED.****BY:** \_\_\_\_\_ **DATE SIGNED:** \_\_\_\_\_  
**SIGNATURE:****TITLE:** \_\_\_\_\_**ORGANIZATION NAME:** \_\_\_\_\_**FEDERAL TAX ID No. or SS No.:** \_\_\_\_\_**TELEPHONE NUMBER:** \_\_\_\_\_**PLEASE REMIT PAYMENT TO:** (Name and Address of Contractor)**I Attest and Certify that all Services and/or Deliverables identified in this Invoice have been performed and/or supplied.**\_\_\_\_\_  
**Contract Administrator Signature**

City Dept/Division:

Contact Name:

Phone: 253-

Fax: 253-



PT18-0350F

## CITY OF TACOMA INSURANCE REQUIREMENTS

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### **I. GENERAL REQUIREMENTS**

- a) The City of Tacoma (the City) reserves the right to approve or reject the insurance provided based upon the insurer (including financial condition), terms and coverage, the Certificate of Insurance (COI), and/or endorsements. The insurance must be provided by an insurer with a rating of (A-) VII or higher in the A.M. Best's Key Rating Guide (<http://www.ambest.com/home/default.aspx>), and pursuant to RCW 48, licensed to do business in the State of Washington (or issued as a surplus line by a Washington Surplus Lines broker).
- b) The Contractor shall keep this insurance in force during the entire term of the contract and for thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.
- c) The liability insurance policies required by this section shall:
  - 1. Contain a "severability of insureds," "separation of interest," or "cross liability" provision.
  - 2. Be primary and non-contributory insurance to any insurance coverage or self-insurance program the City may maintain.
  - 3. Contain a Waiver of Subrogation clause in favor of the City.
  - 4. Other than professional liability, reflect coverage on an "occurrence", not "claims-made" policy form.
- d) The Contractor shall provide the City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- e) The Contractor shall forward to the City, a full and certified copy of the insurance policy(s) and endorsements required by this section upon the City's request.
- f) The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the City.
- g) Failure on the part of the Contractor to obtain and maintain the insurance as required by this section shall constitute a material breach of the Contract, upon which the City may, after giving five business day notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to the City by the Contractor upon demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.
- h) All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by the City to the Contractor.
- i) For all liability insurance policies required by this Section, the City, including its officers, elected officials, employees, agents, and volunteers, and any other entities as required by the Contract, shall be named as additional insured(s) by amendatory endorsement, EXCEPT Professional Liability (if applicable), Workers Compensation, Owners and Contractors Protective Liability, and Railroad Protective Liability.



PT18-0350F

## CITY OF TACOMA INSURANCE REQUIREMENTS

### II. EVIDENCE OF INSURANCE

The Contractor shall deliver a COI and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work to the City. The certificate and endorsements must conform to the following requirements:

- a) An ACORD certificate or a form determined by the City to be equivalent.
- b) Copies of all endorsements showing the policy number and naming the City as an additional insured.
- c) The endorsement is to state that the insurance is primary and noncontributory over any City insurance or self-insurance.
- d) The endorsement is to extend "Products/Completed Operations" coverage to the City as an additional insured.
- e) A statement of additional insured status on an ACORD COI shall not satisfy this requirement.
- f) Any other amendatory endorsements to show the coverage required herein.

### III. CERTIFICATE REQUIREMENTS SPECIFIC REPRESENTATIONS

The following must be indicated on the COI:

- a) The City is named as an additional insured ("with respect to a specific Contract" or "for any and all work performed with the City" may be included in this statement).
- b) "This insurance is primary and non-contributory over any insurance or self-insurance the City may carry" ("with respect to a specific Contract" or "for any and all work performed with the City" may be included in this statement).
- c) A Waiver of Subrogation in favor of the City for General Liability and Automobile Liability.
- d) Self-Insured Retention and applicable deductible limits must be disclosed on the COI and be no more than \$10,000.
- e) Contract or Permit number and the City Department.
- f) All coverage other than professional liability, Cyber/Privacy & Security, and Pollution Liability must be written on "occurrence" form and not "claims-made" form.
- g) Reflect the existence and form numbers of all required endorsements.

### IV. SUBCONTRACTORS

It is the Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. The Contractor shall provide evidence of such insurance upon the City's request.

### V. CERTIFICATE REQUIREMENTS FOR COVERAGES AND LIMITS

The insurance shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits. None of the policies or coverage required by this section shall be subject to a deductible or self-insured retained limit of more than \$10,000 unless first approved in writing by the City Contracting Department.



PT18-0350F

## CITY OF TACOMA INSURANCE REQUIREMENTS

**A. General Liability Insurance****1. Commercial General Liability (CGL) Insurance**

The CGL insurance policy must provide limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

The CGL policy shall be written on an "occurrence", not "claims-made", basis and shall include the following coverage:

- a) Must use Insurance Services Office (ISO) form CG0001(04-13) or its equivalent.
- b) A per project aggregate policy limit.
- c) Products Hazard/Completed Operations- for a period of one year following final acceptance of the work.
- d) Personal/Advertising Injury.
- e) Contractual Liability.
- f) Explosion, Collapse, or Underground Property Damage.
- g) Blasting (only required when the Contractor's work under this Contract includes exposures to which this specified coverage responds).
- h) If Contractor is performing work within 50 feet of a railroad right of way, the General Liability policy shall be endorsed to eliminate the Contractual Liability exclusion pertaining to work within 50 feet of a railroad right of way using ISO form CG2417(10-01) or equivalent.
- i) Abuse & Molestation, by a separate coverage part or an endorsement to the CGL, with limits not less than \$1,000,000 each occurrence & \$2,000,000 aggregate for Contractors working directly with youth under the age of 18. If Abuse & Molestation coverage is provided on a "claims-made" basis, coverage must be maintained for not less than three years following the end of the contract. This may be done by policy renewals or an Extended Reporting Period Endorsement.
- j) Include the City as additional insured and:
  1. Use ISO forms CG2010(04-13) and CG2037(04-13) or equivalent for Contractors performing work on behalf of the City and name the City as an additional insured for ongoing and completed operations.
  2. Use ISO form CG2012(04-13) or equivalent for Permits and name the City as an additional insured.
  3. Use ISO form CG2026(04-13) or equivalent for Facility Use Agreements and name the City as an additional insured.
  4. Blanket additional insured provisions within a policy form will be accepted in lieu of the specific additional insured endorsement forms specified herein. However, a blanket additional insured endorsement shall provide the equivalent coverage provided by specific additional insured endorsements specified herein.

**B. Commercial Automobile Liability (CAL) Insurance**

The Contractor shall obtain and keep in force during the term of the Contract, a policy of CAL insurance coverage, providing bodily injury coverage and property damage coverage for owned (if any), non-owned, hired, and leased vehicles.





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## CITY OF TACOMA INSURANCE REQUIREMENTS

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The Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than \$1,000,000 each accident for bodily injury and property damage. Must use ISO form CA 0001 or equivalent.

### **C. Workers' Compensation**

#### **1. State of Washington Workers' Compensation**

The Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

### **D. Employers' Liability (EL) (Stop-Gap) Insurance**

The Contractor shall maintain EL coverage with limits not less than \$1,000,000 each employee, \$1,000,000 each accident, and \$1,000,000 policy limit.

### **E. Professional Liability Insurance (PLI)**

The Contractor and/or its subcontractor shall provide evidence of PLI covering professional errors and omissions. Such policy must provide minimum limits of \$1,000,000 per claim and \$2,000,000 aggregate. If the scope of such design-related professional services includes work related to pollution conditions, the PLI policy shall include Pollution Liability coverage. If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than three years following the end of the Contract.

### **F. Other Insurance**

Other insurance as may be deemed appropriate to cover the specified risk and exposure arising from the scope of work or changes to the scope of work required by the City. The costs of such necessary and appropriate insurance coverage shall be borne by the Contractor.

