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**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
WATER DIVISION
PURCHASE and SALE AGREEMENT
AGREEMENT NO. 3113**

Reference No.: 2014-09
Seller: Dennis and Peggy Hoffer
Buyer: City of Tacoma, Department of Public Utilities,
Water Division (d.b.a. Tacoma Water)
Abbreviated Legal Description: Portion of the Northeast Quarter of Section 13, Township
21, Range 7 East, W.M.
County: King
Tax Parcel No.: 132107-9035-03

This Purchase and Sale Agreement, hereinafter referred to as "Agreement", entered into on this _____ day of _____, 2016 between DENNIS AND PEGGY HOFFER, husband and wife, hereinafter referred to as "Seller," and the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION (d.b.a. Tacoma Water), the buyer and hereinafter referred to as "Tacoma Water."

WHEREAS, Seller is the owner of the fee title to the real property described below and desires Tacoma Water to purchase said property which consists of approximately 2 acres;

WHEREAS, Tacoma Water desires to acquire the Property, subject to certain conditions as set forth herein; and

WHEREAS, the Parties hereto mutually desire to enter into this Purchase and Sale Agreement ("Agreement") defining their rights, duties and liabilities relating to the subject property.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties HEREBY AGREE AS FOLLOWS:

1. **Purchase.** Sellers agrees to sell and convey to Tacoma Water and Tacoma Water agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, in fee simple, the following real property:

THE WESTERLY 365 FEET, AS MEASURED ALONG THE NORTHERLY LINE OF THE NORTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY OF THE EASTERLY 1,243 FEET, AS MEASURED ALONG THE NORTHERLY LINE OF THE NORTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY OF THE PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 21 NORTH, RANGE 7 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY AND LYING SOUTHERLY OF THE NORTH LINE OF THE GREEN RIVER, THE EAST AND WEST LINES OF SAID 365 FEET ARE PARALLEL WITH THE EAST LINE OF SAID WEST HALF.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NO. 132107-9035-03

Together with all right, title, and interest in and to any rights, licenses, privileges, reversions, and easements pertinent to the real property, including without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the real property as well as all development rights, air rights, water rights, water and water stock relating to the real property and any other easements rights of way or appurtenances used in connection with the beneficial use and enjoyment of the real property (collectively, the "Property").

2. **Purchase Contingencies.** The Seller acknowledges that Tacoma Water's purchase of the Property hereunder is conditioned upon the following reviews, the terms and conditions of which are to be satisfied prior to the termination date specified in Section 8.b. herein. Tacoma Water will have the right to terminate this Agreement if the below listed Purchase Contingencies are not satisfied:

- a. Feasibility Study: During the term of the Agreement Period, Tacoma Water, at its sole cost and expense, will complete a feasibility study to determine, in Tacoma Water's full and complete discretion, that it is feasible for Tacoma Water to own, operate, and develop the Property for its planned

purposes. This includes, but is not limited to market and engineering studies, soils tests, engineers inspections, surveys, and all jurisdictional consents, approvals, and permits that may be required.

- b. Environmental Review: In its sole discretion, during the term of the Agreement Period, Tacoma Water shall have the right to conduct an environmental assessment of the Property. Accordingly, Seller grants, upon 24 hours written notification, Tacoma Water the right of all reasonable and necessary access to the subject Property necessary to complete its environmental review. Tacoma Water shall have the sole right to determine if the results of this environmental review are satisfactory and acceptable.
 - c. Environmental Information: The Seller agrees to provide to Tacoma Water copies of any environmental information or environmental assessment reports which may be available to the Seller and which are pertinent to the subject Property.
 - d. Hazardous Materials: The Seller expressly agrees that Seller shall be solely liable for the remediation of any hazardous materials, substances and/or conditions found on the Property resulting from Seller's past use of said Property and/or occurring between the time of mutual acceptance of this Agreement and Closing; unless such conditions are affirmatively waived by Tacoma Water in writing.
 - e. Title Contingency: In its sole discretion, during the term of the Agreement Period, Tacoma Water may investigate the status of the title to the subject Property to determine whether or not there exist legal impediments to acquiring the Property. Seller agrees herein to cooperate and promptly provide Tacoma Water with documents and other information necessary for it to determine the status of title to the subject Property.
 - f. Completion of Reviews: Tacoma Water shall complete all of the foregoing reviews and shall, prior to the Termination Date of the Agreement Period, provide written notice to the Seller stating whether the Purchase Contingencies have been satisfied and/or waived, and if Tacoma Water will proceed with the purchase of the subject Property. Tacoma Water shall have the right to terminate this Agreement if the Property is not suitable for Tacoma Water's intended use. In the event Tacoma Water does not complete the purchase or if Tacoma Water terminates this Agreement, this Agreement will terminate and Seller and Tacoma Water will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement.
3. **Purchase Price.** Tacoma Water and Seller agree that the purchase price shall be Four Hundred Nine Thousand Dollars (\$409,000.00) which shall be tendered in the form of a Cashier's Check OR electronic funds transfer at the option of Seller, at

