



RESOLUTION NO. U-11315

1 A RESOLUTION relating to Tacoma Power; declaring utility-owned
2 unimproved real property located in Cowlitz County surplus and
3 authorizing the sale to the BNSF Railway Company for \$81,200.

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 2.74 acres of unimproved
7 property ("Property") located in a rural location in unincorporated Cowlitz
8 County, Washington, near the town of Vader, identified under Cowlitz County
9 Assessor Tax Parcel No. WK1601006, to BNSF Railway Company ("BNSF") for
10 an agreed upon amount of \$81,200, and

11 WHEREAS the Property was originally acquired by Tacoma Power in
12 2013, utilizing Fish Habitat Funds targeted for fish habitat protection,
13 restoration, and enhancement consistent with the Cowlitz Hydroelectric Project
14 obligations under FERC License No. 2016, and

15 WHEREAS given its land-locked status and small size, together with its
16 location adjacent to an operating rail line, there is limited opportunity to improve
17 habitat functions and values on the Property, and

18 WHEREAS BNSF, who operates the adjacent rail line, would like to
19 acquire the Property for a bridge replacement project across the Cowlitz River,
20 and

21 WHEREAS Tacoma Power paid \$11,362.00 for the property in 2013, and

22 WHEREAS the net sale proceeds will be returned to the Fish Habitat
23 Fund to be reinvested for fish habitat purposes consistent with the guidelines of
24
25
26



1 the Habitat Advisory Group ("HAG") oversight committee established by the
2 FERC License Settlement Agreement Article 11, and

3 WHEREAS Real Property Services has worked with Tacoma Power's
4 Natural Resources division on this request, and the HAG committee has given
5 its approval, and

6 WHEREAS Tacoma Power and Real Property Services have negotiated
7 the sale price to BNSF of \$81,200.00, which has been determined to represent
8 fair market value, and

9 WHEREAS, Tacoma Power has determined that the Property
10 sought by BNSF is not needed for continued utility service and has deemed the
11 Property surplus to Tacoma Power's needs; Now, Therefore,

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

13 Sec. 1. That it is in the best interests of the City of Tacoma to approve
14 the negotiated sale of approximately 2.74 acres of unimproved property located
15 near the town of Vader in unincorporated Cowlitz County, Washington,
16 identified under Cowlitz County Assessor Tax Parcel No. WK1601006, and as
17 more fully described in the documents on file with the Clerk of the Board, to the
18 BNSF Railway Company in the amount of \$81,200.

19 Sec. 2. That the Property is not essential for continued effective utility
20 service by Tacoma Power and is properly declared surplus property and excess
21 to Tacoma Power's needs.
22
23
24
25
26



1 Sec. 3. That upon approval by the Board, a separate request will be
2 made to the City Council to hold a Public Hearing to be followed by Final
3 Approval. Closing of the sale is expected by June 2022.

4 Sec. 4. That the City Council is requested to hold a public hearing on this
5 matter pursuant to RCW 35.94.040, and thereafter approve this recommended
6 sale and authorize the proper officers of the City of Tacoma to execute all
7 necessary documents, substantially in the same form as on file with the Clerk
8 and approved by the City Attorney.

9 Approved as to form:

10 _____
11 /s/
12 Chief Deputy City Attorney

Chair


Secretary

13 _____
14 Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM:  Matt Bleich, Tacoma Power Natural Resources Manager
Greg Muller, Real Estate Officer, Real Property Services
MEETING DATE: April 13, 2022
DATE: April 1, 2022

SUMMARY: Declare surplus and authorize the negotiated sale of approximately 2.74 acres of unimproved Tacoma Power property, identified as Cowlitz County Assessor Tax Parcel No. WK1601006, located in the Vader vicinity of unincorporated Cowlitz County, to the BNSF Railway Company for \$81,200.00.

BACKGROUND: No previous request has been submitted to Board in relation to this proposal. The sale property is in a rural location in unincorporated Cowlitz County near the town of Vader. As detailed in the Background Memorandum dated March 16, 2021 previously provided to Board Members (copy attached), this property was originally acquired by Tacoma Power in 2013 utilizing Fish Habitat Funds targeted for fish habitat protection, restoration, and enhancement consistent with the Cowlitz Hydroelectric Project obligations under FERC License No. 2016. Given its land-locked status and small size, together with its location adjacent to an operating rail line, there is limited opportunity to improve habitat functions and values on this property.