## EXCLUSIVE SALES LISTING AGREEMENT

THIS EXCLUSIVE SALES LISTING AGREEMENT (the "**Agreement**") is entered into as of the 7<sup>th</sup> day of June, 2019, the "**Effective Date**" by and between Lee & Associates Commercial Real Estate Services, LLC (hereinafter referred to as "**Firm**"), a Washington Limited Liability Company, and the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power), a Washington municipal corporation, (hereinafter referred to as "**Tacoma Power**", "**City**", and/or "**Owner**"). The terms "purchaser" and "buyer" may be used interchangeably herein and have their common meaning.

### ARTICLE ONE APPOINTMENT

1.1. Exclusive Right to Sell. Owner hereby grants Firm the exclusive right to solicit and procure prospective purchasers for that certain real property located at 16515-16525 Canyon Road East, Pierce County, WA, commonly described as the Tacoma Power Frederickson Industrial Site, and as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference (the "**Property**"). Firm accepts the appointment and agrees to act in good faith and use diligent efforts to perform the services required by this Agreement and to assist Owner in maximizing the value to be obtained through the timely sale of the Property.

1.2. Definition of "Sale". As used in this Agreement, the term "sale" shall mean to sell, or to enter into a binding contract to sell, exchange, grant, option, lease, transfer, or convey the fee simple or leasehold interest in the Property or portions thereof, as more fully described in Section 5.2 below.

1.3. Listing Price. The listing price for the Property shall be determined by Owner after consultation with Firm. The sale shall be on an "all cash" basis, or such other terms and conditions as acceptable to Owner in its sole and absolute discretion.

### ARTICLE TWO TERM

2.1. Term of Agreement. The term ("**Term**") of this Agreement shall commence on the Effective Date set forth above and shall end at midnight on that day that is one (1) year after the Effective Date, unless sooner terminated or extended in accordance with the provisions of this Agreement. Owner shall have the option to annually renew and extend the Term of this Agreement by up to four (4) successive periods of one (1) year each by providing written notice to Firm prior to expiration of this Agreement.

2.2. Termination. Owner shall have the right to terminate this Agreement for any reason or for no reason, in Owner's sole discretion, on written notice ("**Notice to Terminate**") given to Firm no later than thirty (30) days prior to the date of termination. If no date is specified in the Notice to Terminate, this Agreement shall terminate at the end of the tenth (10<sup>th</sup>) calendar day following delivery to Firm of the Notice to Terminate.

### ARTICLE THREE REPRESENTATION AND DUTIES OF FIRM

3.1 Licensing. Firm hereby represents that it and all personnel providing services to Owner under this Agreement are, to the extent required by law, duly licensed. Firm shall, at its sole expense, obtain and keep in full force and effect throughout the Term of this Agreement all licenses and permits required to be maintained by Firm in connection with the rendering of the services.

3.2 Performance of Services and Deliverables. Firm shall perform the services through able, qualified and trained personnel of Firm, including, without limitation, supervisory and support personnel, in sufficient number to properly render the services in the manner appropriate for the Property as required by this Agreement. Firm shall have the exclusive right to hire, direct, discipline, compensate and terminate the personnel of Firm, and shall exercise complete and exclusive control over the conduct of its personnel. In addition, the Firm shall perform the following:

3.2.1 Marketing Strategy. Firm shall implement and adhere to the detailed marketing strategy (the "**Marketing Strategy**") contained in **Exhibit B** which sets forth a comprehensive strategy for marketing and sale of the Property. Such Marketing Strategy may be amended solely upon written approval of Owner.

3.2.2 Vader Engineering. Firm shall engage Vader Engineering, a Washington State Minority and Women's Business Enterprise, as a sub-consultant to assist Firm with site engineering expertise for Firm's in-depth site development analysis. Firm will be solely responsible for the engagement, creating a scope of work, supervision of and compensation due Vader Engineering for any services provided to Firm and will not seek or be entitled to reimbursement from Owner for any such compensation due. Vader Engineering's work product and deliverables (or any derivative thereof) will be for the sole, direct benefit of Firm, and no third party shall have any right to it, nor have any reliance on it. Upon request of Owner, Firm shall promptly forward all Vader Engineering work product to Owner.

3.2.3 Deliverables. Firm shall provide to Owner all deliverables as detailed in the excerpt from the "City of Tacoma Request for Proposals PT18-0350F" (the "**Deliverables**"), attached hereto as **Exhibit C**.

3.3 Staffing. Firm's listing team for purposes of implementing the obligations of Firm hereunder shall consist of Zane Shiras, Vanessa Herzog, and Christian Mattson (the "**Listing Team**"). While Owner retains responsibility for drafting the real estate purchase and sale agreement for use in selling the Property, the Listing Team shall assume primary responsibility for providing assistance to Owner in the initiation of discussions and the conduct of negotiations with prospective purchasers on the part of Firm. Such assistance shall include, but not be limited to, providing Owner purchase offer term sheets, letters of intent, or other appropriate documentation received from prospective purchasers. Firm may replace any member of the Listing Team during the Term of this Agreement in the event a member of the Listing Team dies, becomes incapacitated or terminates his/her employment with Firm, provided such replacement individual has similar or greater experience than the replaced member and provided that Owner approves, which approval shall not be unreasonably withheld. Upon written request by Owner,

any member of the Listing Team shall be replaced by another qualified real estate salesperson employed by Firm, subject to Owner's approval, which approval shall not be unreasonably withheld.

3.4 Reports. Firm shall submit to Owner, no later than the fifth (5th) day of each month, a report on the marketing of the Property, which shall include an updated list of all prospective purchasers and a summary of the status of any offers or negotiations.

### 3.5 Confidentiality.

3.5.1 Firm acknowledges that unauthorized disclosure of confidential information or documentation from City related to the services to be provided under this Agreement may cause substantial economic harm or loss to City. As used in this Agreement, the term "Confidential Information" means documents or information provided by Owner to Firm that Owner reasonably understands to be confidential and designates in writing as confidential at the time it is provided to Firm, including any real estate appraisal(s) or value opinions prepared for the Property. Confidential Information shall not include information which: a) was lawfully possessed by the Firm prior to receiving from Owner; (b) becomes known by Firm from a third-party source not under an obligation to Owner to maintain confidentiality; (c) is generally known by the public through no fault of or failure to act by the Firm, or inconsistent with its obligations under this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation; or (e) is or has been independently developed by employees, consultants or agents of the Firm without violation of the terms of this Agreement and without reference or access to any Confidential Information provided by Owner.

3.5.2 For a period beginning on the Effective Date of this Agreement until the earlier to occur of either, (i) the closing of the sale of the Property, or (ii) two (2) years from the date of termination or expiration of this Agreement, Firm agrees to hold Confidential Information in trust and confidence for Owner, and agrees not to use Confidential Information other than as required in the performance of its obligations under this Agreement, which shall include disclosure to Firm's personnel who have a need to know.

3.5.3 Firm shall ensure that the text of this Section 3.5 is included in each sub-contractor's contract pertaining to the services to be provided herein (but Firm is not responsible or liable in the event of sub-contractor's non-compliance).

3.6 Other Brokers. Firm and the Listing Team shall solicit and cooperate with other real estate brokers, not affiliated with Firm, who have procured and are authorized to represent prospective purchasers of the Property.

3.7 Nondiscrimination. Owner and Firm agree that the Property will be offered in compliance with all applicable federal, state and local anti-discrimination laws and regulations. Firm agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. Further, Firm shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a



disabled person. In the event of non-compliance by Firm with any of the non-discrimination provisions of this Agreement, City shall be deemed to have cause to terminate this Agreement, in whole or in part.