Closing as defined below.

4. **Additional Purchase and Sale Contingencies.** Both parties agree this Agreement is subject to approval by the City of Tacoma Public Utility Board. The Seller further acknowledges and agrees that Tacoma Water's offer to purchase the subject Property hereunder is conditioned upon the right to reasonable inspection of the Property, as it deems necessary, during and up to the date of Closing. Tacoma Water shall provide written notification to Seller 24 hours prior to accessing the Property. Said inspection shall include a final hazardous materials inspection of the Property and/or its improvements to confirm conditions are consistent with those which were found upon Tacoma Water's Environmental Review. The Seller expressly agrees that Seller shall be solely liable for the remediation of any hazardous materials, substances and/or conditions found on the Property resulting from Seller's use of said Property, and this obligation shall survive the date of Closing, and the transfer of title.
5. **Title and Conveyance.** Tacoma Water shall open an escrow account with a King County Title Company and establish a date for the exchange of title documents and payment for "Closing" as defined below. At Closing, in exchange for payment from Tacoma Water, Seller agrees to convey to Tacoma Water fee simple, good and merchantable title to the Property by Statutory Warranty Deed. Said Property shall be free and clear of all taxes, assessments, liens and encumbrances, except as agreed to, in writing, by Tacoma Water.
6. **Property Entitlements.** The Seller agrees that he shall not sell, convey, assign, transfer or encumber any or all of the said Property during the term of the Agreement Period, nor construct capital improvements to the Property, nor waste, sell or otherwise transfer any timber or minerals thereon during the Agreement Period. For the duration of the Agreement Period, Seller assumes all risks for damage to or destruction of the Property and Seller is responsible for all Property insurance, repairs to the Property, and water and/or other utilities for the Property.
7. **Real Estate Taxes and Assessments.** The Seller shall be solely responsible for the payment of real estate taxes in a timely and appropriate manner; and that all taxes and special assessments accruing for the year in which the date of Closing of the purchase under which the Agreement shall fall, shall be prorated to the Seller and Tacoma Water hereto, as of the date of Closing. Tacoma Water is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore Closing Agent is directed, to the extent possible, to apply (give notice to) King County for a change in tax status for the Property, so that property taxes do not have to be collected from Buyer at closing.

8. Closing/Termination Date.

- a. "Closing" shall mean the date on which all documents relating to title are recorded and funds are available for disbursement. However, the Parties agree that there shall be substantial and satisfactory compliance if, on the Termination Date, all documents are executed together with all required funds being deposited in escrow, or the funds otherwise being made available by Tacoma Water upon the recording of the title documents.
- b. The Closing date for this transaction shall be not later than **Nintey (90) days** following Tacoma Water's acceptance of this Purchase and Sale Agreement, and under no circumstances later than August 31, 2016, which shall be the termination date ("Termination Date") of this transaction/agreement unless extended by the written consent of Seller and Tacoma Water. The "Agreement Period" shall be the period between Tacoma Water's acceptance of this Agreement and the Termination Date.

9. Closing Agent and Location. Closing shall be facilitated by a qualified King County Title Company located in Enumclaw, Washington or such other Escrow Service as selected by Tacoma Water.