In furtherance of a bridge replacement project across the Cowlitz River, the BNSF Railway Company ("BNSF"), who operates the adjacent rail line, would like to acquire the property.

Tacoma Power paid \$11,362.00 for the property in 2013. The net sale proceeds will be returned to the Fish Habitat Fund to be re-invested for fish habitat purposes consistent with the guidelines of the Habitat Advisory Group ("HAG") oversight committee established by the FERC License Settlement Agreement Article 11. Real Property Services has worked with Tacoma Power's Natural Resources division on this request, and the HAG committee has given its approval.

The sale documents were reviewed by the City Attorney's Office and approved by Tacoma Power management and Real Property Services.

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 by June 2022.



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? N/A.

ATTACHMENTS: Purchase and Sale Agreement, Declaration of Surplus, Background Memorandum to Board, Location Map

CONTACT: Primary Contact: Greg Muller, Real Estate Officer, 253.606.4688
Supervisor: Dylan Harrison, Senior Real Estate Officer, Ext 8836



City of Tacoma

City Council Action Memorandum

TO: Elizabeth Pauli, City Manager
FROM: Jackie Flowers, Director of Utilities DS
JF
COPY: City Council and City Clerk
SUBJECT: Resolution – Declaration of Surplus and Sale of Tacoma Power Real Property – City Council Consent Agenda for April 26, 2022
DATE: April 1, 2022

SUMMARY AND PURPOSE:

To set Tuesday, May 10, 2022 as the date for a Public Hearing regarding the declaration of surplus and sale of approximately 2.74 acres of unimproved Tacoma Power property, identified as Cowlitz County Assessor Tax Parcel No. WK1601006, located in the Vader vicinity of unincorporated Cowlitz County, to the BNSF Railway Company for \$81,200.00.

BACKGROUND:

[Click or tap here to enter text.](#)

The sale property is in a rural location in unincorporated Cowlitz County near the town of Vader. This property was originally acquired by Tacoma Power in 2013 utilizing Fish Habitat Funds targeted for fish habitat protection, restoration, and enhancement consistent with the Cowlitz Hydroelectric Project obligations under FERC License No. 2016. Given its land-locked status and small size, together with its location adjacent to an operating rail line, there is limited opportunity to improve habitat functions and values on this property. In furtherance of a bridge replacement project across the Cowlitz River, the BNSF Railway Company ("BNSF"), who operates the adjacent rail line, would like to acquire the property.

Tacoma Power paid \$11,362.00 for the property in 2013. The net sale proceeds will be returned to the Fish Habitat Fund to be re-invested for fish habitat purposes consistent with the guidelines of the Habitat Advisory Group ("HAG") oversight committee established by the FERC License Settlement Agreement Article 11. Real Property Services has worked with Tacoma Power's Natural Resources division on this request, and the HAG committee has given its approval.

The sale documents were reviewed by the City Attorney's Office and approved by Tacoma Power management and Real Property Services.

COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:

The public may receive notice via publication of the City Council Agenda and Public Hearing notice. Further opportunity for neighborhood and broader public input will be available at the time BNSF has finalized its plans and makes application for development and permits with Cowlitz County, the governing jurisdiction for this property.

2025 STRATEGIC PRIORITIES:

Equity and Accessibility:

The sale will allow continued operation of the abutting rail line owned and operated by BNSF. As the property is located in Cowlitz County, no Equity Index Score has been established.



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.

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 May 10, 2022 as the date to hold a Public Hearing for the declaration of surplus and sale of approximately 2.74 acres of unimproved Tacoma Power property, identified as Cowlitz County Assessor Tax Parcel No. WK1601006, located in the Vader vicinity of unincorporated Cowlitz County, to the BNSF Railway Company for \$81,200.00.

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:

Sale Property Location Map.

LOCATION MAP

TACOMA POWER COWLITZ COUNTY PARCEL SALE TO BNSF – BRIDGE REPLACEMENT PROJECT



COWLITZ COUNTY TAX PARCEL NO. WK1601006

2.74± SF ACRES

VADER VICINITY, UNINCORPORATED COWLITZ COUNTY, WA.