3.8 Compliance with Laws. Firm shall comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, the Property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

3.9 Advertising. Upon completion of the sale of the Property, if such disclosure is permitted under the terms of the purchase and sale, option or other transfer agreement between Owner and the purchaser or transferee, Firm may advertise or issue a press release or other public announcement regarding the sale, in form and content reasonably acceptable to Owner only upon Owner's pre-approval.

3.10 Professional Services Warranty.

- A. Firm warrants that all services performed pursuant to this Agreement shall be generally suitable for the use to which City intends to use said services and deliverables.
- B. In the performance of the services under this Agreement, Firm and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of services. All obligations and services of Firm shall be performed diligently and completely according to such professional standards.

3.11 Public Disclosure.

- A. The Agreement and documents provided to City by Firm hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose this Agreement and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event City receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Firm has complied with the requirements of Sub-Section B below, City agrees to provide Firm ten (10) days' written notice of impending release. Should legal action thereafter be initiated by Firm to enjoin or otherwise prevent such release, all expenses of any such litigation shall be borne by Firm, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. City shall not be liable for any release where notice was provided and Firm took no action to oppose the release of the information. Notice of any proposed release of information pursuant to the Public Records Act shall be provided to Firm according to the "Notices" Article herein.
- B. If Firm provides City with records that Firm considers confidential or proprietary, Firm must mark all applicable pages of said records as "Confidential" or "Proprietary". If Firm fails to so mark records, then 1) City, upon request, may release said record(s) without the need to satisfy the requirement of Sub-Section A above; and 2) Firm expressly waives its rights to allege any kind of civil action or claim against City pertaining to the release of said record(s).

## ARTICLE FOUR AUTHORITY OF FIRM

4.1 Limitation of Authority. Notwithstanding any designation of Firm as "agent," broker, or similar term denoting agency in this Agreement, Firm shall have no right, power or authority to enter into any agreement with any prospective purchaser, real estate broker or any other person or entity in the name of, on behalf of, or otherwise binding upon Owner, nor may Firm create any other obligations or liabilities binding upon Owner, except as otherwise provided by applicable law. Unless pre-approved in writing by Owner, neither Firm nor any broker representing a prospective purchaser is authorized to make any representations concerning the boundary lines of the property, the existence of any encroachments onto adjacent property or onto the Property, the physical condition of the Property, the possible future financial performance of the Property, or the tax consequences of any transaction concerning the Property, and such representation must be properly disclaimed and specifically state that its accuracy has not been verified, that there is no guarantee or warranty (express or implied), and that no party may rely on the information and must conduct their own due diligence and investigation of all matters. Any such representation by Firm without Owner's written approval or a disclaimer shall constitute a breach of this Agreement.

## ARTICLE FIVE FEE

5.1 Calculation of Fee. Firm's sole and exclusive compensation for its services hereunder (the "Fee") shall be calculated as a commission on the greater of either (i) the fair market value of the Property at the time of sale, as determined by a qualified real estate appraiser as further described in Section 9.18, or (ii) the gross purchase price for the Property (in either case, the "**Sale Price**"), as follows: In the event that the Property is sold to a buyer represented by the Listing Team, the Fee shall be equal to two percent (2.00%) of the Sale Price; in the event the Property is sold to a buyer represented by any other broker(s) other than the Listing Team (the "**Co-operating Broker**"), the Fee shall be equal to two and one-half percent (2.50%) of the Sale Price; in such event, the Fee shall be shared between the Listing Team and the Co-operating Broker on a 60%/40% split, with the Listing Team receiving 60% of the Fee, which represents 1.50% of the Sale Price, and the Co-Operating Broker receiving 40% of the Fee, which represents 1.00% of the Sale Price. The Listing Team is not authorized to act as a dual agent. If the Property is sold to a buyer represented by one of Firm's brokers other than the Listing Team, then such broker is acting as a Co-operating Broker, and Owner consents to any of Firm's designated or managing brokers ("Managing Broker(s)"), who supervise the Listing Team and the Co-operating Broker, to act as dual agent(s). If any of Firm's brokers other than the Listing Team act as the Co-operating Broker, Firm shall be entitled to the entire (2.5%) Fee. Listing Team has provided to Owner the pamphlet entitled "The Law of Real Estate Agency." As used in this Agreement, the term "gross purchase price" shall include the cash paid for the Property at closing, and the principal balance of any existing mortgage or loan of Owner, secured by the Property, subject to which buyer assumes or takes title.

### 5.2 When Earned.

5.2.1 Subject to the provisions of this Agreement, the Fee shall be earned for services rendered if, during the Term: (i) the Property is sold to a purchaser procured by Firm, Owner or

anyone else; or (ii) a binding contract for the sale of the Property is entered into by Owner; provided, however, that no transfer of any interest in connection with an entity reorganization or transfer between any City of Tacoma or Department of Public Utilities division or department shall be deemed to be a sale and no Fee shall be earned in connection with such a transfer.

5.2.2 In the event that Owner enters into a binding contract for the sale of the Property and the sale of the Property fails to close for any reason whatsoever, Firm shall not be entitled to the Fee or any other fee, commission or other compensation; except in the event the transaction fails to close due solely to Owner's material breach of said binding contract, then Firm shall be entitled to the Fee.

5.2.3 Exclusions. Unless pre-approved in writing by Owner, Firm shall not, in any discussions with prospective buyers, represent that Owner is willing to sell, transfer, grant, or convey any interest in the Property less than a fee simple estate, or represent that Owner is willing to grant any permissive use of the Property, to include, but not limited to, permits, licenses, or easements. Firm shall not be entitled to the Fee or any other compensation for grant of easement to the Tacoma Sportsmen's Club.

5.3 When Payable. The Fee shall be payable hereunder at closing, or the recordation of the deed transferring title to the Property, whichever is earlier. The sale of the Property is subject to all applicable requirements of the City of Tacoma Charter and Municipal Code, state law, and all other statutes, regulations, rules, orders, and law of any kind applicable to the sale of City of Tacoma or Tacoma Public Utilities real property, including City of Tacoma and Tacoma Public Utilities resolutions and policies regarding the sale of real property. Payment is contingent upon both the Public Utility Board and City Council of the City of Tacoma's approval of a purchase and sale agreement for the Property and all terms and conditions of the transaction under such purchase and sale agreement.

5.4 Rights after Term.

5.4.1 Owner shall pay Firm the Fee in accordance with the terms of this Agreement if, within one hundred twenty (120) calendar days after the expiration or earlier termination of the Term, the Property is sold to, or Owner enters into a binding contract for the sale of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to, any person or entity (including his/her/its successors, assigns or affiliates) with whom Firm has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of the Term, and, in each case, the transaction closes.

## ARTICLE SIX RIGHTS AND OBLIGATIONS OF OWNER

6.1 Refer All Inquiries. Owner shall provide all reasonably available information to permit Firm to properly market the Property in accordance with the terms of this Agreement, and shall timely refer to Firm all inquiries received from real estate brokers and prospective purchasers interested in the Property.

6.2 Rights Reserved By Owner. Owner reserves the right, in all events and in Owner's sole and unfettered discretion, to approve, modify or disapprove any and all proposals and offers regarding pricing, marketing, and terms of sale of the Property; and to approve or reject any prospective purchaser. Owner reserves the right to adjust the terms and conditions of any offer made or received, including, but not limited to, adjustment of the offering or purchase price for the Property upward or downward.

6.3 FIRPTA. Owner represents that it is the owner of the property and that, except as may be disclosed in writing to Firm, no person or entity who has an ownership interest in the Property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").

6.4 Hazardous Materials.

6.4.1 The Property is being sold in an "as is" condition, without representation or warranty of any kind, expressed or implied, oral or written, concerning the Property or any matter related thereto, including zoning, availability or suitability of access or utilities, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, or underground storage tanks ("Hazardous Materials") in, on, or about the Property. Prospective purchasers shall be advised of this disclaimer of condition. Language reflecting the above shall be inserted into any purchase and sale agreement entered into by Owner, which language shall also disclaim any such representations regarding the condition of the Property by Firm.

