

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
POWER DIVISION
REAL ESTATE PURCHASE and SALE AGREEMENT
AGREEMENT NO. 300**

Reference No.: 2013-146
Seller: City of Tacoma, Department of Public Utilities, Light Division, (d.b.a. Tacoma Power)
Buyer: David Michael Filla
Abbr. Legal Description: Portion of the Northwest Quarter of the Southwest Quarter of Section 2 and the Northeast Quarter of the Southeast Quarter of Section 3, Township 11 North, Range 1 West, W.M.
Full Legal Description: Attached as Exhibit A
County: Lewis County
Tax Parcel No(s): Portion of 011332021002

This Real Estate Purchase and Sale Agreement, ("Agreement"), entered into on this _____ day of _____, 2014 between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Tacoma Power" and DAVID MICHAEL FILLA, a single man, hereinafter referred to as "Buyer."

WHEREAS, Tacoma Power is the sole owner of the fee title to the real property more particularly described in Section 1 below; and,

WHEREAS, Buyer desires to purchase from Tacoma Power and Tacoma Power desires to sell to Buyer the real property subject to the terms and conditions set forth herein; and

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

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tacoma Power and Buyer AGREE AS FOLLOWS:

- 1. Purchase.** Tacoma Power agrees to sell and convey to Buyer and Buyer agrees to purchase from Tacoma Power, subject to the terms and conditions set forth in this Agreement, in fee simple the following real property known as portions of tax parcel number 011332021002, and consisting of approximately 13.06 acres located off of Howe Road, Toledo, Washington, legally described as:

See attached Exhibit "A"

Said property is visually depicted in Exhibit "B" attached hereto and made a part

hereof, together with all right, title and interest in and to any rights licenses, privileges, reversions and easements pertinent to the real property, subject to those certain conditions as set forth herein.

The real property together with the rights and interests described above are collectively referred to herein as the "Property". Buyer acknowledges that prior to Closing, Buyer shall have twenty one (21) days from both parties signing this Agreement in order to inspect the Property ("Feasibility Period), if Buyer chooses not to acquire the property prior to the end of the Feasibility Period, Buyer is entitled to the return of the Earnest Money Deposit as described in section 2 below. After the Feasibility Period Buyer acknowledges he is purchasing and shall acquire the Property in its physical condition existing at the date of Closing, "AS-IS," "WHERE IS" AND WITH ALL FAULTS 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, Tacoma Power has made no representations or warranties regarding the Property, excluding those representations and warranties expressly provided in this Agreement.

2. **Earnest Money.** As Earnest Money, Buyer will deposit Five Hundred Dollars (**\$500.00**) in the form of cash or check to be held by the closing agent of Buyer's choice, or with Tacoma Power, within ten (10) days of both parties signing this Agreement. The deposit shall be applied to the Purchase Price at Closing. IN THE EVENT BUYER FAILS WITHOUT LEGAL EXCUSE TO COMPLETE THE PURCHASE OF THE PROPERTY, THE DEPOSIT SHALL BE FORFEITED TO TACOMA POWER AS LIQUIDATED DAMAGES. Buyer and Tacoma Power agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and represent a reasonable estimate of the losses that Tacoma Power will incur if Buyer fails to purchase the Property after all conditions precedent to Buyer's performance have been completely satisfied inn Buyer's sole and absolute discretion.
3. **Purchase Price.** The total purchase price for the Property ("Purchase Price") shall be One Hundred Sixty Thousand Five Hundred Fifteen Dollars (**\$160,515.00**) which shall be paid to the closing agent of Buyer's choice or to Tacoma Power in the form of a Cashier's Check or electronic funds transfer at the option of Tacoma Power at Closing as defined in section 4 below.
4. **Closing.** The closing will occur not later than sixty (60) days following the conditions of section 6 being met, and under no circumstances later than August 31, 2014 (the "Closing Date"). "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to the Tacoma Power, and legal title passes to the Buyer. Buyer is responsible for all closing costs.
5. **Title to Property**
 - 5.1. Conveyance. At Closing, Tacoma Power shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged quitclaim deed ("Deed").
 - 5.2. Condition of Title. Tacoma Power hereby agrees from and after the date

hereof, until the Closing or the termination on this Agreement, that it (a) will take no action that will adversely affect title to the Property; (b) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without Buyer's prior written consent; and (c) will not enter into written or oral contracts or agreements with respect to the operation of the Property, which cannot be cancelled by Buyer on not more than 30 days' notice without premium or penalty.

5.3. Title Policy. At Closing, and at Buyer's option and expense, as a condition at Closing the Title Company shall issue to Buyer an owner's policy of insurance insuring Buyer's title to the property ("Title Policy").