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
LIGHT DIVISION
REAL ESTATE PURCHASE AND SALE AGREEMENT
AGREEMENT NO. A3244

Reference No.: P2019-183

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

Buyer: BNSF Railway Company

Abbreviated

Legal Description: Portion of Govt Lot 2 in S16, T10N, R2W, W.M., Cowlitz Co., WA

County: Cowlitz

Tax Parcel No.: WK1601006

This REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into as of September 17, 2021 (the "Agreement Date") between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a first class municipal corporation ("Seller"), and BNSF RAILWAY COMPANY, a Delaware Corporation, ("Buyer").

RECITALS

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

WHEREAS, Buyer is developing real property that abuts the Property and desires to purchase from Seller, and Seller desires to sell to Buyer, the Property on 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 in the County of Cowlitz and State of Washington, more particularly described as follows:

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

Also known as Cowlitz County Assessor Tax Parcel No. WK1601006 (the "Property").

2. Deposit. Within ten (10) business days of the Agreement Date, Buyer shall deliver to ~~Chicago Title Company of Washington, 1111 Main Street, Suite 200, Vancouver, Washington 98660~~ (the "Title Company"), as escrow agent (the "Escrow Agent") for the Closing of this transaction, an earnest money deposit in the amount of **FOUR THOUSAND SIXTY AND NO/100 DOLLARS (\$4,060.00)** (the "Deposit") as part payment of the purchase price of the Property. The Deposit will be held by the Title Company for the benefit of the parties in an interest-bearing account 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. If either party becomes entitled to the Deposit upon termination of this Agreement, the parties shall deliver an instruction letter (the "Deposit Disbursement Letter") to the Escrow

* - Fidelity National Title 09/30/2021 10/04/2021

Agent directing disbursement of the Deposit to the entitled party; however, the Deposit Disbursement Letter shall not be required if Buyer terminates this Agreement on or before the end of the Feasibility Study Period. If either party fails or refuses to sign or deliver the Deposit Disbursement Letter, the entitled party may pursue a court action for specific performance and shall be entitled to recover all reasonable attorney fees and court costs incurred should it be deemed the prevailing party in such action.

3. Purchase Price. The total purchase price for the Property (**the "Purchase Price"**) will be **EIGHTY-ONE THOUSAND TWO HUNDRED and No/100 U.S. Dollars (\$81,200.00)**, to which the Deposit shall be a fully applicable part. The Purchase Price, including the Deposit, will be disbursed by the Escrow Agent to Seller by check or wire transfer, at Seller's option, at Closing.

4. Title to Property.

4.1 Conveyance. At Closing, Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged quit claim deed (**the "Deed"**) substantially in the form of **Exhibit "B"** attached hereto and by this reference incorporated herein.

4.2 Preliminary Commitment. Upon execution of this Agreement, Seller authorizes Buyer to order a preliminary commitment, at Buyer's expense, and at Buyer's option, for either a standard coverage owner's policy or an ALTA form of extended owner's 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, and as may be amended by the Title Company prior to Closing, Buyer shall advise Seller by written notice (**the "Buyer's Title Notice"**) which encumbrances to title, if any, are disapproved by Buyer (**the "Disapproved Encumbrances"**) within ten (10) business days of receipt of the Preliminary Commitment or Title Company amendment thereto. 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 the Buyer's Title Notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances (**the Seller's Title Notice"**). If Seller fails to give Buyer the Seller's Title Notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove the 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 ten (10) 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 (**the "Buyer's Election Notice"**). 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. Buyer shall be responsible for any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.4 Title Policy. At Closing and at Buyer's expense, Buyer shall cause the Title Company to issue to Buyer, at Buyer's option, either a standard coverage owner's policy or an ALTA form of extended owner's coverage policy 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. Buyer shall be responsible for all costs, including any additional survey work needed, for extended

coverage that exceeds the cost of the standard coverage owner's policy and for any endorsements requested by Buyer.

5. Conditions to Closing. The satisfaction of each of the following at or before Closing shall be a condition of 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, 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 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. Nothing in this Paragraph 5.1 will obligate Seller to obtain Tacoma Public Utility Board or City Council approval beyond the ordinary course of City of Tacoma and Department of Public Utilities procedures.
- 5.2 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expenses (including reasonable costs and attorney 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 as occurring prior to Closing, except for claims caused by Seller's sole negligence.
- 5.3 Buyer Feasibility Study. Buyer will have until one hundred twenty (120) business days from the Agreement Date (**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 Agreement Date 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 5.3, which reports shall be provided to Seller AS-IS, without representation or warranty whatsoever. During the Feasibility Study Period, Buyer may apply with the appropriate governmental authorities to obtain necessary governmental approvals, variances, or permits for Buyer's contemplated use of the Property, and Seller will cooperate with Buyer's reasonable efforts to obtain such approvals, variances, or permits.
- 5.4 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 (**the "Termination Notice"**) 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 deliver to Seller the Termination Notice 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.