10. Closing Costs/Escrow Compliance. Unless limited by law or modified by the terms of this Agreement, Tacoma Water agrees to pay all closing costs and fees including, but not limited to, title insurance, recording fees, escrow fees/costs, excise and other closing taxes that may be required by King County. The Seller and Tacoma Water shall deposit, when notified and without delay, in escrow with the closing agent all instruments, monies, and other documents reasonably required to complete the closing of this transaction in accordance with the terms of this Agreement.

11. Possession. Possession and control of the Property shall be transferred to Tacoma Water upon Closing. All personal property, including refuse, not included in the purchase price shall be removed by Seller prior to closing.

12. Right of Entry by Tacoma Water. Prior to Closing, Seller shall allow, upon written notification 24 hours in advance, Tacoma Water and its representative's reasonable access to enter upon the Property in order to survey and perform environmental assessment(s), appraisals, and other tests to determine the Property's suitability for Tacoma Water's use.

- 13. Default/Litigation.** In the event of a default in the performance of the terms and conditions of this Agreement, and/or if the Seller or Tacoma Water are involved in litigation arising from any dispute relating to this transaction, the prevailing party is entitled to recover reasonable attorneys' fees and costs related to the dispute. In the event any legal action is commenced by a third party arises from Seller's error or omission relating to this transaction, the Seller agrees to indemnify, defend and hold Tacoma Water harmless in such action or litigation now and in the future.
- 14. 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.
- 15. Professional Advice.** The Seller and Tacoma Water 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. General Provisions.**
- a. Notices: Unless otherwise specified in this Agreement, any notice required or given under the terms of this Agreement must be given in writing and delivered to the addressee by certified mail or courier.

Tacoma Water – TPU Real Property Services
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409

Peggy and Dennis Hoffer
36512 SE Green River Headworks Road
Ravensdale, WA 98051

Receipt of any notice shall be defined as occurring within three (3) business days following the postmark date.

- b. Integration: This Agreement constitutes the full understanding between the

Seller and Tacoma Water and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, other than as expressly set forth in this Agreement. This Agreement shall not be modified in any manner except in written instrument mutually executed by the Parties. The covenants and agreements of this Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

- c. Counterparts: This Agreement may be signed in counterparts and assembled to form a complete Agreement.
- d. Amendments: This Agreement shall not be modified in any manner except in a written instrument mutually executed by the Seller and Tacoma Water
- e. Time is of the Essence: Time is of the essence as to all terms and conditions of this Agreement.
- f. Survival: Any terms, which by their nature should survive shall survive the Closing of the sale.
- g. 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.
- h. Indemnification: Seller shall indemnify Tacoma Water from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of this Agreement and caused by Seller's negligence, errors and omissions, willful misconduct, breach of warranty(ies), and/or breach of contract(s).
- i. Governing Law: This Agreement shall be governed and constructed in accordance with the laws of the State of Washington without recourse to any principles of conflicts of laws.
- j. 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.
- k. 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.

IF APPLICABLE, THE SELLER SHALL PROVIDE THE DISCLOSURE STATEMENT REQUIRED BY RCW 64.06.015, AS HEREAFTER AMENDED, WITHIN THE TIME FRAME REQUIRED BY RCW 64.06.030, AS HEREAFTER AMENDED.

17. Commission. Each Party warrants and represents to the other that no real estate brokerage commission is or will be payable by such other party as a result of the transaction herein provided for, or, if any such commission is payable, the warranting party shall pay the same and hereby agrees to indemnify such other party of and against any and all claims for a real estate brokerage commission that may arise as a result of any acts of the warranting party.

Authorized by Public Utility Board Resolution No. _____ adopted _____, 20__.

IN WITNESS WHEREOF, the Parties have signed and sealed this contract the day and year first above written.

SELLER

TACOMA WATER

Dennis W. Hoffer 5-18-2016

Dennis W. Hoffer Date

Peggy Hoffer 5/18/16

Peggy Hoffer Date

Linda McCrea Date
Water Superintendent

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Tacoma Water Review

Dated this _____ day of _____, 20____.

REVIEWED:

APPROVED AS TO FORM:

Water Quality Manager

Deputy City Attorney

Environmental Programs Manager

Financial Manager

REVIEWED:

Surveyor

FINANCE REVIEWED:

Director of Finance

Dated: _____