6. **Conditions to Closing.** Buyer acknowledges and agrees that this Agreement is conditioned upon the following additional reviews, terms, and conditions all of which are to be satisfied prior to Closing:

6.1. 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. If such approval is not obtained, this Agreement will terminate, Earnest Money will be returned to Buyer, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.

6.2. Buyer to Conduct Feasibility Study. Buyer has twenty-one (21) days from date of signing.

7. **Condition of the Property.** Tacoma Power agrees that it shall not sell, convey, assign, transfer or encumber any or all of the said Property during the term of this Agreement up to and including the Closing Date, nor construct capital improvements to the Property, nor waste, sell or otherwise transfer any timber or minerals thereon prior to Closing. Other than as provided for in any Right of Entry or other written agreements between the parties relating to the Property, prior to Closing, Tacoma Power assumes all risks for damage to or destruction of the Property.

8. **Possession.** Tacoma Power shall deliver exclusive possession and control of the Property to Buyer on the Closing Date. Tacoma Power shall remove any and all personal property or debris from the Property on or before the Closing Date, unless specifically authorized otherwise in writing by Buyer or placed on the Property by Buyer.

9. **Default; Remedies; Specific Performance.** In the event of material breach or default in or of this Agreement or any of the representations, warranties, terms, covenants, conditions, or provisions hereof by either party, the non-breaching or non-defaulting party shall have, in addition to a claim for damages from such breach or default, the right to terminate this Agreement upon written notice to other party without any additional liability to the other party.

10. **Litigation / Attorney Fees.** In the event Tacoma Power or the Buyer are involved in litigation arising from any failure to perform any of its obligations under this Agreement or a dispute relating to the meaning or interpretation of any provision of

this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs related to the dispute.

11. Professional Advice. Tacoma Power 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.

12. Release of Tacoma Power. Except with respect to Tacoma Power's representations and warranties expressly provided in this Agreement, Buyer releases Tacoma Power 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 Tacoma Power, that Buyer may have against Tacoma Power arising from, in whole or in part, or related in any way to (a) 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) or (b) any information provided by Tacoma Power.

13. General Provisions.

13.1. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by mail. The 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. E-mail transmission of notice 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:

Tacoma Power: Tacoma Power
Attn: Maureen Barnes
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

Buyer: David "Mick" Filla
P.O. Box 623
Toledo, WA 98591

13.2. Integration. Except as expressly stated otherwise herein this Agreement constitutes the full understanding between the Tacoma Power and Buyer regarding the sale of the property 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. The covenants and agreements of this Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

- 13.3. Amendments. This Agreement shall not be modified in any manner except in written instrument mutually executed by Tacoma Power and the Buyer.
- 13.4. Counterparts. This Agreement may be signed in counterparts and assembled to form a complete Agreement.
- 13.5. Time is of the Essence. Time is of the essence as to all terms and conditions of this Agreement.
- 13.6. Survival: The following sections shall survive the Closing of this Agreement: Section 9 "Default, Remedies, Specific Performance;" Section 10, "Litigation / Attorney Fees;" Section 12 "Release of Tacoma Power;" Section 13.11 "Governing Law;" Section 13.12 "Construction;" Section 13.13 "Brokers and Finders;" and Section 13.14 "Continuation and Survival of Representations and Warranties."
- 13.7. Waiver. Neither Tacoma Power'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.
- 13.8. Assignment. Buyer shall not assign this Agreement without Tacoma Power's prior written consent, which consent may not be unreasonably withheld or delayed.
- 13.9. 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.
- 13.10. Additional Acts. 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 effect the Agreement contemplated herein.
- 13.11. 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 Conflicts of Laws.
- 13.12. 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.
- 13.13. Brokers and Finders Fees. Buyer shall hold Tacoma Power harmless against all claims by brokers and agents for any real estate commission due in this transaction.
- 13.14. 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 the Closing Date, 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. 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.

14. Disclosure. IF APPLICABLE, TACOMA POWER 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.

Sale authorized by City Council Resolution No. _____ adopted _____, 2014 at the request of Public Utility Board Resolution No. U-_____ adopted _____, 2014.

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

Accepted,

Buyer:

Seller:

David Michael Filla Date

William A. Gaines, Date
Utilities Director/CEO

Tacoma Power Review

Dated this _____ day of _____, 2014.