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, THE SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS, AND SOLELY IN RELIANCE ON BUYER'S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS, AND EVALUATION OF THE PROPERTY. As of the Agreement Date, 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 Agreement Date. Seller agrees that, between the Agreement Date and the Closing Date, it will not damage nor commit waste on the Property nor, without the written consent of Buyer, enter into any lease or other agreement that would bind Buyer or the Property after Closing.

6.2 Release. Except with respect to Seller's representations and warranties expressly provided in this Agreement, 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). Except for undisclosed releases of hazardous materials or conditions, or Seller misrepresentation, Buyer assumes all liability and responsibility for any hazardous materials on or under the property and all costs for remediation of same, and shall not seek reimbursement from Seller therefore.

6.3 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.

7. Closing. This transaction will be closed in escrow by the Title Company acting as escrow agent (**the "Escrow Agent"**). The Closing will be held at the office of the Title Company on that date that is thirty (30) business days 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) business 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, the 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 the Escrow Agent, Buyer and Seller will deposit with the Escrow Agent without delay all instruments and monies required to complete the transaction in accordance with this Agreement. **"Closing"** is defined as the occurrence of all of the following events: 1) all documents required to close the transaction are executed; 2) the Title Company has irrevocably committed to issue the Title Policy (including all endorsements required by Buyer); 3) the sale proceeds are disbursed to the Seller; and 4) legal title passes to the Buyer.

8. **Closing Costs and Prorations.** Buyer shall pay the premium for the Title Policy, state of Washington real estate excise taxes applicable to the sale, if any, the document recording fees, and the Escrow Agent's escrow fee. Property taxes and assessments for the current year, and 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) business days after receipt of actual notice of such casualty loss (**the "Casualty Termination Notice"**). Upon exercise of such termination election by either party and delivery of the Casualty Termination Notice, 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 belonging to Seller from the Property on or before the Closing Date, unless any items are specifically authorized to remain in writing by Buyer.

11. **Events of Default.** In the event Buyer fails, without legal excuse to complete the purchase of the Property, then the Deposit 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 the 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 e-mail, with electronic delivery receipt requested (provided that a duplicate copy of any notices delivered by e-mail shall also be delivered via a recognized overnight courier service). Any notice delivered via facsimile (fax) transmission shall not be effective. 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 – 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attention: Greg Muller, Real Estate Officer
e-mail: gmuller@cityoftacoma.org
Telephone: 253.606.4688

Buyer: BNSF Railway Company
2650 Lou Menk Dr, MOB-2
Fort Worth, Texas 76131

Attention: Charlie Keltner
e-mail: Charles.Keltner@BNSF.com
Telephone: 817.352.6464

Any notice sent on a business day will be deemed to have been given, when personally delivered on a business day, 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 e-mail, the same day as verified by the electronic delivery receipt. If notice is sent on a non-business day, the preceding periods commence as of the first business day thereafter.

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 electronic signatures shall be fully binding and effective for all purposes.

14. Brokers and Finders. 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 attorney 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 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. 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 Closing, will be deemed to be material, and will survive the Closing Date for a period of six (6) 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, the 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 this Agreement.

24. Assignment. Except as outlined below in Section 25, Buyer shall not otherwise assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed.

25. Tax-Deferred Exchange Under I.R.C. § 1031. Buyer may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Buyer to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Buyer shall provide Seller with a "**Notice of Assignment**," attached hereto as **Exhibit "C"**, and Seller shall execute an acknowledgement of receipt of such notice. Seller agrees to fully cooperate with Buyer to permit Buyer to accomplish a tax-deferred exchange, but at no additional expense or liability to Seller for such tax-deferred exchange, and with no delay in the Closing. Seller's cooperation will include, without limitation, executing such supplemental documents as Buyer may reasonably request. Seller agrees that Buyer may use its standard form of "Assignment of Rights," attached hereto as **Exhibit "C-1"**, in connection with any tax-deferred exchange. Seller's cooperation as specified herein shall not be interpreted as a representation or guaranty that the Property or assignment of rights will satisfy the requirements of the contemplated tax-deferred exchange. Further, Buyer acknowledges that Seller Approvals and the timing of said Seller Approvals are entirely discretionary with the Tacoma Public Utility Board and Tacoma City Council, and Seller therefore makes no representations or guaranties that the Seller Approvals shall meet any timing requirements of the contemplated tax-deferred exchange.