6.4.2 Owner hereby releases and forever discharges Firm, its directors, officers, employees, agents, successors and assigns from any and all actions, causes of action, suits, covenants, judgments, claims and demands whatsoever, in law or in equity, for or on account of or in any manner connected with Hazardous Materials in, on or about the Property and the violation of any federal, state or local law, statute, ordinance or regulation, any court or administrative order or decree or private agreement relating to the collection, storage, treatment or disposal of Hazardous Materials, except, however, to the extent that any such claims arise out of or result from Firm's violation of any aforesaid law, statute, ordinance, regulation, order, decree, or agreement.

6.5 Compliance with Laws. To the extent required by law, Owner agrees to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, any Property that is the subject of an acquisition or proposed acquisition or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

6.6 Copyrighted Materials. Firm shall be solely responsible for obtaining releases for the performance, display, re-creation, or use of any copyrighted materials.

## ARTICLE SEVEN CONFLICTS OF INTEREST

7.1 Other Interests. Owner acknowledges that, from time to time, Firm may provide to other persons

or other properties services that are similar to those that are to be provided pursuant to this Agreement, including, for example, listing other properties which may be competitive with the Property and showing prospective purchasers other properties in addition to the Property. Such other persons and/or properties may be in direct or indirect competition with Owner, and Owner consents thereto, provided that Firm shall not disclose the confidential information of Owner. Firm may also seek the sale of adjacent, separately-owned properties as an assemblage to the Property, in the event that it is accretive to value, results in better sale terms or higher likelihood of closing, or is in the best interest of Owner. In such event, Firm may be compensated by the other ownership(s), but Firm will still be representing the interests of Owner.

No officer, employee or agent of City, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. Firm shall comply with all federal, state, and city conflict of interest laws, statutes, and regulations. Firm represents that Firm presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Agreement pertains which would conflict in any manner or degree with the performance of Firm's services and obligations hereunder. Firm further covenants that, in performance of this Agreement, no person having any such interest shall be employed. Firm also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Agreement subjecting this Agreement to termination.

## ARTICLE EIGHT NOTICES

8.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be sent by a nationally recognized courier service or personally delivered (including by means of professional messenger service), or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (fax), to the addresses set forth below, and shall be deemed received when actually received.

To Owner:           Attn: Greg Muller, Real Estate Officer  
TPU Real Property Services  
ABS – 2<sup>nd</sup> Floor  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409  
Fax: 253.502.8539

To Firm:           Lee & Associates Commercial Real Estate Services, LLC  
701 Pike Street, Suite 1025  
Seattle, WA 98101  
Attn: James Bowles, President  
Fax: (206) 267-1457

8.2 Change of Notice Address. Notice of a change in address shall be given by notice in the manner set forth in this Article.

## **ARTICLE NINE GENERAL PROVISIONS**

9.1 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Washington, without regard to its conflicts of laws principles. Pierce County shall be the venue of any mediation, arbitration, or litigation arising out of this Agreement.

9.2 Amendment, Modification and Termination. This Agreement may be amended, modified or terminated only by written agreement of Firm and Owner.

9.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party.

9.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.5 Headings. The headings of the Sections and Articles of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

9.6 Due Authority. Each individual signing this Agreement on behalf of a party thereto warrants and represents to the other party that such party has the authority to execute this Agreement on such party's behalf and to bind such party to the terms hereof.

9.7 Severability. In the event any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, that term or provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement. The provisions of this Agreement which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement shall survive termination of this Agreement.

9.8 Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

9.9 Entire Agreement. This Agreement, including the exhibits hereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations and warranties, whether oral or written, by any officer, employee or representative of any party hereto.

9.10 Independent Contractor Status.

9.10.1 The services and deliverables shall be furnished by Firm as an independent contractor,

and nothing herein shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by City with respect to payments to Firm. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. By reason of Firm's status as an independent contractor hereunder, no workers' compensation insurance has been or will be obtained by City on account of Firm. Firm may be required to provide City proof of payment of these taxes and benefits. If City is assessed or deemed liable in any manner for those charges or taxes, Firm agrees to hold City harmless from those costs, including attorneys' fees.

9.10.2 In the event Firm incurs costs in excess of the authorized Fee, Firm shall be solely responsible for such costs and will not seek or be entitled to reimbursement from Owner for any such costs.

9.11 Records Retention. Firm shall establish and maintain records in accordance with requirements prescribed by City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, Firm shall retain such records for a period of six (6) years after receipt of the final payment under this Agreement or date of termination of this Agreement.

9.12 Taxes, Licenses, and Permits.

9.12.1 Firm acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, and Firm agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If City is assessed, made liable, or responsible in any manner for such charges or taxes, Firm agrees to hold City harmless from such costs, including attorneys' fees.

9.12.2 In the event Firm fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body related to this Agreement, including a court of law, then Firm authorizes City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Fee due to Firm.

9.12.3 Firm, at its sole expense, shall obtain and keep in force any and all necessary licenses and permits. Firm shall obtain and maintain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

9.13 Indemnification.

9.13.1 Firm shall indemnify, defend, and hold harmless City, its officials, officers, agents, employees, and volunteers from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the negligent actions of Firm in providing services under this Agreement; provided that this provision shall not apply to the extent that damage or injury results from the fault of City, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute of the state

of Washington may hereafter be amended.

9.13.2 Firm specifically assumes potential liability for actions brought by Firm's own employees against City and, solely for the purpose of this indemnification and defense, Firm specifically waives any immunity under the state industrial insurance law, Title 51 RCW. FIRM AGREES THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

9.13.3 This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnifications hereunder in favor of City. This indemnification shall survive termination of this Agreement.

9.14 Insurance. During the course and performance of the services specified herein, Firm shall adhere to the City of Tacoma Insurance Requirements as contained in Exhibit D attached hereto and incorporated herein by reference.

9.15 Waiver. A waiver or failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Agreement.

9.16 Agreement Administration and Right to Audit.

- A. The Real Estate Officer for the Department of Public Works, Real Property Services Division – TPU for City shall have primary responsibility for administration of this Agreement and approval of services to be performed by Firm, and shall coordinate all communications between Firm and City.
- B. Firm shall, at such times and in such form as City may reasonably require, furnish City with periodic status reports pertaining to the services undertaken pursuant to this Agreement.
- C. Upon City request, Firm shall make available to City all accounts, records, and documents related to the services undertaken pursuant to this Agreement for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance, and/or quality assurance under this Agreement.

9.17 Attorney's Fees. In the event of a dispute between the parties to enforce a right or rights provided by or arising out of this Agreement, then the non-prevailing party shall pay to the prevailing party reasonable attorneys' fees and other costs and expenses of enforcement proceedings. The "prevailing party" shall be the party receiving a net affirmative award or judgement.

In the event of a dispute pertaining to this Agreement, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Agreement.

9.18 Appraisal Services and Fees. The parties agree the appraisal services referenced in Section 5.1 may be initiated only upon the sale of the Property and in the event Firm has a good faith reason to

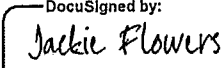


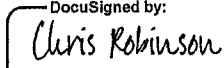
believe the gross purchase price for the Property is substantially below fair market value. As referenced in Section 5.1, said appraisal services shall be performed by an MAI-designated third-party real estate appraiser selected and contracted by Owner. Further, the parties agree to split the cost of said appraisal services on a 50/50 basis.

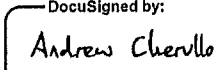
**Signatures on the Following Page**

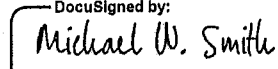
IN WITNESS WHEREOF, this Agreement has been executed by Owner and Firm, through their duly authorized representatives, as of the day and year first above written.