REVIEWED:

APPROVED AS TO FORM:

Theodore C. Coates
Power Superintendent/COO

Michael W. Smith
Deputy City Attorney

Patrick D. McCarty
Generation Manager

Keith Underwood
Natural Resource Manager

REVIEWED:

Jeffrey Singleton
Chief Surveyor

Mark LaRiviere
Senior Fisheries Biologist

Russell Post
Environmental Compliance Manager

City of Tacoma – Tacoma Power – Real Property Services		
Date: April 3, 2014 Gloria Fletcher Senior Real Estate Officer	<i>Tacoma Power – Real Estate</i> Purchase & Sale Agreement No. 300 <i>Portion of 011332021002</i>	Project Number 2012-200
<p>That portion of Parcel "B" of Lewis County Boundary Line Adjustment number 11-0004, recorded under Auditor's file number 3363176, located in the Southwest quarter of Section 2 and the Southeast quarter of Section 3, Township 11 North, Range 1 West, W.M., Lewis County, Washington, more particularly described as follows:</p> <p>Commencing at the Northwest corner of Government Lot 5 of said Section 2; thence East along the North line of said Government Lot 5 a distance of 29.30 feet to the Westerly margin of Howe County Road; thence S17°47'50"E along said margin a distance of 1052.21 feet; thence continuing along said margin S22°21'07"E a distance of 94.32 feet to the True Point of Beginning; thence N88°15'55"W a distance of 1030.15 feet to the West line of Government Lot 5 of said Section 3; thence S00°51'00"E along said West line a distance of 177.28 feet; thence S54°57'58"E a distance of 414.58 feet; thence S54°43'53"E a distance of 437.60 feet; thence S49°48'14"E a distance of 391.26 feet to the East line of said Parcel "B"; thence N03°34'44"W along said East line a distance of 213.76 feet; thence continuing along said line N26°50'47"E a distance of 186.94 feet; thence continuing N16°18'08"E a distance of 248.22 feet; thence continuing N18°44'04"W a distance of 30.50 feet to the Southwesterly margin of Howe County Road; thence N22°21'07"W along said margin a distance of 261.67 feet to the True Point of Beginning.</p> <p>Subject to a 60.00 foot easement for ingress, egress and utilities lying 60.00 feet Westerly of the following described line, lying within Government Lot 5 of Section 2, Township 11 North, Range 1 West, W.M., Lewis County, Washington:</p> <p>Beginning at the Southeast corner of Parcel "B" of Lewis County Boundary Line Adjustment number 11-0004, recorded under Auditor's file number 3363176; thence N03°34'44"W a distance of 213.76 feet along the East line of said Parcel "B"; thence continuing along said East line N26°50'47"E a distance of 186.94 feet; thence continuing N16°18'08"E a distance of 248.22 feet; thence N18°44'04"W a distance of 30.50 feet to its intersection with the Southwesterly margin of Howe County Road as depicted on said Boundary Line Adjustment Map; thence N22°21'07"W along said margin a distance of 355.99 feet to the terminus of said line. Terminus point of said 60.00 foot easement bears N22°21'07"W a distance of 94.32 feet from the Northeast corner of Parcel "B" of Lewis County Boundary Line Adjustment number 11-0004. The Southerly end of said strip bears N49°48'14"W.</p> <p>Sideline to be extended or shortened to meet at its respective intersection.</p> <p>Also together with a 60.00 foot easement for ingress, egress and utilities lying 30.00 feet on each side of the centerline of an existing access road, lying within Government Lot 5 of Section</p>		
TACOMA POWER REAL PROPERTY SERVICES LEGAL DESCRIPTION		
This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.	Exhibit A Page 1 of 2	