26. 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.

27. 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.

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

29. 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 "Seller Disclosure Statement"**) shall be provided to Buyer within five business days after the Agreement Date. Buyer shall within three business days thereafter either deliver written notice to Seller to rescind the Agreement (**the "Buyer Notice to Rescind"**), else the Seller Disclosure Statement will be deemed approved and accepted by Buyer. If Buyer rescinds this Agreement under this Section 28, the Deposit, but 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.

30. 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.


{Remainder of Page Intentionally Left Blank}

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

SELLER:

TACOMA POWER

 08/04/2021
Jackie Flowers, Date
Director of Utilities

 08/04/2021
Chris Robinson,
Power Superintendent

Approved as to form:

Michael W. Smith 07/30/2021
Michael W. Smith,
Deputy City Attorney

City of Tacoma Review

Christopher Mattson
Chris Mattson,
Power Section Manager

Matt Bleich
Matt Bleich,
Power Section Assistant Manager


Travis Nelson
Travis Nelson,
Power Relicensing Coordinator

Ron Ayers
Ron Ayers,
Tacoma Power Chief Surveyor

Andrew Cherullo
Andrew Cherullo,
Director of Finance

BUYER:

BNSF RAILWAY COMPANY

By:  9/10/21
Date

Charles Keltner, Senior Manager Real Estate
Name and Title

EXHIBIT "A"
Property Legal Description

THAT PORTION OF GOVERNMENT LOT 2 OF SECTION 16, TOWNSHIP 10 NORTH, RANGE 2 WEST, W.M., IN COWLITZ COUNTY, WASHINGTON, LYING WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILROAD.

TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD.

EXHIBIT "B"

After Recording Mail To:

TACOMA PUBLIC UTILITIES
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attn: Real Property Services

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
QUIT CLAIM DEED NO. D6775**

Reference No.	P2019-183
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	BNSF Railway Company
Abbr. Legal Description:	Portion of Govt Lot 2 in S16, T10N, R2W, W.M., Cowlitz Co., WA.
Tax Parcel No:	WK1601006

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a Tacoma Power), a Washington first class municipal corporation, for and in consideration of Eighty One Thousand Two Hundred and No/100 U.S. Dollars (\$81,200.00), hereby conveys and quit claims to BNSF Railway Company, a Delaware corporation, as Grantee, all its interest in the following described real property situate in Cowlitz County, State of Washington, to-wit:

THAT PORTION OF GOVERNMENT LOT 2 OF SECTION 16, TOWNSHIP 10 NORTH, RANGE 2 WEST, W.M., IN COWLITZ COUNTY, WASHINGTON, LYING WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILROAD.

TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD.

Also known as Cowlitz County Assessor Tax Parcel WK1601006.
P2019-183/D6775

P2019-183/D6775

Authorized by City Council Resolution No. _____ adopted _____, at
the request of Public Utility Board Resolution No. U- _____ adopted
_____.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by
its proper officers on _____.

CITY OF TACOMA

By: _____
Mayor

Attest:

City Clerk

Accepted by Grantee

**BNSF RAILWAY COMPANY, a Delaware
Corporation**

By: _____
Date

Name and Title

STATE OF WASHINGTON)
)
COUNTY OF PIERCE)

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

Day	Species A (%)	Species B (%)	Species C (%)	Species D (%)
0	100	0	0	0
10	85	10	5	0
20	70	20	10	0
30	55	30	15	0
40	40	35	20	5
50	25	38	25	12
60	15	40	28	17
70	10	40	30	20
80	10	40	30	20
90	10	40	30	20
100	10	40	30	20

Page 13 of 16

P2019-183/D6775

CITY OF TACOMA, DEPT. OF PUBLIC UTILITIES

APPROVED:

Jackie Flowers, Date
Director of Utilities

AUTHORIZED:

Chris Robinson, Date
Power Superintendent

REVIEWED:

Chris Mattson, Date
Power Section Manager

Matt Bleich, Date
Power Section Assistant Manager

Travis Nelson, Date
Power Relicensing Coordinator

Ron Ayers, Date
Tacoma Power Chief Surveyor

Andrew Cherullo, Date
Director of Finance

APPROVED AS TO FORM:

Michael W. Smith, Date
Deputy City Attorney

EXHIBIT "C"

Goldfinch Exchange Company LLC

*A Delaware limited liability company
40 Lake Bellevue Drive, Suite 101
Bellevue, WA 98005
425-646-4020
425-637-2873 fax*

NOTICE OF ASSIGNMENT

TO: CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION and any assignees or exchange intermediaries of Seller.

You and BNSF Railway Company ("BNSF" or Buyer) have entered into a Real Estate Purchase and Sale Agreement (the Agreement), dated _____ for the sale of the real property (the Property) described therein. You are hereby notified that BNSF has assigned its rights as Buyer, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of completing a tax-deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and you will deed the Property directly to BNSF.

ACKNOWLEDGED:

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "C-1"

ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT

THIS ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT (this "Assignment") is entered into between BNSF Railway Company ("Exchangor") and Goldfinch Exchange Company LLC, a Delaware limited liability company ("Intermediary") on _____.

Exchangor, as Buyer, entered into that certain Real Estate Purchase and Sale Agreement (the Agreement), dated _____, with **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION** ("Seller"). The Agreement, together with any and all amendments thereof is incorporated herein by this reference. Exchangor and Intermediary have executed a Master Exchange Agreement dated December 10, 2009, under which Intermediary will acquire the subject property of the Agreement (the "Replacement Property"), described on Exhibit A of the Agreement, and transfer it to Exchangor. This Assignment is part of and supplements the Master Exchange Agreement, and as required thereunder, Exchangor shall assign its rights under the Agreement to Intermediary to effect the exchange.

NOW, THEREFORE, the parties agree:

Exchangor hereby assigns its rights, but not its obligations, in the Agreement to Intermediary and this assignment shall be effective immediately prior to the acquisition of the Replacement Property from Seller. All representations and warranties in the Agreement shall survive this Assignment to Intermediary. Intermediary hereby accepts this assignment. As allowed by Treasury Regulation §1.1031(k)-1(g)(4)(v), Seller shall deed the Replacement Property directly to Exchangor.

This Assignment is binding upon and shall inure to the benefit of the respective heirs, successors, and assigns of Exchangor and Intermediary.

IN WITNESS WHEREOF, the parties have executed this Assignment as their free and voluntary act and deed, on the date indicated above. Signatures may be in counterpart.

EXCHANGOR:

BNSF Railway Company

By: _____
Its: _____

INTERMEDIARY:

Goldfinch Exchange Company LLC, a Delaware limited liability company
By: 1031 Services, Inc., a Washington corporation, Manager

By: Christine E. Towey
Exchange Coordinator

ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT

THIS ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT (this "Assignment") is entered into between BNSF Railway Company ("Exchangor") and Goldfinch Exchange Company LLC, a Delaware limited liability company ("Intermediary") on August 24, 2021.

Exchangor, as Purchaser, entered into that certain Purchase and Sale Contract, dated _____, with CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a TACOMA POWER), ("Seller"). The agreement, together with any and all amendments thereof (collectively the "Agreement"), is incorporated herein by this reference. Exchangor and Intermediary have executed a Master Exchange Agreement dated December 10, 2009, under which Intermediary will acquire the subject property of the Agreement (the "Replacement Property"), described on Exhibit A, and transfer it to Exchangor. This Assignment is part of and supplements the Master Exchange Agreement, and as required thereunder, Exchangor shall assign its rights under the Agreement to Intermediary to effect the exchange.

NOW, THEREFORE, the parties agree:

Exchangor hereby assigns its rights, but not its obligations, in the Agreement to Intermediary and this assignment shall be effective immediately prior to the acquisition of the Replacement Property from Seller. All representations and warranties in the Agreement shall survive this Assignment to Intermediary. Intermediary hereby accepts this assignment. As allowed by Treasury Regulation §1.1031(k)-1(g)(4)(v), Seller shall deed the Replacement Property directly to Exchangor.

This Assignment is binding upon and shall inure to the benefit of the respective heirs, successors, and assigns of Exchangor and Intermediary.