**OWNER:** TACOMA POWER

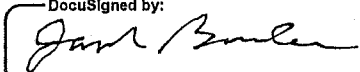
By:   
051901A77517428  
Jackie Flowers, Director of Utilities

Approved:   
42F0F06B24C4B3...  
Chris Robinson, Power Superintendent

Approved:   
30FE4DD3854C41E  
Andrew Cherullo, Finance Director

Approved  
as to Form:   
0156F503D5C04EA...  
Michael W. Smith, Deputy City Attorney

**FIRM:** LEE & ASSOCIATES COMMERCIAL REAL ESTATE SERVICES, LLC  
Licensed Real Estate Broker

By:   
0A11AF328D65489...  
James Bowles, President

**EXHIBIT A**

**[LEGAL DESCRIPTION OF PROPERTY]**

Revised Parcel B of Boundary Line Adjustment recorded under Auditor's File No. 201607085001, described as follows:

Government Lot 2 of Section 30, Township 19 North, Range 4 East of the W.M., in Pierce County, Washington. Except the West 20 feet for road.

Also except those portions conveyed to Pierce County by instruments recorded under Auditor's File Nos. 8604150281 and 201006010129, records of Pierce County, Washington.

Also except those portions conveyed to WGW, Inc. by instruments recorded under Auditor's File Nos. 201607150389, records of Pierce County, Washington.

## EXHIBIT B

### The Marketing Strategy

#### MARKETING STRATEGY

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For this disposition assignment we recommend a flexible process, informed by thorough analysis of the property. No two sites are the same, and the marketing plan must be customized for each individual property. Working hand in hand with the property owner is a key element of developing the marketing strategy, especially for vacant land. This is a process that we have successfully utilized many times over. We are more than traditional brokers that merely put property on the market and wait for a buyer to come along. The team members all have in-depth education and experience in the sales and marketing of industrial assets and development sites. This unique experience allows our team to have a deep understanding of the fundamentals of this disposition and subsequent development. While the Lee & Associates team can meet the quick marketing timeline prescribed by the City/TPU in the RFP (namely that we should be prepared to take the property to market within 10 days of a signed contract), we believe that haste would be detrimental to the City's interests, and we recommend that the proper preparation be conducted, as prescribed in further detail herein this proposal. To best target and maximize the number of prospective buyers for the subject properties, the following steps (some concurrent) would be taken by the Lee & Associates team:

#### 1. Methodology:

In order to fully understand the property, we will review all existing information available from the City of Tacoma/TPU and other public sources. We will perform in-depth analyses of the property and its context in the market, to determine highest-and-best use, in order to formulate a tailored marketing plan. We will then meet with the City to discuss our findings and recommendations. Although we would be performing in-depth analyses and financial modeling to inform the proper strategy, we believe that the best and most likely buyer will be a regional or national industrial real estate developer or an institutional real estate investor with an appetite for industrial development. Owner-users that are currently in the market would also be targeted.

We will build a marketing package that clearly outlines the developable nature of the site. In this will be an anticipated development timeline supported by the information available on the site. We will utilize the services of Vander Engineering to assist in the preparation of the development timeline. This will bring additional credibility to the marketing package. As part of our marketing efforts, we will make direct calls and give in-person presentations to the developers, investors, users and brokers to supplement our marketing materials. This strategy, which includes our own pre-feasibility of the site, provides credibility for potential purchasers, and avoids the need for longer due diligence periods. Being fully versed on the potential of the site allows us to maximize the price of the property by fully understanding the site development requirements, timing and assuring that any future developable value is not left off-the-table.

#### 2. Marketing Plan:

##### Phase 1 – Pre-Marketing & Development Feasibility

Included in the marketing plan is a thorough review of the asset and all available reports from the City/TPU (many of which have been provided). To the degree there are pieces of information missing, the team will assist the City/TPU in procuring them via third party providers, including consultants, architects and attorneys. This will ensure the listing team is fully aware of the current state of the property and know what questions are yet to be answered. We want to anticipate everything from a buyer/developer perspective, to minimize "surprises" during the selling process. Lee & Associates will perform a feasibility study for the development of the property to ensure we understand its highest and best use, thus maximizing the value of the property. This will include:

- Full document review, including any reports (ALTA survey, environmental assessments, Physical Condition Assessments, capital expenditure and ongoing capital budgets, title reports, and any other relevant documentation) in the City's possession.



## MARKETING STRATEGY

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- Consider procuring additional studies, if warranted (the team will assist the City in procuring them via third party providers).
- Zoning/code research and determine any additional regulatory issues that may affect the sites.
- Determine the maximum building density allowed.
- If appropriate, provide a conceptual site plan and preliminary typical building floor plans.
- If appropriate, provide unit matrix and area calculations.
- If appropriate, prepare a Building Massing 3D model based on site plan and floor plans.
- Provide a development summary / proforma.

This is the same methodology that an interested developer/buyer will be utilizing as they evaluate the site. It will provide our team and the City/TPU insight into potential site development issues, and how marketing materials can be created to best address those issues and display the property in its most favorable light.

### Phase 2 – Marketing Materials

Informed by the groundwork that was performed in the previous phase, the team will prepare a comprehensive Offering Memorandum / Request for Proposal (for Acquisition and Development). The marketing materials will be prepared by our professional in-house graphics and marketing team. The marketing materials will incorporate the benefits and opportunities of the property and will highlight the location within the Pierce County submarket. These marketing materials will clearly identify the opportunity to a potential Buyer/Developer. **We are not just selling a piece of vacant land, we are selling a vision of what the property can become.**

### Phase 3 – Marketing Campaign

Unlike many of its brokerage competitors, Lee & Associates strongly believe that **marketing a property as broadly as possible to as many prospective buyers as possible is the best way to generate interest and competition that will maximize pricing and advantageous terms for the City/TPU.** To that effect, the team will not “hoard” the listing for its own benefit.

Upon approval of marketing materials by the City, the team will publish the property broadly to the public via a multi-pronged marketing campaign, which includes (but not limited to) the following:

- **Signage** – Install signage at each property that makes clear the property is for sale and provides contact information to reach us for further detail.
- **Electronic Mail/Proprietary Buyer List** - Broadcast email to a list of all active brokers announcing the availability of the properties to the market.
- **Real Capital Markets (RCM) Platform** – The team would utilize the RCM sale platform for transaction management. RCM is a technology platform that allows for delivery of property materials and data, after the buyer has executed the confidentiality agreement typically required by Seller. RCM allows for efficient time management when interacting with multiple potential buyers, as well as easy reporting. RCM also includes a national buyer database that targets buyers by their purchasing history, which is a supplement to Lee & Associates database.
- **Developers/Cold Call** - Once the marketing materials are out to the public, the Team will call all potential Developers that are active and working on like-kind projects to present the opportunity.



## MARKETING STRATEGY

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This is effective and commonly results in finding the buyers.

- Lee & Associates Website - Listing information will be posted to the local and national Lee & Associates company websites at [www.lee-nw.com](http://www.lee-nw.com) and [www.lee-associates.com](http://www.lee-associates.com). Listings are updated regularly and are visited by brokers as well as potential buyers.
- CBA Multiple Listing Service - Listing information will be submitted to the Commercial Brokers Association (CBA) for publication on their website.
- Other Online Listing Services - Lee & Associates selects the best marketing mediums for our client's property and pays for premium listing services. In addition to our calling efforts, the properties will be showcased on CoStar, Catalist, and Loopnet, maximizing the exposure and practicing Search Engine Optimization (SEO) to push to the forefront.
- Organizations & Memberships - The Lee & Associates team are each members of several elite organizations that can be leveraged for maximizing the exposure of the property. Networks, such as SIOR (Society of Industrial and Office Realtors), CCIM (Certified Commercial Investment Members), WSCAR, ULI, and others act as a force-multiplier for getting the message out.
- Influencers Campaign - Real Estate Attorneys, architects, other industry vendors, EDC's, industry/trade groups, and other organizations are excellent lead generators, and will be leveraged by the team.
- Print Media - At the City's discretion, the listing team can coordinate print media advertisements, as well as public notices, particularly the RFP. The City would pay for these third-party services directly.
- Social Media - In an effort to broaden the reach of listings, our company posts updates on sales activity, new listings, availabilities and pertinent market information on social media channels.