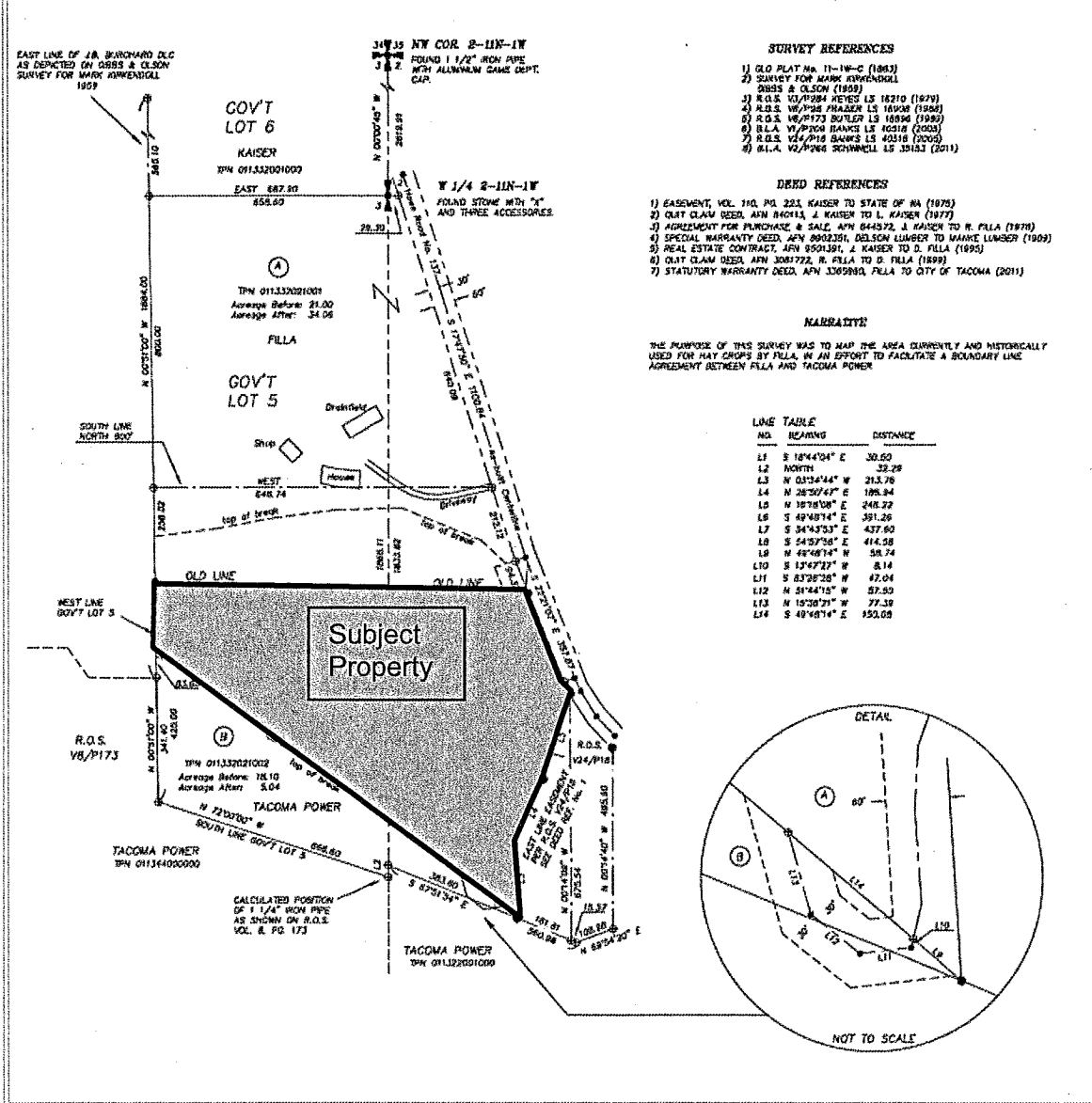
City of Tacoma – Tacoma Power – Real Property Services		
Date: April 3, 2014 Gloria Fletcher Senior Real Estate Officer	<i>Tacoma Power – Real Estate Purchase & Sale Agreement No. 300 Portion of 011332021002</i>	Project Number 2012-200
<p>2, Township 11 North, Range 1 West, W.M., Lewis County, Washington, more particularly described as follows:</p> <p>Commencing at the Southeast corner of Parcel "B" of Lewis County Boundary Line Adjustment Number 11-0004, recorded under Auditor's file number 3363176; thence N49°48'14"W a distance of 58.74 feet to the True Point of Beginning of said centerline; thence S13°47'27"W a distance of 8.14 feet; thence continuing along said centerline S83°26'28"W a distance of 47.04 feet; thence continuing N51°44'15"W a distance of 57.50 feet; thence N15°36'21"W a distance of 77.39 feet to the terminus of said centerline. Terminus point of said 60.00 foot easement bears N49°48'14"W a distance of 208.82 feet from said Southeast corner of Parcel "B" of Lewis County Boundary Line Adjustment Number 11-0004. The Easterly and Westerly ends of said 60.00 foot wide easement bear N49°48'14"W and S49°48'14"E respectively.</p> <p>Sidelines to be extended or shortened to meet at their respective intersections.</p> <p>Also together with and subject to Easements, Restrictions and Reservations of Record.</p>		
TACOMA POWER REAL PROPERTY SERVICES LEGAL DESCRIPTION		
This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.	Exhibit A Page 2 of 2	

City of Tacoma – Tacoma Power – Real Property Services

Date: April 3, 2014
 Gloria Fletcher
 Senior Real Estate
 Officer

Tacoma Power – Real Estate
 Purchase & Sale Agreement No. 300
 Portion of 011332021002

Project Number
 2012-200



TACOMA POWER REAL PROPERTY SERVICES ILLUSTRATION

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Exhibit B