IN WITNESS WHEREOF, the parties have executed this Assignment as their free and voluntary act and deed, on the date indicated above. Signatures may be in counterpart.

EXCHANGOR:

BNSF Railway Company

By:  Charles Keltner

Its: Senior Manager Real Estate

INTERMEDIARY:

Goldfinch Exchange Company LLC, a Delaware limited liability company

By: 1031 Services, Inc., a Washington corporation, Manager

By: Christine Towey
Exchange Coordinator

EXHIBIT "A"
LEGAL DESCRIPTION OF THE LAND

That portion of Government Lot 2 of Section 16, Township 10 North, Range 2 West, Willamette Meridian, Cowlitz County, Washington, lying Westerly of the Westerly right of way line of the Northern Pacific Railroad.



TACOMA PUBLIC UTILITIES

3628 South 35th Street

Tacoma, Washington 98409-3192

Date: 03/16/2021

From: Jackie Flowers, Director of Utilities

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

Subject: Declaration of Surplus of Tacoma Power Property Identified as Cowlitz County Assessor Tax Parcel Number WK1601006.

Tacoma Power owns an unimproved tract of land containing approximately 2.74 acres identified as Cowlitz County Assessor Tax Parcel Number WK1601006 located in unincorporated Cowlitz County. The property was acquired by Tacoma Power in 2013 utilizing Fish Habitat Funds for fish habitat protection, restoration, and enhancement consistent with the Cowlitz Hydroelectric Project obligations under FERC License No. 2016. In furtherance of a bridge replacement project across the Cowlitz River, the BNSF Railway Company ("BNSF") would like to acquire the property.

Following is the Property Legal Description:

THAT PORTION OF GOVERNMENT LOT 2 OF SECTION 16, TOWNSHIP 10 NORTH, RANGE 2 WEST, W.M., IN COWLITZ COUNTY, WASHINGTON, LYING WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILROAD.

TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD.

Upon review by Tacoma Power management, it has been concluded that there is no foreseeable need for Tacoma Power to retain fee ownership of the approximately 2.74 acres proposed for acquisition by BNSF, as the sale proceeds will be returned to the Fish Habitat Fund to be re-invested for fish habitat purposes consistent with the guidelines of the Habitat Advisory Group oversight committee established by the FERC License Settlement Agreement Article 11. 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.

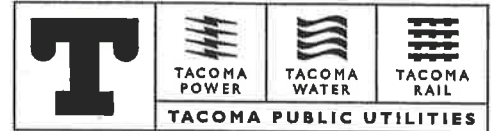
APPROVED:

Jackie Flowers, Director of Utilities

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



MEMORANDUM



03/16/2021
Date: _____

Mr. Bryan Flint, Chair
Public Utility Board
City of Tacoma, WA

Chair Flint,

In order to provide Board with early notice for the opportunity to make inquiries or provide feedback to a proposed TPU real property surplus disposition, attached please find the Declaration of Surplus for the proposed sale of a 2.74 acre tract of unimproved land located in Cowlitz County adjacent to the Cowlitz River.

This property was originally acquired by Tacoma Power in 2013 utilizing Fish Habitat Funds targeted for fish habitat protection, restoration, and enhancement consistent with the Cowlitz Hydroelectric Project obligations under FERC License No. 2016. Given its land-locked status and small size, together with its location adjacent to an operating rail line, there is limited opportunity to improve habitat functions and values on this property.

In furtherance of a bridge replacement project across the Cowlitz River, the BNSF Railway Company ("BNSF"), who operates the adjacent rail line, would like to acquire the property.

Tacoma Power paid \$11,362.00 for the property in 2013. The tentative sale price to BNSF, subject to final negotiation of the Purchase and Sale Agreement, is \$81,200. The net sale proceeds will be returned to the Fish Habitat Fund to be re-invested for fish habitat purposes consistent with the guidelines of the Habitat Advisory Group ("HAG") oversight committee established by the FERC License Settlement Agreement Article 11. Real Property Services has worked with Tacoma Power's Natural Resources division on this request, and the HAG committee has given its approval.

Please let me know if any Board Member wishes additional details or would like to provide feedback to this proposed surplus disposition.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Jackie Flowers', is written over a horizontal line.

Jackie Flowers, Director of Utilities

Attachments:
Declaration of Surplus
Sale Property Location Map