During the marketing period, the team will also be coordinating all tours of the subject property and transmittal of preliminary due diligence materials with prospective buyers, brokers, and third-party vendors to facilitate the transaction and ensure the process moves along at an acceptable pace. In addition, having organized due diligence materials and the answers to typical anticipated development questions, helps to avoid confusion among buyers and the need for contract extensions. We believe this is an extremely important part of closing a transaction that is often not given appropriate attention, especially in the current quick-paced investment environment.

As the marketing campaign is underway, the team will continuously monitor all marketing activity and report the status on a regular basis. Having performed multiple public-sector dispositions, we understand the importance of thorough reporting, which is designed to keep the City's staff informed throughout the process. Communications with the City/TPU will likely include:

- Determination of how best to communicate with the City (single point of contact, task related point of contact, etc.);
- Regularly scheduled e-mail status reports, to include marketing activity reports;
- Copies of correspondence sent to inquiring brokers and prospects, as required;
- Periodic meetings with City staff and the team to ensure continued, open communication;
- Preparation of memoranda and presentations for Council meetings.





## MARKETING STRATEGY

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We anticipate this property will have significant interest from the open market. Regular bi-monthly meetings will be coordinated throughout the marketing and sale process. The team understands that real estate sales are not in the City staff's typical work responsibilities, and we will make a concerted effort to become a trusted advisor and keep the staff educated and informed throughout the process.

### Phase 4 – Strategic Pricing and Offer Review

The goal is to achieve the highest price for the property and craft a purchase and sale agreement that will close and not be "re-traded," meaning a price reduction for something that may or may not have been known to the parties prior to entering into the sale agreement. **We strongly recommend offering development sites as unpriced** in general, since the value that individual developers and investors will derive are highly dependent on the assumptions they apply in their analysis and pro forma underwriting. As one example, if we believe that the reversionary capitalization rate is typically 5.5% based on market comps, but a developer thinks they can sell at a 5.0% capitalization rate and a significantly higher price, then they can afford to (and will) pay more for the site. In addition, given the interest to maximize the proceeds in the current strong market conditions, we believe it reasonable to use a "Call for Offers" date to ensure potential buyers move judiciously on the opportunity.

The team will collect and send all offers and provide a matrix to compare the offers received in a transparent way that allows the City to make an informed decision. Such comparison includes detailed economic and financial analysis. In some instances, we have worked with the client to develop a scoring system, which can offer a somewhat less subjective comparison. Although this assignment will require a more thorough analysis of each offeror's proposed development plan, and a narrative description, below is an example of a summary offer comparison matrix:

OFFER COMPARISON MATRIX				
OFFEROR: Company Name Buyer Name	ABC Company Real Estate	XYZ Company Investment Group	Acme Development Regional Developer	FX Dev Retail User
Intended Use/Project	Develop 5 stories, 150,000 sq ft Mixed Use	Build for future development	Develop 10 stories, 175,000 sq ft Mixed Use	Develop existing building and use as neighborhood development
Comments:	Plan to re-use development existing building. No current plans to use existing structure as a retail store.	Should call need to use a development for the project	Also three stories for retail under construction in the area. Has also discussed future plans to use the 2 stories.	Small local chain of convenience stores.
PURCHASE PRICE	\$5,000,000	\$2,000,000	\$3,100,000	\$2,250,000
Price / SF	\$33	\$13	\$17	\$15
Current Money Deposit	\$10,000	\$10,000	\$10,000	None
LOI Form	Cash	Cash	Financing Note	Financing Note
LOI Percent	1.0%	0.5%	0.5%	N/A
Refundable:	Yes, until 90	Yes, until 90	Yes, until 90	Yes, until 90
ACQUISITION FINANCING				
Equity Source:	Balance sheet cash	None	75% Cash / 25% SBA Loan	75% Cash / 25% SBA Loan
Debt Source:	Acquisition funded all	N/A	75% Cash / 25% SBA Loan	75% Cash / 25% SBA Loan
Financing Terms:	N/A	N/A	75% Cash / 25% SBA Loan	75% Cash / 25% SBA Loan
Comments:			No commitments yet	Signed LOI
DUE DILIGENCE				
Due Diligence Period	30 Days	60 Days	180 Days or LUP	45 Days
Due Diligence Extensions	For 10 day Outlets	None	For 30 day Outlets	None
Extension Payments	\$10,000 each	N/A	\$5,000 each (if 1)	N/A
Outside DD Explanation	150 Days	60 Days	750	45 Days
CLOSING				
Closing Period	15 Days	10 Days	15 Days	45 Days
Estimated Closing Date	8/17/2018	10/23/2018	10/0	8/17/2018
Having Due Diligence	Same	Same	Same	Over 30-day
Outside Closing Dates	8/17/2018	10/23/2018	10/0	8/17/2018
OTHER NOTES	Price, 10% discount for any company that offers		20% discount for any company that offers	

## MARKETING STRATEGY

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A comprehensive analysis of the buyer is critical, and the team will help ensure the buyer is capable of closing on the property. This is done by examining the buyer's previous transactions/projects and research through our network to ensure stability for the seller. This part of the transaction is often not well-guided by other brokers and ends up costing the seller time and money. It takes more work up-front, but is well worth the effort.

### Phase 5 – Due Diligence & Closing

The closing will be split into two parts: a feasibility/due diligence period and a closing period. During the feasibility/due diligence period, the team will be in constant discussions with the buyer to ensure appropriate reports are ordered and steps taken. Ideally, the buyer will have already spent considerable time reviewing the various reports and preliminary due diligence materials that have been provided as part of the marketing efforts. Typically, it will take at least 30-60 days for the buyer to procure the necessary reports, and usually buyers will want a little longer to ensure their completion. In this instance, due to the "raw" nature of the site, additional time is warranted. Upon conclusion of the due diligence period, the buyer will convert their earnest money to non-refundable, but will likely be continuing its entitlement work. After that the team will facilitate the distribution and collection of documents, as needed, and help coordinate with buyer, lender, and counsel to ensure a smooth and timely closing.

### ANTICIPATED TIMELINE

The team is highly capable of providing high-quality marketing materials and getting the subject property out to market in a timely manner. In addition, given the interest to maximize the proceeds in the current strong market conditions, we believe it reasonable to use a "Call for Offers" date to ensure potential buyers move quickly to the opportunity.

#### Timeline

Step 1 – Pre-Marketing Feasibility.....	2-3 Weeks
Step 2 – Marketing Materials.....	2-3 Weeks
Step 3 – Marketing Campaign.....	3-5 Weeks
Step 4 – Strategic Pricing and Offer Review.....	2 Weeks
Step 5 – Closing (Feasibility Period).....	12-16 Weeks
– Closing (Closing).....	2-4 Weeks

The total time for the Sale should range from approximately 6 to 9 months, depending on the buyer's intended use and entitlements needed from Pierce County.



### **EXHIBIT C - The Deliverables**

1. The selected Contractor must be able to assign at least one licensed commercial real estate broker with a minimum of 5 years demonstrated industrial land experience to provide the services required by the City.
2. Listing the property on the Commercial Broker's Association (CBA) web service.
3. Listing the property on the Contractor's website, Costar and possibly others sources deemed appropriate.
4. Providing flyer and other written sales information to the City for inclusion in the City's surplus website(s).
5. Utilizing the Contractor's real estate industry network including, but not limited to, other real estate firms, members of CBA, Pierce County Economic Development Department, Economic Development Board for Tacoma-Pierce County, and prospective buyers to advertise and promote the sale of property within 10 business days of approval of the marketing materials and authorization to proceed by the City.
6. Posting For-Sale signs located in prominent locations and easily visible from nearby rights of way.
7. Providing guidance and assistance for preparing the property for sale, including any studies that may be needed and disclosure documents and items.
8. Showing the property to interested buyers providing viewing opportunities and inspection.
9. Providing relevant information to the City regarding any third-party site visits and feedback on prospective buyers' background and level of interest.
10. Communicating to the market and potential buyers the City's selection process and criteria for evaluating offers for the property, as well as, the City's objectives and goals for the sale and redevelopment of the property. The City's requirements, objectives, community goals, and evaluation criteria will be provided to the Contractor for dissemination to prospective buyers, if necessary, to facilitate a sale.
11. Otherwise assist in the negotiation and sale of the property as directed by the City.
12. Attend and answer any relevant questions from the Tacoma Public Utility Board and/or Tacoma City Council regarding the property, buyer and/or sale terms.

**EXHIBIT D****City of Tacoma Insurance Requirements**

PT18-0350F

**CITY OF TACOMA INSURANCE REQUIREMENTS****I. GENERAL REQUIREMENTS**

- a) The City of Tacoma (the City) reserves the right to approve or reject the insurance provided based upon the insurer (including financial condition), terms and coverage, the Certificate of Insurance (COI), and/or endorsements. The insurance must be provided by an insurer with a rating of (A-) VII or higher in the A.M. Best's Key Rating Guide (<http://www.ambest.com/home/default.aspx>), and pursuant to RCW 48, licensed to do business in the State of Washington (or issued as a surplus line by a Washington Surplus Lines broker).
- b) The Contractor shall keep this insurance in force during the entire term of the contract and for thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.
- c) The liability insurance policies required by this section shall:
  - 1. Contain a "severability of insureds," "separation of interest," or "cross liability" provision.
  - 2. Be primary and non-contributory insurance to any insurance coverage or self-insurance program the City may maintain.
  - 3. Contain a Waiver of Subrogation clause in favor of the City.
  - 4. Other than professional liability, reflect coverage on an "occurrence", not "claims-made" policy form.
- d) The Contractor shall provide the City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- e) The Contractor shall forward to the City, a full and certified copy of the insurance policy(s) and endorsements required by this section upon the City's request.
- f) The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the City.
- g) Failure on the part of the Contractor to obtain and maintain the insurance as required by this section shall constitute a material breach of the Contract, upon which the City may, after giving five business day notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to the City by the Contractor upon demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.
- h) All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by the City to the Contractor.
- i) For all liability insurance policies required by this Section, the City, including its officers, elected officials, employees, agents, and volunteers, and any other entities as required by the Contract, shall be named as additional insured(s) by amendatory endorsement, EXCEPT Professional Liability (if applicable), Workers Compensation, Owners and Contractors Protective Liability, and Railroad Protective Liability.



## PT18-0350F CITY OF TACOMA INSURANCE REQUIREMENTS

### II. EVIDENCE OF INSURANCE

The Contractor shall deliver a COI and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work to the City. The certificate and endorsements must conform to the following requirements:

- a) An ACORD certificate or a form determined by the City to be equivalent.
- b) Copies of all endorsements showing the policy number and naming the City as an additional insured.
- c) The endorsement is to state that the insurance is primary and noncontributory over any City insurance or self-insurance.
- d) The endorsement is to extend "Products/Completed Operations" coverage to the City as an additional insured.
- e) A statement of additional insured status on an ACORD COI shall not satisfy this requirement.
- f) Any other amendatory endorsements to show the coverage required herein.

### III. CERTIFICATE REQUIREMENTS SPECIFIC REPRESENTATIONS

The following must be indicated on the COI:

- a) The City is named as an additional insured ("with respect to a specific Contract" or "for any and all work performed with the City" may be included in this statement).
- b) This insurance is primary and non-contributory over any insurance or self-insurance the City may carry ("with respect to a specific Contract" or "for any and all work performed with the City" may be included in this statement).
- c) A Waiver of Subrogation in favor of the City for General Liability and Automobile Liability.
- d) Self-Insured Retention and applicable deductible limits must be disclosed on the COI and be no more than \$10,000.
- e) Contract or Permit number and the City Department.
- f) All coverage other than professional liability, Cyber/Privacy & Security, and Pollution Liability must be written on "occurrence" form and not "claims-made" form.
- g) Reflect the existence and form numbers of all required endorsements.

### IV. SUBCONTRACTORS

It is the Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. The Contractor shall provide evidence of such insurance upon the City's request.

### V. CERTIFICATE REQUIREMENTS FOR COVERAGES AND LIMITS

The insurance shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits. None of the policies or coverage required by this section shall be subject to a deductible or self-insured retained limit of more than \$10,000 unless first approved in writing by the City Contracting Department.





## PT18-0350F CITY OF TACOMA INSURANCE REQUIREMENTS

### A. General Liability Insurance

#### 1. Commercial General Liability (CGL) Insurance

The CGL insurance policy must provide limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

The CGL policy shall be written on an "occurrence", not "claims-made", basis and shall include the following coverage:

- a) Must use (Insurance Services Office (ISO) form CG0001(04-13) or its equivalent).
- b) A per project aggregate policy limit.
- c) Products Hazard/Completed Operations- for a period of one year following final acceptance of the work.
- d) Personal/Advertising Injury.
- e) Contractual Liability.
- f) Explosion, Collapse, or Underground Property Damage.
- g) Blasting (only required when the Contractor's work under this Contract includes exposures to which this specified coverage responds).
- h) If Contractor is performing work within 50 feet of a railroad right of way, the General Liability policy shall be endorsed to eliminate the Contractual Liability exclusion pertaining to work within 50 feet of a railroad right of way using ISO form CG2417(10-01) or equivalent.
- i) Abuse & Molestation, by a separate coverage part or an endorsement to the CGL, with limits not less than \$1,000,000 each occurrence & \$2,000,000 aggregate for Contractors working directly with youth under the age of 18. If Abuse & Molestation coverage is provided on a "claims-made" basis, coverage must be maintained for not less than three years following the end of the contract. This may be done by policy renewals or an Extended Reporting Period Endorsement.
- j) Include the City as additional insured and:
  1. Use ISO forms CG2010(04-13) and CG2037(04-13) or equivalent for Contractors performing work on behalf of the City and name the City as an additional insured for ongoing and completed operations.
  2. Use ISO form CG2012(04-13) or equivalent for Permits and name the City as an additional insured.
  3. Use ISO form CG2026(04-13) or equivalent for Facility Use Agreements and name the City as an additional insured.
  4. Blanket additional insured provisions within a policy form will be accepted in lieu of the specific additional insured endorsement forms specified herein. However, a blanket additional insured endorsement shall provide the equivalent coverage provided by specific additional insured endorsements specified herein.

#### B. Commercial Automobile Liability (CAL) Insurance

The Contractor shall obtain and keep in force during the term of the Contract, a policy of CAL insurance coverage, providing bodily injury coverage and property damage coverage for owned (if any), non-owned, hired, and leased vehicles.



PT18-0350F

**CITY OF TACOMA INSURANCE REQUIREMENTS**

The Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than \$1,000,000 each accident for bodily injury and property damage. Must use ISO form CA 0001 or equivalent.

**C. Workers' Compensation****1. State of Washington Workers' Compensation**

The Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

**D. Employers' Liability (EL) (Stop-Gap) Insurance**

The Contractor shall maintain EL coverage with limits not less than \$1,000,000 each employee, \$1,000,000 each accident, and \$1,000,000 policy limit.

**E. Professional Liability Insurance (PLI)**

The Contractor and/or its subcontractor shall provide evidence of PLI covering professional errors and omissions. Such policy must provide minimum limits of \$1,000,000 per claim and \$2,000,000 aggregate. If the scope of such design-related professional services includes work related to pollution conditions, the PLI policy shall include Pollution Liability coverage. If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than three years following the end of the Contract.

**F. Other Insurance**

Other insurance as may be deemed appropriate to cover the specified risk and exposure arising from the scope of work or changes to the scope of work required by the City. The costs of such necessary and appropriate insurance coverage shall be borne by the Contractor.

**First Notice to Extend Term –  
Addendum No. 1 to  
City of Tacoma Department of Public Utilities Light Division  
Exclusive Sales Listing Agreement  
RPS Project No. 2018-093**

THIS Addendum No. 1 is hereby incorporated into that certain EXCLUSIVE SALES LISTING AGREEMENT dated June 7, 2019 by and between CITY OF TACOMA, Department of Public Utilities, Light Division (d.b.a. Tacoma Power) ("Tacoma Power", "City", and/or "Owner"), and Lee & Associates Commercial Real Estate Services, LLC ("Firm") (collectively the "Parties").

**WITNESSETH**

**WHEREAS** the Parties have executed the aforementioned EXCLUSIVE SALES LISTING AGREEMENT (the "Agreement"), dated June 7, 2019 (the "Effective Date"), and

**WHEREAS** Section 2.1 of the Agreement provides that the "Term" of the Agreement shall commence on the Effective Date and shall end at midnight on that day that is one (1) year after the Effective Date, unless sooner terminated or extended in accordance with the provisions of the Agreement, and

**WHEREAS** Section 2.1 of the Agreement further provides that the Owner shall have the option to annually renew and extend the Term by up to four (4) successive periods of one (1) year each by providing written notice to Firm, and

**WHEREAS** the Owner wishes to exercise its option to renew and extend the Term of the Agreement for the first renewal and extension period, commencing at midnight on that day that is one (1) year after the Effective Date, herein referred to as the "First Notice to Extend Term", and

**NOW, THEREFORE**, in consideration of the mutual promises and obligations herein, the Parties agree as follows:

1. The expiration of the Term of the Agreement is extended from midnight of June 7, 2020 to midnight of June 7, 2021.
2. All other terms of the Agreement shall remain the same unless formally amended in writing upon mutual agreement of the Parties.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Addendum No. 1 effective as of May 29, 2020.

LEE & ASSOCIATES COMMERCIAL  
REAL ESTATE SERVICES, LLC  
Licensed Real Estate Broker

By:

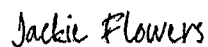


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James Bowles,  
President

TACOMA POWER

By:



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Jackie Flowers,  
Director of Utilities

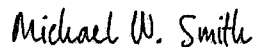
Approved:



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Chris Robinson,  
Power Superintendent

Approved as to Form:



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Michael W. Smith,  
Deputy City Attorney



TACOMA PUBLIC UTILITIES

3628 South 35th Street

Tacoma, Washington 98409-3192

Date: November 1, 2018

From: Jackie Flowers, Director of Utilities

To: Dylan Harrison, Senior Real Estate Officer, Real Property Services

Subject: Declaration of Surplus of Tacoma Power Frederickson Industrial Site

Tacoma Power owns a parcel of land identified as Pierce County Assessor Tax Parcel Number 0419302044. The property is located in the 16500 Block of Canyon Road East in the Frederickson vicinity of unincorporated Pierce County. The parcel contains approximately 31.5 acres and is zoned for industrial use.

Property Legal Description:

Revised Parcel B of Boundary Line Adjustment recorded under Auditor's File No. 201607085001, described as follows:

Government Lot 2 of Section 30, Township 19 North, Range 4 East of the W.M., in Pierce County, Washington. Except the West 20 feet for road.

Also except those portions conveyed to Pierce County by instruments recorded under Auditor's File Nos. 8604150281 and 201006010129, records of Pierce County, Washington.

Also except those portions conveyed to WGW, Inc. by instruments recorded under Auditor's File Nos. 201607150389, records of Pierce County, Washington.

This vacant property was originally transferred from Tacoma Water in 2007 with the intention to build a new South Service Center on the site. However, that project was subsequently cancelled.

Upon review by Tacoma Power management, it has been concluded that there is no reasonable need for Tacoma Power to retain the property. Therefore, pursuant to City of Tacoma Municipal Code Section 1.06.280, I hereby certify that this property has no further public use, is surplus to the needs of Tacoma Public Utilities, and that disposing of it would be in the best interests of the City of Tacoma.

APPROVED:



Jackie Flowers, Director of Utilities

cc: Jennifer Hines, Public Works ADM for Facilities Management/Real Property Services





## LOCATION MAP

TACOMA POWER SALE TO EXETER CANYON LAND, LLC

FREDERICKSON INDUSTRIAL SITE



- Approximately 31.5 Acres
- Pierce County TPN 0419302044



## City of Tacoma

## City Council Action Memorandum

**TO:** Elizabeth Pauli, City Manager  
**FROM:** Jackie Flowers, Director of Utilities  
**COPY:** City Council and City Clerk  
**SUBJECT:** Resolution – Declaration of Surplus and Sale of Tacoma Power Real Property – City Council Consent Agenda for September 22, 2020  
**DATE:** August 28, 2020

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**SUMMARY AND PURPOSE:**

To set Tuesday, October 6, 2020 as the date for a Public Hearing regarding the declaration of surplus and sale of approximately 31.5 acres of Tacoma Power property for \$10,600,000.00 to Exeter Canyon Land, LLC ("Exeter").

**BACKGROUND:**

The Director of Utilities approved the surplus declaration in November 2018. At the conclusion of marketing efforts, a purchase and sale agreement with Exeter was entered into in February 2020. Exeter has extensive nationwide experience in developing industrial properties, many as build-to-suit for particular users and has submitted an application for development with Pierce County. Tacoma Power does not need to retain ownership of the property as ownership entails additional management time and expense. The sale is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been reviewed by the City Attorney's Office and approved by Tacoma Power management and Real Property Services.

**COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:**

As the sale involves an unimproved tract of land in a suburban location in Pierce County, no potential impacts are foreseen. This sale has been vetted by Tacoma Power management.

**2025 STRATEGIC PRIORITIES:****Equity and Accessibility:**

The sale will allow continued development of the Frederickson community, which provides housing, educational, employment, and recreational opportunities in line with state-mandated Growth Management policies, Pierce County development regulations, including environmental mitigation, and the economic development goals of the County Executive, including job creation. As the sale property lies outside the corporate limits of the City, no Equity Index Scores have been identified.

**ALTERNATIVES:**

Presumably, your recommendation is not the only potential course of action; please discuss other alternatives or actions that City Council or staff could take. Please use table below.

Alternative(s)	Positive Impact(s)	Negative Impact(s)
1. Retain property	None.	Costs for maintenance and liability.



City of Tacoma

**City Council Action Memorandum**

**EVALUATION AND FOLLOW UP:**

This is a one-time sale with no on-going evaluation required.

**STAFF/SPONSOR RECOMMENDATION:**

Tacoma Power and Real Property Services recommend that the City Council set October 6, 2020 as the date to hold a Public Hearing for the declaration of surplus and sale of approximately 31.5 acres of Tacoma Power Property to Exeter Canyon Land, LLC for \$10,600,000.00

**FISCAL IMPACT:**

There is no fiscal impact to setting this Public Hearing.

**Are there financial costs or other impacts of not implementing the legislation?**

No

**Will the legislation have an ongoing/recurring fiscal impact?**

No

**Will the legislation change the City's FTE/personnel counts?**

No

**ATTACHMENTS:**

None.